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ELEVENTH PARLIAMENT

FOURTH SESSION

THE STANDING COMMITTEE ON ROADS AND TRANSPORTATION

A REPORT ON THE ROADS STAKEHOLDERS' FORUM HELD AT
SAFARI PARK HOTEL ON 3RD FEBRUARY, 2016

Approved
[Signature]
Speaker

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

13th April, 2016

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ABBREVIATIONS

CAF –	County Assembly Forum
CEC -	County Executive Committee Member
CoG -	Council of Governors
CoK -	Constitution of Kenya
KENHA -	Kenya National Highways Authority
KERRA -	Kenya Rural Roads Authority
KRB -	Kenya Roads Board
KURA -	Kenya Urban Roads Authority
MTF -	Mechanical and Transport Fund
NCA -	National Construction Authority
TA –	Transition Authority
TDGA Act -	Transition to Devolved Government Act

PREFACE

Establishment of the Committee on Roads and Transportation

The Standing Committee on Roads and Transportation is established pursuant to standing order 208 of the Senate Standing Orders. The committee is mandated to consider all matters related to *transportation and roads, Public works, Construction and maintenance of roads, rails and buildings, air, seaports, housing and communication.*

The Committee oversees the Ministry of Transport and Infrastructure and Ministry of Land, Housing and Urban Development.

Membership of the Committee on Roads and Transportation

The Membership of the Committee is as follows:

- | | | |
|--------------------------------|---|------------------|
| 1. Sen. Abu Chiaba Mohamed, MP | - | Chairperson |
| 2. Sen. Judith Sijeny, MP | - | Vice-Chairperson |
| 3. Sen. Kimani Wamatangi, MP | - | Member |
| 4. Sen. Chris Obure, MP | - | Member |
| 5. Sen. Liza Chelule, MP | - | Member |
| 6. Sen. Hargura Godana, MP | - | Member |
| 7. Sen. Mike Sonko Mbuvi, MP | - | Member |
| 8. Sen. Moses Kajwang, MP | - | Member |

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 203, to present the Report of the Standing Committee on Roads and Transportation, on a Stakeholders Forum held on 3rd February, 2016 at Safari Park Hotel in Nairobi.

Signed..........Date..........

SEN. ABU CHIABA, M.P.,

**CHAIRPERSON STANDING COMMITTEE ON ROADS AND
TRANSPORTATION.**

EXECUTIVE SUMMARY

This report documents the deliberations of the Stakeholders Forum held on 3rd February, 2016 at Safari Park Hotel in Nairobi.

Chapter one of the report gives a background to the Forum, which was as a resolution of a sitting of the Committee on Roads and Transportation, held on 9th July, 2015. The Committee, in the execution of its work plan, had undertaken visits to various counties in that year and noted that the challenges faced by those counties were similar. Further, the Committee noted the need to convene a forum to engage stakeholders with a view to chart a way forward in an attempt to address those challenges.

Chapter two of the report contains remarks made during the opening session of the Forum. The remarks were made by the Clerk of the Senate, Committee Chairperson, Chairperson of the County Assemblies Forum, Chairperson of the Council of Governors, Cabinet Secretary, Ministry of Transport & Infrastructure and the Deputy Speaker of the Senate respectively.

Chapter three reports on the presentation by Mr Simon Pkiyach, on behalf of the Chairman, Transition Authority. He gave a status of transfer of the roads function. The Transition Authority had transferred roads to counties, as per the roads register presented to them by the Ministry of Transport and Infrastructure. The transfer was done to the twenty nine (29) counties who had appealed to the Senate in 2014, for the transfer of functions. The authority was in the process of receiving applications from the other eighteen (18) counties who did not appeal to the Senate.

Chapter four of the report contains experiences shared by participants and issues which arose during plenary.

OBSERVATIONS

Chapter five of the report contains observations made during the Forum summarized as follows:

- i. Implementation of the High Court ruling based on a new roads classification register.**

The Transition Authority has implemented the ruling of the High Court on the transfer of functions, based on a new roads classification register, handed over to them by the Ministry of Transport & Infrastructure. This has been done vide a special issue of the Kenya Gazette Supplement No. 4, Legal Notice No. 2, dated 22nd January, 2016.

ii. Unilateral classification of roads

The Cabinet Secretary, Ministry of Transport and Infrastructure has done the classification of roads unilaterally, yet it is a shared function between the national and county governments.

The new roads classification has in effect moved some county roads from Class D to National roads in Class C.

iii. Appeals for the transfer of functions by eighteen (18) county governments

The Transition Authority was in the process of receiving appeals for the transfer of functions, from the eighteen county governments who did not appeal to the Senate.

iv. Intergovernmental Agreements

The county governments have made little headway in signing intergovernmental agreements to ensure that ongoing road projects continue seamlessly.

v. Lack of conformity of classification of Roads in the Kenya Roads Bill, 2015

The classification of roads as provided for in the Kenya Roads Bill, 2015 does not conform to the High Court Ruling on the transfer of functions.

vi. Delay in the passage of the Kenya Roads Bill, 2015

There has been a delay in the passage of the Kenya Roads Bill, 2015 in the National Assembly. The Bill was introduced in the National Assembly on 1st July, 2015 and is yet to be scheduled for the second reading.

vii. Prolonged litigation and disruption of service delivery

In case of disputes, Stakeholders in the roads sector have resorted to litigation at the first instance. These court cases are, in most instances, prolonged hence leading to a disruption of service delivery to ordinary Kenyans.

viii. Failure by the Ministry of Transport and Infrastructure to honour agreements reached through consensus

Several consultations have been done between the Ministry of Transport and Infrastructure and the Council of Governors regarding the roads function. However, the Ministry has failed to honor its part of agreements reached through such consultations.

xiv. Expiry of the Mandate of Transition Authority

Stakeholders were urged to take cognizance of the fact that the mandate of the Transition Authority would soon expire and therefore there was need for them to negotiate the roads functions within the limited time.

RECOMMENDATIONS

Based on the observations made at the Stakeholders' Forum, the Committee on Roads and Transportation recommends that:

i. Consultative engagement for the re-classification of roads

The Committee on Roads and Transportation engages with the Cabinet Secretary, Ministry of Transport and Infrastructure, with a view to having the gazette Notice on the new classification of roads repealed and subsequently ensure that adequate stakeholder consultations are undertaken, prior to effecting a new classification of roads.

ii. Transfer of the roads function to counties who did not appeal to the Senate

The Council of Governors follows up to ensure that all the remaining eighteen (18) county governments who did not appeal to the Senate, appeal to the Transition Authority for the transfer of functions.

iii. Intergovernmental Agreements

The Senate Committee on Roads and Transportation intervenes, to facilitate signing of intergovernmental agreements between national governments and county governments pursuant to Article 187 of the Constitution. This will ensure that the transfer of roads function to county governments is done seamlessly.

iv. Fast track passage of the Kenya Roads Bill, 2015

The National Assembly fast tracks the passage of the Kenya Roads Bill, 2015.

v. Extensive stakeholder consultations on the Kenya Roads Bill, 2015

Once the Kenya Roads Bill, 2015 is transmitted to the Senate, the Committee on Roads and Transportation undertakes extensive stakeholder consultations on the Bill, to ensure a holistic roads reform process that ring-fences gains already made in protecting devolution.

vi. Allocation of Resources

The Senate ensures adequate allocation of funds to county governments, for the roads function, in the financial year 2016/2017.

vii. Alternative Dispute Resolution Mechanisms

Stakeholders in the roads sector explore available alternative dispute resolution mechanisms at the first instance, so as to avoid prolonged court cases.

viii. Decentralization of county roads management

County governments, in making legislations for roads management, to consider promoting further decentralization beyond county headquarters.

1.0 Background of the Stakeholder's Forum

The Senate Standing Committee on Roads and Transportation, in the execution of its work plan, has undertaken visits to ten counties namely: Kajiado, Makueni, Kitui, Kiambu, Lamu, Nakuru, Homabay, Trans-Nzoia and West Pokot.

The Committee has, during its interactions with these counties, observed that they are faced with similar challenges in the roads sector. Most of these challenges would be holistically addressed by the enactment of the Kenya Roads Bill, 2015.

The Kenya Roads Bill, 2015 (Kenya Gazette Supplement No. 77) was introduced and read a first time in the National Assembly on 1st July, 2015. Once the National Assembly passes the Bill, being a Bill concerning Counties, it is expected that it will be transmitted to the Senate for its consideration and concurrence pursuant to the Standing Orders.

Taking note of the Senate's role under Article 96(1) to represent counties and protect the interest of the Counties and their Governments, at its meeting held on 9th July, 2015, the Committee resolved to convene a Stakeholders Forum targeting the following participants:

- i. The Ministry of Transport and Infrastructure
- ii. The Transition Authority
- iii. Council of Governors
- iv. County Assemblies Forum

1.1 Objectives of the stakeholders forum

The specific objectives of the Stakeholders Forum include:

- i. To establish the status of transfer of the Roads Function
- ii. To form linkages with the Ministry of Transport & Infrastructure and counties in the roads sector
- iii. To appreciate the experiences and challenges faced by the County Governments and County Assemblies in the roads sector
- iv. To make resolutions with a view to ensuring that devolution of the roads function is successful and serves the purpose for which it was intended.

Following the prayers, formal convening of the Forum and self-introductions, the Vice-Chairperson invited Mr Jeremiah Nyegenye, CBS, Clerk of the Senate to make his remarks.

2.0 Introductory Remarks by Mr. Jeremiah Nyegenye CBS, Clerk of the Senate

Mr Nyegenye, in his remarks highlighted the following issues:

- i. He emphasized on the importance of the roads sector in the spirit of the new constitution and noted that infrastructure development was key in the achievement of vision 2030;
- ii. Devolution of the roads function remained a key issue, in enabling the achievement of what was envisioned in the constitution;
- iii. The constitution sets aside different roles for both the county and national government as far as the roads function is concerned and there was need to implement these functions in good faith;
- iv. The issue at the heart of the debate in the transfer of the roads function is the classification of the roads i.e what is a county road, who classifies the county roads etc;
- v. The role of classification of roads cannot be left to one body, but must be a consultative and continuous process between all the stakeholders; and
- vi. A way forward would be attained from the forum.

2.1 Remarks by Hon .Sen. Abu Chiaba, Committee Chairperson

Sen Chiaba, the Committee Chairperson made his remarks as highlighted below:

- i. He stated the Mandate of the Committee as provided for in the Senate Standing Orders as to *consider all matters related to transport, roads, public works,*

construction and maintenance of roads, rails and buildings, air, seaports, housing and communication.;

- ii. The Committee in execution of its work plan had undertaken visits to ten counties in the previous year. These included Kajiado, Makueni, Kitui, Kiambu, Lamu, Nakuru, Homabay, Trans-Nzoia and West Pokot;
- iii. During its interactions with Counties, the Committee noted that counties were faced with similar challenges in the roads sector, among others, the lack of a clear classification of roads in line with the new Constitutional dispensation;
- iv. The lack of a clear classification of roads has led to members of the public blaming the county government or national governments, for roads which do not fall under their mandates;
- v. Further, there have been instances of overlap and duplication of road works, between the County Government and the National Government, hence causing challenges in audit and accountability;
- vi. He cited the ruling by Justice Mumbi Ngugi J, delivered on 28th December, 2015, in the Petition by the Council of Governors, which upheld the resolution of the Senate in the Appeals by Counties for the transfer of the roads function. He noted that the ruling would put to rest most of the challenges experienced in the roads sector;
- vii. He informed participants that the Kenya Roads Bill, 2015 (Kenya Gazette Supplement No. 77) was introduced and read a first time in the National Assembly on 1st July, 2015 and was awaiting the second reading;
- viii. Once the Bill is passed in the National Assembly, being a Bill concerning Counties, it is expected that the Bill would be transmitted to the Senate for its consideration and concurrence pursuant to the Standing Orders.
- ix. He reassured the stakeholders that, the Senate Committee on Roads and Transportation was monitoring the Bill and had taken into account concerns raised by the Council of Governors so far; and

- x. Reiterated the objective of the forum to exchange views and deliberate on matters affecting roads as a devolved function, to ensure the success of devolution.

2.2 Remarks by Hon. K. Chepkwony, MCA Nandi County, on behalf of the Chairperson of the County Assemblies Forum (CAF)

Hon.K.Chepkwony, Member of County Assembly for Nandi, made remarks on behalf of the Chairperson, County Assemblies Forum (CAF). He began by conveying the apologies of the Chairperson who was unable to attend the Forum due to other prior official engagements and proceeded to make the remarks as highlighted below:

- i. He conveyed his gratitude on behalf of CAF for the invitation from The Senate, which was seen as a healthy sign of consultation and collaboration between the two entities.
- ii. County Assemblies Forum had observed that implementation of the roads function had been a challenge.
- iii. The yard stick for measuring the success of devolution could be broadly divided into health, roads, water and sanitation.
- iv. He acknowledged that although the County Assemblies Forum appreciated the work of Transition Authority in the transfer of road construction equipment to counties, the implementation of the court ruling was still a challenge.
- v. County Assemblies Forum was hopeful that the new roads legislation would deal with the confusion of the roads classification, since it is the citizens who bear the brunt of poor roads.
- vi. County Assemblies Forum called upon all the stakeholders to keenly look at the speed of implementation of the roads function at the county level.

- vii. He concluded by stating that, the County Assemblies Forum appreciated the efforts by the stakeholders particularly the senate in ensuring the implementation and funding of the roads function

2.3 Remarks by Hon. John Mruttu, Governor Taita Taveta County on behalf of the Chairperson, Council of Governors (COG)

Hon Eng. John Mruttu, Governor Taita Taveta County, made remarks on behalf of the Chairperson, Council of Governors (COG). He began by conveying his apologies and proceeded to make his remarks as follows:

- i. There were several challenges towards the implementation of roads as a devolved function including the failure to transfer roads, lack of funds to construct and maintain the roads, delays in the transfer of MTF equipment to counties.
- ii. He cited Part 2 of the Fourth Schedule of the Constitution which assigns to County Governments ‘county transport, including; county roads, street lighting, traffic and parking and public road transport’ as well as the public works function. He noted that, however, it had been three years since the County Governments were inaugurated yet the roads function had not been devolved.
- iii. He reiterated that devolution of the roads function had been met with several obstacles from the initial time when the Transition Authority, vide Legal Notice No. 137 of 9th August, 2013 transferred county roads (class D, E, and unclassified) to Counties save for those managed by Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA), Kenya Wildlife Service (KWS) and Kenya Forest Service (KFS).
- iv. The Senate noted the following, in its report on appeals by counties for the transfer of the roads function:
 - Transition Authority (TA) had no objection in transferring the management of county roads and was in the process of developing modalities for the transfer of the same.

- Transition Authority would ensure that the county roads managed by KURA and KERRA were transferred as soon as possible and in any case, well before the expiry of the statutory transition period.
- v. Subsequently, the National Government and its agencies continued to construct and perform maintenance and repair works on County roads. Additionally, the National Government agencies continued to receive levies on outdoor advertising which is a County function.
- vi. The Council of Governors instituted a suit in the High Court against Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA) and the Kenya National Highways Authority (KeNHA). In its judgement, and recognizing that County roads had already been constitutionally assigned to County Governments, the High Court ordered the immediate transfer of County roads. The court further prohibited the advertisement of tenders with respect to County roads and County outdoor advertising.
- vii. The Council of Governors had noted with concern that, in spite of the High Court judgment, the Transition Authority had proceeded to submit roads for gazette, in a manner that transfers county roads to the National government by re classifying them.
- viii. The Council of Governors felt aggrieved that, this was in spite of prior consultations and resolutions that roads be transferred according to the Senate recommendations.
- ix. The Council of Governors recommended that further consultations be done between between them and the Senate, as well as all relevant stakeholders to alleviate the current situation.

2.4 Remarks by Eng. Rua, Managing Director, Kenya Roads Board (KRB) on behalf of the Cabinet Secretary Mr. James Macharia, Ministry of Transport and Infrastructure

Eng. Rua, Managing Director, Kenya Roads Board (KRB) made remarks on behalf of the Cabinet Secretary Mr. James Macharia, Ministry of Transport and Infrastructure. He began by conveying the apologies of the Mr Macharia who was unable to attend the Forum owing to other official engagements.

He made his remarks as highlighted below:

- i. Ninety six per cent (96 %) of goods and cargo in Kenya are transported by road;
- ii. The ministry had been on a road reform process, which resulted in the creation of the Kenya Roads Board, Kenya National Highways Authority, Kenya Rural Roads Authority and Kenya Urban Roads Authority;
- iii. He observed that although the Constitution of Kenya provides for the roles of the National and County Governments as relates to roads, it does not define what the national and county roads;
- iv. The attempt to define these roads has taken a long period, a result of which is the Kenya Roads Bill 2015;
- v. The National Government has many Constitutional responsibilities among which are regulating the standards of road construction hence, in a nutshell, the classification of roads;
- vi. The road classification started a long time ago as far as 1970. However with funding from World Bank a reclassification from was done from 2007 ending in 2010, which resulted in the current road classification; and
- vii. He reiterated that the Ministry of Transport and Infrastructure was committed to devolution of the roads function, but it had to be well understood that the Ministry had done a lot in the classification of roads in the country. The

Ministry was looking forward to the process that had already begun as far as deliberations on the Roads function are concerned.

2.5 Key note address by Hon. Sen. Kembi Gitura, Deputy Speaker of the Senate and Senator for Murang'a County

Hon. Sen. Kembi Gitura, Deputy Speaker of the Senate and Senator of Murang'a County made a key note address as highlighted below:

- i. He observed that all the participants had the duty to ensure that devolution works and achieves the goals that are contemplated in the Constitution. Elected leaders had the very important duty of facilitating better service delivery to the citizens of the country and hence had therefore to put their heads together and chart the way forward towards achievement of a better life for all Kenyans in all corners of the country;
- ii. He stated Article 174 of the Constitution which sets out the objects of devolution. Specifically, sub article (d) which provides for the rights of communities to manage their own affairs and to further their development and (f) talks of the promotion of social and economic development and the proximate, easily accessible services throughout Kenya;
- iii. Roads are a very important resource as they are a key factor for development. Any decision made on roads whether legislatively or through court decisions impacts directly on the people and hence this was one of the reasons the Council of Governors had taken so seriously the recent decision by the High Court on the transfer of road functions to the counties. It is also the reason that the Kenya Roads Bill 2015 had elicited so much interest from the stakeholders at all levels;
- iv. Further, Schedule Four of the Constitution provides that county roads are a function of the county governments, assuming therefore that all other roads fall upon the national government. However, the Constitution does not itself define county roads or national government roads;

v. Since roads was a shared function, devolution thereof would inevitably involve taking some functions from the national to the county governments and for that reason, the Deputy Speaker proposed some principles for discussions at the Forum as follows: -

- Principle of subsidiarity

First, that all should be alive to the principle of subsidiarity that calls upon all to allow matters to be handled at the lowest level possible. The stakeholders were urged therefore to consider all matters roads including the provisions of the proposed Roads Bill against this backdrop. Consequently, if there were certain roads that were best managed at the county level, then they were to remain at that level and if there were instances where it would be most prudent to manage certain roads at the national level, then there was the duty to set the framework for the national government to manage those roads.

- Integrated and coordinated approach to service delivery

Where functions are shared, there should be seamless delivery of services to the citizens. No county is an island and there would be instances where counties would need to cooperate with each other and with national government so as to deliver the roads service. If this does not happen, it shall be impossible to realize the objects of devolution as outlined in Article 174 of the Constitution.

Cooperation

- Cooperation among the various organs of the two levels of government was paramount. According to the mwananchi, the government is only one and hence all organs had to work towards making the experience of the people of Kenya, who seek services, a good one.

vi. He reminded the participants that in April 2014, the Senate pronounced itself on the matter of transfer of the roads function when twenty nice counties had preferred an appealed to the Senate. He cited a summary of the Senate recommendations as follows:

- Class A, B & C should be classified as National Roads and Class D and E as county roads. Unclassified roads would be classified as county roads as a transition period measure to continue service delivery.
 - The National government should develop a spatial database for all roads in the country.
 - Parliament should enact legislation on the classification of roads in the entire country to respond to devolved governance structure.
 - The Senate Committee dealing with transport should engage with Transition Authority on why ferries and harbours were not gazetted and on how to clearly unbundle the function.
- vii. The Deputy Speaker pointed out that although the Senate forwarded the recommendations to the Transition Authority and the Attorney General for gazettment, the Attorney General declined to transfer the roads function pursuant to which the Council of Governors filed a constitutional reference that was decided upon in December 2015.
- viii. He further reiterated that the role of Senate was to consider and weigh the all varying views so as to get a broad based view to inform how the Senate would deal with the Kenya Roads Bill, 2015 once it was transmitted to the Senate.
- ix. He urged that the consultative forum not be adversarial. He welcomed all views which would go a long way in informing the Senate and indeed all other stakeholders including the Executive on their respective mandates in realization of the functions pertaining to roads.
- x. The Deputy Speaker registered the commitment of Senate to the ongoing process and requested and encouraged participants to actively participate in the forum with a view to enriching the discussion and resolving the issues at hand.

CHAPTER THREE PRESENTATIONS DURING THE SECOND SESSION: STATUS OF TRANSFER OF THE ROADS FUNCTION CHAIRED BY SEN. CHRIS OBURE, A MEMBER OF THE SENATE COMMITTEE ON ROADS AND TRANSPORTATION

3.1 Presentation by Mr. Simeon Pkiyach – Board Member, Transition Authority

In his presentation, Mr. Simeon Pkiyach, a Board Member of the Transition Authority, on behalf of the Chairman of the Transition Authority, Mr Kinuthia Wamwangi stated as follows:

- i. The devolved system of Governance provided for under the Constitution of Kenya (CoK) 2010 was a major departure from a centralized system of Governance in Kenya. The system of Governance provides two tiers of Government. The National Government and County Governments. The Fourth Schedule to the CoK, 2010 Part 1 and 2 assigns functions to both levels.
- ii. He cited the functions of the National Government Functions under No. '18' as Transport and communications, including in particular; Road Traffic, the construction and operation of national trunk roads, Standards for the construction and maintenance of other roads by counties, Railways, Pipelines, Marine navigation, Civil aviation and Space travel.
- iii. He further cited the functions of the County Governments under Function No. '5' as County transport, including; County roads, Street lighting, Traffic and parking, Public road transport and Ferries and harbours, excluding the regulation of international shipping and matters related thereto.
- iv. He quoted Section 23 of the Transition to Devolved Government Act which provides that the Authority shall by notice in the gazette at least thirty days before the first elections under the Constitution identify functions which may be

transferred to the County Governments immediately after the first elections under the constitution. After the initial transfer of functions every County Government shall make a request to the Authority for the transfer of functions in accordance with Section 15 of the Sixth Schedule.

- v. He stated that the Authority was under an obligation to consider and dispose off any application for the transfer of functions within sixty days from the date of receipt of such application.
- vi. The decision of the Transition Authority on the request to transfer a function would be based on the criteria set out in Section 24 of the Act.
- vii. The Transition Authority is required to propose clear and practical measures to build the capacity of County Governments during the Transition period to enable County Governments to undertake functions within the shortest time possible in case it determines that the County Government does not meet the criteria for transfer of a function under section 24 of the Act.
- viii. Article 187 (1) provides that a function or power of a government at one level may be transferred to government at another level by agreement between the governments if:-
 - A function or power would be more effectively performed or exercised by the receiving government
 - If the transfer of the function or power is not prohibited by legislation under which it is to be performed or exercised
- ix. Article 187 (2) -If a power or function is transferred from a government at one level to a government at the other:-arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred.
- x. The functions assigned to the two levels of government are broad and non-specific, hence the need to be clarified/analyzed/ and broken down further for example:
 - What are the functions assigned under “county Transport”?
 - What happens to functions not mentioned in the constitution (residual)?

- What are the parameters for sharing concurrent functions?
- xi. There are principles to guide functional analysis and competency assignment. These include :
- Constitutionality
 - Subsidiarity
 - Aligning capital and recurrent expenditures
 - Economies of Scale
 - Spillovers
 - Transferability of functions
 - Policy Formulation, Regulation, Standard vis-a-vis Implementation
 - Principle of Proportionality
- xii. Transition Authority oversees and coordinates stakeholders' engagement. The stakeholders include Government of Kenya i.e. Ministries, Departments and Agencies, Mwananchi, Private Sector, Professional Bodies, Non-state actors, Developments partners including NGOs and Faith Based Organizations.
- xiii. TA has held various stakeholder consultations which include:-
- Consultative meeting with the Ministry of Transport and Infrastructure 6th August, 2013
 - Consultative meeting with sector stakeholders on 7th August, 2013: Roads and Civil Engineering Contractors (RACECA); Association of Consulting Engineers Kenya (ACEK); Development Partners – JICA; World Bank; Matatu Welfare Association; and International Budget Partnership (IBP)
 - Consultative meeting with the Parliamentary committee on Transport and infrastructure 7th August, 2013 at Parliament Building - Definition of county roads, classification and justification on transfer functions in the sector.
 - 1st Intergovernmental sectoral forum , 21st October, 2013 at KICC - classification and assignment of the roads function to the National and County Governments

- 2nd Intergovernmental sectoral forum , 11th April, 2014, KSMS
 - 3rd Intergovernmental sectoral forum, 26th May, 2014, KSMS - Classification of the Road Network to the National and County Governments
 - Consultative meeting at the PS's office, 3rd June, 2014 -Public works building, Nairobi – Review and way forward on classification
- xiv. The following functions were transferred under Legal Notice No. 16 of 1st February 2013:
- County Transport i.e. Access Roads, Street lighting, Traffic and Parking. This was in line with Section 23 (1) of the TDGA Act Focused mainly on functions mainly performed by the Defunct Local Authorities
- xv. Transition Authority facilitated Counties to conduct a Quick Readiness assessment exercise to ascertain their preparedness/capacities in May, 2013.
- xvi. TA developed a form whose content include:
- Detailed function
 - HR delivering the function
 - Assets and liabilities
 - Service norms and standards
 - Handing Over Process
 - Counties then applied for the Functions with TA decision to transfer based on the criteria
- xvii. The following functions were transferred under Kenya Gazette Supplement No. 116 of 9th Aug., 2013
- county roads including primary roads linking all sub- county headquarters and minor roads linking markets and administrative centers excluding roads being managed by Kenya Urban Roads Authority, Kenya Rural Roads Authority, Kenya Wildlife Service and Kenya Forest Service
 - Public road transport on licensing of public service vehicles operations
 - Maintenance and operations of ferries and harbors operating in inland lakes and waters which is specific to Kisumu, Mombasa, Kwale and Homa Bay

- Mechanical transport equipment handed over by October, 2015
- xviii. After the judgement in December 2015, Transition Authority submitted a draft legal notice with Schedules of roads register on 22nd Jan, 2016 for the 39 counties appealed. The Authority was further in the process of receiving applications for transfer of the roads function from the other 8 counties.
- xix. Emerging issues or challenges include;
- Delay in enactment of the Roads Policy and Bill
 - Slow pace in consensus building on the classification of the road network
 - Litigation resulting from transfer of functions
- xx. The way forward is that there is need to ensure that the Roads Bill conforms to the devolved system of governance with regards to functional assignment and enhanced engagements in the Intergovernmental sectoral fora.

The third session of the Forum was chaired by Sen. Liza Chelule, a Member of the Senate Committee on Roads and Transportation. During the session, the following issues were highlighted;

- i. It is important for the National Government, to consistently and continually engage all the entities or stakeholders to avoid the tedious and long court processes.
- ii. The people on the ground or mwananchi, need there roads done, their main concern would be the small roads connecting the small centers and not necessarily the main highways. Belaboring on the issues leads to suffering of the citizenry.
- iii. Oversight should be done at county level on the work done by county executive, this is however not done since funding is not adequate for the county assembly, and hence the county assemblies need to be well funded.
- iv. Responsibility among elected leaders even at county level is key for the success of devolution.

The following issues arose during plenary discussions:

Transition Authority

- i. The Transition Authority transferred roads as in accordance with the entries in the roads register handed over to them by the Ministry of Transport and Infrastructure. In the gazette Notice 121,000 Kms of class D, E, F and G was transferred to the counties while 40,000kms remained at the National Government.
- ii. Transition Authority followed the recommendations of the Senate in April 2014, but the Attorney General declined to Gazette the Notice on the grounds that the notice did not attach the roads register on the classes.
- iii. Transition Authority emphasized that the role of the Authority was the transfer of functions and not classification of road.

- iv. Transition Authority was of the opinion that there were challenges of capacity at the county level and urged the National Government to engage the County Governments in building their capacity to undertake the roads function.

Further, there was a challenge of standards as far as e.g. qualifications of roads engineer at county level.

- v. Transition Authority admitted that politics was affecting development at the county level with rampant cases of corruption, nepotism and tribalism.

Kenya Law Reform Commission

Ms Natasha Kimani, representing the Chief Executive Officer of Kenya Law Reforms Commission commented on the issues raised as follows:

- i. According to the Kenya Law Reform Commission (KLRC), enough public participation with the stakeholders in the classification of roads had not been done.
- ii. Further, there was a policy gap in the Constitution in relation to definitions of roads classes.
- iii. The Kenya Roads Bill 2015 was ambiguous on the transition provisions in regard to functions of Kenya Urban Roads Authority and Kenya Rural Roads Authority being transferred to the counties, the fate of their employees and the role of counties roads committee at the county level.

Ministry of Transport & Infrastructure

Eng. Rua from the Kenya Roads Board representing the Cabinet Secretary responded to issues raised as follows:

- The Kenya Roads Bill was published before the gazettment of the roads register. It is therefore incumbent on the legislature to conform to the Bill or vice versa.
- The classification of roads began way back in 2006 before devolution.

- The roads register has not received support from counties because of the fact that CECs at County Executive level, keep changing.
 - Initially the national government wanted roads classes A, B, C and D but in light of the court ruling, only classes A, B and C would be under the National Government. There was therefore need to align the Roads Bill to the court ruling.
 - The Bill has extensively been discussed with the stakeholders, and continues to involve the stakeholders and the Ministry would soon hold a stakeholders forum.
 - The national government has a 40,000 kms network; under the new Roads Bill Kenya Urban Roads Authority ceases to exist and a small unit will be created under Kenya National Highways Authority to manage its functions.
 - 40,000Kms carry about 90% of the traffic, thus under the Roads Bill, the Maintenance Levy will be shared with priority being those with intense traffic. However this was up to debate.
 - He observed that, enforcing road construction standards at the county level has been challenging since the County Executive goes ahead to implement road projects against the advice of the national road agencies and the national construction authority(NCA) who are the body mandated to register all approved contractors based in Kenya or internationally.
- vi. CEC in charge of roads Nakuru County observed that the question of capacity is not only a challenge to the county governments but the National Government as well. This is evident in the shoddy work done by contractors employed by the national road agencies to carry out works at county level. He also questioned the impartiality of the Attorney General and TA is protecting counties and devolution as a whole.
- vii. CEC in charge of roads Murang'a County was critical of the rationale used where 40% and 39 % of funds available was left with the National Government with about 40,000 kms and 2 agencies of roads, while only

15% went to Counties with 121,000kms. He also observed that Muranga County had applied to Transition Authority for the transfer of roads functions but had not yet been considered.

- viii. Hon. K. Chepkwony, MCA Nandi County, reiterated that the buck had to stop somewhere as far as transfer of functions to counties is concerned. Further, gains made in the transfer of functions to counties were being clawed back.

Discussants

- i. The discussants pointed out that before the enactment of the new Constitution, the development of roads in the country was based on which government was in power. However in the new constitution the development of roads was expected to go the grassroots.
- ii. The classification of roads currently resulted from a 2007 exercise in establishing a roads register, however, the register did not reflect the current road classification on the ground.
- iii. Maintaining road construction standards is the prerogative of National Government, whilst some counties had been constructing roads whose standards were questionable, the National Government had to enforce and regulate standards of the roads.
- iv. Oversight of the roads function need not only start at implementation but also at the budgeting level in the county assemblies.
- v. The disbandment of the constituency road committees was a recommended.
- vi. Constituencies within a county can achieve economies of scale by working together on projects of common interest as opposed to working separately.
- vii. Stakeholders were urged to be very pragmatic in solving issues of classification and that an agreement can be sought where the Council of Governors allows Kenya Urban Roads Authority and Kenya Rural Roads Authority to implement projects already tendered before the court ruling.

5.1 OBSERVATIONS

i. Implementation of the High Court ruling based on a new roads classification register.

Transition Authority has implemented the ruling of the High Court on the transfer of functions, based on a new roads classification register handed over to them by the Ministry of Transport & Infrastructure. This has been done vide a special issue of the Kenya Gazette Supplement No. 4, Legal Notice No. 2, and dated 22nd January, 2016.

ii. Unilateral classification of roads

The Cabinet Secretary, Ministry of Transport and Infrastructure has done the classification of roads unilaterally, yet it is a shared function between the national and county governments.

The new roads classification has in effect moved some county roads from Class D to National roads in Class C.

iii. Appeals for the transfer of functions by eighteen (18) county governments

Transition Authority was in the process of receiving appeals for the transfer of functions, from the eighteen county governments who did not appeal to the Senate.

iv. Intergovernmental Agreements

The county governments have made little headway in signing intergovernmental agreements to ensure that ongoing road projects continue seamlessly.

v. Lack of conformity of classification of roads in the Kenya Roads Bill, 2015

The classification of roads as provided for in the Kenya Roads Bill, 2015 does not conform to the High Court Ruling on the transfer of functions.

vi. Delay in the passage of the Kenya Roads Bill, 2015

There has been a delay in the passage of the Kenya Roads Bill, 2015 in the National Assembly. The Bill was introduced in the National Assembly on 1st July, 2015 and is yet to be scheduled for the second reading.

vii. Prolonged litigation and disruption of service delivery

In case of disputes, Stakeholders in the roads sector have resorted to litigation at the first instance. These court cases are, in most instances, prolonged hence leading to a disruption of service delivery to ordinary Kenyans.

viii. Failure by the Ministry of Transport and Infrastructure to honour agreements reached through consensus

Several consultations have been done between the Ministry of Transport and Infrastructure and the Council of Governors regarding the roads function. However, the Ministry has failed to honor its part of agreements reached through such consultations.

ix. Expiry of the Mandate of Transition Authority

Stakeholders were urged to take cognizance of the fact that the mandate of the Transition Authority would soon expire and therefore there was need for them to negotiate the roads functions within the limited time.

5.2 RECOMMENDATIONS

Based on the observations made at the Stakeholders' Forum, the Committee on Roads and Transportation recommends that:

i. Consultative engagement for the re-classification of roads

The Committee on Roads and Transportation engages with the Cabinet Secretary, Ministry of Transport and Infrastructure, with a view to having the gazette Notice on the new classification of roads repealed and subsequently ensure that adequate stakeholder consultations are undertaken, prior to effecting a new classification of roads.

- ii. Transfer of the roads function to counties who did not appeal to the Senate**
The Council of Governors follows up to ensure that all the remaining eighteen (18) county governments who did not appeal to the Senate, appeal to the Transition Authority for the transfer of functions.
- iii. Intergovernmental Agreements**
The Senate Committee on Roads and Transportation intervenes, to facilitate signing of intergovernmental agreements between national governments and county governments pursuant to Article 187 of the Constitution. This will ensure that the transfer of roads function to county governments is done seamlessly.
- iv. Fast track passage of the Kenya Roads Bill, 2015**
The National Assembly fast tracks the passage of the Kenya Roads Bill, 2015.
- v. Extensive stakeholder consultations on the Kenya Roads Bill, 2015**
Once the Kenya Roads Bill, 2015 is transmitted to the Senate, the Committee on Roads and Transportation undertakes extensive stakeholder consultations on the Bill, to ensure a holistic roads reform process that ring-fences gains already made in protecting devolution.
- vi. Allocation of resources**
The Senate ensures adequate allocation of funds to county governments, for the roads function, in the financial year 2016/2017.
- vii. Alternative Dispute Resolution Mechanisms**
Stakeholders in the roads sector explore available alternative dispute resolution mechanisms at the first instance, so as to avoid prolonged court cases.
- viii. Decentralization of county roads management**
County governments, in making legislations for roads management, to consider promoting further decentralization beyond county headquarters.

ANNEX 1 : PROGRAMME

ANNEX 2: LIST OF PARTICIPANTS

ANNEX 3:MINUTES

PARLIAMENT OF KENYA



THE SENATE

STANDING COMMITTEE ON ROADS AND TRANSPORTATION

STAKEHOLDERS FORUM ON ROADS

“Interrogating the implementation of roads as a devolved function”

.....

DATE: WEDNESDAY 3RD FEBRUARY, 2016

VENUE: SAFARI PARK HOTEL, NAIROBI

PROGRAMME

**Clerk’s Chambers,
The Senate,
Parliament Buildings,
Nairobi, Kenya.**

February, 2016

Day 1: Wednesday, 3rd February, 2016

8.30 - 9.00 am

Registration

Responsible Officers: *Ms. Brigid Sielei*
Ms. Pamela Atieno

SESSION 1:

OPENING CEREMONY

Session Chair:

Sen. Judith Sijeny, Committee Vice-Chairperson

9.00 – 9.15 am

Introductory remarks by the Clerk of the Senate, *Mr. J. M. Nyegenye, CBS*

9.15 -9.30am

Remarks by the **Committee Chairperson, *Sen. Abu Chiaba***

9.30-9.45am

Remarks by the Chairperson, County Assemblies Forum (CAF),
Hon (Dr.) Nuh Nassir

9.45-10.00am

Remarks by the Chairman, Council of Governors (COG),
H.E Peter Munya

10.00-10.15am

Remarks by the Ag. Cabinet Secretary, Ministry of Transport & Infrastructure, *Mr. James Wainaina Macharia*

10.15-10.40am

Key note address by Deputy Speaker of the Senate,
Sen. Kembi Gitura, MGH, MP.

10.40 – 11.00 am

Health Break & Group Photo Session

SESSION 2:

STATUS OF TRANSFER OF THE ROADS FUNCTION

Session Chair:

Sen. Chris Obure- Committee Member

11.00am – 12.00 pm

Gains made and challenges faced in transfer of the roads function

Presenter: Chairman, Transition Authority,
Mr. Kinuthia Wamwangi, EBS

12.00-1.00pm

Plenary

Discussants: *Sen. Liza Chelule*
Sen. Kimani Wamatangi

1.00-2.00pm

Lunch break

SESSION 3:

SHARING OF EXPERIENCES

Session Chair:

Sen. Liza Chelule – Committee Member

2.00 – 2.40pm

Presentation by the County Assemblies Forum

Presenter: Chairperson, *Hon (Dr.) Nuh Nassir*

2.40-3.15pm

Plenary Session (Q & A)

Discussants: *Sen. Moses Kajwang*

Sen. Hargura Godana

3.15 – 3.55pm

Presentation by the Council of Governors

**Presenter: Chairman, Infrastructure & Energy
Committee, H.E Eng. John Mruttu – Chairman**

3.55-4.40pm

Plenary Session (Q & A)

*Mr Joash Dache, Chief Executive Officer, Kenya
Law Reforms Commission*

END OF THE PROGRAMME

Programme Coordinator

Ms. Joyce Aluoch-0787771662

Rapporteurs

Ms. Anne Njeri-0723510745, Ms Carol Kirorei-0717488917







THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

SENATORS ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
1.	SEN JUDITH A SITEMY	VICE-CHAIR	jsitemy@gmail.com	0722306664	
2	SEN. CHRIS OBURE	MEMBER	Chrisobure@yahoo.com	0724699844	
3	SEN Abuchibag	chairman	abuchibag01@gmail.com	0722410177	
4,	Sen. Eng. Godana Hargwa	Member	ggodana@yahoo.com	0724528845	
5	SEN LIZ CHELOLE	Member	Lizchelole@gmail.com	070601138	
6	Sen Moses Kajwang	Member	senatorkajwang@gmail.com	0717111259	




THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

TUESDAY, 2ND FEBRUARY, 2016

SENATORS ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
	Sen Kembi-Gitura	DS Senate	dsenate@parliament.go.ke		
	Sen Kamatafu	Director	KICM@parliament.go.ke		
	Leah Amos Njoroge	OEC - NUNDA NGA	leahnjoroge@jehw.co		





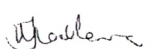
THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

TUESDAY, 2ND FEBRUARY, 2016

SECRETARIAT ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
1	Jeremiah M. Nyegonye	Clerk of the Senate	cSenate@parliament.go.ke	0722315703	
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3	Anne N. Kigoro	Researcher	akigorowahome@gmail.com	0723510745	
4	Judy Ndegwa	Legal Counsel	wahibwa.kemil@gmail.com	0721842559	
5	James M. Macharia	Media Relations Officer	Jammastjr@gmail.com	0724 082450	
6	Brigid Sietei	Public Communication Assistant			

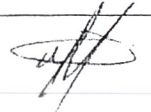
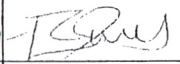
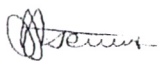
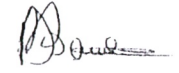


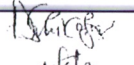
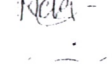
THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

SECRETARIAT ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
1	GODANA M. ELEMA	ASAA	elena mano@yahoo.com	0720-279583	
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4	BENHAR OTERO	DRIVER			
5	JAPHETH KIPTOO	HANDSHELD	kiptoojapheth@gmail.com	0724554909	
6	Grace Mutung'u	PA to DS	mmutungu@gmail.com	0721898732	
7	Duncan Serگون	Security D/S		0721835511	
8	Peter Ndegwa	Driver D/S		0722783495	

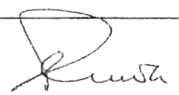
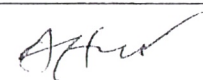
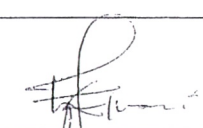
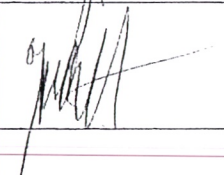


THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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	John M. Mutitu	Governor Taita COG Taita	mutitujm@gmail.com	0722410381	
	Christine Mafuta	ITCO	mafuta.christine22@gmail.com	0728241960	
	OMBESI BRYAN	Kenya News Agency KNA	bryanoombesi@gmail.com	0715610112	


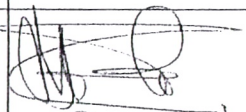


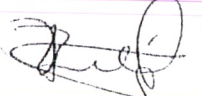
THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
Rono				
Hon Samuel Kimani G	ROADS CHAIR MCA (Ntandarua)	creation.growth@gmail.com	0722 347 096	
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OTIENO ROY ODONGO	LIASION OFFICER H. B. County	raetlogo@gmail.com	0722257563	
Hon. KIERU MAMBU	CHE Integrated Relations Committee	Kieruwambui@gmail.com	0722598221	

THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

NAMES	INSTITUTION/ DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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Mr. William Chapman	med - Nandi	williamchapman@yahoo.com	0724678 299	
Simon A. Prityach	T A	splicityan@yahoo.com	0722602610	
LONAH LOSEM	CAF	lonah@countyassemblyforum.org	0715344266	


THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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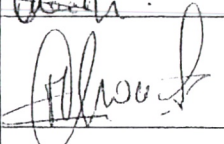

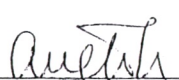

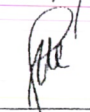
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WEDNESDAY, 3RD FEBRUARY, 2016

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NAMES	INSTITUTION/ DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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Rono Spivester	KASS Media	rono@kassfm.com	0715159266	
Joash Bett	KASS fm	joashbett2@gmail.com	0770780784	

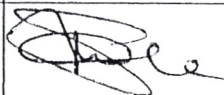

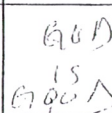
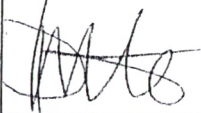


THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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CARINE OTIENO	Baraka FM	carine.otieno@yahoo.com	0726842103	
Valerian Khakayi	GHESTO Radio	khakayinival@gmail.com	0718195596	


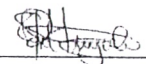




THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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Gidon Keter	Star	gidonketer@radioafrika.org 0726886766		
Joseph Ndundu	Star	ndundamj@gmail.com	0726361987	
Moses Nyamora	STANDARDS	Mnyamora@standards.go.ke	0711984558	






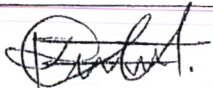
THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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Nancy Mwai	Reporter	Wangumani@gmail.com	0723906184	
BEVERLYNE MWSIKI	THE STANDARD	bmwili@yahoo.com	0728659446	
Kari Mwsiki	K24 TV	nduatikari16@gmail.com	072378288	
Chenutai Gani	K24 TV	goinjane@gmail.com	0721773420	
Kennedy Muthiri	QTV - NMG	kmuthiri@ke-natio-media.com	0723177400	




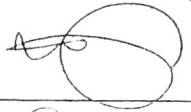
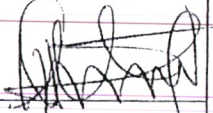

THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

	NAMES	DESIGNATION / Institution	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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	Stephen Letso	classic 105	stev.letso23@gmail.com	0712728035	
	Mebob Abior	Council of Governors	Mabior@oag.go.ke	0721135470	
	Maurice Mwangi	Weekly Mirror	mwangim@yahoo.co.uk	0722281591	
	Hillan Mageka	X-News	hmageka@gmail.com	0710658747	
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THE SENATE

STANDING COMMITTEE ON ROADS & TRANSPORTATION

STAKEHOLDERS FORUM

WEDNESDAY, 3RD FEBRUARY, 2016

ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
	Ekeola Githau	X-NEWS	Githau@gmail.com	0729246806	

MINUTES OF THE FOURTH (4TH) SITTING OF THE SENATE STANDING COMMITTEE ON ROADS AND TRANSPORTATION HELD ON TUESDAY 1ST MARCH, 2016 AT 11:30A.M. IN COMMITTEE ROOM 5, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS.

PRESENT

1. Sen. Abu Chiaba Mohamed, M.P -Chairperson
2. Sen. Judith Sijeny, M.P -Vice- Chairperson
3. Sen. Chris Obure, MP -Member
4. Sen. Liza Chelule, MP -Member
5. Sen. Kimani Wamatangi, M.P -Member

APOLOGY

1. Sen. Hargura Godana, M.P -Member
2. Sen. Moses Kajwang', M.P -Member
3. Sen. Mike Sonko Mbuvi, MP -Member

IN ATTENDANCE

Secretariat

1. Ms. Joyce Aluoch -Clerk Assistant
2. Ms. Anne Njeri - Research Officer
3. Ms. Elizabeth Muhia - Principal Legal Counsel

MIN.NO.SEN/RT/23/2016

PRELIMINARIES

The Chairperson called the meeting to order at 11:30a.m followed by a word of prayer.

MIN.NO.SEN/RT/24/2016

ADOPTION OF THE AGENDA

The Committee adopted the agenda for the meeting as was presented, having been proposed by Sen. Kimani Wamatangi, M.P and seconded by Sen. Liza Chelule, MP.

MIN. NO. SEN/RT/25/2016 CONFIRMATION OF MINUTES

Minutes of the 2nd sitting

Minutes of the 2nd sitting held on Tuesday 18th February, 2016, were confirmed, having been proposed by Sen. Kimani Wamatangi, M.P and seconded by Sen. Liza Chelule, M.P.

Minutes of the 3rd sitting

Minutes of the 3rd sitting held on Tuesday 23rd February, 2016, were confirmed, having been proposed by Sen. Kimani Wamatangi, M.P and seconded by Sen. Liza Chelule, M.P.

MIN. NO. SEN/RT/26/2016 MATTERS ARISING

Under MIN NO. SEN/RT/12/2016

Members noted that the timelines, within which the Committee was expected to consider the Budget Policy Statement, was limited.

**MIN. NO. SEN/RT/27/2016 CONSIDERATION AND ADOPTION OF A REPORT
ON THE STAKEHOLDERS FORUM**

Members considered and adopted the report on the Stakeholders Forum, having been proposed by Sen. Kimani Wamatangi, M.P and seconded by Sen. Liza Chelule, M.P. except for the following amendments on the recommendations:

- a) Deletion of recommendation i. and ii and replacing thereof, with a recommendation that, the Senate Committee on Roads and Transport to engage the Cabinet Secretary, Ministry of Transport & Infrastructure, with a view to having the Gazette Notice on re-classification of roads repealed and an all-inclusive engagement with the stakeholders be done.
- b) Inclusion of the need to sensitize Members of the public on the responsible Government for specific roads for clarity of accountability.
- c) Deletion of the recommendation (x) on transition of employees of state road agencies.

a) Presentation by Legal Counsel

- On the issue of contracts entered into prior to the ruling of the High Court on the Transfer of Functions, Ms Elizabeth Muhia advised the Members that, it was only possible to give an opinion after perusing the specific contracts, with a view to establish the clause on termination.
- On the issue of legislative intervention by the Committee to ensure oversight of the road funds, she stated that the Public Finance Management Act 2012 provides for measures to avoid misuse of public funds and in addition, the Directorate of Legal Services was working on an amendment to the Act, to enhance oversight function of the Senate in relation to funds allocated to the county governments.
- On the issue of re-classification of roads, MsMuhia proposed that the stakeholders concerned should have an extensive engagement on the way forward.

b) Meeting with the Cabinet Secretary, Ministry of Transport & Infrastructure

Members were informed that the Cabinet Secretary, Ministry of Transport & Infrastructure in response to the invitation to a meeting of the Committee, requested for a postponement of the meeting. This was due to official engagements out of the country for two weeks.

It was resolved that summons be issued for the Cabinet Secretary to attend a meeting of the Committee on 22nd March, 2016.

c) Meeting with the Council of Governors

Members were informed that the Council of Governors had written to the Clerk of the Senate to appreciate the Committee for the invitation to discuss the Budget Policy Statement, 2016. Further, they had requested for a meeting with the Committee to discuss the framework put in place by the various county governments to ensure that they have capacity to take up the roads Function.

It was resolved that the meeting be scheduled for Thursday 10th March, 2016. Further, the Legal Counsel was tasked to prepare a list of measures to be presented to the Council of Governors, to avoid misuse of the funds allocated to the roads Function.

d) Statement by Sen. Daniel Karaba on Kenol-Makutano-Marua Road

Members considered the response from the Ministry of Transport and Infrastructure on the Statement by Sen. Daniel Karaba on Kenol-Makutano-Marua Road.

It was resolved that Sen. Judith Sijeny, the Committee Vice-Chair, delivers the Statement in the House on Tuesday 1st March, 2013 and in case of any clarifications, inform the House that the Committee had summoned the Cabinet Secretary to its meeting.

e) Sale of Kenya Airways slots at Heathrow Airport

Members were informed that there had been an alleged sale of prime landing and take off slots for Kenya Airways at Heathrow Airport occasioning a loss of colossal amount to Kenya Airways.

It was resolved that Sen. Kimani Wamatangi M.P. shares information with the secretariat and subsequently Kenya Airways be invited to a meeting of the Committee to give an insight into the issue.

MIN. NO. SEN/RT/29/2016

DATE OF THE NEXT MEETING

The next meeting with the Council of Governors would be held on **Thursday 10th March, 2016 at 11.00a.m.**

MIN. NO. SEN/RT/30/2016

ADJOURNMENT

There being no other business, the meeting was adjourned at 1.20p.m.

SIGNATURE:.....

DATE:.....

(CHAIRPERSON: SEN. ABU CHIABA, M.P.)