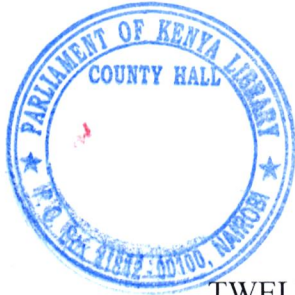


Approved for tabling in the House.

~~Bill~~ N/A

24/5/2022



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - SIXTH SESSION

THE DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT

ON

THE TRAFFIC (AMENDMENT) BILL, 2021

(NATIONAL ASSEMBLY BILL NO. 60 OF 2021)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 MAY 2022	DAY: Tuesday
TABLED BY:	Chair Transport Committee
BY:	Ann Mwangi

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



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ANNEXURES LIST

- (i) Minutes of Committee sittings
- (ii) Signed list of Members who attended the sitting which considered and adopted the report
- (iii) Print media advertisement on public participation
- (iv) Public memoranda received on the Bill:
 - (a) Mr. Gerald Osiemo
 - (b) TOMAE Kenya
 - (c) Kenya Driving Schools Association
 - (d) The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA)
 - (e) Kenya Private Sector Alliance (KEPSA)
 - (f) The National Transport and Safety Authority (NTSA)

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Traffic Amendment Bill, 2021 (*National Assembly Bill No. 60 of 2021*), sponsored by the Hon. Kassait Kamket, MP. The Bill was published on 26th August 2021, read a First Time on 16th February 2022 and thereafter committed to the Departmental Committee on Transport, Public Works and Housing for review and reporting to the House pursuant to National Assembly Standing Order 127.

Following public participation advertisement in the print media on 23rd February, 2022 in line with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received Seven (7) memoranda.

The Committee discussed the Bill with stakeholders on Wednesday, 30th March, 2022. There were varied responses from the stakeholders with numerous proposals for amendments. The Committee considered all the submissions from the stakeholders before proposing an amendment as contained in the schedule attached at the end of this Report.

The Committee wishes to sincerely thank the Offices of the Speaker and of the Clerk of the National Assembly for the support extended to it in the execution of its mandate. I also take this opportunity to thank all Committee Members for their resilience and commitment towards consideration of the Bill and production of this report. The Committee further wishes to record its appreciation for exemplary services rendered by the Committee Secretariat. The Committee equally wishes to thank all the stakeholders who participated in the consideration of the Bill for their useful contributions.

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 Traffic Amendment Bill, 2021.

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

Chairperson - Departmental Committee on Transport, Public Works and Housing

PART 1

1.0 PREFACE

1. Pursuant to Standing Order 127(1), the Bill was Read a First Time on Wednesday, 16th February 2022 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. 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.
Sotik 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
Senior 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

Ms. Lilly Cherotich
Protocol Officer

Mr. Yaqub Ahmed
Media Relations Officer

Mr. Collins Mahamba
Audio Recording Officer

PART 2

2.0 OVERVIEW OF THE TRAFFIC AMENDMENT BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 60 OF 2021)

2.1 Analysis of the Bill

1. Clause 2 of the Bill seeks to amend section 2 of the Act to introduce the National Transport and Safety Authority into the Act.
2. Clause 3 of the Bill seeks to amend section 16 of the Bill to empower the national Transport and Safety Authority to—
 - (a) determine the intervals at which vehicles are to be inspected;
 - (b) conduct motor vehicle inspections; and
 - (c) delegate inspection of motor vehicles to another person or body of their choosing.Under the current provisions of the Act, inspections are done by the Motor Vehicle Inspection Unit.
3. Clause 4 of the Bill seeks to amend section 44 of the Act to changes the question of whether a person was driving under the influence from a subjective test to an objective test. It proposes that a person only be charged and convicted of the offence if they exceed a certain prescribed limit of alcohol in their system.
4. Clause 5 of the Bill seeks to amend section 70 of the Act to delete the offence of exceeding the speed limit prescribed on a traffic sign by more than 20kmh which currently attracts a penalty of imprisonment not less than three months or a fine of not less than twenty thousand shillings or both.
5. Clause 6 of the Bill seeks to amend section 103A of the Act to delete the requirement for drivers of public service vehicles to undergo compulsory testing after every two years to ascertain their competence.

PART 3

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

7. Following the call for submission of memoranda by the public through the placement of advertisements in the print media of 23rd February, 2022, the Committee received twelve memoranda.
8. On 30th March 2021, the Committee met with stakeholders. The Committee thereafter proceeded with report writing before adopting this report on 4th April 2022.
9. The following stakeholders submitted written memoranda to the Committee, in response to the said call through the advertisements of 23rd February, 2022—
 - (a) Mr. Gerald Osiemo
 - (b) TOMAE Kenya
 - (c) Kenya Driving Schools Association
 - (d) The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA)
 - (e) Kenya Private Sector Alliance (KEPSA)
 - (f) The National Transport and Safety Authority (NTSA)
10. The Committee also met and discussed the Bill with the above listed stakeholders on Wednesday, 30th March, 2022, within Parliament Buildings.

Consideration of the Traffic Amendment Bill, 2021

11. While considering the Traffic Amendment Bill, 2021 (National Assembly Bill No. 60 of 2021), the Committee took into account the written memoranda (*annexure (iv)*) and oral submissions received from the public regarding each clause.

CLAUSE 2

The National Transport and Safety Authority noted that Section 2 of the Act already defines the Term “Authority” to mean the National Transport and Safety Authority. The Committee agreed with this view.

CLAUSE 3

12. TOMAE (K) Limited proposed the addition of a provision regulating Vehicle emission levels as follows requiring—
 - (a) All vehicles that are imported comply with a minimum of EURO 4/IV vehicle emissions where the allowed limit of concentration of carbon monoxide is at a volume of 0.5 percent while that of hydrocarbons stands at 0.12 percent or 1,200 parts per million (ppm);
 - (b) Every importer of motor vehicles to adhere to the emissions limits set by the country and any non-compliant imported vehicles be disallowed from operating in the country and returned back to their country of origin at the importers cost;
 - (c) All Vehicles will undergo annual emissions testing together with fitness testing done by the NTSA and other licensed Inspection Companies under the KS1515 Kenya Bureau of Standards.

- (d) Any vehicle found to violate the minimum vehicle emissions levels to pay a fine in the sum of Kshs.50,000 and repeat violators to have their cars impounded and lose their driving privileges for a certain period not exceeding 6 months;
- (e) All vehicles to undergo an initial emission inspection test and subsequent annual emission inspections in a standard testing method.
- (f) They further proposed that for purposes of road safety, every Public Service Vehicle (PSV) and Heavy Commercial Vehicle be required to have Service Check Certificates in order to be able to operate on the road after either every 3,000 / 5,000 or 10,000 km./ The Committee was of the view that the proposals would unduly expand the matters covered under the Bill.

The Kenya Driving Schools Association proposed that the Clause be amended to clarify whether the requirement for Motor Vehicle inspections applies to all motor vehicles. The Committee noted that the provision as drafted applies to all classes of Motor Vehicles.

CLAUSE 4

- 13. The Kenya Driving Schools Association proposed that the Clause be amended to provide specificity on the limits applicable to persons driving under the influence of alcohol or drugs and to define the two terms. The Committee noted that the Clause permits NTSA to prescribe the limits in regulations after consultations. With regard to the definitions, the Committee noted that terms are sufficiently clear and do not require definition under the Act. The Regulations to be made by NTSA may clarify the matter further.
- 14. The National Campaign Against Alcohol and Drug Abuse noted that it has been scientifically proven that the effect of a similar quantity of alcoholic drink may have differing levels of effect on the physical and mental capacity of different individuals. They proposed that the process of determining the prescribed alcohol and drug limits be done by competent technical bodies such as the Government Chemist or the Ministry of Health. The Committee was of the view that NTSA would, in making the necessary regulations and prescribing applicable limits, be required to consult all stakeholders including NACADA, the Government Chemist and the Ministry of Health.

CLAUSE 5

- 15. The Kenya Driving Schools Association was of the view that a deletion of section 70(5B) on the offence of exceeding the speed limit prescribed on a traffic sign by more than 20kmh which currently attracts a penalty of imprisonment not less than three months or a fine of not less than twenty thousand shillings or both was not reasonable and requires further consideration.
- 16. On its part, NTSA noted that the provision has caused a lot of confusion as some proponents have argued that it means that a person does not commit an offence unless the speed limit is exceeded by more than 20 kph while others have argued that this section creates a minimum penalty for those who violate the speed limit by more than 20 kph. It was their further submission that confusion has also extended to the Judiciary where in one case it held that there was no offence created unless the speed limit was exceeded by 20 kph and in other cases the Judiciary has convicted drivers who have exceeded the speed limit by less than 20 Kph.
The Committee agreed with the view of NTSA due to the need for certainty in law.

CLAUSE 6

- 17. The Committee received no adverse submissions or proposals for amendment on the Clause.

PART 4

4.0 COMMITTEE'S OBSERVATIONS

18. The Committee observed that Clause 2 of the Bill is unnecessary as the definition of NTSA is already included in the Traffic Act;

5.0 COMMITTEE'S RECOMMENDATION

19. The Committee having considered the Traffic Amendment Bill, 2021 (National Assembly Bill No. 60 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 2** 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

SCHEDULE OF AMENDMENTS

CLAUSE 2

THAT, the Bill be amended by deleting Clause 2.

MINUTES OF THE THIRTEENTH (13TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 22ND MARCH 2022 AT 10:00 AM AT THE BOARDROOM AT 8TH FLOOR, UKULIMA COOPERATIVE HOUSE, NEAR PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David L. Pkosing, C.B.S., M.P. – *Chairperson*
2. Hon. Abdul Rahim Dawood, M.P.
3. Hon. Moses Malulu Injendi, M.P.
4. Hon. Omar Mwinyi Shimbwa, M.P.
5. Hon. Ahmed Bashane Gaal, M.P.
6. Hon. Dominic Koskei, M.P.
7. Hon. Kulow Maalim Hassan, M.P.
8. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

9. Hon. Mercy Wanjiku Gakuya, M.P. – *Vice Chairperson*
10. Hon. David Njuguna Kiaraho, M.P.
11. Hon. Johnson Manya Naicca, M.P.
12. Hon. Peris Pesi Tobiko, C.B.S., M.P.
13. Hon. Samuel Arama, M.P.
14. Hon. Ahmed Abdisalan Ibrahim, M.P.
15. Hon. Ali Wario Guyo, M.P.
16. Hon. George Aladwa Omwera, M.P.
17. Hon. Gideon Mulyungi, M.P.
18. Hon. Janet Nangabo, M.P.
19. Hon. Shadrack John Mose, M.P.

SECRETARIAT

- | | | |
|-----------------------------|---|--|
| 1. Ms. Tungo Chelagat Aaron | - | Senior Clerk Assistant |
| 2. Mr. Ahmed Salim Abdalla | - | Clerk Assistant II |
| 3. Mr. Ronald Walala | - | Legal Counsel |
| 4. Mr. Eric Kariuki | - | Research Officer |
| 5. Mr. Collins Mahamba | - | Audio Officer |
| 6. Mr. John Gituri Njoroge | - | Intern, Public Communications & Media R. |

MIN No. TPWH 063/2022:

PRELIMINARIES

The Chairman called the meeting to order at fifteen minutes past ten o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting to receive Legal Brief on the Traffic (Amendment) Bill (NA Bill 60 of 2021) by Hon. Kassait Kamket

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

MIN No. TPWH 064/2022:

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

The agenda item was deferred to the next meeting.

MIN NO. TPWH 065/2022:

LEGAL BRIEF ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET

Members were taken through the Bill clause by clause as follows:

1. The principal object of this Bill is to amend the Traffic Act, Cap. 403.
2. Clause 1 of the Bill contains its Short Title.
3. Clause 2 of the Bill seeks to amend section 2 of the Act to introduce the National Transport and Safety Authority into the Act.
4. Clause 3 of the Bill seeks to amend section 16 of the Bill to empower the national Transport and Safety Authority to—
 - (a) determine the intervals at which vehicles are to be inspected;
 - (b) conduct motor vehicle inspections; and
 - (c) delegate inspection of motor vehicles to another person or body of their choosing.

Under the current provisions of the Act, inspections are done by the Motor Vehicle Inspection Unit.
5. Clause 4 of the Bill seeks to amend section 44 of the Act to changes the question of whether a person was driving under the influence from a subjective test to an objective test. It proposes that a person only be charged and convicted of the offence if they exceed a certain prescribed limit of alcohol in their system.
6. Clause 5 of the Bill seeks to amend section 70 of the Act to delete the offence of exceeding the speed limit prescribed on a traffic sign by more than 20kmh which currently attracts a penalty of imprisonment not less than three months or a fine of not less than twenty thousand shillings or both.
7. Clause 6 of the Bill seeks to amend section 103A of the Act to delete the requirement for drivers of public service vehicles to undergo compulsory testing after every two years to ascertain their competence.

Way Forward

The Committees resolved to conduct stakeholder engagement and do report writing on the same, from 29th March to 2nd April 2022.

MIN No. TPWH 066/2022:

ADJOURNMENT

There being no other business, the sitting was adjourned at noon. Next meeting to be held on notice.

Signed.....

[Handwritten Signature]

(Chairperson)

Date.....

17/05/2022

MINUTES OF THE FIFTEENTH (15TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON WEDNESDAY, 30TH MARCH 2022 AT 10:00 AM AT THE 2ND FLOOR BOARDROOM, CONTINENTAL HOUSE, WITHIN PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David L. Pkosing, C.B.S., M.P. – *Chairperson*
2. Hon. Mercy Wanjiku Gakuya, M.P. – *Vice Chairperson -virtually*
3. Hon. Abdul Rahim Dawood, M.P.
4. Hon. Moses Malulu Injendi, M.P.
5. Hon. Omar Mwinyi Shimbwa, M.P.
6. Hon. Samuel Arama, M.P.
7. Hon. Ahmed Bashane Gaal, M.P.
8. Hon. Ali Wario Guyo, M.P.
9. Hon. Gideon Mulyungi, M.P. -*virtually*
10. Hon. Janet Nangabo, M.P.
11. Hon. Kulow Maalim Hassan, M.P.
12. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

13. Hon. David Njuguna Kiaraho, M.P.
14. Hon. Johnson Manya Naicca, M.P.
15. Hon. Peris Pesi Tobiko, C.B.S., M.P.
16. Hon. Dominic Koskei, M.P.
17. Hon. Ahmed Abdisalan Ibrahim, M.P.
18. Hon. George Aladwa Omwera, M.P.
19. Hon. Shadrack John Mose, M.P.

SECRETARIAT

- | | | |
|-----------------------------|---|------------------------|
| 1. Ms. Tungo Chelagat Aaron | - | Senior Clerk Assistant |
| 2. Mr. Ahmed Salim Abdalla | - | Clerk Assistant II |
| 3. Mr. Ronald Walala | - | Legal Counsel |
| 4. Mr. Eric Kariuki | - | Research Officer |
| 5. Mr. Job Owaga | - | Audio Officer |
| 6. Ms. Lily Cherotich | - | Protocol Officer |
| 7. Mr. John Gituri Njoroge | - | Protocol -Intern |

IN ATTENDANCE

- | | | |
|---------------------------|---|--------------------------------|
| 1. Mr. Gerald Osiero | - | Expert on Road Transport |
| 2. Ms. Nerea Musita | - | Director, TOMAE Kenya Limited |
| 3. Hon. Samy Weya | - | Director, TOMAE Kenya Limited |
| 4. Mr. Robert Ngungi | - | Deputy Director, Head of Legal |
| 5. Mr. Duncam Kibogong | - | Deputy Director, Road Safety |
| 6. Mr. Cosmas Ngeso | - | Deputy Director, Licensing |
| 7. Mr. Raymond Gou Hourne | - | TOMAE |
| 8. Eng. Gerald Wangai | - | NTSA |
| 9. Mr. George Njao | - | DG, NTSA |
| 10. Mr. Samwel Kamau | - | Chairman, KDSA |

- | | | |
|-----------------------------|---|------------------------------------|
| 11. Ms. Lumala John | - | Chairman, KDS Nairobi Region |
| 12. Mr. Felix Oketch | - | Lawyer for KDSA |
| 13. Mr. John O. Magara | - | KDSA |
| 14. Ms. Lister M. Nyamasege | - | KDSA, Nyanza Region Representative |
| 15. Mr. James Muguku | - | KDSA Lawyer |
| 16. Ms. Eunice Imwendwa | - | KDSA Treasurer |
| 17. Mr. Daniel Konyango | - | NACADA, Legal Department |
| 18. Mr. V. G. Okioma | - | NACADA CEO |

MIN No. TPWH 077/2022: **PRELIMINARIES**

The Chairman called the meeting to order at thirty minutes past nine o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting to receive submissions from various stakeholders / members of the public on the Traffic (Amendment) Bill (NA Bill 60 of 2021) by Hon. Kassait Kamket

The agenda of the meeting was therefore adopted after being proposed by the Hon. Malulu Injendi, MP and seconded by the Hon. Ahmed Bashane, MP.

MIN No. TPWH 078/2022: **CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS**

The agenda item was deferred to the next meeting.

MIN NO. TPWH 079/2022: **SUBMISSIONS BY MR. GERALD OSIEMO ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET**

In his submissions, Mr. Gerald opposed the amendment citing that it would bring about harassments of motorists by the authorities and increased corruption. He however gave the following recommendations:

- I. Use of high-tech gadgets to record alcohol content instead of the breathalyzer so as to be able to provide water tight evidence in courts.
- II. The authority to outsource drivers testing service from Automotive Association of Kenya.
- III. Deletion of the word "exceeded by more than 20km/hr" in clause 5 of the bill and its substitution with specific limits.

MIN NO. TPWH 080/2022: **SUBMISSIONS BY TOMAE KENYA ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET**

In their submissions, TOMAE Kenya were in support of the Bill. They however, proposed inclusion of further amendments to the Bill as follows:

- I. All vehicles imported with an age limit of ten years and recommendation of five-year age limit for light duty vehicles, will need to comply with a minimum EURO 4/IV vehicle emissions.

- II. Every importer to comply with emissions limits. Revocation of permission to operators who don't comply with the emissions limit set, and vehicles will be returned to their country of origin at the importers' cost.
- III. All vehicles to undergo annual emissions testing as well as fitness testing.
- IV. Vehicles in violation of the emission limit to attract a fine of up to 50,000 Ksh.
- V. All vehicles to undergo initial emission inspections.

TOMAE Kenya afterwards gave a comparative study on different traffic act jurisdiction that included emission testing such as, Rwanda, India, South Africa, EU and the UK.

MIN NO. TPWH 081/2022:

SUBMISSIONS BY THE KENYA DRIVING SCHOOLS ASSOCIATION ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET

The Kenya Driving Schools Association noted that the proposed amendment to section 4 of the act has no such provisions. The provision is in section 3(2) and should be the one that is amended.

The also pointed out that they are dangers in lack of clarity on which vehicles to undertake inspection.

For section 44 (1) of the amendment they proposed use of the word “**when**” before in charge. They also added the act should define the word drug and alcohol to elaborate on what amounts to alcohol or drug.

The explained that it is not reasonable to remove the speed limit.

MIN NO. TPWH 082/2022:

SUBMISSIONS BY THE NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE (NACADA) ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET

The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) submitted that there were various factors that determine effect of alcohol to different people's mental and physical capacity such as metabolic rate, amount of body fat, use of other drugs among others. They however were in support of the amendment siting that it will improve the regulatory functions of the law. Nacada was of the opinion that the process of determining the prescribed limits should be done by competent technical bodies like the government chemist and ministry of health.

MIN NO. TPWH 083/2022:

SUBMISSIONS BY THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET

The National Transport and Safety presented the challenges it faces in implementing its role of inspection such as the low number of centers which is 17 in number. It outlined the possible cost of inspections centers modernization to about 2 billion. The authority was in support of the amendment but proposed the amendment to Section 16 (20) to reads that; **Every vehicle more than four years from the recorded date of manufacture shall be subjected to inspection at**

intervals to be determined by the authority. They explained that this is meant to remove ambiguity of the vehicle to be inspected. The authority was in support of the amendment to section 44 of the principal act stating that it will enable the ministry and authority to introduce the use of prescribed limits and develop rules and regulations containing specific prescribed limits.

MIN No. TPWH 084/2022: ADJOURNMENT

There being no other business, the sitting was adjourned at twenty minutes past noon. Next meeting to be held same day on Wednesday, 30th March 2022 at 2:30pm.

Signed..... 

(Chairperson)

Date..... 

MINUTES OF THE SIXTEENTH (16TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON WEDNESDAY, 30TH MARCH 2022 AT 2:30 PM AT THE 2ND FLOOR BOARDROOM, CONTINENTAL HOUSE, WITHIN PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David L. Pkosing, C.B.S., M.P. – *Chairperson*
2. Hon. Abdul Rahim Dawood, M.P.
3. Hon. Omar Mwinyi Shimbwa, M.P.
4. Hon. Ahmed Bashane Gaal, M.P.
5. Hon. Janet Nangabo, M.P.
6. Hon. Kulow Maalim Hassan, M.P.
7. Hon. Tom Mboya Odege, M.P.
8. Hon. William Kamket, M.P., - *Sponsor of the Bill*

MEMBERS ABSENT WITH APOLOGY

9. Hon. Mercy Wanjiku Gakuya, M.P. – *Vice Chairperson*
10. Hon. David Njuguna Kiaraho, M.P.
11. Hon. Johnson Manya Naicca, M.P.
12. Hon. Moses Malulu Injendi, M.P.
13. Hon. Peris Pesi Tobiko, C.B.S., M.P.
14. Hon. Samuel Arama, M.P.
15. Hon. Ahmed Abdisalan Ibrahim, M.P.
16. Hon. Ali Wario Guyo, M.P.
17. Hon. Dominic Koskei, M.P.
18. Hon. George Aladwa Omwera, M.P.
19. Hon. Gideon Mulyungi, M.P.
20. Hon. Shadrack John Mose, M.P.

SECRETARIAT

- | | | |
|-----------------------------|---|------------------------|
| 1. Ms. Tungo Chelagat Aaron | - | Senior Clerk Assistant |
| 2. Mr. Ahmed Salim Abdalla | - | Clerk Assistant II |
| 3. Mr. Ronald Walala | - | Legal Counsel |
| 4. Mr. Eric Kariuki | - | Research Officer |
| 5. Mr. Job Owaga | - | Audio Officer |
| 6. Ms. Lily Cherotich | - | Protocol Officer |
| 7. Mr. John Gituri Njoroge | - | Protocol -Intern |

MIN No. TPWH 085/2022: PRELIMINARIES

The Chairman called the meeting to order at thirty minutes past two o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting to receive submissions on the Traffic (Amendment) Bill (NA Bill 60 of 2021) by Hon. Kassait Kamket.

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

MIN No. TPWH 086/2022:

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

The agenda item was deferred to the next meeting.

MIN NO. TPWH 087/2022:

SUBMISSIONS BY THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA) ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET

The Kenya Private Sector Alliance (KEPSA) did not appear before the Committee despite being invited. The Committee however, took note of KEPSA's letter dated 11th March 2022 whereby the Alliance declared their support to the Bill as published.

MIN NO. TPWH 088/2022:

SUBMISSIONS BY HON. KASSAIT KAMKET, MP ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET

In his submission, the Hon. Kassait Kamket, MP declared his full support to the Bill, explaining that the intended amendments were of great benefit to the country. He urged the Committee to support the Bill in its entirety.

MIN No. TPWH 089/2022:

ADJOURNMENT

There being no other business, the sitting was adjourned at thirty minutes past three o'clock. Next meeting to be held on notice.

Signed.....

(Chairperson)

Date.....17/05/2022

MINUTES OF THE TWENTY FOURTH (24TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON SUNDAY, 17TH MAY 2022 AT 10AM IN 2ND FLOOR BOARDROOM, CONTINENTAL BUILDING

MEMBERS PRESENT

1. Hon. David L. Pkosing, C.B.S., M.P. – *Chairperson*
2. Hon. Abdul Rahim Dawood, M.P.
3. Hon. Samuel Arama, M.P.
4. Hon. Omar Mwinyi Shimbwa, M.P.
5. Hon. Ahmed Bashane Gaal, M.P.
6. Hon. Ali Wario Guyo, M.P.
7. Hon. Dominic Koskei, M.P.
8. Hon. George Aladwa Omwera, M.P.
9. Hon. Kulow Maalim Hassan, M.P.
10. Hon. Janet Nangabo, M.P.
11. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

12. Hon. Mercy Wanjiku Gakuya, M.P. – *Vice Chairperson*
13. Hon. David Njuguna Kiaraho, M.P.
14. Hon. Johnson Manya Naicca, M.P.
15. Hon. Moses Malulu Injendi, M.P.
16. Hon. Peris Pesi Tobiko, C.B.S., M.P.
17. Hon. Ahmed Abdisalan Ibrahim, M.P.
18. Hon. Gideon Mulyungi, M.P.
19. Hon. Shadrack John Mose, M.P.

SECRETARIAT

- | | | |
|-----------------------------|---|--|
| 1. Ms. Tungo Chelagat Aaron | - | Senior Clerk Assistant |
| 2. Mr. Ahmed Salim Abdalla | - | Clerk Assistant II |
| 3. Mr. Ronald Walala | - | Legal Counsel |
| 4. Mr. Collins Mahamba | - | Audio Officer |
| 5. Mr. Job Owaga | - | Audio Officer |
| 6. Ms. Zainabu Wario | - | Serjeant-at-Arms |
| 7. Mr. Yeziel Jilo | - | Serjeant-at-Arms |
| 8. Ms. Lilian Cherotich | - | Protocol Officer |
| 9. Mr. John Gituri Njoroje | - | Intern, Public Communications & Media R. |

MIN No. TPWH 110/2022:

PRELIMINARIES

The Session Chairperson called the meeting to order at half past ten o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting to adopt the report on consideration of the Traffic (Amendment) Bill (NA Bill 60 of 2021) by Hon. Kassait Kamket, MP

The agenda of the meeting was therefore adopted after being proposed by the Hon. Kulow Hassan, MP and seconded by the Hon. George Aladwa, MP.

MIN No. TPWH 111/2022:

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

The agenda item was deferred to the next meeting.

MIN NO. TPWH 112/2022:

ANALYSIS OF SUBMISSIONS BY VARIOUS STAKEHOLDERS ON THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET

Members went through the submissions on the Traffic (Amendment) Bill (NA Bill 60 of 2021), clause by clause, while debating whether the views should be carried as they were or not. The views analyzed included those from the following:

1. Mr. Gerald Osiero
2. TOMAE Kenya
3. Kenya Driving Schools Association
4. National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA)
5. Kenya Private Sector Alliance (KEPSA)

MIN NO. TPWH 113/2022:

ADOPTION OF THE REPORT ON CONSIDERATION OF THE TRAFFIC (AMENDMENT) BILL (NA BILL 60 OF 2021) BY HON. KASSAIT KAMKET, MP

The Committee went through the draft report and unanimously agreed to adopt the same with the observations and recommendations contained therein.

The adoption was therefore proposed by Hon. Ahmed Bashane Gaal and seconded by Hon. George Aladwa Omera.

MIN No. TPWH 114/2022:

ADJOURNMENT

There being no other business, the sitting was adjourned at twelve noon. Next meeting to be held on notice.


Signed.....

(Chairperson)

Date.....

**Adoption of the Committee Report on consideration of
The Traffic (Amendment) Bill (NA Bill No. 60 of 2021)**

We, the Members of the Departmental Committee on Transport, Public Works and Housing, have, pursuant to Standing Order 199, adopted this Report on consideration of the Traffic (Amendment) Bill (NA Bill No. 60 of 2021) 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 



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION

DEPARTMENTAL COMMITTEES ON LABOUR AND SOCIAL WELFARE AND THAT ON TRANSPORT, PUBLIC WORKS AND HOUSING

In the Matter of consideration of Article 118(c) of the Constitution and
The National Assembly Standing Order 127 (3)
and

In the Matter of consideration by the National Assembly of –

- 1) The Children (No. 2) Bill, 2021 (National Assembly Bill No. 49 of 2021);
- 2) The Geriatric Bill, 2021 (National Assembly Bill No. 51 of 2021); and
- 3) The Traffic (Amendment) Bill (National Assembly Bill No. 60 of 2021)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

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

The Children (No. 2) Bill, 2021 (National Assembly Bill No. 49 of 2021) is sponsored by the **Hon. Lilian Gogo, M.P.** (Rangwe Constituency). The Bill underwent First Reading on 16th February, 2022 and thereafter committed to the Departmental Committee on Labour and Social Welfare for review and reporting to the House. The Bill seeks to repeal the Children Act, 2001, to provide for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of Children’s institutions; to give effect to the provisions of the Constitution and for the connected purposes.

The Geriatric Bill, 2021 (National Assembly Bill No. 51 of 2021) is sponsored by the **Hon. Gathoni Wamuchomba, M.P.** (Kiambu County). The Bill underwent First Reading on 16th February, 2022 and thereafter committed to the Departmental Committee on Labour and Social Welfare for review and reporting to the House. The Bill seeks to give effect to Article 57 of the Constitution by establishing a legal framework for the treatment of older members of the society; and to improve the living conditions of older members of the society by providing for their rights to human dignity, safety and security, education, health and equality and non-discrimination.

Traffic (Amendment) Bill (National Assembly Bill No. 60 of 2021) is sponsored by **Hon. Kassait Kamket, M.P.** (Tiati Constituency). The Bill underwent First Reading on 16th February, 2022 and thereafter committed to the Departmental Committee on Transport, Public Works and Housing for review and reporting to the House. The Bill seeks to amend the Traffic Act, Cap. 403 to align it with the Constitution to facilitate implementation of traffic laws and regulations; to provide a framework for the development of strategies to ensure that operations in the traffic sector are conducted in compliance with the prevailing regulations; to harmonize the provisions of the Principal Act, the National Transport Safety Authority Act, No. 33 of 2012 and the regulations made under the Act with other traffic-related laws for the safety of road users and the general public.

Now therefore, in compliance with Article 118 (1) (b) of the Constitution and National Assembly Standing Order 127(3), the Committees hereby invite the general public and stakeholders to submit memoranda on the Bill. Copies of the Bill are available at the National Assembly Table Office or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be submitted to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi**; or emailed to clerk@parliament.go.ke; to be received **on or before Friday, 11th March, 2022**.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
23rd February, 2022

“For the Welfare of Society and the Just Government of the People”



SPECIAL ISSUE

Kenya Gazette Supplement No. 225 (National Assembly Bills No. 60)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 3rd December, 2021

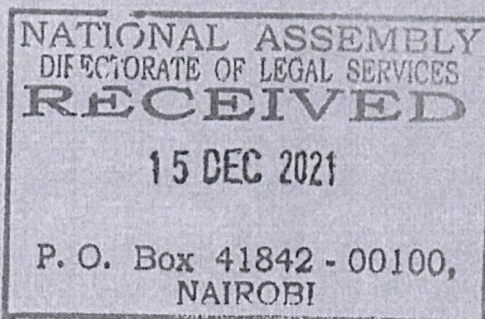
CONTENT

Bill for Introduction into the National Assembly —

PAGE

The Traffic (Amendment) Bill, 2021

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MATIONAL ASSSEMBLY
STATE OF ARIZONA
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JUN 20
P. O. Box 41842 - 00100
ALBUQU

THE TRAFFIC (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Traffic Act, *Cap.* 403 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Traffic (Amendment) Act, 2021. Short title.

2. Section 4 of the Traffic Act (in this Act, referred to as “principal Act”), is amended in subsection (2) by inserting the following new definition in its proper alphabetical sequence—
 “Authority” has the meaning assigned to it under the National Transport and Safety Authority Act.” Amendment of section 2 of *Cap.* 403.

3. Section 16 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—
 “(2) Every vehicle that has been operated for a period exceeding four years from the recorded date of manufacture shall be subjected to inspection at intervals to be determined by the Authority.
 (3) An inspection under subsection (2) shall be conducted by the Authority or persons authorized in writing by the Authority” No. 33 of 2012.
Amendment of Section 16 of *Cap.* 403.

4. Section 44 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—
 “(1). Any person who, when driving or attempting to drive, or in charge of a motor vehicle on a road or other public place, is under the influence of an alcoholic drink or a drug beyond the prescribed limits, shall be guilty of an offence and, liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding two years or to both.” Amendment of Section 44 of *Cap.* 403.

5. Section 70 of the principal Act is amended by deleting subsection (5B). Amendment of Section 70 of *Cap.* 403.

6. Section 103A of the principal Act is amended by deleting subsection (4). Amendment of section 103A of *Cap.* 403.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal object of this Bill is to amend the Traffic Act, *Cap. 403* to align it with the Constitution to facilitate implementation of traffic laws and regulations.

The Bill also seeks to provide a framework for development of strategies to ensure that operations in the traffic sector are conducted in compliance with the prevailing regulations.

The Bill further seeks to harmonize the provisions of principal Act, the National Transport Safety Authority Act, *No. 33 of 2012* and the regulations made under the Act with other traffic related laws for the safety of road users and the general public.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill seeks to amend section two of the principal act to provide for the definition of the term "Authority" as provided for under the National Transport and Safety Authority Act.

Clause 3 of the Bill seeks to amend section 16 of the principal Act to anchor the outsourcing of inspection into law by providing that inspection can be done by persons authorized by the Authority other than the Authority itself and to provide the frequency within which inspection shall be done.

Clause 4 of the Bill seeks to amend section 44(1) of the principal Act since Section 44(1) as obtains currently contains a subjective test which may not be easily implemented with such words as "*as to be incapable of having proper control of the vehicle*". The amendment shall ensure that this test be an objective one by providing for such measurable and scientific applications such as prescribed limits hence the amendment.

Clause 5 of the Bill seeks to amend section 5B of the principal Act to cure the frequent misinterpretation of the section which provides that a person who violates the speed limit prescribed for a road under subsection (1A) by more than twenty kilometers per hour commits an offence and shall be liable, on conviction, to imprisonment for a term of not less than three months, or a fine of not less than twenty thousand, or both.

Some entities interpret section 5B to mean a person does not commit an offence unless the speed limit is exceeded by more than 20km/h, while other entities including the Authority, argue that the section creates a minimum penalty for persons who violate the speed limit by more than 20km/h.

Clause 6 of the Bill seeks to amend the principal Act by deleting section 103A(4) of the principal Act to provide for practicability in operation of the transport industry and ease implementation of 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 on how the Bill affects county governments

This Bill concerns county governments in terms of Article 110 (1) of the Constitution as it affects the functions and powers of county governments as set out under Part 2 of the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill, within the meaning of Article 114 of the Constitution

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

Dated 26th August, 2021

HON. KASSAIT KAMKET,
Member of Parliament.

Section 2 of Cap. 403 which it is proposed to amend—

In this Act, unless the context otherwise requires—

“authorised officer” means a person appointed as such under section 3(4);

“Authority” means the National Transport and Safety Authority established under the National Transport and Safety Authority Act; “bicycle” means any bicycle or tricycle not self-propelled; “cattle” includes oxen, bulls, cows, horses, camels, mules, asses, sheep, goats and swine;

“certifying officer” means the person appointed to be the certifying officer under subsection (2) of section 3;

“commercial vehicle” means a motor vehicle constructed or adapted for the carriage of goods or burdens of any description in connection with any trade, business or agriculture, but does not include any type or class of motor vehicle which the Authority may, by notice in the Gazette, declare not to be commercial vehicles for the purposes of this Act;

“computerized motor vehicle registration system” means any software or hardware for use in storing, retrieving, processing or disseminating information relating to registration records of motor vehicles and trailers, the licensing of drivers, and the keeping of such records in relation thereto as are required by this Act;

“dealer” means any person who deals by way of business in motor vehicles or trailers; “dealer’s general licence” means a licence issued under section 23;

“deregistration certificate” means a deregistration certificate issued under section 6A(2)

“drive”, in relation to a motor vehicle, includes the steering of a motor vehicle; “driver” means any person who drives or guides, or is in actual physical control of, any vehicle or cattle on any road;

“driving licence” means a licence to drive a motor vehicle issued under this Act, and any document deemed to be a driving licence by any rules made under this Act;

“driving test examiner” deleted by Act No. 18 of 2018, Sch.; “heavy commercial vehicle” means a commercial vehicle whose tare weight exceeds six thousand seven hundred and twenty pounds;

“highway authority” means the Minister for the time being responsible for Public Roads or any other Authority or body to whom the Minister delegates powers subject to such terms and conditions as he may deem appropriate;

“information technology” means any equipment or software for use in storing, retrieving, processing or disseminating information;

“inspection certificate” means a certificate affixed to a vehicle under section 17A; “inspector” means any person appointed to be an inspector of vehicles under subsection (3) of section 3;

“invalid carriage” means a motor vehicle specially designed and constructed for the use of persons suffering from some physical defect or disability;

“licensing officer” means a licensing officer appointed under section 3;

“manufacturer” means a manufacturer of motor vehicles and trailers;

“matatu” means a public service vehicle having a seating accommodation for not more than twenty-five passengers exclusive of the driver, but does not include a motor-car;

“motor-car” means a motor vehicle having seating accommodation for not more than ten passengers excluding the driver, but does not include a motorcycle;

“motorcycle” means a motor vehicle with less than four wheels the weight of which unladen does not exceed eight hundred weights;

“motor omnibus” means a public service vehicle having seating accommodation for more than twenty-five passengers exclusive of the driver;

“motor vehicle” means any mechanically propelled vehicle, excluding any vehicle running on a specially prepared way such as a railway or tramway or any vehicle deriving its power from overhead electric power cables or such other vehicles as may from time to time by rules under this Act be declared not to be motor vehicles for the purposes of this Act;

“owner”, in relation to a vehicle which is the subject of a hire-purchase agreement or hiring agreement, includes the person in possession of the vehicle under that agreement;

Section 16 of Cap. 403 which it is proposed to amend—

16. (1) An application for a license under this Part shall be made to a licensing officer in the prescribed form accompanied by the fee payable and the vehicle registration book.

Application for
licence

(2) Every vehicle more than four years old from the recorded date of manufacture shall be subjected to inspection by the motor vehicle inspection unit.

Driving under
influence of drink

44. (1) Any person who, when driving or attempting to drive, or when in charge of a motor vehicle on a road or other public place, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, 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.

(2) A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified, for a period of twelve months from the date of conviction, for holding or obtaining a licence.

Section 70 of Cap. 403 which it is proposed to amend—

Traffic signs.

70. (1) Subject to and in conformity with such general or other directions as may be given by the Minister, a highway authority may cause or permit traffic signs to be placed on or near a road.

(1A) Without prejudice to the generality of subsection (1), a highway authority shall cause to be placed on or near a road traffic signs prescribing speed limits on the road.

(2) Traffic signs shall be of the prescribed size, colour and type except

where the Minister authorizes the erection or retention of a sign of another character.

(3) After the commencement of this Act, no traffic signs shall be placed on or near any road except under and in accordance with subsections (1) and (2) of this section:

Provided that—

- (i) nothing in this subsection shall apply to any notice in respect to the use of a bridge;
- (ii) a highway authority or police officer of or above the rank of Inspector may authorize the erection of any traffic sign for any special purpose for a period not exceeding seven days, and such traffic sign shall be deemed to be lawful even though it does not conform to the requirements of this section.

(4) All traffic signs shall be deemed to have been lawfully erected until the contrary is proved.

(5) A highway authority may, by notice in writing, require the owner or occupier of any land on which there is any traffic sign or any object which so closely resembles a traffic sign that it might reasonably be taken to be such a sign to remove it, and if any person fails to comply with such a notice the highway authority may effect the removal, doing as little damage as may be, and may recover as a civil debt recoverable summarily from the person so in default the expense incurred in so doing:

Provided that this subsection shall not apply in the case of any sign or object so long as its retention is expressly authorized by the highway authority.

(5A) The driving licence of a person who has been convicted for the violation of a speed limit prescribed for a road under subsection (1A) shall be invalidated for a period not less than three years—

- (a) if the violation of the limit is by more than twenty kilometres per hour; and
- (b) the violation is repeated three or more different times.

(5B) A person who violates a speed limit prescribed for a road under subsection (1A) by more than twenty kilometres per hour commits an offence and shall be liable, on conviction, to imprisonment for a term of not less than three months, or a fine of not less than twenty thousand shillings, or both.

Section 103A of Cap. 403 which it is proposed to amend—

Uniforms and
special badge.

103A. (1) Every driver and every conductor of a public service vehicle shall wear a special badge and uniform.

(2) The uniform referred to in subsection (1) shall be prescribed by the Registrar of Motor Vehicles and shall, in the case of a driver, be navy blue in colour and in the case of a conductor, be maroon in colour.

(3) The special badges required under subsection (1) shall be provided by the Registrar of Motor Vehicles upon satisfaction of all requirements and upon payment of the prescribed fee.

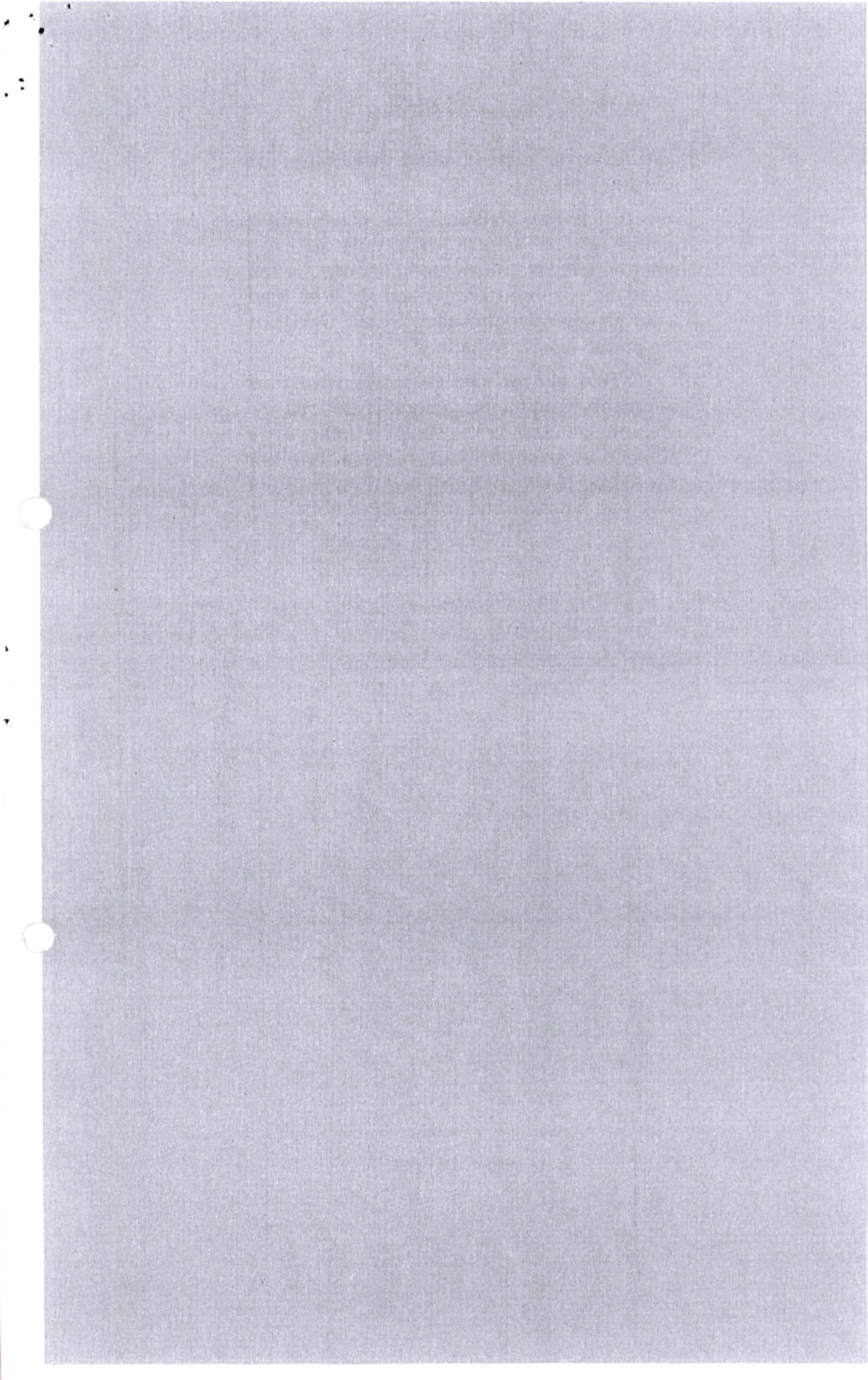
(4) Every driver of a public service vehicle shall undergo compulsory testing after every two years to ascertain his or her competence.

(5) Every owner of a public service vehicle shall employ at least one driver and one conductor who shall be the holder of a

certificate of good conduct issued by the relevant authority.

(6) Every conductor or driver of a public service vehicle shall only take up employment as such upon being vetted pursuant to subsection (5) and shall be paid a permanent monthly salary by the owner of the public service vehicle.

(7) A person who contravenes or fails to comply with the provisions of this section commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding twelve months, or to a fine of not less than ten thousand shillings, or both.



Submission - 1/6

from

**MR. GERALD
OSIEMO**

Gerald A. Osiemo,
Cell: 0720 734 968
25/03/222

**The Chairman,
The Departmental Committee on Transport, Public Works & Housing
Parliament**

Dear Sir,

RE: THE TRAFFIC (AMENDMENT) BILL 2021.

The above subject refers.

Firstly, I thank the committee, in its wisdom, for resolving to invite me to this important session to give my views in line with the provisions of Article 118 of the constitution. Why has parliament scored 99% on this invite? Because am not an ordinary public participant, but indeed a keynote, and hence privileged to give valuable / meaningful views to the committee.

Secondly, let me now introduce myself:-

I am a self-made top expert on road safety/ PSV affairs in the country, having operated the PSV business hands-on for a longtime within which period I, on own motion, have done extensive research for the last 33 years on the causes of road carnage and attendant remedies, the behavior of the traffic police, the Authority and the PSV crew, the causes of the clogged traffic jams in our cities streets and attendant solutions, the tactics used by the PSV carjackers and the attendant counter tactics. These diseases infected pests commandeer the vehicles at gunpoint into plantations, where they rob the victims and in addition rape the women and even sodomize the men who attempt to resist. The causes of the Bodaboda menace and attendant remedies.

In this connection, I wish to inform the committee, as the by the way, that three Cabinet secretaries, that of Transport, Interior and ICT are bungling the boda boda sector under the guise of reforms, from very ignorant point of view. Just like I wrote requesting you to invite me into this meeting, I wrote to them warning they were working by trial and error gambling and they needed to invite me to show them the way from wealthy experience point of view. But as usual, leaders in this country do not listen or respond to letters from hustlers. Secondly, it is totally demeaning and misplacement of priorities for the VIP Principal secretaries to be compelled to police and supervise the boda boda registration which starts on Monday 28th for two months. The problem with boda boda is broken systems. Fix the systems and the boda boda will register without supervision. With broken systems, even if the President, his deputy and all the cabinet secretaries stooped low to supervise the exercise, it will be a zero-sum game. However, that is a story for another day.

Now back to the subject matter. I have read the amendment bill thoroughly and singled out seven (7) sections which have loopholes that may be exploited by the enforcers to extort money from the public and I have accordingly proposed watertight safeguards as outlined here below:-

1. **Clause 3(a).** The bill seeks to amend section 16 to provide for outsourcing of motor vehicle inspection function. This is very dangerous move and whoever floated it had corrupt motives. Commercializing this important function is the most stupid action by a human being in his right senses. Verifying the roadworthy of a psv, for example, is about putting lives on the line. This is by any standards a very lucrative business, where corruption will start from the competition at the tendering point. The winning bidder, having bought the business may choose simply to dish out compliance certificates to the highest bidders. I mean you needn't take your vehicle physically, but to deliver cash and you come back with a certificate!

Clause 3(b). The section talks about the provision of frequency within which inspection shall be done. This is the elephant in the room, where the Authority has introduced the so-called random inspections, where they can remove a number plate of a vehicle they inspected yesterday! This under the guise that the speed governor could have been tampered with. I propose the following to the committee in addressing the above conundrum. The committee to put into law that once a commercial vehicle has been inspected and passed the test, the vehicle is deemed to be roadworthy / compliant until the next anniversary. The committee to treat the argument by the Authority that motorists tamper with speed governors soon after inspection, as a figment of wild imagination by the Authority triggered by corruption. The truth of the matter is the so-called random inspections are motivated by corruption, where the Authority is the "judge, jury and executioner in its own case". Where are the safeguards to check against abuse? If for example, the Authority technician lied that the speed governor had been tampered with, where are the safeguards to protect the vulnerable operators? I mean, where is the independent speed governor technician in the operation team to provide an excellent safeguard in such a scenario, by examining the governor/s jointly with the Authority technicians.

2. **Clause 5.** This section speaks about speed limits. On this one I plead to the committee to direct the Authority to procure two servers, one to be mounted in their offices and the second one to be mounted at the judiciary to be manned by the chief Registrar. Why this proposal? I have researched, and discovered that the limits are deleted upon provision of bribes. Secondly, the speed gun holder may call his/her colleague a head to arrest / impound a certain vehicle by lying that it had exceeded the limits, but the

truth is the vehicle is big and owner perceived to be moneyed. Finally, does the authority have the speed gun central data registration unit- server, in the first place? If not, then there are no checks and balances mechanisms, where the gun operator is left to own devices, where he/she is the “judge, jury and executioner in own case”.

Secondly, on the same clause the confusing conundrum can be cured by deleting “exceeded by more than 20km/hr” and substituted with specific limits for cars and other vehicles. The speed allowance is the window often exploited by the Authority to harass motorists.

3. **16(2)** This section provides that every vehicle more than 4 years old from the recorded year of manufacture shall be subjected to inspection by the motor vehicle inspection unit. On this section clarity is needed to be injected into law considering that all commercial vehicles undergo compulsory roadworthy inspections before issuance of annual road licenses, regardless of the recorded year of manufacture.

4. **44(1)** This section speaks of a person driving under the influence of a drink or drug. I start by saying the operation to catch such offenders must be structured, as opposed to the casual operation which obtained before the project was halted. The enforcers must map and zone a particular city. The best scenario would be to mount the operation simultaneously across the whole city while positioning officers to seal all escape “panya routes” for a successful operation, but due to manpower challenges the operations in certain zones must cover all the escape panya routes.

Secondly, the offenders are caught by breathing into a gadget called breathalyzer which records the alcohol content in the blood. I have been spying and discovered that a drunkard bribes his way out and his alcohol content is pinned on a pastor who is not ready to bribe or has no money.

I propose that the Authority procures high-tech gadgets such that you swipe your ID/ Passport and as you breath into it a receipt is generated complete with name, date, time and level of alcohol content for water-tight evidence in court.

5. **44(2)** Why is the safeguard in **44(1)** important? A drunkard or even a sober person implicated will be ready to give any bribe to save his disqualification from driving for twelve months.

6. **103A(4)** Every driver of a public service vehicle shall undergo compulsory testing after every two years to ascertain his / her competence. This is wonderful, but susceptible to be heavily abused. This is a perfect case where outsourcing comes in handy. But this outsourcing should never be to every Tom, Dick or Harry. The Authority to be compelled to source this service from one of the most reputable testing firms in the world, that is the Automobile Association of Kenya (AA). In this company

monkey business has no place and am sure all the participants, including the committee can agree with me on this.

7. **103(6)**. This section speaks that every conductor or driver of a PSV shall be paid permanent monthly salary by the owner of the PSV. This can only happen through a miracle. In a nutshell, it is possible for long distance buses, but impossible for short distance town service.

If the ministers concerned had listened to me I had a plan in mind to reform the sector the way I know, nobody else does, after which I would have placed the sector unto the structured platform for them to obey the law or for the law to find a place to rest on.

Thank you

Gerald A. Osiemo

Top Expert Road Safety/ PSV Affairs

Submission - 2/6

from

TOMAE

Kenya

TOMAE

KENYA LIMITED

THE TRAFFIC (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2021)

RECOMMENDATIONS

30TH MARCH 2022

MOTOR VEHICLE FITNESS AND EMISSIONS INSPECTION

Motor vehicle emissions contribute to ambient levels of air toxics known or suspected as human or animal carcinogens. Exposures to air toxics can also cause noncancerous health effects, such as neurological, cardiovascular, respiratory, reproductive and/or immune system damage.

Hereunder is our proposal for the clause to be included in the draft Traffic (Amendment) Bill

VEHICLE EMISSIONS.

- (i) All vehicles that are imported, both new and used with an age limit of 10 years and with a recommendation of a five-year age limit for light duty vehicles both petrol and diesel, will need to comply with a minimum of EURO 4/IV vehicle emissions where the allowed limit of concentration of carbon monoxide is at a volume of 0.5 percent while that of hydrocarbons stands at 0.12 percent or 1,200 parts per million (ppm);
- (ii) Every importer of motor vehicles will be expected to adhere to the emissions limits set by the country and any non-compliant imported vehicles will not be allowed to operate in the country and will be returned back to the country of origin at the importers cost.
- (iii) All Vehicles will be required to undergo annual emissions testing together with fitness testing done by the NTSA and other licensed Inspection Companies under the KS1515 Kenya Bureau of Standards.
- (iv) Any vehicle found to violate the minimum vehicle emissions levels will attract a fine in the sum of Kshs.50,000 and repeat violators will have their cars impounded and will lose their driving privileges for a certain period not exceeding 6 months;
- (v) All vehicles will be required to undergo an initial emission inspection test and subsequent annual emission inspections in a standard testing method as stated in clause (iii) herein above.

COMPARATIVE STUDIES ON DIFFERENT TRAFFIC ACT JURISDICTIONS THAT INCLUDE EMISSIONS TESTING

RWANDA

Air Quality Management Law 18/2016 of 18/05/2016 governing the preservation of air quality and prevention of air pollution in Rwanda was adopted. The law specifically requires the Rwanda Standard Board to establish air quality standards from any source such as factories, stoves and Vehicles.

Article 9: Any means of vehicle for transport operating in Rwanda must undergo an inspection for emissions control. All emissions inspections implemented by the Motor Vehicle Inspection Centre are operated by the Rwanda National Police.

Emissions inspection is mandatory to all vehicles operating in Rwanda (twice a year for all commercial and public transport vehicles and once a year for other vehicles (private, public and even utilities)

The Traffic Police has now acquired mobile and handheld emissions inspection equipment for on-spot checks (Effective use hasn't yet started)

Inspected parameters include the Hydrocarbons and Carbon Monoxide for gasoline vehicles and Opacity for diesel vehicles.

Motorcycles do not undergo inspections (In plans) but in Kenya motorcycles and motor tricycles (tuk-tuk) should be included.

Their strategy in implementing is by;

1. Applying strict import regulations on vehicles
2. Smooth traffic flow around traffic hotspots
3. Reducing emissions from bus fleets

INDIA

India adopted the European template for vehicle emissions standards, creating parallel 'Bharat' standards (e.g. Bharat III standards are equivalent to Euro 3 standards). New vehicles sold in select Indian cities must meet Bharat IV (Euro 4) standards, while the rest of the country mandates Bharat III standards.

Bharat Stage VI

On 19 February 2016, the Ministry of Road Transport and Highways issued a draft notification of Bharat Stage (BS) VI emission standards. The standards, as proposed, took effect throughout the country for all light-duty and heavy-duty vehicles as well as two and three wheelers manufactured on or after 1 Apr 2020. The draft proposal specified mass emission standards, type approval requirements, and on-board diagnostic (OBD) system and durability levels for each vehicle category.

The proposal also specified changes to vehicle type approval procedures for light-duty vehicles by including provisions for in-service conformity testing using portable emissions measurement system (PEMS).

The proposed BS VI regulation established an important precedent for leapfrogging from Euro IV-equivalent directly to Euro VI-equivalent motor vehicle emissions standards.

EU and UK

A distinction must be made between emissions legislation as laid down in the EU directives which deal mainly with the construction of the vehicles and the UK domestic legislation which deals with their use. Directives such as 91/542 (Parts 1 and 2 of which are better known as Euro I and Euro II) and 99/96 (Euro III and Euro IV) specify maximum limits that can only be measured on a test bed and, as such, can be regarded as the responsibility of the manufacture-rather than the user. The Euro III standard which was introduced for new vehicles from 1 October 2001 used the European Steady State Test Cycle.

In addition, those engines fitted with a particulate filter and/or DeNOx catalyst have to be tested under the European Transient Cycle.

- Euro IV was introduced for new vehicles registered from 1 October 2006.
- Euro V was introduced for new vehicles registered from 1 October 2009.
- Euro VI was introduced for new vehicles registered from 31 December 2013.

UK domestic legislation, on the other hand, is aimed at vehicles in service and includes checks on the emissions of carbon monoxide (CO) and hydrocarbons (HC) from petrol engines and black smoke from diesel engines.

The use of the smoke meter at the annual test was introduced in September 1992 for turbocharged and naturally-aspirated diesel engines, followed by a reduction in the maximum permitted smoke levels on 25 September 1995.

From 1 July 2009, more stringent smoke level tests were introduced at the annual test on vehicles equipped with Euro IV engines or better. Vehicles in this category, which were registered from 1 July 2008, are required to pass a smoke test with a reduced smoke limit of 1.5m'.

SOUTH AFRICA

The exhaust emission from the engine of a vehicle was set to comply with the regulations promulgated under the Atmospheric Pollution Prevention Act, 1965 (Act 45). Also governed by Air Quality Management by-Law 2003, 2010

The gaseous and particulate emissions from the vehicle shall comply with the requirements of SANS 20083 Uniform provisions concerning the approval of vehicle with regard to the emissions of pollutants according to engine fuel requirements to the level of ECE R83.

PUBLIC SERVICE VEHICLES AND HEAVY COMMERCIAL VEHICLES SERVICE CHECKS

For purposes of road safety, every PSV and HCV should have Service Check Certificates in order to be able to operate on the road. Under the below clause, it can be inserted either every 3,000 / 5,000 or 10,000 km for service. However numerous countries do it every 6 months to ensure the mentioned vehicles are roadworthy and acceptable for public usage.

1791

THE TRAFFIC (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Traffic Act, Cap. 403 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Traffic (Amendment) Act, 2021. Short title.

2. Section 4 of the Traffic Act (in this Act, referred to as "principal Act"), is amended in subsection (2) by inserting the following new definition in its proper alphabetical sequence—

"Authority" has the meaning assigned to it under the National Transport and Safety Authority Act." Amendment of section 2 of Cap. 403.

3. Section 16 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

"(2) Every vehicle that has been operated for a period exceeding four years from the recorded date of manufacture shall be subjected to inspection at intervals to be determined by the Authority." Ins. 33 of 2012.

(3) An inspection under subsection (2) shall be conducted by the Authority or persons authorized in writing by the Authority." Amendment of Section 16 of Cap. 403.

4. Section 44 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

"(1). Any person who, when driving or attempting to drive, or in charge of a motor vehicle on a road or other public place, is under the influence of an alcoholic drink or a drug beyond the prescribed limits, shall be guilty of an offence and, liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding two years or to both." Amendment of Section 44 of Cap. 403.

5. Section 70 of the principal Act is amended by deleting subsection (5B). Amendment of Section 70 of Cap. 403.

6. Section 103A of the principal Act is amended by deleting subsection (4). Amendment of section 103A of Cap. 403.

COMPARATIVE STUDIES ON SERVICE CERTIFICATE CHECKS

SOUTH AFRICA AND RWANDA

Every six months roadworthy service checks, and a certificate is issued to the vehicle

UNITED STATES OF AMERICA

According to Federal Motor Carrier Safety Administration under the United States Department of Transportation Every motor carrier shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control.

Parts and accessories must be in safe and proper condition at all times.

Pushout windows, emergency doors, and emergency door marking lights must be inspected at least every 90 days.

In Conclusion

Safety, protection, and profitability result from diligent safety inspections. When vehicles are checked periodically during the year, it ensures that they are in compliance with regulations, minimizes road breakdowns and accidents, also ensures public safety.

PRESENTED BY:

TOMAE KENYA LIMITED

WU YI PLAZA

SUITE B 6TH FLOOR ROOM 12

GALANA ROAD, NAIROBI

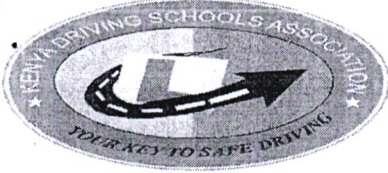
TEL: +254705655128

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Submission - 3/6

from

**KENYA DRIVING
SCHOOLS
ASSOCIATION**



KENYA DRIVING SCHOOLS ASSOCIATION

TEL: 0722 744 737 / 0720 653 647

Email: kenyadrivingschoolassociation@gmail.com

Date:.....

KENYA DRIVING SCHOOL ASSOCIATION (KDSA) SUBMISSIONS ON THE TRAFFIC ACT CAP 403 PARLIAMENT AMMENDENT BILL

1. The proposed amendment to Section 4 of the Act has no such provision. That provision is in **Section 3(2)** and should be the one that is amended.

2. **Section 16(2)** proposed amendment:

The proposal is okay, *BUT*

There is danger that lack of clarity. Does inspection apply to ALL vehicles including Private cars, there is need for clarity. There is need to ensure that intended inspection. We need to enact what is practicable to remove the danger of the law being misused by the implementing authority

3. **Section 44 (1)** of the amendment;

We propose some specificity on the limits in terms of measurable and scientific applications to avoid the loopholes.

There is also need to insert word "*WHEN*" before in charge

The Acts needs to define the word "drug" and Alcohol under the Interpretation so that it's clear what amounts to a drug or Alcohol.

4. **Section 70.**

That proposal may call for more discussion by all stakeholders to agree on what constitutes over speeding.

As country we have moral to ensure that there is sanity on our road by making sure that speed limit marking are not just cosmetic.

Speed limits is universally applied to check on safety of pedestrians using roads; the aged, children etc.

Is it reasonable to remove the speed limit? Our response is NO/

5. **Deletion of Section 103A (4)**

This provision is okay.

Submission - 4/6

from

NACADA



**SUBMISSIONS BY THE NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST
ALCOHOL AND DRUG ABUSE (NACADA) IN THE CONSIDERATION OF THE
TRAFFIC (AMENDMENT) BILL, 2021**

Honourable Chairman;

We refer to the above subject matter.

Following the call for submission of views to the Committee, we hereby address the Hon. Members as follows:

Hon. Chairman, the National Authority for the Campaign against Alcohol and Drug Abuse (NACADA) is grateful for the opportunity to be afforded a hearing by the Committee at this early stage of consideration of the Bill.

Hon. Chair, we further thank the National Assembly for the cooperation and support it has given NACADA over the last many years it has been in existence as a state corporation.

Hon. Chair, NACADA appreciates the role of Parliament in coming up with new laws for the country, and also improving the existing ones through amendments. This being one of the three main mandates of the legislature other than representation of the people and oversight over the executive, the value derived from involvement of public participation in the legislative processes cannot be overemphasized.

Section 4 of the Alcoholic Drinks Control Act, No. 4 of 2010 (ADCA), provides NACADA's mandate as the Relevant Agency which includes advising the Cabinet Secretary on a wide range of issues concerning alcoholic drinks. Therefore, as a key stakeholder NACADA is pleased to present its views on the proposed amendments as follows:

a. Synopsis

The World Health Organization defines Substance use disorders as brain disease that result from alteration of a person's brain structure and function resulting in long-term psychological and physical dependence.

Substance abuse is a major social problem in Kenya, and findings suggest that **Kenyans abuse both licit and illicit substances** as follows:

- **10.4% abuse alcohol**
- 6.8% abuse tobacco
- 3.1 % abuse khat (miraa)

- 0.8 % abuse cannabis
- 0.4% abuse heroin
- 0.3% abuse inhalants.

This demonstrates that most Kenyans are at risk of severe health related complications as a result of licit and illicit substance use.

b. The proposed amendment to section 44(1) of the statute:

The proposed amendment that NACADA has a statutory mandate to make an observation on is the one proposed to section 44(1) of the statute as follows:

44(1). Any person who, when driving or attempting to drive, or in charge of a motor vehicle on a road or other public place, is under the influence of an alcoholic drink or a drug beyond the prescribed limits, shall be guilty of an offence and, liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding two years or to both.

The import of the amendment of this section is to change the subjective test of being under the influence of an alcoholic drink "***to such an extent as to be incapable of having proper control of the vehicle***" to the more objective test of "**prescribed limits**"

Hon. Chair, it has been scientifically proved that the effect of a similar quantity of an alcoholic drink may have differing levels of effect on the mental and physical capacity of an individual depending on various factors as follows:

- **Whether the person is male or female:** Women's bodies have less water and more fatty tissue than men's, so the alcohol in the water in their system is more concentrated. Blood Alcohol Concentration (BAC) is also likely to be higher just before a woman's menstruation than any other time. Additionally, men, more than women, make more of the protective enzyme that breaks down alcohol before it enters the blood.
- **Metabolic rate:** Which is affected by diet, digestion, fitness, emotional state, hormonal cycle.
- **Type of build:** Small framed people may have a higher BAC than large framed people who have drunk the same amount.
- **Amount of body fat:** Body fat does not absorb alcohol so alcohol is more concentrated in people with a high proportion of body fat.

- **Drinking on an empty stomach:** Having food in the stomach slows down the rate at which alcohol passes into the bloodstream.
- **Drinking quickly:** The body can only metabolise one standard drink per hour.
- **Percentage of alcohol in a drink:** The higher the percentage the higher the BAC.
- **The type of alcohol:** Fizzy drinks are absorbed more quickly.
- **The container size:** It is the number of standard drinks not the number of glasses that determines BAC. One glass may contain several standard drinks.
- **The time since last drink:** The body can only break down one standard drink per hour so the BAC may still be rising several hours after drinking has stopped because the alcohol takes time to be absorbed.
- **The use of other drugs:** This won't affect BAC but may 'mask' the effect of alcohol. Stimulants such as speed and ecstasy may make a person feel more sober than they really are and cause severe dehydration. Cannabis or other depressants such as analgesics and cold and flu tablets, combined with alcohol, decrease alertness and motor skills more than just consuming alcohol alone. Alcohol combined with some antibiotics may cause headaches, nausea and flushing and reduce the effectiveness of the antibiotics.

Hon. Chair, in so far as the Bill seeks to amend section 44(1) of the Act by proscribing the act of ***driving, or being in charge of a motor vehicle on a road or other public place, while under the influence of an alcoholic drink or a drug beyond the prescribed limits***, it is our considered opinion that the proposed amendment will improve the regulatory function of the law as it will no longer be left to the personal attributes of the driver, nor to the judgement of the law enforcement officer to determine whether a driver has broken the law or not.

c. International obligation on campaign against drink driving:

During the 63rd Session of the World Health Assembly, held in Geneva in May 2010, the 193 Member States of the World Health Organization (WHO), including Kenya, adopted the **Resolution WHA63.13 on Global Strategy to Reduce the Harmful Use of Alcohol**. The policy options and interventions available for national action were grouped into 10 recommended target areas, which should be seen as supportive and complementary to each other. These 10 areas are:

- a. Leadership, awareness and commitment
- b. Health services' response

- c. Community action
- d. Drink-driving policies and countermeasures
- e. Availability of alcohol
- f. Marketing of alcoholic beverages
- g. Pricing policies
- h. Reducing the negative consequences of drinking and alcohol intoxication
- i. Reducing the public health impact of illicit alcohol and informally produced alcohol
- j. Monitoring and surveillance.

In regard to drink-driving policies and countermeasures, the Countries committed themselves to undertake the following policy options and interventions include:

- i. Introducing and enforcing an upper limit for blood alcohol concentration, with a reduced limit for professional drivers and young or novice drivers;
- ii. Promoting sobriety check points and random breath-testing;
- iii. Administrative suspension of driving licences;
- iv. Graduated licensing for novice drivers with zero-tolerance for drink-driving;
- v. Mandatory driver-education, counselling and, as appropriate, treatment programmes;
- vi. Encouraging provision of alternative transportation, including public transport until after the closing time for drinking places;
- vii. Conducting public awareness and information campaigns in support of policy and in order to increase the general deterrence effect;
- viii. Running carefully planned, high-intensity, well-executed mass media campaigns.

Section 3 of the ADCA, 2010 provides a schedule of object and purpose of Act to be, inter alia;

“protect the health of the individual in the light of the dangers of excessive consumption of alcoholic drinks; adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting”

and also



“inform and educate the public on the harmful health, economic and social consequences of the consumption of alcoholic drinks”

Therefore, ADCA 2010 is the domestic legal instrument that seeks to implement the Global Strategy as adopted by WHO in 2010. As such, any legal provision relating to alcoholic drinks should form part of the Kenyan legal system that addresses the components of the Global Strategy.

In this regard, the amendment is a direct contribution to the implementation of the drink-driving policies and countermeasures as a strategy area as passed in the **Resolution WHA63.13**

Application of the above international obligations:

- Article 2 (6) of the constitution of Kenya provides that all treaties and conventions ratified by Kenya form part of the laws of Kenya under the Constitution.
- Additionally, the international legal doctrine of *pacta sunt servanda* provides that a state signatory to an international treaty undertakes to observe the treaty provisions in good faith.

From the above, it is prudent that the Parliament does not pass laws that will negate the obligation of Kenya to observe the above international legal instruments.

NACADA's proposals:

- i. NACADA supports the amendment proposed to section 44(1) of the statute
- ii. The Authority is of the opinion that **the process of determining the “prescribed limits” should be done by competent technical bodies like the Government Chemist, Ministry of Health, etc** in regulations to be formulated and subjected to a comprehensive stakeholder engagement.



d. Conclusion

In the overall, Hon. Chairman, we therefore urge the Committee to convey the above position to the whole Assembly with a request that the amendment proposed to section 44(1) of the statute be carried subject to provision being made for the appropriate mode of determining "prescribed limits" of alcoholic drinks.

Thank you.

Submission - 5/6

from

KEPSA



*DD committees
8
14/03*

The Voice of Private Sector in Kenya

Ref: 061/03-PPD/2022

March 11, 2022

The Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
Nairobi

*Tungo Aaron
pls facilitate
14/3/22*



Dear Mr. Michael Sialai, EBS

RE: KEPSA POSITION ON THE TRAFFIC (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2021)

Receive warm greetings from the Kenya Private Sector Alliance.

We continue to appreciate your support and the cordial relationship between the National Assembly and KEPSA throughout the years.

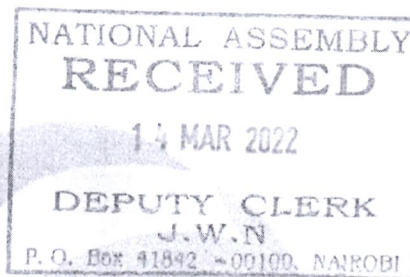
We write to you in response to your invitation to the public and stakeholders to make submissions on the **Traffic (Amendment) Bill (National Assembly Bill No. 60 Of 2021)**.

As private sector, we support all measures that seek to improve the safety of road users and the general public, and particularly welcome the outsourcing of inspections by the Authority. This will open up avenues for authorized private sector players to work with the Authority, especially during these times when business are still recovering from the massive disruptions of the Covid-19 pandemic.

We remain hopeful that the Bill will be passed into law as soon as possible to enable businesses and the public at large to start enjoying the benefits of the proposed law.

Yours Sincerely,

Carole Kariuki, EBS, MBS, HSC
Chief Executive Officer



Submission - 6/6

from

NTSA

(views supported by
The Ministry of Transport &
The Ministry of Interior)



REPORT ON THE TRAFFIC (AMENDMENT) BILL, NATIONAL ASSEMBLY BILL NO 60 OF 2021.

1. AMENDMENT TO SECTION 16(2) ON MOTOR VEHICLE INSPECTION.

16(2) Every vehicle that has been operated for a period exceeding four years from recorded date of manufacture shall be subjected to inspection at intervals to be determined by the Authority.

RATIONALE FOR THE AMENDMENT.

The Decade of Action for Road Safety 2011–2020 was officially proclaimed by the United Nations General Assembly in March 2010.

Its goal is to stabilize and reduce the forecast level of road traffic deaths around the world. It is estimated that 5 million lives could be saved on the world's roads during the decade

The Decade of Action for Road Safety encourages Governments to implement road safety policies and action plans that address the following five pillars:



Pillar 3 “safer vehicles” concerns addressing the prevailing low standards of vehicles, which contribute to a significant number of crashes and casualties.

The objective of this pillar is to encourage deployment of improved vehicle safety norms and technologies for both passive and active safety.

Under this pillar 3, Kenya undertook to improve safer vehicles by ensuring that all vehicles above 4 years from the date of manufacture undergo mandatory inspections to ensure

their road worthiness. Consequently in 2012, Section 16(2) of the Traffic Act that requires this mandatory inspection was introduced.

However, the Authority has been unable to operationalize this section and currently only carry's out inspection of PSVs and Commercial Service Vehicles due to the following reason:-

There are a total of 17 motor vehicle inspection centers in Kenya wholly operated by the government whose total annual inspection capacity is 300,000 vehicles. Table A illustrates the centers, current inspection lanes and maximum inspection capacity.

It is important to note that there are currently approximately 2 million vehicles currently in Kenya.

Table A – Inspection centers.

S/N	CENTRES	Current lanes	Maximum daily inspection	Maximum annual inspections
1	LIKONI	3	200	60000
2	MOMBASA	2	150	45000
3	KISUMU	1	50	15000
4	NAKURU	1	60	18000
5	EMBU	1	50	15000
6	ELDORET	1	60	18000
7	THIKA	1	80	24000
8	KAKAMEGA	1	50	15000
9	MERU	1	30	9000
10	KISII	1	40	12000
11	NYERI	1	40	12000
12	VOI	1	30	9000
13	MACHAKOS	1	70	21000

14	NYAHURURU	1	30	9000
15	KITALE	1	40	12000
16	GARISSA	1	20	6000
17	KERICHO	1	30	9000
	TOTAL		900	309000

It would cost approximately over Ksh 2 billion to modernize the above centers in order to increase their total annual inspection capacity to cover the 2 million vehicles in Kenya.

However of the 17 inspection centers only 6 are viable to modernization due to physical constraints. These are:-

Table B – Viable Inspection centers.

S/N	CENTRES	Current lanes	Required lanes	Expected daily inspection	Current annual inspections	Expected annual inspection
1	LIKONI	3	5	500	47,000	150,000
2	MOMBASA	2	4	400	36,000	90,000
3	KISUMU	1	3	300	8,400	90,000
4	NAKURU	1	3	300	24,000	90,000
5	EMBU	1	3	300	7,200	90,000
6	ELDORET	1	2	200	10,800	60,000
					133,400	570,000

The total expected volume of inspected vehicles after modernizing the 6 centres will increase to approximately 800,000 vehicles which will still leave an approximately 1,200,000 vehicles un-inspected.

Due to the above reason, there is therefore a need to overhaul the current setup if the Authority is to adequately inspect the over 2 million vehicles in Kenya and outsource the same to the private sector and hence the proposed amendment.

Under the system it is envisaged that the private entity will put up and operate the inspection center in line with the motor vehicle regulations to be developed by the Authority.

Specifically, the Authority's role in the inspection process shall be to:-

1. Regulate, monitor and audit the private inspection centers.
2. Set standards for the motor vehicle inspection including emission standards.
3. Manage the vehicle inspection data.
4. Perform specialized inspections for certain classes and types of vehicles e.g. PSV and heavy commercial vehicles.
5. Resolve customer disputes in motor vehicles inspection.
6. Approve and certifying all the motor vehicle inspectors.
7. Setting of inspection fees applicable.
8. Conduct accident inspections.

The Private motor vehicle inspection centers shall have the following roles:-

1. Inspection of vehicles in accordance to the standards and regulations formulated by the Authority.
2. Collection of motor vehicle data on vehicle inspection on behalf of the Authority.

The Motor Vehicle Inspection Regulations will also contain specifics on the operation of the system including but not limited to the following:-

1. The standards or guidelines applicable.
2. The responsibilities of the Authority and the private inspection centers.
3. The audit and oversight of the private inspection centers.
4. The indemnification of the Authority from civil suits in cases where accidents can be attributed to improper inspection by the private inspection centers.
5. The suspension and revocation of private inspection centers.

On emission testing, it is noted that currently, transport emissions account for approximately 13% of total national emissions and is expected to increase to 17% by 2030.

The Kenya National Climate Change Action Plan (NCCAP) has identified areas of emission reduction in road transport including the implementation of the revised Kenya Standard KS 1515 - Code of practice for inspection of road vehicles.

This code of practice specifies general, safety and environmental requirements for Road Vehicles and inspection schedule for Road Vehicles including the process of conducting emission testing and applicable limits.

It should be noted that the private inspection centers shall as part of the inspection process carry out emission testing thus extending coverage to other vehicles other than PSV and Commercial Vehicles.

RECOMMENDATION.

The Authority is in support of the amendment which:-

- Will provide legal anchorage for the outsourcing of inspection in law by providing the inspection can be done by persons authorized by the Authority other than the Authority itself.
- Provide for the frequency of inspection shall be done.
- Enable the Authority in conjunction with the Ministry develop Rules to regulate the inspection process.

However the Authority proposes that the amendment reads that:-

Every vehicle more than four years from the recorded date of manufacture shall be subjected to inspection at intervals to be determined by the Authority.

This removes ambiguity as to which vehicle is to be inspected.

2. AMENDMENT TO SECTION 44 – DRINK DRIVING.

44(1). Any person who, when driving or attempting to drive, or in charge of a motor vehicle on a road or other public place, is under the influence of an alcoholic drink or a drug beyond the prescribed limits, shall be guilty of an offence and, liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding two years or to both."

During the Sixty-third session of the World Health Assembly, held in Geneva in May 2010, the 193 Member States of WHO reached an historical consensus on a global strategy to reduce the harmful use of alcohol by adopted resolution WHA63.13. Kenya was among the Member States supporting the resolution.

The adopted resolution and endorsed strategy gives guidance to both Member States and to the WHO Secretariat on ways to reduce the harmful use of alcohol.

In regard to drunk driving the Countries committed themselves to undertake the following policy options and interventions include:

- introducing and enforcing an upper limit for blood alcohol concentration, with a reduced limit for professional drivers and young or novice drivers;
- promoting sobriety check points and random breath-testing;
- administrative suspension of driving licences;
- graduated licensing for novice drivers with zero-tolerance for drink-driving;
- mandatory driver-education, counselling and, as appropriate, treatment programmes;
- encouraging provision of alternative transportation, including public transport until after the closing time for drinking places;
- conducting public awareness and information campaigns in support of policy and in order to increase the general deterrence effect;
- running carefully planned, high-intensity, well-executed mass media campaigns.

In order to comply with the Resolution, the Government through the Ministry of Transport and the National Police had enacted and implemented the Traffic Breathalyzer Rules 2011 to operationalize the above section. The Rules contained prescribed limits of Blood Alcohol Concentration and the use of the breathalyzer in the measurement of the same.

Blood/Breath Alcohol Concentration (BAC) is the amount of alcohol in the bloodstream or on one's breath. BAC is expressed as the weight of ethanol, in grams, in 100 milliliters of blood, or 210 liters of breath. BAC can be measured by breath, blood, or urine tests.

Driving is a "divided attention" task, requiring a high level of coordination between the hands, feet, and brain, as well as spatial awareness of a person's surrounding as the vehicle moves. Alcohol in blood causes our driving abilities to be diminished, with increased amounts of alcohol causing an even greater reduction.

Alcohol impairment has a significant effect on the crash risk of drivers, riders and pedestrians. It is routinely reported as one of the most serious contributing factors to road crashes in many countries. Drivers who drink and drive have a much higher risk of involvement in crashes than those with no alcohol in their blood. This risk grows rapidly with increasing blood alcohol concentration. Alcohol use results in impairment which increases the likelihood of a crash since it produces poor judgement, increased reaction

time, lower vigilance and decreased visual acuity. Physiologically, alcohol also lowers blood pressure and depresses consciousness and respiration

It is estimated that about 23% of all road fatalities globally are attributed to alcohol. In most high-income countries about 20% of fatally injured drivers have excess alcohol in their blood (i.e. blood alcohol concentration (BAC) in excess of the legal limit). Studies in low- and middle-income countries have shown that between 33% and 69% of fatally injured drivers and between 8% and 29% of non-fatally injured drivers had consumed alcohol before their crash (WHO).

EFFECTS OF BLOOD ALCOHOL CONCENTRATIONS AND PERFORMANCE

Alcohol compromises driving performance and thus increases the risk of a road traffic collision.

The number of drinks consumed is a very poor measure of intoxication largely because of variation in physiology and individual alcohol tolerance.

Variation exists with respect to body weight, sex and body fat percentage, even between genders.

The higher the concentration of the alcohol in the body the higher the risk as demonstrated below:-

BAC (g/100ml)	Effects on the body
0.01–0.05	Increase in heart and respiration rates
	Decrease in various brain centre functions
	Inconsistent effects on behavioural task performances
	Decrease in judgment and inhibitions
	Mild sense of elation, relaxation and pleasure
0.06–0.10	Physiological sedation of nearly all systems
	Decreased attention and alertness, slowed reactions, impaired coordination, and reduced muscle strength
	Reduced ability to make rational decisions or exercise good judgment
	Increase in anxiety and depression
0.10–0.15	Decrease in patience
	Dramatic slowing of reactions
	Impairment of balance and movement
	Impairment of some visual functions
	Slurred speech
0.16–0.29	Vomiting, especially if this BAC is reached rapidly
	Severe sensory impairment, including reduced awareness of external stimulation
0.30–0.39	Severe motor impairment, e.g. frequently staggering or falling
	Non-responsive stupor
	Loss of consciousness
	Anaesthesia comparable to that for surgery
0.40 & greater	Death (for many)
	Unconsciousness
	Cessation of breathing
	Death, usually due to respiratory failure

Source: (13)

According to the 2011 Rules the prescribed BAC limits were as follows:-

- (a) 35 microgrammes of alcohol in 100 millilitres of breath,
- (b) 80 milligrammes of alcohol in 100 millilitres of blood, or
- (c) 107 milligrammes of alcohol in 100 millilitres of urine.

Through **Civil Appeal 219 of 2014** by Reminisce Sports Bar Limited vs Ministry of Transport & others, the court held that the Rules were incapable of creating an offence under Section 44 as the same did not provide for prescribed limits.

RECOMMENDATION.

The Authority is in support of the amendment which will enable:-

- Legal anchorage for the Ministry and Authority to introduce the use of the prescribed limits in the determination of an offence under section 45 thus providing an objective scientific test as opposed to a subjective one which depends on an individual to determine if a driver has proper control of a vehicle.

- Enable the Ministry and Authority to develop rules and regulations that will contain the specific prescribed limits in addition to other provisions on the administration of the tests to be conducted by the police. It should be noted that the prescribed limits will be developed in conjunction with technical stakeholders including the Kenya Medical Association, NACADA, Government Chemist etc.

3. SECTION 70 OF THE PRINCIPAL ACT IS AMENDED BY DELETING SUBSECTION (5B).

(5B) A person who violates a speed limit prescribed for a road under subsection (1A) by more than twenty kilometers per hour commits an offence and shall be liable, on conviction, to imprisonment for a term of not less than three months, or a fine of not less than twenty thousand shillings, or both.

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 unless the speed limit is exceeded by more than 20 kph. Others have argued that this section creates a minimum penalty for those who violate the speed limit by more than 20 kph.

This confusion has also extended to the Judiciary wherein in one case it held that there was no offence created unless the speed limit was exceeded by 20 kph in other cases the Judiciary have convicted drivers who have exceeded the speed limit by less than 20 Kph.

RECOMMENDATION.

The Authority supports the amendment.

4. SECTION 103A OF THE PRINCIPAL ACT IS AMENDED BY DELETING SUBSECTION (4).

103(4) Every driver of a public service vehicle shall undergo compulsory testing after every two years to ascertain his or her competence

This is contradictory of section 30(6) which provides as follows:-

(6)A driver of a public service vehicle or a commercial vehicle shall be required to undergo every three years a driving test under section 39 successfully as a condition for each renewal of the license.

The three year timeline is preferable as it corresponds with the expiry of the license.

RECOMMENDATION.

The Authority therefore supports the amendment.