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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- SECOND SESSION

REPORT OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT,
PUBLIC WORKS AND HOUSING

ON THE CONSIDERATION OF THE KENYA ROADS BILL, 2017
(NATIONAL ASSEMBLY BILL NO. 47 OF 2017)

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

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Paper laid
By Chair of the
Committee for
on 20/2/2018 at
the Table

20 FEB 2018

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LIST OF ABBEVIATIONS

KeNHA	-	Kenya National Highways Authority
KeRRA	-	Kenya Rural Roads Authority
KNCCI	-	Kenya National Chamber of Commerce and Industry
KRB	-	Kenya Roads Board
ICPAK	-	Institute of Certified Public Accountants of Kenya
KFS	-	Kenya Forest Service.
CoG	-	Council of Governors
ICPAK	-	Institute of Certified Public Accountants
PPP	-	Public Private Partnership
RMLF	-	Roads Maintenance Levy Fund



ANNEXURES

- Annexure 1 - Submission by COG
- Annexure 2 - Submission by KENHA
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FOREWORD

The Bill was read for the first time on 14th December 2017 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1); it is on the basis of this that the Committee makes this Report. The Committee held six (6) meetings with stakeholders where submissions were received and considered before the adoption of this report.

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations of the submissions by different stakeholders on the Kenya Roads Bill, 2017. The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability, transparency and ensuring the participation of the public.

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee on Transport, Public Works and Housing, it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Kenya Roads Bill, 2017.

SIGNED.....

HON. DAVID PKOSING, CBS, M.P

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING



1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;

- a. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b. study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c. study and review all legislation referred to it;
- d. study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e. investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f. to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);
- f (a). examine treaties, agreements and conventions;
- g. examine treaties, agreements and conventions;
- h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- j. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- k. examine any questions raised by Members on a matter within its mandate.



Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-

- a) Transport;
- b) Roads;
- c) Public works;
- d) Construction and maintenance of roads, rails and buildings;
- e) Air and seaports; and
- f) Housing.

In executing this mandate, the Committee oversees various State Departments, namely:

- i. The State Department of Transport;
- ii. The State Department of Infrastructure;
- iii. The State Department of Housing and Urban Development;
- iv. The State Department of Public Works; and
- v. The State Department of Shipping and Maritime Affairs.



1.2 Members of the Committee

- 1) Hon. David Pkosing, M.P. **Chairperson**
- 2) Hon. Moses Kuria, M.P. **Vice Chairperson**
- 3) Hon. Dominic Kipkoech Koskei, M.P.
- 4) Hon. Peris Pesi Tobiko, M.P.
- 5) Hon. Kulow Maalim Hassan, M.P.
- 6) Hon. Mugambi Murwithania Rindikiri, M.P.
- 7) Hon. Samuel Arama, M.P.
- 8) Hon. Shadrack John Mose, M.P.
- 9) Hon. Rigathi Gachagua, M.P.
- 10) Hon. Rehema Dida Jaldesa, M.P.
- 11) Hon. Ahmed Bashane Gaal, M.P.
- 12) Hon. David Njuguna Kiaraho, M.P.
- 13) Hon. Johnson Many Naicca, M.P.
- 14) Hon. Tom Mboya Odege, M.P.
- 15) Hon. Suleiman Dori Ramadhani, M.P.
- 16) Hon. Ahmed Abdisalan Ibrahim, M.P.
- 17) Hon. Gideon Mutemi Mulyungi, M.P.
- 18) Hon. Savula Ayub Angatia, M.P.
- 19) Hon. Vincent Kemosi Mogaka, M.P.

1.3 Committee Secretariat

- | | |
|-----------------------------|-------------------------------|
| 1) Ms. Chelagat Tungo Aaron | Second Clerk Assistant |
| 2) Mr. Ahmed Salim Abdalla | Third Clerk Assistant |
| 3) Ms. Mercy Wanyonyi | Legal Counsel |
| 4) Mr. James Muguna | Research Officer |
| 5) Mr. Eugene Luteshi | Audio Officer |
| 6) Mr. Abdinasir Moge Yusuf | Fiscal Analyst |
| 7) Ms. Zainabu Wario | Sergeant at Arms |



1.4 ADOPTION OF THE COMMITTEE REPORT

We, the Members of the Departmental Committee on Transport, Public Works and Housing have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached list (Annexure 12)



2.0 BACKGROUND

The Kenya Roads Bill, 2017 was read for the first time on 14th December 2017 and subsequently committed to the Departmental Committee on Transport, Public Works and Housing for consideration pursuant to the provisions of Standing Order 127 (1), and report to the House. The principal object of this Bill is to give effect to the Fourth Schedule to the Constitution in relation to the roads subsector. It is proposed to review, consolidate and rationalize the legal and institutional framework for management of the road network and roads sub sector in a more efficient and effective manner.

3.0 SITTINGS

The Committee considered the Kenya Roads Bill, 2017 in its sittings held on Friday, 16th and Saturday, 17th February 2018 and adopted its report on Saturday, 17th February 2018. This was preceded by five (5) other meetings with stakeholders such as sittings on 30th January 2018, 31st January 2018 and 6th February 2018 where submissions were received and considered before the adoption of this report.

3.1 SUMMARY OF THE KENYA ROADS BILL, 2017

PART 1-PRELIMINARY

The principal object of this Bill is to give effect to the Fourth Schedule to the Constitution in relation to the roads subsector. It is proposed to review, consolidate and rationalize the legal and institutional framework for management of the road network and roads sub sector in a more efficient and effective manner. With this object it is also proposed to amend the Kenya Roads Board Act, 1999(Cap 408A), repeal the Kenya Roads Act 2007 (Cap 408), and the Public Roads and Roads of Access Act, 1920 (Cap 399). **(Clause 3)**



The Act shall apply to all public roads managed by the respective Authority and the county governments but not to national parks and reserves which are under the management and control of Kenya Wildlife Service. **(Clause 5)**

PART II-ESTABLISHMENT OF THE PUBLIC ROADS STANDARDS BOARDS

This part provides for the establishment of the Public Roads Standards Board **(Clause 6)** which is an advisory Board whose functions include to advise the Cabinet Secretary on standards for road and bridge materials, design, construction, maintenance and performance levels; standard contract forms for works and consultancy services among others. **(Clause 8)**

PART III-CLASSIFICATION OF NATIONAL TRUNK AND COUNTY ROADS

A public road shall be classified in the manner set out in the **First Schedule** and where a new road is established, the responsible Authority or county government shall submit to the Cabinet Secretary a request for classification of the road, and the Cabinet Secretary shall assign the road in accordance with the classification that accurately reflects the function served by the road. **(Clause 10)**

The Cabinet Secretary may, from time to time, review the classification and assignment of public roads for purposes of ensuring that the classification accurately reflects the function served by the road; and all parts of the country have reasonable access to a national trunk road or a county road.

PART IV-ESTABLISHMENT OF ROAD AUTHORITIES

This part provides for the establishment and composition of the Kenya National Highways Authority, Kenya National Secondary Roads Authority, and the managing Boards of these Authorities, powers and functions of these Boards.

The Bill establishes the **Kenya National Highways Authority** as a body corporate **(Clause 12)** responsible for the management, development, rehabilitation and maintenance of primary national trunk roads Classes S, A, and B, as specified in Part A of the First Schedule to this Act.



Clause 15 establishes the **Kenya National Urban Roads Authority** as a body corporate responsible for the management, development, rehabilitation and maintenance of secondary National Trunk Roads classes H and J as specified in the First Schedule.

Clause 18 establishes the **Kenya National Secondary Roads Authority** as a body corporate responsible for the management, development, rehabilitation and maintenance of secondary National Trunk Roads classes C and D as specified in the First Schedule.

The responsibilities of the three Authorities include constructing, upgrading, rehabilitating and maintaining roads under their jurisdiction, controlling primary national trunk roads and road reserves and access to roadside developments and implementing road policies in relation to primary national trunk roads. **(Clauses 13, 16 and 19)**

The Bill also establishes the Boards of the three Authorities as body corporates with perpetual succession and a common seal. The Boards of the Authorities shall be responsible for overseeing the operations of the Authorities for purposes of attaining equity in the development of road network in all parts of Kenya, securing continuing improvements of performance, protecting the long term viability of the Authorities and ensuring that financial needs of the Authority are addressed. **(Clause 15)**

PART V- ADMINISTRATIVE PROVISIONS

This Part provides for the procedure for appointment of Chairpersons, other members and Director-General, qualifications and appointment of Chairperson and members. It also includes provisions for committees of the Board, term of office, remuneration of members, meetings of the Board, removal from office, vacation of office and filling of vacancy of office of members, etc. of the Authority. This Part includes provisions on board of directors, removal of the Director-General, employees of the Authority, power of the Authority to make regulations relating to employees, regulations on employees by the Board and common seal of the Authority. **Clause 22** of the Bill provides for the qualifications for appointment of the Chairpersons and members of the Board. The persons must be holders of a **degree** from a university recognized in



Kenya, have knowledge and experience of at least **ten years** in the relevant field and meet the requirements of Chapter Six of the Constitution.

A person shall be qualified for appointment as Director-General if that person holds **a Civil Engineering degree and a master's degree** from a university recognized in Kenya, is registered by the Engineers Board of Kenya as a professional engineer, has had at least **ten years' experience in a management level** in the roads sector and satisfies the requirements of Chapter Six of the Constitution. **(Clause 29)**

PART VI- GENERAL POWERS OF AN AUTHORITY

This Part provides for the general powers of the Authorities, and provides for acquisition of land for the purposes of the Authority, power to enter land and survey land, power to enter land to prevent accidents etc., power to enter and alter position of pipes etc. from within road reserve, power to take water and compensation where such acquisition is made by or on behalf of the Authority.

Where an Authority requires any land for its purposes, the Cabinet Secretary shall submit a request for the acquisition to the National Land Commission, and the provisions of the Land Act, 2012 shall apply, provided that an Authority may in consultation with the National Land Commission pay directly any compensation due to any person whose land or property is acquired. **(Clause 41)**

An authorized employee of the Authority may enter upon any land and survey such land or any portion thereof and where any damage on the land is caused by reason of the exercise of the powers conferred, the owner or occupier of the land shall be entitled to compensation. **(Clause 42)**

Any authorized employee of the of the Authority may enter upon any land for purposes of preventing the occurrence of an accident, preserving the safety of traffic or the safe operation of any service provided by the Authority. **(Clause 43)**

A road Authority may use and occupy for such period as may be necessary for the carrying out of the road works, any land (including private land) along or adjoining the road in relation to



which to be carried out after issuing to the registered owner or occupier of the land, a notice of at least thirty days of its intention to occupy the land unless it is an emergency or the as is practicable in the circumstances. **(Clause 46)** Further, an Authority may, for its purposes, temporarily close or divert a public road and similarly close or divert a road permanently. **(Clause 49)**

Where a county road crosses or runs along boundaries of more than one county government, concerned county governments may enter into agreement stating the manner in which the inter-county road shall be constructed or maintained; or costs for constructing or maintaining the road. Where the relevant county governments are not able to agree, any county government may refer the matter to the Intergovernmental Relations Technical Committee for determination by the Council of Governors. **(Clause 52)**

The Cabinet Secretary, in consultation with the relevant Authority may declare a national trunk road or a portion thereof as a national toll road **(Clause 54)** and the Authority may establish and maintain national toll bridges, together with, approaches, ramps and other essential appurtenances, for the passage or carriage of passengers, animals, goods and vehicles on any road in which it is responsible. **(Clause 55)**

The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations authorizing the imposition and collection of road user charges in respect of the distance travelled by a vehicle on a road by the Authority in respect of roads, including national and county roads for the purpose of recovering the cost of maintaining, repairing and replacing the road and reasonably related to the impact of that vehicle on such cost. **(Clause 56)**

PART VII-FINANCIAL PROVISIONS

This Part provides for financial matters. It includes provisions on the financial year, annual estimates, accounts and audits of the Authority. It also provides provisions for development and implementation of a roads sector investment programme and annual works programme. Further, it provides for restriction on expenditure outside the budget, principles for operation, of levy of fees and charges and their gazettment, recovery of debts, and annual reports.



The funds and resources of each Authority shall consist of monies paid to it from the **Road Fund**, any other monies appropriated by Parliament, funds accruing from investments made by the Authority, grants, loans, gifts or donations from the Government or any other source, made with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance, revenue earned from the activities of the Authority under this Act and any other funds received by the Authority in the performance of its functions under this Act. **(Clause 58)**

Subject to the written approval of the Cabinet Secretary and the National Treasury, an Authority may **(Clause 60)** invest any part of its funds in such a manner as it may consider appropriate. Further, an Authority may borrow money required for the exercise of its functions and for meeting its obligations after approval by the Cabinet Secretary. **(Clause 61)**

Each Authority and each county government shall, not later than six months before the end of each financial year, prepare and submit to the Kenya Roads Board for approval **an annual road works programme** based on the approved five-year road investment program in respect of the ensuing financial year, comprising estimates of expected maintenance, development and capital expenditure of the Authority or county government in the said financial year to be financed. **(Clause 64)**

The Cabinet Secretary shall, **once in every five years**, in consultation with the national and county government and the Kenya Roads Board, cause to be prepared a **road investment program** for approval by the Cabinet Secretary responsible for finance. **(Clause 65)**

Further, each Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services or for the use of road reserves under their jurisdiction. **(Clause 67)**

PART VIII-MISCELLANEOUS

This Part provides for miscellaneous matters. An Authority may exercise, for a National trunk road in the area of a county government, all of the powers that the county government may exercise for a county road in the area. **(Clause 70)**

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An Authority or a county government may transfer any function relating to roads in accordance with the provisions of Article 187 of the Constitution and Part III of the Intergovernmental Relations Act, 2012 and an Authority may, in accordance with the relevant roads implementation program, carry out or enter into contracts on behalf of the National government with other persons including county governments or agencies of the Government. **(Clause 71)**

An Authority may enter into an arrangement with any person including a county government or a national government body or agency for the sharing of the cost of acquisition of land for road transport infrastructure, road works on a national trunk road, or their works that contribute to the effectiveness and efficiency of the road network; or the operation of a National trunk road; including all necessary preliminary costs associated with the acquisition, works or operation. **(Clause 73)**

If a county government considers that improvements to a national trunk road in its area would be beneficial to the county road network, the county government may make financial arrangements with the relevant/respective authority for the improvements to be made. **(Clause 74)**

A county government shall obtain the relevant/respective Authority's written approval if it intends to carry out road works on a county road or make changes to the management of a County road where the works or changes would require the carrying out of road works on a National trunk road; or otherwise have a significant adverse impact on a national trunk road; or have a significant impact on the planning of a national trunk road or a future national trunk road. **(Clause 75)**

A county government may exercise, for a national trunk road in its area, all the powers that it may exercise for a county road in its area provided that notification of the actions have been consented to by the National Agency with delegated powers over the road. **(Clause 76)**

The Cabinet Secretary shall oversee the performance of the activities of each Authority, under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of the Act. **(Clause 77)**



Clause 81 provides that a county government, a board of a city or a municipality, a town committee or other person shall not in any way interfere with the control, maintenance, development or protection of any national trunk road except where such power has been delegated by the responsible Authority or by the Cabinet Secretary under. However an Authority shall encourage community and private sector participation in road construction, maintenance and management under its supervision and guidance.

Clause 84 of the Bill creates the major offences and the prescribed penalties e.g any person who unlawfully does any act which obstructs, or is likely to obstruct the working of any equipment or vehicle belonging to any Authority and used in its operations, and which act endangers or is likely to endanger the life of any person therein, damages, or in any way interferes with any road or other property of any Authority in such a manner as to endanger the life of any person, does any act which obstructs, or is likely to obstruct the operation of vehicles on any road, or the use of any weighbridge; or exceeds axle load limit, commits an offence, and is liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred thousand shillings, or to both.

PART IX-RESPONSIBILITIES OF COUNTY GOVERNMENTS

This Part provides for responsibilities of County Governments. Each county government shall, within its area of jurisdiction, be responsible for the construction and maintenance of the county roads in accordance with the provisions of Part 2 of the Fourth Schedule to the Constitution and Part B of the First Schedule to the Act.**(Clause 100)** Some of their functions shall include constructing, upgrading, rehabilitating and maintaining county roads, managing reserves and facilitating access to roadside developments with respect to county roads and implementing road policies in relation to county roads.

Each county government shall by county legislation establish a **County Roads Agency** being either a department or division which shall be responsible for the management, development and maintenance of County Roads under the county executive in charge of roads. **(Clause 101)**

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PART X- TRANSITIONAL PROVISIONS

Upon the commencement of the Act the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority shall stand dissolved. All the rights, duties, obligations, assets, liabilities and staff of the former authorities existing at the commencement of this Act shall be automatically and fully transferred to the respective Authority. **(Clause 102)**

The Bill seek to repeal the Kenya Roads Act 2007 **(Clause 103)**

4.0 CONSIDERATION OF THE KENYA ROADS BILL, 2017

The Committee considered the Kenya Roads Bill, 2017 in its sitting held on Friday, 16th February 2018. Pursuant to Standing Order 127(3)(a), the Committee invited the public through the Daily Nation and Standard newspapers on 27th December 2017 to make representations on the Bill. The Committee received a number of memoranda with various proposals on the Bill.

The Committee, pursuant to Standing Order 127(3)(c), further engaged different stakeholders in the road sector by holding meetings with the Ministry and various agencies and organizations. In this regard, views were sought and memoranda submitted from the following stakeholders:

i. The Council of Governors

The CoG was represented by the Governor for Busia County and the Governor for Nyandarua County when they met the Committee on 30th January 2018, morning session in Committee Room 7, at Parliament Building.

Main Issues: Some of the issues raised were with respect to consultation where they were proposing that the Council of Governors should be consulted when reviewing the classification and assignment of public roads, since pursuant to the Fourth Schedule of the Constitution, county governments have a responsibility to develop and manage county roads. Another issue raised was with regards to the classification of the roads where the COG proposed that class D roads should be under the development and



management of county governments as opposed to KeRRA, since the then Transition Authority had transferred Class D, E and other unclassified roads to counties vide Legal Notice No.24 of 2016. The COG further proposed that they should be allocated 55% of the RMLF. However, via a joint communique from the COG and the Ministry dated 15th February 2018, it was agreed that the COG should be allocated 20% of the RMLF which is to be distributed equally to the county governments as conditional grants.

Committee's Observations: Issues of Public Participation were anchored in the Constitution and therefore adequately addressed. With respect to Class D Roads, the Committee concurred with the CoG that these roads had been classified as county roads via the Gazette Notice No.1 of 2012 where roads had been classified according to their functionalities. On resource sharing, the Committee proposed 19% instead of 20% of the RLMF.

ii. The Kenya National Highways Authority

KeNHA was represented by its Chairperson and the Director General when they met the Committee on 30th January 2018, morning session. Further, on the 17th of February, 2018, KENHA submitted further amendments on the Bill.

Main Issues: It was proposed that the legal framework governing Public Private Partnership should be provided for in the Bill so as to ensure optimum development of roads in the country as the allocation from the exchequer was not sufficient for the development and maintenance of roads. Further that the Bill should clearly mandate the Authority to operate toll roads as one of its functions.

Committee's Observation: Committee agreed that PPP is the only way to achieve optimum development of the road infrastructure. Further that there ought to be a clear legal framework governing the tolling system by the relevant agencies.

iii. The Kenya Urban Roads Authority

KURA was represented by the Ag. Director General when they met the Committee on 30th January 2018.



Main Issues: It was proposed that the legal framework governing Public Private Partnership should be provided for in the Bill so as to ensure optimum development of roads in the country as the allocation from the exchequer was not sufficient for the development and maintenance of roads, especially with respect to the development of intelligent roads and roads that are of national importance at the county level. The Authority further proposed that the composition of the Boards of the three roads agencies needs to be reviewed so as to ensure that the relevant institutions are represented in the Boards.

Committee's Observations: Committee agreed that PPP is the only way to achieve optimum development of the road infrastructure. Also that the composition of the Boards should be hybrid consisting of representation from relevant institutions and from the general public taking into consideration the ethnic and regional diversity of the people of Kenya.

iv. The Kenya Rural Roads Authority

KeRRA was represented by the Director General when they met the Committee on 30th January and 6th February 2018.

Main Issues: It was proposed by the Authority that they be allocated 35% of the RLMF considering the network covered by the Authority which comprises of both paved and unpaved roads of approximately 31,000KMs and because of their economic and social functions, the maintenance need is higher. Also, that the maintenance backlog over the years is also high owing to minimal budgetary allocation. Further, that the classification of roads C and D should be retained within their jurisdiction as provided for in the Bill.

Committee's Observations: The committee observed that Class D roads had been classified as county roads via the Gazette Notice No.1 of 2012 where roads had been classified according to their functionalities. The committee was also of the view that the road network under their jurisdiction was sufficient.



v. **The Kenya National Chamber of Commerce and Industry**

KNCCI was represented by the Chief Executive Officer when they met the Committee on 31st January 2018.

Main Issues: It was proposed that the Chamber ought to be consulted by the road agencies and even county governments in the execution of their functions. Also that the Chamber should be represented in the Boards of the three roads agencies.

Committee's Observations: That the Constitution had already provided for public participation hence the issue of consultation had already been addressed. Committee adopted a hybrid system. Further that the composition of the Boards should be hybrid consisting of representation from relevant institutions and from the general public taking into consideration the ethnic and regional diversity of the people of Kenya.

vi. **The Kenya Roads Board**

KRB was represented by its Chief Executive Officer when they met the Committee on 31st January 2018.

Main Issues: The KRB proposed that they should be assigned the function of updating the road register every five years and advising the Cabinet Secretary on the same. That they be allowed to also withhold funds which are due to the road agencies including the county governments if they do not meet the set standards for road construction as prescribed by the Cabinet Secretary.

Committee's Observations: The committee was of the opinion that the proposed amendments by KRB to keep an inventory of the road network after every five years would make the oversight role of KRB more effective. That the withholding of the road agencies and county governments allocation of the RLMF would help in ensuring that the road standards are adhered to by the roads agencies and even the county governments.



vii. The State Department for Infrastructure, Ministry of Transport

The State Department of Infrastructure was represented by the Principal Secretary on 6th February 2018. The Secretary in charge of Infrastructure represented the Ministry in all its meetings from 30th January 2018.

Main Issues: It was proposed that the legal framework governing Public Private Partnership should be provided for in the Bill so as to ensure optimum development of roads in the country as the allocation from the exchequer was not sufficient for the development and maintenance of roads. The Ministry further proposed that the composition of the Boards of the three roads agencies needs to be reviewed so as to ensure that the relevant institutions are represented in the Boards.

Committee's Observations: The Committee agreed with most of the Ministry's proposals. It was agreed that PPP is the only way to achieve optimum development of the road infrastructure. Further that the composition of the Boards should be hybrid consisting of representation from relevant institutions and from the general public taking into consideration the ethnic and regional diversity of the people of Kenya.

Other agencies that submitted their memoranda in response to the advert dated 27th December 2017 comprise of:

viii. Institute of Certified Public Accountants of Kenya (ICPAK)

Main Issues: It was proposed that they should be represented in the Boards of the three roads agencies so as to improve diversity. Further that the Boards would largely benefit from the expertise drawn outside government agencies.

Committee's Observations: Committee was of the opinion that the composition of the Boards should be hybrid consisting of representation from relevant institutions and from the general public taking into consideration the ethnic and regional diversity of the people of Kenya.



ix. The Kenya Forest Service (KFS).

Main Issues: It was proposed that KFS should be recognized as a road agency and consequently be allocated with money from the RMLF.

Committee's Observations: The committee was of the opinion that most of the roads in the forest reserve or crossing forest reserve are currently either being maintained by KeRRA or county governments hence no need for allocation of the RLMF to KFS.

COMMITTEE AMENDMENTS

Having considered all the clauses, and having given due consideration to different views as submitted by different stakeholders, the Committee therefore proposed the following amendments as agreed in its meeting of 16th February 2018 and as adopted on 17th February 2018:

CLAUSE 2

THAT Clause 2 be amended by deleting the definition of the words “county roads agency” and substituting therefor the following new definition—

“county roads agency” means a roads agency established by the county governments which shall be responsible for the management, development and maintenance of county roads.

Rationale: To ensure county roads agency are established as independent road agencies and not as departments or divisions within the county.

CLAUSE 7

THAT Clause 7 be amended be amended in sub-clause (1) by deleting paragraph (h) and substituting therefor the following new paragraph—

“(g) the Engineers Board of Kenya”;



Rationale: Institution of engineers is a society of engineers whereas the Engineers Board of Kenya is a regulator of engineers. The proposal is therefore reasonable. This proposal was also supported by the Kenya Urban Roads Authority.

CLAUSE 10

THAT Clause 7 be amended in the marginal notes by deleting the words “Classification of national trunk and county roads” and substituting therefor the words “Classification of public roads”.

Rationale: There is need for uniformity and consistency in the use of words in the body of Part III of the Bill and the first schedule.

CLAUSE 13

THAT, clause 13 be amended in sub-clause (2) by–

- (a) inserting the words “Classes S,A and B” immediately after the words “national trunk roads” appearing in paragraph(b);
- (b) inserting the words “Classes S,A and B at the end of paragraph (c);
- (c) inserting the words “and any other subsequent regulations under this Act” immediately after the word “Act” appearing in paragraph (d); and
- (d) inserting the following new paragraph immediately after paragraph (d) –

“(da) controlling, operating and managing toll roads under it’s jurisdiction ;”

- (e) inserting the words “Classes S,A and B” immediately after the words “national trunk roads” appearing in paragraph(f);
- (f) inserting the words “Classes S,A and B” immediately after the words “national trunk roads” appearing in paragraph(g);
- (g) inserting the words “Classes S,A and B at the end of paragraph (h);
- (h) inserting the words “Classes S,A and B at the end of paragraph (i);
- (i) inserting the words “Classes S,A and B at the end of paragraph (j); and
- (j) inserting the words “Classes S,A and B at the end of paragraph (k);

Rationale: For clarity purposes with respect to their functions.

CLAUSE 14

THAT Clause 14 be amended

(a) in sub-clause (2) by—

- (i) deleting the words “from amongst the members appointed under paragraph (f) appearing in paragraph (a);
- (ii) deleting the words “five” appearing in paragraph (f) and substituting therefor the words “two”;
- (iii) deleting sub-paragraphs (ii), (iii) and (v) appearing in paragraph (f); and
- (iv) inserting the following new paragraph immediately after paragraph (f)
“(g) two persons appointed by the Cabinet Secretary taking into consideration the regional and ethnic diversity of the people of Kenya.”

(b) in sub-clause (3) by deleting the words “Authority” and substituting therefor the words “Board”.

(c) in sub-clause (4) by deleting the figure “(1)” and substituting therefor the figure “(2)”.

(d) in sub-clause (5) by deleting the figure “(1)” and substituting therefor the figure “(2)”.

Rationale: For clarity purposes.

CLAUSE 17

THAT Clause 17 be amended —

(a) in sub-clause (1) by —

- (i) by re-numbering the existing sub-clause (1) as sub-clause (2); and
- (ii) by inserting the following new sub-clause (1)
“(1) There is established the Board of the Kenya National Urban Roads Authority”.



(b) in sub-clause (2) by –

- (i) deleting the words “from amongst the members appointed under paragraph (f) appearing in paragraph (a);
- (ii) deleting the words “five” appearing in paragraph (f) and substituting therefor the words “two”;
- (iii) deleting sub-paragraphs (ii), (iii) and (iv) appearing in paragraph (f); and
- (iv) inserting the following new paragraph immediately after paragraph (f)

“(g) two persons appointed by the Cabinet Secretary taking into consideration the regional and ethnic diversity of the people of Kenya.”

Rationale: For clarity purposes

CLAUSE 19

THAT Clause 19 be amended in sub-clause (1) by deleting the words “and D”.

Rationale: For ensure that KeRRA has jurisdiction with respect to only Class C roads, not D.

CLAUSE 20

THAT Clause 20 be amended in sub-clause (2) by–

- (a) deleting the words “from amongst the members appointed under paragraph (f) appearing in paragraph (a);
- (b) deleting the words “five” appearing in paragraph (f) and substituting therefor the words “two”;
- (c) deleting sub-paragraphs (ii), (iii) and (v) appearing in paragraph (f); and
- (c) inserting the following new paragraph immediately after paragraph (f)
 - “(g) two persons appointed by the Cabinet Secretary taking into consideration the regional and ethnic diversity of the people of Kenya.”

Rationale: For clarity purposes



CLAUSE 22

THAT Clause 22 be amended –

(a) in sub-clause (1) by –

(ii) by inserting the words “in engineering, accountancy, law, survey or management” immediately after the words “degree” appearing in paragraph (a); and

(iii) deleting the words “the relevant field” and substituting therefore the words “in engineering, accountancy, law, survey or management” appearing in paragraph (b).

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

Rationale: For clarity purposes

CLAUSE 29

THAT Clause 29 be amended by deleting sub-clause (4) and substituting therefor the following new sub-clause–

“(4) The Director-General shall be appointed for a term of four years and may be eligible for re-appointment for one further term of four years.

Rationale: To give the Board discretion in the appointment process.

CLAUSE 48

THAT Clause 48 be amended –

(a) by inserting the following proviso immediately after sub-clause (1) –

“provided that it does not result in the imposition on the Authority of any cess, levies and charges which are not imposed by an Act of Parliament.” ; and

(b) in sub-clause (7) by deleting the words “adequately” and substituting therefor the words “adequate”.

Rationale: (a) is for clarity purposes and (b) to correct a typographical error.



CLAUSE 52

THAT Clause 52 be amended in sub-clause (4) by inserting the words “as issued by the Cabinet Secretary” at the end of paragraph (b).

Rationale: The setting of standards for road construction is a function of the national government under the fourth schedule.

CLAUSE 53

THAT Clause 53 be amended in sub-clause (2) by inserting the words “furniture” immediately after the words “road”.

Rationale: To cover the road and all its accessories in case of damage.

CLAUSE 55

THAT Clause 55 be amended by inserting the words “subject to the Constitution” at the beginning of sub-clause (2).

Rationale: To align it with the fourth schedule of the constitution.

CLAUSE 56

THAT Clause 56 is amended by inserting the following new sub-clause immediately after sub-clause (4)

“(5) Regulations made under sub-section (4) may prescribe a penalty in respect of any contravention of any provisions thereof”.

Rationale: To provide for penalty in case of non-compliance.

CLAUSE 60

THAT Clause 60 be amended by inserting the words “regulations by” immediately after the words “and”.



Rationale: To ensure that all directives are in accordance with the law.

CLAUSE 64

THAT Clause 64 be amended by inserting the words “and state department responsible for infrastructure” immediately after the words “Kenya Roads Board”.

Rationale: Because the Ministry has the general oversight.

CLAUSE 66

THAT Clause 66 be amended by inserting the words “sound” immediately after the words “in accordance”

Rationale: For clarity purposes.

CLAUSE 68

THAT Clause 68 be amended by deleting the words “section 45” and substituting therefor the words “section 67”

Rationale: For clarity purposes.

CLAUSE 69

THAT Clause 69 be amended by deleting the words “section 55” and substituting therefor the words “section 54”

Rationale: The proposal seeks to correct a cross-referencing error.

CLAUSE 71

THAT Clause 71 be amended by inserting the following proviso immediately after in sub-clause (3) –

“Provided that any agreement entered into pursuant to this section relating to programmes financed by the Road Fund shall be made in consultation with Kenya Roads Board.”



Rationale: To ensure that the KRB is consulted before any transfer of functions by agreement is made between the two levels of government if the programme is to be financed by the Road Fund.

CLAUSE 72

THAT Clause 72 be amended by inserting the words “subject to the approval of the Cabinet Secretary” at the beginning.

Rationale: To ensure that any cost sharing agreements are made with approval of the Cabinet Secretary.

CLAUSE 73

THAT Clause 73 be amended in sub-clause (1) by inserting the words “subject to the approval of the Cabinet Secretary” at the beginning.

Rationale: To ensure that any financial agreements entered into by any road agency and any other person or a County Government is approved by the CS.

CLAUSE 75

THAT Clause 75 is amended in sub-clause (9) by deleting the words “Chief Executive” and substituting therefor the words “Director General”

Rationale: For clarity purposes

CLAUSE 79

THAT Clause 79 be amended in sub-clause (1) by inserting the words “furniture” immediately after the words “road”.

Rationale: To cover the road and all its accessories in case of damage.



CLAUSE 101

THAT Clause 101 be amended by deleting the words “being either a department or division”

Rationale: To ensure independence of the agency.

CLAUSE 102

THAT Clause 102 be amended –

- (a) in sub-clause (2) by inserting the words “Kenya National Urban Roads Authority” at the end ; and
- (b) in sub-clause (5) by deleting paragraph (d) and substituting therefor the following new paragraph–

“(d)the annual estimates of the former Kenya National Highways Authority, Kenya Urban Roads Authority and Kenya Rural Roads Authority for the financial year in which this Act commences shall be deemed to be the annual estimates of the Kenya National Highways Authority under this Act and the annual estimates of the former Kenya Kenya Urban Roads Authority shall be deemed to be the annual estimates of the Kenya National Urban Roads Authority and the annual estimates of the former Kenya Rural Roads Authority shall be deemed to be the annual estimates of the Kenya National Secondary Roads Authority for the remainder of that financial year.

Rationale: Proposal (a) is for clarity purpose. Proposal (b) is to ensure that each of the three roads authorities proposed in the Bill have distinct annual estimates. It is also to include the Kenya National Urban Roads Authority which was left out in the Clause.

FIRST SCHEDULE

THAT the First Schedule be amended–

- (a) in Part A by deleting the classification of secondary national trunk roads and substituting therefor the following new classification

Class C	Roads forming important regional routes, linking County
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headquarters or other regionally important centers, constituency headquarters, Municipal or Town Council Centres and other towns to each other and to Class A or B roads. Required to collect regional and local traffic and channel it to class A and B roads; and

(b) in Part B by inserting the following new classification at the beginning–

Class D Roads meant to collect traffic from lower class roads and channel it to the higher class roads. They are required to provide lower level of services than arterial roads at lower permissible speed over shorter distances with limited access control. Meant to collect traffic from lower roads and connect it with Class C roads.

Rationale: To realign the classification with the gazette notice, and to make the functions of the functions clearer for future reclassification of roads.

THIRD SCHEDULE -CONSEQUENTIAL AMENDMENTS

THAT, the proposed amendment to section 6(2)(d) of the Kenya Roads Board Act No.7 of 1999 be amended–

- (a) in paragraph (1) by deleting the words “Thirty five (35%)” and substituting therefor the words “thirty two (32%);
- (b) in paragraph (2) by deleting the words “Thirty (30%)” and substituting therefor the words “twenty nine (28%);
- (c) by deleting paragraph (4) and substituting therefor the following new paragraph–
“(4) Eighteen (19%) per centum is allocated to the county governments equally as conditional grants in respect of county roads; and
- (d) in paragraph (6) by –
 - (i) deleting the words “six (6) per centum” and substituting therefor the words “seven (7%) per centum; and



(ii) inserting the words “and training” at the end of sub-paragraph (a).

THAT the proposed amendment to section 2 of the Kenya Roads Board Act No.7 of 1999 be amended by inserting the following new paragraph immediately after paragraph (k) –

“(ka) every five years conduct an inventory and condition survey of all public roads and advise the Cabinet Secretary”.

THAT the Third Schedule be amended in the consequential amendments inserting the following new amendment to the Kenya Roads Board Act No.7 of 1999 by –

s.30 Insert the following—

(1) The Board may withhold funds of any road agency or county government that fails to comply with the public road standards prescribed under section of the Kenya Roads Act, 2017 until such compliance has been

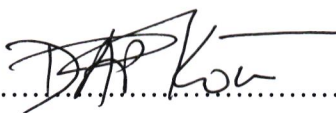
COMMITTEE'S GENERAL OBSERVATIONS

- (1) The Bill mainly provides for the classification of roads between the National and county governments and assigning them their unique functionalities.
- (2) That upon the passage of the Bill, the Ministry of Transport through the State Department of Infrastructure and the KRB need to do proper mapping in respect to functionalities. That the composition of the Boards of the road agencies should be hybrid, consisting of representation from relevant institutions such as the Institute of Surveyors of Kenya and the Institution of Engineers of Kenya. Further, the Committee was of the view that the Cabinet Secretary should be given power to nominate two people from the general public taking into consideration the ethnic and regional diversity of the people of Kenya.
- (3) Sharing of resources should be guided by the usages of the roads rather than the length of kilometers
- (4) The Committee will propose relevant amendments to the Bill to actualize its observations.



5.0 COMMITTEE RECOMMENDATION

The Committee, having considered the Kenya Roads Bill, 2017, will be proposing amendments in **clauses 2, 7, 10, 13, 14, 17, 19, 20, 22, 29, 48, 52, 53, 55, 56, 60, 64, 66, 68, 69, 71, 72, 73, 75, 79, 101 and 102.** The Committee will also be proposing amendments to the **First and Third Schedule** of the Bill during the Committee of the Whole stage.

SIGNED 

CHAIRPERSON

(HON. DAVID PKOSING, CBS, M.P)

DATE..... 