

INTERNAL MEMO

STANDING COMMITTEE ON ROADS AND TRANSPORTATION



To: Speaker of the Senate

Through: Clerk of the Senate

Through: Deputy Clerk (EG)

Through: Director, Committee Services

From: Clerk Assistant

Date: 18th March, 2019

DATE	18 th March, 2019
TABLED BY	
COMMITTEE	
CLERK AT THE TABLE	

Rt. Hon. Speaker
You may approve for tabling
20/03/19

Recommended for approval for tabling
Forwarded & recommended
19/03/19

EG
21/03/19

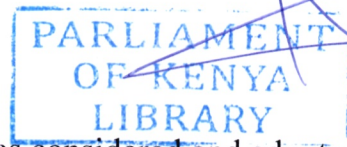
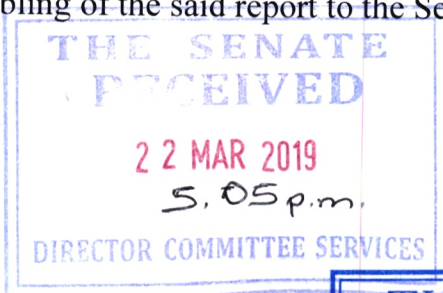
RE: **REPORT OF THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018**

The above matter refers.

The Standing Committee on Roads and Transportation has considered and adopted its report on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018.

The Purpose of this memo is to forward for your information, the Report and seek your approval for the Tabling of the said report to the Senate.

Pmulesi
Peter Mulesi



PAPERS LAID	
DATE	27/03/2019
TABLED BY	Vice Chairman
COMMITTEE	Roads & Transport
CLERK AT THE TABLE	Stella

Approved
22/3/19

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REPUBLIC OF KENYA



Rt Hon. Speaker

copy recommended for approval for tabling. E 21/03/19

PARLIAMENT

You may approve for tabling. 21/03/19

THE SENATE

TWELFTH PARLIAMENT - SECOND SESSION

THE STANDING COMMITTEE

*Approved
22/3/19*

ON

ROADS AND TRANSPORTATION

REPORT ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018.

Clerk's Chambers,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

November, 2018

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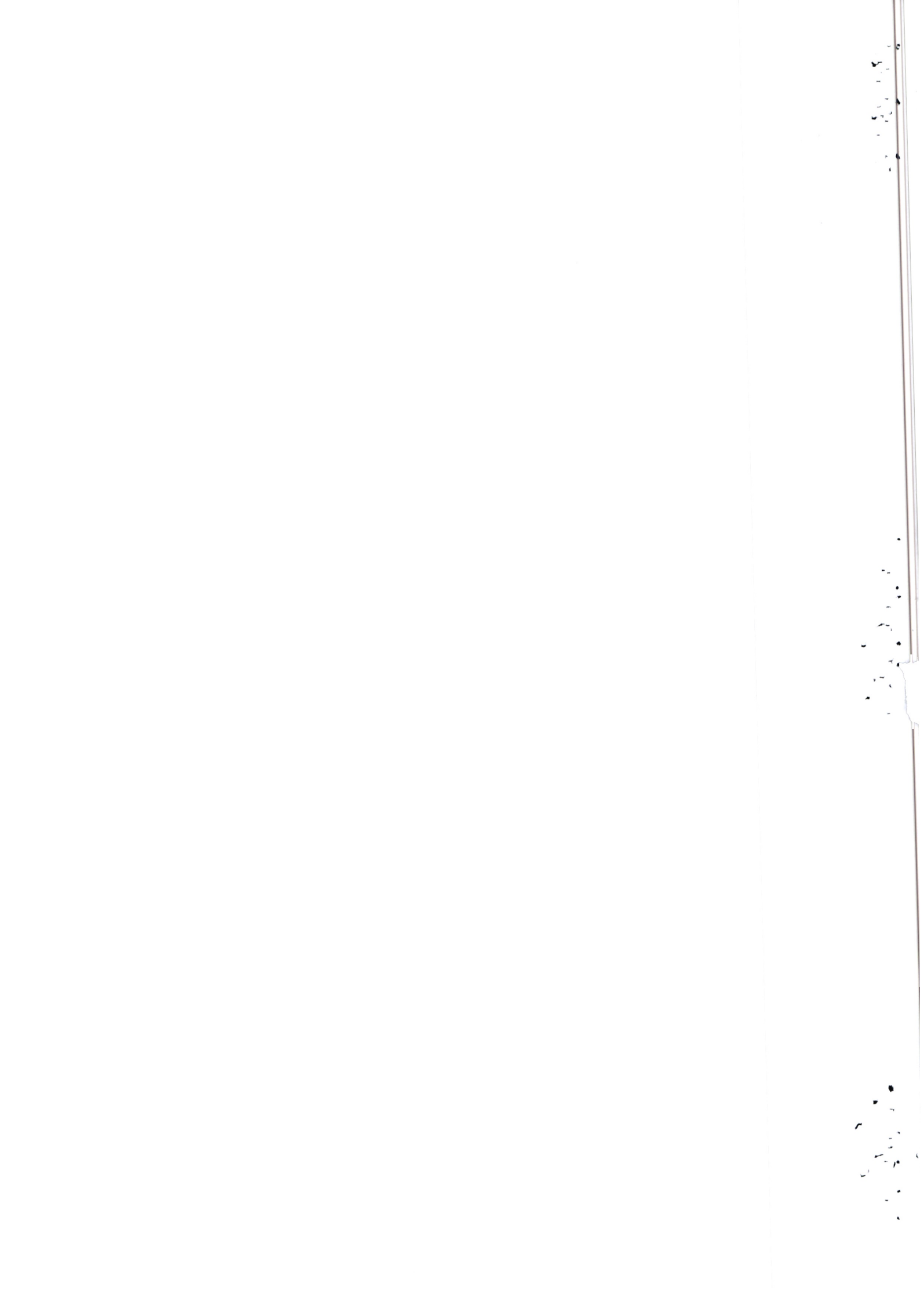
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ABBREVIATIONS AND ACRONYMS

CEC:	County Executive Committee Member
COG -	Council of Governors
KeNHA-	Kenya National Highways Authority
KURA -	Kenya Urban Roads Authority
NCA -	National Construction Authority



PREFACE

Mr Speaker Sir,

The Standing Committee on Roads and Transportation was constituted in December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of Senate standing order 218(3).

The Committee is mandated to consider all matters relating to: *transport, roads, public works, construction and maintenance of roads, rails and buildings, air and seaports.*

In executing its mandate, the Committee oversees the Ministries of Transport, Infrastructure, Housing and Urban Development.

The Committee comprises the following Members:

(1) Sen. Wamatangi Kimani, MP,	Chairperson
(2) Sen. (Eng.)Hargura Godana, MP,	Vice- Chairperson
(3) Sen. Enoch Wambua, MP,	Member
(4) Sen. Christine Zawadi, MP,	Member
(5) Sen. (Dr.) Lelegwe Ltumbesi, MP,	Member
(6) Sen. Philip Mpaayei, MP,	Member
(7) Sen. Sylvia Kasanga, MP,	Member
(8) Sen. (Prof.) Ekal Imana, MP,	Member
(9) Sen. Cleophas Malalah, MP,	Member

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EXECUTIVE SUMMARY

The County Planning (Roads, Pavements and Parking Bays) Bill, 2018 originated in the Senate and sponsored by Sen. Ledama Ole Kina, MP.

The Bill seeks to provide a legislative framework for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and pavements in each county. It also provides for the proper planning and placement of access-ways to commercial buildings along major roads within counties.

The Bill confers responsibility on the County Executive Committee (CEC) Member responsible for matters relating to roads in each county. It therefore delegates limited and conditional legislative powers and does not limit fundamental rights and freedoms.

Further, the Bill mandates county governments to plan, construct and maintain county roads, streets, lanes, alleys, parking bays, drainage systems and pavements within the respective counties.

The Bill concerns county governments in terms of Article 110(1) (a) of the Constitution as it contains provisions that affect the functions and powers of the county governments with respect to county transport, county roads, parking, and public road transport as set out under paragraph 5 of part 2 of the Fourth Schedule to the Constitution. The Bill therefore affects the functions and powers of county governments as provided under the Constitution; and is not a money Bill within the meaning of Article 114 of the Constitution.

The Committee made some of the following observations;

- 1) **Objects of the Bill**—There are already in place other laws/ Acts of Parliament that address all the issues captured in the Preamble such as the Physical Planning Act, Kenya Roads Act, 2007, the Traffic Act, the Public Roads and Roads of Access Act, the Street Adoption Act, the Persons with Disabilities Act and Urban Areas and Cities Act;
- 2) **Interpretation**— Some of the proposed definitions and classifications differ from those that are contained in the Kenya Roads Bill, 2017 that is undergoing enactment before the Senate;

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- 3) **The object and purpose of this Bill** has not provided a clear distinction of the role of the County Governments and that of the National Governments;
- 4) **Duties of the County Executive Committee Member**—In the Bill, the role of the CECs in relation to the Fourth Schedule seems to overlap with that of the Cabinet Secretary;
- 5) **Standards of construction**—The Bill has not stipulated the standards of construction. No reference has been made to other laws on standards /approvals of constructions and as such there is a risk of conflict with mandates of other public bodies such as National Construction Authority (NCA);
- 6) **Roles of State Agencies**—It was observed that the roles of Kenya Urban Roads Authority and Kenya Rural Roads Authority should be in line with the division of functions between the two levels of government in accordance with the Constitution. The functions and resources still under the control of these State Corporations must be devolved to county governments;

Recommendation

The Committee recommends that House approves the County Planning (Roads, Pavements and Parking Bays) Bill, 2018, with amendments.

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ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker and the Clerk of the Senate for providing technical and logistical support during the entire process of considering the County Planning (Roads, Pavements and Parking Bays) Bill, 2018. The Committee also thanks in particular the Ministry of Transport, Infrastructure, Housing and Urban Development, State Department of Infrastructure, Kenya National Highways Authority (KENHA), Kenya Urban Roads Authority (KURA), the National Transport and Safety Authority (NTSA), the Council of Governors (CoG), Bunge la Wazalendo, the Institute of Social Accountability (TISA), Kilimani Project Foundation and Members of the public who made submissions, both orally and in writing. The Committee acknowledges the commitment and dedication of the secretariat that facilitated the production of the report.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 143 (1), to present a report of the Standing Committee on Roads and transportation on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018 for consideration by the House.

SIGNED.......... DATE.....29/11/2018.....

SEN. WAMATANGI KIMANI PAUL, M.P,
CHAIRPERSON,
STANDING COMMITTEE ON ROADS AND TRANSPORTATION

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ADOPTION OF REPORT

Pursuant to standing order 207 (2) the Standing Committee on Roads and Transportation considered the County Planning (Roads, Pavements and Parking Bays) Bill, 2018 and adopted its report as follows—

Sen. Wamatangi Kimani, MP,

Chairperson

Sen. Hargura Godana, MP,

Vice- Chairperson

Sen. Enoch Wambua, MP,

Member

Sen. Christine Zawadi, MP,

Member

Sen. (Dr.) Lelegwe Ltumbesi, MP,

Member

Sen. Philip Mpaayei, MP,

Member

Sen. Sylvia Kasanga, MP,

Member

Sen. (Prof.) Ekal Imana, MP,

Member

Sen. Cleophas Malala, MP,

Member

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1.0 INTRODUCTION

The County Planning (Roads, Pavements and Parking Bays) Bill, 2018 was read a first time and committed to the Standing Committee on Roads and Transportation on 11th September, 2018, pursuant to Standing Order 140 (1).

Pursuant to Article 118 (1) (b) of the Constitution and Standing Order No. 140 (5), of the Senate Standing Order, the Standing Committee on Roads and Transportation invited interested members of the public to submit any representations that they may have on the Bill on Thursday, 11th October, 2018 at Kenyatta International Convention Centre (KICC). The Committee invited submissions from members of the public on the Bill through an advertisement in the Daily Nation Newspaper and the Standard Newspaper of Monday, 8th October, 2018.

The principal objective of the Bill is to provide a legislative framework for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and pavements in each county. It also provides for the proper planning and placement of access-ways to commercial buildings along major roads within counties.

The Bill seeks to provide a framework for county roads planning with regard to economic development and accessibility of services. This is in line with Article 174(f) of the Constitution, which states that one of the core goals of devolution is the promotion of social and economic development and the provision of easily accessible services throughout Kenya.

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1.1 OVERVIEW OF THE BILL

The Constitution of Kenya ushered in a new system of governance that created various duties between the national government and the county governments. Transport is a shared function as per the Fourth Schedule of the Constitution.

The County Planning (Roads, Pavements and Parking Bays) Bill 2018 seeks to provide for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and pavements. The Bill also is intended to provide for proper planning of access ways to commercial buildings along major roads.

Clause 1 is the Short Title.

Clause 2 provides for the interpretation.

Clause 3 is the object and purpose of the Act.

Clause 4 provides for the application of the Act.

Clause 5 provides the duties of the County Executive Committee Member.

Clause 6, 7 and 8 of the Bill contains provisions on the construction and maintenance of streets, lanes, alleys, parking bays and pavements by the county governments. The responsibility for the construction of these amenities lies with the county executive member responsible for matters relating to roads.

Clause 9 of the Bill states that the County Executive Member shall designate areas for use by pedestrians for the purpose of crossing a major road in the county in a manner that does not interfere with the flow of traffic. This clause requires the CEC to ensure the construction of footbridges or any other convenience for use by pedestrians to cross a major road.

Clause 10 of the Bill contains provisions on access ways to commercial buildings. In this clause, the owners of a commercial building situated along a major road shall ensure access ways are present near major roads.

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In clause 11 and 12, there are provisions on the construction and maintenance of pavements and parking bays by the owners of commercial buildings. Clause 13 deals with the use of pavements whereas clause 14 is on the rules of parking of motor vehicles.

The issue of designated parking is addressed in clause 15. In this clause, there shall be parking bays for heavy commercial vehicles and petroleum tanker vehicles. A person who contravenes this provision commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Clause 16 of the Bill empowers the County Executive Member to make regulations for the better implementation of the Act. These regulations shall be on prescription of standards for construction and use of streets, lanes, alleys, parking bays, pavements, drainage systems and other structures prescribed by this Act as well as prescription of the procedure for the application of any approval provided in the Act.

1.2 CONSEQUENCES OF THE BILL

The Bill seeks to significantly alter the planning and construction of buildings and county roads in a manner that will enhance the accessibility of services. Once enacted, the Bill confers responsibility for ensuring accessibility to these services on the County Executive Committee Member responsible for matters relating to roads.

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2.0. PUBLIC PARTICIPATION/ STAKEHOLDER CONSULTATION

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 140 (5), the Committee held a one day public hearing on Thursday, 11th October, 2018 and received the following representations:-

A. KENYA NATIONAL HIGHWAYS AUTHORITY

1. Clause 1(*Short Title*):

Proposed Amendment

- i. For issues relating to urban development, the Physical Planning Act should take precedence. To consider adding value to the existent laws by way of introducing appropriate amendments rather than a new law that replicates or in the case of the Bill brings direct conflict or competition with the existent laws.
- ii. The Bill should be held in abeyance in view of the pending Kenya Roads Bill, 2017 that deals substantively with issues concerning county roads.

Justification

- i. There are already in place other laws/ Acts of Parliament that address all the issues captured in the Preamble:
 - Physical Planning Act
 - Kenya Roads Act, 2007
 - Traffic Act
 - Public Roads and Roads of Access Act
 - Street Adoption Act
 - Person with Disabilities Act
 - Urban Areas and Cities Act

2. Clause 2(*Interpretation*)

Proposed Amendment

- i. Definition of the term ‘pavement’

Justification:

- i. Terms need to be properly defined so as to distinguish the term “Pavement” to refer to walk ways as opposed “Pavement” to mean the road surface

Proposed Amendment

- i. The definition of the term “commercial building” to be amended

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Justification

- i. The definition of the term generalizes the application of the term “commercial building”. The Physical Planning Act defines the same to exclude a petroleum filling station or an industrial building.
- ii. Reference should be made to the Physical Planning Act. Any changes should be made by introducing amendments to the Physical Planning Act if need be.

Proposed Amendment

- i. Definition of “county road” to be amended

Justification

- i. The Kenya Roads Act does not make reference to Class UW as referenced in the Bill. The list of classes of roads fails to adhere to the new classifications of roads vide Legal Notice No. 2 (Kenya Gazette Supplement No.4 of 22nd January, 2016 - Roads Register.
- ii. That the Bill makes reference to classes of roads. County Roads should be as provided under the Roads Act. Classification of roads is the role of Cabinet Secretary and the classification of roads may change from time to time.

Proposed Amendment

- i. Definition of the term “heavy commercial vehicle” to be amended.

Justification

- i. The unit of measure of weight in pounds does not reflect the standard measure which should be kilograms.
- ii. If there is any need for change the same should be made by amendment to the Traffic Act which already defines the term.
- iii. The definition and limits in weights are already defined under the Traffic Act(See Rule 25 of the Traffic Rules)

Proposed Amendment

- i. Amendment of the term “major road” needs deletion or revision

Justification

- i. The Kenya Roads Act does not make reference to any class by the name “UF”.
- ii. The effect of this definition is to essentially define all roads in the country, with the exception of the class “UF” roads as major roads.

Proposed Amendment

- i. Definition of the term “minor road” needs revision or deletion.

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Justification

- i. The Schedule referred to does not make any reference to class UF roads.

Proposed Amendment

- i. Amendment to the term “national road”

Justification

- i. There has been a new classification of roads vide Legal Notice No 2. (Kenya Gazette Supplement No. 4 of 22nd January 2016)- Roads Register.

3. Clause 3 (*Object and purpose of the Act*)

Proposed Amendment

- i. The term access ways needs to be clearly defined as it is ambiguous.

Justification

- i. The mandate of the Roads Agencies includes planning, construction and access to the roads under their jurisdiction. Therefore, the object herein is in conflict with the current mandate of Roads Agencies under the Roads Act.

Proposed Amendment

- i. Clause 3(b) should be amended and there should be amendments to the Physical Planning Act.

Justification

- i. The element of planning and zoning as a whole is domiciled under the Physical Planning Act. Any additional criteria or considerations to preserve commercial value should thus be within the Physical Planning Act.
- ii. The role of ensuring commercial value of premises should not at any time be allowed to supersede public interest and safety.

Proposed Amendment

- i. Amendment to the Physical Planning Act

Justification

- ii. The Current Physical Planning Act is to be implemented by the local authorities (read County Governments) in view of the provisions therein

4. Clause 5 (*Duties of the county executive committee member*)

Proposed Amendment

- i. Amendment to clause 5 (b) by deletion of the word “all roads”.

Justification

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- i. The use of the term “all roads” brings direct conflict between the mandate of the CEC and other public officers’ mandates including but not limited to Ministries and State Agencies.
- ii. Current framework and policy on road development and maintenance factors in elements of road drainage.

Proposed Amendment

- i. Amendment to clause 5(c) to localize the mandate of the CEM to county roads

Justification

- i. The mandate of the CEC should be restricted to county roads and should be referenced to the Physical Planning Act.

Proposed Amendment

- i. Amendment to clause 5(d) to restrict parking bays to county roads

Justification

- i. The envisaged parking bays should be limited to areas within the county roads.
- ii. Further the Bill does not make prescriptions as to the standards and the requirements such as proper signage and markings to identify the proposed parking bays.

Proposed Amendment

- i. Amendments to be made to clause 5(e) by deletion.

Justification

- ii. This duty is repeated under clause 5(a) of the Bill

Proposed Amendment

- i. Amendment of clause 5(f) to restrict the mandate of the CEM to county roads

Justification

- i. Inspection of buildings is a mandate already premised on other laws(Physical Planning Act) and building codes.
- ii. The clause also makes reference to building codes and standards set out in the Act, but does not go ahead to set the said codes and standards
- iii. Given the name of the Bill, the same should limit itself to issues of county roads, pavement and parking bays and “access” as envisaged in the preamble to the Bill.

Proposed Amendment

- i. Amendment to be made to clause 5(2) by deletion

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Justification

- ii. Role already placed with the Council for Persons with Disabilities under the Persons with Disabilities Act.

5. Clause 5(*Construction and maintenance of streets, lanes, alleys, etc*)

Proposed Amendment

- i. Amendment to clause 5 (b) by deletion of the word “all roads”.

Justification

- i. The use of the term “all roads” brings direct conflict between the mandate of the CEM and other public officers’ mandates including but not limited to Ministries and State Agencies.
- ii. Current framework and policy on road development and maintenance factors in elements of road drainage.

6. Clause 6(*Construction and maintenance of streets, lanes, alleys, etc*)

Proposed Amendment

- i. Amendment to clause 6 to make reference to the Physical Planning Act

Justification

- i. The clause compels the county government to undertake activities related to physical planning.

7. Clause 7(*Construction and maintenance of parking bays by the county government*)

Proposed Amendment

- i. Amendment to clause 7(2)

Justification

- i. This clause needs further workings in view of the nature of public land, the provisions of the Constitution and Land Act with regard to public land and the role of the National Lands Commission on the issues of Public Land.
- ii. Further, given the nature of the appointment and tenure of the CEM, there is need to involve a group as opposed to an individual through a committee or such other group in the decision to designate public land for construction of parking bays.
- iii. The fact that land is public land does not mean the same does not serve a function or is not held by any other public body. This provision runs the risk of bringing further disarray in the ownership and use of public land especially held by the government agencies.

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8. Clause 8 (*Construction and maintenance of pavements by the county government*)

Proposed Amendment

- i. The term “pavement” needs to be defined for clarity.

Justification

- i. The mandate should be localized to county roads only. There is conflict with the mandates of other State agencies.
- ii. The Construction should adhere to the set relevant standards and qualities.

9. Clause 9(*Designation of pedestrian crossing*)

Proposed Amendment

- i. Clause 9(1) to be amended to conform to statutory mandates of county government

Justification

- ii. The mandate here to be localized to county roads.

Proposed Amendment

- i. Clause 9(2) to be amended

Justification

- i. Crossings always factored in at point of construction based on data from studies based on need, safety, traffic volumes etc and as per the mandate specific to the Road Agencies.

10. Clause 10 (*Access ways to commercial buildings*)

Proposed Amendment

- i. Amendment to be made to clause 10(1)(a)

Justification

- i. The element of standardization and quality assurance not accounted for.
- ii. Provision is in conflict with mandate of roads agencies as far as roads of access control are concerned. (Number of accesses to/from major roads introducing challenges to mobility, safety along the “major roads”, drainage issues etc)

Proposed Amendment

- i. Clause 10(1)(b) should be amended and the Physical Planning Act should be amended

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Justification

- i. The whole essence of requirement for Building plans approvals is to ascertain conformity to issues such as entry and exit to buildings. Physical Planning Act caters for this.
- ii. Requirements to be fulfilled should include necessary approvals and standards which are already provided for through other laws.

Proposed Amendment

- i. Clause 10(2) should be amended by deleting the word “if” appearing immediately after the words “subsection (1)”

Justification

- ii. Use of the word “unless” introduces a meaning opposite to that intended in the Bill. Consider the word “if”.

11. Clause 12 (*Construction and maintenance of parking bays by owners of commercial buildings*)

Proposed Amendment

- i. Amendment to clause 12(2) to indicate the standards of construction of parking bays

Justification

- i. The Bill has not stipulated the standards of construction. No reference has been made to other laws on standards /approvals of constructions and as such there is risk of conflict with mandate of other public bodies such as National Construction Authority(NCA).
- ii. The standards to be adhered to are already set under the Physical Planning Act, Building codes etc. while the mandate to standards for the construction and maintenance of Roads is already premised on the National Government by the Constitution.
- iii. There is a need to comply with Fourth Schedule of the Constitution

12. Clause 13(*Use of pavements*)

Proposed Amendment

- i. Clause 13(3) is covered under a different law.

Justification

- ii. The Traffic Act already makes provision for the offences. There is a need to ensure harmony in the punishment of offenders.

13. Clause 14 (*Parking of motor vehicles*)

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Proposed Amendment

- i. Clause 14 of the Bill should be amended through deletion

Justification

- i. The Traffic Act already makes provision for the offences outlined in this clause.
- ii. The clause gives the CEC power to seize motor vehicles that are contravening parking conditions.
- iii. The act of seizing may need to be limited to clamping, demobilizing etc in view of rights to property.

B. COUNCIL OF GOVERNORS

1. Clause 2(Interpretation)

Proposed Amendment

Definition of national and county roads

- i. Align the definitions of the Roads under this Act to those in the Constitution and Roads Bill to have “national roads” and “county roads”.

Justification

- i. The Constitution of Kenya and the Kenya Roads Bill have the definition of “major” and “minor roads” but only national county roads and the Bill should follow these definitions. This should be effected throughout the entire Bill.

Definition of “access ways”

- i. Include the interpretation of “access ways”

Justification

- i. This term has been used severally in this Bill but it is not defined under the interpretation section of the Bill

3. Definition of “walkways”

- i. Include the definition of the term “walkways” which are to replace the definition of the term “pavements”

Justification

- i. Pavement in engineering terms also includes roads so the COG proposes the replacement of the use of the word “pavement” in the entire Bill with “walkways”.

2. Clause 5(Duties of the county executive committee member)

Proposed Amendment

- i. (1)The county executive committee member shall-

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(b)facilitate the design, development and maintenance of drainage systems along all county roads

(c)maintain the drainage systems along all roads

Justification

- i. The National Government should facilitate the design, development and maintenance of drainage along county roads but only supervise and maintain for national roads since they do not have the resources to develop for national roads as well as county roads

3. Clause 7(*Construction and maintenance of parking bays by the county government*)

Proposed Amendment

- i. (2)The County Executive committee member shall for the purpose of subsection(1), designate public land for the construction of parking bay in line with the provisions of the Land Act

Justification

- i. The County Executive Member should not have arbitrary powers but should exercise this power in line with the Land Act and due regard to the custodians of the various types of public land.

4. Clause 8 (*Construction and maintenance of pavements by the county government*)

Proposed Amendment

- i. Each county government shall construct and maintain walkways along all county roads in the respective county.

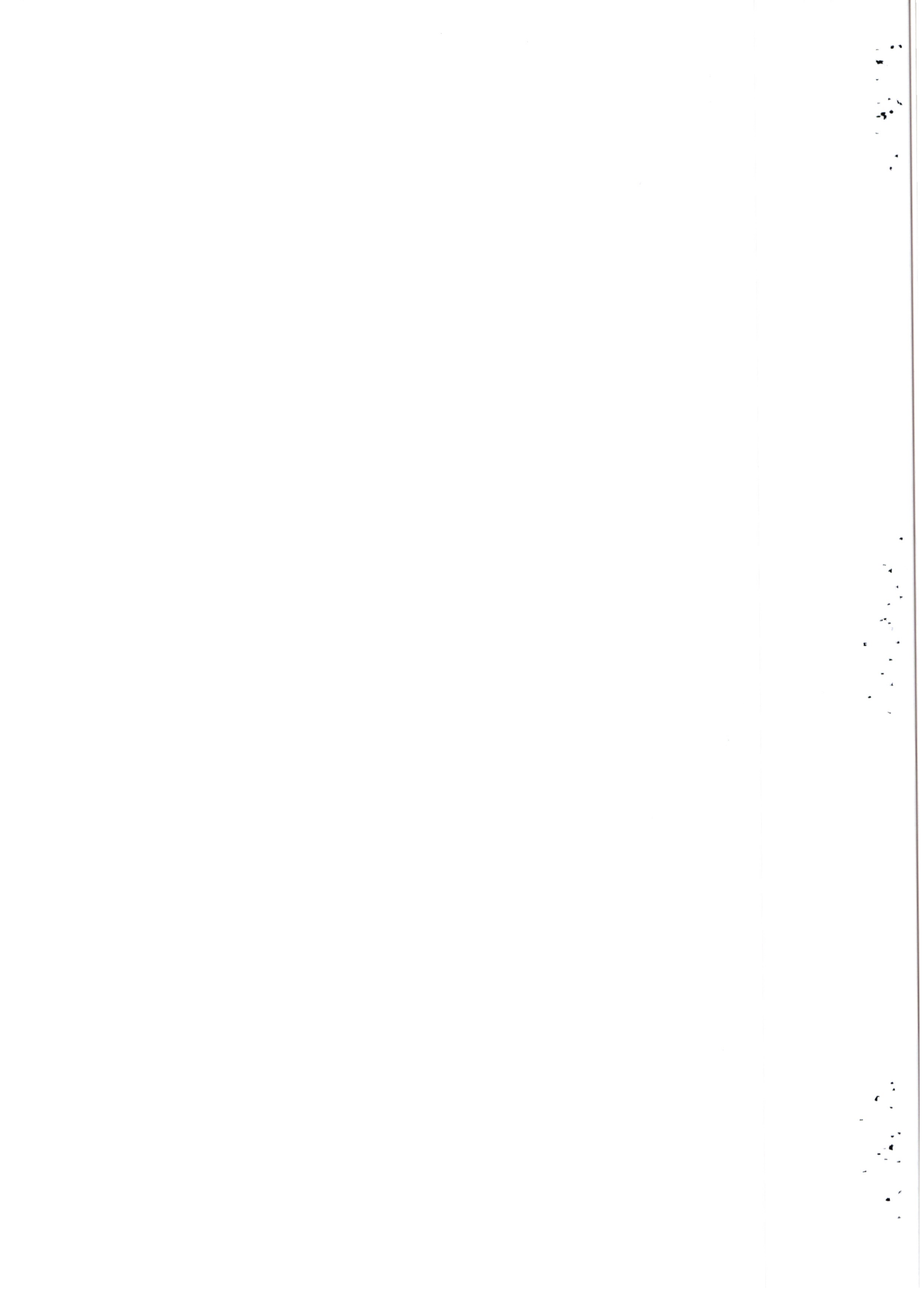
Justification

- i. For national roads, the National Government should construct the walkways and County Governments should only assist when it comes to maintenance.
- ii. The National Government should the walkways for national roads and the county governments construct and maintain pavements for county roads

5. Clause 9(*Designation of pedestrian crossing*)

Proposed Amendment

- i. The County Executive committee member shall designate areas for use by pedestrians for the purpose of crossing all national and county roads in the county in a manner that does not interfere with the flow of traffic.



Justification

- i. This is in line with the proposals made above (clause 8) on the definition of roads.

6. Clause 10 (*Access ways to commercial buildings*)

Proposed Amendment to clause 10(1)

- i. Subject to subsection(2), an owner of a commercial building which is situated along a major road shall—
 - (a) Construct an access way, drainage and walkway to the property in which the building is situated in such a manner that they do not obstruct a road or extend directly from the road.

Justification

- i. Not given

Proposed Amendment to clause 10(4)

- i. The provision should be amended to specify that the fine should be paid to the respective county government.

Justification

- i. Not given

7. Clause 11 (*Construction and maintenance of pavements by owners of commercial buildings*)

Proposed Amendment

- i. Remove clause 11(1)(b)

Justification

- i. None given in submission.

Proposed Amendment

- i. Replace the word “pavement” with “walkway”

Justification

- i. None outlined in submission

8. Clause 12 (*Construction and maintenance of parking bays by owners of commercial buildings*)

Proposed Amendment

- i. (3) the respective county government may enter into an agreement with the owner of a commercial building or premises under subsection(1) for the lease

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of a designated parking bay for a period of not more than twelve years and on condition that the construction of the parking bay —

Justification

- i. This will cater for all other commercial properties that are not necessarily building which may be used as parking bays.

9. Clause 13 (*Use of pavements*)

Proposed Amendment

- i. Replace the word “pavement” with walkways

Justification

- i. Pavement in engineering terms also includes roads so the COG proposes the replacement of the use of the word “pavement” in the entire Bill with “walkways”

10. Clause 14 (*Designated Parking*)

Proposed Amendment

- i. Include the need to have the parking bays for motorcycle operators

Justification

- i. The number of domestic and commercial motorcycles is increasing in cities and towns and it is important for the counties to designate parking spots for motorcycles as well

11. (*Additional clauses*)

Proposed Amendment

- i. This Act should include a section specifically on the construction and maintenance of the drainage systems along national and county roads

Justification

- i. Drainage is a critical component in the construction and maintenance of national and county roads.

C. THE INSTITUTE FOR SOCIAL ACCOUNTABILITY

1. Clause 2(*Interpretation*)

Proposed Amendment

- i. The definition of the term “county roads” is in conflict with the Kenya Roads Bill

2. Role of the Kenya Urban Roads Authority

Proposed Amendment

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- i. Analyse and restructure the role of Kenya Urban Roads Authority and Kenya Rural Roads Authority to be in line with the division of functions between the two levels of government in accordance with the Constitution. The functions and resources still under the control of these State Corporations must be devolved to county governments

Justification

- ii. KURA and KeRRA are national state agencies continue to perform some aspects of county government road functions, for instance, planning, development and maintenance of urban roads and rural roads respectively.

3. Funds must follow functions

Proposed Amendment

- i. All the resources necessary for county governments to implement their functions of maintaining county roads under the Constitution.

Justification

- i. The Constitution Article 175(b) states that county governments shall have reliable resources of revenue to enable them govern and deliver services effectively.
- ii. The Constitution and the County Planning(Roads, Pavements and Parking Bays) Bill if enacted place the function of managing county roads on county governments

D. KENYA URBAN ROADS AUTHORITY

1. Interpretation

Proposed Amendment

- i. Amendments to definitions of “county roads”, “minor roads” and “national roads”

Justification

- i. The proposed definitions and classifications for the ‘Minor’ ‘National’ and ‘County Roads’ differ from those that are contained in the Kenya Roads Bill, 2017 that is undergoing enactment before the Senate.
- ii. We would recommend the adoption of the definitions contained in the Roads Bill, 2017.

2. Object and purpose of the Act

Proposed Amendment

- i. Amendment to clause 3 of the Bill

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Justification

- i. There is a need to provide a clear distinction of the role of the County Governments and that of the National Government in so far as access ways are concerned.
- ii. Accessibility and other purposes therewith are the sole responsibility of the National agencies that are mandated to construct such roads as per the Fourth Schedule to the Constitution of Kenya 2010.
- iii. The issue of Access to Major roads (National Roads) lies in the jurisdiction of the National Agency under whose mandate the road lies.

3. Application of the Act

Proposed Amendment

- i. Amendment to clause 4 of the Bill

Justification

- i. The Application of the Act seems to allow the County CECs authority over major roads contrary to the Fourth Schedule of the Constitution of Kenya 2010.

4. Amendments to clause 5,6 and 7

Proposed Amendment

- i. Amendments to clauses 5, 6 and 7 of the Bill

Justification

- i. A list of related Duties and Responsibilities are well captured in the Kenya Roads Bill, 2017 which is before the Senate and has undergone wider public consultation processes

5. Amednments to clauses 8 and 9

Proposed Amendment

- i. Amendments to clauses 8 and 9 of the Bill

Justification

- i. Existing Roads agencies responsible for the National Roads have the mandate and jurisdiction for the walkways/foot paths, cycle tracks and footbridges on the road networks within their purview.

Mr J.K. Mutai, Kilimani Project Foundation; proposed as follows;

- i. that children should be at the centre of urban Planning
- ii. Sought clarity on the definition of accessibility to buildings and access roads;
- iii. The need for decongestion of the city and sustainable urban mobility especially by establishing spaces for buses, private cars, cyclists and other road users.

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- iv. He proposed parking for bicycles and code of practice for all users both motorized and non- motorized;
- v. Urban transport should focus on Bus Rapid Transport (BRT) and backed by a continuous dialogue on mobility of choice for the public as per global best practice.

Mrs. Jane Komen, Bunge la Wazalendo,

Informed the Committee as follows;

- i. that there was need for a comprehensive plan on the parking for motorcycles in urban areas and improved collection of parking for county revenue;
- ii. The public deserved service delivery through improvement of drainage, sanitation and toilets in the urban areas and markets;
- iii. Access roads should be target agricultural urban areas to ensure that farmers could promptly deliver their produce to the market

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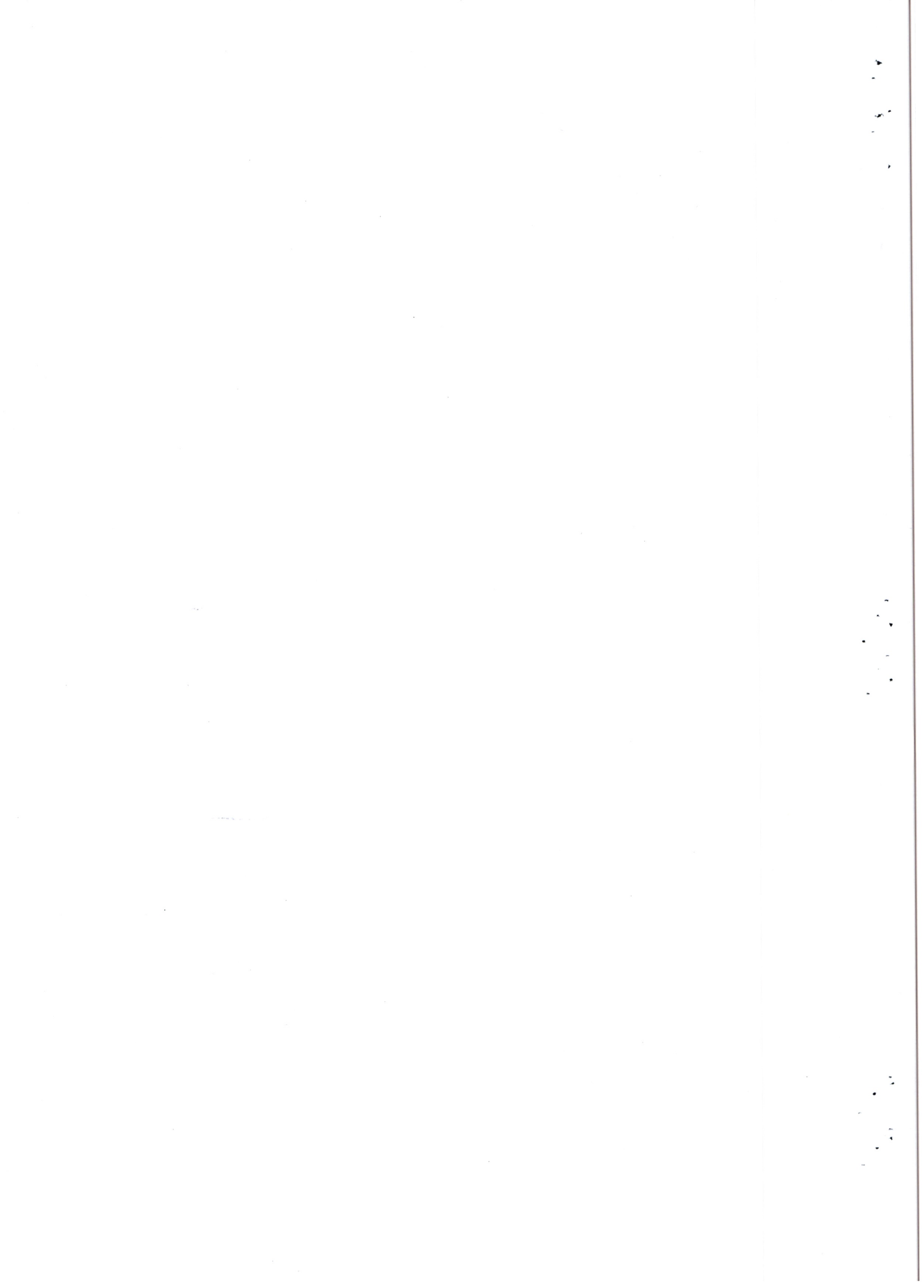
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3.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

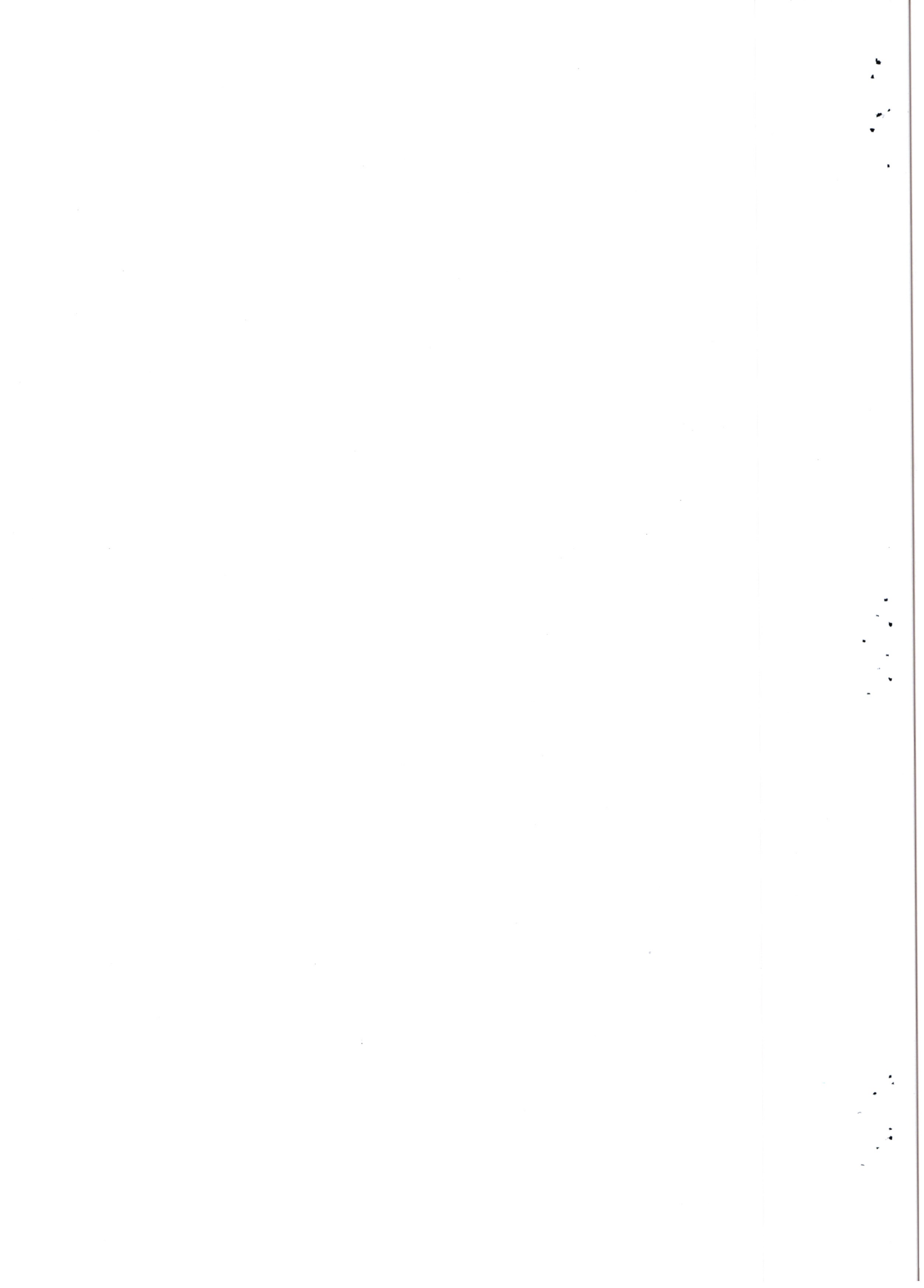
3.1 OBSERVATIONS

After the presentation of the Bill and upon review from various stakeholders and after extensive internal deliberations, the Committee made the following observations:

- 1) The scope of the Bill was too wide and general as it touched on various diverse aspects including roads construction, traffic management and other devolved functions;
- 2) The title of the Bill included the term 'planning'. This was very similar to the Physical Planning Act and the title of the Physical Planning Bill, 2017 that was currently at the National Assembly and awaiting consideration by the Senate;
- 3) Certain clauses in the Bill were a duplication of existing laws. The Committee further noted that the existing laws simply need to be enforced;
- 4) The Committee specifically identified Clause 5(f) of the proposed Bill and observed that the Bill did not provide for or set out any building code in any of its provisions;
- 5) That the Bill covered aspects that were already under the consideration of the Roads Bill that is currently being considered at the Senate after having been passed by the National Assembly;



- 6) The Bill had the potential to distort the state of business in the counties and if enacted, it would further occasion significant upheaval in the planning of towns and urban centres;
- 7) That if the Bill was enacted, it would cause distortions in the property market as the implementaton of its provisions would significantly impact physical planning and development;
- 8) That the provisions of the Bill granted overlapping powers to the county executive committee member responsible for roads and that these overlapping powers were in conflict with the role of the Cabinet Secretary.



3.2 RECOMMENDATIONS

The Committee makes the following crucial recommendations on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018;

- 1) The title of the Bill should read as, “**County Roads, Walkways and Parking Bays Act, 2018**”. This is in order to align the Bill with its intended role of legislating county transport and to avoid confusion with the national government’s role in transport;
- 2) The Bill should be amended to provide a clear distinction of the role of the county governments and that of the National Government as outlined in the Fourth Schedule of the Constitution;
- 3) The provisions of the Bill regarding the use of parking spaces should be deleted as it is best handled by county assembly legislation. As per the Fourth Schedule of the Constitution, parking is a fully devolved function;
- 4) The Bill’s clauses relating to physical planning should be deleted altogether as they are in direct conflict with the current Physical Planning Act and the Physical Planning Bill, 2017;
- 5) The Bill contains clauses that are in conflict with existing laws and in particular, the Traffic Act which makes provision for the offences specified in the Bill. There is therefore a need to amend the Bill in order to ensure uniformity in the punishment of offenders within the law.
- 6) The Senate should consider the Bill as guided by the recommendations of the Committee.

ANNEXURES

- 1) Proposed Committee Stage Amendments
- 2) Committee Minutes
- 3) Stakeholders submissions
- 4) Public Advert on Public Hearing/ Receipt of Memoranda
- 5) Attendance for Public Hearing/ Receipt of Memoranda

Annexure : Proposed Committee Stage Amendments

27th November, 2018

The Clerk of the Senate,
Parliament Buildings,
NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018 (SENATE BILLS NO. 18 OF 2018)

NOTICE is given that Sen. Wamatangi Kimani Paul, Chairperson to the Standing Committee on Roads and Transportation, intends to move the following amendments to the County Planning (Roads, Pavements and Parking Bays) Bill, 2018, Senate Bill No 18 of 2018 at the Committee Stage—

CLAUSE 3

THAT clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) provide a framework for planning of commercial structures along county roads in accordance with the Physical Planning Act;

No. 6 of 1996

CLAUSE 4

THAT clause 4 of the Bill be amended by deleting the words “and all commercial buildings constructed along major roads” appearing immediately after the words “county roads”.

CLAUSE 5

THAT clause 5 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the words “all roads” and appearing immediately after the words “drainage systems along” in paragraph (b) and substituting therefor the words “county roads”;

(ii) deleting the words “national and” appearing immediately after the words “constructed along” in paragraph (c);

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(iii) deleting paragraph (d) and substituting therefor the following new paragraph—

(d) construct, maintain and facilitate the construction and maintenance of adequate parking bays in the respective county.

(iv) deleting paragraph (e);

(v) deleting paragraph (f) and substituting therefor the following new paragraph—

No 6 of 1996.

(f) facilitate regular inspection of all buildings, roads, streets, lanes, alleys, parking bays and walkways under the jurisdiction of the county government to ensure that they adhere to prescribed building codes and standards as set out in the Physical Planning Act, the Urban Areas and Cites Act and any other written law;

(b) by inserting the following new sub-clause immediately after sub-clause(2)—

(3) The CEC shall, for purposes of subsection (2) consult with the National Council for Persons with Disabilities established under section 3 of the Persons with Disabilities Act.

CLAUSE 6

THAT clause 6 of the Bill be amended by inserting the words “in accordance with the Physical Planning Act” immediately after the words “in the county”.

CLAUSE 7

THAT clause 7 of the Bill be amended —

(a) by deleting sub-clause (1); and

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(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(1) The county executive committee member shall, in consultation with the National Lands Commission, designate public land for the construction of parking bays within the county.

CLAUSE 8

THAT the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Construction and maintenance
of walkways by the county
government

8. Each county government shall construct and maintain walkways along all county roads in the respective county.

CLAUSE 9

THAT the Bill be amended by deleting clause 9 and substituting therefor the following new clause—

Designation of Pedestrian
Crossing

9. (1) The County Executive Member shall designate areas for use by pedestrians for the purpose of crossing a county road in a manner that does not interfere with the flow of traffic and that complies with national and county legislation.

(2) The County Executive Member shall, for the purpose of subsection (1) and where necessary, designate a pedestrian crossing and maintain a footbridge or any other convenience for use by pedestrians to cross a county road.

CLAUSE 10

THAT the Bill be amended by deleting clause 10 and substituting therefor the following new clause —

Access ways to commercial
buildings

10. (1) Subject to subsection (2), an owner of a commercial building which is situated along a

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county road—

(a) may, with the approval of the county government, construct an access-way to the property in which the commercial building is situated in such a manner that the access-way does not obstruct a county road or extend directly from a county road.

No. 6 of 1996

(b) shall ensure adequate space for access to the building in accordance with the Physical Planning Act and any other written law .

(2) The county government shall ensure that there is an alternative means of access to commercial buildings in the area where the building is situated.

(3) Every person who, immediately before the commencement of this Act, owns a commercial building situated along a county road shall comply with provisions of this section—

(a) within a period of twelve months from the date of the commencement of this Act; or

(b) within a period of twelve months from the date of completion of the construction of an alternative means of access to the building as provided under subsection (2).

(4) A person who contravenes subsection (1) (b) commits an offence and is liable, on conviction, in accordance with section 30 of the Physical Planning Act.

CLAUSE 11

THAT the Bill be amended by deleting clause 11 and substituting therefor the following new clause—

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Construction and maintenance of walkways by owners of commercial buildings.

11. (1) The owner of a commercial building may construct and maintain a walkway next to the commercial building where the county government—

(a) has designated an area next to the building for the construction of a walkway; and

(b) has not constructed or has failed to maintain the walkway.

(2) A person shall not construct or maintain a walkway under subsection(1)—

(a) unless such person has applied for and obtained approval of the county executive committee member; and

(b) otherwise in accordance with the prescribed standards.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (2) by deleting the words “in accordance with the standards prescribed under this Act” and substituting therefor with the words “in accordance with the Physical Planning Act and any other written law”.

CLAUSE 13

THAT clause 13 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “pavement” appearing immediately after the word “A” and substituting therefor the word “walkway”;

(b) in sub-clause(2) by deleting the word “pavement” appearing immediately after the words “commercial activity on a” and substituting therefor the word “walkway”; and

(c) by deleting sub-clause (3).

CLAUSE 14

THAT clause 14 of the Bill be amended —

(a) by deleting sub-clause (3); and

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- (b) in sub-clause (4) by deleting the word “seize” appearing immediately after the words “committee member may” and substituting therefor the word “walkways”.

CLAUSE 15

THAT the Bill be amended—

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

Cap 39 of 1953

(4) A person who contravenes this section commits an offence and is liable, on conviction in accordance with section 52A of the Traffic Act.

- (b) by deleting sub-clause 5.

CLAUSE 16

THAT the Bill be amended

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1) The county executive committee member may, in consultation with the Cabinet Secretary responsible for Infrastructure and all relevant stakeholders, make regulations for the better carrying out of the provisions of this Act;

- (b) in sub-clause (2)

- i. by deleting paragraph (a); and

- ii. in sub-clause (2)(b) by deleting the word “pavement” appearing immediately after the words “parking bays and” in paragraph (b) and substituting therefor the word “walkways”.

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) by deleting the definition of the word “commercial building” and substituting therefor the following new definition:

“commercial building” shall have the same meaning assigned to it under the Physical Planning Act;

- (b) by inserting the following new definition immediately after the definition of the word “national road”—

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“walkway” means any egress, footpath, pathway or route for use by non-motorized traffic and shall not include cycle lanes ;

(c) by deleting the definition of the words “heavy commercial vehicle” and substituting therefor the following new definition—

“heavy commercial vehicle” has the meaning assigned to it under section 2 of the Traffic Act;

(d) by deleting the definition of the words “county road” and substituting therefore the following new definition—

“county road” means all roads falling within the mandate of the county governments under Part 2 of the Fourth Schedule to the Constitution and specified under any other written law;

(e) by deleting the definition of the words “major road”;

(f) by deleting the definition of the words “minor road”; and

(g) by deleting the definition of the words “national road”.

SHORT TITLE

THAT the Bill be amended by deleting clause (1) and substituting therefor the following new clause—

Short Title

1. This Act may be cited as the County Roads, Walkways and Parking Bays Act, 2018.

Dated theNovember, 2018.

Sen. Wamatangi Kimani Paul
Chairperson,
Standing Committee on Roads and Transportation

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MINUTES OF THE THIRTY FIFTH SITTING OF THE STANDING COMMITTEE ON ROADS AND TRANSPORTATION HELD ON WEDNESDAY 7TH NOVEMBER, 2018 AT COMMITTEE ROOM 4 , MAIN PARLIAMENT AT 8.30.A.M.

PRESENT

(1) Sen. Wamatangi Kimani, MP,	Chairperson
(2) Sen. Hargura Godana, MP,	Vice- Chairperson
(3) Sen. (Dr.) Lelegwe Ltumbesi, MP,	Member (Chairing)
(4) Sen. Enoch Wambua, MP,	Member
(5) Sen. Christine Zawadi, MP,	Member
(6) Sen. (Prof.) Ekal Imana, MP,	Member

ABSENT WITH APOLOGY

(1) Sen. Sylvia Kasanga, MP,	Member
(2) Sen. Cleophas Malalah, MP,	Member
(3) Sen. Philip Mpaayei, MP,	Member

SECRETARIAT

1) Mr. Peter Mulesi	Clerk Assistant
2) Mr. Malcom Ngugi	Legal Counsel
3) Mr. Simon Muinde	Audio Officer
4) Mr. Boniface Mbithi	Sergeant- At Arms

MIN.NO. 135/SCRT/2018:

PRELIMINARIES

The Chairman called the meeting to order at 9.25am and there followed a word of prayer.

MIN.NO. 136/SCRT/2018:

ADOPTION OF THE AGENDA

The agenda of the day was adopted after having been proposed by Sen. (Prof.) Malachy Ekal, MP, and Seconded by Sen. Enoch Wambua, MP as follows;

1. Preliminaries

- a. *Prayer*
- b. *Remarks by the Chairperson*
2. Adoption of Agenda
3. Consideration of Submissions from the Public Hearing on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018.
4. Any Other Business
5. Adjournment and Date of the next meeting

MIN.NO. 137/SCRT/2018:

CONSIDERATION OF SUBMISSIONS FROM THE PUBLIC HEARING ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018.

The Chairperson invited the secretariat to take the Committee through the matrix on the proposed amendments by stakeholders from the Public Hearing / Receipt of Memoranda which had been held 11th October, 2018.

The Committee was informed as follows;

A. KENYA NATIONAL HIGHWAYS AUTHORITY

1. Clause 1(*Short Title*):

Proposed Amendment

- i. For issues relating to urban development, the Physical Planning Act should take precedence. To consider adding value to the existent laws by way of introducing appropriate amendments rather than a new law that replicates or in the case of the Bill brings direct conflict or competition with the existent laws.
- ii. The Bill should be held in abeyance in view of the pending Kenya Roads Bill, 2017 that deals substantively with issues concerning county roads

Justification

- i. There are already in place other laws/ Acts of Parliament that address all the issues captured in the Preamble:
 - Physical Planning Act
 - Kenya Roads Act, 2007
 - Traffic Act
 - Public Roads and Roads of Access Act

- Street Adoption Act
- Person with Disabilities Act
- Urban Areas and Cities Act

2. Clause 2(*Interpretation*)

Proposed Amendment

- i. Definition of the term ‘pavement’

Justification:

- i. Terms need to be properly defined so as to distinguish the term “Pavement” to refer to walk ways as opposed “Pavement” to mean the road surface

Proposed Amendment

- i. The definition of the term “commercial building” to be amended

Justification

- i. The definition of the term generalizes the application of the term “commercial building”. The Physical Planning Act defines the same to exclude a petroleum filling station or an industrial building.
- ii. Reference should be made to the Physical Planning Act. Any changes should be made by introducing amendments to the Physical Planning Act if need be.

Proposed Amendment

- i. Definition of “county road” to be amended

Justification

- i. The Kenya Roads Act does not make reference to Class UW as referenced in the Bill. The list of classes of roads fails to adhere to the new classifications of roads vide Legal Notice No. 2 (Kenya Gazette Supplement No.4 of 22nd January, 2016_ - Roads Register.
- ii. That the Bill makes reference to classes of roads. County Roads should be as provided under the Roads Act. Classification of roads is the role of Cabinet Secretary and the classification of roads may change from time to time.

Proposed Amendment

- i. Definition of the term “heavy commercial vehicle” to be amended.

Justification

- i. The unit of measure of weight in pounds does not reflect the standard measure which should be kilograms.
- ii. If there is any need for change the same should be made by amendment to the Traffic Act which already defines the term.
- iii. The definition and limits in weights are already defined under the Traffic Act(See Rule 25 of the Traffic Rules)

Proposed Amendment

- i. Amendment of the term “major road” needs deletion or revision

Justification

- i. The Kenya Roads Act does not make reference to any class by the name “UF”.
- ii. The effect of this definition is to essentially define all roads in the country, with the exception of the class “UF” roads as major roads.

Proposed Amendment

- i. Definition of the term “minor road” needs revision or deletion.

Justification

- i. The Schedule referred to does not make any reference to class UF roads.

Proposed Amendment

- i. Amendment to the term “national road”

Justification

- i. There has been a new classification of roads vide Legal Notice No 2. (Kenya Gazette Supplement No. 4 of 22nd January 2016)- Roads Register.

3. Clause 3 (*Object and purpose of the Act*)

Proposed Amendment

- i. The term access ways needs to be clearly defined as it is ambiguous.

Justification

- i. The mandate of the Roads Agencies includes planning, construction and access to the roads under their jurisdiction. Therefore, the object herein is in conflict with the current mandate of Roads Agencies under the Roads Act.

Proposed Amendment

- i. Clause 3(b) should be amended and there should be amendments to the Physical Planning Act.

Justification

- i. The element of planning and zoning as a whole is domiciled under the Physical Planning Act. Any additional criteria or considerations to preserve commercial value should thus be within the Physical Planning Act.
- ii. The role of ensuring commercial value of premises should not at any time be allowed to supersede public interest and safety.

Proposed Amendment

- i. Amendment to the Physical Planning Act

Justification

- ii. The Current Physical Planning Act is to be implemented by the local authorities (read County Governments) in view of the provisions therein

4. Clause 5(*Duties of the county executive committee member*)

Proposed Amendment

- i. Amendment to clause 5 (b) by deletion of the word “all roads”.

Justification

- i. The use of the term “all roads” brings direct conflict between the mandate of the CEC and other public officers’ mandates including but not limited to Ministries and State Agencies.
- ii. Current framework and policy on road development and maintenance factors in elements of road drainage.

Proposed Amendment

- i. Amendment to clause 5(c) to localize the mandate of the CEM to county roads

Justification

- i. The mandate of the CEC should be restricted to county roads and should be referenced to the Physical Planning Act.

Proposed Amendment

- i. Amendment to clause 5(d) to restrict parking bays to county roads

Justification

- i. The envisaged parking bays should be limited to areas within the county roads.
- ii. Further the Bill does not make prescriptions as to the standards and the requirements such as proper signage and markings to identify the proposed parking bays.

Proposed Amendment

- i. Amendments to be made to clause 5(e) by deletion.

Justification

- ii. This duty is repeated under clause 5(a) of the Bill

Proposed Amendment

- i. Amendment of clause 5(f) to restrict the mandate of the CEM to county roads

Justification

- i. Inspection of buildings is a mandate already premised on other laws(Physical Planning Act) and building codes.
- ii. The clause also makes reference to building codes and standards set out in the Act, but does not go ahead to set the said codes and standards
- iii. Given the name of the Bill, the same should limit itself to issues of county roads, pavement and parking bays and “access” as envisaged in the preamble to the Bill.

Proposed Amendment

- i. Amendment to be made to clause 5(2) by deletion

Justification

- ii. Role already placed with the Council for Persons with Disabilities under the Persons with Disabilities Act.

5. Clause 5(*Construction and maintenance of streets, lanes, alleys, etc*)

Proposed Amendment

- i. Amendment to clause 5 (b) by deletion of the word “all roads”.

Justification

- i. The use of the term “all roads” brings direct conflict between the mandate of the CECM and other public officers’ mandates including but not limited to Ministries and State Agencies.
- ii. Current framework and policy on road development and maintenance factors in elements of road drainage.

6. Clause 6(*Construction and maintenance of streets, lanes, alleys, etc*)

Proposed Amendment

- i. Amendment to clause 6 to make reference to the Physical Planning Act

Justification

- i. The clause compels the county government to undertake activities related to physical planning.

7. Clause 7(*Construction and maintenance of parking bays by the county government*)

Proposed Amendment

- i. Amendment to clause 7(2)

Justification

- i. This clause needs further workings in view of the nature of public land, the provisions of the Constitution and Land Act with regard to public land and the role of the National Lands Commission on the issues of Public Land.
- ii. Further, given the nature of the appointment and tenure of the CEM, there is need to involve a group as opposed to an individual through a committee or such other group in the decision to designate public land for construction of parking bays.

- iii. The fact that land is public land does not mean the same does not serve a function or is not held by any other public body. This provision runs the risk of bringing further disarray in the ownership and use of public land especially held by the government agencies.

8. Clause 8 (*Construction and maintenance of pavements by the county government*)
Proposed Amendment

- i. The term “pavement” needs to be defined for clarity.

Justification

- i. The mandate should be localized to county roads only. There is conflict with the mandates of other State agencies.
- ii. The Construction should adhere to the set relevant standards and qualities.

9. Clause 9 (*Designation of pedestrian crossing*)

Proposed Amendment

- i. Clause 9(1) to be amended to conform to statutory mandates of county government

Justification

- ii. The mandate here to be localized to county roads.

Proposed Amendment

- i. Clause 9(2) to be amended

Justification

- i. Crossings always factored in at point of construction based on data from studies based on need, safety, traffic volumes etc and as per the mandate specific to the Road Agencies.

10. Clause 10 (*Access ways to commercial buildings*)

Proposed Amendment

- i. Amendment to be made to clause 10(1)(a)

Justification

- i. The element of standardization and quality assurance not accounted for.

- ii. Provision is in conflict with mandate of roads agencies as far as roads of access control are concerned. (Number of accesses to/from major roads introducing challenges to mobility, safety along the “major roads”, drainage issues etc)

Proposed Amendment

- i. Clause 10(1)(b) should be amended and the Physical Planning Act should be amended

Justification

- i. The whole essence of requirement for Building plans approvals is to ascertain conformity to issues such as entry and exit to buildings. Physical Planning Act caters for this.
- ii. Requirements to be fulfilled should include necessary approvals and standards which are already provided for through other laws.

Proposed Amendment

- i. Clause 10(2) should be amended by deleting the word “if” appearing immediately after the words “subsection (1)”

Justification

- ii. Use of the word “unless” introduces a meaning opposite to that intended in the Bill. Consider the word “if”.

11. Clause 12 (*Construction and maintenance of parking bays by owners of commercial buildings*)

Proposed Amendment

- i. Amendment to clause 12(2) to indicate the standards of construction of parking bays

Justification

- i. The Bill has not stipulated the standards of construction. No reference has been made to other laws on standards /approvals of constructions and as such there is risk of conflict with mandate of other public bodies such as National Construction Authority(NCA).
- ii. The standards to be adhered to are already set under the Physical Planning Act, Building codes etc. while the mandate to standards for the construction and maintenance of Roads is already premised on the National Government by the Constitution.

- iii. There is a need to comply with Fourth Schedule of the Constitution

12. Clause 13(*Use of pavements*)

Proposed Amendment

- i. Clause 13(3) is covered under a different law.

Justification

- ii. The Traffic Act already makes provision for the offences. There is a need to ensure harmony in the punishment of offenders.

13. Clause 14 (*Parking of motor vehicles*)

Proposed Amendment

- i. Clause 14 of the Bill should be amended through deletion

Justification

- i. The Traffic Act already makes provision for the offences outlined in this clause.
- ii. The clause gives the CEC power to seize motor vehicles that are contravening parking conditions.
- iii. The act of seizing may need to be limited to clamping, demobilizing etc in view of rights to property.

B. COUNCIL OF GOVERNORS

1. Clause 2(*Interpretation*)

Proposed Amendment

Definition of national and county roads

- i. Align the definitions of the Roads under this Act to those in the Constitution and Roads Bill to have “national roads” and “county roads”.

Justification

- i. The Constitution of Kenya and the Kenya Roads Bill have the definition of “major” and “minor roads” but only national county roads and the Bill should follow these definitions. This should be effected throughout the entire Bill.

Definition of “access ways”

- i. Include the interpretation of “access ways”

Justification

- i. This term has been used severally in this Bill but it is not defined under the interpretation section of the Bill

3. Definition of “walkways”

- i. Include the definition of the term “walkways” which are to replace the definition of the term “pavements”

Justification

- i. Pavement in engineering terms also includes roads so the COG proposes the replacement of the use of the word “pavement” in the entire Bill with “walkways”.

2. Clause 5(*Duties of the county executive committee member*)

Proposed Amendment

- i. (1)The county executive committee member shall-
 - (b)facilitate the design, development and maintenance of drainage systems along all county roads
 - (c)maintain the drainage systems along all roads

Justification

- i. The National Government should facilitate the design, development and maintenance of drainage along county roads but only supervise and maintain for national roads since they do not have the resources to develop for national roads as well as county roads

3. Clause 7(*Construction and maintenance of parking bays by the county government*)

Proposed Amendment

- i. (2)The County Executive committee member shall for the purpose of subsection(1), designate public land for the construction of parking bay in line with the provisions of the Land Act

Justification

- i. The County Executive Member should not have arbitrary powers but should exercise this power in line with the Land Act and due regard to the custodians of the various types of public land.

4. Clause 8 (*Construction and maintenance of pavements by the county government*)
Proposed Amendment

- i. Each county government shall construct and maintain walkways along all county roads in the respective county.

Justification

- i. For national roads, the National Government should construct the walkways and County Governments should only assist when it comes to maintenance.
- ii. The National Government should the walkways for national roads and the county governments construct and maintain pavements for county roads

5. Clause 9 (*Designation of pedestrian crossing*)
Proposed Amendment

- i. The County Executive committee member shall designate areas for use by pedestrians for the purpose of crossing all national and county roads in the county in a manner that does not interfere with the flow of traffic.

Justification

- i. This is in line with the proposals made above (clause 8) on the definition of roads.

6. Clause 10 (*Access ways to commercial buildings*)
Proposed Amendment to clause 10(1)

- i. Subject to subsection(2), an owner of a commercial building which is situated along a major road shall—
 - (a) Construct an access way, drainage and walkway to the property in which the building is situated in such a manner that they do not obstruct a road or extend directly from the road.

Justification

- i. Not given

Proposed Amendment to clause 10(4)

- i. The provision should be amended to specify that the fine should be paid to the respective county government.

Justification

- i. Not given

7. Clause 11 (*Construction and maintenance of pavements by owners of commercial buildings*)

Proposed Amendment

- i. Remove clause 11(1)(b)

Justification

- i. None given in submission.

Proposed Amendment

- i. Replace the word “pavement” with “walkway”

Justification

- i. None outlined in submission

8. Clause 12 (*Construction and maintenance of parking bays by owners of commercial buildings*)

Proposed Amendment

- i. (3) the respective county government may enter into an agreement with the owner of a commercial building or premises under subsection(1) for the lease of a designated parking bay for a period of not more than twelve years and on condition that the construction of the parking bay —

Justification

- i. This will cater for all other commercial properties that are not necessarily building which may be used as parking bays.

9. Clause 13 (*Use of pavements*)

Proposed Amendment

- i. Replace the word “pavement” with walkways

Justification

- i. Pavement in engineering terms also includes roads so the COG proposes the replacement of the use of the word “pavement” in the entire Bill with “walkways”

10. Clause 14 (*Designated Parking*)

Proposed Amendment

- i. Include the need to have the parking bays for motorcycle operators

Justification

- i. The number of domestic and commercial motorcycles is increasing in cities and towns and it is important for the counties to designate parking spots for motorcycles as well

11. (*Additional clauses*)

Proposed Amendment

- i. This Act should include a section specifically on the construction and maintenance of the drainage systems along national and county roads

Justification

- i. Drainage is a critical component in the construction and maintenance of national and county roads.

C. THE INSTITUTE FOR SOCIAL ACCOUNTABILITY

1. Clause 2(*Interpretation*)

Proposed Amendment

- i. The definition of the term “county roads” is in conflict with the Kenya Roads Bill

2. Role of the Kenya Urban Roads Authority

Proposed Amendment

- i. Analyse and restructure the role of Kenya Urban Roads Authority and Kenya Rural Roads Authority to be in line with the division of functions between the

two levels of government in accordance with the Constitution. The functions and resources still under the control of these State Corporations must be devolved to county governments

Justification

- ii. KURA and KeRRA are national state agencies continue to perform some aspects of county government road functions, for instance, planning, development and maintenance of urban roads and rural roads respectively.

3. Funds must follow functions

Proposed Amendment

- i. All the resources necessary for county governments to implement their functions of maintaining county roads under the Constitution.

Justification

- i. The Constitution Article 175(b) states that county governments shall have reliable resources of revenue to enable them govern and deliver services effectively.
- ii. The Constitution and the County Planning(Roads, Pavements and Parking Bays) Bill if enacted place the function of managing county roads on county governments

D. KENYA URBAN ROADS AUTHORITY

1. Interpretation

Proposed Amendment

- i. Amendments to definitions of “county roads”, “minor roads” and “national roads”

Justification

- i. The proposed definitions and classifications for the ‘Minor’ ‘National’ and ‘County Roads’ differ from those that are contained in the Kenya Roads Bill, 2017 that is undergoing enactment before the house.
- ii. We would recommend the adoption of the definitions contained in the Roads Bill, 2017.

2. Object and purpose of the Act

Proposed Amendment

- i. Amendment to clause 3 of the Bill

Justification

- i. There is a need to provide a clear distinction of the role of the County Governments and that of the National Government in so far as access ways are concerned.
- ii. Accessibility and other purposes therewith are the sole responsibility of the National agencies that are mandated to construct such roads as per the Fourth Schedule to the Constitution of Kenya 2010.
- iii. The issue of Access to Major roads (National Roads) lies in the jurisdiction of the National Agency under whose mandate the road lies.

3. Application of the Act

Proposed Amendment

- i. Amendment to clause 4 of the Bill

Justification

- i. The Application of the Act seems to allow the County CECs authority over major roads contrary to the Fourth Schedule of the Constitution of Kenya 2010.

4. Amendments to clause 5,6 and 7

Proposed Amendment

- i. Amendments to clauses 5, 6 and 7 of the Bill

Justification

- i. A list of related Duties and Responsibilities are well captured in the Kenya Roads Bill, 2017 which is before the Senate and has undergone wider public consultation processes

5. Amednments to clauses 8 and 9

Proposed Amendment

- i. Amendments to clauses 8 and 9 of the Bill

Justification

- i. Existing Roads agencies responsible for the National Roads have the mandate and jurisdiction for the walkways/foot paths, cycle tracks and footbridges on the road networks within their purview.

Observations by the Committee

After the presentation of the Bill and upon review from stakeholders and internal deliberations, the Committee made the following observations;

- 1) Most of the stakeholders had expressed reservations on most of the provisions of the Bill;
- 2) The scope of the Bill was too wide and general as it touched on various diverse aspects including roads construction, traffic management and other matters which were covered in existing Acts and legislations. Further, certain clauses in the Bill were a duplication of existing laws.
- 3) The title of the Bill included the term 'Planning'. This was very similar to the Physical Planning Act and the title of the Physical Planning Bill, 2017 that was under consideration by the National assembly.
- 4) That the Bill covered aspects that were already under the consideration of the Roads Bill that is currently being considered at the Senate after having been passed by the National Assembly;
- 5) The Bill if enacted had the potential to distort the state of business in the counties and would further occasion significant upheaval in the planning of towns and urban centres;
- 6) That the provisions of the Bill granted overlapping powers to the County Executive Committee Member responsible for roads and that these overlapping powers were in conflict with the role of the Cabinet Secretary.

Recommendations by the Committee

The Committee acknowledged the views raised by the stakeholders and recommended as follows;

- 1) The title of the legislative proposal should read, “**County Roads, Pavements and Parking Areas Planning Bill, 2018**”;
- 2) The Bill should be further amended to provide a clear distinction of the role of the county governments and that of the National Government in the definition and use of accessways;
- 3) The clause on the use of parking spaces should be deleted as it is best handled by County Assembly legislation given that it is a fully devolved function. Further there was in existing a statute in the Traffic Act which made provisions for the offences specified in the Bill. There was a need to ensure uniformity in the punishment of offenders;
- 4) That Clause 10 be deleted altogether as it was in direct conflict with the current Physical Planning Act and the Physical Planning Bill, 2017;

The Committee tasked the Secretariat to clean the report in view of the submissions by stakeholders in order to make clear reservations of the Committee on the Bill. It was resolved Senate proceeds with the Bill guided by recommendations of the Committee.

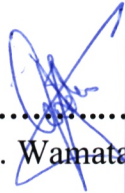
MIN.NO. 138/SCRT/2018: ANY OTHER BUSINESS

Acknowledgement of visiting Students from Starehe Boys Center: The Chairperson recognized the presence of students and Teachers from Starehe Boys School, Nairobi who were in attendance. He explained the Mandate of the Committee and the business that was being transacted. Members present thanked Starehe Boys for choosing to attend the session of the Committee and further wished them success in their studies and future careers..

MIN.NO. 139/SCRT/2018: ADJOURNMENT AND DATE OF THE NEXT MEETING

Having exhausted the agenda of the day, the meeting was adjourned at 10.35am.

SIGNED:



.....
CHAIRPERSON –Sen. Wamatangi Kimani Paul, MP

DATE:.....

29/11/2018

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MINUTES OF THE THIRTY NINTH SITTING OF THE STANDING COMMITTEE ON ROADS AND TRANSPORTATION HELD ON TUESDAY 27TH NOVEMBER, 2018 AT COMMITTEE ROOM 4 , MAIN PARLIAMENT AT 9.00.A.M.

PRESENT

(1) Sen. Wamatangi Kimani, MP,	Chairperson
(2) Sen. Hargura Godana, MP,	Vice- Chairperson
(3) Sen. Enoch Wambua, MP,	Member (Chairing)
(4) Sen. (Dr.) Lelegwe Ltumbesi, MP,	Member
(5) Sen. Christine Zawadi, MP,	Member
(6) Sen. (Prof.) Ekal Imana, MP,	Member

ABSENT WITH APOLOGY

(1) Sen. Sylvia Kasanga, MP,	Member
(2) Sen. Cleophas Malalah, MP,	Member
(3) Sen. Philip Mpaayei, MP,	Member

SECRETARIAT

1) Mr. Peter Mulesi	Clerk Assistant
2) Mr. Malcom Ngugi	Legal Counsel
3) Mr. Simon Muinde	Audio Officer
4) Mr. Abdallah Mbore	Sergeant- At Arms
5) Mr. Said Osman	Researcher

MIN/ SCRT/153/2018:

PRELIMINARIES

The Chairman called the meeting to order at 9.26am and there followed a word of prayer.

He welcomed the Members present and explained that the agenda before the committee was very crucial noting that the County Planning (Roads, pavements and Parking Bays) Bill, 2018 was due for Third reading.

He urged the Committee to consider amendments that had been proposed by the stakeholders during the public Hearing/ Receipt of Memoranda for purposes of enriching Committee stage Amendments.

He nominated Sen. (Dr.) Lelegwe Ltumbesi to Chair the meeting owing to some official engagements at the Global Conference on Blue Economy that was underway at the Kenyatta International Convention Centre (KICC).

MIN/ SCRT/154/2018: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Enoch Wambua MP and Seconded by Sen. Christine Zawadi, MP as follows;

1. Prayer
2. Adoption of Agenda
3. Consideration for Committee stage amendments on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018
4. Any other business
5. Adjournment and Date of next meeting

MIN/ SCRT/155/2018: CONSIDERATION FOR COMMITTEE STAGE AMENDMENTS ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018.

The Chairperson invited Members to the deliberations on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018 as follows;

CLAUSE 3

THAT clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

No. 6 of 1996

(b) provide a framework for planning of commercial structures along county roads in accordance with the Physical Planning Act;

CLAUSE 4

THAT clause 4 of the Bill be amended by deleting the words “and all commercial buildings constructed along major roads” appearing immediately after the words “county roads”.

CLAUSE 5

THAT clause 5 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the words “all roads” and appearing immediately after the words “drainage systems along” in paragraph (b) and substituting therefor the words “county roads”;

(ii) deleting the words “national and” appearing immediately after the words “constructed along” in paragraph (c);

(iii) deleting paragraph (d) and substituting therefor the following new paragraph—

(d) construct, maintain and facilitate the construction and maintenance of adequate parking bays in the respective county.

(iv) deleting paragraph (e);

(v) deleting paragraph (f) and substituting therefor the following new paragraph—

No 6 of 1996.

(f) facilitate regular inspection of all buildings, roads, streets, lanes, alleys, parking bays and walkways under the jurisdiction of the county government to ensure that they adhere to prescribed building codes and standards as set out in the Physical Planning Act, the Urban Areas and Cites Act and any other written law;

(b) by inserting the following new sub-clause immediately after sub-clause(2)—

(3) The CEC shall, for purposes of subsection (2) consult with the National Council for Persons with Disabilities established under section 3 of the Persons with Disabilities Act.

CLAUSE 6

THAT clause 6 of the Bill be amended by inserting the words “in accordance with the Physical Planning Act” immediately after the words “in the county”.

CLAUSE 7

THAT clause 7 of the Bill be amended —

(a) by deleting sub-clause (1); and

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(1) The county executive committee member shall, in consultation with the National Lands Commission, designate public land for the construction of parking bays within the county.

CLAUSE 8

THAT the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Construction and maintenance
of walkways by the county
government

8. Each county government shall construct and maintain walkways along all county roads in the respective county.

CLAUSE 9

THAT the Bill be amended by deleting clause 9 and substituting therefor the following new clause—

Designation of Pedestrian
Crossing

9. (1) The County Executive Member shall designate areas for use by pedestrians for the purpose of crossing a county road in a manner that does not interfere with the flow of traffic and that complies with national and county legislation.

(2) The County Executive Member shall, for the purpose of subsection (1) and where necessary, designate a pedestrian crossing and maintain a footbridge or any other convenience for use by pedestrians to cross a county road.

CLAUSE 10

THAT the Bill be amended by deleting clause 10 and substituting therefor the following new clause —

Access ways to commercial buildings

No. 6 of 1996

10. (1) Subject to subsection (2), an owner of a commercial building which is situated along a county road—

(a) may, with the approval of the county government, construct an access-way to the property in which the commercial building is situated in such a manner that the access-way does not obstruct a county road or extend directly from a county road.

(b) shall ensure adequate space for access to the building in accordance with the Physical Planning Act and any other written law .

(2) The county government shall ensure that there is an alternative means of access to commercial buildings in the area where the building is situated.

(3) Every person who, immediately before the commencement of this Act, owns a commercial building situated along a county road shall comply with provisions of this section—

(a) within a period of twelve months from the date of the commencement of this Act; or

(b) within a period of twelve months from the date of completion of the construction of an alternative means of access to the building as provided under subsection (2).

(4) A person who contravenes subsection (1) (b) commits an offence and is liable, on conviction, in accordance with section 30 of the Physical Planning Act.

CLAUSE 11

THAT the Bill be amended by deleting clause 11 and substituting therefor the following new clause—

Construction and maintenance of walkways by owners of commercial buildings.

11. (1) The owner of a commercial building may construct and maintain a walkway next to the commercial building where the county government—

(a) has designated an area next to the building for the construction of a walkway; and

(b) has not constructed or has failed to maintain the walkway.

(2) A person shall not construct or maintain a walkway under subsection(1)—

(a) unless such person has applied for and obtained approval of the county executive committee member; and

(b) otherwise in accordance with the prescribed standards.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (2) by deleting the words “in accordance with the standards prescribed under this Act” and substituting therefor with the words “in accordance with the Physical Planning Act and any other written law”.

CLAUSE 13

THAT clause 13 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “pavement” appearing immediately after the word “A” and substituting therefor the word “walkway”;

(b) in sub-clause(2) by deleting the word “pavement” appearing immediately after the words “commercial activity on a” and substituting therefor the word “walkway”; and

(c) by deleting sub-clause (3).

CLAUSE 14

THAT clause 14 of the Bill be amended —

(a) by deleting sub-clause (3); and

(b) in sub-clause (4) by deleting the word “seize” appearing immediately after the words “committee member may” and substituting therefor the word “walkways”.

CLAUSE 15

THAT the Bill be amended—

(a) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

Cap 39 of 1953 (4) A person who contravenes this section commits an offence and is liable, on conviction in accordance with section 52A of the Traffic Act.

(b) by deleting sub-clause 5.

CLAUSE 16

THAT the Bill be amended

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1) The county executive committee member may, in consultation with the Cabinet Secretary responsible for Infrastructure and all relevant stakeholders, make regulations for the better carrying out of the provisions of this Act;

(b) in sub-clause (2)

i. by deleting paragraph (a); and

ii. in sub-clause (2)(b) by deleting the word “pavement” appearing immediately after the words “parking bays and” in paragraph (b) and substituting therefor the word “walkways”.

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) by deleting the definition of the word “commercial building” and substituting therefor the following new definition:

“commercial building” shall have the same meaning assigned to it under the Physical Planning Act;

(b) by inserting the following new definition immediately after the definition of the word “national road”—

“walkway” means any egress, footpath, pathway or route for use by non-motorized traffic and shall not include cycle lanes ;

(c) by deleting the definition of the words “heavy commercial vehicle” and substituting therefor the following new definition—

“heavy commercial vehicle” has the meaning assigned to it under section 2 of the Traffic Act;

(d) by deleting the definition of the words “county road” and substituting therefore the following new definition—

“county road” means all roads falling within the mandate of the county governments under Part 2 of the Fourth Schedule to the Constitution and specified under any other written law;

(e) by deleting the definition of the words “major road”;

(f) by deleting the definition of the words “minor road”; and

(g) by deleting the definition of the words “national road”.

SHORT TITLE

THAT the Bill be amended by deleting clause (1) and substituting therefor the following new clause—

Short Title

1. This Act may be cited as the County Roads, Walkways and Parking Bays Act, 2018.

Resolutions of the Committee

After deliberations, it was resolved as follows;

The Committee adopted the draft Committee stage amendments and tasked the Secretariat to input all the proposed amendments and submit the final draft report for adoption in during the next meeting.

MIN/ SCRT/157/2018: ADJOURNMENT AND DATE OF THE NEXT MEETING

Having exhausted the agenda of the day, and there being no other business, the meeting adjourned at 10.13am.

SIGNED:



.....
fu CHAIRPERSON –Sen. Wamatangi Kimani Paul, MP

DATE:..... 29/11/2018

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MINUTES OF THE FOURTY SECOND SITTING OF THE STANDING COMMITTEE ON ROADS AND TRANSPORTATION HELD ON TUESDAY 27TH NOVEMBER, 2018 AT COMMITTEE ROOM 5 , MAIN PARLIAMENT AT 9.00.A.M.

PRESENT

(1) Sen. Wamatangi Kimani, MP,	Chairperson
(2) Sen. (Dr.) Lelegwe Ltumbesi, MP,	Member (Chairing)
(3) Sen. Enoch Wambua, MP,	Member
(4) Sen. (Prof.) Ekal Imana, MP,	Member
(5) Sen. Sylvia Kasanga, MP,	Member

ABSENT WITH APOLOGY

(1) Sen. Hargura Godana, MP,	Vice- Chairperson
(2) Sen. Christine Zawadi, MP,	Member
(3) Sen. Cleophas Malalah, MP,	Member
(4) Sen. Philip Mpaayei, MP,	Member

SECRETARIAT

1) Mr. Peter Mulesi	Clerk Assistant
2) Mr. Simon Muinde	Audio Officer
3) Mr. Abdallah Mbore	Sergeant- At Arms

MIN/ SCRT/167/2018:

PRELIMINARIES

The Chairman called the meeting to order at 9.26am and there followed a word of prayer.

He welcomed the Members present and explained that the agenda before the committee was very crucial noting that the County Planning (Roads, pavements and Parking Bays) Bill, 2018 was due for Third reading.

He urged the Committee to consider amendments that had been proposed by the stakeholders during the public Hearing/ Receipt of Memoranda for purposes of enriching Committee stage Amendments.

He invited Sen. (Dr) Lelegwe Ltumbesi to Chair the meeting as he had other official matters to attend to outside the meeting.

MIN/ SCRT/168/2018:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Enoch Wambua MP and Seconded by Sen. (Prof.) Ekal Imana, MP, as follows;

1. Prayer
2. Adoption of Agenda
3. Consideration and adoption of Committee stage amendments on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018
4. Any other business
5. Adjournment and Date of next meeting

MIN/ SCRT/169/2018: CONSIDERATION AND ADOPTION OF COMMITTEE STAGE AMENDMENTS ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018.

The Chairperson took Members on the Clause by Clause consideration of the proposed committee stage amendments as follows;

CLAUSE 3

THAT clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

No. 6 of 1996

(b) provide a framework for planning of commercial structures along county roads in accordance with the Physical Planning Act;

CLAUSE 4

THAT clause 4 of the Bill be amended by deleting the words “and all commercial buildings constructed along major roads” appearing immediately after the words “county roads”.

CLAUSE 5

THAT clause 5 of the Bill be amended—

- (a) in sub-clause (1) by—

(i) deleting the words “all roads” and appearing immediately after the words “drainage systems along” in paragraph (b) and substituting therefor the words “county roads”;

(ii) deleting the words “national and” appearing immediately after the words “constructed along” in paragraph (c);

(iii) deleting paragraph (d) and substituting therefor the following new paragraph—

(d) construct, maintain and facilitate the construction and maintenance of adequate parking bays in the respective county.

(iv) deleting paragraph (e);

(v) deleting paragraph (f) and substituting therefor the following new paragraph—

No 6 of 1996.

(f) facilitate regular inspection of all buildings, roads, streets, lanes, alleys, parking bays and walkways under the jurisdiction of the county government to ensure that they adhere to prescribed building codes and standards as set out in the Physical Planning Act, the Urban Areas and Cites Act and any other written law;

(b) by inserting the following new sub-clause immediately after sub-clause(2)—

(3) The CEC shall, for purposes of subsection (2) consult with the National Council for Persons with Disabilities established under section 3 of the Persons with Disabilities Act.

CLAUSE 6

THAT clause 6 of the Bill be amended by inserting the words “in accordance with the Physical Planning Act” immediately after the words “in the county”.

CLAUSE 7

THAT clause 7 of the Bill be amended —

(a) by deleting sub-clause (1); and

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(1) The county executive committee member shall, in consultation with the National Lands Commission, designate public land for the construction of parking bays within the county.

CLAUSE 8

THAT the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Construction and maintenance
of walkways by the county
government

8. Each county government shall construct and maintain walkways along all county roads in the respective county.

CLAUSE 9

THAT the Bill be amended by deleting clause 9 and substituting therefor the following new clause—

Designation of Pedestrian
Crossing

9. (1) The county executive member shall designate areas for use by pedestrians for the purpose of crossing a county road in a manner that does not interfere with the flow of traffic and that complies with national and county legislation.

(2) The county executive member shall, for the purpose of subsection(1) and where necessary, designate a pedestrian crossing and maintain a footbridge or any other convenience for use by pedestrians to cross a county road.

CLAUSE 10

THAT the Bill be amended by deleting clause 10 and substituting therefor the following new clause —

Access ways to commercial buildings

10. (1) Subject to subsection (2), an owner of a commercial building which is situated along a county road—

(a) may, with the approval of the county government, construct an access-way to the property in which the commercial building is situated in such a manner that the access-way does not obstruct a county road or extend directly from a county road.

(b) shall allocate adequate space for access to the building in accordance with the Physical Planning Act and any other written law .

(2) The county government shall ensure that there is an alternative means of access to commercial buildings in the area where the building is situated.

(3) Every person who, immediately before the commencement of this Act, owns a commercial building situated along a county road shall comply with provisions of this section—

(a) within a period of twelve months from the date of the commencement of this Act; or

No. 6 of 1996

(b) within a period of twelve months from the date of completion of the construction of an alternative means of access to the building as provided under subsection (2).

(4) A person who contravenes subsection(1)(b) commits an offence and is liable, on conviction, in accordance with section 30 of the Physical Planning Act.

CLAUSE 11

THAT the Bill be amended by deleting clause 11 and substituting therefor the following new clause—

Construction and maintenance of walkways by owners of commercial buildings.

11. (1) The owner of a commercial building may construct and maintain a walkway next to the commercial building where the county government—

(a) has designated an area next to the building for the construction of a walkway; and

(b) has not constructed or has failed to maintain the walkway.

(2) A person shall not construct or maintain a walkway under subsection(1)—

(a) unless such person has applied for and obtained approval of the county executive committee member; and

(b) otherwise in accordance with the prescribed standards.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (2) by deleting the words “in accordance with the standards prescribed under this Act” and substituting therefor with the words “in accordance with the Physical Planning Act and any other written law”.

CLAUSE 13

THAT clause 13 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “pavement” appearing immediately after the word “A” and substituting therefor the word “walkway”;
- (b) in sub-clause(2) by deleting the word “pavement” appearing immediately after the words “commercial activity on a” and substituting therefor the word “walkway”; and
- (c) by deleting sub-clause (3).

CLAUSE 14

THAT clause 14 of the Bill be amended —

- (a) by deleting sub-clause (3); and
- (b) in sub-clause (4) by deleting the word “seize” appearing immediately after the words “committee member may” and substituting therefor the word “walkways”.

CLAUSE 15

THAT the Bill be amended—

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

Cap 39 of 1953

(4) A person who contravenes this section commits an offence and is liable, on conviction in accordance with section 52A of the Traffic Act.

- (b) by deleting sub-clause 5.

CLAUSE 16

THAT the Bill be amended

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—
 - (1) The county executive committee member may, in consultation with the Cabinet Secretary and all relevant stakeholders, make regulations for the better carrying out of the provisions of this Act;
- (b) in sub-clause (2)

- i. by deleting paragraph (a); and
- ii. in sub-clause (2)(b) by deleting the word “pavement” appearing immediately after the words “parking bays and” in paragraph (b) and substituting therefor the word “walkways”.

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) by deleting the definition of the word “commercial building” and substituting therefor the following new definition:

“commercial building” shall have the same meaning assigned to it under the Physical Planning Act;

- (b) by inserting the following new definition immediately after the definition of the word “national road”—

“walkway” means any egress, footpath, pathway or route for use by non-motorized traffic and shall not include cycle lanes ;

- (c) by deleting the definition of the word “heavy commercial vehicle” and substituting therefor the following new definition—

“heavy commercial vehicle” has the meaning assigned to it under section 2 of the Traffic Act;

- (d) by deleting the definition of the word “county road” and substituting therefore the following new definition—

“county road” means all roads falling within the mandate of the county governments under Part 2 of the Fourth Schedule to the Constitution and specified under any other written law;

- (e) by deleting the definition of the word “major road”;

- (f) by deleting the definition of the word “minor road”; and

- (g) by deleting the definition of the word “national road”.

SHORT TITLE

THAT the Bill be amended by deleting clause (1) and substituting therefor the following new clause—

Short Title

1. This Act may be cited as the County Roads, Walkways and Parking Bays Act, 2018.

Resolutions of the Committee

It was resolved as follows;

The Committee tasked the Secretariat to amend the draft report based on the observations of the Committee on the proposed amendments and submit the final report for adoption on Thursday, 29th November, 2018 together with Minutes of the consideration of the Bill.

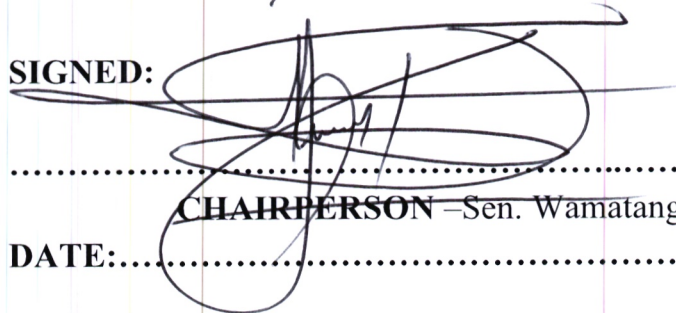
MIN/ SCRT/170/2018: ANY OTHER BUSINESS

- 1) **NaMATA Visits** : Members sought to be briefed on the progress made on the previously proposed benchmarking visits by NaMATA;
- 2) **Turkana County Visit**: Sen. (Prof) Malachy Imana, MP, requested that the planned visit to Turkana County be deferred as there were other urgent matters he would be attending to.

MIN/ SCRT/171/2018: ADJOURNMENT AND DATE OF THE NEXT MEETING

Having exhausted the agenda of the day, the meeting was adjourned at 10.13am.

SIGNED:



.....
CHAIRPERSON – Sen. Wamatangi Kimani Paul, MP

DATE:.....

29/11/2018

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MINUTES OF THE FOURTY FOURTH SITTING OF THE STANDING COMMITTEE ON ROADS AND TRANSPORTATION HELD ON THURSDAY 29TH NOVEMBER, 2018 AT COMMITTEE ROOM 5 , MAIN PARLIAMENT AT 8.30.A.M.

MEMBERS PRESENT

(1) Sen. Wamatangi Kimani, MP,	Chairperson
(2) Sen. Hargura Godana, MP,	Vice- Chairperson
(3) Sen. Cleophas Malalah, MP,	Member
(4) Sen. Philip Mpaayei, MP,	Member
(5) Sen. (Dr.) Lelegwe Ltumbesi, MP,	Member
(6) Sen. Enoch Wambua, MP,	Member
(7) Sen. Christine Zawadi, MP,	Member

MEMBERS ABSENT WITH APOLOGY

Sen. Sylvia Kasanga, MP,	Member
Sen. (Prof.) Ekal Imana, MP,	Member

SECRETARIAT

1) Mr. Peter Mulesi	Clerk Assistant
2) Mr. Said Osman	Research Officer
3) Mr. Simon Muinde	Audio Officer
4) Mr. Abdallah Mbore	Sergeant- At Arms

MIN/ SCRT/176/2018:

PRELIMINARIES

The Chairperson called the meeting to order at 9.00am and there followed a word of prayer.

MIN/ SCRT/177/2018:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP, and Seconded by Sen. Enoch Wambua, MP, with amendments as follows;

1. Prayer
2. Adoption of Agenda
3. Consideration of the Report for the Committee as per as per Standing Order 51(1)(b)
4. Confirmation of Minutes of the 35th , 39th and 42nd Sittings on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018;
5. Adoption of the Committee Report on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018
6. Any other business
7. Adjournment and Date of next meeting

MIN/ SCRT/178/2018: CONSIDERATION OF THE COMMITTEE SESSIONAL REPORT STATEMENT AS PER STANDING ORDER 51(1)(b).

The secretariat presented the draft statement of the Committee activities for the reporting period (August 9th –November, 9th, 2018) as per the requirements of Standing Order 51 (1) (b).

Members were informed that the Standing Order provided that at least every three (3) months a Committee Chairperson was expected to make a statement relating to activities of the Committee.

Subsequently, the Committee was informed that as outlined in Standing Order 215 (2) the reporting activities of the Committee entailed the following items-

- i. Bills considered by the Committee;
- ii. Statements considered by the Committee;
- iii. Petitions considered by the Committee;
- iv. Inquiries undertaken by the Committee and progress of any such inquiry;
- v. County visits undertake by the committee and the outcome of such visits; and
- vi. The manner and the extent to which the committee met its public participation obligations in respect of the business of the Committee.

Resolution of the Committee

It was agreed that the statement had captured the main activities by the Committee for the reporting period and the report was unanimously approved for presentation to the Senate.

MIN/ SCRT/179/2018: CONFIRMATION OF MINUTES OF THE 35TH , 39TH AND 42ND SITTINGS ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018

The Committee considered the draft report on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018.

Members were informed that a report on the proposed committee stage amendments on the Bill had been finalized for adoption the Committee.

The Chairperson invited the Secretariat to briefly take Members through the proposed Committee stage amendments to be effected at the Third Reading.

The following Minutes were adopted as follows;

- 1) Minutes of the 35th sitting held on 14th November, 2018 were confirmed after having been proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP, and Seconded by Sen. Enoch Wambua, MP.
- 2) Minutes of the 39th sitting held on 20th November, 2018 were confirmed after having been proposed by Sen. (Prof.) Ekal Imana, MP, and Seconded by Sen. Christine Zawadi, MP.
- 3) Minutes of the 42nd sitting held on 27th November, 2018 were confirmed after having been proposed by Sen. Enoch Wambua, MP, and Seconded by (Dr.) Lelegwe Ltumbesi, MP.

MIN/ SCRT/180/2018: ADOPTION OF THE COMMITTEE REPORT ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018

The Committee unanimously adopted its report on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018.

It was further, resolved that all the Members present sign the adoption page of the report as confirmation of the majority decision.

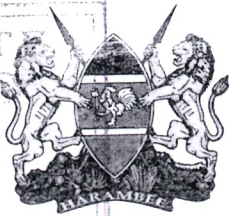
MIN/ SCRT/181/2018: ADJOURNMENT AND DATE OF THE NEXT MEETING

Having exhausted the agenda of the day, the meeting was adjourned at 10.02am.

SIGNED: 

.....
CHAIRPERSON –Sen. Wamatangi Kimani Paul, MP

DATE:..... 18.3.2019



Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel : (020) 2403314, 2403313
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12 OCT 2018

Ref: COG/6/10 Vol.6 (27)

11th October, 2018

Jeremiah Nyegenye, CBS
The Clerk of the Senate
Parliament Buildings
NAIROBI

① Com.
DLS.
Note and deal.
15/10/18

Dear Mr. Nyegenye,

LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL 2018

The above matter refers.

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable.

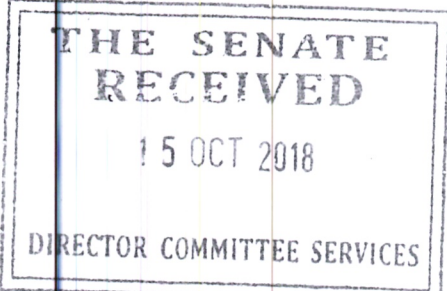
Based on these principles, the Council of Governors has reviewed the County Planning (Roads, Pavements and Parking Bays) Bill 2018 and would like to forward for your consideration the following legislative memorandum attached herewith.

Yours Sincerely
[Signature]

Jacqueline Mogeni
Chief Executive Officer

② Clerk Assistant
Roads Committee
Please deal
15/10/18

Copy: All Excellency Governors
All County Secretaries
All County Attorneys





COUNCIL OF GOVERNORS

**LEGISLATIVE MEMORANDUM ON THE COUNTY
PLANNING (ROADS, PAVEMENTS AND PARKING BAYS)
BILL 2018**

TO

THE SENATE

FROM

**THE COUNCIL OF GOVERNORS
INFRASTRUCTURE AND ENERGY COMMITTEE**

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of the Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (hereafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part;

In recognition of the fact that the Constitution sets out the functions of County Governments under Part II of the Fourth Schedule to include county public works, county roads, street lighting, traffic, parking, public road transport, ferries and harbors.

Aware of the need for coordinated action between the national and county governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

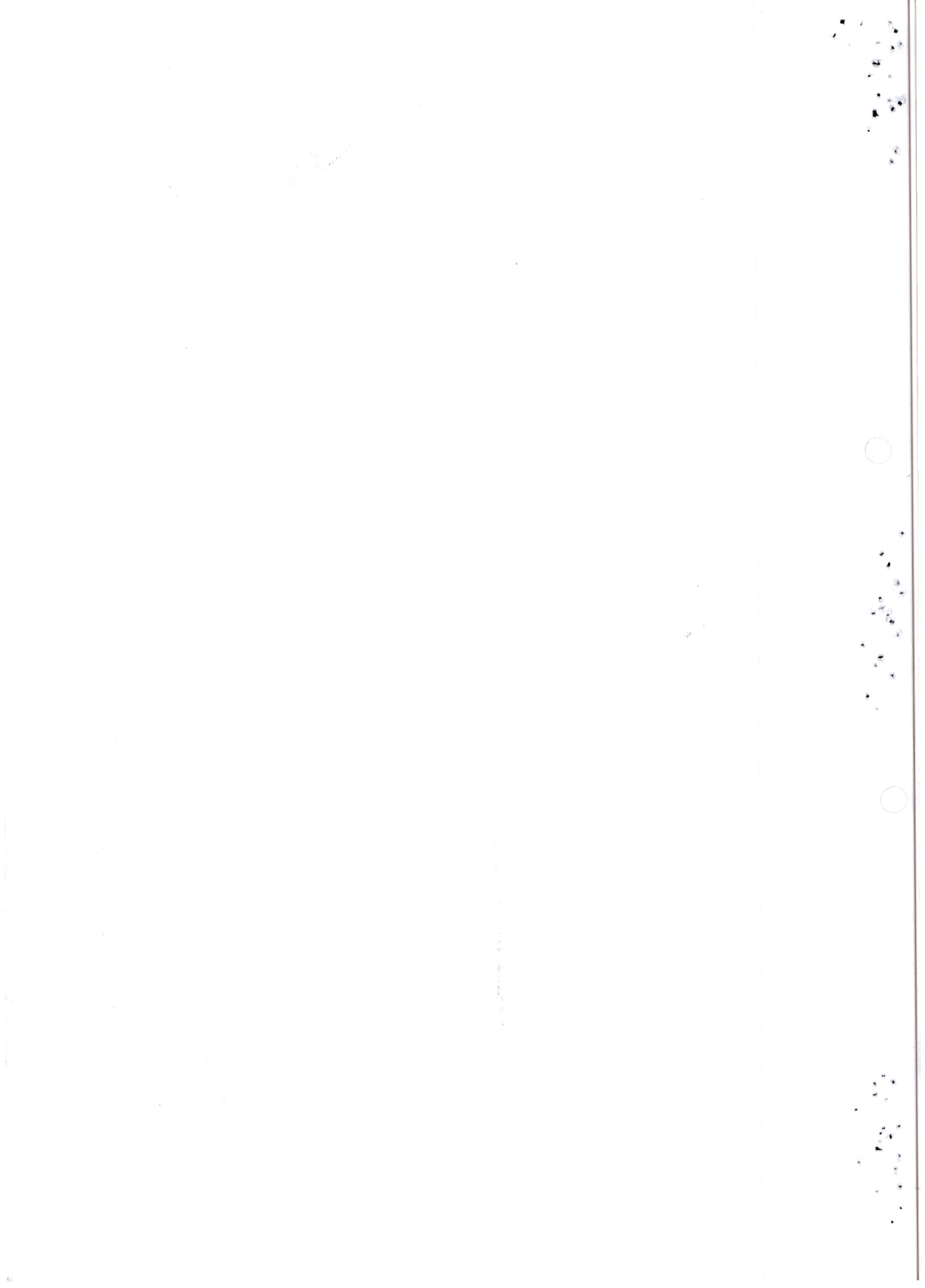
The Council of Governors therefore proposes the following amendments to the County Planning (Roads, Pavements and Parking Bays) Bill 2018:

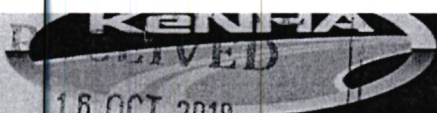
CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Clause 2 Interpretation	Remove the definition of major and minor roads.	Align the definitions of the Roads under this Act to those in the Constitution and Roads Bill to have ‘national roads’ and ‘county roads’	The Constitution of Kenya (2010) and the Kenya Roads Bill do not have definition of ‘major’ and ‘minor roads’ but only national and county roads and this Bill should follow these definitions. This should be effected throughout the entire Bill
		Include the interpretation of ‘access ways’	The term ‘access ways’ has been used severally in this Bill but it is not defined under the interpretation section of the Bill.
		Include the definition of ‘walkways’ which are to replace the definition of pavements	Pavement in engineering terms also includes roads so the COG proposes the replacement of

			the use of the word 'pavement' in the entire Bill with 'walkways'
Clause 5 Duties of the county executive committee member.	5(1) The county executive committee member shall - (b) facilitate the design, development and maintenance of drainage systems along all roads.	5(1) The county executive committee member shall - (b) facilitate the design, development and maintenance of drainage systems along all county roads (c) maintain the drainage systems along all roads.	The National Government should facilitate the design, development and maintenance of drainage along county roads but only supervise and maintain for national roads since they do not have the resources to develop for national roads as well as county roads.
Clause 7 Construction and maintenance of parking bays by the county	7(2) The county executive committee member shall, for the purpose of subsection (1), designate public land for the construction of parking bays.	(2) The county executive committee member shall, for the purpose of subsection (1), designate public land for the construction of parking bay in line with the provisions of the Land Act	The county executive member should not have arbitrary powers but should exercise this powers in line with the Land Act and due regard to the custodians of the various types of public land
Clause 8 Construction and maintenance of pavements by the county government	Each county government shall construct and maintain pavements along all national and county roads in the respective county.	Each county government shall construct and maintain walkways along all county roads in the respective county. For national roads, the National Government should construct the walkways and County Governments should only assist when it comes to maintenance.	The National Government should construct the walkways for national roads and the county governments construct and maintain pavements for county roads
Clause 9(1) Designation of pedestrian crossing	9. (1) The county executive committee member shall designate areas for use by pedestrians for the purpose of crossing a major road in the county in a manner that does not interfere with the flow of traffic.	The county executive committee member shall designate areas for use by pedestrians for the purpose of crossing all national and county roads in the county in a manner that does not interfere with the flow of traffic.	This is in line with the proposals made above on the definition of the roads

<p>Clause 10(1) Access ways to commercial buildings</p>	<p>Subject to subsection (2) an owner of a commercial building which is situated along a major road shall-</p> <p>(a) Construct and access way to the property in which the building is situated in such a manner that the access way does not obstruct a major road or extend directly from a major road</p>	<p>Subject to subsection (2) an owner of a commercial building which is situated along a major road shall-</p> <p>(a) Construct and access way, drainage and walkway to the property in which the building is situated in such a manner that they do not obstruct a road or extend directly from the road</p>	
<p>Clause 10(4)</p>	<p>(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings and subsequently to a fine not exceeding one hundred thousand shillings for every month the person fails to comply with the provisions of this section.</p>	<p>This provision should specify that this fine should be paid to the respective County government</p>	<p>This will provide clarity in regards to who should collect these fines.</p>
<p>Clause 11</p>	<p>11. (1) The owner of a commercial building may construct and maintain a pavement next to the commercial building where the county government—</p> <p>(b) has not constructed or has failed to maintain the pavement.</p>	<p>Remove Clause 11(1)(b)</p> <p>Replace the word 'pavement' with 'walkway'</p>	
<p>Clause 12 Construction and maintenance</p>	<p>(3) the respective county government may enter into an agreement with the owner of a commercial building under subsection (1) for the lease of a designated parking bay for a period of not more</p>	<p>(3) the respective county government may enter into an agreement with the owner of a commercial building or premises under subsection (1) for the lease of a designated parking</p>	<p>This will cater for all other commercial properties that are not necessarily building which may be used as parking bays</p>

e of parking bays	than twelve years and on condition that the construction of the parking bay-	bay for a period of not more than twelve years and on condition that the construction of the parking bay-	
Clause 13 Use of pavements		Replace the word 'pavement' with 'walkways'	Pavement in engineering terms also includes roads so the COG proposes the replacement of the use of the word 'pavement' in the entire Bill with 'walkways'
Clause 15	(1) The county executive committee member shall designate parking bays for—	Include the need to have the parking bays for motorcycle operators.	The number of domestic and commercial motorcycles in increasing in cities and towns and it is important for the counties to designate parking spots for motorcycles as well.
OTHER RECOMMENDATIONS			
Drainage systems		This Act should include a section specifically on the construction and maintenance of the drainage systems along national and county roads	Drainage is a critical component in the construction and maintenance of national and county roads.





16 OCT 2018

Blue Shield Towers, Hospital Road, Upper Hill, P. O. Box 49712-00100, Nairobi

Tel 020-8013842 Email dg@kenha.co.ke / info@kenha.co.ke Website www.kenha.co.ke

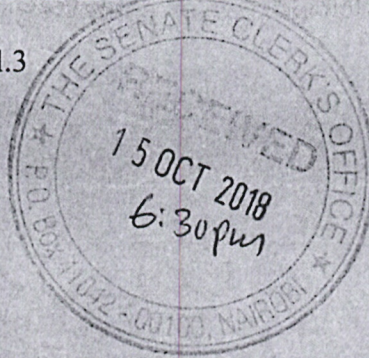
DIRECTOR LEGAL SERVICES

Office of the Director General

Ref No.: KeNHA/02/CS/LSD/1A Vol.3

Date: 12th October, 2018

Clerk of the Senate,
Clerk's Chambers,
The Senate,
Parliament Buildings,
P. O. Box 41842 - 00100
NAIROBI.



① Dcom.
DLS.
Kindly note and deal.
16/10/18

Dear *Sir,*

RE: KENYA NATIONAL HIGHWAYS AUTHORITY COMMENTS ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018

We refer to the above matter and to the Public Hearings held on 11th October, 2018 by the Senate Standing Committee on Roads and Transportation.

Please find attached herewith the Authority's comments on the Bill for your consideration and further action.

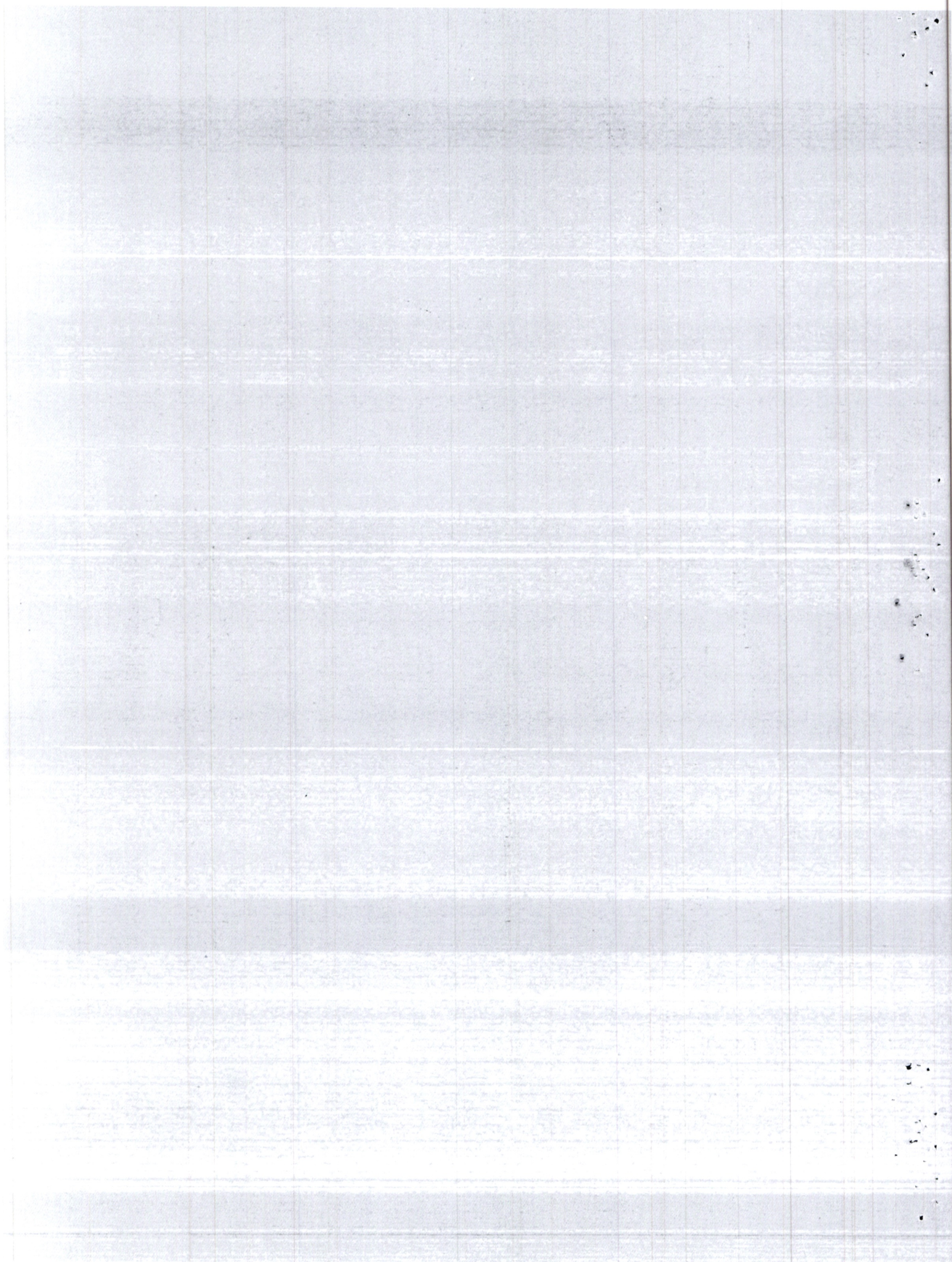
Yours *Sincerely,*

Eng. Peter M. Mundinia
DIRECTOR GENERAL

② Clerk Assistant
Roads Committee
Please deal
16/10/18



Vision: To be a leading Highways Authority committed to quality, safe and adequate national trunk roads.
Mission: To construct and manage national trunk roads that enhances socio-economic growth and prosperity.





KeNHA COMMENTS ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018

NO	CLAUSE	PROVISION	OBSERVATION/COMMENT	PROPOSAL
1.	The Preamble to the Bill	An ACT of Parliament to provide for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and pavements; provide proper planning of access-ways to commercial buildings along major roads; and for connected purposes.	<p>i. There are already in place other laws/ Acts of Parliament that address all the issues captured in the Preamble.</p> <ul style="list-style-type: none"> • Physical Planning Act • Kenya Roads Act, 2007 • Traffic Act (cap 403) • Public Roads and Roads of Access Act • Street Adoption Act (cap 406) • Persons with Disabilities Act • Urban Areas and Cities Actjust to mention but a few <p>ii. There is also a proposed Kenya Roads Bill that is currently pending before the Senate, having undergone its Second Reading</p>	<p>➤ For issues relating to urban development, the Physical Planning Act should take precedence.</p> <p>➤ To consider adding value to the existent laws by way of introducing appropriate amendments rather than a new law that replicates or as is the case here brings direct conflict/competition with the existent laws.</p> <p>➤ In view of the pending Kenya roads Bill that deals substantively with issues concerning county roads, the current County Bill may be held in abeyance</p>
2.	Interpretation Clause	Fails to define some important terms such as <i>“pavement”</i>	Term needs to be properly defined so as to distinguish the term “Pavement” to refer to walk ways as opposed to “Pavement” to mean the road surface	




	<p>Defines the Term “Commercial Building” without making reference to the definition given under the Physical Planning Act</p> <p>Definition of county road to mean roads falling under class D, E, F, G, K, L, P, R, S, T, U, W, UA or UW under the First Schedule of the Kenya Roads Act</p> <p>Definition of “heavy commercial vehicle” as a commercial vehicle which has an operating weight exceeding ten thousand pounds;</p>	<p>The definition of the term generalizes the application of the term commercial building. The Physical Planning Act defines the same to exclude a petroleum filling station or an industrial building.</p> <p>The Kenya Roads Act does not make reference to Class UW as referenced in the Bill.</p> <p>The list of Classes of roads fails to adhere to the new Classifications of Roads vide Legal Notice No. 2 (<i>Kenya Gazette Supplement No. 4 of 22nd January, 2016</i>)-<i>Roads Register</i></p> <p>That the Bill makes reference to classes of roads. County Roads should be as provided under the Roads Act. Classification of roads is the role of Cabinet Secretary and the classification of roads may change from time to time.</p> <p>The unit of measure of weight in pounds does not reflect the standard measure which should be kilograms.</p>	<p>➤ Reference should be made to the Physical Planning Act. Any changes should be made by introducing amendments to the Physical Planning Act (if need be)</p> <p>➤ If there is any need for change, the same should be made by amendment to the Traffic Act which already defines the term.</p>
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			The definition and limits in weights are already defined under the Traffic Act (see Rule 25 of the Traffic Rules).	
		Definition of term “major road” to mean all classified roads except the road classified as class UF under the First Schedule of the Kenya Roads Act;	The Kenya Roads Act does not make reference to any class by the name “UF” The effect of this definition is to essentially define all roads in the country, with the exception of the “class UF” roads as major roads.	
		Definition of the term “minor road” to mean a road classified as class UF under the First Schedule of the Kenya Roads Act. Definition of the term “national road” to mean a road classified as class A, B or C under the First Schedule of the Kenya Roads Act	The Schedule referred to make no reference to the class UF roads. The has been a new classification of roads vide Legal Notice No. 2 (<i>Kenya Gazette Supplement No. 4 of 22nd January, 2016</i>)- <i>Roads Register</i> .	
3.	Clause 3 Object and Purpose of the Bill	a) provide a framework for the planning and construction of access ways from major roads in each county in a manner that ensures the safety of road users.	The term “access ways” has not been defined hence ambiguous. The mandate of the Roads Agencies includes planning, construction and	➤ Conflict with mandate of Roads Agencies therefore the Bill be reworked




		<p>b) provide a framework for the planning of commercial buildings along major roads in a manner that ensures that the buildings are accessible and do not lose their commercial viability;</p> <p>c) promote the development of a well planned environment in counties in order to achieve unhindered and adequate access to buildings from major roads by members of the public.</p>	<p>access to the roads under their jurisdiction. Therefore, the object herein is in conflict with current mandate of Roads Agencies under the Roads Act.</p> <p>The element of planning and zoning as a whole is domiciled under the Physical Planning Act. Any additional criteria or considerations to preserve commercial value should thus be within the Physical Planning Act.</p> <p>The role of ensuring commercial value of premises should not at any time be allowed to supersede public interest and safety.</p> <p>Further, the current Physical Planning Act is to be implemented by the local authorities (read County Governments) in view of the provisions therein.</p>	<p>➤ Incorporate amendments (if any) to the Physical Planning Act.</p>
4.	<p>Clause 5 (Duties of the County Executive Committee</p>	<p>b) facilitate the design, development and maintenance of drainage systems along <i>all roads</i>;</p>	<p>The use of the term “all roads” brings direct conflict between the mandate of the CEM and other public officers’ mandates including but not limited to Ministries and State Agencies.</p>	




	<p>Member – <i>Abbreviated as CEM for purposes of this report)</i></p>	<p>c) ensure access-ways to buildings constructed along national and county roads;</p> <p>d) make provision for, and ensure the construction of, adequate parking bays in the respective county;</p> <p>e) ensure the maintenance of county roads;</p> <p>f) facilitate regular inspection of all buildings, roads, streets, lanes, alleys, parking bays and pavements to ensure that they adhere to the prescribed building codes and standards as set out in</p>	<p>Current framework and policy on road development and maintenance factors in elements of road drainage.</p> <p>The mandate of the CEM should thus be localized to County roads and should be referenced to the Physical Planning Act.</p> <p>The envisaged parking bays should be limited to areas within the county roads.</p> <p>Further, the Bill does not make prescriptions as to the standards and the requirements such as proper signage and markings to identify the proposed parking bays.</p> <p>This duty is repeated under Clause 5(a) of the Bill</p> <p>The mandate of the CEM should be localized to County roads.</p> <p>Inspection of buildings is a mandate already premised on other laws (Physical Planning Act) and building codes.</p>	
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	Clause 5(2)	<p>this Act and any other written law.</p> <p>Duty of the CEM to make provision for the access and use of buildings, roads, streets, lanes, alleys, parking bays and pavements by persons with disabilities in accordance with section 21 of the Persons with Disabilities Act, 2003.</p>	<p>The Bill makes reference to building codes and standards set out in the Act, but does not go ahead to set the said codes and standards.</p> <p>Given the name of the Bill, the same should limit itself to issues of county roads, pavement and parking bays and “access” as envisaged in the preamble to the Bill.</p> <p>Role already placed with the Council for Persons with Disabilities under the Persons With Disabilities Act.</p>	
5.	Clause 6 (Construction and maintenance of streets, lanes, alleys, etc.)	<p>Provides that each county government shall construct and maintain streets, lanes, alleys and other means of accessing properties in the county.</p>	<p>There is need to make reference to the Physical Planning Act.</p>	



6.	Clause 7 (Construction and maintenance of parking bays by the county)	(2) The county executive committee member shall, for the purpose of subsection (1), designate public land for the construction of parking bays.	<p>This Clause needs further workings in view of the nature of public land, the provisions of the Constitution and Land Act with regard to public land and the role of the National Land Commission on issues of Public land.</p> <p>Further, given the nature of the appointment and tenure of the CEM, there is need to involve a group as opposed to an individual through a committee or such other group in the decision to designate public land for construction of parking bays.</p> <p>The fact that land is public land does not mean the same does not serve a function or is not held by any other public body. This provision runs the risk of bringing further disarray in the ownership and use of public land especially held by government agencies.</p>	➤ Need to adhere to the provisions of the Constitution and the Land Act relating to Public Land.
7.	Clause 8 (Construction and maintenance of pavements by the county government)	Each county government shall construct and maintain pavements along all national and county roads in the respective county.	<p>The term pavement needs to be defined for clarity.</p> <p>The mandate should be localized to county roads only.</p> <p>There is conflict with the mandates of other State Agencies.</p>	



			The construction should adhere to the set relevant standards and qualities.	
8.	Clause 9 (Designation of pedestrian crossing)	<p>1) The county executive committee member shall designate areas for use by pedestrians for the purpose of crossing a major road in the county in a manner that does not interfere with the flow of traffic.</p> <p>(2) The county executive committee member shall, for the purpose of subsection (1) and where necessary, designate a zebra crossing or construct and maintain a footbridge or any other convenience for use by pedestrians to cross a major road.</p>	<p>The mandate here to be localized to county roads</p> <p>Crossings always factored in at point of construction based on data from studies based on need, safety, traffic volumes etc and as per the mandate specific to the Roads Agencies.</p>	
9.	Clause 10 (Access ways to commercial buildings)	1 (a) Owners of Commercial Buildings situated along major roads to construct an access way to property in a manner that the access way does not obstruct a major road or extend directly from a major road.	<p>The element of standardization and quality assurance not accounted for</p> <p>Provision is in conflict with mandate of Roads agencies as far as roads of access control is concerned. (number of accesses to/from major roads introducing</p>	<p>➤ Mandate of setting standards for the construction and maintenance of all roads is placed on the National government as per the Constitution.</p>



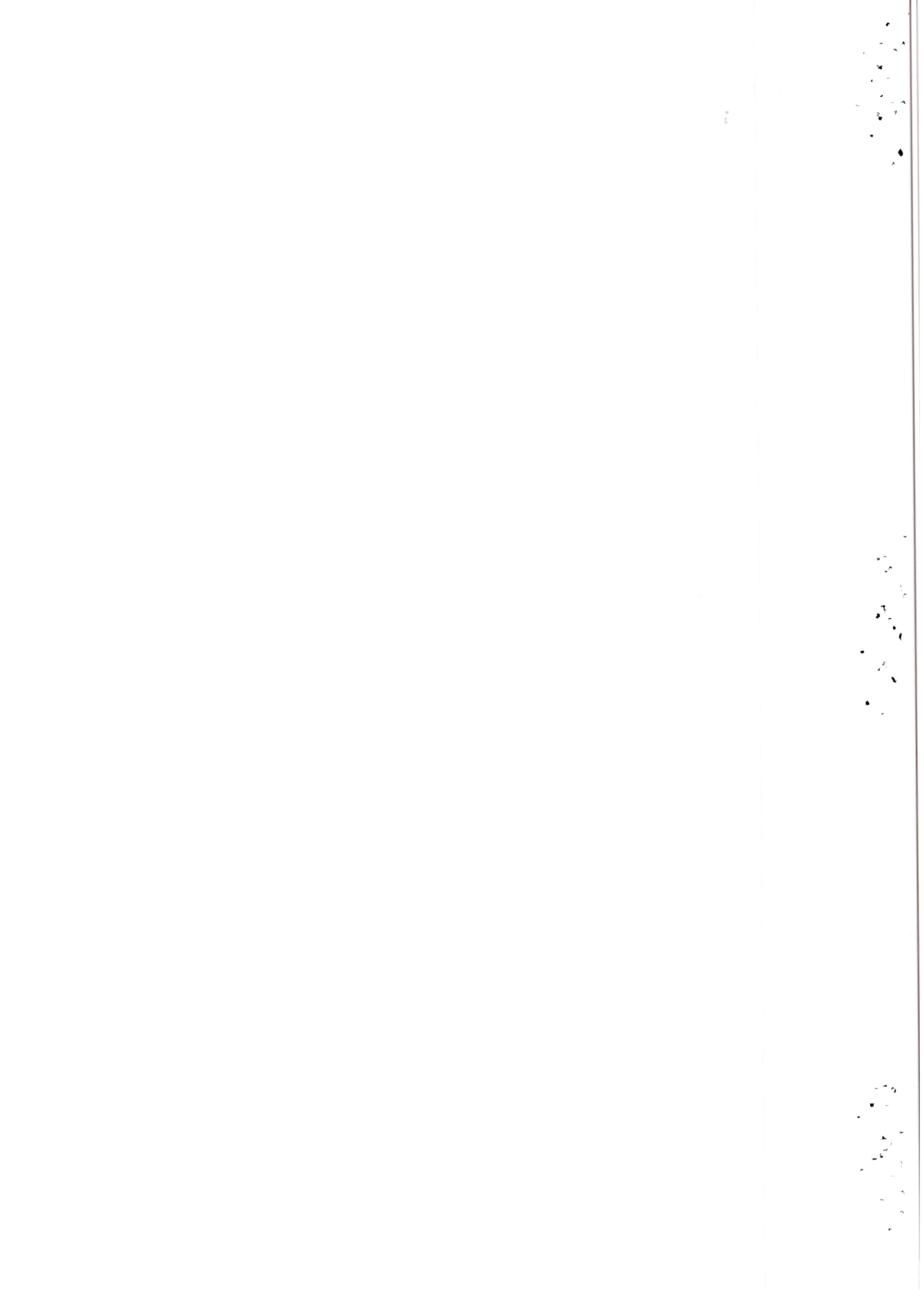
			challenges to mobility, safety along the “major roads”, drainage issues etc)	
		1 (b) Duty on owners to allocate adequate space for access	<p>The whole essence of requirement for Building Plans approvals is to ascertain conformity to issues such as entry and exit to buildings. Physical Planning Act caters for this.</p> <p>Requirements to be fulfilled should include necessary approvals and standards, which are already provided for through other laws.</p>	➤ Amendments to the Physical Planning Act (if any)
		(2) A person shall not be required to comply with subsection (1) unless the county government has provided an alternative means of access to the property in which the building is situated.	Use of the word “ unless ” introduces a meaning opposite to that intended in the Bill. Consider using the word “ if ”	
10.	Clause 12 (Construction and maintenance of parking	2) Construction of parking bays to be by the standards prescribed in the Act	<p>The bill has not gone ahead to stipulate the said standards.</p> <p>No reference has been made to other laws on standards/approvals of constructions</p>	



	bays by owners of commercial buildings)		and as such there is risk of conflict with the mandates of other public bodies such as NCA. Standards to be adhered to already set under the Physical Planning Act, Building Codes etc. while the mandate to set standards for the construction and maintenance of Roads is already premised on the National Government by the Constitution.	➤ Need to comply with Fourth Schedule of the Constitution.
11.	Clause 13 (3) (Use of Pavements)	Offence created against mis use of pavements	Traffic Act already makes provision for the offences. Ensure harmony in the punishment.	
12.	Clause 14 (Parking of motor vehicles)	Offence created against parking in non designated areas	Traffic Act already makes provisions for parking in non designated areas The Clause gives the CEM power to seize motor vehicle contravening parking conditions. The act of seizing may need to be limited to clamping, demobilizing etc in view of rights to property.	

KENYA URBAN ROADS AUTHORITY (KURA)
SUBMISSIONS ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018

P	
Proposals in the Bill(Clauses)	Views and Recommendations
<p>Interpretation</p> <p>2. In this Act-</p> <ul style="list-style-type: none"> • “county road” means a road classified as class D, E, F,G, K, L, P, R, S, T, U, W, UA or UW under the First Schedule of the Kenya Roads Act; “major road” means all classified roads except the road classified as class UF under the First Schedule of the Kenya Roads Act; • “minor road” means a road classified as class UF under the First Schedule of the Kenya Roads Act; and • “National road” means a road classified as class A, B or C under the First Schedule of the Kenya Roads Act. 	<p>The proposed definitions and classifications for the ‘Minor’ ‘National’ and ‘County Roads’ differ from those that are contained in the Kenya Roads Bill, 2017 that is undergoing enactment before the house.</p> <p>We would recommend the adoption of the definitions contained in the Roads Bill, 2017.</p>
<p>3. The object and purpose of this Act is to:-</p> <p>(a)provide a framework for the planning and construction of access ways from major roads in each county in a manner that ensures the safety of road users;</p> <p>(b)provide a framework for the planning of commercial buildings along major roads in a manner that ensures that the buildings are accessible and do not lose their commercial viability; and</p> <p>(c) Promote the development of a well-planned environment in counties in order to achieve unhindered and adequate access to buildings from major roads by members of the public.</p>	<p>(a) There is a need to provide a clear distinction of the role of the County Governments and that of the National Government in so far as <i>access ways</i> are concerned.</p> <p>(b) Accessibility and other purposes therewith are the sole responsibility of the National agencies that are mandated to construct such roads as per the Fourth Schedule to the Constitution of Kenya 2010.</p> <p>(c) The issue of Access to Major roads (National Roads) lies in the jurisdiction of the National Agency under whose mandate the road lies.</p>
<p>4. This Act shall apply to all county roads and all commercial buildings constructed along major roads.</p>	<p>The Application of the Act seems to allow the County CECs authority over major roads contrary to the Fourth Schedule of the Constitution of Kenya 2010.</p>
<p>5. Duties of the county executive committee member. 6. Construction and maintenance of streets, lanes, alleys, etc. 7. Construction and maintenance of parking bays by the county</p>	<p>A list of related Duties and Responsibilities are well captured in the Kenya Roads Bill, 2017 which is before the Senate and has undergone wider public consultation processes</p>
<p>8. Construction and maintenance of pavements by the county government. 9. Designation of pedestrian crossing.</p>	<p>Existing Roads agencies responsible for the National Roads have the mandate and jurisdiction for the walkways/foot paths, cycle tracks and footbridges on the road networks within their purview.</p>



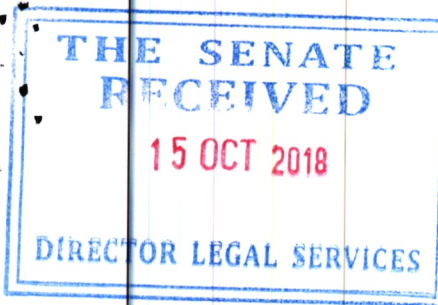
KENYA URBAN ROADS AUTHORITY (KURA)
SUBMISSIONS ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL, 2018

<p>10. Access ways to commercial buildings.</p> <p>11. Construction and maintenance of pavements by owners of commercial buildings.</p> <p>12. Construction and maintenance of parking bays by owners of commercial buildings.</p> <p>13. Pavements.</p>	<p>The proposed accesses can only be developed with the concurrence, guideline and direction of the National government agency responsible for the road network.</p> <p>A clear definition that distinguishes a pavement from a walkway is necessary to avoid confusion.</p>
<p>14. Parking of motor vehicles.</p> <p>15. Designated parking for heavy commercial vehicles and petroleum tankers</p>	<p>(14). Provisions for parking are best handled by legislation promulgated under County Assemblies.</p> <p>(15). These provisions are best enacted after exhaustive and robust consultations with the members of the Transport Industry (haulage) and the Energy sector otherwise they will move the Judiciary and have these provisions expunged from the Act.</p>
<p>16. Regulations.</p>	<p>In so far as the regulations touch on Standards for the enumerated civil works they are unconstitutional as that is a function of the national government as per the Fourth Schedule to the Constitution of Kenya 2010, whose proposals are under consideration in the Kenya Roads Bill, 2017 currently before the Senate.</p>

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MEMORANDUM ON THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL 2018

To:
Jeremiah Nyegenye,
Clerk of the Senate,
Office of the Clerk/Secretary, Parliamentary Service Commission,
Main Parliament Building,
P. O. Box 41842 – 00100, Nairobi

Cc:
Chairperson,
Senate Standing Committee on Roads and Transportation
P. O. Box 41842 – 00100, Nairobi

11th October, 2018

About TISA

The Institute for Social Accountability (TISA) is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya. TISA has been operational since March 2008, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya. TISA submits this memorandum in response to the notice for submission of memoranda made by the clerk of the Senate pursuant to Article 118 of the Constitution and Standing Order 140 (5) of the Senate that Parliament shall facilitate public participation and involvement in its legislative and other business of Parliament and its committees.

Review of the County Planning (Roads, Pavements and Parking Bays) Bill 2018

We commend the Senate in its efforts to develop the *County Planning (Roads, Pavements and Parking Bays) Bill 2018* that seeks to provide a legislative framework for the planning, construction and maintenance of county roads, streets lanes, alleys, parking bays, drainage systems and pavements in each county. It also provides for the proper planning and placement of access ways to commercial buildings along major roads within counties.

However, we note with concern the following issues which if remain unresolved may affect the effective implementation of the Bill if enacted

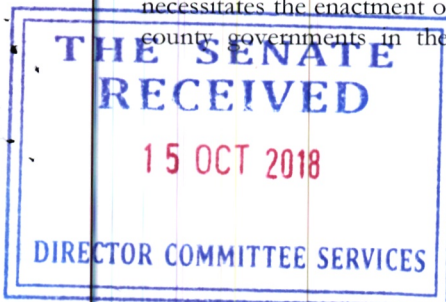
i. Function Assignment

The *Constitution Fourth Schedule (Part 1 Paragraph 18)* assigns the national government responsibility for road traffic; the construction and operation of national trunk roads; and standards for the construction and maintenance of other roads by counties. On the other hand, counties are assigned the responsibility for county transport including county roads; street lighting, traffic and parking; public road transport and ferries and harbours excluding the regulation of international and national shipping matters (*Part 2 Paragraph 5*). A review of these provisions reveals that the *Constitution* classifies roads as national trunk roads and county roads. However, the *Constitution* does not define the terms national trunk roads and county roads and this necessitates the enactment of legislation and policy that unbundles the functions assigned to the national and county governments in the roads sector. The defunct Transition Authority unbundled and transferred

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Roads Committee

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functions related to the roads sector in 2016. However, the demarcation between National and County government roads, as gazetted by the defunct Transition Authority is still contested by the County Governments, and the resolution of the matter is pending the enactment of a Roads Act.¹ There is currently a proposed Bill, the *Kenya Roads Bill 2017* undergoing review in the Senate.

However, the *County Planning (Roads, Pavements and Parking Bays) Bill* under clause 2 in defining county roads makes reference to the classification of public roads under the *First Schedule of the Kenya Roads Act*. It is not clear which Act the Bill is making reference to as the current *Kenya Road Act* was enacted in 2007 and the *Kenya Roads Bill 2017* is yet to be enacted. This lack of clarity may result in conflict of laws if the *Kenya Roads Bill 2017* and the *County Planning (Roads, Pavements and Parking Bays) Bill 2018* are enacted as follows:

- a) The *County Planning (Roads, Pavements and Parking Bays) Bill 2018* defines county roads as a road classified as class D, E,F,G,K,L,P,R,S,T,U,W,UA and UW.
- b) The *Kenya Roads Bill 2017* classifies county roads as Class E,F,G,K,L,M,N,P and National Trunk roads as S,A,B,H,J,C,D.
- c) The *Kenya Roads Act 2007* classifies public roads as National Roads including Class A, B, C; Rural Roads as Class D, E, F, G, K, L, P, R, S, T, U, W, and Urban Roads as Class UA, UC or UL. It is important to note that the *Kenya Roads Act 2007* will be repealed upon the enactment of the *Kenya Roads Bill 2017*.

Recommendation: The National and County Governments need to finalize the issue of classification of roads and enact a law that clearly classifies National Trunk Roads and County Roads to avoid duplication of mandate and responsibilities between the two levels of government.

ii. Role of Kenya Urban Roads Authority and Kenya Rural Roads Authority

We note with concern that Kenya Urban Roads Authority and Kenya Rural Roads Authority both of which are national government state agencies continue to perform some aspects of county government road functions, for instance, planning, development and maintenance of urban roads and rural roads respectively.²

Recommendation: There is need to analyze and restructure the role of Kenya Urban Roads Authority and Kenya Rural Roads Authority³ to be in line with the division of functions between the two levels of government in accordance with the *Constitution*. The functions and resources still under the control of these State Corporations must be devolved to county governments.

iii. Funds must follow functions

The *Constitution Article 175(b)* states that county governments shall have reliable resources of revenue to enable them govern and deliver services effectively. The *Constitution* and the *County Planning (Roads, Pavements and Parking Bays) Bill* (if enacted) place the function of managing county roads on county governments.

Recommendation: All the resources necessary for county governments to implement this function must be included in revenue allocation.⁴

For further information, please contact us at:

info@tisa.or.ke

P.O. Box 48353 - 00100 Nairobi

Tel: +254 20 4443676

www.tisa.or.ke

¹ Intergovernmental Relations Technical Committee, *EMERGING ISSUES ON TRANSFER OF FUNCTIONS TO NATIONAL AND COUNTY GOVERNMENTS*, November 2017

² Ibid

³ Ibid

⁴ Ibid

12TH PARLIAMENT

THE SENATE

STANDING COMMITTEE ON ROADS AND TRANSPORTATION

ATTENDANCE REGISTER

DATE: 11th October 2018 TIME: 10 am

AGENDA: Public Hearing on the County Planning (Roads, Pavements and Parking Bays), 2018.

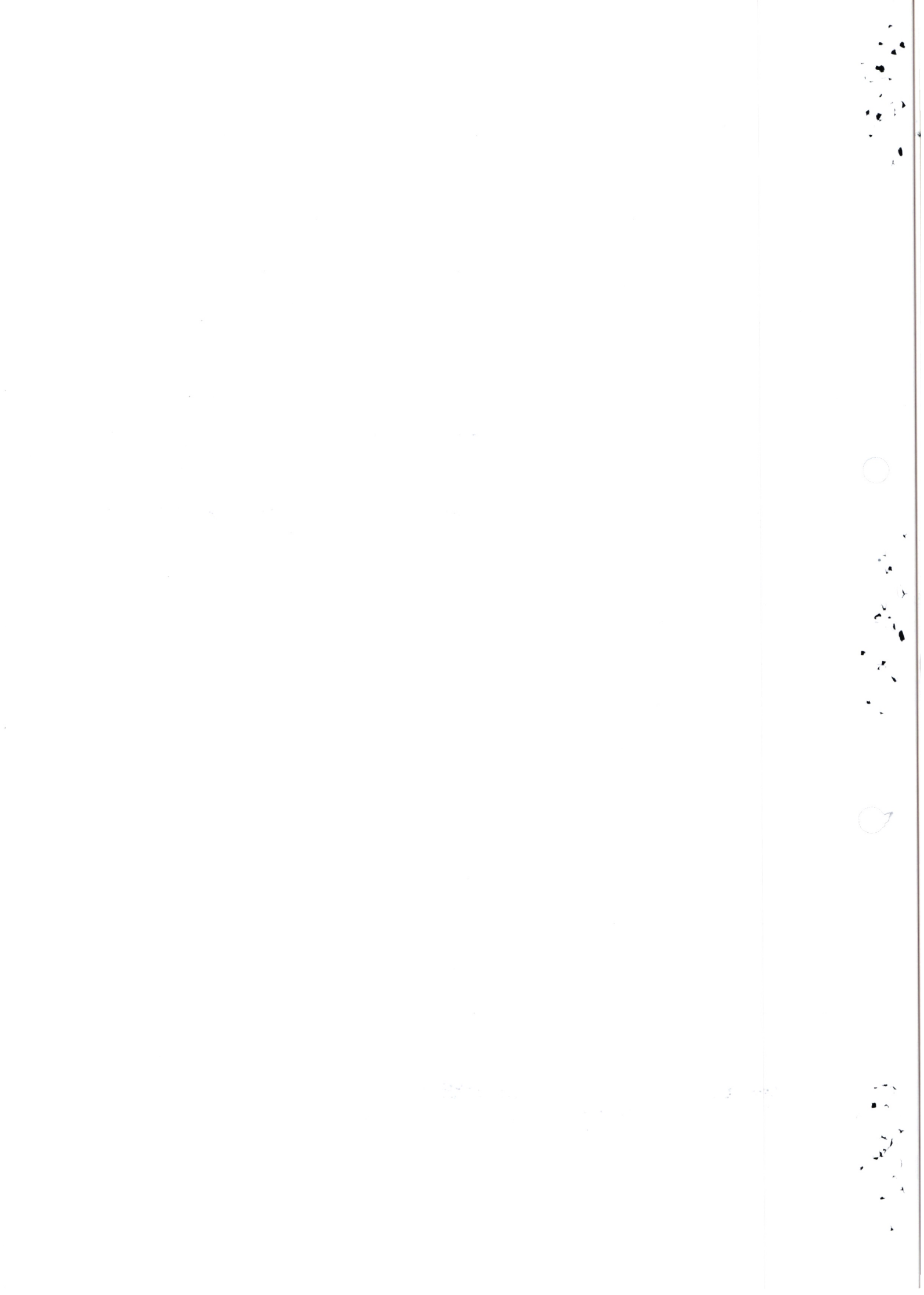
VENUE: SHIMBA HALL, KICC

INATTENDANCE

	NAME	DESIGNATION / INSTITUTION	CONTACT	SIGNATURE
✓1.	Dr. John Wacutu	Member of Parliament	0720015856	[Signature]
✓2.	J.K. Mutai	Kilimanjaro Project Foundation	0722-310094	[Signature]
✓3.	Eng. Gilbert Arasa	SPSER / SDOI	0726555858	[Signature]
✓4.	PETER BOSIRE	AD (KURA)	0722273816	[Signature]
✓5.	COLLINS OGUTU	LAWYER (KURA)	0705043517	[Signature]
6.	Concepta A.O	Senate	0716864357	[Signature]
7.	Peter Mhai	Senate	0720123604	[Signature]
✓8.	Dr DUNCAN KIBOYONGA	NTSA	0722477709	[Signature]
9.	Jane Komari	Bunge Lu Wazalendo	0713119665	[Signature]
✓10	Eng. J. NJUGUNA GATHU	KENHA	0722768815	[Signature]
11.				
12.				
13.				
14.				

Committee Clerk: Peter Mulesi

Signature: [Signature]



THE SENATE

STANDING COMMITTEE ON ROADS AND TRANSPORTATION



ATTENDANCE REGISTER

DATE: 11th OCTOBER 2018 TIME: 10:4m

AGENDA: Public Hearing on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018.

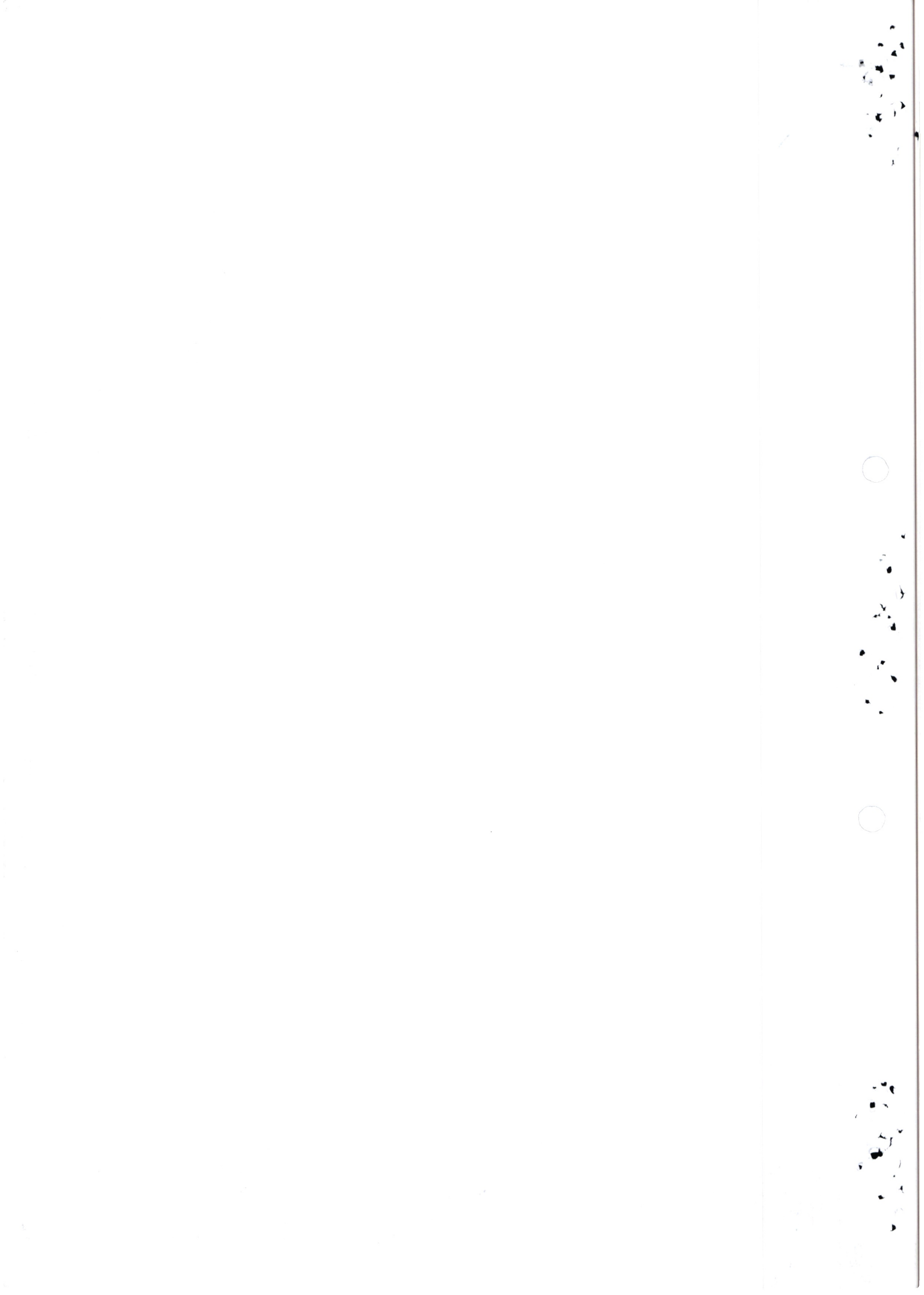
VENUE: SHIMBA HALL, KICC

INATTENDANCE

	NAME	DESIGNATION / INSTITUTION	CONTACT	SIGNATURE
1.	Brenda Rao	KENHA	0714339708	
2.	NJIRU NJUE	KENHA	0714777250	
3.				
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Committee Clerk: Peter Waswa Mulesi

Signature: 



Dramatic change to policy on Africa

counter China new Africa plan

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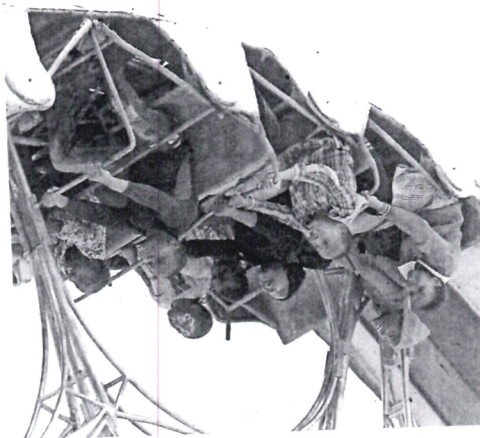
the Build Act replaces had not been permitted to make direct investments of that sort. Its mandate was limited to activities such as underwriting risk insurance for US companies venturing into emerging markets.

Trump administration officials say they cannot yet provide specifics on how the new International Development Finance Corporation will benefit Kenya. But they add that the increased funding provided by the Build Act will likely lead US private businesses to invest more aggressively in countries such as Kenya that are viewed as posing comparatively less risk.

"It makes US companies more competitive and reduces the risk in a growing market that is not well understood by American business," Witney Schneidman, an Africa specialist at a Washington consulting firm, wrote regarding the Build Act in a recent blog post.

The legislation soon to be signed into law by President Trump has also drawn criticisms.

Raj Bhala, a US law professor and adviser to the Dentons investment consulting firm, argues that the \$60 billion in funding for the Build Act is too "paltry" a sum.



DENNIS ONSONGO / NATION

Fanfare at trade fair

Children have fun on the final day of the weeklong Nairobi International Trade Fair yesterday. The annual event was officially opened by President Uhuru Kenyatta on Thursday.

At a glance

COUNTERING THE CHINESE

The US cannot hope to counter Chinese influence in Africa when its new international development arm can muster only six per cent of the total value of China's investments in the developing world, Prof Bhala wrote last week on the Bloomberg news agency's opinion website.

Revamp Kenyan embassies abroad: MPS

BY SAMWEL OWINO

MPS want the government to urgently improve the condition of its foreign missions which are in deplorable state.

A report tabled in Parliament in August by the chairman of the National Assembly Committee on Defence and Foreign Relations, Mr Katoo ole Metito (Kajiado South), paints a grim picture of broke foreign missions operating in old blocks.

While debating the report last

week Thursday, the lawmakers said there is need for the executive to urgently facelift all the offices abroad.

Majority Whip Benjamin Washiali said the foreign missions' help in supervising bilateral agreements that Kenya signs with other countries hence their conditions should be improved.

"In the next supplementary budget, some money should be set aside to improve conditions of our foreign missions," Mr

Washiali said.

Deputy Minority Whip Chris Wamalwa said he recently visited Egypt and was disappointed at the state of affairs at Kenya's offices.

"The ambience of the foreign missions must be good because they project the face of Kenya," Mr Wamalwa said as he also asked the Treasury to urgently address the problem of late disbursement of money to the missions saying the staff were suffering due to pay delays.

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CLOSING DATE: 15TH OCTOBER 2018

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REPUBLIC OF KENYA



**TWELFTH PARLIAMENT
THE SENATE**

The County Planning (Roads, Pavements and Parking Bays) Bill, 2018

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The County Planning (Roads, Pavements and Parking Bays) Bill, 2018 was read a First Time in the Senate on 11th September, 2018 and thereafter stood committed to the Senate Standing Committee on Roads and Transportation.

Pursuant to the provisions of Article 118 and standing order 140 (5) of the Standing Orders of the Senate, the Standing Committee on Roads and Transportation now invites interested members of the public to submit any representations that they may have on the County Planning (Roads, Pavements and Parking Bays) Bill, 2018. The representations may be made orally or by submission of written memoranda in the following manner -

1. Public Hearings shall be held on **Thursday, 11th October, 2018 from 10:00 a.m. to 1.00 pm at the Shimba Hills, KICC** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi** or emailed to cSenate@parliament.go.ke, to be received on or before **Monday, 8th October, 2018 at 5:00 pm**.

The County Planning (Roads, Pavements and Parking Bays) Bill, 2018 is available on the Parliament website at <http://www.parliament.go.ke/senate>.

**CLERK OF THE SENATE/ SECRETARY
PARLIAMENTARY SERVICE COMMISSION.**

