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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

ADDENDUM

TO THE REPORT OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT,
PUBLIC WORKS AND HOUSING
ON ITS CONSIDERATION OF THE KENYA ROADS (AMENDMENT) BILL, 2021
(NATIONAL ASSEMBLY BILL NO. 13 OF 2021) TABLED ON 5TH AUGUST 2021

Approved HSK
DSNA

Tabled

24/11/21			
THE NATIONAL ASSEMBLY PAPERS LAID			
DATE: 24 NOV 2021		DAY: Wed	
TABLED BY:	Chair - Transport Pkosing, MP		
CLERK-AT THE-TABLE:	R. Tiampati		

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS - NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER 2021

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CHAIRPERSON'S FOREWORD

The Kenya Roads (Amendment) Bill, 2021 (*National Assembly Bill No. 13 of 2021*), sponsored by Chairperson of the Departmental Committee on Transport, Public Works and Housing, was published on 30th April, 2021, read a First Time on 10th June, 2021 and thereafter committed to the Departmental Transport, Public Works and Housing for review and reporting to the House pursuant to Standing Order 127.

Following placement of adverts in the print media on 11th June, 2021 requesting for comments on the Bill from the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received eight (8) memoranda.

The Committee discussed the Bill with stakeholders on Wednesday, 28th July 2021. There were varied responses from the stakeholders; with others supporting the Bill as is while others proposing amendments. The Committee considered all the submissions while making recommendations to amend clause 3 of the Bill. The Committee thereafter table its report on 5th August 2021 with recommendations to amend Clause 3 of the Bill.

Subsequently, the Committee received numerous petitions from the Members of the public to amend its recommendation. During its meeting on 21st October 2021, the Committee considered the further submissions from the public and resolved to rescind its recommendation contained at Paragraph 27 of the Report tabled in the House on 5th August 2021.

The Committee wishes to sincerely thank the Offices of the Speaker and of the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. I also take this opportunity to thank all Members of the Committee for their reconsideration of the Bill as per the further requests from Kenyans. The Committee further wishes to record its greatest appreciation for services rendered by the very able Committee Secretariat. Their efforts and input made the work of the Committee and production of this Addendum possible. The Committee further wishes to thank all the stakeholders who actively implored upon the Committee to reconsidered the Bill.

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the Addendum to the Report of the Committee on its consideration of the Kenya Roads (Amendment) Bill, 2021.

HON. DAVID PKOSING, C.B.S, M.P.

Chairperson - Departmental Committee on Transport, Public Works and Housing

1.0 PREFACE

1. Pursuant to Standing Order 127(1), the Bill was Read a First Time on Thursday, 25th March 2021 and consequently committed to the Departmental Committee on Transport, Public Works and Housing for consideration and thereafter report to the House. The Committee tabled its Report on 5th August 2021 but subsequently received petitions from the public to reconsider its recommendation to amend the Bill.

1.1 Committee Mandate

2. The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f. *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - f(a). *examine treaties, agreements and conventions;*
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - i. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *examine any questions raised by Members on a matter within its mandate.*
3. 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.
4. In executing this mandate, the Committee oversights various State Departments, namely:
 - a) The State Department of Transport;
 - b) The State Department of Infrastructure;
 - c) The State Department of Housing and Urban Development;
 - d) The State Department of Public Works; and
 - e) The State Department of Shipping and Maritime Affairs.

1.2 Committee Membership

5. The Committee on Transport, Public Works and Housing as constituted by the House comprises of the following members:

Chairperson

Hon. David Pkosing, C.B.S., M.P.
Pokot South Constituency
Jubilee Party

Vice-Chairperson

Hon. Mercy Wanjiku Gakuya, M.P.
Kasarani Constituency
Jubilee Party

Members:

Hon. Abdul Rahim Dawood, M.P.
North Imenti Constituency
Jubilee Party

Hon. David Njuguna Kiaraho, M.P.
Ol Kalou Constituency
Jubilee Party

Hon. Johnson Many Naicca, M.P.
Mumias West Constituency
Orange Democratic Movement Party

Hon. Omar Mwinyi Shimbwa, M.P.
Changamwe Constituency
Orange Democratic Movement Party

Hon. Peris Tobiko, C.B.S., M.P.
Kajiado East Constituency
Jubilee Party

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

Hon. Ahmed Abdisalan Ibrahim, M.P.
Wajir North Constituency
Orange Democratic Movement Party

Hon. Ahmed Bashane Gaal, M.P.
Tarbaj Constituency
Peoples Democratic Party

Hon. Ali Wario Guyo, M.P.
Garsen Constituency
Orange Democratic Movement Party

Hon. Dominic Kipkoech Koskei, M.P.
Soitik Constituency
Jubilee Party

Hon. George Aladwa Omwere, M.P.
Makadara Constituency
Orange Democratic Movement Party

Hon. Gideon Mutemi Mulyungi, M.P.
Mwingi Central Constituency
Wiper Democratic Party

Hon. Kulow Maalim Hassan, M.P.
Banisa Constituency
Economic Freedom Party (EFP)

Hon. Moses Malulu Injendi, M.P.
Malava Constituency
Jubilee Party

Hon. Janet Wanyama Nangabo, M.P.
Trans-Nzoia County
Jubilee Party

Hon. Shadrack John Mose, M.P.
Kitutu Masaba Constituency
Jubilee Party

Hon. Tom Mboya Odege, M.P.
Nyatike Constituency
Orange Democratic Movement Party

1.3 Committee Secretariat

6. The Committee secretariat comprise the following:

Ms. Chelagat Tungo Aaron
First Clerk Assistant
Head of Secretariat

Mr. Ahmed Salim Abdalla
Second Clerk Assistant

Mr. Ronald Walala
Legal Counsel I

Mr. Abdinasir Moge Yusuf
Fiscal Analyst I

Mr. Eric Kariuki
Research Officer III

Ms. Zainabu Wario
Serjeant-at-Arms

Mr. Yeziel Jilo
Serjeant-at-Arms

Mr. Yaqub Ahmed
Media Relations Officer

Mr. Collins Mahamba
Audio Recording Officer

**ADDENDUM TO REPORT ON THE KENYA ROADS (AMENDMENT) BILL, 2021
(NATIONAL ASSEMBLY BILL NO. 13 OF 2021)**

Upon further consultations with stakeholders and receipt of petitions from several stakeholders as per the attached submissions, the Committee, at its meeting held on Thursday 21st October, 2021, resolved to rescind its recommendation contained at Paragraph 27 of the Report tabled in the House on Thursday, 5th August, 2021 and to substitute therefor the following new recommendation—


“The Committee having considered the Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021), stakeholders’ comments on the Bill recommends to the House to pass the Bill without amendment”

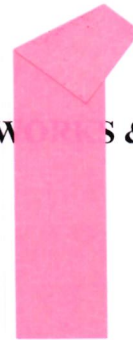
Signed 

Hon. David L. Pkosing, C.B.S., M.P.

Chairperson

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

Date 



**Adoption on the Addendum on Public / Stakeholders' Views on the Report Tabled on
5th August 2021 on the Kenya Roads (Amendment) Bill, 2021
(National Assembly Bills No. 13 of 2021)**

We, the Members of the Departmental Committee on Transport, Public Works and Housing, have, pursuant to Standing Order 199, adopted this Report and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. David Pkosing, CBS – Chairperson

2. Hon. Mercy Wanjiku Gakuya – Vice Chairperson

3. Hon. Abdul Rahim Dawood

4. Hon. David Njuguna Kiaraho

5. Hon. Johnson Many Naicca

6. Hon. Moses Malulu Injendi

7. Hon. Omar Mwinyi Shimbwa

8. Hon. Peris Pesi Tobiko, CBS

9. Hon. Samuel Arama

10. Hon. Ahmed Abdisalan Ibrahim

11. Hon. Ahmed Bashane Gaal

12. Hon. Ali Wario Guyo

13. Hon. Dominic Kipkoech Koskei

14. Hon. George Aladwa Omwera

15. Hon. Gideon Mutemi Mulyungi


16. Hon. Kulow Maalim Hassan

17. Hon. Janet Wanyama Nangabo

18. Hon. Shadrack John Mose

19. Hon. Tom Mboya Odege




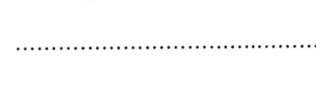




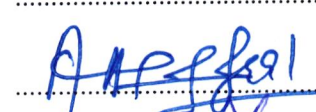








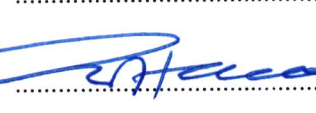


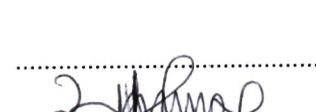


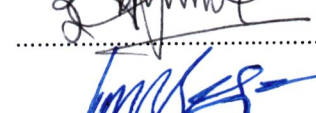
















MINUTES OF THE FOURTY FIFTH (48TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 21ST OCTOBER 2021 AT 10.00 A.M. AT 5TH FLOOR BOARDROOM, CONTINENTAL HOUSE

MEMBERS PRESENT

1. Hon. David L. Pkosing, C.B.S., M.P. - Chairperson
2. Hon. Abdul Rahim Dawood, M.P. - *virtually*
3. Hon. Omar Mwinyi Shimbwa, M.P.
4. Hon. Dominic Koskei, M.P.
5. Hon. Peris Pesi Tobiko, C.B.S., M.P.
6. Hon. Kulow Maalim Hassan, M.P. -*virtually*
7. Hon. Mercy Wanjiku Gakuya, M.P. – *virtually*
8. Hon. David Njuguna Kiaraho, M.P.
9. Hon. Malulu Injendi, M.P
10. Hon. Tom Mboya Odege, M.P. - *virtually*
11. Hon. Shadrack John Mose, M.P.
12. Hon. Ahmed Abdisalan Ibrahim, M.P
13. Hon. Gideon Mulyungi, M.P. - *virtually*

MEMBERS ABSENT WITH APOLOGY

14. Hon. Johnson Many Naicca, M.P.
15. Hon. Janet Nangabo, M.P.
16. Hon. Ahmed Bashane Gaal, M.P.
17. Hon. George Aladwa Omwera, M.P.
18. Hon. Ali Wario Guyo, M.P.
19. Hon. Samuel Arama, M.P.

SECRETARIAT

- | | | |
|------------------------------|---|--------------------|
| 1. Ms. Tungo Chelagat Aaron | - | Clerk Assistant I |
| 2. Mr. Ronald Walala | - | Legal Counsel |
| 3. Ms. Zainab Wario | - | Sergeant-at-arm |
| 4. Mr. Collins Mahaba | - | Audio Officer |
| 5. Mr. Boniface Matano Kataa | - | Legislative Fellow |
| 6. Mr. Frank Rutto | - | Legislative Fellow |
| 7. Ms. Naureen Chemweno | - | Legislative Fellow |

IN ATTENDANCE

- | | | |
|------------------------------|---|--|
| 1. Hon. Kassait Kamket MP | - | Member, Tiaty |
| 2. Hon. Miriam Chikukwa, M.P | - | Parliament of Zimbabwe |
| 3. Hon. Marko Raidza, M.P. | - | Parliament of Zimbabwe |
| 4. Hon. Omega Sibanda, M.P | - | Parliament of Zimbabwe |
| 5. Hon. James Chidakwa, M.P. | - | Parliament of Zimbabwe |
| 6. Hon. Allan Markham, M.P. | - | Parliament of Zimbabwe |
| 7. Ms. Sithabisiwe Macheza | - | Committee Clerk |
| 8. Ms. Eslina Ganda | - | Minister Counsellor from the Embassy of Zimbabwe |
| 9. Ms. Edith Muteema | - | Counsellor from the Embassy of Zimbabwe |
| 10. Mr. George Njau | - | Director General-NTSA |

- 11. Eng. Gerald Wangai - Director-Motor Vehicle Inspection-NTSA
- 12. Mr. Robert Ngugi - Deputy Director-Legal Services-NTSA
- 13. Mr. Tom Abuga - Legal Manager-NTSA

MIN No. TPWH 288/2021: **PRELIMINARIES**

The Chairman called the meeting to order at twenty minutes past ten o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was sitting to receive submissions from the National Transport and Safety Authority on the proposed Traffic (Amendment) Bill, 2021 by Hon. Kassait Kamaket, M.P. The Chairman further informed the members that the committee was hosting a delegation of members of Parliament and staff from the Parliament of Zimbabwe on a benchmarking tour. The Chairman also extended warm welcome to Hon. Malulu Injendi, who is a new member to the Committee.

The agenda of the meeting was therefore adopted after being proposed by the Hon. Dominic Koskei, MP and seconded by the Hon. Omar Mwinyi, MP.

MIN No. TPWH 289/2021: **CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS**

Minutes of the 47th sitting which was held on 7th October 2021 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Ali Wario, MP, and seconded by the Hon. Tom Odege, MP.

MIN NO. TPWH 290/2021: **SUBMISSIONS BY HON. KASSAIT KAMKET, MP ON THE PROPOSED TRAFFIC (AMENDMENT) BILL, 2021**

The Hon. Kassait Kamket briefed the committee on the proposed Traffic (Amendment) Bill, 2021. He submitted that there was need to amend the regulations in order to allow the National Transport and Safety Authority to effect the regulations. He submitted that the proposal seeks to amend Cap 403 of the Act.

MIN NO. TPWH 291/2021: **SUBMISSIONS BY THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ON THE PROPOSED TRAFFIC (AMENDMENT) BILL, 2021**

The National Transport and Safety Authority submitted that the proposed Traffic amendment bill 2021 seeks to outsource inspection of motor vehicles to private entities and to have the NTSA anchored in the Traffic Act. They submitted that currently, inspection is only done in 17 centres countrywide and they intent to have centres all over the country. The NTSA noted that they plan to train the inspectors of vehicles on quality control and work with the National Industrial Training Authority to develop a curriculum to be approved by the Kenya National Quality Authority. Additionally, the NTSA will license the inspectors of the motor vehicles.

The Authority requested to be given time to benchmark from developed countries such as the US and UK and also from the WHO on the scientifically proven levels on prescribed drug limit.

There were concerns raised that there is no real inspection done by NTSA, but just an issue of formality, which is not good for the safety of the people. NTSA was also advised to place liabilities on insurance and also ensure that there is monitoring on the private motor vehicle inspectors.

NTSA admitted that they were aware that there is the conversion of cars from petrol to use of gas through standards issued by KEBS and only one company is licensed to do the conversion. With regard to the issue of conversion of cars, it was directed that the Cabinet Secretary for Transport and NTSA to be invited to appear before the committee to clarify on the matter.

MIN NO. TPWH 292/2021:

PETITION ON THE OPENING UP THE POSITION OF THE DIRECTOR GENERAL IN ROAD AUTHORITIES IN THE KENYA ROADS (AMENDMENT) BILL, 2021

It was reported that there were several petitions by members of the public requesting the Committee to rescind its recommendations of making changes to the office of the Director General in various road authorities.

It was recommended that the original proposal of the Bill to have a Director General with engineering background be retained and have the proposal presented on the floor of the House for debate.

The Committee therefore recommended to the House to pass the Bill without amendments.

MIN No. TPWH 293/2021:

ANY OTHER BUSINESS

Members and staff of the Parliament of Zimbabwe who were on a benchmarking visit to the Parliament of Kenya expressed their appreciation to the committee for hosting them. They added that they learnt a lot on how the committee conducts its business. Staffers from the Embassy of Zimbabwe raised concerns with regards to the time taken to register diplomatic cars by the National Transport and Safety Authority. The chairman advised the National Transport and Safety Authority to take the necessary action. The National Transport and Safety Authority also noted that they had established a diplomatic office to deal with all diplomatic matters.

It was also noted that the issue of conversion cars may leads to issues of copyright, intellectual property rights and warranting. Additionally, it was noted that it is important to support African invention and innovation.

MIN No. TPWH 294/2021:

ADJOURNMENT

There being no other business, the sitting was adjourned at fifty minutes past twelve o'clock. Next meeting to be held on 27th October 2021 at 10am

Signed...

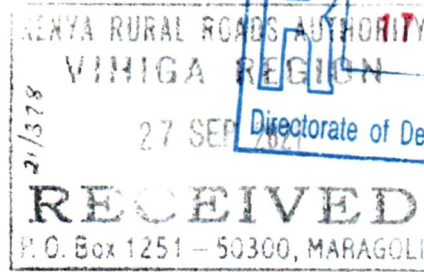


.....
(Chairperson)

Date...

.....21/10/2021.....

The Clerk, National Assembly
Tel: 254 2 2221291 or 2848000
Fax: 254 2 2243694
E-mail: clerk@parliament.go.ke



**RE: PETITION TO THE NATIONAL ASSEMBLY CONCERNING THE
KENYA ROADS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL
NO. 13 OF 2021)**

We, the undersigned, Citizens of the Republic of Kenya and representative members of the Institution of Engineers of Kenya, a learned society of the engineering profession that cooperates with national and international institutions in developing and applying engineering to benefit of humanity.

Dhsc
17/11/21

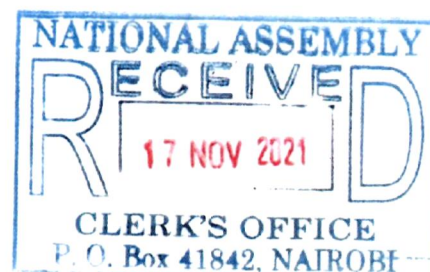
DRAW the attention of the National Assembly to the following:

1. The proposed amendment, following recommendations of the Transport Committee Report, to open the Director General position of the three Road Authorities of KeNHA, KURA and KeRRA to professions other than Engineering is not aligned to the authorities' core mandate and will derail the benefits that have been realized in the road sector over the last ten years.

We submit:

- 1.1. THAT the Constitution of Kenya, 2010 and the supporting legislations envisaged progressive and competency-based governance as a best practice for quality improvement and should be encouraged at every opportunity
- 1.2. THAT the core mandate and business of the Road Agencies is to design, construct and maintain the roads infrastructure. This core business is engineering in nature.
- 1.3. THAT under the Kenya Roads Act 2007, Section 5(1), management of the authorities is undertaken by a BOARD drawn from representatives of Industry, Highway Engineering, Transport Economists, Surveyors, Accountancy and Law.

Tungo Aaron
pls facilitate
17/11/21



- 1.4. THAT the Director General Appointed by the BOARD in consultation with the Minister (Cabinet Secretary) as per Kenya Roads Act, 2007 Section 13(2) is responsible for the day-to-day operations and administration of the Authority in respect of which he is appointed.
- 1.5. THAT the Road Authorities are empowered by the legislation of Kenya Roads Act 2007, Section 22 to carry out day-to-day activities of; to maintain, operate, improve and manage the roads under their jurisdiction; to construct new roads; to measure vehicle metrics – axle loads, dimensions or capacities; and to provide such amenities or facilities to the public as necessary or desirable.
- 1.6. THAT the role of the Director General includes taking professional responsibility for the core mandate and business of the organization they lead and is also the Principal Technical Advisor to the Cabinet Secretary on matters roads infrastructure.
- 1.7. THAT the State Corporations Act of 2015 defines the Chief Executive as *the person exercising the executive powers of a state corporation* thus bearing responsibility for the core business of the respective corporation
- 1.8. THAT the **Engineer's Act 2011** requires that a person responsible for Engineering designs and works be a Licenced Professional Engineer recognized under The Act.
- 1.9. THAT international best practices across the world have embraced skill-specific job requirements for the Chief executives for respective institutions based on the core business. Some of the institutions are:

	Country	Roads/ Highway Authority or Agency	Front Officer	Designation	Technical Qualifications
1	Nigeria	FERMA, Federal Roads Maintenance Agency	Engr. Nuruddeen Abdurrahman Rafindadi	CEO/ Managing Director	BSc, MSc (Engineering)
2	South Africa	SANRAL, South African National Roads Agency	Eng. Skhumbuzo Dennis Macozoma	Chief Executive Officer	BSc, MSc (Engineering)
3	Rwanda	RTDA, Rwanda Transport Development Agency	Eng. Imena Munyampenda	Director General	BSc, MSc (Engineering),
5	Ghana	Ghana Highway Authority	Ingr. Nicholas Dome Brown	Chief Executive	BSc, MSc (Engineering)

	Country	Roads/ Highway Authority or Agency	Front Officer	Designation	Technical Qualifications
6	Tanzania	TANROADS, Tanzania Roads Authority	Eng. Rogatus Hussein Mativila	Chief Executive Officer	BSc, MSc (Engineering)
7	United Kingdom	Highways England	Nick Harris	Chief Executive Officer	BSc (Engineering)
8	United States of America	Federal Highway Administration (FHWA),	Thomas D. Everett	Executive Director	BSc (Engineering)
9	India	National Highways Authority of India (NHAI),	Shri Giridhar Aramane	Chairman	BSc (Engineering)
10	Australia	Austroads	Neil Scales	Director General	BSc, MSc (Engineering)
11	Germany	Federal Trunk Roads	Dr. Ing Stefan Krause	Director General	BSc, MSc, PhD (Engineering),
12	Israel	The National Transport Infrastructure Company	Nisim Peretz	Director General	BSc, MSc (Engineering)

1.10. THAT in Kenya, skill specific job requirements have been adopted for state corporations, institutions and constitutional offices such as IEBC, OAG, Judiciary, KRA, KcNHA, KURA, KcRRA, State Universities have the Chief Executive position job requirements aligned with specific skill set aligned to the organization's core business.

1.11. THAT the roads agencies took up the role of Chief Engineer Roads under the old constitution and have improved efficiency under the leadership of Engineering professionals.

1.12. THAT as a key stakeholder to the Kenya Roads (Amendment) Bill 2021, the Institution of Engineers of Kenya submitted comments, views and memorandum at the initial stages of stakeholder engagement and thereafter the Bill has undergone SUBSTANTIVE amendments with potential to greatly impact the operations of engineering in the country.

1.13. THAT the Bill was recalled from the floor of the National Assembly on 19th August 2021 for further deliberation with stakeholders. We are concerned the Bill is proposed


to be re-tabled yet our contributions as key stakeholders are not captured in the Kenya Roads (Amendment) Bill 2021.

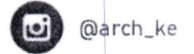
1.14. THAT, none of these issues raised in this Petition is pending in any court of Law, Constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the National Assembly-

1. Uphold the requirement of Highway Engineering as qualification for the position of Director General of the three road authorities of KeNHA, KURA and KeRRA.

Dated this 1st day of November 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	Eng. J. Wanyama	605 Nkye	0284266	
2	Eng. Michael Ochieng	447 Kileleshwa	23275297	
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AAK | PROMOTING EXCELLENCE
IN THE BUILT ENVIRONMENT

AAK/NA/Y21/FO1

29th September 2021

Mr. Michael Sialai, EBS

The Clerk, National Assembly,

P.O Box 41842,

Nairobi, Kenya.

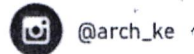
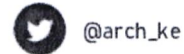
Dear Sir,

RE:AAKSUBMISSIONS ON THE PROPOSED AMENDMENTS TO THE ROADS ACT, 2007

Established in 1967, AAK is Kenya's leading Built and Natural Environment's professional association, incorporating Architects, Quantity Surveyors, Town Planners, Engineers, Landscape Architects, Environmental Design Consultants and Construction Project Managers. As an umbrella association, we bring together professionals in National and County Governments, the Private Sector and Academia. We also act as a link between professionals and stakeholders in the construction industry including policy makers, manufacturers, real estate developers, financial institutions, among others.

We write with reference to the Kenya Roads (Amendment) Bill, 2021 which seeks to among others introduce changes to the qualifications of the Director General (DG) for the respective road agencies in the country. According to the proposed amendments, stipulated in the Transport Committee Report, section 14 of the Kenya Roads Act 2007 will be amended to delete the clauses (a) and (b) that requires one to be an EBK-registered engineer in the field of highway engineering. We note that while the proposed legislative amendments are intended to improve the management of roads in Kenya, such a move may reverse the gains made over the years.

The functions of Roads Authorities as stipulated under clause 4, 7 and 10 of the Kenya Roads Act 2007 are technical in nature comprising of management, development, rehabilitation and maintenance of various categories of roads. The entire road project life cycle from feasibility studies, design, construction and maintenance of the road network falls under the specialized



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IN THE BUILT ENVIRONMENT

training of highway engineers who, under the Engineers Board of Kenya (EBK)-the regulator, take professional responsibility for the outcome. They are governed by a code of professional ethics and conduct under both EBK and IEK.

The Director-General is responsible for providing strategic leadership in the Authority where (s)he is appointed and is also the Principal Technical Advisor to the Board of Directors and the Cabinet Secretary on matters roads infrastructure. The role of the Director General includes taking professional responsibility for the core mandate and business of the organization they lead. It therefore begs the question as to whether any individual without the requisite technical and, or engineering background will be able to fulfill such duties.

The AAK is convinced that the status quo should be maintained and leadership of the road authorities be left to professionals with a background in highway and civil engineering. We believe that the Roads Act 2007 in its current form created a conducive environment for achievement of the extensive and significant improvement of the road network witnessed over the last decade. If the Roads Act requires any amendments, then it would be prudent to enhance the positive aspects of it rather than attempt to change a system that has been tried, tested and evidently delivered immense socio-economic benefits to our country. The AAK therefore wishes to urge our parliamentarians to take a more rational approach to the proposed amendments.

We hereby thank you for your continued engagement with our Association and wish to affirm our commitment to engage further with you on this and other parliamentary initiatives.

Yours faithfully,

WILSON MUGAMBI
PRESIDENT, AAK

The Clerk, National Assembly

Tel: 254 2 2221291 or 2848000

Fax: 254 2 2243694

E-mail: clerk@parliament.go.ke

**RE: PETITION TO THE NATIONAL ASSEMBLY CONCERNING THE
KENYA ROADS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL
NO. 13 OF 2021)**

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We submit:

- 1.1. THAT the Constitution of Kenya, 2010 and the supporting legislations envisaged progressive and competency-based governance as a best practice for quality improvement and should be encouraged at every opportunity.
- 1.2. THAT the core mandate and business of the Road Agencies is to design, construct and maintain the roads infrastructure. This core business is engineering in nature.
- 1.3. THAT under the Kenya Roads Act 2007, Section 5(1), management of the authorities is undertaken by a BOARD drawn from representatives of Industry, Highway Engineering, Transport Economists, Surveyors, Accountancy and Law.

1.4. THAT the Director General Appointed by the BOARD in consultation with the Minister (Cabinet Secretary) as per Kenya Roads Act, 2007 Section 13(2) is responsible for the day-to-day operations and administration of the Authority in respect of which he is appointed.

1.5. THAT the Road Authorities are empowered by the legislation of Kenya Roads Act 2007, Section 22 to carry out day-to-day activities of; to maintain, operate, improve and manage the roads under their jurisdiction; to construct new roads; to measure vehicle metrics – axle loads, dimensions or capacities; and to provide such amenities or facilities to the public as necessary or desirable.

1.6. THAT the role of the Director General includes taking professional responsibility for the core mandate and business of the organization they lead and is also the Principal Technical Advisor to the Cabinet Secretary on matters roads infrastructure.

1.7. THAT the State Corporations Act of 2015 defines the Chief Executive as *the person exercising the executive powers of a state corporation* thus bearing responsibility for the core business of the respective corporation

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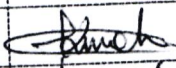
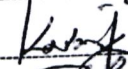



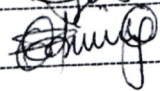
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Dated this... 27th day of... SEPTEMBER... 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	ENG. THOMAS KOECH	30251-0100 NBI	22580324	
2	TIMOTHY G. KARAJA	30251-00100 NBI	23580865	
3	ELIAS OTIENO	30259-00100 NBI	2598072	
4	Eng. Boaz D. Mahila	30259- ^{NBI} 0790	11042060	
5	Victor Ondigi	30259-00100 NBI 24384196	24384196	
6	Edwin Ondiki	30259 NBI	25208008	
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Dated this 28th day of September 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	Ery MDAALIK KIDENDA	Box 75630-00100 NBI	4830626	<i>Ery Kidenda</i>
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
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Dated this.....day of.....2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	PATRICK OWUORI	P.O.Box 73-00517	10089530	
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HOWARD HUMPHREYS (EAST AFRICA) LTD.
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No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	Crispus Kihara	P.O. Box 2059 NAIROBI	24983447	Karim
2	Eng. Peter Wadwa	P.O. Box 65743 NRB	3391356	[Signature]
3	Eng. Festus Oumngi	P.O. Box 57788 00100	13758662	[Signature]
4	Eng. Geoffrey Mwangi	P.O. Box 5769 NRB	20539068	[Signature]
5	Eng. Daniel Areba	P.O. Box 12317 20100 MAKURU	12898271	[Signature]
6	Eng. Edward Macharia	P.O. Box 1425 00100 NRB	10317199	[Signature]
7	ENG. PATRICK WACWERU	P.O. Box 30156-00100	25186045	[Signature]
8	Eng. Jeremiah Munari	P.O. Box 32236 00100-NRB	20712522	[Signature]
9	Eng. Wambui Maina	P.O. Box 30156 00100	27399019	[Signature]
10	Florida Jimiyu	P.O. Box 35621-00100	23785416	[Signature]
11	Anthony Maina	P.O. Box 17290 00100 NRB	31391655	[Signature]
12	KEVIN ROTICH	P.O. Box 3466 30100 ELDERET	29896895	[Signature]
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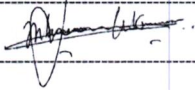
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No	NAME	ADDRESS	I.D. No.	SIGNATURE
<u>1</u>	Mburu Joseph Waweru	P.O. Box 111 Ruiru 00232	21997243	
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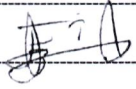
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No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	Eng.Mauti Onduso Ezra	1253-40200 Kisii	26205060	
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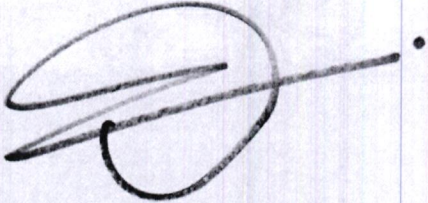
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1.14. THAT, none of these issues raised in this Petition is pending in any court of Law, Constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the National Assembly-

1. Uphold the requirement of Highway Engineering as qualification for the position of Director General of the three road authorities of KeNHA, KURA and KeRRA.

Dated this...28.....day of...September.....2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	Reuben James Lubanga	55388- 00200	4830684	
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Dated this... 28th ... day of... September ... 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	ENG. KENNEDY KUNGA	28928	25661164	
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Dated this.....*28th*.....day of.....*September*.....2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	<i>Eng. Bernard K. Kipchumba</i>	<i>P.O. Box 48 Kapcherop</i>	<i>21765988</i>	<i>B.K.K.</i>
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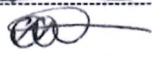


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WHEREFORE, your humble petitioners pray that the National Assembly-

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Dated this 28th day of September 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	ENG. FRED OGUTO	Box 8775-00200 NRB	24619643	
2	ENG. OBED OGEA	Box 8201 00100 NRB	27178971	
3	ENG LYDIAH DWIND	51970 00200 NRB	8972286	
4	ENG. CLYDE OMURAYI	21292-00100 NRB	24796613	
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Dated this...**28th**...day of...**September**...**2021**.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	Walter Ngetich	316-20106 Molo	29325453	
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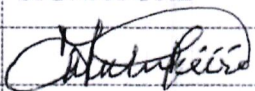
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Dated this...27th...day of...September 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	Eng Jonathan Ntui	P.O. Box 1245-0066 NRB	16049401	
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Dated this ¹⁵ 28 day of September 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	FR. BENSON KELI KIKO	3983-00506	9225117	BK-KELI
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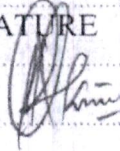
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WHEREFORE, your humble petitioners pray that the National Assembly-

1. Uphold the requirement of Highway Engineering as qualification for the position of Director General of the three road authorities of KeNHA, KURA and KeRRA.

Dated this 28 day of SEPTEMBER 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	ENG. HILARY AKWIRI	29071-00100	22452882	
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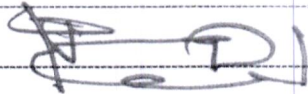
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1. Uphold the requirement of Highway Engineering as qualification for the position of Director General of the three road authorities of KeNHA, KURA and KeRRA.

Dated this... 27th... day of... SEPTEMBER... 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	Hings P. N	288-	11668721	
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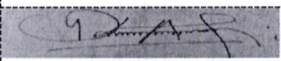
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WHEREFORE, your humble petitioners pray that the National Assembly-

1. Uphold the requirement of Highway Engineering as qualification for the position of Director General of the three road authorities of KeNHA, KURA and KeRRA.

Dated this.....day of 2021.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
1	KEVIN OKOTH AJUUL	311-40609	26135121	
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SPECIAL ISSUE

Kenya Gazette Supplement No. 78 (National Assembly Bills No. 13)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2021

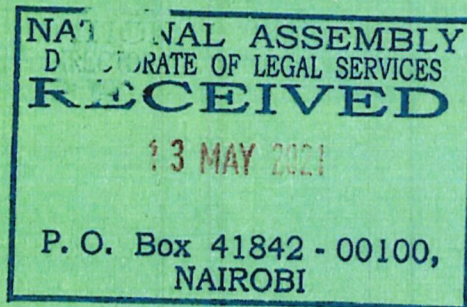
NAIROBI, 30th April, 2021

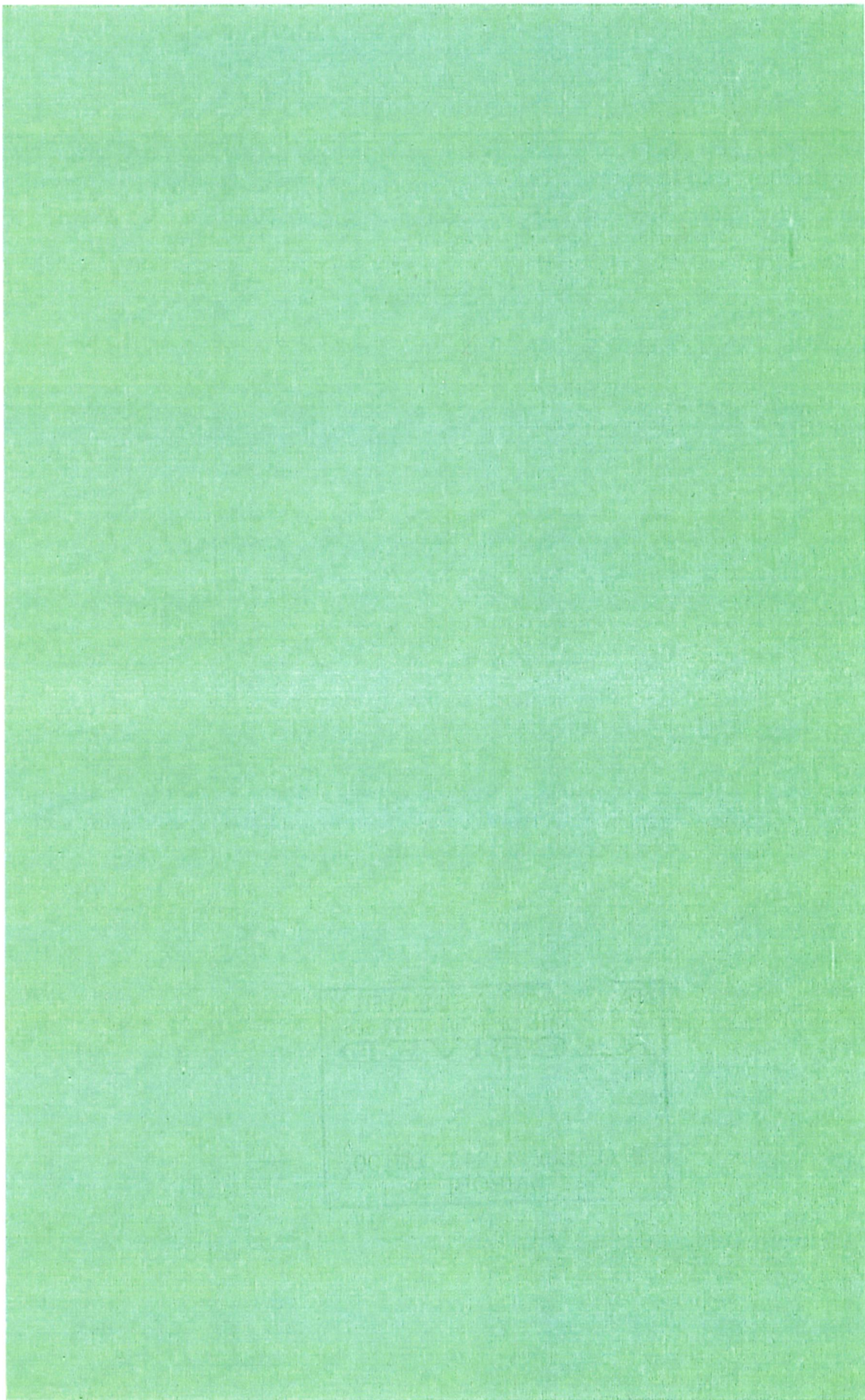
CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Kenya Roads (Amendment) Bill, 2021365





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THE KENYA ROADS (AMENDMENT) BILL, 2021

AN ACT of Parliament to amend the Kenya Roads Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya Roads (Amendment) Act, 2021.

Short title.

2. Section 13 of the Kenya Roads Act (in this Act referred to as the “principal Act”) is amended in subsection (3) by deleting the word “three” appearing immediately after the words “term of” and substituting therefor the word “five”.

Amendment of section 13 of No. 2 of 2007.

3. The principal Act is amended by repealing section 14 and replacing therefor the following new section—

Repeal and replacement of section 14 of No. 2 of 2007.

Qualification of Director-General.

14. A person shall be qualified for appointment as a Director-General if the person—

- (a) holds a bachelor’s degree in civil engineering and a Masters’ degree from a university recognized in Kenya;
- (b) is registered with the Engineers Board of Kenya;
- (c) has at least fifteen years’ experience with at least ten years post-registration experience in highway and road engineering;
- (d) has at least ten years experiment in managerial position within the roads sector; and
- (e) satisfies the requirements of Chapter Six of the Constitution.

4. Section 38 of the Principal Act is amended—

Amendment of
section 38 of No.
2 of 2007.

- (a) in subsection (2) by deleting the expression “Controller and Auditor-General in accordance with the Public Audit Act, 2003” and substituting therefor the expression “Auditor-General in accordance with the Public Audit Act, 2015”;
- (b) in subsection (3) by deleting the expression “Public Audit Act, 2003” and substituting therefor the expression “Public Audit Act, 2015”;
- (c) in subsection (4) by deleting the words “Controller and” appearing immediately after the words “audit the”;
- (d) in subsection (5) by deleting the words “Controller and” appearing immediately after the words “provide the”; and
- (e) in subsection (6) by deleting the words “Controller and” appearing immediately after the word “the”.

5. Section 44 of the Principal Act is amended in subsection (2) by—

Amendment of
section 44 of No.
2 of 2007.

- (a) deleting the words “Controller and” appearing immediately after the words “report of the ” in paragraph (b); and
- (b) deleting the words “Controller and” appearing immediately after the words “by the” in paragraph (c).

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal object of the Bill is to amend the Kenya Roads Act, (No. 2 of 2007) to align the Act with the provisions of the Constitution with regard to the auditing functions of the Office of the Auditor-General. The Act currently refers to the defunct office of the Controller of Budget and the Auditor-General.

The Bill further seeks to amend the term of office of and the qualification for the Director-General of the Kenya Roads Board appointed under the Act.

Statement on Delegation of Legislative Powers and Limitation of Fundamental Rights and Freedoms

This Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Statement of the Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 19th April, 2021.

DAVID PKOSING,
Chairperson, Transport, Public Works and Housing Committee.

Section 13 of No. 2 of 2007 which it is proposed to amend—

13. Director-General

(1) Each Authority shall have a Director-General, who shall be appointed by the concerned Board in consultation with the Minister from among three candidates competitively selected by the Board.

(2) The Director-General shall be responsible for the day to day operations and administration of the Authority in respect of which he is appointed.

(3) Subject to this Act, the Director-General shall hold office for a term of three years and shall be eligible for appointment for one more term.

(4) Subject to this Act and to the general direction and control of the concerned Board, the Director-General shall be responsible for the following matters with respect to the Authority for which he is responsible—

- (a) the implementation of the policies and programmes of the Authority and reporting thereon to the Board;
- (b) the proper management of the funds and property of the Authority;
- (c) the organisation and control of the staff of the Authority;
- (d) the development of an operations plan for achieving the Authority's objectives;
- (e) co-operation with other lead agencies and organisations in the roads sector;
- (f) the development of an economic, efficient and cost-effective internal management structure;
- (g) the formulation and implementation of the strategic plan, business plan and annual plan of the Authority;
- (h) the implementation and fulfillment of the policies and agreed objectives, performance targets and service standards of the Authority;
- (i) the provision of advice as required on all matters within the Authority's responsibility; and
- (j) the performance of any other duty necessary for the implementation of this Act as may be assigned to him by the concerned Board.

Section 14 of No. 2 of 2007 which it is proposed to amend—

14. Qualifications of the Director-General

A person shall be qualified for appointment as Director-General if such a person—

- (a) is registered with the Engineers Registration Board of Kenya in the category of registered engineer in the field of highway engineering and is a member of the Institution of Engineers of Kenya; and
- (b) has at least fifteen years' post-registration experience in the field of road and highway engineering.

Section 38 of No. 2 of 2007 which it is proposed to amend —

38. Accounts and Audit

(1) Each Authority shall keep proper books of accounts and shall prepare an annual statement of accounts in conformity with international accounting standards.

(2) For each financial year, the Authority shall prepare and submit for audit accounts to the Controller and Auditor-General in accordance with the Public Audit Act, 2003 (No. 12 of 2003), and comply with all applicable requirements of that Act.

(3) The costs of the audit shall be as specified in the Public Audit Act, 2003.

(4) In addition to the annual audit, the Controller and Auditor-General may at any time audit the accounts and examine the records of financial transactions of the Authority, and shall forthwith draw the attention of the Minister to any irregularity disclosed by such audit and examination.

(5) The authorities shall provide the Controller and Auditor-General with all necessary and appropriate facilities for the examination of the accounts and records.

(6) The Controller and Auditor-General may make copies of or take extracts from account books or other financial records of the authorities.

Section 44 of No. 2 of 2007 which it is proposed to amend—

44. Annual Report

(1) Each Authority shall, within a period of four months after the end of each financial year, submit to the Minister an annual report dealing generally with the activities and operations of the Authority.

- (2) An annual report submitted under subsection (1) shall include—
- (a) information with regard to the progress and policies of the Authority;
 - (b) a copy of the audited accounts of the Authority in respect of that year together with the report of the Controller and Auditor-General;
 - (c) each report submitted in relation to that financial year by the Controller and Auditor-General;
 - (d) an overview of the operations of the Authority;
 - (e) an assessment of the degree to which performance targets have been achieved;
 - (f) an assessment of the adequacy of road funding;
 - (g) a report on the condition of the road network and the degree of change in such condition since the last report, the projected optimal level of the network and the extent of financing required to meet that level;
 - (h) a review of the technical adequacy and proven cost efficiency of road management operations;
 - (i) a report on progress achieved concerning coordination between the authorities and regional entities, including any challenges encountered and proposals for the future;
 - (j) generally a report on the degree to which the objectives of this Act have been realized and the levels of compliance with the provisions of this Act; and
 - (k) such other information as the Minister may request in writing.

Approved for tabling



SWA
5/8/2021

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT

ON

THE KENYA ROADS (AMENDMENT) BILL, 2021

(NATIONAL ASSEMBLY BILL NO. 13 OF 2021)

05 AUG 2021 Thurs
Hon. David Pkusing
Chair Transport
Mainch wanjiku

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS - NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2021

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ANNEXURES LIST

- (i) Minutes of the meetings of the Committee
- (ii) Adoption list of Members
- (iii) Newspaper advertisement inviting the public to make representations on the Bill
- (iv) Memoranda received by the Committee:
 - (a) Mr. Okiya Omtatah Okoiti
 - (b) Institute of Certified Public Accountants of Kenya (ICPAK)
 - (c) Kenya Institute of Supplies Management (KISM)
 - (d) Institute of Human Resource Management (IHRM)
 - (e) Institution of Engineers of Kenya (IEK)
 - (f) Office of the Attorney General & Department of Justice
 - (g) Kenya Roads Board (KRB)
 - (h) State Department for Infrastructure

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Kenya Roads (Amendment) Bill, 2021 (*National Assembly Bill No. 13 of 2021*), sponsored by Chairperson of the Departmental Committee on Transport, Public Works and Housing. The Bill was published on 30th April, 2021, read a First Time on 10th June, 2021 and thereafter committed to the Departmental Transport, Public Works and Housing for review and reporting to the House pursuant to Standing Order 127.

Following placement of adverts in the print media on 11th June, 2021 requesting for comments on the Bill from the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received eight (8) memoranda.

The Committee discussed the Bill with stakeholders on Wednesday, 28th July 2021. There were varied responses from the stakeholders; with others supporting the Bill as is while others proposing amendments. The Committee considered all the submissions while making recommendations to amend clause 3 of the Bill.

The Committee wishes to sincerely thank the Offices of the Speaker and of the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. I also take this opportunity to thank all Members of the Committee for their patience, sacrifice, endurance and commitment towards the production of this Report. The Committee further wishes to record its appreciation for services rendered by the Committee Secretariat. Their efforts and input made the work of the Committee and production of this Report possible. The Committee further wishes to thank all the stakeholders who actively participated in the consideration of the Bill.

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Kenya Roads (Amendment) Bill, 2021.



HON. DAVID PKOSING, C.B.S, M.P.

Chairperson - Departmental Committee on Transport, Public Works and Housing

1.0 PREFACE

1. Pursuant to Standing Order 127(1), the Bill was Read a First Time on Thursday, 10th June 2021 and consequently committed to the Departmental Committee on Transport, Public Works and Housing for consideration and thereafter report to the House.

1.1 Committee Mandate

2. The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows:
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f. *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - f(a). *examine treaties, agreements and conventions;*
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - i. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *examine any questions raised by Members on a matter within its mandate.*
3. 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.
4. In executing this mandate, the Committee oversees various State Departments, namely:
 - a) The State Department of Transport;
 - b) The State Department of Infrastructure;
 - c) The State Department of Housing and Urban Development;
 - d) The State Department of Public Works; and
 - e) The State Department of Shipping and Maritime Affairs.

1.2 Committee Membership

5. The Committee on Transport, Public Works and Housing as constituted by the House comprises of the following members:

Chairperson

Hon. David Pkosing, C.B.S., M.P.
Pokot South Constituency
Jubilee Party

Vice-Chairperson

Hon. Gathoni Wamuchomba, H.S.C., M.P.
Kiambu County
Jubilee Party

Members:

Hon. Abdul Rahim Dawood, M.P.
North Imenti Constituency
Jubilee Party

Hon. David Njuguna Kiaraho, M.P.
Ol Kalou Constituency
Jubilee Party

Hon. Johnson Many Naicca, M.P.
Mumias West Constituency
Orange Democratic Movement Party

Hon. Omar Mwinyi Shimbwa, M.P.
Changamwe Constituency
Orange Democratic Movement Party

Hon. Peris Tobiko, C.B.S., M.P.
Kajiado East Constituency
Jubilee Party

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

Hon. Ahmed Abdisalan Ibrahim, M.P.
Wajir North Constituency
Orange Democratic Movement Party

Hon. Ahmed Bashane Gaal, M.P.
Tarbaj Constituency
Peoples Democratic Party

Hon. Ali Wario Guyo, M.P.
Garsen Constituency
Orange Democratic Movement Party

Hon. Dominic Kipkoech Koskei, M.P.
Soitik Constituency
Jubilee Party

Hon. George Aladwa Omwere, M.P.
Makadara Constituency
Orange Democratic Movement Party

Hon. Gideon Mutemi Mulyungi, M.P.
Mwingi Central Constituency
Wiper Democratic Party

Hon. Kulow Maalim Hassan, M.P.
Banisa Constituency
Economic Freedom Party (EFP)

Hon. Mercy Wanjiku Gakuya, M.P.
Kasarani Constituency
Jubilee Party

Hon. Janet Wanyama Nangabo, M.P.
Trans-Nzoia County
Jubilee Party

Hon. Shadrack John Mose, M.P.
Kitutu Masaba Constituency
Jubilee Party

Hon. Tom Mboya Odege, M.P.
Nyatike Constituency
Orange Democratic Movement Party

1.3 Committee Secretariat

6. The Committee secretariat comprise the following:

Ms. Chelagat Tungo Aaron
First Clerk Assistant
Head of Secretariat

Mr. Ahmed Salim Abdalla
Second Clerk Assistant

Mr. Ronald Walala
Legal Counsel I

Mr. Abdinasir Moge Yusuf
Fiscal Analyst I

Mr. Eric Kariuki
Research Officer III

Ms. Zainabu Wario
Serjeant-at-Arms

Mr. Yeziel Jilo
Serjeant-at-Arms

Mr. Yaqub Ahmed
Media Relations Officer

Mr. Collins Mahamba
Audio Recording Officer

2.0 OVERVIEW OF THE KENYA ROADS (AMENDMENT) BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 13 OF 2021)

2.1 Analysis of the Bill

7. The principal object of this Bill is to amend the Kenya Roads Act, 2007 to enhance the term of office and the qualifications for appointment as a Director-General under the Act. The Bill further seeks to amend the Act to align it with the Constitution and the Public Audit Act, 2015 with regard to the audit of public bodies by the Auditor-General.
8. Clause 1: Provides for the short title.
9. Clause 2: Proposes amendment to Section 13 of the Kenya Roads Act, 2007 by deleting the word “three” appearing immediately after the words “term of” and substituting therefor the word “five”.
10. Clause 3: Proposes repeal and replacement of Section 14 of the Kenya Roads Act, 2007 and replacing it with a new section on Qualification of Director General.
11. Clause 4: Proposes amendment to Section 38 of the Kenya Roads Act, 2007
12. Clause 5: Proposes amendment to Section 44 of the Kenya Roads Act, 2007
13. The Bill does not delegate legislative powers, neither does it limit fundamental rights and freedoms.
14. The enactment of the Bill shall not occasion additional expenditure of public funds.

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

15. Following the call for submission of memoranda by the public through the placement of advertisements in the print media of 11th June 2021 and 2nd July 2021, the Committee received eight memoranda.
16. On 2nd August 2021, the Committee considered its report on the Bill and adopted it in the same sitting.
17. The following stakeholders submitted memoranda to the Committee—
 - (a) Mr. Okiya Omtatah Okoiti;
 - (b) Institute of Certified Public Accountants of Kenya (ICPAK);
 - (c) Kenya Institute of Supplies Management (KISM);
 - (d) Institute of Human Resource Management (IHRM);
 - (e) Institution of Engineers of Kenya (IEK);
 - (f) Office of the Attorney General & Department of Justice;
 - (g) Kenya Roads Board (KRB); and
 - (h) State Department for Infrastructure.

Consideration of the Kenya Roads (Amendment) Bill, 2021

18. While considering the Kenya Roads Bill, 2021 the Committee took into account the written memoranda (*annexure (iv)*) and oral submissions received from the public regarding each clause.

Clause 1

19. There were no submissions from stakeholders regarding clause 1.

Clause 2

20. The State Department for Infrastructure, the Kenya Roads Board, the Institution of Engineers of Kenya, and the Institute of Certified Public Accountants of Kenya supported the enhancement of the term of office for a Director General appointed under the Act to five years as contained in the Bill. Mr. Okiya Omtatah Okoiti opposed the enhancement of the term of office, noting that the current three-year renewable period is adequate.

Clause 3

21. The State Department for Infrastructure and the Kenya Roads Board supported the proposed qualifications for appointment as a Director General as contained in Clause 3 of the Bill.
22. The Institution of Engineers of Kenya proposed the inclusion of a master's degree or higher in a related field; registration with the Engineers Board of Kenya as a Professional Engineer or higher category; membership of the Institution of Engineers of Kenya; and at least fifteen (15) years post-registration experience in highway, road or transportation engineering as part of the qualifications for appointment as a Director General.
23. On the other hand, the Institute of Certified Public Accountants, Okiya Omtatah, the Institute of Human Resource Management, and the Kenya Institute of Supplies Management proposed the opening up of the qualifications for appointment as a Director-General to persons from professions. It was their view that the current provisions of the

Act and the proposal in the Bill limit the position of the Director General to one profession only and hence discriminates against other professions which are able to provide competent candidates to be considered for appointment on merit.

Clause 4

24. There were no submissions from stakeholders regarding clause 4.

Clause 5

25. There were no submissions from stakeholders regarding clause 5.

4.0 COMMITTEE'S OBSERVATIONS

26. The Committee observed as follows:

- (1) The proposal to enhance the term of office of the Director-General from three years to five-years had been contained in the Kenya Roads Bill, 2017 which was lost at mediation. The proposal to enhance the term had been approved by both Houses of Parliament and formed the basis of the Clause 2 as contained in the Bill.
- (2) Majority of the submissions from the public proposed that the qualifications for appointment as a Director General under the Kenya Roads Act, 2007 be opened up to allow the consideration of competent persons in other professions for appointment;
- (3) The current qualifications for appointment as a Director-General, which limit appointment to those in the engineering profession, are not aligned with the general managerial functions of the role outlined at section 13(4) of the Act. Section 13(4) provides as follows—

“(4) Subject to this Act and to the general direction and control of the concerned Board, the Director-General shall be responsible for the following matters with respect to the Authority for which he is responsible—

(a) the implementation of the policies and programmes of the Authority and reporting thereon to the Board;

(b) the proper management of the funds and property of the Authority;

(c) the organisation and control of the staff of the Authority;

(d) the development of an operations plan for achieving the Authority's objectives;

(e) co-operation with other lead agencies and organisations in the roads sector;

(f) the development of an economic, efficient and cost-effective internal management structure;

(g) the formulation and implementation of the strategic plan, business plan and annual plan of the Authority;

(h) the implementation and fulfilment of the policies and agreed objectives, performance targets and service standards of the Authority;

(i) the provision of advice as required on all matters within the Authority's responsibility; and

(j) the performance of any other duty necessary for the implementation of this Act as may be assigned to him by the concerned Board.”

- (4) The Kenya Roads Act was enacted in 2007, prior to the promulgation of the current Constitution. Article 232(1) of the Constitution outlines the values and principles of public service which include fair competition and merit as the basis for appointment to public office. Article 232(1) of the Constitution provides as follows—

“(1) The values and principles of public service include—

(a) high standards of professional ethics;

(b) efficient, effective and economic use of resources;

(c) responsive, prompt, effective, impartial and equitable provision of services;

(d) involvement of the people in the process of policy making;

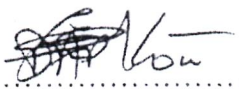
(e) accountability for administrative acts;

(f) transparency and provision to the public of timely, accurate information;
(g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
(h) representation of Kenya's diverse communities; and
(i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—
(i) men and women;
(ii) the members of all ethnic groups; and
(iii) persons with disabilities."

- (5) The current provision on qualifications contained in the Act is discriminatory as it reserves the post of Director General to only one qualification and profession.
- (6) Clause 3 of the Bill would therefore need to be amended to allow the consideration and appointment of persons from other professions to the post of Director General.

COMMITTEE'S RECOMMENDATION

27. The Committee having considered the Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021), stakeholders' comments on the Bill and the above observations recommends to the House to pass the Bill with amendments. The Committee shall propose amendments to Clause 3 of the Bill as contained in the Schedule.

Signed 

Hon. David L. Pkosing, C.B.S., M.P.
Chairperson

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

Date 08/08/2021

SCHEDULE OF AMENDMENTS

CLAUSE 3

Clause 3 of the Bill be amended by deleting the proposed new section 14 of the Act and substituting therefor the following—

14. A person shall be qualified for appointment as the Director-General if the person—
- (a) holds a postgraduate degree in engineering, architecture, finance, accounts, management, law or a related field from a university recognized in Kenya;
 - (b) has at least ten years' experience in a senior managerial position within the roads sector;
 - (c) is registered by a relevant regulatory body;
 - (d) is a member in good standing of a relevant professional body; and
 - (e) satisfies the requirements of Chapter six of the Constitution.

Justification(s):

- (1) In light of immense public interest from stakeholders
- (2) To align the provision with the values and principles of public service outlined at Article 232 of the Constitution which include fair competition and merit in appointments to public office;
- (3) To align the provision with the general managerial functions of the Director General outlined in s.13 of the Act;
- (4) To promote fair competition for the position and ensure recruitment of the most competent candidate. The current provision is discriminatory as it reserves the post of DG to only one qualification and profession