

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - SECOND SESSION

*Paper laid by the
Chairperson Departmental Committee
on Transport, Public Works & Housing
on 8/11/18 (pm)*



THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND
HOUSING

REPORT ON
CONSIDERATION OF PETITION BY THE TRANSPORT OPERATORS WORKERS
UNION OF KENYA ON CREATION OF REGULATION OF DIGITAL TAXI/ CAB
OPERATORS (E- HAILING APPS) IN KENYA

*Approved for Tabling
8/11/18
AS
DSM*

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER 2018



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1.0 PREFACE

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report on the Petition on the Transport Operators Workers Union of Kenya on creation of regulation of digital taxi/ cab operators (e- hailing apps) in Kenya

The petition was tabled before the House pursuant to Standing Order 225 (2) (a) by the Member for Dagoretti North, Hon. Simba Arati, MP.

Pursuant to Standing Order 227 (1), the petition was referred to the Departmental Committee on Transport, Public Works and Housing for consideration and preparation of a report within 60 days.

1.1 Mandate of the Committee and Membership

a) Mandate

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*);
- 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.

b) Committee Membership

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

c) Committee Secretariat

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

1.2 **Committal and Consideration of the Petition**

Pursuant to the provisions of Standing Orders 227 (1), the petition was referred to the Departmental Committee on Transport, Public Works and Housing for consideration and preparation of a report within 60 days.

The Committee proceeded with the consideration of the petition by holding meetings to set up terms of reference and scheduling meetings.

In considering the petition, the Committee invited and held meetings with the officials from the Ministry of Transport and Infrastructure and National Transport and Safety Authority, Competition Authority, Digital Taxi Association of Kenya, Public Transport Operators Union, Rideshare Sacco Society as well as Hon. Simba Arati, M.P and the Petitioners. The meeting aimed at responding to issues raised by the petitioners.

1.3 **Committee Observations**

Having held meetings and considered the submissions presented on the petitions, the Committee made the following observations:-

- i. The Committee noted that there is need for NTSA to formulate the regulatory framework to govern all taxi service operators.
- ii. There is need for the NTSA to come up with guidelines to facilitate enforcement and compliance by all taxi operators

1.4 **Response to the Prayers in the Petition**

The petitioners prayed that the National Assembly through the Departmental Committee for Transport, Public Works and Housing:-

- i. Reviews the Traffic Act of 2012 to include App-Based Taxi Services in order to distinguish private car hire services from taxi services;

The Committee did not agree with the Petitioner's prayer, noting that the proposal to amend the Traffic Act 2012 may lead to discrimination of other taxi service operators. Further, it was noted that any amendments to the law, should not exclude any taxi service operator from its purview.

- ii. Causes the Competition Authority of Kenya to prioritize the industry to remedy any anti-competitive issues that may arise;

The Committee noted that the prayer was ambiguous. It was of the view that as much as competition is healthy, it has to work to the advantage of the client and the good governance of the Country.

- iii. Causes the harmonization of taxi rates and operating procedures for all taxi cabs and private hire vehicles;

The Committee rejected the prayer, noting that the country operates in a free market economy and therefore price control may not be applicable at the moment.

- iv. Causes the NTSA to come up with guidelines to facilitate enforcement and compliance by all taxi operators;





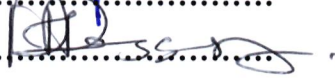
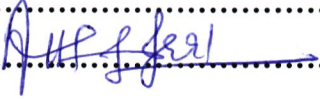
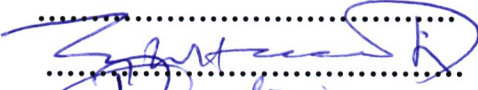

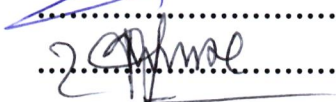

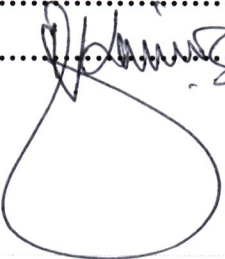
The Committee was in agreement with the prayers and proposed that the National Transport and Safety Authority formulate the regulatory framework to govern all taxi service operators.

- v. Makes any other direction it deems fit in the circumstance of this matter.

There is need for the National Transport and Safety Authority to come up with guidelines to facilitate enforcement and compliance by all taxi operators

1.5 Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing have, pursuant to Standing Order 199, adopted this Report on the consideration of the Public Petition by Hon. Simba Arati, M.P on the Transport Operators Workers Union of Kenya on creation of regulation of digital taxi/ cab operators (e- hailing apps) in Kenya. We affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today 6th November, 2018.

- 1. Hon. David Pkosing CBS, M.P 
- Chairperson**
- 2. Hon. Moses Kuria, M.P. 
- Vice Chairperson**
- 3. Hon. Samuel Arama, M.P. 
- 4. Hon. David Njuguna Kiaraho, M.P.
- 5. Hon. Johnson Many Naicca, M.P.
- 6. Hon. Rigathi Gachagua, M.P. 
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- 16. Hon. Rehema Dida Jaldesa, M.P. 
- 17. Hon. Shadrack John Mose, M.P. 
- 18. Hon. Tom Mboya Odege, M.P.
- 19. Hon. Vincent Kemosi Mogaka, M.P. 

1.6 Acknowledgment

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support and services extended to the Members to enable the Committee complete this report within the given timelines.

I am grateful to the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the Secretariat for their technical support during the compilation of the report.

On behalf of the Committee, and pursuant to Standing Orders 227(2) of the National Assembly, It is my honor and privilege to present these report to the House for consideration and adoption of the Committee Report

SIGNED  DATE 03/11/2018

HON. DAVID PKOSING, CBS, M.P
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

2.0 BACKGROUND INFORMATION

- 2.1 The Petition on the Transport Operators Workers Union of Kenya on creation of regulation of digital taxi/ cab operators (e- hailing apps) in Kenya **was presented to the House** pursuant to Standing Order 225 (2) (a) by the Member for Dagoretti North, Hon. Simba Arati, MP on 24th July, 2018
- 2.2 Pursuant to House rules, the petition was referred to the Departmental Committee on Transport, Public Works and Housing for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227.
- 2.3 The petitioners wished to draw the attention of the House to the following:-
- i) **THAT**, the regulation of the Kenya Taxi has evolved from the formulation of the city of Nairobi (Taxi Cab)By Law of 1963 based on the repealed local Government Act;
 - ii) **THAT**, in the late 1980s the corporate taxi company entered the market and were incorporated within the County Government of Nairobi under the taxi cab By-law s in 2007;
 - iii) **THAT**, entry into the market by other taxi provider, like easy taxi , Uber Kenya Limited among other occasioned review of current regulation to accommodate them
 - iv) **THAT, Uber** the application – based taxi provider ,founded in the Francisco in America in 2009, operating in 400 cities in 68 countries, where they entered in Kenya in January 2015 and has largely disrupted market innovation ;
 - v) **THAT** further since inception, Uber services have been resisted by the traditional taxi operators on the allegations that they create unfair compensation as their prices are way too cheap;
 - vi) **THAT**, it is alleged that Uber is registered to be providing private car hire services and not Taxi services hence putting passengers safety at risk ;
 - vii) **THAT**, efforts to resolve this matter with the relevant government agencies have been futile;
 - viii) **THAT**, the matter presented in the petition was not pending before any tribunal court of law or independent body

The petitioners prayed that the National Assembly through the Committee Transport, Public Works and Housing:-

- i. Reviews the Traffic Act of 2012 to include App-Based Taxi Services in order to distinguish private car hire services from taxi services;
- ii. Causes the Competition Authority of Kenya to prioritize the industry to remedy any anti-competitive issues that may arise;
- iii. Causes the harmonization of taxi rates and operating procedures for all taxi cabs and private hire vehicles;
- iv. Causes the NTSA to come up with guidelines to facilitate enforcement and compliance by all taxi operators; and
- v. Makes any other direction it deems fit in the circumstance of this matter.

3.0 SUBMISSIONS AND EVIDENCE

Having been seized of the Petition, the Committee commenced its consideration by inviting the Hon. Simba Arati, MP, The Principal Secretary, State Department for Transport, and the Director General, National Transport and Safety Authority, Competition Authority, Digital Taxi Association of Kenya, Public Transport Operators Union, Rideshare Sacco Society among other petitioners. During the meeting, written and oral evidence was adduced as recorded hereunder

3.1 Submission from the Petitioners

The Hon. Simba Arati, the conveyor of the petition on behalf of the Transport Operators Workers' Union of Kenya on creation of Regulation of Digital Taxi /Cab Operators (E-Hailing Apps) in Kenya, submitted that he met the petitioners outside the precincts of Parliament when they were protesting and after listening to the protesters (now the petitioners), he took the responsibility of receiving the protesters' petition and convey it to the National Assembly.

It was submitted that the prayers before the Committee was to ensure that the Committee;

- i. Reviews the Traffic Act of 2012 to include App-Based Taxi Services in order to distinguish private car hire services from taxi services;

- ii. Causes the Competition Authority of Kenya to prioritize the industry to remedy any anti-competitive issues that may arise;
- iii. Causes the harmonization of taxi rates and operating procedures for all taxi cabs and private hire vehicles;
- iv. Causes the NTSA to come up with guidelines to facilitate enforcement and compliance by all taxi operators; and
- v. Makes any other direction it deems fit in the circumstance of this matter.

The petitioners further submitted that their main issue was pricing. They stated that it was important for the taxi industry to have its own set of regulations to avoid unfair competition.

3.2 Submission from the Ministry and the Competition Authority of Kenya

The Competition Authority of Kenya stated that issues of price regulation were not in the best interest of consumers and that there were so many social benefits that come with the online taxi services. They stated that the only lacuna in the law is the issue of security because as it stands now, it is not clear on whether the responsibility lies with the application developers, the drivers or the online taxi company. The Authority further submitted that they are ready to advice on matters pricing if called upon to do so.

The National Transport and Safety Authority on its part reported that they were still studying the new “phenomenon of online taxi” and that they didn’t want to rush into proposing regulations before they understood the sector in its entirety. They declared that they will involve all stakeholders while formulating the regulations.

Some Members suggested that pricing issue as it is may be good for the consumers but not good for the market and that it was important to have regulations. It was noted that while considering the best interest of consumers, it was equally important to note that the country has a free market economy. . It was suggested that the AA can be proposed to be the formulator of the online taxi pricing policies.

4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATION

4.1 Observations

The Committee made the following observations, that;

- i. The Committee noted that there is need for NTSA to formulate the regulatory framework to govern all taxi service operators.
- ii. There is need for the NTSA to come up with guidelines to facilitate enforcement and compliance by all taxi operators

4.2 Recommendation/ Response to Prayers.

The Committee having heard from the officials from the State Department for Transport, the National Transport and Safety Authority, Competition Authority, Digital Taxi Association of Kenya, Public Transport Operators Union and Rideshare Sacco Society makes the following responses to the prayers:-

- i. Reviews the Traffic Act of 2012 to include App-Based Taxi Services in order to distinguish private car hire services from taxi services;

The Committee did not agree with the Petitioner's prayer, noting that the proposal to amend the Traffic Act 2012 may lead to discrimination of other taxi service operators. Further, it was noted that any amendments to the law, should not exclude any taxi service operator from its purview.

- ii. Causes the Competition Authority of Kenya to prioritize the industry to remedy any anti-competitive issues that may arise;

The Committee noted that the prayer was ambiguous. It was of the view that as much as competition is healthy, it has to work to the advantage of the client and the good governance of the Country.

- iii. Causes the harmonization of taxi rates and operating procedures for all taxi cabs and private hire vehicles;

The Committee rejected the prayer, noting that the country operates in a free market economy and therefore price control may not be applicable at the moment.

- iv. Causes the NTSA to come up with guidelines to facilitate enforcement and compliance by all taxi operators;

The Committee was in agreement with the prayers and proposed that the National Transport and Safety Authority formulate the regulatory framework to govern all taxi service operators.

v. Makes any other direction it deems fit in the circumstance of this matter.

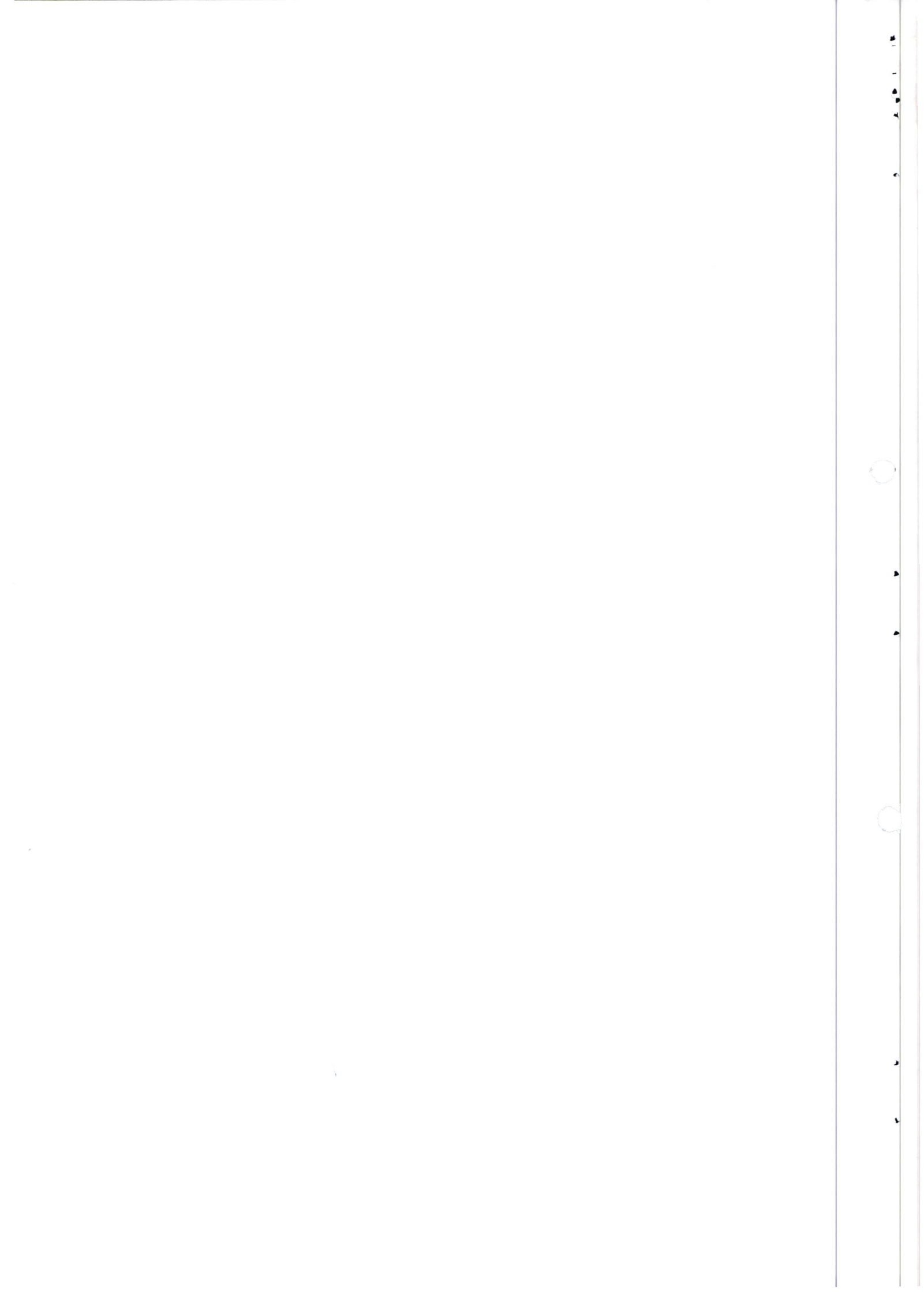
There is need for the National Transport and Safety Authority to come up with guidelines to facilitate enforcement and compliance by all taxi operators

SIGNED  DATE 6/11/2018

HON. DAVID PKOSING, CBS, M.P

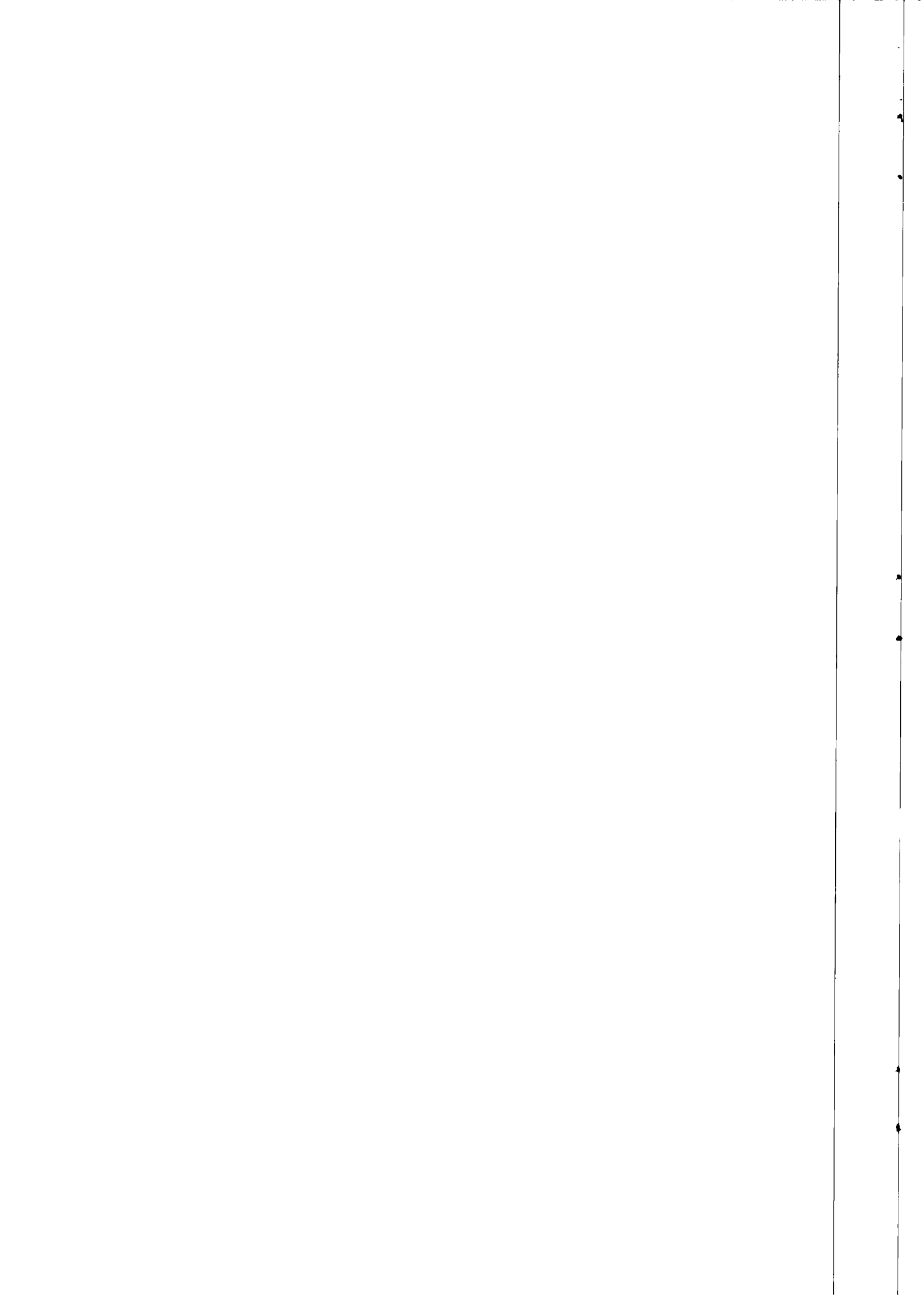
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING



ANNEXURE 1

COPY OF THE PETITION



54

REPUBLIC OF KENYA



Approved [Signature]

Wearner
July 25, 2018
AM

Hon. Speaker,
you approve
24/7

SNA
24/7/18

THE NATIONAL ASSEMBLY
(TWELFTH PARLIAMENT) (SECOND SESSION)

PUBLIC PETITION
BY THE TRANSPORT OPERATORS WORKERS' UNION OF KENYA ON
CREATION OF REGULATION OF DIGITAL TAXI/CAB OPERATORS
(E-HAILING APPS) IN KENYA.

I, the **UNDERSIGNED**, on behalf of the ~~residents of the~~ Public Transport Operators
Workers' Union of Kenya;

?

DRAW the attention of the House to the following: -

1. **THAT**, the regulation of the Kenya Taxi has evolved from the formulation of the city of Nairobi (Taxi Cabs) By-Laws of 1963 based on the repealed local Government Act;
2. **THAT**, in the late 80's, the corporate taxi company entered the market and were incorporated within the County Government of Nairobi under the Taxi Cab By-Laws of 2007;
3. **THAT**, entry into market of other taxi providers like Easy taxi, Uber Kenya Limited among others occasioned review of current regulations to accommodate them;
4. **THAT**, Uber, the application-based taxi provider, founded in the San Francisco in America in 2009, operating in 400 cities in 68 countries, entered Kenya in January 2015 and has largely disrupted market innovation;
5. **THAT**, further, since inception, Uber services have been resisted by the traditional taxi operators on the allegation that they create unfair competition as their prices are way too cheap;
6. **THAT**, the relatively low prices that Uber and other Apps are offering in the market pose unfair competition since they do not incur other expenses like paying of drivers, maintenance and running costs among others which local taxi owners incur;
7. **THAT**, it is alleged that Uber is registered to be providing private car hire services and not taxi services hence putting passengers' safety at risk;

PUBLIC PETITION
BY THE PUBLIC TRANSPORT OPERATORS WORKERS' UNION OF KENYA
ON CREATION OF REGULATION OF DIGITAL TAXI/CAB OPERATORS
(E-HAILING APPS) IN KENYA.

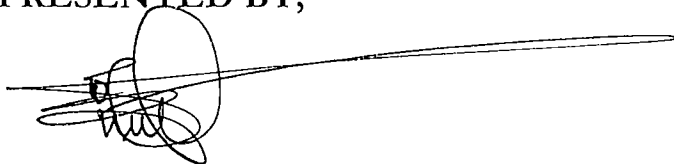
8. **THAT**, efforts to resolve the matters have been futile;
9. **THAT**, the matter presented in this petition is not pending before any court of law, constitutional or legal body;

THEREFORE, your humble petitioners **PRAY** that the National Assembly, through the Departmental Committee on **Transport, Public Works and Housing**: -

- i) Reviews the Traffic Act of 2012 to include App-Based Taxi Services in order to distinguish private car hire services from taxi services;
- ii) Causes the Competition Authority of Kenya to prioritize the industry to remedy any anti-competitive issues that may arise;
- iii) Causes the harmonization of taxi rates and operating procedures for all taxi Cabs and Private Hire Vehicles;
- iv) Causes the NTSA to come up with guidelines to facilitate enforcement and compliance by all taxi operators; and
- v) Makes any other direction it deems fit in the circumstance of this matter.

And your **PETITIONERS** will ever pray.

PRESENTED BY,



HON. SIMBA ARATI, MP
MEMBER FOR DAGORETTI NORTH CONSTITUENCY

DATE:

PUBLIC TRANSPORT OPERATORS WORKERS UNION KENYA

AFFILIATED TO CENTRAL ORGANIZATION OF TRADE UNION (KENYA), & INTERNATIONAL TRANSPORT WORKERS FEDERATION, LONDON

All correspondence should be addressed to the General Secretary

To be Present
Hon Simba Arati

NATIONAL CHAIRMAN - JOSEPH NDIRITU KAROBIA
GENERAL SECRETARY - FENUS OKONJI
NATIONAL TREASURER - PATRICK MUHIA MUCHUMI

HEAD OFFICE
Mitiani House, 1st Floor - Mfangano Street NAIROBI COUNTY
P.O. BOX 78-00516 NAIROBI, CELL: 0720 316 876
EMAIL: puton@gmail.com

UNION PETITION TO NATIONAL ASSEMBLY FOR CREATION OF REGULATION OF DIGITAL TAXI/CAB OPERATORS (E-HAILING APPS) IN KENYA

THE CLERK OF NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
P.O. BOX 41842-00100
NAIROBI

R. Karim
Truthfully facilitated
preparation
R. Karim
7/6/18

We the undersigned Petitioners being the union officials, the members and the affiliates being citizens of the Republic of Kenya pursuant to article 119 of the Constitution, the Petition to Parliament (procedure) Act and standing order 230 of the National Assembly Standing Orders:-

DRAW the attention of the house to the following:

1. **THAT**, the regulation of the Kenya Taxi has evolved from the formulation of city of Nairobi (Taxi-Cab) By-Laws, 1963 based on the repealed local Government Act. In the late 80's the corporate taxi company entered the market. These corporates were then captured within the county government of Nairobi (Tax Cab by Laws 2007). Currently the recent entry of application based taxi service providers such as Easy Taxi and Uber Kenya Ltd. LITTLE CAB TAXIFY (Uber) have necessitated the review of current regulations as further expounded in this report.

Deputy General Secretary - Karl Kitusa Machado, Assistant General Secretary - Synaida K. Omukhango,
Assistant Treasurer - Peter Kimari Trustee 1 - Joel Mwangi, 2 - Evans Andu Kiptoo 3 - Dan Omuyoma

To Provide quality services in representation to our members

2. **THAT**, Uber, the application based taxi service provider, was founded in San Francisco America by Uber Technologies Inc. in 2009. It operates in 400 cities in 68 countries. The incorporated uber entered the Kenyan market in January 2015. While uber has been hailed as an attractive alternative to traditional Taxi services, industry , players, regulatory and customers are beginning to experience the effect of its disruptive innovation in the market.
3. **THAT**, Uber services have been resisted by the traditional taxi operators on the allegation that they creates unfair competition. The argument is that its pricing model is driving them out of business, considering that the online ride hailing service has cheap fares.
4. **THAT**, in response to the seemingly increasing hostility from union members who are drivers and drivers partners, we are demanding the National Assembly to come up with Regulation of Taxi operators in the country, and (especially Uber, Taxify, Little Cab, Mondo, Maramoja etc) to drivers who are referred to as driver partners.
5. **THAT**, the union specific objectives were to demand a regulation which will:-
 - (i) Ensure that the process of competition is protected in the taxi-services industry and a level playing is cultivated and maintained.
 - (ii) Ensure that the welfare of consumers in this industry is enhanced and maintained by promoting safety standards and quality of services standards and creation of employment.
 - (iii) Inform all proposed regulations in the industry.
6. **THAT**, in furtherance of the above objectives the union:
 - (i) Appreciated the market characteristic of the taxi industry in Kenya.

The union has identified various stake holders in the industry, traditional Taxi Association, Corporate Taxis and the App. Based taxi.

The stakeholders complains are as follows

- i) Incorporation/registration of the companies/associations
- ii) Technology each of the companies was employing
- iii) Pricing models
- iv) Business strategies
- v) Compliance with the taxation regime and
- vi) Challenges facing in the industry is noncompliance of decision making.

7. **THAT**, some other stakeholders indicated that their pricing model is 100/= per kilometer (and Kshs 300 waiting charges per hour. This cabs are restricted in some packing areas whereas other players like uber, taxfy, little cab are able to maneuver because they cannot be easily identified.

8. **THAT**, this is a technology company incorporated and launched in Kenya in January 2015. The technology used is internet based mobile phone application. And the stated company is fully tax compliant, the company has no membership, does not own vehicles and charges no joining fees. It only applies rules of request to join the platform, this include, vehicle inspection, certificate of good conduct the vehicle being a 2008 model or newer.

9. **THAT**, Uber's cost component factors taken into account when pricing include but are not limited to vehicle cost, useful life of a vehicle, full cost, insurance cost, maintenance cost, driver payment cost, music copyright licence, NTSA vehicle inspection cost, city councils fee, advance tax and other consideration according to uber taxify, little cab etc.

10. **THAT**, Uber charges a 20-25% service fees per rider, the cost to the consumer consists of a Basic fare of Kshs 100/= as per minute rate of Kshs 4 per

kilometer rate of Kshs 60, a minimum fare of Kshs 300 and a cancellation fee of Kshs 200 it applies surge pricing, (demand and supply driven) whenever necessary as determined by uber's, taxify and little cab.

11. **THAT**, the union finds that the stake holders did not understand the current regulation of being fully compliant as per the county By-laws, the Traffic Act and the prevailing tax regime or otherwise there was an issue of moral hazard.
12. **THAT**, the union noted that Uber is registered to be providing private car hire services and not taxi services. This implies it operates in different (read more friendly) regulatory regime from its competitors. Further the union observed the existence of discriminatory application of branding provisions of the county by-laws to the detriment of branded vehicles due to restrictions of entry to certain compounds.
13. **THAT**, the union's position is that the security of both the passenger and driver is paramount. However, there were concerns that there is no coherence of safety standards across all taxi operators.
14. **THAT**, the relatively low prices that uber and other apps are offering in the market was deemed by most of other stakeholders as unfair competition. The union proposed that the members of parliament should prioritize the industry in order to remedy any anti-competitive issues that may arise. The main concern with uber, taxify and little cab are competing fairly since they do not pay national and county taxes like parking fees, VAT, NHIF, NSSF, wages, maintenance of vehicle, loan repayment etc.

PRICING MODELS

1. Since 2016, the E-Hailing App Companies have been reviewing fares charged to riders downwards, while retaining the commission they charge to Driver-Partners for the use of their apps.

2. For example, in the month of January 2016, **Uber** was charging **KES 60 per kilometer** and **KES 4 per Minute**, fuel by then was less than **KES 90 per litre**. Currently **Uber and Taxify** are charging **KES 16 per Kilometre** while fuel cost is currently at **KES 107 per Litre**
3. According to the Automobile Association Of Kenya which regularly publishes a schedule of Vehicle Running Costs as a *Uniform* guide to policy makers in Government and business, and to the motoring public, **the current running costs for vehicles 1000cc and below**, excluding licenses (NTSA inspection, Driver PSV License, Good Conduct Certificates, KRA Vehicle Advance Tax, excluding App Company Commissions, excluding driver labor costs) is **KES 26 per Kilometre**. For Vehicles **1500cc and below** the cost is **KES 44 per Kilometre** in running costs only
4. This means, the Driver-Partners are running into loses maintaining their vehicles while the App Companies continue to make profits. Currently the App Companies are charging less than the recommended pricing of the Automobile Association of Kenya arbitrarily without consulting and seeking concurrence with Driver-Partners.
5. The reason why app companies charge such low fares, is that instead of them competing on service delivery, they compete by lowering fares to the detriment of drivers and vehicle owners as the App Companies have nothing to lose because they don't own vehicles, don't pay drivers salaries, don't maintain vehicles and don't incur running costs whatsoever, yet they still maintain their commissions regardless of fares charged
6. These price wars have caused drivers and vehicle owners untold suffering, healthwise, broken homes, deaths as a result of fatigue related issues, road

accidents and to the extent of bank repossession and auction of vehicles due to loan defaulting.

7. Recently UBER put out a Solicitation For use of general data by the name of UBER MOVEMENT to urban planners, city leaders, riders, innovators and developers to better understand the transportation needs of their cities.
8. That in the month of February 2017, we the the member of the association were invites by the transport committee of this house where we expressed the same grievances as above. The committee was chaired by the then member of Parliament of Starehe Constituency, Hon. Maina Kamanda and ever since no report.

THE HONOURABLE HOUSE PETITIONERS PRAYS AS FOLLOWS:

1. **THAT**, the definition of "TAXI CAB" and "Private hire vehicle" in the traffic Act Cap 403 (2012) to be reviewed by NTSA to include App. Based Taxi Services in their definitions. The above laws need to clearly distinguish car hire services from Taxi Services. For Example Taxi-cabs and private hire vehicles can be distinguished by the duration they are engaged offering services or whether a driver is provided in the services.
2. **THAT**, NTS to provide guidelines for county government to access their database on taxicabs. This will facilitate enforcement and compliance checks.
3. **THAT**, the County governments to amend their laws to include app. Based algorithms of a meter and enforce the county laws on metering.
4. **THAT**, the Competition Authority of Kenya to prioritize the industry in order to remedy any anticompetitive issues that may arise.

- **Adhering to county by laws**

Despite Uber Taxify, little cab, mondo maramoja identifying itself as or Taxi service and the operating model being that of a Taxi they are operating outside the requirement and regulations of county by laws by posing as a “private car hire” company.

- **Licensing Requirements.**

Application based Taxi cabs have not required their drivers to attain some of the licensing and operational requirements applicable under the by laws.

- **Branding Uber Taxify, little Cab, Mara Moja**

Have been operating without any distinguishable markings/brandings despite this being a requirement of the county By-laws.

- **Taxes.**

There is need to ensure that all players in the industry are compliant within the relevant tax regime.

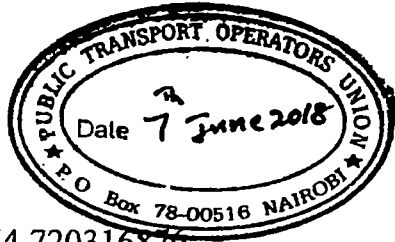
- **Pricing: Uber Taxify little cab**


Pricing model has been alleged to be predatory.

That all E. Hailing Apps companies to be recognized as transport operators/companies as opposed to Technology Companies as they earn their revenues from Transport business.

That this Honourable House dispenses this petition with urgency as workers are operating on losses for a long time.

NAME OF PETITIONERS

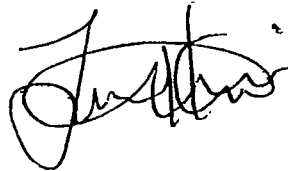


FENUS OKONJI 
GENERAL SECRETARY - +254 720316870
PUBLIC TRANSPORT OPERATORS UNION (KENYA)
P.O. BOX 58-0016 NAIROBI KENYA

OFFICIALS


JOSEPH NDIRITU
NATIONAL CHAIRMAN – KENYA

JOHN KIMANI - +254 701348248
BRANCH CHAIRMAN – NAIROBI



WYCLIFF ALUTALALA - +254 722 229 463
BRANCH SECRETARY – NAIROBI



UNION AFFILIATED ORGANIZATION

DAVID N. MUTERU - +254 722 229 463
CHAIRMAN
DIGITAL TAXI ASSOCIATION OF KENYA
P.O. BOX 25692-00603, NAIROBI KENYA



MUHAMMAD M. MBURU - +254 726 555 888
SECRETARY GENERAL
RIDESHARE SACCO SOCIETY LIMITED
P.O. BOX 1097-00200 NAIROBI KENYA



OUR AFFILIATES

CENTRAL ORGANIZATION OF TRADE UNIONS (KENYA)
SECRETARY GENERAL – COTU

INTERNATIONAL TRANSPORT FEDERATION – I.T.F (AFRICA)

ANNEXURE 2

SUBMISSION BY THE MINISTRY

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MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

MINISTERIAL STATEMENT REGARDING PETITION BY THE TRANSPORT OPERATORS WORKERS' UNION OF KENYA ON CREATION OF REGULATION OF DIGITAL TAXI/CAB OPERATORS (E-HAILING APPS.) IN KENYA

Response

Mr. Chairman, it is important to clarify that the National Government does not regulate or license taxis or boda-boda operations. The responsibility is under County Governments. Each County has its own by-laws on how taxis and motorcycles are licensed and regulated. However, the National Government comes in on overall policy on public transport in the country.

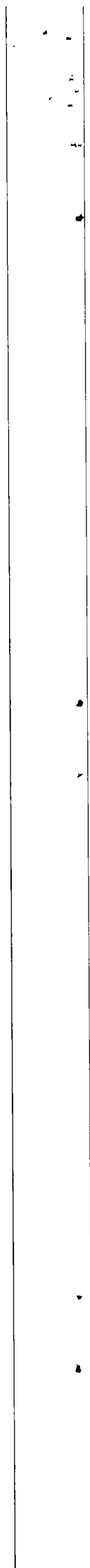
Mr. Chairman, the Ministry is currently reviewing the Integrated National Transport Policy approved by National Assembly in 2012. The intention is to update the Policy and include the changing circumstances and needs of the transport sector. These include use of cable cars, electric motor vehicles and motorcycles, digital app hailing taxi operations and climate change. The policy review will be finalized in 2019.

Specific responses to the issues

- a) **On review of the Traffic Act of 2012 to include App-based Taxi Services in order to distinguish private car hire services from taxi services.**

Digital App-based taxis services are not defined in the said Act as the same is new technology in the Kenyan economy. The Ministry and National Transport and Safety Authority (NTSA) are in the process of reviewing the Traffic Act, CAP 403.

The reviewed Act will address the needs of digital app hailing taxis. The industry players (stakeholders) will be consulted for their input. The roadmap for reviewing the Act is attached as **annex 1**.



b) That National Transport & Safety Authority (NTSA) to come up with guidelines to facilitate enforcement and compliance by all taxi operators

The digital app hailing taxis is a new phenomenon in the country and there are no regulations and guidelines for the sector. On 11th July 2018, the State Department witnessed execution of a Memorandum of Understanding between Taxi Forum and Digital App Taxi Providers on the improvement and development of taxi services for the owners, drivers and digital app providers. NTSA was mandated with the task of holding periodical meetings with taxi- app based service providers. The same is scheduled for 30th August 2018. In addition, a team has been constituted to formulate and/or draft regulations for taxi-app operators to complement the policy.




ESTHER KOIMETT, CBS
PRINCIPAL SECRETARY


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ANNEX 1. PROPOSED ROADMAP FOR THE OVERHAUL OF THE TRAFFIC ACT

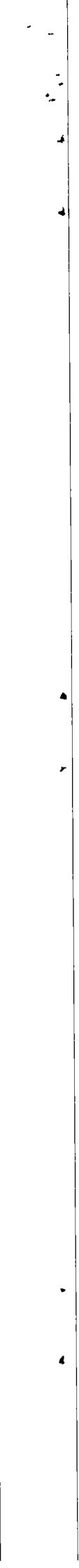
STEP 1- INTERNAL DRAFT - DONE

- Research.
 - Benchmarking with other Traffic Acts.
 - Development of a lay draft.
- 

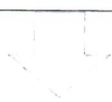
STEP 2 - CORE STAKEHOLDERS - JULY - SEPT

- Consultative meetings with the core stakeholders on the first draft. The core stakeholders are as follows:-
 - Director of Public Prosecutions.
 - Attorney General.
 - Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works.
 - Insurance Regulatory Authority.
 - Judiciary.
 - The National Police Service.
 - Kenha.
 - Kerra.
 - Kurra.
 - Council of Governors.
 - University of Nairobi -Institute of Development Studies.
 - Law Society of Kenya.
 - Association of Kenya Insurers.
 - Kenya Transporters Association.
 - KEPSA
 - MOA
 - Kenya Law Reform Commission.
 - Motorist Association.
 - Boda Boda Rep.
 - Road Safety Volunteers.
 - NAMATA
 - KRA
- 


Engagement of a draftsperson



STEP 3 - PRESENTATION OF SECOND DRAFT. OCTOBER-DEC

- Compilation of all the views for stakeholders.
 - Refinement of draft.
 - Presentation to the Board for approval.
- 

STEP 4- PUBLIC PARTICIPATION.

- Holding of targeted meetings eg Parliamentary Committees, PSV operators, KEPSA, Commercial operators etc
 - Holding of open consultative meetings countrywide.
 - Compilation of different views.
- 

STEP 5- PRESENTATION OF FINAL DRAFT.

- Drafting of final bill.
- Presentation to the Board and Ministry.

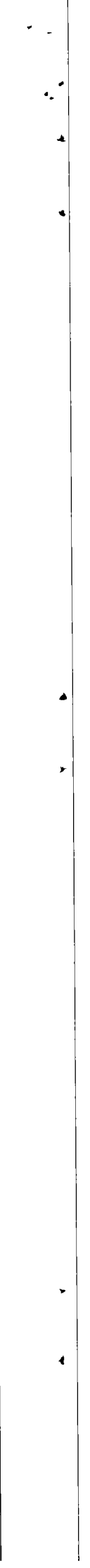
It is important to note that the Fourth Schedule Part 2 Section 5 provides for “county transport” as one of the devolved functions. It states as follows:

County transport, including:

- a. County roads*
- b. Street lighting*
- c. Traffic and parking*
- d. Public road transport*
- e. Ferries and harbors, excluding the regulation of international and national shipping and matters relating thereto (emphasis supplied)*

Annex 2; Definitions

The Section 2 Traffic Act, CAP 403 Laws of Kenya defines private hire vehicle and taxicab as follows:



“private hire vehicle” means any public service vehicle constructed or adapted to carry not more than seven passengers, exclusive of the driver, such vehicle not being a taxicab or matatu; and

“taxicab” means any public service vehicle constructed or adapted to carry not more than seven passengers, exclusive of the driver, which is registered under any by-laws relating to the licensing and operation of taxicabs to ply for hire from a taxi rank or other public place within the area where such by-laws are in force.

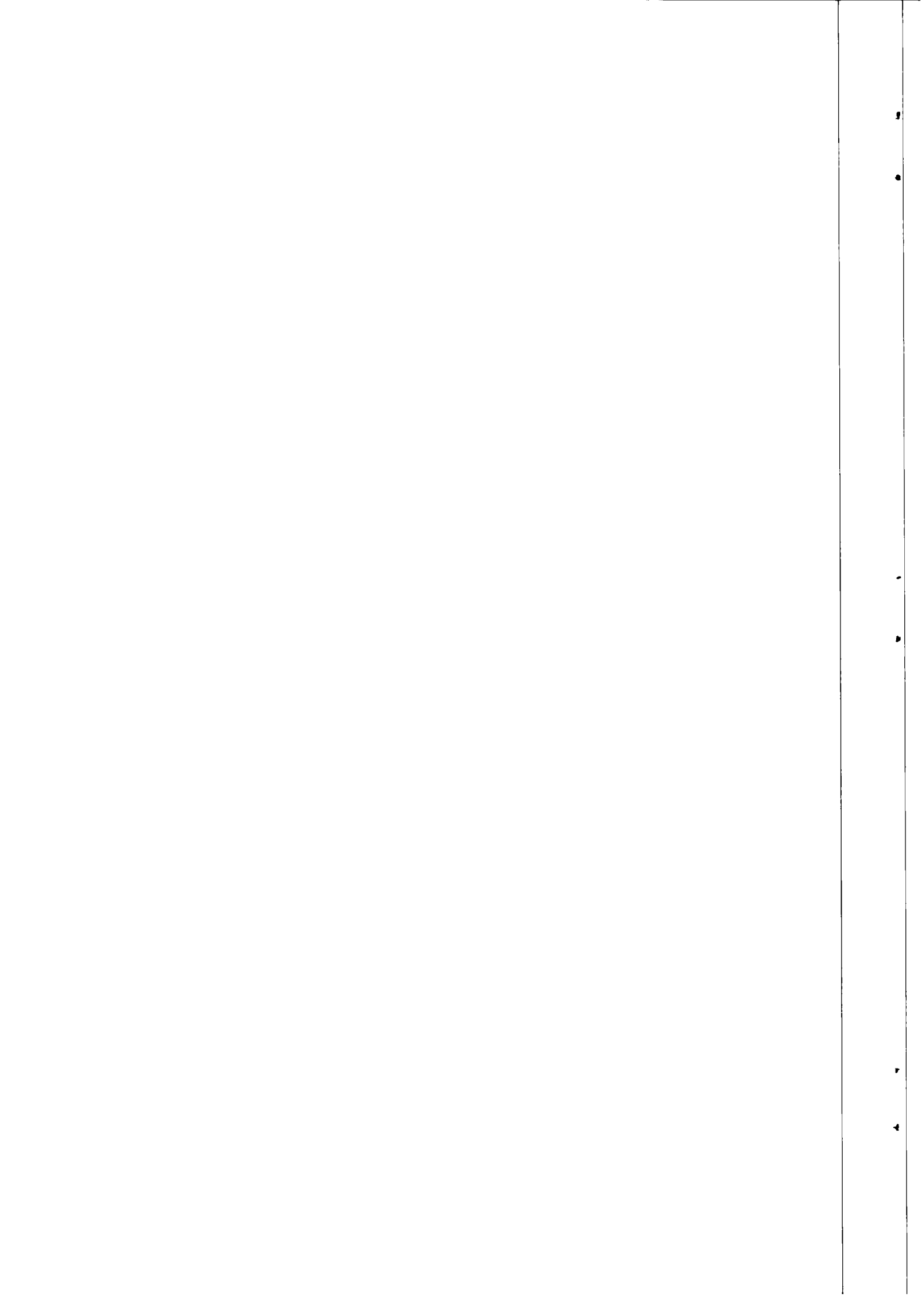
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ANNEXURE 3

SUBMISSION BY THE

COMPETITION AUTHORITY OF

KENYA



THE COMPETITION AUTHORITY OF KENYA'S MEMORANDUM ON THE PETITION BY THE TRANSPORT OPERATORS WORKERS' UNION OF KENYA ON CREATION OF REGULATION OF DIGITAL TAXI/CAB OPERATORS (E-HAILING APPS) IN KENYA.

A. Background

1. The Competition Authority of Kenya ("the Authority") in response to the invitation by the **Departmental Committee on Transport, Public Works and Housing** submits the following regarding the above referenced Petition.
2. The Authority's Memorandum is based on its mandate which include regulation of market conduct including on price fixing; territorial allocation and also Abuse of Dominance (foreclosure through exclusive agreements, predatory pricing, among others) and; advising the government and other government agencies in regard to competition and consumer protection matters.
3. The above mandate has the ultimate objective of enhancing the welfare of the consumers of the goods and services produced/supplied in Kenya.
4. Premised on the Para 2 above, the Authority has reviewed the said Petition and wishes to submit to the issues raised by the Petition, especially the following Prayers:
 - a. For the Parliamentary Committee to cause the Competition Authority of Kenya to prioritize the industry to remedy anti-competitive issues that may arise; and
 - b. For the Parliamentary Committee to cause the harmonization of taxi rates and operating procedures for all taxi cabs and Private hire vehicles.

B. Evolution of the Taxi Industry in Kenya and its regulation

5. Before entry of App-based taxi services, with the Uber Taxi services within Nairobi in January 2015, the Kenyan taxi industry had been characterized by informal networks.

6. Taxi-services are provided in three main formats, namely, (i) Rank taxis, (ii) Corporate Taxi's and (iii) Application based taxi services. The first model of taxi services in Kenya was the Rank /traditional taxis, followed by those providing corporate services and later the App based taxis.
7. Taxi Ranks are generally the traditional (regular) taxis. The first traditional taxi services provided in Kenya started with the incorporation of the Kenya National Transport Cooperative Society (KNTCS) in 1965, which owned taxis, buses and lorries. This company was nationalized by the government in 1966 leading to change of its name to Kenatco taxis.
8. Corporate Taxis are structured to include several drivers in a fleet of cars that are available around the clock. The typical taxi cab company also includes a call center, and a management team to handle the business.
9. **Application Based Taxi:** These are mobile based application companies that do not necessarily own any vehicles, or drivers but create a virtual marketplace for the procurement of Taxi services. They do however work with independent operators and fleet partners.

C. Application Based Taxis

10. Provision of taxi services under the digital app platform takes place in either of the following two (2) formats:

FORMAT	CONTRACTUAL ARRANGEMENT	PAYMENT	CONCERNS
a. The driver who is the owner of the car enters into an arrangement with the digital app provider, in order to provide taxi services under the digital app platform.	Contract between driver and digital App operator.	Direct payment to the owner of the car.	This is the least disputed as the owner receives their payment after the digital App operator deducts their commission.
b. The driver who is the owner of the car enters into an arrangement with the digital app provider, in order to provide taxi services, then hires a driver to be operating the car.	Two contracts applicable: i. Contract between the owner of the car and the digital App operator; and ii. Contract between driver and owner of car.	Two modes of payment: i. Direct payment between owner of the car and the digital App operator; and ii. The Driver is then paid by the owner of the car.	This is the most disputed as the driver is paid a standard charge by the owner of the car which may not be a favourable rate to the driver. Alternatively, the driver is paid an amount from which the commission of the digital App provider has already been deducted together with the amount payable to the owner of the car.

D. International Experiences

11. Emergence of Digital taxi platforms have elicited debate, globally, regarding whether or how they should be regulated. The debate, unfortunately with no convergence, has included whether the platforms are taxi operating companies or infrastructure providers to the operators.
12. This debate is illustrated with the following examples:
 - a. In **Brazil**, two courts ruled that Uber drivers are employees of Uber. Specifically, the ruling stated that, *'Uber provides a transportation service to passengers, using the*



human work provided by drivers, that it is not correct to say that drivers are clients, they are workers who expend energy for the company's profitable activity'.

- b. **India** has introduced regulations aimed at standardizing taxi (both traditional and e-hailing) regulations. The regulations aim at introducing extensive background checks of drivers geared towards enhancing security, the digital apps to be registered as taxi operators before they can provide digital app taxi services, all vehicles on the digital platforms to be equipped with a location tracking device and emergency safety button and drivers who offer their services on multiple platforms to apply for a commercial license and police verification certificate.
 - c. In the State of **California** (USA), the drivers filed a lawsuit claiming that they should not be classified as independent contractors as this prohibits them from entitlement of reimbursement of expenses such as gas and vehicle maintenance. While in **Seattle**, a Bill was introduced with the aim of addressing concerns arising from changes which affect drivers working conditions such as; reduction in taxi fares and changes in commissions charged to the driver.
 - d. **In Colombia:** A Bill was introduced to standardize regulations across all taxis. In particular, requirement for the County administration to conduct background checks on drivers, checks to be conducted on the taxis operating on the digital platform, same fees imposed on traditional taxis to be imposed on the digital platform taxis and requirement to obtain a license.
 - e. **The European Court of Justice** ruled that Uber must be classified as a service in the field of transport. More particularly, *"a company whose service is "to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys" must be considered "a service in the field of transport." This doesn't necessarily mean that there will be a change of rules overnight...*
13. In Kenya, after the introduction of the App-based taxis, the Authority (and also other regulators) were presented with complaints by the traditional taxis (yellow lines) against the App-Based Taxis (then Uber). The complaints were generally regarding alleged:

- i. Predatory pricing (Low pricing) by Uber, and;
 - ii. Discrimination regarding the different regulatory regimes facing the two taxi modes.
14. The Authority's investigations, regarding predatory pricing allegation, revealed that Uber was not a dominant firm, and hence their pricing regime could not stand the predatory pricing test under the tenets of any modern competition law, the Competition Act included.
15. In regard to the regulatory regime, including branding and licensing, the Authority's position was and still is, although the regime is skewed, the relevant Regulators should review the existing regimes governing the traditional taxis and conduct a regulatory impact assessment regarding their effectiveness in developing the taxi-transport sector in Kenya. This exercise should be actualized prior to adoption of any or extra regulations to govern the industry.
16. However, the Authority is plausible to regulations that are aimed at ensuring safety (security); protection and health of the Consumers including the drivers.
17. The Authority has not received any complaints from the traditional taxis since then. This notwithstanding, the Authority is privy to the issues raised by drivers of digital app-based taxis in the period of July 2018, that:
- i. There is lack of clear regulations to guide the development and operations of digital app-based taxis;
 - ii. Security of drivers with eighteen (18) having been killed between November 2017 and July 2018; and
 - iii. Poor pricing Policy adopted by the Digital App providers particularly Uber, Taxify, Little Cab, Mondo Ride, Maramoja and Fone Taxi. The drivers described the pricing strategies as exploitative and unsustainable as prices are adjusted downwards without any consultations with drivers or vehicle owners.
18. The Authority's interrogation of these issues has established that:
- i. Taxi drivers were aggrieved by the various discounts offered by the App-based taxis which they were of the opinion that they are borne by the drivers. The



representatives of the taxi companies have indicated that any discounts given to customers were borne by the respective companies as part of their marketing costs and are not passed unto their driver/partners; and

ii. The contract between the drivers and the owner of the cars is negotiated separately from the contract between the Digital App provider and the owner of the car.

19. The above issues are governed through private contracts and it is expected that individual contracts should be able to govern the resultant grievances. Also, the Authority is alive to the fact that there exists ease of entry and exit among the apps based taxis and this scenario increases contestability in the market. Nonetheless, we are aware that the Ministry of Transport created a Forum to address the grievances in the recent past.

20. The Contestability in the market has increased competition among the app based providers; at both supply (commissions to the drivers) and demand side (rates charged to the consumers) (see Table 1 below).

Table 1: Charges by traditional taxis and digital app-based taxis compared

A. Tariff Rates by Traditional Taxis, 2018		
No.	Variable	Tariff Rate (KES)
1.	Contract per day	8,600.00
2.	Excess charges per KM	45.00
3.	Waiting charges per Hour	300.00
4.	Charges per running KM	45.00
5.	City transfer*	400.00
Note: * City transfer charges apply to a distance not exceeding 2 kilometres.		

B. Charges by Selected Digital Based Taxis, 2016 and 2018						
	2016 (in KES.)			2018 (in KES.)		
	Base charge	Price per KM.	Price per minute	Base charge	Price per KM.	Price per minute
Uber	100.00	35.00	3.00	85.00	27.00	4.00
Taxify	100.00	50.00	5.00	75.00	27.00	3.00
Little Cab	55.00	4.00	none	100.00	30.00	4.00
Mondo Ride	100.00	45.00	3.00	85.00	26.00	3.00
Kenatco Taxi	100.00	60.00	4.00	--	--	--
# Pewin Cabs has a zoning flat rate of KES 300 from CBD to Sarit Centre and KES 1,500 from CBD to Karen						

21. Comparing the 2018 data, this Table also clearly shows that customers benefit from lower costs either in terms of base charge, per KM or per minute charges by the app based taxis,

as opposed to the traditional taxis. And, in terms of per kilometer charges, the app-based taxis are at least 30% cheaper than the traditional taxi.

22. It is important also to highlight that acquisition and deployment of the App technology has been on the increase since the entry of Uber in January 2015. We construe this to mean that there are no immense entry barriers (regulatory and costs) in the app based taxi market, as shown in Table 2.

Table 2: Entrant into app platforms by different taxi companies

No.	Company	Backed by:	Year of Entry
1	Delight Cab	GPS satellite	2012
2	Easy Taxi*	app	April 2014
3	Maramoja	app	March 2015
4	Uber	app	January 2015
5	Kenatco taxi	app	October 2016
6	Mondo Ride	app	January 2016
7	Taxify	app	July 2016
8	Pewin Cabs	app/phone	2016
9	Little Cab	app	March 2018

*Note: * Easy Taxi exited Kenyan market in 2016*

E. Proposal to Harmonize Taxi rates and operating procedures for all taxi cabs and Private hire vehicles

23. The Authority submits that any regulatory interventions in any market should be aimed at increasing consumer welfare. Consumers' welfare is increased through price competition; accessibility of service, and quality of the service, among others.
24. In addition, and as indicated earlier, consumers safety and health should also be of paramount importance. However, our view is that the current arrangement, between the Platforms and the Partners, is not very explicit on who covers the contractual obligations if and when a consumer is exposed to any related risks. It is our opinion that there is need to explore a framework to mitigate against this seemingly *lacuna*.
25. In regard to consumer welfare, since the entry of the App based taxis, our estimates from the data available indicate a decrease in taxi charges by between 15 and 45% for the most common app based taxis (Uber and Taxify - see Table 1 above), increase in the number of app operating fleets by about 25% between 2015 and 2016; and providers by over 70% between 2014 (only 2 app Providers) and 2018 (8 app Providers).



26. This is coupled with increased quality of service, in terms of the fleet age and hygiene. Statistics also indicate that the age groups and the social classes accessing taxis services has also expanded.
27. This scenario has been facilitated by increased competition among providers, and continuous threat of loss of market share due to ease of entry and exit in the industry by 'partners', as they can easily switch from one platform to another and from traditional to app-based taxi services. Further, it has been noted by customers of the digital app taxi services that drivers easily switch from one platform to another in order to receive the requests of the customers, as the drivers are registered on most of the digital taxi platforms.
28. Premised on this, the Authority is advising against any interventions that may deter forces of supply and demand signaling market rates in this sector. However, and as mentioned earlier, regulations may be introduced only if and only if found to deepen safety standards and quality of service standards.
29. In summary, we posit that harmonization of taxi rates is likely to impede competition (*i.e.* interfere with free interplay of forces of demand and supply in setting market taxi rates) and to the detriment of the consumer as the result would be the setting of minimum prices which is against the tenets of any competition law.
30. Minimum pricing will take away the freedom which business enterprises need to attract customers by innovating and creating incentives to woo the customers. Customers on the other hand are treated to choices and quality which is enhanced through healthy competition.
31. The Authority has observed that the digital app providers through increased competition in the industry have developed products meant to attract both customers and drivers to their platform. An example is where some providers are seeking to empower its drivers to move from employment to owning their own car by availing a loan product; others have introduced incentives such as attractive return on Commission and access to free WIFI onboard.

F. Conclusion and Recommendations

32. The phenomenon of digital apps taxi is a recent introduction into Kenya, and as in all other countries across the globe, it has occasioned a debate. Indeed, as indicated herein above, there exists no global convergence regarding the regulatory regime to govern the



ISO 9001:2015 CERTIFIED

App-based taxis, especially regarding licensing, branding and identity; whether they are platforms or taxi companies.

33. However, there seems to be convergence in regard to introducing measures aimed at deepening passengers and drivers' safety. As highlighted earlier, there is a need to clarify who takes responsibility, for example, when a rider (customer) does not get expected standards of taxi service or gets offended by a taxi driver, as the app Provider has no obligation under contract to redress grievances or complaints by the consumer.
34. The Authority wishes to reiterate that although regulations may be necessary to manage development of some markets, it is important to highlight that digital apps taxi market is a disruptive technology and hence characterized by continuous innovation and dynamism. This is aimed at facilitating the market players to deepen their market shares through introduction of various products and services to the benefits of the consumers. This dynamism is manifested also with price wars.
35. Disruptive technology can be impeded by regulations, which may act as obstacles to growth of some sectors. The taxi industry in Kenya was stagnant over decades (since 1966), recording minimal employment levels and unnoticeable contribution to the GDP. This is despite of the fact that the traditional taxi industry has been heavily regulated. The services also were a preserve of the social elites due to the high rates charged.
36. Due to the importance of the disruptive technology in the growth of our economy, the Authority in its current Strategic Plan has prioritized enforcement in this area (including research) to inform the best regulatory regime to support the disruptive technology and also ensure effective competition among the clients. This initiative is being informed by the various experiences globally and some of the ongoing research efforts in Asia (India in particular) and South Africa.
37. With the foregoing, and being alive to the fact that there is no global convergence, read international best practice, regarding the best mode of regulatory regime, the Authority opines that there exists indispensable need to review the existing regulatory regime that govern the traditional taxis, expose it to regulatory impact assessment, based on the current developments in the industry and revise it to accommodate growth of this sector. This will not only facilitate growth of this sector but also offer credible competition to the Matatu industry.
38. Otherwise, exposing the apps taxi to the current regulations and or regulations informed by historical regimes (anachronism) will be counter-productive to its growth. This



position is buttressed by the fact that there is free entry and exit into the industry and this should not be constrained; for the benefits of the incumbents.

39. Most importantly also, the Authority's position is that taxi rates should never be harmonized. Pricing is the most important and fundamental benefit resulting from our current economic dispensation. Entry of digital apps taxis not only ensured revision of the taxi rates in Kenya downwards, but also it increased the accessibility of the service to all age groups and social class.
40. Harmonization of the pricing regime will definitely extinguish the existing gains and dampen any further disruption in the sector to the detriment of the consumer.
41. To conclude, the Authority's wishes to advise that: -
 - i. Pricing is the most important and fundamental benefit resulting from market competition. Proposed harmonization of rates will extinguish it, to the detriment of consumers welfare;
 - ii. There exists free entry and minimal switching costs by drivers, among the apps based taxis, and also between the traditional and apps based taxis. This ensures that platform providers do not possess market power. Threat of entry (by new competitors) and exit (by partners), ensures constant innovation and introduction of new products;
 - iii. Introduction of regulations in the taxi industry should be aimed at facilitating growth of the sector through innovation and ensuring continuous disruption. Regulations should never be a form of protecting the service providers but rather a vehicle to deepen and sustain consumer benefits. Consumer benefits should be manifested through price dynamism (not harmonization); increased quality service delivery, hygiene and passengers (consumers) safety;
 - iv. Consumers' safety and health should also be of paramount importance. However, our view is that the current arrangement, between the Platforms and the Partners, is not very explicit on who covers the contractual obligations if and when a consumer is exposed to any related risks. It is our opinion that there is need to explore a framework to mitigate against this seemingly *lacuna*.
 - v. Due to the importance of the new economy disruptive technology including apps based taxis in the growth of our economy, the Authority in its current Strategic Plan

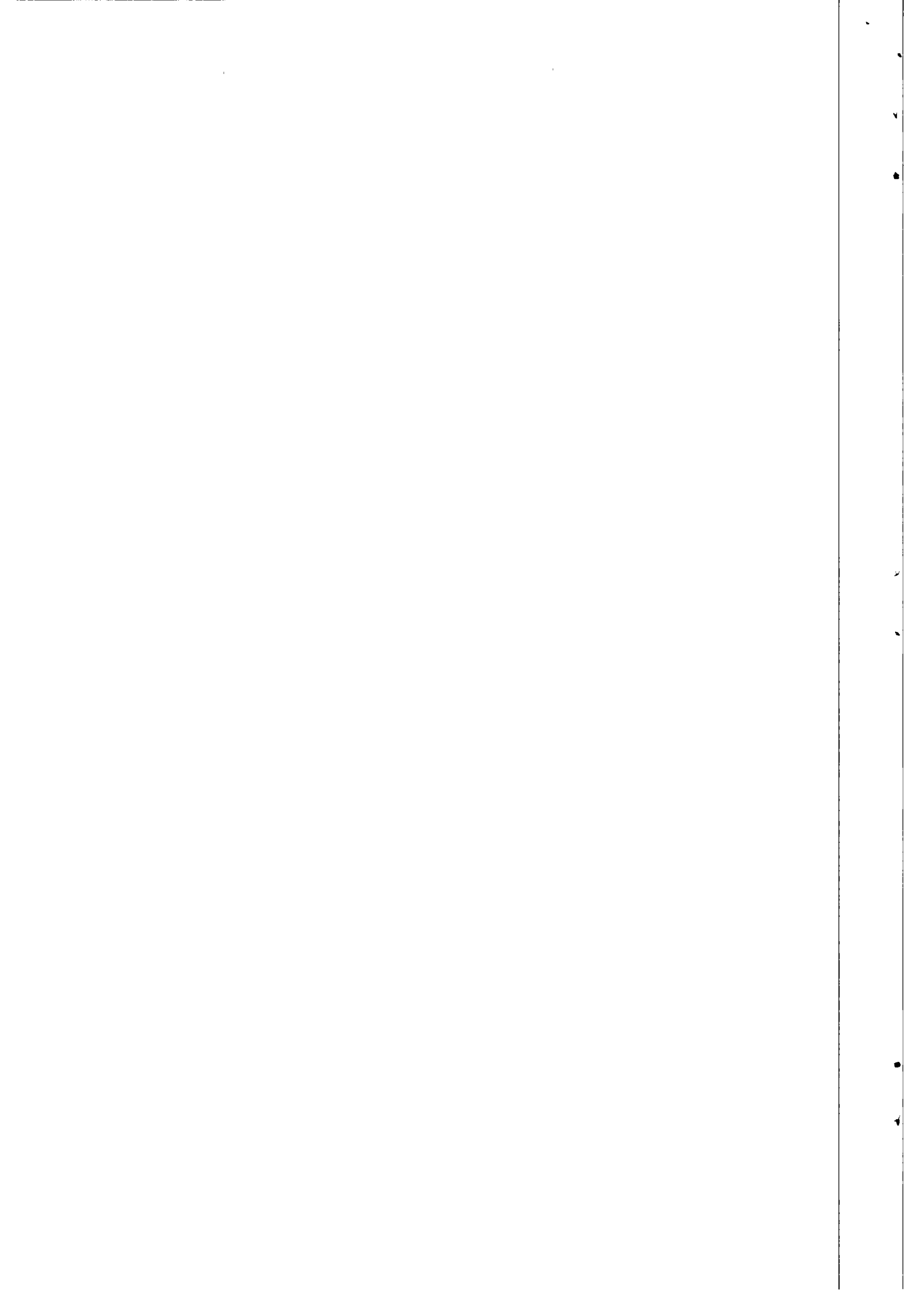
has prioritized enforcement in this area (including research) to inform the best regulatory regime to support the disruptive technology.

- vi. It is equally important that the Kenya Transporters Workers Union should endeavor to educate its members with the objective of building internal capacity in terms of contracts' content between its members and the platform providers and also between its members (drivers) and their employers (vehicle owners).


Wang'ombe Kariuki, MBS

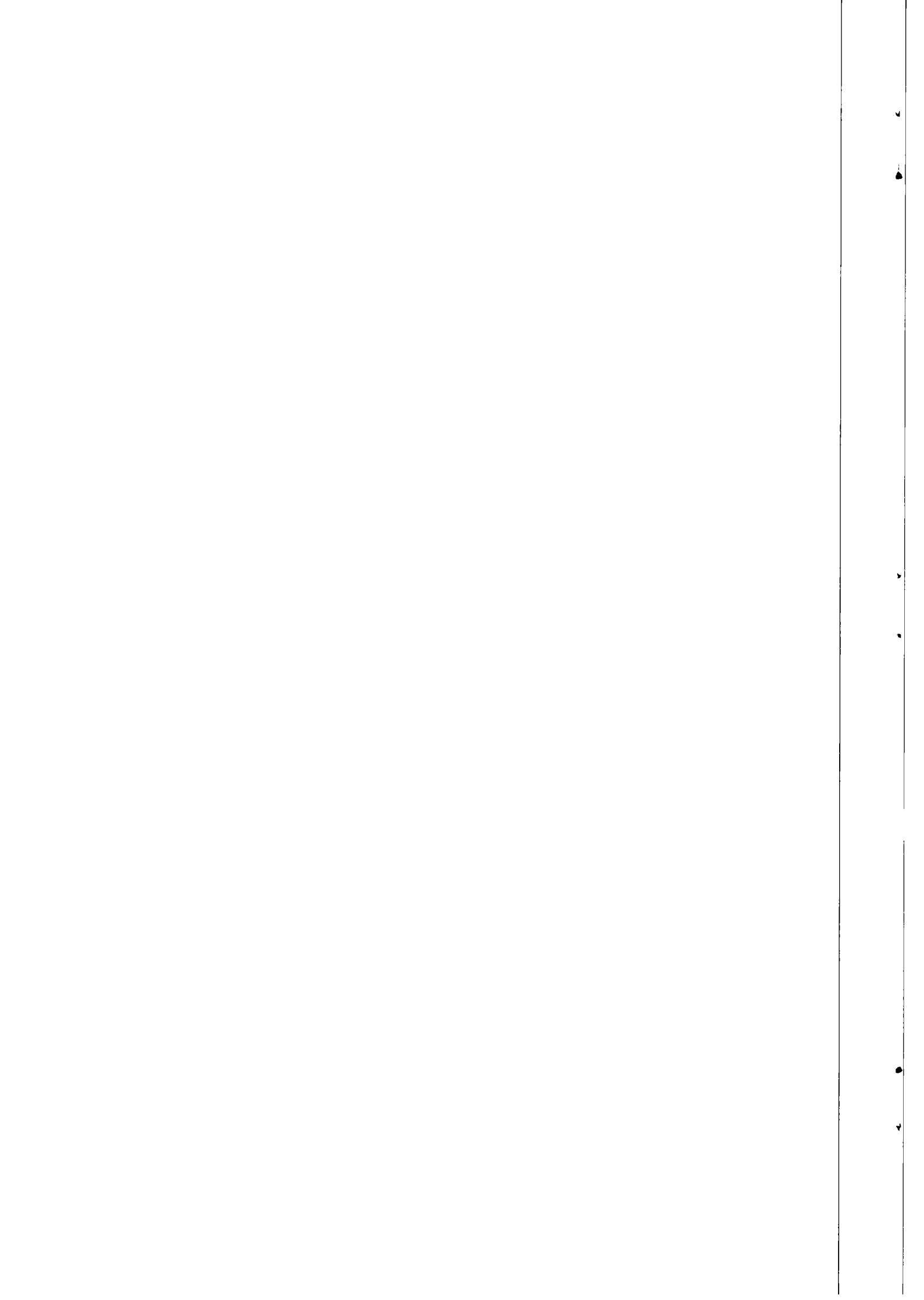
DIRECTOR-GENERAL

23rd August 2018



ANNEXURE 4

COMMITTEE MINUTES



MINUTES OF THE FIFTY SECOND (52ND) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 23RD AUGUST 2018 AT 11.30 A.M. IN 5TH FLOOR BOARDROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Samuel Arama
2. Hon. Suleiman Dori Ramadhani
3. Hon. Ahmed Abdisalan Ibrahim
4. Hon. Dominic Kipkoech Koskei
5. Hon. Mugambi Murwithania Rindikiri
6. Hon. Shadrack John Mose
7. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. David Pkosing - Chairperson
2. Hon. Moses Kuria - Vice Chairperson
3. Hon. Rehema Dida Jaldesa
4. Hon. Ahmed Bashane Gaal
5. Hon. Kulow Maalim Hassan
6. Hon. Johnson Many Naicca
7. Hon. Savula Ayub Angatia
8. Hon. David Njuguna Kiaraho
9. Hon. Tom Mboya Odege
10. Hon. Gideon Mutemi Mulyungi
11. Hon. Rigathi Gachagua
12. Hon. Peris Pesi Tobiko

SECRETARIAT

- | | | |
|-----------------------|---|---------------------|
| 1. Mr. Ahmed Salim A. | - | Clerk Assistant III |
| 2. Ms. Mercy Wanyonyi | - | Legal Counsel |
| 3. Mr. Eugene Luteshi | - | Audio Officer |
| 4. Ms. Zainab Wario | - | Sergeant at arm |

IN ATTENDANCE

- | | | |
|----------------------------|---|---|
| 1. Hon. Simba Arati, MP | - | Conveyor of the petition |
| 2. Mr. Francis Meja | - | DG, NTSA |
| 3. Mr. Wang'ombe Kariuki | - | DG, Competition Authority of Kenya |
| 4. Mr. Martin Eshiwani | - | Director, Road Transport, Ministry |
| 5. Ms. Ninette Mwarania | - | Manager, Policy & Res. CAK |
| 6. Mr. Mugambi Mutegi | - | Communications Manager, CAK |
| 7. Ms. Alexia Waweru | - | Legal Officer, Competition Authority K. |
| 8. Mr. Adan Wario | - | Research & Policy, CAK |
| 9. Ms. Connie Ngachu | - | Legal Officer, NTSA |
| 10. Ms. J. Githinji | - | Director R&L, NTSA |
| 11. Ms. Brenda Mwangi | - | State Counsel, State Dept. of Transport |
| 12. Ms. Bhoke Elizabeth | - | Legal, State Dept. of Transport |
| 13. Ms. Rhayan Kanyadong' | - | Digital Taxi Forum Consultant |
| 14. Mr. Fenus Okonji | - | General Secretary, Pub. Trans. Oper. Union |
| 15. Mr. David Muteru | - | Chair, Digital Taxi Assoc. of Kenya |
| 16. Mr. Wycliffe Alutalala | - | Secretary, Public Transport Operators Union |
| 17. Ms. Florence Kinyua | - | Treasurer, Public Transport Operators Union |
| 18. Mr. Muhammad Mburu | - | Secretary, Rideshare Sacco Society Limited |
| 19. Mr. John Kimani | - | Chairman, PUTON/DTF |
| 20. Ms. Agnes Mwangera | - | PUTON official |

The Chairperson called the meeting to order at thirty minutes past eleven o'clock, with a word of prayer from Hon. Vincent Kemose, MP. The meeting Chairperson informed the Committee that the agenda of the meeting was to receive views from the petitioners and different stakeholders on the petition by the Transport Operators Workers' Union of Kenya on creation of Regulation of Digital Taxi /Cab Operators (E-Hailing Apps) in Kenya. Members adopted the agenda, the proposer being Hon. Suleiman Dori and the seconder being Hon. Samuel Arama.

MIN No. TPWH 227/2018: **CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS**

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN No. TPWH 228/2018: **SUBMISSION FROM THE PETITIONERS**

The Hon. Simba Arati, the conveyor of the petition on behalf of the Transport Operators Workers' Union of Kenya on creation of Regulation of Digital Taxi /Cab Operators (E-Hailing Apps) in Kenya, submitted that he met the petitioners outside the precincts of Parliament when they were protesting and after listening to the protesters (now the petitioners), he took it upon himself the responsibility to receive the protesters' petition and convey it to the National Assembly.

It was submitted that the prayers before the Committee was that the Committee:

- i. Reviews the Traffic Act of 2012 to include App-Based Taxi Services in order to distinguish private car hire services from taxi services;
- ii. Causes the Competition Authority of Kenya to prioritize the industry to remedy any anti-competitive issues that may arise;
- iii. Causes the harmonization of taxi rates and operating procedures for all taxi cabs and private hire vehicles;
- iv. Causes the NTSA to come up with guidelines to facilitate enforcement and compliance by all taxi operators; and
- v. Makes any other direction it deems fit in the circumstance of this matter.

The petitioners further submitted that their main issue was pricing. They stated that it was important for the taxi industry to have its own set of regulations to avoid unfair competition.

MIN No. TPWH 229/2018:

**SUBMISSION FROM THE MINISTRY AND THE
COMPETITION AUTHORITY OF KENYA**

The Competition Authority of Kenya stated that issues of price regulation are not in the best interest of consumers and that there were so many social benefits that come with the online taxi services. They stated that the only lacuna in the law is the issue of security because as it stands now, it is not clear on whether the responsibility lies with the application developers, the drivers or the online taxi company. The Authority further submitted that they are ready to advice on matters pricing if called upon to do so.

The National Transport and Safety Authority on its part reported that they were still studying the new “phenomenon of online taxi” and that they didn’t want to rush into proposing regulations before they understood the sector in its entirety. They declared that they will involve all stakeholders while formulating the regulations.


Some Members suggested that pricing issue as it is may be good for the consumers but not good for the market and that it was important to have regulations. It was noted that while considering the best interest of consumers, it was equally important to consider the country has a free market economy. It was suggested that the AA can be proposed to be the formulator of the online taxi pricing policies.

The Committee resolved that it will retreat at a later date to consider the petition, the submissions from the Ministry and the Competition Authority of Kenya, before making its report.


MIN No. TPWH 230/2018:

ADJOURNMENT

There being no other business, the sitting was adjourned at thirty minutes past one o’clock. The next meeting to be held on notice

Signed.....

(Chairperson)

Date.....

MINUTES OF THE SIXTY FIRST (61ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON MONDAY, 6TH NOVEMBER 2018 AT 10.00 A.M. IN THE COMMITTEE ROOM, 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. David Njuguna Kiaraho
3. Hon. Ahmed Abdisalan Ibrahim
4. Hon. Ahmed Bashane Gaal
5. Hon. Dominic Kipkoech Koskei
6. Hon. Johnson Many Naicca
7. Hon. Mugambi Murwithania Rindikiri
8. Hon. Rigathi Gachagua
9. Hon. Shadrack John Mose
10. Hon. Tom Mboya Odege
11. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria - Vice Chairperson
2. Hon. Samuel Arama
3. Hon. Gideon Mutemi Mulyungi
4. Hon. Kulow Maalim Hassan
5. Hon. Suleiman Dori Ramadhani
6. Hon. Rehema Dida Jaldesa
7. Hon. Peris Pesi Tobiko
8. Hon. Savula Ayub Angatia

SECRETARIAT

- | | | |
|-----------------------------|---|-------------------------|
| 1. Ms. Chelagat Aaron Tungo | - | Clerk Assistant I |
| 2. Mr. Ahmed Salim | - | Clerk Assistant III |
| 3. Mr. Abdinasir Moge | - | Fiscal Analyst |
| 4. Mr. Eugene Luteshi | - | Audio Officer |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Zainab Wario | - | Sergeant at arm |

IN ATTENDANCE

- | | | |
|-------------------------|---|-------------------------------|
| 1. Mr. Daniel Manduku | - | Ag. MD, Kenya Ports Authority |
| 2. Mr. Edward Kamau | - | GM, Corporate Services, KPA |
| 3. Mr. Peter Oremo | - | Lamu Port Project Cordinator |
| 4. Mr. Abduatif Hussein | - | Programme Assistant, LCDA |
| 5. Mr. Benard Oluoch | - | Finance Officer, LCDA |
| 6. Mr. Geoffrey Kavate | - | Ag. GM, Finance, KPA |
| 7. Eng. A. M. Samatar | - | GM, Lamu Port Project, KPA |
| 8. Eng. D. Amadi | - | Head, Lamu Port Project, KPA |
| 9. Mr. Martin Mutuku | - | Head, Corporate Dev. KPA |

MIN No. TPWH 275/2018: PRELIMINARIES

The meeting was called to order at ten minutes past ten o'clock, with a word of prayer from Hon. Johnson Many Naicca, MP. Members confirmed the agenda as meeting the stakeholders to discuss the funding gap for the Lamu Port Project. Members adopted the agenda, the proposer being Hon. Rigathi Gachagua and the seconder being Hon. Tom Odege.

MIN No. TPWH 276/2018: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN No. TPWH 277/2018: DISCUSSION ON THE LAMU PORT FUNDING GAP

The Committee noted that this was a follow up meeting, the earlier one having been held on 25th September 2018 at the same venue.

The Kenya Ports Authority submitted that there were eight funding options for the construction of the Lamu Port. These include a commercial loan, a government borrowing loan, infrastructure bond, Build Operate & Transfer model, government to government arrangement with China, KPA to pay from its own reserves although this option was not feasible, review of tariff from 10% to 15% which is also not feasible, and the last option was direct funding by the government of Kenya as has been the case, an option which was thought to be more practical.

It was noted that in the current financial year, the government of Kenya funded the project to a tune of around 8.8 billion.

The meeting noted that termination of the contract at this point is not a good option and that it may turn out to be more costly. It was agreed that a way of funding must be found. The KPA submitted that it was important to look for a development partner who will not only be able to give volume to the works but one who will also be able to provide for the funding gap.

The Committee noted that there was financing gap of around 36 billion but the exact figure will, as per the undertaking by KPA, become known by the first week of December 2018. KPA further reported that it had so far used around 6.453 billion from its own reserve for the project and that it was already constrained financially in terms of project funding.

The meeting further resolved that a hybrid model of funding may be the best option. This will include combined efforts of the government of Kenya, the Kenya Ports Authority and the Build, Operate and Transfer model. KPA and the Committee's Fiscal Analyst were tasked with coming up with a draft resolution on the same.

MIN No. TPWH 278/2018:

**ADOPTION OF THE REPORT ON THE PETITION
BY THE TRANSPORT OPERATORS WORKERS'
UNION OF KENYA ON CREATION OF
REGULATION OF DIGITAL TAXI /CAB
OPERATORS (E-HAILING APPS) IN KENYA**

The Committee adopted the Report on consideration of the petition by the Transport Operators Workers' Union of Kenya on creation of Regulation of Digital Taxi /Cab Operators (E-Hailing Apps) in Kenya, which was conveyed by Hon. Simba Arati. Adoption was proposed by Hon. Vincent Mogaka and seconded by Hon. Dominic Kipkoech Koskei.

MIN No. TPWH 279/2018:

**ADOPTION OF THE REPORT ON THE PETITION
FROM THE HON. SHIMBWA OMAR MWINYI, MP
ON BEHALF OF THE RESIDENTS OF THE
NATIONAL HOUSING CORPORATION TENANTS
WELFARE ASSOCIATION IN CHANGAMWE
CONSTITUENCY, MOMBASA COUNTY**

The Committee adopted the Report on consideration of the petition from the Hon. Shimbwa Omar Mwinyi, MP on behalf of the residents of the National Housing Corporation Tenants Welfare Association in Changamwe Constituency; Mombasa County was proposed by Hon. Shadrack Mose and seconded by Hon. Tom Mboya Odege, MP.

MIN No. TPWH 280/2018:

ANY OTHER BUSINESS

1. Some Members proposed that the retreat scheduled to take place between 8th and 11th November 2018 be postponed to a later date because of other official engagements which may make it hard for Members to attend. It was also feared that some of the Ministry officials, may for the same reason not be able to attend to the retreat. The Chairperson undertook to consult the Ministry on the same and communicate to Members on the way forward.

2. The meeting further resolved that the Cabinet Secretary for Treasury and the Cabinet Secretary for Transport and Infrastructure be invited to appear before the Committee on Thursday, 29th December 2018 to deliberate on the issue further.

MIN No. TPWH 281/2018: ADJOURNMENT

There being no other business, the sitting was adjourned at five minutes past one o'clock. The next meeting to be held on notice

Signed.....

(Chairperson)

Date.....



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- SECOND SESSION

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

ON

CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL,
2018

(NATIONAL ASSEMBLY BILLS NO. 12 OF 2018)

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JUNE 2018



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- Annex 2: Advert for submission of memoranda
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- Annex 4: Committee Minutes

A. PREFACE

Chairperson's Foreword

The Statute law (Miscellaneous Amendments) Bill, 2018 was published on the 10th April, 2018 by the Hon. Aden Duale, MP and consequently the Bill underwent the First Reading on 18th April, 2018 in the National Assembly. The Bill was thereafter committed to the Departmental Committee on Transport Public Works and Housing as provided for in the National Assembly Standing Order 127(1)

The Statute law (Miscellaneous Amendments) Bill, 2018 seeks to make amendments to various statutes. The Committee on Transport, Public Works and Housing was tasked with scrutinizing amendment the Bill.

The Committee while considering the Bill pursuant to Article 118(b) and Standing Order 127(3), invited the public to submit representation/comments they might have on the Bill. This invitation was done through, a notification which was placed in the mainstream print media on 26th April, 2018.

While considering the Bill, the Committee received oral submissions and written memoranda from stakeholders.

- a) **Mr. Kenneth Samoei** who had proposed amendments to the Engineers Act,2011 to among other things provide that the members of the Engineers Board of Kenya appointed by the Cabinet Secretary be "elected" as opposed to being "appointed" by the Cabinet Secretary; and
- b) **Mr. Stephen Kiama** as regards the proposed amendments to the Traffic Act, Cap 403 on the definition of "driving test examiners" which had been proposed to be replaced yet the definition had not been proposed to be deleted and the proposed amendments to the National Transport and Safety Authority Act with regards to the removal of the corporate powers of the Authority, No.33 of 2012.
- c) The Managing Director of the **Kenya Airports Authority** on behalf of the institution was agreeable to the proposed amendments to the Kenya Airports Authority Act (Cap.395).
- d) The Acting Executive Director of the **National Construction Authority** on behalf of the institution was agreeable to the proposed amendments to the National Construction Authority Act, No. 41 of 2011.
- e) The Registrar of the **Engineers Board of Kenya** on behalf of the institution was agreeable to the proposed amendments to the Engineers Act 2011 No. 43 of 2011.
- f) The **National Housing Corporation** was agreeable to the proposed amendments to the Housing Act, Cap 117.
- g) The **National Transport and Safety Authority (NTSA)** and the **Ministry of Transport, Infrastructure and Urban Development** were agreeable to all the proposed amendments to the

Traffic Act, Cap. 403, the same having emanated from themselves. They were also in agreement with the members that the proposed amendments to section 8 of the Traffic Act, Cap. 403 which seeks to create the offence and prescribe the penalty on issuance of insurance cover to a person who is not the registered owner of a motor vehicle, ought to be relooked.

- h) The **National Transport and Safety Authority (NTSA)** and the **Ministry of Transport, Infrastructure and Urban Development** were opposed to all the proposed amendments to the National Transport and Safety Authority Act, No. 33 of 2012 on grounds that-
- (i) The proposed amendments did not originate from them;
 - (ii) They were never consulted or informed of the proposed amendments;
 - (iii) The proposed amendments are substantive in nature and that the Statute Miscellaneous Acts are limited to minor corrections and amendments;
 - (iv) The proposed amendments have far reaching consequences and if adopted would reverse the tremendous gains achieved by NTSA;
 - (v) The proposed amendments bring ambiguity as opposed to clarity on the legal status, role, functions and performance of the National Transport and Safety Authority; and
 - (vi) The proposed amendments create glaring vacuums and lacunas as they lack transition clauses, should the amendments be adopted.

B. Mandate and Membership of the Committee

a) Mandate

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*);
- 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.

b) Membership

1. Hon. David Pkosing, M.P.
2. Hon. Moses Kuria, M.P.
3. Hon. Johnson Many Naicca, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Savula Ayub Angatia, M.P.
7. Hon. Samuel Arama, M.P.

Chairperson
Vice Chairperson

8. Hon. Suleiman Dori Ramadhani, M.P.
9. Hon. Rigathi Gachagua, M.P.
10. Hon. Ahmed Bashane Gaal, M.P.
11. Hon. Ahmed Abdisalan Ibrahim, M.P.
12. Hon. Dominic Kipkoech Koskei, M.P.
13. Hon. Gideon Mutemi Mulyungi, M.P.
14. Hon. Kulow Maalim Hassan, M.P.
15. Hon. Mugambi Murwithania Rindikiri, M.P.
16. Hon. Rehema Dida Jaldesa, M.P.
17. Hon. Shadrack John Mose, M.P.
18. Hon. Tom Mboya Odege, M.P.
19. Hon. Vincent Kemosi Mogaka, M.P.

C. Consideration of the Statute law (Miscellaneous Amendments) Bill, 2018

Hon. Chair,

The Statute law (Miscellaneous Amendments) Bill, 2018 underwent the First reading on 18th April, 2018 and thereafter committed to the Departmental Committee on Transport Public Works and Housing as provided for in the Standing order 127(1) for deliberation.

Pursuant to Article 118(b) and Standing Order 127(3), which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 26th April, 2018 informing the public that the Committee was considering the Statute law (Miscellaneous Amendments) Bill, 2018 and invited them to submit any representation they might have on the Bill.

Hon. Chair,

The Committee held meetings to consider pertinent issues that the Bill was seeking to address. It is worth noting that the Committee received two (2) written memoranda regarding the Bill.

D. Adoption of the Report

We the members of the Departmental Committee on Transport, Public Works and Housing have pursuant to Standing Order 199 adopted this Report on the consideration of the Statute law (Miscellaneous Amendments) (No.2) Bill, 2018 and the Statute law (Miscellaneous Amendments) Bill,

2018. We affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Tuesday 19th June, 2018:-

1. Hon. David Pkosing, M.P

Chairperson

2. Hon. Moses Kuria, M.P.

Vice Chairperson

3. Hon. Samuel Arama, M.P.

4. Hon. David Njuguna Kiaraho, M.P.

5. Hon. Johnson Many Naicca, M.P.

6. Hon. Rigathi Gachagua, M.P

7. Hon. Peris Pesi Tobiko, M.P.

8. Hon. Suleiman Dori Ramadhani, M.P.

9. Hon. Savula Ayub Angatia, M.P.

10. Hon. Ahmed Abdisalan Ibrahim, M.P.

11. Hon. Ahmed Bashane Gaal, M.P.

12. Hon. Dominic Kipkoech Koskei, M.P.

13. Hon. Gideon Mutemi Mulyungi, M.P.

14. Hon. Kulow Maalim Hassan, M.P.

15. Hon. Mugambi M. Rindikiri, M.P.

16. Hon. Rehema Dida Jaldesa, M.P.

17. Hon. Shadrack John Mose, M.P.

18. Hon. Tom Mboya Odege, M.P.

19. Hon. Vincent Kemosi Mogaka, M.P.


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E. Acknowledgments

Hon. Chair,

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support and services extended to the Members to enable the Committee complete this report within the given timelines.

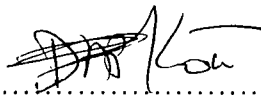
I am grateful for the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the Secretariat for their technical support during the compilation of the report.

On behalf of the Committee, and pursuant to Standing Order No. 127 (4) of the National Assembly, It is my honor and privilege to present the to the House for consideration and adoption the Committee Report on the consideration of the Statute law (Miscellaneous Amendments) Bill, 2018 that seeks to make amendments to the;

- i. Housing Act, (Cap 117)
- ii. Kenya Ports Authority Act (Cap.391);
- iii. Kenya Airports Authority Act (Cap.395);
- iv. Traffic Act (Cap. 403);
- v. Kenya Roads Board Act, 1999 (No.7 of 1999);
- vi. National Construction Authority Act, 2011 (No. 41 of 2011);
- vii. Engineers Act 2011 (No. 43 of 2011); and
- viii. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012).

Thank you

SIGNED



HON. DAVID PKOSING, CBS, M.P

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

1. Background

I. Committal of the Statute law (Miscellaneous Amendments) Bill, 2018

The Statute law (Miscellaneous Amendments) Bill, 2018 underwent first reading on 18th April, 2018 and thereafter committed to the Departmental Committee on Transport Public Works and Housing as provided for in the Standing order 127(1).

Pursuant to Article 118(b) and Standing Order 127(3), which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 26th April, 2018 informing the public that the Committee was considering the Statute law (Miscellaneous Amendments) Bill, 2018 which sought to amend the Housing Act, (Cap 117); the Kenya Ports Authority Act (Cap.391); the Kenya Airports Authority Act (Cap.395); the Traffic Act (Cap. 403); the Kenya Roads Board Act, 1999 (No.7 of 1999); the National Construction Authority Act, 2011 (No. 41 of 2011); the Engineers Act 2011 (No. 43 of 2011) and the National Transport and Safety Authority Act, 2012 (No. 33 of 2012).

II. Objective of the statute law

The Statute law (Miscellaneous Amendments) Bill, seeks to make various, wide ranging amendments to various statutes. The Departmental Committee on Transport Public Works and Housing was tasked with scrutinizing amendments to eight statutes.

III. Public Participation

Article 118(1) (b) of the Constitution provides that “Parliament shall facilitate public participation and involvement in the legislation and other business of the Parliament and its Committees.” Standing Order 127(3) of the National Assembly Standing Orders provides that “the Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the House.”

Arising from the foregoing the Committees, placed a notification in the two mainstream print media on 26th April.2018 informing the public that the Committee was considering the Statute law (Miscellaneous Amendments) Bill, 2018, that seeks to make wide-amendments to various statutes. The Committee was tasked with scrutinizing amendments to the following statutes;

- (a) The Housing Act, (Cap 117);

- (b) The Kenya Ports Authority Act (Cap.391);
- (c) The Kenya Airports Authority Act (Cap.395).
- (d) The Traffic Act (Cap. 403)
- (e) The Kenya Roads Board Act, 1999 (No.7 of 1999).
- (f) The National Construction Authority Act, 2011 (No. 41 of 2011).
- (g) The Engineers Act 2011 (No. 43 of 2011).
- (h) The National Transport and Safety Authority Act, 2012 (No. 33 of 2012).

The Committee received oral submissions and written memoranda from stakeholders;

- a) **Mr.Kenneth Samoei** who had proposed amendments to the Engineers Act,2011 to among other things provide that the members of the Engineers Board of Kenya appointed by the Cabinet Secretary be “elected” as opposed to being “appointed” by the Cabinet Secretary; and
- b) **Mr.Stephen Kiama** as regards the proposed amendments to the Traffic Act, Cap 403 on the definition of “driving test examiners” which had been proposed to be replaced yet the definition had not been proposed to be deleted and the proposed amendments to the National Transport and Safety Authority Act with regards to the removal of the corporate powers of the Authority, No.33 of 2012.
- c) The Managing Director of the **Kenya Airports Authority** on behalf of the institution was agreeable to the proposed amendments to the Kenya Airports Authority Act (Cap.395).
- d) The Acting Executive Director of the **National Construction Authority** on behalf of the institution was agreeable to the proposed amendments to the National Construction Authority Act, No. 41 of 2011.
- e) The Registrar of the **Engineers Board of Kenya** on behalf of the institution was agreeable to the proposed amendments to the Engineers Act 2011 No. 43 of 2011.
- f) The **National Housing Corporation** was agreeable to the proposed amendments to the Housing Act, Cap 117.
- g) The **National Transport and Safety Authority (NTSA)** and the **Ministry of Transport, Infrastructure and Urban Development** were agreeable to all the proposed amendments to the Traffic Act, Cap. 403, the same having emanated from themselves. They were also in agreement with the members that the proposed amendments to section 8 of the Traffic Act, Cap. 403 which seeks to create the offence and prescribe the penalty on issuance of insurance cover to a person who is not the registered owner of a motor vehicle, ought to be relooked.
- h) The **National Transport and Safety Authority (NTSA)** and the **Ministry of Transport, Infrastructure and Urban Development** were opposed to all the proposed amendments to the National Transport and Safety Authority Act, No. 33 of 2012 on grounds that-
 - (i) The proposed amendments did not originate from them;
 - (ii) They were never consulted or informed of the proposed amendments;
 - (iii)The proposed amendments are substantive in nature and that the Statute;

- (iv) Miscellaneous Acts are limited to minor corrections and amendments;
- (v) The proposed amendments have far reaching consequences and if adopted would reverse the tremendous gains achieved by NTSA;
- (vi) The proposed amendments bring ambiguity as opposed to clarity on the legal status, role, functions and performance of the National Transport and Safety Authority; and
- (vii) The proposed amendments create glaring vacuums and lacunas as they lack transition clauses, should the amendments be adopted.

The Committee held several meetings to deliberate on pertinent issues that the Bill was seeking to address.

2. Committee Scrutiny of the proposed amendment to the Statute

The following is a brief scrutiny of the proposed amendment to the statute

Statute	Section	Proposed Amendment	Memoranda from the public	Comments	COMMITTEE OBSERVATIONS
The Housing Act, (Cap 117).	s.3(2)	Delete and substitute therefor the following new subsection— “(2) The Corporation shall consist of— (a) a chairperson appointed by the President; (b) the Principal Secretary responsible for housing in the Ministry; (c) a person appointed by the Cabinet Secretary for the time being responsible for finance; and (d) not less than five nor more than seven persons appointed by the Cabinet Secretary for the time being responsible	The National Housing Corporation (NHC) supported the amendments as proposed in the Bill.	The proposed amendment seeks to introduce the following changes: (a) the Chairperson will be appointed by the President as opposed to the Cabinet Secretary; (b) the Cabinet Secretary can appoint five to seven members as opposed to the six to eight he/she can currently appoint.	(a) the Cabinet Secretary should be limited to appointing a maximum of six members only under paragraph (d); (b) in appointing members under paragraph (d), the Cabinet Secretary should have regard to minority group.

		for housing, being persons who in his or her opinion possess knowledge of housing development or housing finance.”			
The Kenya Ports Authority Act (Cap.391).	s.62(1)	Delete the expression “Chief Justice” and substitute therefor the words “Registrar of the Nairobi Centre for International Arbitration established under the Nairobi Centre for International Arbitration Act, 2013”.		The proposed amendment seeks to provide that arbitrators in disputes under the Act shall be appointed by the Registrar of the Nairobi Centre for International Arbitration instead of the Chief Justice.	This is in order as it encourages independence of the courts and arbitration. The Committee accepted the amendment.
The Kenya Airports Authority Act (Cap.395).	s.33(1)	Delete the expression “Chief Justice” and substitute therefor the words “Registrar of the Nairobi Centre for International Arbitration established under the Nairobi	The Managing Director of the Kenya Airports Authority supported the amendments as proposed in the Bill.	The proposed amendment seeks to provide that arbitrators in disputes under the Act shall be appointed by the Registrar of the Nairobi Centre for International Arbitration instead of the Chief Justice.	This is in order as it encourages independence of the courts and arbitration. The Committee accepted the amendment as proposed.

		Centre for International Arbitration Act, 2013”.				
The Traffic Act (Cap. 403)	s.2	<p>Insert the following new definition in proper alphabetical sequence –</p> <p>“authorised officer” means a person appointed as such under section 3(4).</p>	<p>The National Transport and Safety Authority (NTSA) and the Ministry of Transport, Infrastructure and Urban Development were agreeable to all the proposed amendments.</p> <p>Mr. Stephen Kiama Section 2 of the Act provides that “driving test examiner” means any person appointed to be a driving test examiner under subsection (3) of section 3; Currently, there is no section 3 (3).The</p>	The proposed amendment introduces a new definition in the Act.	<p>Delete the term “driving test examiner” from the interpretation section (section 2) of the Act.</p> <p>The Committee proposed introduction of section 3(3) and “authorised officer”</p>	

			<p>introduction of a new section 3 (3) will not correspond to the current definition.</p> <p>NB. The “term driving test examiner” is found in section 39 (1). The Bill proposes to delete this term. If adopted, it would be necessary to delete this term from the interpretation section.</p>		
s.3	<p>Insert the following new subsections immediately after subsection (2)-</p> <p>(3) The Authority may appoint such number of suitably qualified persons to be inspectors of motor vehicles as it may deem necessary for purposes of this</p>	<p>3(4) – (i) The Bill refers to offices instead of officers (typographical error).</p> <p>(ii) This section does not need to be inserted as the Traffic Act, Cap. 403 is enforced by police officers and the role of an authorised</p>	<p>The proposed amendment seeks to define and provide for the appointment of inspectors of motor vehicles and designation of authorised officers by the NTSA for purposes of the Act.</p>	<p>This amendment is to align the Traffic Act, Cap. 403 with section 4 of the National Transport and Safety Authority Act, 2012 which provides that the Authority shall conduct motor vehicle inspection and certification.</p> <p>The Committee accepted the amendment as proposed.</p>	

		<p>Act.</p> <p>(4) The Authority may designate any of its offices to be authorised officers for purposes of this Act.</p>	<p>officer of the Authority should fall under the National Transport and Safety Authority Act, 2012.</p> <p>NB. There are various amendments being proposed to the Traffic Act, Cap. 403 and the National Transport and Safety Authority Act, 2012 to link the two statutes.</p>		
	s.8	<p>Renumber the existing provision as subsection (1) and insert the following new subsection after the renumbered subsection (1)-</p> <p>“(2) Any person who issues a motor vehicle insurance cover to a person other than the</p>		<p>The proposed amendment seeks to create the offence and prescribe the penalty on issuance of insurance cover to a person who is not the registered owner of a motor vehicle.</p>	<p>(a) There is need to distinguish between the beneficial owner and the registered owner;</p> <p>(b) There is need to distinguish the issue of ownership and insurance of motor vehicles;</p> <p>(c) This amendment will discourage the sale of cars by hire purchase and part payments.</p>

		registered owner of the vehicle commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding two years for a first offence, and to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding two years for each subsequent offence.”			The Committee rejected the amendment as proposed.
	s.39(1)	Delete the words “driving test examiners” and substitute therefor the words “the Authority”.	The proposed amendments will contradict the NTSA Act, 2012 as the Authority is only given oversight responsibility but not the responsibility to conduct driving test. NB. This is a	The proposed amendment seeks to provide for driving tests which are conducted by the National Transport and Safety Authority as opposed to driving test examiners.	This is in line with the Committee’s proposal that the Authority should limit itself to policy issues only. The Committee accepted the amendment as proposed.

			policy and administrative issue which the Ministry should shed light on.		
	s.45(1)	Insert the words “or a commercial vehicle” immediately after the words “public service vehicle”.		The proposed amendment seeks to create an offence and provide for the penalty for driving of a commercial vehicle, under any intoxicating liquor.	This proposal is welcome as it penalises the driving of commercial vehicles while being intoxicated. The Committee accepted the amendment as proposed.
	s.56(1)	Insert at the end thereof the words “or as provided for under the East African Community Vehicle Load Control Act, 2013.		The proposed amendment seeks to recognize loads as specified by the manufacturer of the chassis of a vehicle or provided for under Traffic Act and also the East African Community Vehicle Load Control Act, 2013.	This proposal is welcome as it standardises the loads that can be carried within East Africa. The Committee accepted the amendment as proposed.
	s.57	Insert the following new subsection immediately a subsection (2)- “(3) An authorised officer	(a) The proposed subsection (3) is not advisable as it is the role of the police to	The proposed amendment seeks to create an offence and prescribe penalty for driving a vehicle which requires a permit prescribed under the Act or the East African	(b) The term “authorised officer” has been introduced in section 2 and it refers to NTSA officials; (c) The Committee is of the view that NTSA

		<p>may detain a vehicle carrying any of the loads requiring a permit as prescribed under this Act or the East African Community Load Control Act, 2013, and which is found to be without a permit, or direct such vehicle to proceed to such place as may be necessary, taking into account safety, health or security, and the transporter owning such vehicle shall be liable to such fine or imprisonment as may be prescribed.”</p>	<p>enforce the Traffic Act, Cap. 403 and the NTSA will be usurping the role of the police.</p> <p>(b) The issue of a lack of permit is not a safety issue.</p> <p>(c) The provision that the vehicle will be directed to a place as may be necessary is not permissible as vehicles should always be detained at a police station unless a court of law prescribes otherwise.</p> <p>The President stated in January</p>	<p>Community Load Control Act, 2013 without such a permit.</p> <p>(a)</p>	<p>officials should not be allowed to patrol the roads;</p> <p>(d) The section refers to officers of a “highway authority” and there will be need to distinguish these officers from those of NTSA.</p> <p>The Proposed amendment was rejected by the Committee</p>
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			<p>2018 that traffic management along the roads should be the work of the police.</p> <p>NB. There are various amendments being proposed to the Traffic Act, Cap. 403 and the National Transport and Safety Authority Act, 2012 to link the two statutes.</p>		
	s.58	<p>Delete the expression “section 55 or section 56” and substitute therefor the expression “section 55, 56 or 57”;</p> <p>Insert at the end thereof the words “or in accordance with the East African Community Vehicle Load</p>		<p>The proposed amendment seeks to include contravention of section 57 and the East African Community Vehicle Load Control Act, 2013 as provisions which the penalties under section 58 will apply.</p>	<p>The Bill should be amended so that it reflects that the words “or in accordance with the East African Community Vehicle Load Control Act, 2013” should be inserted before the words “shall be guilty”.</p>

		Control Act, 2013.			
	s.70(5B)	Delete.		The proposed amendment seeks to remove the penalty provided with respect to violation of traffic signs prescribing speed limits on the road by more than twenty kilometers per hour. Penalty for the same is already provided in sub-section (5A).	Section 70 (5A) and (5B) prescribe different penalties for the same offence. No justifiable reasons for the removal of the penalty. The Proposed amendment was rejected by the Committee
	s.85	Delete and substitute therefor the following ne section- 85. Driving under the influence of drink. Subject to section 45, any person who, when driving or attempting to drive or when in charge of a vehicle other than a motor vehicle, on a road or other public place, is under the influence of drink or a drug beyond		The proposed amendment seeks to give power to the Cabinet Secretary to prescribe the limits of drinks or drugs a driver of a motor vehicle can consume.	There is need to: (a) define drink or drug more precisely; (b) Define who the relevant Cabinet Secretary is; and why it should be left to the Cabinet Secretary to define the limits. The Proposed amendment was rejected by the Committee

		<p>the limits prescribed by the Cabinet Secretary, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for term not exceeding two years, or to both.</p>			
	s.91(1)	<p>Insert the following new paragraph immediately after paragraph (h) -</p> <p>(i) Causes any damage to the road.</p> <p>Insert the following new subsection immediately after subsection (2) -</p> <p>(3) Any person who contravenes the provisions of this section commits an offence and is</p>		<p>The proposed amendment seeks to create the offence and prescribe the penalties for any damage to roads.</p>	<p>This proposal is in order as it ensures that any damage to the road is punishable.</p> <p>The Proposed amendment was adopted by the Committee</p>

		liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.			
	s.94	Delete and substitute therefor the following new section- 94. Any person who contravenes or fails to comply with any of the provisions of this Part commits an offence and is liable on conviction, where no other penalty is specifically provided, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.		The proposed amendment seeks to enhance the penalty provided with respect to contravention of the provisions of the Part from Kshs. 5, 000 to Kshs. 20, 000 or imprisonment for a term not exceeding one year.	This amendment is in order as it caters for instances whereby the offender cannot raise the necessary fine. The Proposed amendment was adopted by the Committee
	s.104	Delete and substitute therefor the following new		The proposed amendment seeks to correct a drafting error	This amendment is in order as it corrects a drafting error.

		<p>section -</p> <p>104. Any person who contravenes or fails to comply with any provisions of this Part commits an offence and is liable on conviction, where no penalty is specifically provided, to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months.</p>		<p>as it was not clear whether the maximum penalty was Kshs. 10, 000 or Kshs. 20, 000 and also introduce the provision of imprisonment for a term not exceeding six months.</p>	<p>The Proposed amendment was adopted by the Committee</p>
	s.106(1)	<p>Insert the words “or the East African Community Vehicle Load Control Act, 2016” immediately after the words “this Act”.</p>		<p>The proposed amendment seeks to recognize the East African Community Vehicle Load Control Act, 2013 with respect to contravention of the provisions of the Act on removal of vehicles from the road.</p>	<p>The section is sometimes abused by police officers and should be amended further:</p> <ul style="list-style-type: none"> (a) to define the time period for the vehicle to be considered abandoned; and (b) to provide that the police officer should not be below the rank of inspector. <p>The Proposed amendment was</p>

					adopted by the Committee
	106 (8)	Delete and substitute therefor the following new subsection- (8) Any person who fails to comply with this section or order given under thereunder commits an offence and is liable on conviction, where no penalty is specifically provided, to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months.		The proposed amendment seeks to prescribe a general penalty for contravention of the provisions of the section.	Delete the word "under" appearing immediately before the word "thereunder" as it is unnecessary. The Proposed amendment was adopted by the Committee
The Kenya Roads Board Act, 1999 (No.7 of 1999).	s.12(2)	Delete and substitute therefor the following new subsection- “(2) A person shall be qualified for appointment as the Executive Director if that person-		The proposed amendment seeks to: (a) widen the professionals who may qualify as Executive Director; (b) Prescribe additional requirements for	The qualifications for the Executive Director should be the same as those in the Roads Bill, 2017 which is currently under consideration by the Senate.

		<p>(a) holds a Master's degree in finance, accounting, law or engineering from a university recognised in Kenya;</p> <p>(b) has knowledge and at least ten years' experience in a relevant field;</p> <p>(c) has served in a senior management position for a period of at least five years; and</p> <p>(d) Satisfies the requirements of Chapter Six of the Constitution.</p> <p>”</p>		<p>qualification for appointment of the Executive Director of the Kenya Roads Board, that is, a Master's degree from a university recognised in Kenya and have served in a senior management position for a period of at least five years.</p>	
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The National Construction Authority Act, 2011 (No. 41 of 2011).	s.18(5)	Delete the expression “section 14 and 16” and substitute therefor the expression “section 16”.	The National Construction Authority was agreeable to all the proposed amendments.	The proposed amendment seeks to correct a cross-referencing error. Section 14 deals with co-option of members and establishment of Committees and is not applicable to section 18 (5).	The Act should be amended to reflect the change of term from “Minister” to “Cabinet Secretary”. The Committee accepted the amendment.
	s.27(3)	Insert the words “under section 26(4)” at the end thereof.		The proposed amendment seeks to correct a drafting error as the section is incomplete.	This is in order. The Proposed amendment was adopted by the Committee
	s.30(c)	Delete the expression “expression “Section 31”.		The proposed amendment seeks to correct a cross-referencing error.	This is in order. The Proposed Amendment was adopted by the Committee
	s.42(2)	Delete the expression “section 29” appearing in paragraph (a) and substitute therefor the expression “section 31”.		The proposed amendment seeks to correct a cross-referencing error.	This is in order. The Proposed amendment was adopted by the Committee
The Engineers Act 2011	s.23(6)	Delete the full stop at the end thereof and add	The Engineers Board of Kenya was	The proposed amendment seeks to provide for extension	This is in order. However, it may be abused by foreign

<p>(No. 43 of 2011).</p>		<p>the words “and may approve the extension of the renewal of such registration for the purpose of completing the works referred to in subsection (4)”.</p>	<p>agreeable to the proposed amendment.</p> <p>Kenneth Samoei</p> <p>(a) S. 5 (g) (i)- delete the word “nominated” and substitute therefor the word “elected”;</p> <p>(b) S. 7 (1) (l) – delete as the provision contravenes the Universities Act, 2012;</p> <p>(c) S. 7 (1) (o) – delete the word “school of engineering” and substitute with the word “programme”. This is because the Board draws</p>	<p>of renewal of registration of foreign engineers where works have not been completed.</p>	<p>engineers who may desire to extend their stay in the country.</p> <p>The Proposed amendment was adopted by the Committee</p>
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			<p>funds from the exchequer. The fund earmarked for establishing a school will be prudently utilized in enhancing university facilities.</p> <p>(d) S. 16 (a) (iii) – insert the words “or any professional as may be approved by the Board”;</p> <p>(e) S. 46 – delete. This section contravenes section 5A of the Universities Act, 2012 and has rendered many government sponsored students and</p>	
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			<p>graduates in limbo. This provision also interferes with the autonomy of a chartered university.</p> <p>NB. These provisions are in contravention of Standing Order 133 (5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject matter or proposes to unreasonably or unduly expand the subject of the Bill or is inappropriate or is not in logical sequence to the subject matter</p>		
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<p>The National Transport and Safety Authority Act, 2012 (No. 33 of 2012).</p>	<p>s.2</p>	<p>Delete the definition of the word “Cabinet Secretary” and substitute therefor the following new definition -</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the Authority.</p>	<p>of the Bill</p> <p>The National Transport and Safety Authority (NTSA) and the Ministry of Transport, Infrastructure and Urban Development were opposed to all the proposed amendments on grounds that they did not originate from them; they were never consulted or informed; the proposed amendments are substantive in nature and that the Statute Miscellaneous Acts are limited to minor corrections and amendments; the proposed amendments have far reaching consequences and if adopted would reverse the tremendous gains achieved by NTSA; the proposed</p>	<p>The proposed amendment seeks to provide that reference to the Cabinet Secretary in the Act refers to the Cabinet responsible for the Authority as opposed to the Cabinet Secretary responsible for matters relating to transport.</p>	<p>The Cabinet Secretary is functionally responsible and cannot just be responsible to a specific body.</p> <p>The Proposed amendment was rejected by the Committee</p>
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			<p>amendments bring ambiguity as opposed to clarity on the legal status, role, functions and performance of NTSA; and the proposed amendments create glaring vacuums and lacunas as they lack transition clauses, should the amendments be adopted.</p>		
	s.3(2)	Delete.	<p>Mr. Stephen Kiama It is not clear what will remain of the Authority if these amendments are implemented.</p>	<p>The proposed amendment removes the body corporate powers of the Authority.</p>	<p>The Proposed amendment is substantive in nature and requires broad stakeholder engagement hence should not be in the Statute Law Miscellaneous (Amendment) Bill which is supposed to make only minor amendments to existing legislation.</p> <p>The Proposed amendment was rejected by the Committee</p>
	s.5	Delete.	<p>It is not clear what will</p>	<p>The proposed amendment seeks to</p>	<p>The Proposed amendment is substantive in nature</p>

			happen to the already established offices.	remove the requirement for the Authority to have its headquarters in Nairobi and establish offices elsewhere in Kenya.	and requires broad stakeholder engagement hence should not be in the Statute Law Miscellaneous (Amendment) Bill which is supposed to make only minor amendments to existing legislation. The Proposed amendment was rejected by the Committee
	s.15(1)	Delete the word “Board” and substitute therefor the word “Cabinet Secretary”.	It is not clear what will be the role of the Board in the recruitment of the Director-General.	The proposed amendment provides that Director General of the Authority is to be appointed by the Cabinet Secretary as opposed to the Board.	The Proposed amendment is substantive in nature and requires broad stakeholder engagement hence should not be in the Statute Law Miscellaneous (Amendment) Bill which is supposed to make only minor amendments to existing legislation. The Proposed amendment was rejected by the Committee
	(3)	Delete the word “Board” and substitute therefor the word “Cabinet Secretary”.	This amendment does not make sense.	The amendment does not make sense as the Director-General cannot be an <i>ex officio</i> member of the Cabinet	The Proposed Amendment is substantive in nature and requires broad stakeholder engagement hence

				Secretary.	should not be in the Statute Law Miscellaneous (Amendment) Bill which is supposed to make only minor amendments to existing legislation.
					The Proposed amendment was rejected by the Committee

3. General Observations

While the Committee deliberated on the Bill, it made the following general observations-

- i. As regards to the proposed amendments to the Housing Act, Cap 117, the Committee noted that the Cabinet Secretary should appoint a maximum of six members to the Corporation taking into account the regional and ethnic balance of the people of Kenya, gender, and representation of youths and persons with disabilities.
- ii. As regards to the proposed amendments to the Kenya Ports Authority Act, Cap 309 and the Kenya Airports Authority Act, Cap.395, the Committee was agreeable to the proposed amendments which seek to provide that arbitrators in disputes under the two statutes shall be appointed by the Registrar of the Nairobi Centre for Arbitration instead of the Chief Justice since it would encourage the independence of the courts in matters arbitration.
- iii. As regards to the proposed amendments to the Traffic Act, Cap 403, the Committee noted that-
 - (a) The proposed amendments seek to align the Traffic Act, Cap 403 to the National Transport and Safety Authority Act, No.33 of 2012 since the amendments seek to, among other things define and provide for the appointment of inspectors of motor vehicles and designate authorized officers by the National Transport and Safety Authority; and
 - (b) The proposed amendments seek to recognize the East African Community Load Control Act, 2013 as regards the removal of vehicles from the road and also create an offence with

respect to driving of commercial vehicles while being intoxicated and prescribe a penalty for the same or in accordance with the East African Community Load Control Act,2013;

- iv. As regards to the proposed amendments to the Kenya Roads Board Act, No.7 of 1999, the Committee noted that the Kenya Roads Bill, 2017 which was at the Senate had similar amendments on the qualifications of the Executive Director of the Board and had been passed by the House.
- v. With respect to the proposed amendments to the National Construction Authority Act, No. 41 of 2011, the Committee noted that the amendments were minor amendments seeking to correct cross-referencing mistakes.
- vi. As regards to the proposed amendments to the Engineers Act, No. 43 of 2011,the Committee noted that the amendments only seek to provide for the extension of the renewal of registration of foreign engineers where works have not been completed.
- vii. With respect to the proposed amendments to the National Transport and Construction Authority Act, No.33 of 2012, the Committee observed that the proposed amendments were substantive in nature seeking to remove the corporate powers of the Authority and to also have its offices and establish offices elsewhere.
- viii. The proposed amendments by Mr. Kenneth Samoei to the Engineers Act, No. 43 of 2011 were in contravention of Standing Order 133 (5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject matter or proposes to unreasonably or unduly expand the subject of the Bill or is inappropriate or is not in logical sequence to the subject matter of the Bill.

4. Committee Recommendations

Having considered the Bill, the Committee recommends that-

- i. Section 3(2) of the Housing Act, be further amended in paragraph (d) by-
 - (a) deleting the words “not less than five nor more than seven” and substituting therefor the words “six”; and
 - (b) by inserting the following new paragraph immediately after paragraph (d) –

“(h) in appointing the persons under paragraph (d), the Cabinet Secretary shall ensure that

—

- (i) It reflects the regional and ethnic diversity of the people of Kenya;
- (ii) Not more than two thirds of the members are of the same gender; and
- (iii) Youths and persons with disability are represented.

- ii. The Traffic Act, Cap 403 be further amended in section 2 by deleting the definition of the term “driving test examiner”;
- iii. The proposed amendment to section 8 of the Traffic Act, Cap 403 be deleted;
- iv. The proposed amendment to section 57 of the Traffic Act, Cap 403 be deleted;
- v. The proposed amendment to Section 58 of the Traffic Act, Cap 403 be further amended by inserting the words “or in accordance with the East African Commercial Vehicle Load Control Act, 2013” before the words “shall be guilty”;
- vi. The proposed amendment to section 70 (5B) of the Traffic Act, Cap 403 be deleted;
- vii. The proposed amendment to section 85 of the Traffic Act, Cap 403 be deleted;
- viii. The proposed amendment to Section 106 (8) of the Traffic Act, Cap 403 be further amended by deleting the words “under” appearing immediately before the word “thereunder”;
- ix. The proposed amendment to section 12(2) of the Kenya Roads Board Act, No.7 of 1999 be amended by deleting the word “Master’s” appearing in paragraph (a);
- x. The proposed amendment to section 2 of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;
- xi. The proposed amendment to section 3(2) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;
- xii. The proposed amendment to section 5 of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;
- xiii. The proposed amendment to section 15(1) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;
- xiv. The proposed amendment to section 15(3) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;



ENGINEERS BOARD OF KENYA

ENGINEERS BOARD OF KENYA

MEMORANDUM ON PROPOSAL FOR CONSIDERATION BY THE NATIONAL ASSEMBLY

IN THE MATTER OF:

ENGINEERS ACT 2011

SUBMITTED BY:

ENGINEERS BOARD OF KENYA (EBK)

JUNE 2018

Handwritten signature and date: 14/6

1.0 Introduction

The Engineers Board of Kenya (EBK) is a statutory body established under Section 3 (1) of the Engineers Act 2011 and is responsible for the registration of engineers and engineering firms, regulation of engineering professional services, setting of standards, development and general practice of engineering.

Other key mandates and functions of the Board include setting of engineering services and standards, enter and inspect sites where construction, installation, erection, alteration, renovation, maintenance processing or manufacturing works are in progress for the purpose of verifying that professional engineering services are being undertaken by qualified and registered engineers.

2.0 Proposal for consideration by the National Assembly with regard to Engineers Act 2011

Engineers Board of Kenya is proposing the following amendment to the Engineers Act, 2011.

Section 23 (6) be amended as follows:

Delete the full stop at the end thereof and add the words "and may approve the extension of the renewal of such registration for the purpose of completing the works referred to in subsection (4)."

3.0 Rationale for miscellaneous amendment

Section 23(4) of the Act provides that "The registration of a person under this section shall be valid for the period or for the duration of the work specified by the Board"

The amendment seeks to provide clarity on what should happen in an event where a project will not have been completed during the specified period under section 23(4) above.

4.0 Recommendation

Section 23 (6) be amended as follows:

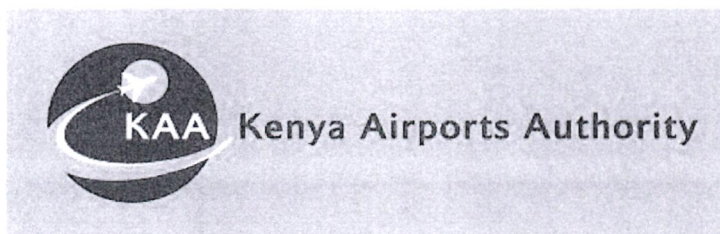
Section 23 (6) be amended as follows:

Delete the full stop at the end thereof and add the words "and may approve the extension of the renewal of such registration for the purpose of completing the works referred to in subsection (4)."

SUBMITTED BY: **ENG. NICHOLAS M. MUSUNI, REGISTRAR/CEO EBK**

SIGNED:

DATED: 14/06/2018



BRIEF ON STAKEHOLDER SUBMISSIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILLS NO. 12)

The Authority is to make submissions on amendment of Section 33(1) of the Kenya Airports Authority Act.

Section 33 (1) of the Kenya Airports Authority Act is on Compensation and states as follows:-

In the exercise of the powers conferred by sections 12, 14, 15 and 16, the Authority shall do as little damage as possible; and, where any person suffers damage no action or suit shall lie but he shall be entitled to such compensation therefor as may be agreed between him and the Authority or, in default of agreement, as may be determined by a single arbitrator appointed by the Chief Justice.

The Amendment Bill in its Memorandum of Objects and Reasons proposes to amend the Kenya Airports Authority Act to provide that arbitrators in disputes under the Act shall be appointed by the Registrar of the Nairobi Centre for International Arbitration in place of the Chief Justice. The Bill intends to do this by amending Section 33(1) as follows:-

Delete the expression "Chief Justice" Authority Act and substitute therefor the words "Registrar of the Nairobi Centre for of International Arbitration established under the Nairobi Centre for International Arbitration Act, 2013".

A benefit of the proposed amendment is that there will be improved turnaround time in resolution of matters referred to arbitration as the process of appointment of arbitrators will be expedited. This is in view of the Registrar unlike the Chief Justice largely handling arbitration, which is only one out of the many avenues of dispute resolution fora.

Notwithstanding the foregoing, the shortcomings of the proposed amendment are that:-

It fails to take cognizance of the industry specific expertise that is required in resolution of disputes arising from the Authority exercising its powers under the Act. This is evident in the proposed amendment's failure to set out the criteria to be employed in appointment of arbitrators in disputes requiring industry specific expertise such as relevant qualifications and experience.

There are no timelines set for appointment of arbitrators by the Registrar and conclusion of the proceedings to ensue thereafter.

To this end the Authority proposes establishment of Dispute Resolution Tribunal as follows:-

Establishment of Tribunal

(1) There is established a tribunal to be known as the Kenya Airports Authority Administrative Review Tribunal which shall consist of—

(a) a Chairperson nominated through a competitive process by the Judicial Service Commission, who shall be a person qualified for appointment as a Judge of the High Court of Kenya;

(b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya through a competitive process with knowledge, experience and professional qualifications in aviation law;

(c) two persons to be recruited through a competitive recruitment process from the aviation industry who shall have knowledge and experience in airport operation matters; and

(d) one other person recruited competitively and who shall be a holder of such other qualifications and experience of proven ability in such other fields as the Cabinet Secretary may deem necessary.

(2) All appointments to the Tribunal shall be done by the Cabinet Secretary by name and through a Gazette notice.

(3) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) In appointing members of the Tribunal, regard shall be taken to ensure that no more than two-thirds of the members of the Tribunal shall be of the same gender and that the chairperson and the vice-chairperson shall not be of the same gender.

Tenure and vacation of office

(1) A member of the Tribunal shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Tribunal shall become vacant—

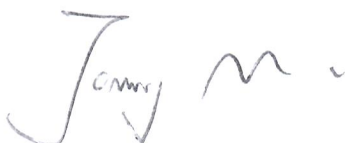
(a) at the expiration of three years from the date of his or her appointment;

(b) if he or she accepts any office the holding of which, if he or her were not a member of the Tribunal, would give rise to the existence of a conflict of interest with his or her membership to the Tribunal;

(c) if he or she is removed from membership of the Tribunal by the Cabinet Secretary upon findings of an inquiry determining his or her failure to discharge the functions of his or her office (whether arising from infirmity of body or mind or from any other lawful cause) or for misbehavior;

(d) if he or she resigns the office of member of the Tribunal; or

(e) upon death.



(3) Members of the Tribunal shall be paid allowances approved by the Cabinet Secretary, in consultation with the Cabinet Secretary for the time being responsible for matters relating to finance.

Secretary to the Tribunal

(1) The Tribunal shall have a Secretary who shall be a public officer appointed by the Cabinet Secretary through an open and competitive process.

(2) The Secretary shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in performance of his or her functions.

(4) The Secretary shall perform any other functions determined by the Tribunal.

Jurisdiction of the Tribunal

The Tribunal shall have the jurisdiction to hear and determine complaints or appeals arising from—

(a) exercise of the Authority's powers under Sections 12, 14, 15 and 16 of the Act;

(b) any exercise of powers to make decisions, but not powers in respect of staff employment, granted to the Managing Director or the Authority under this Act or regulations made thereunder.

Proceedings of the Tribunal

(1) The Tribunal shall, upon an appeal made to it in writing, within thirty days after the occurrence of the event against which a party is dissatisfied, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.

(2) The Tribunal shall sit at such times and in such places as it may appoint by Gazette Notice.

(3) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(4) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.

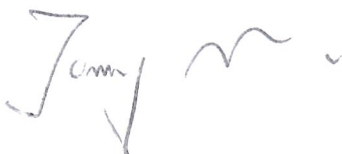
(5) A person who is party to the proceedings before the Tribunal may appear in person or be represented by an advocate of the High Court.

Powers of the Tribunal

(1) On hearing of a complaint or an appeal, the Tribunal shall have all the powers to—

(a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or

(b) summon expert evidence as may be necessary.



(2) Where the Tribunal considers it desirable for the purposes of minimising expenses, to avoid delay or for any special reason, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories have been made to respond.

Awards of the Tribunal

(1) The Tribunal may—

(a) award damages;

(b) confirm, set aside or vary the order or decision in question; or (c) make an order for the maintenance of the status quo of any matter or activity which is the subject of a complaint or appeal before it until the complaint or appeal is determined.

(2) The Tribunal shall have power to award the costs of any proceedings before it and direct that the costs shall be taxed in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(3) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him or her a certificate stating the amount of the costs.

(4) Every certificate issued under subsection (3) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

(5) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto, and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act (Cap. 21) shall apply.

(6) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

(7) All summons, notices or other documents issued under the hand of the Chairperson of the Tribunal shall be deemed to be issued by the Tribunal.

Appointment of assessors

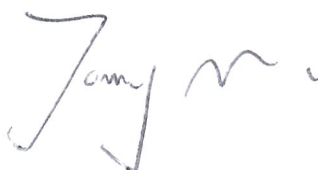
The Chairperson of the Tribunal, in consultation and with the concurrence of two other members of the Tribunal, may appoint in writing any person with special skills or knowledge on aviation issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

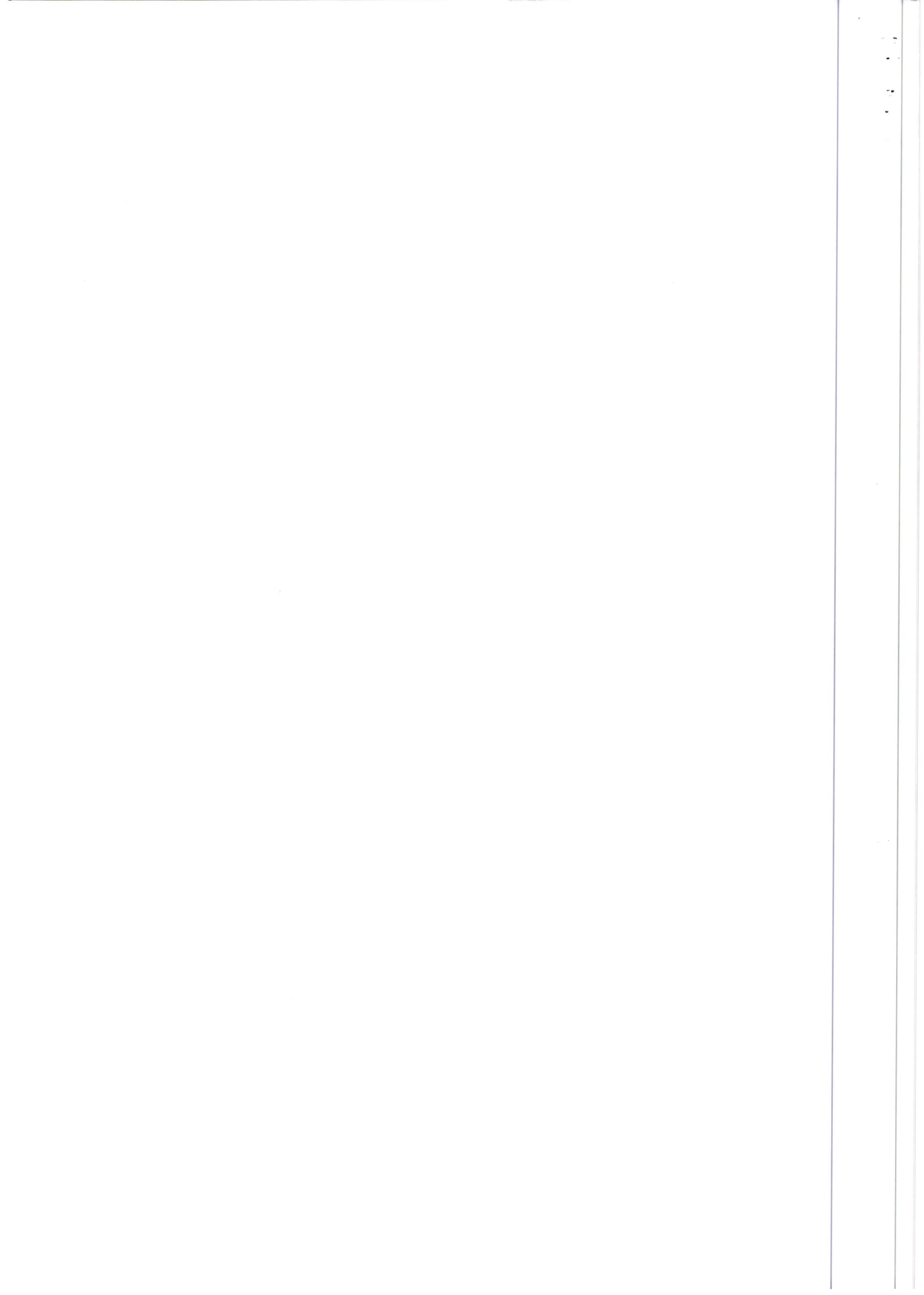
Contempt of the Tribunal

Any person who—

(a) fails to attend the Tribunal after being summoned by the Tribunal to do so;

(b) refuses to take oath or affirmation before the Tribunal, or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;

A handwritten signature in blue ink, appearing to read 'Jimmy' followed by a flourish.



(c) knowingly gives false evidence or information which he knows to be misleading before the Tribunal; or

(d) at any sitting of the Tribunal—

(i) wilfully insults any member or officer of the Tribunal; or

(ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal;

(e) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal, commits an offence under this Act and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings or imprisonment to a term not exceeding three months, or to both.

Quorum for Tribunal

For the purposes of hearing and determining any cause or matter under this Act, the Chairperson and two other members of the Tribunal shall form a quorum.

Disclosure of interest

A member of the Tribunal who has a direct interest in any matter that is the subject of the proceedings before the Tribunal shall disclose in writing the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

Appeals to the High Court

(1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court.

(2) A decision or order of the Tribunal shall be enforced forthwith except where an appeal has been lodged or commenced provided that the lodging or commencing of an appeal shall not on its own, operate as a stay.

(3) Upon the hearing of an appeal under this section, the High Court may—

(a) confirm, set aside or vary the decision or order in question;

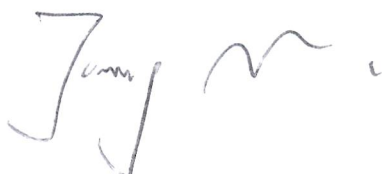
(b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may deem fit to give;

(c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

(d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

Appeals to the Court of Appeal

A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal on matter of law.



Protection from personal liability

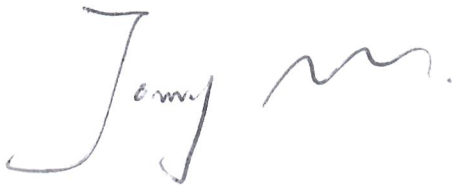
The Chairperson or any other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of, and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal.

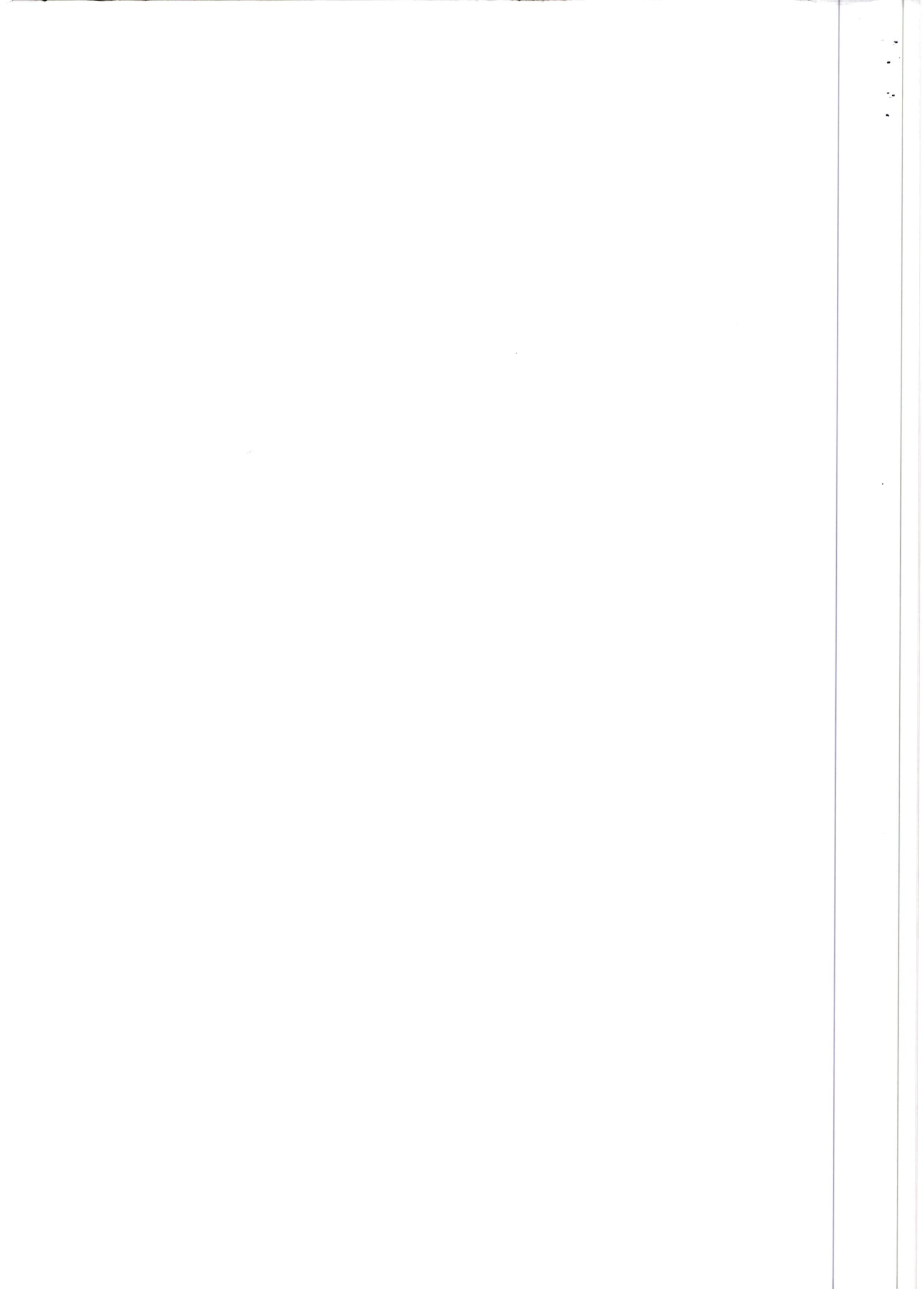
STATUS OF THE KAA LEGAL INSTRUMENTS

The Authority is in the process of reviewing its Act to align it to the provisions of the Constitution, the regulatory framework governing the aviation industry and best practice. The Draft Bill has been forwarded for the Ministry for concurrence and forwarding to the Office of the Attorney General for their review and formulation of the final draft.

A *layman's draft* of the KAA regulations is being prepared and the same upon finalization shall be forwarded to the Office of the Attorney General for their review and formulation of the final draft.

The process of harmonization, consolidation and review of the Authority's rates for Animal Holding; the Concession Order of 1996; Rental and Building; and Ground Transportation has commenced. To this end as the Authority prepares the *layman's draft* of the regulations as a matter of prudence it has requested Ministerial approval to submit the proposed rates to the Committees on Transport and Delegated Legislation for their deliberation and facilitation of stakeholder engagement for purposes of Gazettement.

A handwritten signature in cursive script, appearing to read "Jerry M.", is located at the bottom of the page.





NTSA SUBMISSIONS TO THE PROPOSED AMENDMENTS TO THE TRAFFIC ACT CAP 403 - STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2018

Section 4(1)(e) of the National Transport and Safety (NTSA) Act places the responsibility to administer the Traffic Act on NTSA.

Pursuant to this responsibility NTSA proposed and supports the below listed amendments which are contained in the Miscellaneous Amendment Bill 2018:-

SECTION	PROPOSED	RATIONALE
Section 45 Prohibition of drinking when driving or in charge of a Public Service Vehicle.	Any person who, when driving or in charge of, or during any period of duty in connexion with the driving of, a public service vehicle, or a commercial service vehicle drinks any intoxicating liquor shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both	Inclusion of commercial service vehicles in this section to prohibit them from driving when consumed any intoxicating liquor.
Section 39(1)	<i>(1) Driving test for the purpose of this Act shall be conducted by the Authority.</i>	Driver test examiners are defined in section 2 as those persons appointed under section 3(3) of the Traffic Act. However following the enactment of The National Transport and Safety Authority Act 2012, section 3 was amended by deleting section 3(3). This therefore means that there is no definition of a driver test examiner yet section 39(1) provides for driving test to be conducted by them.
Section 70(5B).	Deletion of section 70(5B). This Section provides for a minimum penalty of Ksh 20,000 for	This section has caused a lot of confusion as some proponents have argued that the section means that a person does not commit an offence

	<p>anyone exceeding the prescribed speed limit by more than 20 kph.</p>	<p>unless the speed limit is exceeded by more than 20 kph.</p> <p>Others including the Authority have argued that this section creates a minimum penalty for those who violate the speed limit by more than 20 kph.</p> <p>This confusion has also extended to the Judiciary with some courts adopting the minimum penalty interpretation and others the no offence interpretation. In order to clarify this we propose the deletion of Section 70(5B).</p>
Section 8	<p>insert the following new subsection)-</p> <p>"(2) Any person who issues a motor vehicle insurance cover to a person other than the registered owner of the vehicle commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding two years for a first offence, and to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding two years for each subsequent offence.</p>	<p>The inclusion of this section will not only ensure that motor vehicle insurance covers are given to the true owners of the vehicle therefore minimizing fraud but also support the implementation of section 9 which requires the transfer of ownership of vehicles within 14 days</p>
Section 85 Driving under influence of drink.	<p>85. Subject to section 45, any person who when driving or attempting to drive, or when in charge of a vehicle, other than a motor vehicle, on a road or other public place is under the influence of drink or a drug <u>beyond the limits prescribed</u> by the Cabinet Secretary shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.</p>	<p>i. To ensure that there is no conflict with section 45 which prohibits the consumption of any intoxicating liquor for PSV (and CSV, if amended).</p> <p>ii. To support the use of prescribed limits for all other drivers as provided in the Breathalyzer Rules.</p>



**NATIONAL TRANSPORT AND SAFETY
AUTHORITY
(NTSA)**

**NTSA MEMORANDUM ON THE STATUTE
LAW (MISCELLANEOUS AMENDMENTS) BILL,
2018**

NTA

EXECUTIVE SUMMARY.

This memorandum contains the National Transport and Safety Authority's (NTSA) submissions on the proposed amendments to the National Transport and Safety Act No 33 of 2012 contained in the Statute Miscellaneous Bill 2018.

The Memorandum is divided into the following four parts:-

Part 1 – Why NTSA was established. This part gives a brief historical account of the factors that necessitated the formation of NTSA. This include the need for a strong institutional framework in the management of the road transport subsector whose management was not only fragmented but disjointed and uncoordinated prior to the formation of NTSA.

Part 2 – Achievements of NTSA. This part analyses the achievements NTSA has accomplished in the 3 years it has been in existence in terms of improved service delivery, reduction in loss of life through road accidents, enhanced legislative and regulatory environment and revenue growth for the government in the road transport subsector.

Part 3 – Analysis of the proposed amendments. This part gives a comprehensive analysis of the proposed amendments and subsequent implications.

Part 4 – Observations and Recommendations. This part contains NTSA's observations and recommendations to the proposed amendments. This include the lack of participation or involvement of NTSA in the formulation of the proposed amendments and the adverse consequences and reversal of gains made in the road transport subsector attendant to the proposed amendments. .

1.0. WHY NTSA WAS ESTABLISHED

Before the formation of the Authority its current functions were split between several different Government Agencies/institutions as follows:-

Institutional set up prior to NTSA's establishment

Agency/Institution	Function
Ministry of Transport	Policy formulation
Transport Licensing Board (TLB)	Transport licensing and regulation.
National Road Safety Council	Road safety education, road safety audit, road safety research and road safety data
National Police Service (Motor Vehicle Inspection Unit)	Vehicle inspection and certification
Road Transport Department/ Registrar of Motor Vehicles	Vehicle registration and driver licensing
Kenya Revenue Authority/ Registrar of Motor Vehicles (KRA)	Collection of Revenue, Vehicle registration, Driver licensing.
National Police Service/Traffic Police Department	Driver testing and Enforcement of traffic laws.
Ministry of Local Government	Allocation of pickup and drop off points and licensing of taxis
Ministry of Roads Infrastructure	Infrastructure Development

The above institutional framework where multiple agencies or institutions dealt with different aspects of road transport and safety led to a scenario where the management of the road transport subsector in Kenya was not only fragmented but disjointed and uncoordinated.

These disjointed and uncoordinated approach to the management of road transport subsector led to a weak institutional framework resulting in an unsafe, unreliable and inefficient road transport system in Kenya.

Indeed the Sessional Paper Number 2 of 2012 on Integrated National Transport Policy identified the institutional framework as was as the main

challenge in the management of the road transport subsector in Kenya and recognized the need for a single lead agency.

Further the UN Decade of Action (The Moscow Declaration) which Kenya is a party to recommended the formation of a lead agency to address Road Safety challenges.

In recognition of the above, the Ministry of Transport and Infrastructure (MoTI) engaged various stakeholders including Government, Non-governmental agencies, Transport operators, Parliamentary committees on Transport in formulating the bill that was presented in Parliament leading to the establishment of NTSA via Act. No.33 of 2012 whose main functions were to:-

- (a) advise and make recommendations to the Cabinet Secretary on matters relating to road transport and safety;
- (b) implement policies relating to road transport and safety;
- (c) plan, manage and regulate the road transport system in accordance with the provisions of this Act;
- (d) ensure the provision of safe, reliable and efficient road transport services; and
- (e) administer the Traffic Act.

The delinking process from the multiple agencies and institutions was concluded in 2017 and NTSA has established itself as the lead agency in the management of the road sub sector.

The Authority is headquartered in Nairobi with 17 regional offices across the country and a dedicated staff complement of 703 employees.

2.0. ACHIEVEMENTS OF NTSA TO DATE

NTSA started its full operations in July 2014. Over the short time of its existence the Authority has achieved the following;

2.1. Improved service delivery.

NTSA has drastically improved service delivery to the public by leveraging on ICT and reengineering established processes in the following areas:-

a. Motor Vehicle Inspection

Before the formation of NTSA, motorists waited for more than three (3) days in queues for vehicles to be inspected at the centers. Indeed it was a common sight to find numerous vehicles parked for several kilometers outside inspection centers.

This was mainly due to inefficient processes and a dilapidated motor vehicle inspection infrastructure where all services were done manually.

NTSA upon delinking embarked on modernizing the Inspection centers (Nairobi -Likoni and Mombasa - Miritini inspection centers). Further NTSA invested in ICT in the management of the inspection process resulting in the online booking of motor vehicle inspection. Under this system, booking and payment is done online from the convenience of a motorists' home or office and the motorist is given the opportunity to choose the date, venue and time of inspection. This has significantly improved service delivery resulting in tremendous savings in terms of time and money.

There has also been a significant increase in the number of vehicles undergoing inspection from one hundred and fifty thousand (150,000) annually, to three hundred and forty eight thousand (348,000). It is important to note that the inspection process significantly contributes to the reduction in road fatalities by assessing the road worthiness of vehicles on our roads.

Currently NTSA is in the process of rehabilitating and upgrading the other remaining Inspection centers while it pursues outsourcing of vehicle inspection services.



b. Driving Licenses, Motor Vehicle Registration and Licensing Process

Before the inception of NTSA, the process of applying or renewing a driving licenses, road service licenses and registration of vehicles was time consuming and cumbersome with drivers, motorist and owners having to queue all day at KRA banking halls.

Today, the same process hardly takes ten minutes and can be done from the comfort of the driver's offices or homes. This has greatly improved efficiency, customer service and ease of doing business.

It is important to note that NTSA inherited outdated systems for registration and licensing from KRA. These systems were developed in-house and were easily manipulated without audit trail. In addition, they were not web based forcing customers to visit KRA Offices for services hence poor service delivery.

Through the support of the World Bank and ICT Authority, NTSA has acquired a state of the art system; the Transport Integrated Management System (TIMS). The system incorporates all functions of NTSA into a single database. This has transformed the way the Authority interacts with its customers in terms of access and convenience as the system is web based and is available 24/7. Further, the Authority has eliminated the need for cash transactions and minimized human interaction in our processes. The online platform is cost saving, transparent and accountable.

In addition NTSA is currently rolling out the new generation Driving License which has the following features: identifying the holder through biometrics, demerit point system and a payment wallet to facilitate the payment of instant fines.

In conclusion it is worthwhile to note that NTSA has made tremendous strides in improving service delivery to the public by having all its services online and streamlining all processes. This has resulted in increased efficiency, improved accessibility to services (the public can access the services from anywhere and at any time through the ecitizen portal), sealed revenue leakages and enhanced accountability.

2.2 Reduction in loss of lives through road accidents.

The burden of road crashes and injuries on Kenya is immense. An estimated 3,000 deaths from road crashes occur annually in Kenya with an estimated economic cost of 5.6% of the GDP~300 billion Kenya shillings annually.

Since its formation NTSA has managed to considerably reduce the loss of lives through road fatalities. This reduction is directly attributable to the efforts of NTSA through the following;-

- Implementation of pedestrian safety interventions including the installation of pedestrian fences (guard rails) along identified High risk roads in Nairobi. The initiative saw a reduction of pedestrian fatalities by 40%.

- Enhanced coordination and harmonization of the activities of various Road safety actors including Government agencies and private sector players through the development of a National Road Safety Action Plan.

- Provision of strategic leadership and direction in formulation and implementation of Road Safety Prevention and mitigation Programs in line with the five pillars of the UN Decade of Action for Road Safety 2011-2020.

- Improved data collection and analysis enabling identification of high risk roads, drivers, vehicles and times which inform intervention measures and priority areas for action.

- Development of a new and comprehensive driver training and testing curriculum. The aim of this curriculum is to professionalize and standardize the training of drivers for quality hence a positive impact on road safety.

- Establishment and operationalization of the County Transport and Safety Committees (CTSCs) as provided for in the NTSA Act 2012. Their primary role is to oversee the management and regulation of the road transport system by the Authority at the county level.

- Enhancement of knowledge and public awareness on safer road use through various programs and campaigns targeting all categories of road users particularly on the highest risk roads through meetings, media campaigns, Alco-blow operations and spearheading the development of Road safety incorporation into the new basic education curriculum.



-Conducting road audits on high risk and newly built to establish the risks and safety interventions required.

In conclusion it is worthwhile to note that road fatalities have reduced despite an increase in the risk factors such as vehicle population and road network.

2.3 Enhanced legal regulation and management of the Road Transport Subsector.

NTSA has since 2014 developed and caused the enactment of several statutory instruments to enhance the regulation and management of the road transport sub sector as detailed below:

	REGULATION	PURPOSE
1	NTSA Operation of Motorcycles Regulations 2014.	This regulation is currently in force and provides a legislative basis for the regulation of operation of motorcycles and in particular boda boda and tuk tuks.
2	NTSA Operation of Public Service Vehicles 2014.	Currently in force and provides a legislative basis for the regulation of operation of public services vehicles. It introduced the requirements of Sacco's and body corporates.
3	NTSA Operation of Tourist Service Vehicles 2015.	Currently in force and its purpose is twofold:- <ul style="list-style-type: none"> - To differentiate the operation of tourist service vehicles (TSV) from public service vehicles. - To regulate the activities of TSVs.
4	Traffic Registration Rules 2016.	Currently in force and its purpose is twofold:- <ul style="list-style-type: none"> -to introduce and anchor the new generation number plates in law. -to introduce and anchor in law the third license plate sticker (e-sticker).

5	Traffic Minor Offences 2016 (Instant fines).	Though enacted, is not operational due to a pending court case. Its purpose was to provide a legislative basis for the instant fines for minor offences.
6	NTSA Operations of Commercial Service Vehicles.	Not yet enacted and its purpose is to provide a legislative basis for the regulation of the activities of commercial vehicles.
7	Traffic Driving School and Instructor Rules.	Currently in force and provides a legislative basis for the regulation of driving schools, instructors and driving licenses.
8	The Motor Vehicle Inspection Regulations, 2018	Not yet enacted. Its purpose is to provide a legislative basis for the inspection of all vehicles and out sourcing of inspection centers.
9	Revision of Traffic Act	The Authority is currently undertaking an entire overhaul of the Traffic Act Cap 403.

2.4 Increase in Revenue for the Government.

Before NTSA was formed, the total traffic revenue collected by various government agencies in the road transport sub sector was slightly above Kshs. 2 Billion. Owing to the introduction and implementation of various interventions and innovations by NTSA, the revenue has grown to close to Ksh. 4 Billion which translates to a revenue increase for the Government of 100%. Of this total amount collected, 27% is Appropriation in Aid whilst 73% is Exchequer revenue.

3 ANALYSIS OF THE PROPOSED AMENDMENTS

The Statute miscellaneous Bill 2018 proposes to make the following amendments to the NTSA Act No 31 of 2012 whose effect is as follows:-

Amendment 1.

Section proposed to be amended:- Section 2 NTSA Act

What the section currently provides

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to transport;

Proposed amendment.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the Authority”.

Implication.

-The effect of this amendment is to create ambiguity to the definition of the term Cabinet Secretary. If the amendment is adopted, the Cabinet Secretary referred to in the Act becomes ambiguous and capable of different interpretations.

- The functions of the Authority as listed in the NTSA Act relate to the transportation sector. Therefore the appropriate Cabinet Secretary responsible for matters relating to transport is the appropriate Cabinet Secretary in charge of transport as it currently provided.

Amendment 2.

Section proposed to be amended:- Section 3(2) NTSA Act

What the section currently provides

The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing money;

(d) entering into contracts; and

(e) Doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

Proposed amendment.

Delete the whole section 3(2) of the Act.

Implication.

- The implication of these amendment is to revoke the legal status of the Authority as a body corporate thereby reducing the Authority to a non-legal entity that cannot:-

-sue or be sued.

-own property.

-borrow money.

-enter into contracts.

-do or perform all other things or acts for the proper performance of its functions.

-The import of this amendment is to strip NTSA of its legal character. This has serious legal implications in relation to:-

-all ongoing legal cases.

-all ongoing contracts valued at approximately valued at over 2 billion.

-staff complement of over 700 employees.

-ownership of property including inspection centers, vehicles and other assets including TIMS system.

- This amendment shall further have the effect of creating a lacuna or vacuum on the management of the road transport subsector and performance of the functions of the Authority.

Amendment 3.

Section proposed to be amended:- Section 5

What the section currently provides

(i)The Headquarters of the Authority shall be in the capital city.



(ii)The Authority may establish such other offices anywhere in Kenya as it may consider necessary for the discharge of its functions.

Proposed amendment.

Delete the whole section 5 of the Act

Implication.

- . The amendment not only creates ambiguity and confusion as to the headquarters and location of NTSA offices but also creates a vacuum as to the location of the headquarters of NTSA.

-The amendment also strips the power to create regional offices thereby depriving Kenyans of their constitutional right to access services.

- The amendment also limits the operations and functions of the Authority.

Amendment 4

Section proposed to be amended:- Section 15(i)

There shall be a Director-General of the Authority who shall be competitively recruited and appointed by the Board, on such terms and conditions as the Board shall determine.

Proposed Amendment.

Delete the word "Board" and substitute therefor the word "Cabinet Secretary".

To read:-

There shall be a Director-General of the Authority who shall be competitively recruited and appointed by the Cabinet Secretary , on such terms and conditions as the Cabinet Secretary shall determine.

Implication.

-The amendment is in conflict with the State Corporations Act which provides for the recruitment of the Director General by the Board and appointment by the Cabinet Secretary.

-It negates the role of the board in the recruitment process yet the Director General is answerable to the board.

Amendment 5.

Section proposed to be amended:- Section 15(3)

The Director-General shall be an *ex officio* member of the Board and shall have no right to vote at any meeting of the Board.

Proposed Amendment.

Delete the word "Board" and substitute therefor the word "Cabinet Secretary"

To read:-

The Director-General shall be an *ex officio* member of the Cabinet Secretary and shall have no right to vote at any meeting of the Cabinet Secretary.

Implication.

This is an absurd amendment as the Director General cannot be an ex-official member of the Cabinet Secretary and cannot vote at any meeting of the Cabinet Secretary.

4 NTSA OBSERVATIONS AND RECOMMENDATIONS

1. These proposed amendments did not originate from NTSA.
2. NTSA was never consulted or informed of the proposed amendments, the objects and the intention of the amendments despite the fact that the Authority by virtue of section 4 (1)(e) of the NTSA Act is charged with the legal responsibility of administering the Traffic Act.
3. It is noted that the proposed amendments are substantive in nature and it is our understanding that amendments as contained in Statute Miscellaneous Acts are limited to minor corrections or amendments.
4. Kenya is viewed in the Region (EAC, COMESA, and SADC) as having the best institutional framework for road transport management through NTSA. The proposed amendments will potentially lead to departure from international best practice and the UN Decade of Action.
5. The proposed amendments have far reaching consequences as illustrated and in particular the amendment of section 5(3) and if adopted would reverse the tremendous gains achieved by NTSA thus far.



6. The proposed amendments bring ambiguity as opposed to clarity on the legal status, role, functions and performance of the Authority.
7. The proposed amendments create glaring vacuums and lacunas as they lack transition clauses should the amendments be adopted. For example it is unclear who assumes legal responsibility for the ongoing legal cases, contracts, assets, liabilities and staff compliment of 703 Kenyans employed by NTSA.

Based on the above NTSA recommends the rejection of the proposed miscellaneous amendments to the NTSA Act 2012 in their entirety.

MINUTES OF THE THIRTY SEVENTH (37TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 19TH JUNE 2018 AT 9.30 A.M. IN 11TH FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. Samuel Arama
3. Hon. Suleiman Dori Ramadhani
4. Hon. Ahmed Abdisalan Ibrahim
5. Hon. Kulow Maalim Hassan
6. Hon. Mugambi Murwithania Rindikiri
7. Hon. Peris Pesi Tobiko
8. Hon. Rehema Dida Jaldesa
9. Hon. Shadrack John Mose
10. Hon. Tom Mboya Odege
11. Hon. Vincent Kemosi Mogaka
12. Hon. Dominic Kipkoech Koskei
13. Hon. Rigathi Gachagua
14. Hon. David Njuguna Kiaraho
15. Hon. Johnson Manya Naicca

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria - Vice Chairperson
2. Hon. Ahmed Bashane Gaal
3. Hon. Gideon Mutemi Mulyungi

MEMBERS ABSENT WITHOUT APOLOGY

1. Hon. Savula Ayub Angatia

FRIEND OF THE COMMITTEE

1. Hon. Chris Wamalwa - Member for Kimilili

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant II
2. Mr. Ahmed Salim A. - Clerk Assistant III
3. Ms. Mercy Wanyonyi - Legal Counsel II
4. Mr. James Muguna - Research Officer
5. Mr. Eugene Luteshi - Audio Officer
6. Ms. Zainab Wario - Sergeant at arm
7. Mr. Yezziel Jillo - Sergeant at arm
8. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

2. Mr. Nicholas Bodo - Ag. Director, Air Transport
3. Mr. Gilber Kibe - Director General. KCAA
4. Mr. Conrad Mochu - M.D. PR Agency
5. Mr. Martyn Lunani - Chief Investigator of Aircraft Accidents

MIN No. TPWH 150/2018: PRELIMINARIES

The Chairperson called the meeting to order at forty minutes past nine o'clock, with a prayer from Hon. Sam Arama, MP. The Chairperson informed the Committee that the agenda of the meeting was meeting with Kenya Civil Aviation Authority on the statement by Hon. Chris Wamalwa on the aircraft crash of 5th June 2018 and adoption of reports on the Statute Law (Miscellaneous Amendments) Bill, 2018, the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018, the Building Surveyors Bill, 2017 and three delegation reports for visits undertaken in Malaysia, Senegal and South Africa.

MIN No. TPWH 151/2018: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The confirmation of the pending minutes of the previous sittings was deferred to Tuesday, 26th June 2018.

MIN No. TPWH 152/2018: **MEETING WITH THE KENYA CIVIL AVIATION
AUTHORITY (KCAA) ON THE AIRCRAFT CRASH
OF 5TH JUNE 2018**

Mr. Nicholas Bodo, who accompanied the Director General of KCAA, read to the Committee a statement signed by the Cabinet Secretary for Transport, explaining the sequence of events since the occurrence of the aircraft crash of the flight Reg. 5Y-CAC en route from Kitale to Nairobi, which was operated by Fly SAX company.

In the statement, the Cabinet Secretary informed the Committee that investigations were ongoing, and added that the Emergency Locator Transmitter (ELT) was found and was being examined. It was further reported that the aircraft last underwent an inspection and received a Certificate of Release into Service (CRS) on 14th May 2018 and was therefore airworthy. In addition, the aircraft was fitted with a Ground Proximity Warning System (GPWS) and Weather Radar. The Ministry undertook to update the Committee with more information as and when it becomes available.

Members, including the Hon. Chris Wamalwa, were not satisfied with the information from the Ministry. The Committee noted that the government owed the families of the victims and the country at large a detailed and open explanation on the air crash. While interacting with the Ministry representatives, it was noted that there were ten pending investigations into the causes of different air crashes in Kenya and therefore it was important that the matters be brought to a quick and conclusive closure. The Committee further noted with concern that although the flight was given clearance to fly at 13000 feet, the crew requested to fly at 11000 feet despite the fact that the path might not have been favorable to a lower cruise. The Committee also noted that although the flight was destined for Wilson to Kitale, there was an immediate change to Jomo Kenyatta International Airport reportedly for the pilot to drop three passengers who were late for their connecting flight. This information was however subject to verification from the Fly SAX Company. The Director General of KCAA informed the Committee that change of path is

normal as long as the pilot requested from the air traffic control for any reasons deem proper by the pilot.

The Committee was further informed that most of the information spread on both the print and the social media on the accident were untrue but that the relevant government and investigatory agencies cannot respond to such because the investigations were ongoing and therefore it needed extreme level of restraint considering the sensitivity of the matter.

The Ministry officials were asked to send more information and a preliminary report to the Committee by Thursday, 21st June 2018. Further, the KCAA was advised to send a request to aircraft operators to ensure they only use pressurized aircrafts in those routes with bad weather as part of precautionary and safety steps.

MIN No. TPWH 153/2018: **ADOPTION OF THE REPORT ON STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2018**

The Report on Statute Law (Miscellaneous Amendments) Bill, 2018 was adopted by the Committee, having been proposed for adoption by Hon. Peris Tobiko and seconded by Hon. Mugambi Rindikiri.

MIN No. TPWH 154/2018: **ADOPTION OF THE REPORT ON STATUTE LAW
(MISCELLANEOUS AMENDMENTS) (NO. 2) BILL,
2018**

The Report on Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 was adopted by the Committee, having been proposed for adoption by Hon. Samuel Arama and seconded by Hon. Shadrack Mose.

MIN No. TPWH 155/2018: **ADOPTION OF THE REPORT ON THE BUILDING
SURVEYORS BILL, 2018**

The Report on the Building Surveyors Bill, 2018 was adopted by the Committee, having been proposed for adoption by Hon. David Kiharao and seconded by Hon. Rigathi Gachagua.

MIN No. TPWH 156/2018:

**ADOPTION OF THE DELEGATION REPORT ON
THE 9TH WORLD URBAN FORUM (WUF9) HELD IN
KUALA LUMPUR, MALAYSIA**

The Delegation Report on the 9TH World Urban Forum (WUF9) held in Kuala Lumpur, Malaysia on February 2018 was adopted by the Committee, having been proposed for adoption by Hon. Tom Odege and seconded by Hon. Dominic Koskei.

MIN No. TPWH 157/2018:

**ADOPTION OF THE DELEGATION REPORT ON
THE ICAO REGIONAL FACILITATION (FAL)
SEMINAR HELD IN DAKAR SENEGAL**

The Delegation Report on the ICAO Regional Facilitation (FAL) Seminar held in Dakar Senegal on March 2018 was adopted by the Committee, having been proposed for adoption by Hon. Rehema Jaldesa and seconded by Hon. Mugambi Rindikiri.

MIN No. TPWH 158/2018:


**ADOPTION OF THE DELEGATION REPORT ON
THE ICAO REGIONAL SEMINAR HELD IN
JOHANNESBURG, SOUTH AFRICA**

The Delegation Report on the ICAO Regional Seminar held in Johannesburg, South Africa on April 2018 was adopted by the Committee, having been proposed for adoption by Hon. Samuel Arama and seconded by Hon. Vincent Mogaka.

MIN No. TPWH 159/2018:

ADJOURNMENT

There being no other business, the sitting was adjourned at ten minutes past one o'clock. The next meeting to be held on Thursday, 21st June 2018.

Signed.....

(Chairperson)

Date.....
20/06/2018

MINUTES OF THE THIRTY SIXTH (36TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 14TH JUNE 2018 AT 9.30 A.M. IN 2ND FLOOR BOARDROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Shadrack John Mose - Session Chairperson
2. Hon. David Njuguna Kiaraho
3. Hon. Ahmed Abdisalan Ibrahim
4. Hon. Dominic Kipkoech Koskei
5. Hon. Gideon Mutemi Mulyungi
6. Hon. Mugambi Murwithania Rindikiri
7. Hon. Peris Pesi Tobiko
8. Hon. Rehema Dida Jaldesa
9. Hon. Tom Mboya Odege
10. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. David Pkosing - Chairperson
2. Hon. Moses Kuria - Vice Chairperson
3. Hon. Samuel Arama
4. Hon. Suleiman Dori Ramadhani
5. Hon. Ahmed Bashane Gaal
6. Hon. Johnson Many Naicca
7. Hon. Kulow Maalim Hassan

MEMBERS ABSENT WITHOUT APOLOGY

1. Hon. Rigathi Gachagua
2. Hon. Savula Ayub Angatia

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant II
2. Mr. Ahmed Salim A. - Clerk Assistant III
3. Ms. Mercy Wanyonyi - Legal Counsel II
4. Mr. James Muguna - Research Officer
5. Mr. Eugene Luteshi - Audio Officer
6. Mr. Yezziel Jillo - Sergeant at arm
7. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

1. Mr. Charles Hinga - Principal Secretary, Housing
2. Prof. Arch. P. M. Maringa (Ph.D) - Principal Secretary, Transport
3. Mr. Francis Meja - Director General, NTSA
4. Mr. Andrew Saisi - Managing Director, NHC
5. Mr. Johnny Anderson - Managing Director, KAA
6. Lt. Gen. (Rtd) J.N. Waweru - Board Chairman, NTSA
7. Mr. Gitonga M'limbine - Board Member, NTSA
8. Brigut Oyway - Board Member, NTSA
9. Mr. John Muya - U.S., State Dept. of Transport
10. Mr. William Keitany - Ag. Corporate Secretary, NHC
11. Ms. Katherine N. Kisila - Corporation Secretary
12. Mr. Moses A. Nyakiongora, OGW - National Buildings Inspectorate, Nrb
13. Mr. Nicholas M. Musuni - Registrar/CEO, Engineers Board
14. Ms. Catherine Kinya Mungania - Legal & Corporate Affairs Manager
15. Ms. Grace Kamau - Senior Principal State Counsel, Transport
16. Mr. Charles O. Konyango - Director, Urban Development – U.D.D.
17. Mr. Kenneth O. Nyaseda - Senior Physical Planning Officer
18. Mr. Simon Opondo - Dep. Director, State Dept. of Housing
19. Mr. Maurice Akech - Ag. Executive Director, NCA
20. Ms. Angelah Rugut - Principal Air Transport Officer, Transport
21. Mr. Robert Ngugi - Senior Dep. Director, Legal, NTSA

- | | | |
|----------------------------|---|---|
| 22. Mr. Patrick Tilotei | - | P.A. to D.G., NTSA |
| 23. Eng. R. Karani Raymond | - | Manager, Reg. & Compliance, NCA |
| 24. Ms. Yvonne Getugi | - | Senior Legal Officer, NCA |
| 25. Ms. Victoria Mulwa | - | Senior Legal Officer, Kenya Railways |
| 26. Mr. Daniel Moss | - | Legal Assistant, Kenya Airports Authority |

MIN No. TPWH 147/2018: PRELIMINARIES

The Chairperson called the meeting to order at thirty five minutes past nine o'clock, with a prayer from Hon. Tom Odege, MP. The Chairperson informed the Committee that the agenda of the meeting was meeting with different stakeholders on to receive submissions on the Statute Law (Miscellaneous Amendments) Bill, 2018 and the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018.

**MIN No. TPWH 148/2018: SUBMISSIONS FROM STAKEHOLDERS ON THE
STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2018 AND THE STATUTE
LAW (MISCELLANEOUS AMENDMENTS) (NO. 2)
BILL, 2018**

The stakeholders present were welcomed into the meeting. Oral submissions on the Statute Law (Miscellaneous Amendments) Bill, 2018 were received from the Kenya Airports Authority (KAA), from the Engineers Board of Kenya (EBK), from the National Construction Authority (NCA), from the National Transport and Safety Authority (NTSA), from the National Housing Corporation, and from the Ministry through the State Department for Housing & Urban Development and through the State Department for Transport. In their various submissions, the stakeholders largely agreed with the amendments contained in the Bill except for a few proposals which the Committee undertook to consider in the final report. Further, the National Transport and Safety Authority (NTSA) and the Ministry rejected in totality amendments to the National Transport and Safety Authority Act, 2012 on the grounds that both the Ministry and the NTSA were not consulted on the proposals and if allowed to pass, the amendments will have far-reaching consequences on the smooth operations of the NTSA.

Oral submissions on the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 were received from the Ministry with regard to the Urban Areas and Cities Act, 2011 and the Ministry had no objections to the proposed amendments since the amendments were pursuant to paragraph 20 and 21 of Part 1 of the Fourth Schedule to the Constitution which provides that housing policy and general principles of land planning and co-ordination of planning by counties is a function of the national government. The Committee therefore noted that the proposed amendments seek to ensure that county governments comply with the National Urban Development Policy.

MIN No. TPWH 149/2018:

ADJOURNMENT

There being no other business, the sitting was adjourned at thirty minutes past one o'clock. The next meeting to be held on Tuesday, 19th June 2018.

Signed.....



(Chairperson)

Date.....

20/06/2018

MINUTES OF THE THIRTY FIRST (31ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 17TH MAY 2018 AT 9.30 A.M. IN BOMA INN HOTEL, SOUTH C NAIROBI

PRESENT

Hon. David Pkosing - Chairperson
Hon. Samuel Arama
Hon. Johnson Manya Naicca
Hon. David Njuguna Kiaraho
Hon. Ahmed Abdisalan Ibrahim
Hon. Dominic Kipkoech Koskei
Hon. Kulow Maalim Hassan
Hon. Mugambi Murwithania Rindikiri
Hon. Peris Pesi Tobiko
Hon. Shadrack John Mose
Hon. Vincent Kemosi Mogaka
Hon. Gideon Mutemi Mulyungi
Hon. Rigathi Gachagua

ABSENT WITH APOLOGY

Hon. Moses Kuria - Vice Chairperson
Hon. Ahmed Bashane Gaal
Hon. Rehema Dida Jaldesa
Hon. Suleiman Dori Ramadhani
Hon. Savula Ayub Angatia
Hon. Tom Mboya Odege

SECRETARIAT

Ms. Chelagat Tungo - Clerk Assistant II
Mr. Ahmed Salim Abdalla - Clerk Assistant III
Ms. Emma Essendi - Legal Counsel II
Mr. James Muguna - Research Officer
Mr. Abdinasir Moge - Fiscal Analyst
Ms. Zeinab Wario - Sergeant-at-arm
Mr. Eugene Luteshi - Audio Office

MIN No. TPWH128/2018: PRELIMINARIES

The Chairman called the meeting to order at 2:45 p.m. The meeting was then opened with a word of prayer. Members were informed that the agenda of the meeting was to receive a briefing from the Fiscal Analyst on the budget estimates for the financial year 2018/19 before interrogation of the main budget for Ministry of Transport, Infrastructure, Housing and Urban Development as well as its Departments and Agencies.

MIN No. TPWH129/2018: BRIEF ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2018

The Legal Counsel took Members through the Brief on the Statute Law (Miscellaneous Amendments) Bill, 2018, Clause by Clause. While the Committee deliberated on the Bill, it made the following general observations

- 1) As regards to the proposed amendments to the Housing Act, Cap 117, the Committee noted that the Cabinet Secretary should appoint a maximum of six members to the Corporation taking into account the regional and ethnic balance of the people of Kenya, gender, and representation of youths and persons with disabilities.
- 2) As regards to the proposed amendments to the Kenya Ports Authority Act (Cap 309) and the Kenya Airports Authority Act (Cap.395), the Committee was agreeable to the proposed amendments which seek to provide that arbitrators in disputes under the two statutes shall be appointed by the Registrar of the Nairobi Centre for Arbitration instead of the Chief Justice since it would encourage the independence of the courts in matters arbitration.
- 3) As regards the proposed amendments to the Traffic Act, Cap 403, the Committee noted that-
 - (a) The proposed amendments seek to align the Traffic Act, Cap 403 to the National Transport and Safety Authority Act, No.33 of 2012 since the amendments seek to, among other things define and provide for the appointment of inspectors of motor vehicles and designate authorized officers by the National Transport and Safety Authority; and
 - (b) The proposed amendments seek to recognize the East African Community Load Control Act, 2013 as regards the removal of vehicles from the road and also create an offence with respect to driving of commercial vehicles while being intoxicated and prescribe a penalty for the same or in accordance with the the East African Community Load Control Act, 2013;
- 4) As regards to the proposed amendments to the Kenya Roads Board Act, the Committee noted that the Kenya Roads Bill, 2017 which was at the Senate had similar amendments on the qualifications of the Executive Director of the Board and had been passed by the House.

- 5) As regards to the proposed amendments to the National Construction Authority Act, the Committee noted that the amendments were minor amendments seeking to correct cross-referencing mistakes.
- 6) As regards to the proposed amendments to the Engineers Act, the Committee noted that the amendments only seek to provide for the extension of the renewal of registration of foreign engineers where works have not been completed.
- 7) With respect to the proposed amendments to the National Transport and Construction Authority Act, No33 of 2012, the Committee observed that the proposed amendments were substantive in nature seeking to remove the corporate powers of the Authority and to also have its offices and establish offices elsewhere.
- 8) With regards to the proposed amendments to the Urban Areas and Cities Act, the Committee observed that the proposals are pursuant to Paragraph 20 and 21 of Part 1 of the Fourth Schedule to the Constitution which provides that housing policy and general principles of land planning and co-ordination of planning by counties is a function of the national government. The Committee further noted that the proposed amendments seek to ensure that county governments comply with the National Urban Development Policy.
- 9) The proposed amendments by Mr. Kenneth Samoei to the Engineers Act were in contravention of Standing Order 133 (5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject matter or proposes to unreasonably or unduly expand the subject of the Bill or is inappropriate or is not in logical sequence to the subject matter of the Bill.

Having considered the Bill, the Committee made the following recommendations that:-

- 1) Section 3(2) of the Housing Act, be further amended in paragraph (d) by-
 - (a) deleting the words “not less than five nor more than seven” and substituting therefor the words “six”; and
 - (b) by inserting the following new paragraph immediately after paragraph (d) –

“(h) in appointing the persons under paragraph (d),the Cabinet Secretary shall ensure that –

 - (i) It reflects the regional and ethnic diversity of the people of Kenya;
 - (ii) Not more than two thirds of the members are of the same gender; and
 - (iii) Youths and persons with disability are represented.
- 2) The Traffic Act, Cap 403 be further amended in section 2 by deleting the definition of the term “driving test examiner”;
- 3) The proposed amendment to section 57 of the Traffic Act, Cap 403 be deleted;
- 4) The proposed amendment to Section 58 of the Traffic Act, Cap 403 be further amended by inserting the words “or in accordance with the East African Commercial Vehicle Load Control Act,2013” before the words “shall be guilty”;
- 5) The proposed amendment to section 70 (5B) of the Traffic Act, Cap 403 be deleted;

