INTERNAL MEMO

STANDING COMMITTEE ON ROADS AND TRANSPORTATION

To: **Speaker of the Senate**

Thro': **Clerk of the Senate**

Hon. Speaker
You may approve
19/06/18

Thro': **Senior Deputy Clerk (EG)**

Recommended for tabling. EG 19/06/18

From: **Director, Committee Services**

Approved
19/06

Date: **19th June, 2018**

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RE: REPORT ON THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILLS NO.47 OF 2017)

The above matter refers.

The Standing Committee on Roads and Transportation has considered and adopted its report on the Kenya Roads Bill (National Assembly Bills No.47 of 2017).

The purpose of this memo is to forward for your information, the Report and seek your approval for the Tabling of the said report to the Senate.

Njenga Njuguna.

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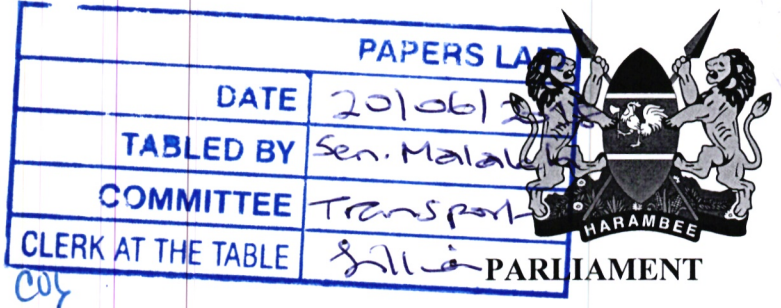

PARLIAMENT



Right Hon. Speaker
You may approve for tabling.
19/06/18

Recommended for tabling.
19/06/18

Approved
19/06/2018

THE SENATE

TWELFTH PARLIAMENT

SECOND SESSION, 2018

THE STANDING COMMITTEE

ON

ROADS AND TRANSPORTATION

REPORT ON THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILLS NO. 47 OF 2017)

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
P. O. BOX 41842-00100,
NAIROBI.

JUNE, 2018



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ABBREVIATIONS AND ACRONYMS

COG - Council of Governors

KeNHA- Kenya National Highways Authority

KeRRA- Kenya Rural Roads Authority

KenURA - Kenya National Urban Roads Authority

KenSRA- Kenya National Secondary Roads Authority

KRB - Kenya Roads Board

KURA- Kenya Urban Roads Authority

PREFACE

Mr Speaker Sir,

The Standing Committee on Roads and Transportation was constituted in December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of Senate standing order 212(3).

The Committee is mandated to consider all matters relating to*: transport, roads, public works, construction and maintenance of roads, rails and buildings, air and seaports.*

In executing its mandate, the Committee oversees the Ministry of Transport, Infrastructure, Housing and Urban Development.

The Committee comprises the following Members:

(1) Sen. Wamatangi Kimani, MP,	**Chairperson**
(2) Sen. (Eng.) Hargura Godana, MP,	**Vice- Chairperson**
(3) Sen. Enoch Wambua, MP,	Member
(4) Sen. Christine Zawadi, MP,	Member
(5) Sen. Steve Lelegwe, MP,	Member
(6) Sen. Philip Mpaayei, MP,	Member
(7) Sen. Sylvia Kasanga, MP,	Member
(8) Sen. (Prof.) Ekal Imana, MP,	Member
(9) Sen. Cleophas Malalah, MP,	Member

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker and the Clerk of the Senate for the support extended to it during the entire process of considering the Kenya Roads Bill (National Assembly Bills No.47 of 2017) including the conduct of the Public Hearing/Receipt of Memoranda. The Committee also thanks in particular the Ministry of Transport, Infrastructure, Housing and Urban Development, Kenya National Highways Authority (KENHA), Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA), Kenya Roads Board (KRB) and members of the public who made submissions, both orally and in writing. The Committee acknowledges the commitment and dedication of the secretariat that facilitated the production of the report.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 134(5) and further to Standing Order 207(2) to present a report of the Standing Committee on Roads and Transportation on the Kenya Roads Bill (National Assembly Bills No.47 of 2017) for consideration by the House.

SIGNED..... DATE.....18/6/18.....

SEN. WAMATANGI KIMANI PAUL, M.P,
CHAIRPERSON,
STANDING COMMITTEE ON ROADS AND TRANSPORTATION

ADOPTION OF REPORT

Pursuant to standing order 207 (2) the Standing Committee on Roads and Transportation considered the Kenya Roads Bill (National Assembly Bills No. 47 of 2017) and adopted its report as follows-

Sen. Wamatangi Kimani, MP, **Chairperson**----------

Sen. Hargura Godana, MP, **Vice- Chairperson**----------

Sen. Enoch Wambua, MP, Member----------

Sen. Christine Zawadi, MP, Member----------

Sen. Steve Lelegwe, MP, Member----------

Sen. Philip Mpaayei, MP, Member----------

Sen. Sylvia Kasanga, MP, Member----------

Sen. (Prof.) Ekal Imana, MP, Member----------

Sen. Cleophas Malala, MP, Member----------

1.0 INTRODUCTION

Mr. Speaker Sir,

The Kenya Roads Bill (National Assembly Bills No. 47 of 2017) was published vide Kenya Gazette Supplement No.184 of 6th December, 2017, to give effect to the Fourth Schedule of the Constitution in relation to the roads subsector to review, consolidate and rationalize the legal and institutional framework for management of the road network and roads subsector in a more efficient and effective manner.

The Bill was considered and passed by the National Assembly on 19th April, 2018 and was received in the Senate on 15th May, 2018. The Bill was Read a First Time on 16th May, 2018 and was subsequently referred to the Standing Committee on Roads and Transportation on 16th May, 2018 pursuant to Standing Order 134 of the Senate standing orders.

Pursuant to Article 118 (1) (b) of the Constitution and Standing Order No. 134 (5), of the Senate Standing Order, the Standing Committee on Roads and Transportation invited interested members of the public to submit any representations that they may have on the Bill on Tuesday, 12th June, 2018 at Mini Chamber, County Hall, Parliament Buildings through an advertisement in the Daily Nation Newspaper and the Standard Newspaper of Thursday, 7th June, 2018.

The Committee held a Public Hearing on 12th June, 2018 at the Mini Chamber, County Hall, Parliament Buildings and received both oral and written submissions from stakeholders and the public. The stakeholders included the Ministry of Roads, Infrastructure, Housing and Urban Development, Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KURA), Kenya Roads Board (KRB), Kenya Rural Roads Authority (KeRRA) and Nature Kenya, a civil society organization.

Some of the key issues that various stakeholders submitted on included; classification of roads, the sharing of the Roads Fund, composition of the various authorities established in the Bill and how to best represent the interests of counties.

The submissions by stakeholders and proposals for amendments of various clauses of the Bill guided the Committee in making its observations and recommendations.

Mr. Speaker Sir,

According to its Objects and Memoranda, the Bill seeks to provide for the classification, management, construction and maintenance of public roads. It also seeks to establish the Kenya National Highways Authority, Kenya National Urban Roads Authority and Kenya National Secondary Roads Authority and to provide for their functions and powers.

The Committee at its meeting held on Thursday, 14th June, 2018, and considered the submissions from the public hearing and recommended that the Kenya Roads Bill (National Assembly Bills No.47 of 2017 be adopted subject to the amendments contained in *Annex I* to be moved at the Committee Stage.

The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

2.0 OVERVIEW OF THE KENYA ROADS BILL, 2017

Introduction

The Fourth Schedule to the Constitution of Kenya 2010 distributes functions between the National and the County Governments. The transport function which is listed under the Schedule is a shared function as between the two levels of Government.

The National Government under paragraph 18, Part 1 of the Fourth Schedule to the Constitution is mandated to deal with transport and communications including, in particular-

(a) the construction and operation of national trunk roads; and
(b) Standards for the construction and maintenance of other roads by counties.

The County Governments on the other hand are mandated under paragraph 5 of Part 2 of the Fourth Schedule to the Constitution to deal with county transport including, county roads.
The present legal framework including the Kenya Roads Act, 2007 which was enacted before the promulgation of the new Constitution does not recognize this new arrangement as regards the roads function. It imperative that the existing legal regime be repealed and others be amended to reflect this new constitutional order and a new law which recognizes the distinct functions of these two levels of Governments be enacted. It is therefore necessary to have in place, a legal regime that provides for the classification of these roads so that each level of Government can clearly identify which roads fall within its mandate.

The Bill provides for –

1) Preliminary (Clauses 1-5):
   This part contains preliminary matters which include the short title, interpretation of terms, object and purpose of the Act, Guiding principles and the application of the Act.
2) Establishment of the Public Roads Standards Board (Clauses 6-9)

The Bill establishes a Public Roads Standards Board. Clause 7 of the Bill states that the Board shall consist of a representative from each of the following bodies-

(a) the State Department responsible for public roads;
(b) the State Department responsible for matters relating to devolution;
(c) the Inter-governmental Relations Technical Committee;
(d) the Kenya National Highways Authority;
(e) the Kenya National Urban Roads Authority;
(f) the Kenya National Secondary Roads Authority;
(g) the Kenya Roads Board;
(h) the Engineers Board of Kenya;
(i) the National Agency responsible for testing and research on roads; and

(j) the National Transport and Safety Authority.

The chairperson to the Board shall be the Principal Secretary for the State Department responsible for public roads. The State Department responsible for public roads shall be the secretariat to the Board. The functions of the Board are to advise the Cabinet Secretary on the following matters:

(a) standards for road and bridge materials, design, construction, maintenance and performance levels;
(b) standard contract forms for works and consultancy services;
(c) research and studies necessary for development and updating on public roads standards;
(d) the types, sizes and usage of vehicles on roads and maximum vehicle and axle load limits for purposes of protecting roads from damage;
(e) development and training of human resources required for the development, rehabilitation and maintenance of roads; and
(f) monitoring system to ensure adherence to the standards.

3) Classification of Roads (Clauses 10-11)

The Bill states that public roads shall be classified in the manner set out in the First Schedule. Clause 10(2) states that where a new road is established, the responsible Authority or county government shall submit to the Cabinet Secretary a request for classification of the road, and the Cabinet Secretary shall assign the road in accordance with the classification that accurately reflects the function served by the road for purposes of ensuring that the classification accurately reflects the function served by the road and all parts of the country have reasonable access to a national trunk road or a county road.

Clause 10(3) states that the Cabinet Secretary may review the classification and assignment of public roads to ensure that the classification accurately reflects the function served by the road and all parts of the country have reasonable access to a national trunk road or a county road.

The classification of roads as set out under the First Schedule. The Schedule classifies roads into **three categories** namely **Primary National Trunk Roads** which includes Classes S, A, B, H and J roads, **Secondary National Trunk Roads** which includes classes C and D roads and **county roads** which includes Classes E, F, G, K, L, M, N and P.

(1) Under Part III of the Bill, the Cabinet Secretary shall be responsible for the assignment of a road into any one of the categories set out above. This classification may be carried out from time to time by the cabinet secretary or upon the request of an authority established by the Bill or a County Government submitting a request to the cabinet secretary for the classification of a newly established road.

(2) Each authority and each county government is required to keep an up to date inventory of the roads under its management, in such form and with such detail, including categorization and identity details as prescribed by the Cabinet secretary.

4) Establishment of Road Authorities (Clause 12-21)

Part IV of the Bill establishes three roads authorities, all of which are body corporate with perpetual succession and shall be capable of suing and being sued, taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property, borrowing and lending money and doing or performing all such other things or acts as may be necessary for the furtherance of its purpose and functions.

These authorities are as follows:

(1) **The Kenya National Highways Authority**

Clause 12(1) establishes this authority which is responsible for the management, development, rehabilitation, and maintenance of primary national trunk roads S, A and B as set out in Part A of the First Schedule.

Clause 14(1) establishes the Board of the Kenya National Highways Authority which shall be composed of the following persons:

(a) a non-executive Chairperson to be appointed by the President

(b) the Principal Secretary in the ministry or State department responsible for matters relating to roads;

(c) the Principal Secretary in the ministry or State department responsible for matters relating to transport;

(d) the Principal Secretary to the National Treasury;

(e) the Director-General of the Authority, who shall be an *ex officio* member and secretary to the Board;

(f) two persons, nominated by the following organizations—

(i) Institution of Engineers of Kenya; and

(ii) Institute of Surveyors of Kenya;

(g) two persons appointed by the Cabinet Secretary through a transparent and formal process taking into consideration the regional and ethnic diversity of the people of Kenya.

Clause 14(3) states that the members of the Board under paragraphs (1) (b), (c) and (d) may designate an officer from their respective Ministry or State department to represent them. The nominating organizations shall each submit three names of the candidates approved at their respective annual general meeting for appointment by the Cabinet Secretary.

(2) **The Kenya National Urban Roads Authority**

This authority is established under Clause 15(1) and is responsible for the management, development, rehabilitation and maintenance of primary national trunk roads Classes H and J as described in Part A of the First Schedule.

Clause 15(3) states that the headquarters of the Authority shall be in the capital city and that the authority may establish such administrative offices in each county as may be necessary.

(3) **Kenya National Secondary Roads Authority**

This authority is established under clause 18(1) and it is responsible for the management, development, rehabilitation, and maintenance of secondary National Trunk Roads Class C as specified in the Part A of the First Schedule.

The Bill further requires the Authorities and the Cabinet Secretary to execute a performance agreement and at the end of each financial year to submit, to the Cabinet Secretary, an annual report on activities undertaken including progress and policy, audited accounts together with the report of the Auditor-General, an overview of the operations of the Authority, assessment on achievement of performance targets, and report on the realization of the objectives of the Act.

5) Administrative Provisions (Clause 22-40)

Part V of the Bill contains administrative provisions applicable to the Kenya National Highways Authority, the Kenya National Urban Roads Authority and the Kenya National Secondary Roads Authority. Clause 22 specifies the qualifications for appointment of chairpersons and members of the abovementioned Boards.

Clause 23 outlines the considerations on appointment of members of the Board. It states that the President and the Cabinet Secretary shall ensure that the board reflects the regional and ethnic diversity of the people of Kenya and that not more than two-thirds of the members are of the same gender. Persons appointed to the Board shall hold office for a period of three years and shall be eligible for re-appointment for one further term as per clause 24. The Bill also addresses the issues of remuneration and vacation of office in clauses 25 and 26.

The Bill states that each of the road authorities shall have a Director-General. The Director-General shall be competitively recruited and appointed by the respective Board on such terms and conditions as the Board shall determine. Clause 30 states that the Director-General shall be the chief executive and accounting officer of the Authority and secretary to the Board. The removal of the Director-General is provided for in clause 31. The Director-General of each of the authorities has the power to appoint officers, agents and staff with the approval of the Board as per clause 32. These appointments shall be in line with Article 232 of the Constitution. The officers and staff shall serve on terms and conditions set out by the Board and shall be paid in such terms as set by the Salaries and Remuneration Commission.

Clause 33 states that each of the roads authorities shall establish its internal structural organization in order to carry out its activities efficiently. The chairperson, Board members, officers and agents of each of the Authorities is protected from personal liability for any act provided that the act was carried out in the course of executing their lawful duties.

The Bill in clause 36 also provides for a performance agreement to be executed between the Cabinet Secretary and the road authorities in respect of the management and work programme of the respective authority. Clause 37 states that each Authority shall after the end of each financial year but within a period of four months, submit to the Cabinet Secretary an annual report on its activities and operations.

Clause 38 states that the Authority may make regulations relating to the conditions of service of its employees. Clause 39(1) provides that the affixing of the common seal of an authority shall be authenticated by the signature of the chairperson and the Director-General. Documents that do not require to be under seal shall be authenticated by the Director-General's signature. In the event that the chairperson or the Director-General is absent, the Board may in consultation with the Cabinet Secretary, nominate a member to authenticate the seal on their behalf. The Common seal shall be kept in such custody as the Board may direct. This seal when affixed to a document and authenticated shall be officially noticed and an order or authorization of the Authority will have deemed to have been given. Clause 40 states that the conduct of business and affairs of the Board shall be conducted in accordance with the Second Schedule of the Bill.

6) General Power of an Authority (Clauses 41-56)

Clause 41 gives the roads authority powers of acquisition of land provided that affected persons are compensated in consultation with the National Land Commission. Clause 42 empowers an authorized employee to enter and survey land. In the event of damage on the land caused by an authorized employee, the authority is to compensate the land owner for damages. Clause 44 gives the Authority power to enter and alter the position of any electric, telephone, telegraphic, fibre optic or other wire of any nature, or the position of any drain or sewer. Before such entry, notice must be given to the owner of the land. The road authorities also have the power to remove pipe, wire, and infrastructure utilities within road reserves as per clause 45. In this event, adequate notice must be given to the owner of the land. Service of notice shall be through a newspaper of wide circulation in Kenya.

The road authorities may occupy private land in carrying out its activities such as development, construction, rehabilitation and maintenance of a road. Clause 46(2) states that the road authorities shall give the owner of the land adequate notice of intention to occupy the land at least thirty days before the occupation. In matters of urgency, a road authority is exempted from giving such notice. Clause 47 states that the roads authorities also have the power to take any water from any natural watercourse subject to the provisions of the Water Act 2002.

It is of note that the Bill makes reference to the Water Act 2002 which was repealed and replaced by the Water Act, 2016. The section of the current Water Act relevant to this Bill is section 36 which states as follows:

'*A permit is required for any of the following purposes—*

a. any use of water from a water resource, except as provided by section 37;

b. *the drainage of any swamp or other land;*
c. *the discharge of a pollutant into any water resource; and*
d. *any other purpose, to be carried out in or in relation to a water resource, which is prescribed by Regulations made under this Act to be a purpose for which a permit is required.'*

Clause 48 states that a road authority may enter upon land and remove any soil, clay, rock, gravel, murram, lime, sand, shale, shingle, slate or surface soil, and may carry across any land, by a route to be agreed between the owner. In the event of failure to agree, the road authority shall compulsorily acquire such land, and remove such material, and may provide within the land in connection with such functions labour or other camps, works buildings, access roads, and space for stockpiling, and may erect machinery and other gear for the purpose of quarrying any such material. In the exercise of these powers, a road authority shall not be liable to payment of any levies and charges that have not been imposed by the national government.

Clause 48(3) states that a county exercising its authority may enter land only within the county. Clause 50 states that where a railway is to be constructed or has been constructed, the Authority shall require the owner or operator of the railway to erect such gates and to execute such other works as may be necessary for the safety of the public. In the case of national trunk roads, the owner or operator of the railway shall construct the railway in such a manner that it does not cross the road on the level and the owner or operator of the railway shall comply with such requirements.

Clause 51 states that the Authority has the power to require owners of any land to remove trees or trim any plant growth that interferes with roads. Clause 52 deals with inter-county bridges and states that each county government shall be jointly responsible to maintain an inter-county road. Clause 53(3) states that where a county road crosses or runs along the boundaries of more than one county government, the concerned county governments may enter into an agreement stating the manner in which the inter-county road shall be constructed or maintained. Clause 53 states that a driver or a person in charge of a vehicle shall not drive or haul a vehicle or cause it to be driven or hauled over any bridge on or near a conspicuous notice which has been placed to the effect that such bridge is insufficient to carry traffic in excess of a specified weight, unless the gross weight of the vehicle and any trailer attached thereto is less than the weight specified or the driver or person in charge of the vehicle has obtained the consent, in writing, of the relevant Authority.

Clause 54 states that the Cabinet Secretary, in consultation with the Authority may declare a national trunk road, bridge or tunnel or a portion thereof as a national toll road for purposes of this Act, and may make Regulations.

Clause 55 (1)states that the Authority may establish and maintain national toll bridges, together with, approaches, ramps and other essential appurtenances, for the passage or carriage of passengers, animals, goods and vehicles on any road in which it is responsible.

The establishment of a ferry boat service shall require the approval of the Cabinet Secretary and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary. Clause 55(3) also states that an agreement, in which a private party develops, operates or maintains a ferry boat service on behalf of an Authority or Kenya Wildlife Service shall be approved under the Public Private Partnerships Act.

7) Financial Provisions (Clauses 57-68)

The financial year of each Authority shall be the period of twelve months commencing on the 1st of July in every year and ending on the 30th of June in the next succeeding year as per clause 57. Clause 58 states that the funds and resources of each Authority shall consist of monies paid to it from the Road Fund, any other monies appropriated by Parliament, funds accruing from investments made by the Authority, grants, loans, gifts or donations from the Government or any other source, made with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance, revenue earned from the activities of the Authority under this Act; and any other funds received by the Authority in the performance of its functions under this Act.

Clause 59 states that the receipts, earnings or accruals of each Authority and the balances at the end of each financial year shall be retained for the purposes for which the respective Authority is established. Regarding the investment of the Authority's Fund, clause 60 states that subject to the written approval of the Cabinet Secretary and regulations made by the National Treasury, an Authority may invest any part of its funds in such a manner as it may consider appropriate. The Bill at clause 61 also states that an authority may borrow money required for the exercise of its functions and for meeting its obligations after approval by the Cabinet Secretary. Clause 62 states that at least the road authorities shall prepare their financial estimates at least three months before the commencement of each financial year. Under clause 63, the road authorities shall keep proper books of account and audit which shall be reported in line with the law relating to audit.

Under Clause 64, each Authority and each county government is required, not later than six months before the end of each financial year, to prepare and submit to the Kenya Roads Board, for approval, an annual road works programme. The annual road works programme is based on the approved five-year road investment program in respect of the ensuing financial year,

comprising estimates of expected maintenance, development and capital expenditure of n Authority or county government in the financial year to be financed.

Clause 65 states that the Cabinet Secretary shall, once in every five years, in consultation with the national and county governments and the Kenya Roads Board, cause to be prepared a road investment program for approval by the Cabinet Secretary responsible for finance. The road investment programme outlines development and maintenance priorities costed with respect to stated sections of the road, and also aggregated by class, traffic loading or such other detail as may be specified. Clause 67 of the Bill provides that each Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services or for the use of road reserves under its jurisdiction. Such charges must be published in the Gazette. These charges as per the provisions of clause 68, shall be published in the Gazette and shall come into operation at least thirty days after publication.

8) Miscellaneous (Clauses 69-99)

Under clause 71, an Authority or a County Government may transfer any function relating to roads in accordance with the provisions of Article 187 of the Constitution and Part III of the Intergovernmental Relations Act, 2012.

In this regard, an Authority may, in accordance with the relevant roads implementation program, carry out or enter into contract on behalf of the National government with other persons including county governments or agencies of the Government for the carrying out of, among others, road works on a national trunk road or on land that is intended to become a national trunk road; the operation of a national trunk road and road works on a county road in accordance with an agreement between the Authority and the county government. Clause 72 states that a road authority may enter into agreement with any person including a county government for the sharing of the cost of acquisition of land for road construction, operation and associated purposes. Clause 73 states that with the approval of the Cabinet Secretary, a road authority may enter into an agreement with a county government under which the authority supplies funds to the county for road works on a county road, for other works that contribute to the effectiveness and efficiency of the road network or for the operation of a county road.

Clause 74 states that if a county government considers that improvements to a national trunk road in its area would be beneficial to the county road network, the county government may make financial arrangements with the relevant authority for the improvements to be made. Clause 75 further states that a county government shall obtain the respective Authority's written approval if it intends to carry out road works on a county road or make changes to the management of a county road where the works or changes would require the carrying out of road works on a national trunk road, have a significant adverse impact on a national trunk road or have a significant impact on the planning of a national trunk road or a future national trunk road. Clause 75(6) states that the permission criteria may include conditions, including a

condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes shall have. If a county government contravenes clause 75(1) or a condition that applies to it under this section, the county government is liable to compensate the Authority for the cost of road works to national trunk roads that are reasonably required as a result of the contravention.

Clause 78 outlines the rules that govern the types of structures and other works on, over and below roads or certain other land. The liability of an owner and driver for damages to a road or road furniture is outlined in clause 79. These damages are payable to a road authority. Clause 81(2) states that a road authority shall encourage community and private sector participation in road construction, maintenance and management under its supervision and guidance. Accommodation works are also provided for in clause 83 where a road authority shall construct and maintain works for the benefit of the owners and occupiers of land adjoining those on which the road is constructed. Clause 84 outlines the acts that constitute major offences under the Bill and the penalty for persons found guilty of committing these acts. The penalty stipulated in the bill is imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred thousand shillings, or to both. Clause 85 further outlines the other acts that are deemed to be minor offences and stipulates that the imprisonment for a term not exceeding six months, or to a fine not exceeding fifty thousand shillings, or to both.

Clause 87 states that the Cabinet Secretary may, by notice in the Gazette, exempt State vehicles or any category of State vehicles from the provisions of the Bill or any regulations made under this Bill. The Bill provides in clause 88 that no action shall lie in respect of nuisance by reason only of the noise and vibration caused by vehicles or construction plant and equipment on a public road. The Bill provides in clause 91 that any action that may lie against the Authority must be brought at least one month after notice containing particulars of claim has been given to the Authority and such action must be instituted within twelve months after the alleged act, neglect, default complained of and within six months next after the cessation of a continuing injury or damage.

The Bill also exempts execution or attachment with respect to orders made against the Authorities but requires the Director General to pay out of the revenue of the Authority amounts awarded against the Authority. Clause 95 states that upon application to the Cabinet Secretary responsible for finance, each authority shall be entitled to exemption from duty chargeable under the law relating to payment of stamp duty in respect of any instrument executed by or on behalf of, or in favour of the Authority. Clause 96 states that each Authority shall publish and publicise all important information within its mandate. A citizen may make a request for information in public interest and in doing so shall follow the procedure outlined in clause 96(2)(a). Clause 96(3) states that an authority may decline to give information to a person in a number of circumstances. These circumstances are where the request is

unreasonable in the circumstances, if the information requested is at a deliberative stage by the Authority, if there is failure of payment of the prescribed fee or the person fails to satisfy any confidentiality requirements determined by the Authority. Clause 99 states that the Cabinet Secretary shall review and revoke all legal notices establishing the former authorities, and departments whose functions fall under the purview of the powers and functions of an Authority. This is in order to enable the transfer of the functions, assets, and liabilities of the former authorities to the respective Authority, as contemplated under the Bill.

9) Responsibilities of County Governments (Clauses 100-101)

Part IX of the Bill outlines the responsibilities of county governments. Clause 100 states that each county government shall, within its area of jurisdiction be responsible for the construction and maintenance of the county roads in accordance with the provisions of Part 2 of the Fourth Schedule to the Constitution and Part B of the First Schedule to the Bill.

Clause 100(2) of the Bill provides for the functions and duties of the county government as follows—

(a) constructing, upgrading, rehabilitating and maintaining county roads;
(b) managing reserves and facilitating access to roadside developments with respect to county roads;
(c) implementing road policies in relation to county roads;
(d) ensuring adherence to the rules and guidelines on axle load control as prescribed under the Traffic Act and any Regulations made under this Act;
(e) ensuring that the quality of county road works is in accordance with national standards issued by the Cabinet Secretary;
(f) overseeing the management of traffic and road safety on county roads in collaboration with the county government;
(g) collecting and collating all such data related to the use of county roads as may be necessary for efficient planning under this Act;
(h) monitoring and evaluating the use of county roads;
(i) planning the development and maintenance of county roads;
(j) preparing the county investment programme and annual county road works programmes for county roads; and
(k) coordinating with road Authorities or agencies

Clause 100(3) states that the national government shall be responsible for the standard for the construction and maintenance of county roads by county governments. Under clause 101 of the Bill, each county government is required, by county legislation, to establish a County Roads Agency as a department or division under the auspices of the County Executive Committee Member for roads. The agency shall be responsible for the management, development and maintenance of County Roads.

10)Transitional Provisions (Clauses 102-104)

Clause 102(2) states that persons who immediately before the commencement of this Act were employees of the former Roads Authorities shall, upon the commencement of this Act, be deemed to be the employees of the Kenya National Highways Authority, Kenya National Secondary Roads Authority and the Kenya National Urban Roads Authority.

The Bill states in clause 102(5) that upon its enactment, the following changes shall take place:

(i) the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority shall stand dissolved on the appointed date;

(ii) all the rights, duties, obligations, assets, liabilities and staff of the former authorities existing at the enactment of the new Act shall be automatically and fully transferred to the respective Authority;

(iii) any reference to any of the former authorities in any written law, contract, document or instrument of any nature shall, on the commencement of the new Act, be read and construed as a reference to the respective Authority;

(iv) the annual estimates of the former Kenya National Highways Authority, shall be deemed to be the annual estimates of the Kenya National Highways Authority under the new Act and the annual estimates of the former Kenya Urban Roads Authority shall be deemed to be the annual estimates of the Kenya National Urban Roads Authority under the new Act and the annual estimates of the former Kenya Rural Roads Authority shall be deemed to be the annual estimates of the Kenya National Secondary Roads Authority under the new Act for the remainder of that financial year;

(v) any administrative direction made by any of the former authorities which was in force immediately before the commencement of the new Act shall, as long as they are consistent with the new Act, have force as if it was a direction made under the new Act by the respective Authority, as the case may be;

(vi) all contracts, deeds, bonds, agreements, arrangements, guarantees and other instruments made or entered into, on behalf of, or in relation to the former authorities, shall have effect as if made or entered into by, on behalf of or in relation to, the respective Authority, as the case may be; and

(vii) all actions, claims, arbitrations, applications and other proceedings, including proceedings on appeal or review, pending or existing immediately before the commencement of the new Act, by, against, or in relation to any of the former authorities, or former boards shall have effect as if they were proceedings by, against, or in relation to the respective Authority, as the case may be, and may be continued and completed accordingly.

11) Classification of Public Roads

The First Schedule of the Bill classifies the public roads into National Trunk Roads and County Roads. National trunk roads include class S, classes A, B, H, J and C. County roads are classified into class D, E, F, G, K, L, M, N and P.

12) Allocation of the Roads Fund

The Third Schedule, the Bill amends the Kenya Roads Board Act to provide for the allocation of the Roads Fund by providing that no more than-

(1) thirty five (35%) per centum is allocated to the Kenya National Highways Authority in such proportions as the Board may determine with the approval of the Cabinet Secretary in respect of primary national trunk roads Classes S,A and B;

(2) twenty eight (28%) per centum is allocated to the Kenya National Secondary Roads Authority in respect of secondary national trunk roads and the said per centum shall be equally distributed to the Constituencies;

(3) ten (10%) per centum is allocated to the National Urban Roads Authority

(4) sixteen (16%) per centum is allocated to the county governments equally as conditional grants in respect of county roads;

(5) one (1%) per centum is allocated to the Kenya Wildlife Services in respect of roads in national parks and reserves;

(6) seven (7%) per centum is allocated annually by the Board with the approval of the Cabinet Secretary to priority projects derived from the road investment programmes including support road standards, technical assistance and shall include –

(a) one (1%) per centum for material development and training; and

(b) one (1%) per centum for research and testing.

(7) one (1%) per centum to be allocated to the National Transport and Safety Authority to support road safety programmes; and

(8) two (2%) per centum to the Kenya Roads Board in respect of the recurrent expenditure of the Board.

13) Consequences of the Bill

The Bill seeks to repeal the Kenya Roads Act 2007 and amend the Kenya Roads Board Act No.7 of 1999 and the Physical Planning Act No.6 of 1996. The Bill will also affect the way counties currently undertake their roads function as they will be required to adhere to standards set by the Cabinet Secretary and to also seek for approvals from the relevant Authority if it intends to carry out road works on a county road where such works would have an effect on a national trunk road or a future national trunk road.

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER CONSULTATIONS

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 134 (5),the Committee held a one day public hearing on 12th June, 2018 and received the following representations;-

1) The Council of Governors (CoG)

The CoG proposed the following amendments:

(a) **Clause 7(1)** to include a County representative nominated by the Council of Governors. The justification was that County Governments were directly responsible for construction and maintenance of county roads and as such should have a representative in the board.

(b) **Clause 9(1)** be amended to read as follows-

"The Cabinet Secretary, in consultation with County Governments, shall by regulations prescribe standards for testing, design, construction and maintenance of national trunk roads by the roads authorities and county roads by county Governments".

Justification: In the spirit of consultation and co-operation under Article 6(2) of the Constitution, this will ensure that the standards prescribed are implemented or implementable by the county governments

(c) **Clause 10(2)** be amended as follows;

"That where a new road is established, the Authority or county government shall give a proposal on the classification and assignment of roads and submit to the Cabinet Secretary for National Inventory and mapping."

Justification: The role of the Cabinet Secretary to classify roads as proposed in this clause would ensure uniformity of road classifications in the Country. However, this role should be done respecting the constitutionally assigned functions of both levels of government.

(d) **Clause 10(3)** be amended as follows; that

"The Cabinet Secretary may, from time to time, and in consultation with county governments, review the classification and assignment of public roads under subsection (2)"

Justification: The roads function was a function of both levels of government therefore in the spirit of Article 6(2) of the Constitution, the Cabinet Secretary should consult with the County Governments when reviewing the classification of roads.

(e) **Clause 41** to include provision for the approval of the county government in the event the land being acquired is under the county government
Justification: Under Article 62(2) and Article 63 of the Constitution, county governments are in charge of public land held in trust for the people resident in the county and they are also in charge of unregistered community land in the counties. For this reason, if any of the land being acquired is under the administration of the county government, it is prudent to ensure that they consult with the county government before the acquisition of such land.

(f) **Clause 44** -The alteration of electric, telephone poles, drainage and sewer should be in consultation and with approval of the relevant County Government
Justification: The function of county public works, county planning, gas and energy reticulation are functions of the county governments therefore if the Authority wants to alter such infrastructure, there is need to consult the relevant county governments.

(g) **Clause 46(1)(a)** include the word 'or' appearing after the word road.

(h) **Clause 47:** An Authority may, for its purposes, and in consultation with the relevant county government, take any water from any natural watercourse subject to the Water Act, 2016.
Justification: Under the Fourth Schedule of the Constitution, County governments are in charge of implementing policies that conserve natural resources and the environment particularly on water and soil conservation. For this reason, an Authority should first consult with the relevant county government.

(i) **Clause 55(2)**: The establishment of a ferry boat service under subsection (1) shall require the approval of the relevant county government and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary and the relevant county government.
Justification: Under the Fourth Schedule of the Constitution, the function of county transport includes ferries and harbours. For this reason, the establishment of a ferry boat service, its operations and charges should be done by the relevant county government

(j) **Clause 56 (1):** The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary and County Governments, make Regulations in accordance with

this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads

Justification: In the spirit of consultation and cooperation under Article 6(2) of the Constitution, this will ensure that the road user charges prescribed are implemented by the county governments in respect to county roads.

(k) **Clause 75 be amended as follows;**

(1) A county government may consult the relevant/respective Authority's if —

(a) it intends to carry out road works on a county road or make changes to the management of a county road where

(b) the works or changes would;

(i) require the carrying out of road works on a national trunk road; or

(ii) otherwise have a significant adverse impact on a national trunk road; or

(iii) have a significant impact on the planning of a national trunk road or a future national trunk road.

Justification: This consultation will ensure that the activities of both levels of government are in tandem and that alterations by the county governments to county roads, does not adversely affect the plans of national trunk roads.

(l) **Clause 77 be amended as follows** "The Cabinet Secretary shall in consultation with County Governments oversee the performance of the activities of the Authority, under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of this Act.

Justification: The powers of the Cabinet Secretary should only be limited to the Kenya National Highways Authority. Other roles performed by the county governments should be considered in intergovernmental forums.

(m) **Clause 98 (1)** be amended as follows; The Cabinet Secretary may, in consultation with County Governments and the Authority, make Regulations for the better carrying out of the provisions of this Act.

Justification: This will ensure that the prescribed Regulations are implemented effectively at the national and county level.

(n) **The First Schedule** be amended to provide that the National Government retain Class S, A, B, C and J as National trunk roads while county governments be in charge of Class D, E, F, G, K, L, M, N and P.

The definition of Class D roads should be retained as the Roads Bill that was in the National Assembly i.e. roads linking constituency headquarters, Municipal or Town Council Centres and other towns to each other and to higher class roads. Required to collect local traffic from lower class roads and channel it to the higher class roads.

Justification: The Council of Governors through the Intergovernmental forum known as the Intergovernmental Budget and Economic Council (IBEC), chaired by H.E. Deputy President signed an Intergovernmental Agreement which provided that Class D roads are county Government roads. Unfortunately after this agreement, the National Assembly reclassified the Class C and D roads under this Bill i.e. former description of Class D roads is now described as Class C road which is under the National Government.

(o) **Third Schedule (S. 104) S. 6(2)(d)** to read as follows:
(2) Twenty (20%) per centum is allocated to County Governments equitably in respect of County Roads.

Justification: The Council of Governors through the Intergovernmental forum known as the Intergovernmental Budget and Economic Council (IBEC), chaired by H.E. Deputy President signed an Intergovernmental Agreement which provided that which provided for the Fuel Levy Fund to be increased from the current fifteen (15%) per centum annual allocation to twenty (20%) to take care of the increased need of road maintenance in the Counties.
This was after the COG agreed to compromise the Ksh 8 billion meant to be transferred as the costs of the Class D roads transferred via Legal Notice No 24 dated 22nd January 2016.

2) The Kenya National Highways Authority (KeNHA)
KeNHA proposed the following amendments:

(a) **Clause 2** in the interpretation, the definition of be amended as follows;
"Public road" means all roads falling under the classifications under Schedule I and any other subsequently classified roads"

Justification: The Bill recognizes public roads as outlined and classified under the First Schedule. The reference to the Public Roads and Roads of Access Act (under the Bill) needed to be effected through a consequential amendment to the Acts to reflect the public roads aspect.

(b) **Clause 12 (3)** be amended by Deleting the words 'in each county'

Justification: Possible financial implications if Authority is to have administrative offices in each county.

3) State Department of Infrastructure

They proposed the following amendments:

(a) **Clause 52(4)** may include a provisions of the act so that the Intergovernmental Technical Relations Committee (IGTRC) can come to a speedy and efficient legal settlement;

(b) **Clause 67:** Delete the phrase *"...or for the use of road reserves..."*

Justification: According to the Final Report on the Transfer of Functions by the Transition Authority, reserves for County roads and access to roadside developments are functions of the county governments and the Authority should not impose any fees on them without the approval of the county government.

4) Kenya Roads Board (KRB)

KRB proposed the following amendments to the Third Schedule of the Bill:

(a) Sec 6 (2) (i). This should be replaced with sec 6 (2) (l)

Justification: Once the above section is amended, section 6 (2) (10) (ii) ceases to exist and therefore its amendment is not necessary as proposed. Further, the numbering of the subsections inserted after subsection 2(l) bearing (j), (k), (l) and (m) should be renumbered to reflect the correct sequence.

(b) Section 12(2) as follows;

Delete and substitute therefor the following new subsection—

(2) A person shall be qualified for appointment as the Executive Director if that person –

(a) holds a degree in finance, accounting, law or engineering from a university recognized in Kenya ;

(b) has knowledge and at least ten years' experience in a relevant field

(c) has served in a senior management position for a period of at least five years; and

(d) satisfies the requirements of Chapter Six of the Constitution

Justification:

a) The object and purpose for which the Kenya Roads Board was established as given in section 6(1) of the Kenya Roads Board Act, 1999 is to oversee the road network in Kenya and thereby coordinate development, rehabilitation and maintenance and to be the principle advisor to the Government on all matters related thereto. This has not changed to justify revisions to the requirements for appointment of the Executive Director.

The Executive Director is the secretary to the Board and hence responsible for the day to day management of the functions of the Board which are mainly to coordinate road maintenance policies, strategies and programs undertaken by Road Agencies.

Further, County Governments which are at the moment managing 121,000 km of roads in the country require technical assistance both at policy and operational level, to get them to attain professional practice in road maintenance/management like the current Road Authorities. To avoid collapse of the important road network managed by Count Governments, Kenya Roads Board requires a technical Executive Director in the field of civil engineering to ensure good road maintenance. In this regard, the appropriate academic and professional qualifications to fulfil this object and purpose of the Board are in the civil engineering profession.

b) The proposed amendment targets to open up the position of the Executive Director to two specific fields namely; law and finance/accounting. There is no rationale of opening it up from civil engineering, to only include these two fields. Other professions like Economics, Planning, Survey, Business Management and Social Sciences would also play a role if at all the position should be held by professions other than Civil Engineering. Further, the amendments do not stipulate professional requirements, which dilutes the qualifications and professional accountability of the person appointed as Executive Director.

c) The requirements proposed except (d) are not in parity with the requirements for appointment of Director-Generals in the Roads Authorities (holder of a Bachelor's degree in civil engineering, Master's degree and registered engineer) as stipulated in section 29 of the Kenya Roads Bill, 2017.

d) Requirement No. (c), for the holder to have served in a senior management position for a period of at least five years could be construed to target certain individuals in an organization. Should the amendment be allowed, the word '**senior**' should be **'expunged'** so that this requirement is at per with that adopted in this Bill for Director Generals of Road Authorities.

Based on the above, it is recommended that the requirements as stipulated in the current KRB Act remain as is and that the proposed amendment is withdrawn from the Kenya Roads Bill, 2017.

5) Kenya Rural Roads Authority

KeRRA proposed the following amendments to the Bill:

(a) **Clause 2** is amended by deleting paragraph 2 and substituting therefor

"Thirty-two percent(32%) is allocated to the Kenya National Secondary Roads Authority in respect of Secondary National Trunk roads and the said per centum to be distributed as follows:"

Justification: Secondary Trunk roads have not attracted substantial donor funds. It is therefore proposed that the allocations for maintenance of these critical link roads be increased from the Road Maintenance Levy Fund, being the only source of funding currently.

The road network for both the Secondary National Trunk Roads is a combination of both paved roads and unpaved roads and because of their economic and social function, the maintenance needs for the roads is higher.

The maintenance backlog over the years is also high owing to minimal budgetary allocation. Most paved roads have continued to deteriorate over the years yet budgetary allocations for resealing, regravelling or recarpeting could have extended the lifespan of such roads by an additional five (5) years or more.

Critical drainage structures are still missing on some roads while the existing ones constructed during the pre-independence era require replacement owing to the aging factor and the increase in the traffic loading using such roads.

With the explanation indicated above, Kenya National Secondary Roads Authority will require additional funding to address both the historical challenges of a poorly maintained network and also plan to maintain the network that is currently being upgraded to bitumen standards.

(b) **Clause 17(5) to be deleted**.

Justification: Need to include a representative of the Institute of Surveyors, should have the same as with the clauses establishing the roads authorities and there should be inclusion of the National Transport and Safety Authority representative.

(c) 50% to be distributed equally to all the constituencies for routine maintenance and spot improvement of National Trunk Road network within constituencies.

Justification: The increased funding will provide for spot improvement of the unpaved road network (regravelling and construction of missing drainage structures including culverts, minor bridges and drifts).

(d) 50% to be retained by the Kenya National Secondary Roads Authority for maintenance of the paved road network under the Authority's mandate.

Justification: The amendment will ensure that there are adequate funds for maintenance of the national secondary trunk road network as prioritized by Constituency Roads Committees. This is to avoid deterioration of the network.

6) **Submissions by a Member of the Public**

Mr. Wanjohi Nyamu made his submissions as follows:

a) That the Kenya Roads Bill, 2017 was very important in ensuring better roads standards in the country;
b) Enforcement of proper road usage should be taken together with enhanced road security management;
c) All major roads in the counties should be tarmacked ;
d) Corruption was a major threat to the attainment of better roads standard and proposed that the public service transport system (Matatu) should be streamlined to ensure discipline;
e) There was need to integrate small and micro- enterprise in the development of the roads as a means of enabling livelihoods and job creation.

4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

OBSERVATIONS

The Standing Committee on Roads and Transportation considered submissions from stakeholders on the Kenya Roads Bill (National Assembly Bills No.47 of 2017 and made the following observations;

(a) Establishment of the Public Roads Standards Board

(i) The establishment of the Board was necessary to ensure high standards of construction, maintenance and performance in the road sector at both National and County levels of government.

(ii) The proposed Public Roads Standards Board was not a duplication of the Kenya Roads Board that as established by the Kenya Roads Board Act.

(iii) Clause 7(1) of the Bill did not provide for representation from the County Governments.

(b) Powers of Review and Classification of Roads

i) Classification of roads in Kenya has been based on functionality and not level of service as per the practice in neighbouring countries. For example, there were class A roads which were unpaved while there were paved roads which were classes such as D and E. As a result, provisions on classification of roads were aimed at harmonizing processes to international standards and to ensure proper development and management of the roads network;

ii) The Committee established that as per the provisions of clause 10(3), the Ministry responsible for transport had developed a new classification system and had reclassified the road network through a gazetted Road Register in line with the Constitution of Kenya 2010.

iii) Concern was raised over the lack of a list of government and county roads within each County.

(c) The General Power of Road Authority

(i) The Committee concurred with Clause 44 on the need for consultations between and among county governments during the alteration of infrastructure caused by road construction and maintenance. Further, the Council of Governors in their memoranda had observed that in the event that a road authority was to alter the position of any electric, telephone, telegraphic, fibre optic and such related wires and pipes during road construction, consultation with the relevant county government was needed.

(ii) The Committee further observed that there was a need to protect and preserve the environment, natural resources and wildlife during construction of roads.

(iii) The Committee noted that the formation of ferry boat services as described in clause 55(2) would create conflict between the two levels of government and the ongoing powers and function of the Kenya Ferry Services which was a national government institution.

(iv) It was agreed that as per Article 62(2) and 63 of the Constitution, county governments should be consulted whenever a roads authority intended to occupy land during the construction of roads in the county.

(d) Functions of the County Government

(i) The Committee also took positive note of Clause 101 which mandated the County Governments to establish a county roads agency to deal with the role of construction, maintenance and development of county roads through county legislation

However, the Committee further observed as follows: That:

(i) The Bill did not make provisions for publications and updating of the road registers for roads in the country;

(ii) It was argued that historically these roads had been developed by National government or private developers and handed over to local governments for maintenance. Concerned that county governments lacked capacity in the development and maintenance of these roads, the Bill should have provided modalities for the national Government to provide technical support to County governments through the national road agencies.

(iii) The Committee noted that clause 37(1) and 37(2) which require each road Authority to submit an annual report on its activities and operations within a period of four months was unworkable. This is because it was not practical to submit audited accounts within four months after the end of a financial year since the Auditor-General produces reports after six months.

RECOMMENDATIONS

The Committee made the following recommendations on the Kenya Roads Bill (National Assembly Bills No. 47 of 2017);

(a) The Council of Governors should be represented on the Public Roads Standards Board to guarantee the spirit of Art. 6(2) and to provide roles for levels of government on National and County Roads.

Further, relevant institutions such as the Institute of Surveyors of Kenya and the Institution of Engineers of Kenya should be included in the Board.

(b) Clause 2 in the interpretation be amended as follows:

*"'**Public Road**' means all roads falling under the classifications under Schedule I and any other subsequently classified roads"*

(c) Clause 9(1) be amended so as to reflect the specific mandates of both levels of governments. The county governments should be consulted by the National Government only on county roads;

(d) Clause 10(3) be amended as follows;

"The Cabinet Secretary may, from time to time, and in consultation with the relevant county governments, review the classification and assignment of public roads under subsection (2)"

(e) Clause 12(3) be amended by deleting the words '*in each county*';

(f) Clause 41 be amended to include provisions for the approval of the county government in the event that the land being acquired was under the County government. The county governments should be given powers of compulsory acquisition that should be exercised in consultation with the National Lands Commission ;

(g) Clause 44 be amended to include provisions that the alteration of electric, telephone poles, drainage and sewer lines by a roads Authority should be in consultation and with approval of the relevant County Government;

(h) Clause 46(1)(a) to be amended by inserting the word '*or*' to appear immediately after the word '*road*';

(i) Clause 47 to be amended as follows-

a. '*An Authority may for its purposes and in consultation with the relevant county government, take any water from any watercourse subject to the Water Act, 2016".*

(j) Clause 52(4) to include a provision that ensures that disputes brought to the Intergovernmental Relations Technical Committee (IGRTC) are concluded in an expeditious and efficient manner;

(k) Clause 67 to be amended to delete the phrase '*or for the use of road reserves*';

(l) Clause 56 (1) be deleted as the management of county roads is delegated to the county governments by clause 101.

(m) A route numbering or naming system to guide classification of new roads and road identification by road agencies and road users;

(n) The County Governments to classify and assign county roads within their jurisdiction and submit their classification to the Cabinet Secretary for inventory purposes;

(o) Provision for agency routine maintenance of National Trunk Roads sections located in municipalities by County governments as well as publication and updating of road registers for National Trunk Roads and County Roads;

(p) The Third Schedule to be renumbered by deleting the words 'sec 6(2)(i)' and substituting therefore with the numeration 'Sec 6(2)(l)';

(q) The Distribution of the Roads Maintenance Levy Fund be retained in the Third Schedule of the Bill.

Annexures

1) Proposed Committee Stage Amendments
2) Committee Minutes
3) Stakeholders Submissions
4) Public advert

ANNEXURE ONE: PROPOSED COMMITTEE STAGE AMENDMENTS

CLAUSE 2

THAT the proposed clause 2 of the Bill be amended—

(a) by deleting the definition of public roads and substituting therefor the new paragraph-

"'**Public Road'** means all roads falling under the classifications under Schedule I and any other subsequently classified roads".

CLAUSE 9

THAT the proposed clause 9 of the Bill be amended—

(a) by inserting the following new paragraph immediately after sub-clause(1)

'In exercising sub-section (1),the Cabinet Secretary shall engage in consultation with the county governments and relevant stakeholders'.

CLAUSE 10

THAT the proposed clause 10 of the Bill be amended—

(a) in sub-clause (2) by inserting a new paragraph immediately after paragraph(b)—

'(c) the Cabinet secretary shall implement classification that utilizes a route numbering or naming system that guides road identification by road agencies and road users '

(b) by deleting sub-clause(3) and therefor the following clause:

'(3) The Cabinet Secretary may, from time to time, and in consultation with the relevant county governments, review the classification and assignment of public roads under subsection (2)'.

CLAUSE 12

THAT the proposed clause 12 of the Bill be amended —

(a) in sub-clause (3)by deleting the words, 'in each county' appearing immediately after the words 'administrative offices'.

CLAUSE 41

THAT the proposed clause 41 of the Bill be amended—

(a) by inserting the following new sub-clause under clause 41

41 (2).Where the land required by an Authority is held by the county government, the Authority shall engage in consultation with the relevant county government and the National Lands Commission.

CLAUSE 44

THAT the proposed clause 44 of the Bill be amended—

(a) by inserting the following new sub-clause immediately after sub-clause (2)—

(3)The Authority in exercising its powers under this section shall seek consultation and approval of the relevant county government.

CLAUSE 46

THAT the proposed clause 46 of the Bill be amended—

(a) in sub-clause(1)(a) by inserting the word 'or' immediately after the word 'road'.

CLAUSE 47

THAT the proposed clause 47 of the Bill be deleted and substituted therefor with the following new clause

Power to take water.

47. An Authority may for its purposes and in consultation with the relevant county government, take any water from any watercourse subject to the Water Act, 2016.

CLAUSE 48

THAT the proposed clause 48 of the Bill be amended—

(a) by inserting the following new sub-clauses appearing immediately after sub-clause (12)—

(13) Roads referred to in sub-section(1) shall not be carried out where they may endanger any rare or threatened species, wildlife migration, water sources or springs or sites of cultural or natural importance.

(14)All contemplated roads or road-works in sensitive areas of cultural or natural importance such as wetlands, indigenous forests and historic or pre-historic sites shall require approval from the National Environment Management Authority as per section 42 of the Environmental Management and Co-ordination Act, 1999.

(15)In the event that the proposed road works cannot avoid passing through a protected area, the Authority shall construct overpasses or underpasses to allow wildlife movement at frequent intervals.

(16) With reference to sub-section 15, where overpasses or underpasses cannot be constructed, the Authority shall ensure that fences are erected on both sides of the road.

CLAUSE 52

THAT the proposed clause 52 of the Bill be amended—

(a) by inserting a new sub-clause appearing immediately after sub-clause(4)—

(5)any matter brought to the Intergovernmental Relations Technical Committee shall be determined in an expeditious and efficient manner.

CLAUSE 56

THAT the proposed clause 56 of the Bill be amended—

(a) by deleting sub-clause(1) and substituting therefor with the following new paragraph:

Road user charges

56. (1) The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of national roads.

CLAUSE 67

THAT the proposed clause 67 of the Bill be amended—

(a) in sub-clause 67(1) by deleting the words 'or for the use of road reserves' appearing immediately after the word 'services'

CLAUSE 101

THAT the proposed clause 101 of the Bill be amended—

(a) by inserting the following new sub-clause under clause 101:

'(b) In the exercise of the powers under subsection(a), each county government through their County Roads Agency shall classify and assign the roads under their jurisdiction and submit the proposed classification to the Cabinet Secretary for approval and inventory purposes. '

THIRD SCHEDULE

THAT the proposed Third Schedule of the Bill be amended—

(r) in the marginal note by deleting the words 'sec 6(2)(i)' and substituting therefore with the numeration 'Sec 6(2)(l)'.

MINUTES OF THE 18TH MEETING OF THE STANDING COMMITTEE ON ROADS, TRANSPORTATION HELD ON THURSDAY, 14TH JUNE, 2018 AT HOTEL INTERCONTINENTAL HOTEL, NAIROBI AT 6.30PM

PRESENT

1) Sen. Wamatangi Kimani Paul, MP
2) Sen. Enock Wambua, MP
3) Sen. Sylvia Kasanga, MP
4) Sen. Steve Lelegwe, MP
5) Sen. Cleophas Malalah, MP

ABSENT WITH APOLOGY

1) Sen. Hargura Godana, MP
2) Sen. Christine Zawadi, MP
3) Sen. Prof. Ekal Imana, MP
4) Sen. Philip Mpaayei, MP

SECRETARIAT

1) Mr. Peter Mulesi - Clerk Assistant
2) Mr. Malcom Ngugi - Legal Counsel
3) Mr. Boniface Mbithi - Sergeant-At-Arms
4) Mr. Simon Muinde -Audio Recorder
5) Mr. Vitus Okech - Researcher

MIN/ 081/SCRT/2018: **PRELIMINARIES**

The Chairman called the meeting to order at 6.30pm and there followed a word of prayer.

He thanked the Members for their patience to finalize the report on the Kenya Roads Bill (National Assembly Bills No. 47 of 2107). He also acknowledged the input by the Committee and for taking time to peruse all the presentations made.

He informed the meeting that the purpose of the late evening meeting was to consider and adopt the committee recommendations which were based on the observations made from the public hearing submissions.

MIN/ 082/SCRT/2018: **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. Cleophas Malalah MP and Seconded by Sen. Enoch Wambua, MP, as follows;

1. Preliminaries
2. Adoption of Agenda
3. Consideration of the Committee Recommendations on the Kenya Roads Bill (National Assembly Bills No.47 of 2017)
4. Any other business
5. Date of next meeting

MIN/083/SCRT/2018: **CONSIDERATION OF PROPOSED RECOMMENDATIONS ON THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILLS NO. 47 OF 2017)**

Having considered all the stakeholder submissions on the Kenya Roads Bill (National Assembly Bills No. 47 of 2017, the Committee adopted its draft observations and recommendations and recommended the following amendments at the Committee stage;

CLAUSE 2
THAT the proposed clause 2 of the Bill be amended—
(a) by deleting the definition of public roads and substituting therefor the new paragraph-
"'**Public Road'** means all roads falling under the classifications under Schedule I and any other subsequently classified roads".

CLAUSE 9
THAT the proposed clause 9 of the Bill be amended—
(a) by inserting the following new paragraph immediately after sub-clause(1)
'In exercising sub-section (1),the Cabinet Secretary shall engage in consultation with the county governments and relevant stakeholders'.

CLAUSE 10
THAT the proposed clause 10 of the Bill be amended—
(a) in sub-clause (2) by inserting a new paragraph immediately after paragraph(b)—

'(c) the Cabinet secretary shall implement classification that utilizes a route numbering or naming system that guides road identification by road agencies and road users '

(b) by deleting sub-clause(3) and therefor the following clause:
'(3) The Cabinet Secretary may, from time to time, and in consultation with the relevant county governments, review the classification and assignment of public roads under subsection (2)'.

CLAUSE 12
THAT the proposed clause 12 of the Bill be amended —
(a) in sub-clause (3)by deleting the words, 'in each county' appearing immediately after the words 'administrative offices'.

CLAUSE 37
THAT the proposed clause 37 of the Bill be amended—

(a) in sub-clause(1) by deleting the words 'four months' appearing immediately after the words 'of' and substituting therefor with the words 'six months'

CLAUSE 41

THAT the proposed clause 41 of the Bill be amended—

(a) by inserting the following new sub-clause under clause 41

41 (2).Where the land required by an Authority is held by the county government, the Authority shall engage in consultation with the relevant county government and the National Lands Commission.

CLAUSE 44

THAT the proposed clause 44 of the Bill be amended—

(a) by inserting the following new sub-clause immediately after sub-clause (2)—

(3)The Authority in exercising its powers under this section shall seek consultation and approval of the relevant county government.

CLAUSE 46

THAT the proposed clause 46 of the Bill be amended—

(a) in sub-clause(1)(a) by inserting the word 'or' immediately after the word 'road'.

CLAUSE 47

THAT the proposed clause 47 of the Bill be deleted and substituted therefor with the following new clause

Power to take water. **47.** An Authority may for its purposes and in consultation with the relevant county government, take any water from any watercourse subject to the Water Act, 2016.

CLAUSE 48

THAT the proposed clause 48 of the Bill be amended—

(a) by inserting the following new sub-clauses appearing immediately after sub-clause (12)—

(13) Roads referred to in sub-section(1) shall not be carried out where they may endanger any rare or threatened species, wildlife migration, water sources or springs or sites of cultural or natural importance.

(14)All contemplated roads or road-works in sensitive areas of cultural or natural importance such as wetlands, indigenous forests and historic or pre-historic sites shall require approval from the National Environment Management Authority as per section 42 of the Environmental Management and Co-ordination Act, 1999.

(15)In the event that the proposed road works cannot avoid passing through a protected area, the Authority shall construct overpasses or underpasses to allow wildlife movement at frequent intervals.

(16) With reference to sub-section 15, where overpasses or underpasses cannot be constructed, the Authority shall ensure that fences are erected on both sides of the road.

CLAUSE 52

THAT the proposed clause 52 of the Bill be amended—

(a) by inserting a new sub-clause appearing immediately after sub-clause(4)—
(5)any matter brought to the Intergovernmental Relations Technical Committee shall be determined in an expeditious and efficient manner.

CLAUSE 56

THAT the proposed clause 56 of the Bill be amended—

(a) by deleting sub-clause(1) and substituting therefor with the following new paragraph:

Road user charges

56. (1) The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of national roads.

CLAUSE 67

THAT the proposed clause 67 of the Bill be amended—

(a) in sub-clause 67(1) by deleting the words 'or for the use of road reserves' appearing immediately after the word 'services'

CLAUSE 101

THAT the proposed clause 101 of the Bill be amended—

(a) by inserting the following new sub-clause under clause 101:
'(b) In the exercise of the powers under subsection(a), each county government through their County Roads Agency shall classify and assign the roads under their jurisdiction and submit the proposed classification to the Cabinet Secretary for approval and inventory purposes. '

THIRD SCHEDULE

THAT the proposed Third Schedule of the Bill be amended—

1) in the marginal note by deleting the words 'sec 6(2)(i)' and substituting therefore with the numeration 'Sec 6(2)(l)'.

Adoption of the Report

The Committee adopted the report on the Kenya Roads Bill (National Assembly Bills No. 47 of 2017) having been proposed by Sen. Steve Lelegwe, MP and Seconded by Sen. Sylvia Kasanga, MP.

MIN/084/SCRT/2018: **ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the meeting adjourned at 9.00pm.

SIGNED: .....

CHAIRPERSON –Sen. Wamatangi Kimani Paul, MP,

DATE: 18/6/2018

MINUTES OF THE 17TH MEETING OF THE STANDING COMMITTEE ON ROADS, TRANSPORTATION HELD ON THURSDAY, 14TH JUNE, 2018 AT INTERCONTINENTAL HOTEL, NAIROBI AT 10.30AM

PRESENT

1) Sen. Wamatangi Kimani Paul, MP
2) Sen. Enock Wambua, MP
3) Sen. Sylvia Kasanga, MP
4) Sen. Steve Lelegwe, MP
5) Sen. Cleophas Malalah, MP

ABSENT WITH APOLOGY

1) Sen. Hargura Godana, MP
2) Sen. Christine Zawadi,MP
3) Sen. Prof. Ekal Imana, MP
4) Sen. Philip Mpaayei, MP

SECRETARIAT

1) Mr. Peter Mulesi - Clerk Assistant
2) Mr. Malcom Ngugi - Legal Counsel
3) Mr. Boniface Mbithi - Sergeant-At-Arms
4) Mr. Simon Muinde -Audio Recorder
5) Mr. Vitus Okech - Researcher

MIN/ 077/SCRT/2018: PRELIMINARIES

The Chairman called the meeting to Order at 10.40am and there followed a word of prayer.

He welcomed all those present to a meeting of the Committee to consider and adopt the draft report on the Kenya Roads Bill (National Assembly Bills No. 47 of 2107).

MIN/078/ SCRT/2018: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Steve Lelegwe, MP, and Seconded by Sen. Sylvia Kasanga, MP, as follows;

AGENDA

1. Preliminaries

2. Adoption of Agenda
3. Consideration of the draft report on the Kenya Roads Bill (National Assembly Bills No.47 of 2017)
4. Any other business
5. Date of next meeting

MIN/079/ SCRT/2018: **CONSIDERATION OF THE DRAFT REPORT ON THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILLS NO.47 OF 2017)**

The Standing Committee on Roads and Transportation considered submissions from stakeholders on the Kenya Roads Bill (National Assembly Bills No.47 of 2017 and made the following observations;

1. **Establishment of the Public Roads Standards Board**

(i) The establishment of the Board was necessary to ensure high standards of construction, maintenance and performance in the road sector at both National and County levels of government.

(ii) The proposed Public Roads Standards Board was not a duplication of the Kenya Roads Board that as established by the Kenya Roads Board Act.

(iii) Clause 7(1) of the Bill did not provide for representation from the County Governments.

2. **Powers of Review and Classification of Roads**

i) Classification of roads in Kenya has been based on functionality and not level of service as per the practice in neighboring countries. For example, there were class A roads which were unpaved while there were paved roads which were classes such as D and E. As a result, provisions on classification of roads were aimed at harmonizing processes to international standards and to ensure proper development and management of the roads network;

ii) The Committee established that as per the provisions of clause 10(3), the Ministry responsible for transport had developed a new classification system and had reclassified the road network through a gazetted Road Register in line with the Constitution of Kenya 2010.

iii) Concern was raised over the lack of a list of government and county roads within each County.

3. **The General Power of Road Authority**

(i) The Committee concurred with Clause 44 on the need for consultations between and among county governments during the alteration of infrastructure caused by road construction and maintenance. Further, the Council of Governors in their memoranda had

observed that in the event that a road authority was to alter the position of any electric, telephone, telegraphic, fibre optic and such related wires and pipes during road construction, consultation with the relevant county government was needed.

(ii) The Committee further observed that there was a need to protect and preserve the environment, natural resources and wildlife during construction of roads.

(iii) The Committee noted that the formation of ferry boat services as described in clause 55(2) would create conflict between the two levels of government and the ongoing powers and function of the Kenya Ferry Services which was a national government institution.

(iv) It was agreed that as per Article 62(2) and 63 of the Constitution, county governments should be consulted whenever a roads authority intended to occupy land during the construction of roads in the county.

4. Functions of the County Government

(i) The Committee also took positive note of Clause 101 which mandated the County Governments to establish a county roads agency to deal with the role of construction, maintenance and development of county roads through county legislation

However, the Committee further observed as follows: That**:**

(i) The Bill did not make provisions for publications and updating of the road registers for roads in the country;

(ii) It was argued that historically these roads have been developed by National government or private developers and handed over to local governments for maintenance. Aware that governments lacked capacity in the development and maintenance of these roads, the Bill should have provided modalities for the national Government to provide technical support to County governments through the national road agencies.

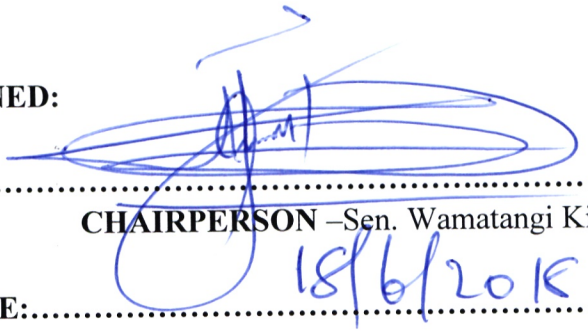
(iii)The Committee noted that clause 37(1) and 37(2) which require each road Authority to submit an annual report on its activities and operations within a period of four months was unworkable. This is because it was not practical to submit audited accounts within four months after the end of a financial year since the Auditor-General produces reports after six months.

It was resolved that the Secretariat prepare the final draft with specific focus on the observations and recommendation to be discussed during the next meeting.

MIN/080/SCRT/2018: <u>ADJOURNMENT AND DATE OF THE NEXT MEETING</u>

There being no other business, the meeting adjourned at 3.30pm the next meeting was set for Thursday, 14th June, 2018 at 6.30pm.

SIGNED:



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CHAIRPERSON –Sen. Wamatangi Kimani Paul, MP,

DATE:.....18/6/2018.....

MINUTES OF THE 16TH MEETING OF THE STANDING COMMITTEE ON ROADS, TRANSPORTATION HELD ON 12TH JUNE, 2018 AT MINI CHAMBER, COUNTY HALL AT 10.30AM

PRESENT

1) Sen. Wamatangi Kimani Paul, MP
2) Sen. Enock Wambua, MP
3) Sen. Sylvia Kasanga, MP
4) Sen. Steve Lelegwe, MP

ABSENT WITH APOLOGY

1) Sen. Hargura Godana, MP
2) Sen. Cleophas Malalah, MP
3) Sen. Christine Zawadi,MP
4) Sen. Prof. Ekal Imana, MP
5) Sen. Philip Mpaayei, MP

STAKEHOLDERS PRESENT

1) Mr. Julius Korir	- Principal Secretary, State Department of Infrastructure
2) Eng. P.O. Ondari	- State Department of Infrastructure
3) Eng. S. M .Kinoti	-Ag. Director General, KURA
4) Eng. Amos O. Ombol	-KURA
5) Eng. M. Y. Telieny	-KURA
6) Ms. Carolyn Ng'ang'a	- KURA
7) Mr. Tarayia Ole Kores	- KURA
8) Mr. Henry M. Murwa	-KURA
9) Eng. Peter M. Mindini	-KeNHA
10) Mr. Nathaniel C. Munga	- KeNHA
11) Eng. D. Orwenyo	-Kenya Roads Board
12) Mr. Justin Rapando	-KeRRA
13) Eng. J.K. Gakubia	-KeRRA
14) Eng. Gilbert Arasa	-MOTIHUD
15) Mr. Wanjohi Nyamu	- YA-AFRIKA ART GROUP

SECRETARIAT

1) Mr. Peter Mulesi	- Clerk Assistant
2) Mr. Malcom Ngugi	- Legal Counsel
3) Mr. Boniface Mbithi	- Seagent-At-Arms
4) Mr. Simon Muinde	-Audio Recorder

MIN/ 073/SCRT/2018: **PRELIMINARIES**

The Chairman called the meeting to Order at 9.30am and there followed a word of prayer.

He welcomed all those present to a Public Hearing/ Receipt of memoranda on the Kenya Roads Bill (National Assembly Bills No. 47 of 2107).

He stated the mandate of the Committee and its composition.

He explained that the Bill had originated from the national Assembly to the Senate and after being read a First Time, had been referred to the Standing Committee on Roads and Transportation on 16th May, 2018 for consideration.

As per Standing order 134 (5), the Committee was required to facilitate a Public hearing in order to consider the views of all stakeholder and members of the public on the impact and consequence of the Bill. Further, he explained the purpose and the procedure for enacting legislation and the requirement for a public hearing.

The Chairperson thanked all the stakeholders present for their response to the call for their views as had been advertised in the major dailies for Thursday, 7th June, 2018 and through Committee correspondence and invitation letters.

Participants were informed that the Bill had been extensively considered during the 11th Parliament and a number of issues had been identified such as classification of roads, funding and the role of National and County Government.

He acknowledged all those present led by the Mr. Julius Korir, The Principal Secretary, State Department for Infrastructure, Ministry of Transport, Infrastructure, Housing and Urban Development.

He later called for self-introduction.

MIN/074/ SCRT/2018: **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. Enoch Wambua, MP, and Seconded by Sen. Sylvia Kasanga, MP, as follows;

AGENDA

1. Preliminaries
2. Adoption of Agenda
3. Presentations on the Kenya Roads Bill (National Assembly Bills No.47 of 2017)
4. Any other business
5. Date of next meeting

MIN/ 075/SCRT/2018: **PRESENTATIONS ON THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILLS NO.47 OF 2017)**

The Chairperson invited the Mr. Julius Korir, The Principal Secretary, State Department for Infrastructure, Ministry of Transport, Infrastructure, Housing and Urban Development.

Mr. Korir presented apologies from the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development who had been expected to lead the delegation from the Ministry and the stakeholders to the public hearing.

He stated that the Ministry and the stakeholders were satisfied with most of the provisions and had made representations during the consideration of the same Bill at the National Assembly.

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 134 (5),the Committee held a one day public hearing on 12th June, 2018 and received the following representations;-

1) **Council of Governors (CoG)** proposed amendment :

i. Clause 7(1) to include a County representative nominated by the Council of Governors. The justification was that County Governments were directly responsible for construction and maintenance of county roads and as such should have a representative in the board.

ii. Clause 9(1) be amended to read as follows, that "The Cabinet Secretary, in consultation with County Governments, shall by regulations prescribe standards for testing, design, construction and maintenance of national trunk roads by the roads authorities and county roads by county Governments".
Justification: In the spirit of consultation and co-operation under Article 6(2) of the Constitution, this will ensure that the standards prescribed are implemented/ implementable by the county governments

iii. **Clause** 10(2) be amended as follows; That where a new road is established, the Authority or county government shall give a proposal on the classification and assignment of roads and submit to the Cabinet Secretary for National Inventory and mapping.
Justification: The role of the Cabinet Secretary to classify roads as proposed in this clause would ensure uniformity of road classifications in the Country. However, this role should be done respecting the constitutionally assigned functions of both levels of government.

iv. **Clause** 10(3) be amended as follows; that the Cabinet Secretary may, from time to time, and in consultation with county governments, review the classification and assignment of public roads under subsection (2
Justification: The roads function was a function of both levels of government therefore in the spirit of Article 6(2) of the Constitution, the Cabinet Secretary should consult with the County Governments when reviewing the classification of roads.

v. **Clause 41 to include** provision for the approval of the county government in the event the land being acquired is under the county government

Justification: Under Article 62(2) and Article 63 of the Constitution, county governments are in charge of public land held in trust for the people resident in the county and they are also in charge of unregistered community land in the counties. For this reason, if any of the land being acquired is under the administration of the county government, it is prudent to ensure that they consult with the county government before the acquisition of such land.

vi. **Clause 44** -The alteration of electric, telephone poles, drainage and sewer should be in consultation and with approval of the relevant County Government
Justification: The function of county public works, county planning, gas and energy reticulation are functions of the county governments therefore if the Authority wants to alter such infrastructure, there is need to consult the relevant county governments.

vii. **Cause** 46(1)(a) include the word 'or' appearing after the word road.

viii. **Clause 47:_**An Authority may, for its purposes, and in consultation with the relevant county government, take any water from any natural watercourse subject to the Water Act, 2016.
Justification: Under the Fourth Schedule of the Constitution, County governments are in charge of implementing policies that conserve natural resources and the environment particularly on water and soil conservation. For this reason, an Authority should first consult with the relevant county government.

ix. **Council of Governors:** Clause 55(2): The establishment of a ferry boat service under subsection (1) shall require the approval of the relevant county government and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary and the relevant county government.
Justification: Under the Fourth Schedule of the Constitution, the function of county transport includes ferries and harbours. For this reason, the establishment of a ferry boat service, its operations and charges should be done by the relevant county government

x. Clause 56(1): The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary and County Governments, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads
Justification: In the spirit of consultation and cooperation under Article 6(2) of the Constitution, this will ensure that the road user charges prescribed are implemented or implementable by the county governments in respect to county roads.

xi. Clause 55(2): The establishment of a ferry boat service under subsection (1) shall require the approval of the relevant county government and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary and the relevant county government.
Justification: Under the Fourth Schedule of the Constitution, the function of county transport includes ferries and harbours. For this reason, the establishment of a ferry boat service, its operations and charges should be done by the relevant county government.

xii. Clause 56(1): The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary and County Governments, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads

Justification: In the spirit of consultation and cooperation under Article 6(2) of the Constitution, this will ensure that the road user charges prescribed are implemented or implementable by the county governments in respect to county roads.

xiii. **Clause 75 be amended as follows;**

(1) A county government may consult the relevant/respective Authority's if —

(a) it intends to carry out road works on a county road or make changes to the management of a county road where the works or changes would—

(i) require the carrying out of road works on a national trunk road; or

(ii) otherwise have a significant adverse impact on a national trunk road; or

Justification: This consultation will ensure that the activities of both levels of government are in tandem and that alterations by the county governments to county roads do not adversely affect the plans of national trunk roads.

xiv. **Clause 77 be amended as follows "**The Cabinet Secretary shall in consultation with County Governments oversee the performance of the activities of the Authority, under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of this Act.

Justification: The powers of the Cabinet Secretary should only be limited to the Kenya National Highways Authority. Other roles performed by the county governments should be considered in intergovernmental forums.

xv. Clause 98 (1) be amended as follows; The Cabinet Secretary may, in consultation with County Governments and the Authority, make Regulations for the better carrying out of the provisions of this Act.

Justification: This will ensure that the prescribed Regulations are implemented effectively at the national and county level.

xvi. **First Schedule** be amended to provide that the National Government retain Class S, A, B, C and J as National trunk roads while county governments be in charge of Class D, E, F, G, K, L, M, N and P.

xvii. The definition of Class D roads should be retained as the Roads Bill that was in the National Assembly i.e. roads linking constituency headquarters, Municipal or Town Council Centres and other towns to each other and to higher class roads. Required to collect local traffic from lower class roads and channel it to the higher class roads.

Justification: The Council of Governors through the Intergovernmental forum known as the Intergovernmental Budget and Economic Council (IBEC), chaired by H.E. Deputy President signed an Intergovernmental Agreement which provided that Class D roads are county Government roads.

Unfortunately after this agreement, the National Assembly reclassified the Class C and D roads under this Bill i.e. former description of Class D roads is now described as Class C road which is under the National Government.

xviii. **Third Schedule (S. 104) S. 6(2)(d)** to read as follows:
(2) Twenty (20%) per centum is allocated to County Governments equitably in respect of County Roads.

Justification: The Council of Governors through the Intergovernmental forum known as the Intergovernmental Budget and Economic Council (IBEC), chaired by H.E. Deputy President signed an Intergovernmental Agreement which provided that which provided for the Fuel Levy Fund to be increased from the current fifteen (15%) per centum annual allocation to twenty (20%) to take care of the increased need of road maintenance in the Counties.

This was after the COG agreed to compromise the Ksh 8 billion meant to be transferred as the costs of the Class D roads transferred via Legal Notice No 24 dated 22nd January 2016.

2) **Kenya National Highways Authority** proposed as follows;

i. Clause 2 in the interpretation, the definition of be amended as follows;_"Public road" means all roads falling under the classifications under Schedule I and any other subsequently classified roads.
Justification: The Bill recognizes public roads as outlined and classified under the First Schedule. The reference to the Public Roads and Roads of Access Act (under the Bill) needed to be effected through a consequential amendment to the Acts to reflect the public roads aspect.

Section 12(3) be amended by deleting the words 'in each county'

Justification: Possible financial implications if Authority is to have administrative offices in each county.

ii. Clause 17(1(f)(v)

3) **State Department of infrastructure:**

i. Clause 52(4) may include a provisions of the act so that IGTRC can come to a speedy and efficient legal settlement;
ii. Clause 52(4) may include a provision so that IGTRC can come to a speedy and efficient legal settlement.
iii. Clause 67**:** Delete the phrase "…or for the use of road reserves…"

Justification: According to the Final Report on the Transfer of Functions by the Transition Authority, reserves for County roads and access to roadside developments are functions of the

county governments and the Authority should not impose any fees on them without the approval of the county government.

4) Kenya Roads Board :

i. Sec 6(2)(i). This should be replaced with sec 6(2) (l)
Justification: Once the above section is amended, section 6(2) (l0 (ii) ceases to exist and therefore its amendment is not necessary as proposed . Further, the numbering of the subsections inserted after subsection 2(l) bearing (j), (k), (l) and (m) should be renumbered to reflect the correct sequence.

ii. Section 12(2) as follows;
Delete and substitute therefor the following new subsection—

(2) A person shall be qualified for appointment as the Executive Director if that person –

(a) holds a degree in finance, accounting, law or engineering from a university recognized in Kenya ;
(b) has knowledge and at least ten years' experience in a relevant field
(c) has served in a senior management position for a period of at least five years; and
(d) satisfies the requirements of Chapter Six of the Constitution

Justification:

1. The object and purpose for which the Kenya Roads Board was established as given in section 6(1) of the Kenya Roads Board Act, 1999 is to oversee the road network in Kenya and thereby coordinate development, rehabilitation and maintenance and to be the principle advisor to the Government on all matters related thereto.
The Executive Director is the secretary to the Board and hence responsible for the day to day management of the functions of the Board which are mainly to coordinate road maintenance policies, strategies and programs undertaken by Road Agencies.
Further, County Governments which are at the moment managing 121,000 km of roads in the country require technical assistance both at policy and operational level, to get them to attain professional practice in road maintenance/management like the current Road Authorities. To avoid collapse of the important road network managed by Count Governments, Kenya Roads Board requires a technical Executive Director in the field of civil engineering to ensure good road maintenance. In this regard, the appropriate academic and professional qualifications to fulfil this object and purpose of the Board are in the civil engineering profession.

2. The proposed amendment targets to open up the position of the Executive Director to two specific fields namely: law and finance/accounting. There is no rationale of opening it up from civil engineering, to only include these two fields. Other professions like Economics, Planning, Survey, Business Management and Social Sciences would also play a role if at all the position should be held by professions other than Civil Engineering. Further, the

amendments do not stipulate professional requirements, which dilutes the qualifications and professional accountability of the person appointed as Executive Director.

3. The requirements proposed except (d) are not in parity with the requirements for appointment of Director-Generals in the Roads Authorities (holder of a Bachelor's degree in civil engineering, Master's degree and registered engineer) as stipulated in section 29 of the Kenya Roads Bill, 2017.

4. Requirement No.(c), for the holder to have served in a senior management position for a period of at least five years could be construed to target certain individuals in an organization. Should the amendment be allowed, the word '**senior**' should be **'expunged'** so that this requirement is at per with that adopted for Director Generals of Road Authorities.

Based on the above, it is recommended that the requirements as stipulated in the current KRB Act remain as is and that the proposed amendment is withdrawn from the Kenya Roads Bill, 2017.

5) Kenya Rural Roads Authority:

i. Clause 2 is amended by deleting paragraph 2 and substituting therefore "Thirty-two percent(32%) is allocated to the Kenya National Secondary Roads Authority in respect of Secondary National Trunk roads and the said per centum to be distributed as follows:"
Justification: Secondary Trunk roads have not attracted substantial donor funds. It is therefore proposed that the allocations for maintenance of these critical link roads be increased from the Road Maintenance Levy Fund, being the only source of funding currently.

The road network for both the Secondary National Trunk Roads is a combination of both paved roads and unpaved roads and because of their economic and social function, the maintenance needs for the roads is higher.

The maintenance backlog over the years is also high owing to minimal budgetary allocation. Most paved roads have continued to deteriorate over the years yet budgetary allocations for resealing, regravelling or recarpeting could have extended the lifespan of such roads by an additional five (5) years or more.

Critical drainage structures are still missing on some roads while the existing ones constructed during the pre-independence era require replacement owing to the aging factor and the increase in the traffic loading using such roads.

With the explanation indicated above, Kenya National Secondary Roads Authority will require additional funding to address both the historical challenges of a poorly maintained network and also plan to maintain the network that is currently being upgraded to bitumen standards.

ii. Clause 17(5) to be deleted.
Justification: Need to include a representative of the Institute of Surveyors, Should have the same as with the clauses establishing the roads authorities and there should be inclusion of the National Transport and Safety Authority representative.

iii. 50% to be distributed equally to all the constituencies for routine maintenance and spot improvement of National Trunk Road network within constituencies.
Justification: The increased funding will provide for spot improvement of the unpaved road network (regravelling and construction of missing drainage structures including culverts, minor bridges and drifts).

iv. 50% to be retained by the Kenya National Secondary Roads Authority for maintenance of the paved road network under the Authority's mandate.
Justification: The amendment will ensure that there are adequate funds for maintenance of the national secondary trunk road network as prioritized by Constituency Roads Committees. This is to avoid deterioration of the network.

Submissions by a Member of the Public

Mr. Wanjohi Nyamu made his submissions as follows:

a) That the Kenya Roads Bill, 2017 was very important in ensuring better roads standards in the country;
b) Enforcement of proper road usage should be taken together with enhanced road security management;
c) All major roads in the counties should be tarmacked ;
d) Corruption was a major threat to the attainment of better roads standard and proposed that the public service transport system (Matatu) should be streamlined to ensure discipline;
e) There was need to integrate small and micro- enterprise in the development of the roads as a means of enabling livelihoods and job creation.

Reactions by the Committee

The Committee appreciated the views and comments made by the stakeholders on the various sections of the Bill and read a communique from the Council of Governors which had raised concerns on the class D roads and the Roads Levy Maintenance Fund. Further, references were had been made on the High court ruling on the matter.

The committee noted that the Kenya Roads Bill, 2017 had significant impact on the devolved system of government and the Senate.

Recommendations

Having conducted the public Hearing on the Kenya Roads Bill (National Assembly Bills No.47 of 2017), the committee resolved as follows;

1) The Principal Secretary, State Department for Infrastructure to compile, consolidate and submit all the views of the Ministry and the Stakeholders by close of business on Wednesday, 13th June, 2018;
2) The Committee to meet with the council of Governors on Wednesday, 13th June at 11.am and receive submissions on the Bill.
3) The Committee to hold a half day in Nairobi on Thursday, 14th June, 2018 to consolidate all the presentations and submissions made and prepare its report on the Bill.

MIN/076/SCRT/2018: **ANY OTHER BUSINESS**

1) The Committee raised concern over the public address system that had failed during the public hearing;
2) The Committee was informed that the pending familiarization visit to the Port of Lamu and the LAPSSET would be undertaken on Thursday,21st June, 2018
3) The Committee trip to Brazil that had been scheduled for 18th -28th June, 2018 had been postponed for two weeks. Members would be informed of the actual travel dates as soon as the Sponsor, the NaMATA communicates with the Senate.
4) The scheduled meeting with the Kenya Ferry Services (KFS) management for Wednesday, 13th June, 2018 over the Cable Car Express tender had been postponed. The KFC had sought a new date to appear before the Committee.
   (The Secretariat was requested to follow up on the new dates for a meeting with KFS and further confirm the appearance before the Committee by the Kenya Maritime Authority (KMA) and EPCO contractors on the matter of the Construction of the KMA headquarters at Mbaraki, Mombasa).

MIN/076/SCRT/2018: **ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the meeting adjourned at 12.47am and the next meeting was set for Wednesday, 13th June, 2018 at 11.00am.

SIGNED:

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CHAIRPERSON –Sen. Wamatangi Kimani Paul, MP,

DATE: 18/6/2018

MINUTES OF THE 13TH MEETING OF THE STANDING COMMITTEE ON ROADS, TRANSPORTATION ON THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILS NO. 47 OF 2017 HELD ON 5TH JUNE, 2018 AT MAIN SENATE CHAMBER, MAIN PARLIAMENT AT 10.00AM

PRESENT

1) Sen. Wamatangi Kimani Paul, MP
2) Sen. Sylvia Kasanga, MP
3) Sen. Christine Zawadi,MP
4) Sen. Enock Wambua, MP
5) Sen. Cleophas Malalah, MP

ABSENT WITH APOLOGY

1) Sen. Prof. Ekal Imana, MP
2) Sen. Philip Mpaayei, MP
3) Sen. Steve Lelegwe, MP
4) Sen. Hargura Godana, MP

SECRETARIAT

1) Mr. Peter Mulesi - Clerk Assistant
2) Mr. Malcom Ngugi - Legal Counsel
3) Mr. Steven Maru - Sergeant-At-Arms
4) Mr. Boniface Mbithi - Sergeant-At-Arms
5) Mr. Simon Muinde -Audio Recorder
6) Mr. Alex Rithi - Media Relations Officer
7) Mr. Said Osman - Research Officer

MIN/060/ SCRT/2018: PRELIMINARIES

The Chairman called the meeting to Order at 10.25.am and there followed a word of prayer.

He stated that following the referral of the Kenya Roads Bill (National Assembly Bills No. 47 of 2017) to the Senate, the Bill was read a First Time on 16th May, 2018. Thereafter, it stood committed to the Senate Standing Committee on Roads and Transportation pursuant to standing order 134 of the Standing Orders of the Senate.

The Committee was required to consider the Bill within 30days which expire on 15th June, 2018. Consequently, Members were urged to treat the Bill as an urgent matter before the Committee.

He further explained the background of the Bill which had begun during the 11th Parliament but was not concluded due to several issues of divergence between the National and County Government, especially the classification of roads.

It was therefore stated that consideration of the Kenya Roads Bill, 2017 was of great importance and required in-depth interrogation by all the Members.

He further advised that besides the briefing by the legal Counsel, the committee would invite all the stakeholders to build consensus on the Bill.

He welcomed the Legal Counsel, Mr. Malcom Ngugi to take the Committee through the provisions, impact, effects and consequences of the Bill.

MIN/061/SCRT/2018: **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. Enoch Wambua, MP, and Seconded by Sen. Sylvia Kasanga, MP, as follows;

1. Preliminaries
2. Adoption of Agenda
3. Consideration of the Kenya Roads Bill, 2017
4. Any other business
5. Date of next meeting

MIN/061/ SCRT/2018: **CONSIDERATION OF THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILLS NO. 47 OF 2017)**

Mr. Malcom Ngugi, Legal counsel informed the Committee as follows: That;

(a) The Bill seeks to provide for the classification, management, construction and maintenance of public roads. It also seeks to establish the Kenya National Highways Authority, Kenya National Urban Roads Authority and Kenya National Secondary Roads Authority;

(b) The Fourth Schedule to the Constitution of Kenya 2010 distributed functions between the National and the County Governments and that the transport function was one of the functions listed under the Schedule as a shared function between the two levels of Government;

i. The National Government under paragraph 18, Part 1 of the Fourth Schedule to the Constitution was mandated to deal with transport and communications

including and in particular, the construction and operation of national trunk roads and standards for the construction and maintenance of other roads by counties.

(d) The County Governments on the other hand were mandated under paragraph 5 of Part 2 of the Fourth Schedule of the Constitution to deal with county transport including county roads. **(It was therefore necessary to classify these roads so that each level of Government could clearly identify which roads fell within its respective mandate).**

The current legal framework including the Kenya Roads Act 2007 which was enacted before the promulgation of the new Constitution did not recognize this new arrangement with regard to the roads function. It was therefore imperative that a new law which recognized the distinct functions of these two levels of Governments be enacted and the existing legal regime be repealed or amended to reflect the new constitutional order.

OVERVIEW OF THE BILL

He informed the Committee that the Bill provided for –

I. **Establishment of the Public Roads Standards Board which shall consist of a representative from each of the following bodies-**

(a) the State Department responsible for public roads;

(b) the State Department responsible for matters relating to devolution;

(c) the Inter-governmental Relations Technical Committee;

(d) the Kenya National Highways Authority;

(e) the Kenya National Urban Roads Authority;

(f) the Kenya National Secondary Roads Authority;

(g) the Kenya Roads Board;

(h) the Engineers Board of Kenya;

(i) the National Agency responsible for testing and research on roads; and

(j) the National Transport and Safety Authority.

The chairperson to the Board shall be the Principal Secretary for the State Department responsible for public roads. The State Department responsible for public roads shall be

the secretariat to the Board. The functions of the Board are to advise the Cabinet Secretary on the following matters:

(a) standards for road and bridge materials, design, construction, maintenance and performance levels;
(b) standard contract forms for works and consultancy services;
(c) research and studies necessary for development and updating on public roads standards;
(d) the types, sizes and usage of vehicles on roads and maximum vehicle and axle load limits for purposes of protecting roads from damage;
(e) development and training of human resources required for the development, rehabilitation and maintenance of roads; and
(f) monitoring system to ensure adherence to the standards.

II. Classification of Roads

The First Schedule of the Bill provided on how roads shall be classified. Clause 10(2) provided that where a new road was established, the responsible Authority or county government shall submit to the Cabinet Secretary a request for classification of the road, and the Cabinet Secretary shall assign the road in accordance with the classification that accurately reflects the function served by the road for purposes of ensuring that the classification accurately reflects the function served by the road and all parts of the country had reasonable access to a national trunk road or a county road.

Further, Clause 10(3) stated that the Cabinet Secretary may review the classification and assignment of public roads to ensure that the classification accurately reflects the function served by the road and all parts of the country have reasonable access to a national trunk road or a county road.

The Schedule classified roads into **three categories** namely **Primary National Trunk Roads** which includes Classes S, A, B, H and J roads, **Secondary National Trunk Roads** which included classes C and D roads and **county roads** which included Classes E, F, G, K, L, M, N and P.

(1) Under Part III of the Bill, the Cabinet Secretary shall be responsible for the assignment of a road into any one of the categories set out above. This classification may be carried out from time to time by the cabinet secretary or upon the request of an authority established by the Bill or a County Government submitting a request to the Cabinet Secretary for the classification of any newly established road.

(2) Each authority and county government was required to keep an up to dated inventory of the roads under its management, in such form and with such detail, including categorization and identity details as prescribed by the Cabinet secretary.

III. Establishment of Road Authorities

Part IV of the Bill established three roads authorities, all of which are body corporate with perpetual succession and shall be capable of suing and being sued, taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property, borrowing and lending money and doing or performing all such other things or acts as may be necessary for the furtherance of its purpose and functions. These authorities were enlisted as follows:

(1) **The Kenya National Highways Authority (KENHA)**

Clause 12(1) established this authority which was responsible for the management, development, rehabilitation, and maintenance of primary national trunk roads S, A and B as set out in Part A of the First Schedule.

Clause 14(1) established the Board of the Kenya National Highways Authority which shall be composed of the following persons:

(a) a non-executive Chairperson to be appointed by the President

(b) the Principal Secretary in the ministry or State department responsible for matters relating to roads;

(c) the Principal Secretary in the ministry or State department responsible for matters relating to transport;

(d) the Principal Secretary to the National Treasury;

(e) the Director-General of the Authority, who shall be an *ex officio* member and secretary to the Board;

(f) two persons, nominated by the following organizations—

(i) Institution of Engineers of Kenya; and

(ii) Institute of Surveyors of Kenya;

(g) two persons appointed by the Cabinet Secretary through a transparent and formal process taking into consideration the regional and ethnic diversity of the people of Kenya.

Clause 14(3) provided that the members of the Board under paragraphs (1) (b), (c) and (d) may designate an officer from their respective Ministry or State department to represent them. The nominating organizations shall each submit three names of the candidates approved at their respective annual general meeting for appointment by the Cabinet Secretary.

(2) **The Kenya National Urban Roads Authority (KNURA)**
This authority is established under Clause 15(1) and is responsible for the management, development, rehabilitation and maintenance of primary national trunk roads Classes H and J as described in Part A of the First Schedule.

Clause 15(3) states that the headquarters of the Authority shall be in the capital city and that the authority may establish such administrative offices in each county as may be necessary.

(3) **Kenya National Secondary Roads Authority**
This authority is established under clause 18(1) and it is responsible for the management, development, rehabilitation, and maintenance of secondary National Trunk Roads Class C as specified in the Part A of the First Schedule.

The Bill further required the Authorities and the Cabinet Secretary to execute a performance agreement and at the end of each financial year to submit, to the Cabinet Secretary, an annual report on activities undertaken including progress and policy, audited accounts together with the report of the Auditor-General, an overview of the operations of the Authority, assessment on achievement of performance targets, and report on the realization of the objectives of the Act.

IV. Administrative Provisions

Part V of the Bill contains administrative provisions applicable to the Kenya National Highways Authority, the Kenya National Urban Roads Authority and the Kenya National

Secondary Roads Authority. Clause 22 specifies the qualifications for appointment of chairpersons and members of the abovementioned Boards.

Clause 23 outlines the considerations on appointment of members of the Board. It states that the President and the Cabinet Secretary shall ensure that the board reflects the regional and ethnic diversity of the people of Kenya and that not more than two-thirds of the members are of the same gender. Persons appointed to the Board shall hold office for a period of three years and shall be eligible for re-appointment for one further term as per clause 24. The Bill also addresses the issues of remuneration and vacation of office in clauses 25 and 26.

The Bill states that each of the road authorities shall have a Director-General. The Director-General shall be competitively recruited and appointed by the respective Board on such terms and conditions as the Board shall determine. Clause 30 states that the Director-General shall be the chief executive and accounting officer of the Authority and secretary to the Board. The removal of the Director-General is provided for in clause 31. The Director-General of each of the authorities has the power to appoint officers, agents and staff with the approval of the Board as per clause 32. These appointments shall be in line with Article 232 of the Constitution. The officers and staff shall serve on terms and conditions set out by the Board and shall be paid in such terms as set by the Salaries and Remuneration Commission.

Clause 33 stated that each of the roads authorities shall establish its internal structural organization in order to carry out its activities efficiently. The chairperson, Board members, officers and agents of each of the Authorities is protected from personal liability for any act provided that the act was carried out in the course of executing their lawful duties.

The Bill in clause 36 also provided for a performance agreement to be executed between the Cabinet Secretary and the road authorities in respect of the management and work programme of the respective authority. Clause 37 states that each Authority shall after the end of each financial year but within a period of four months, submit to the Cabinet Secretary an annual report on its activities and operations.

Clause 38 stated that the Authority may make regulations relating to the conditions of service of its employees. Clause 39(1) provides that the affixing of the common seal of an authority shall be authenticated by the signature of the chairperson and the Director-General. Documents that do not require to be under seal shall be authenticated by the Director-General's signature. In the event that the chairperson or the Director-General is absent, the Board may in consultation with the Cabinet Secretary, nominate a member to authenticate the seal on their behalf. The Common seal shall be kept in such custody as the Board may direct. This seal when affixed to a document and authenticated shall be officially noticed and an order or authorization of the Authority will have deemed to have been given. Clause 40 states that the conduct of business and affairs of the Board shall be conducted in accordance with the Second Schedule of the Bill.

V. General Power of an Authority

Clause 41 gave the roads authority powers of acquisition of land provided that affected persons are compensated in consultation with the National Land Commission. Clause 42 empowers an authorized employee to enter and survey land. In the event of damage on the land caused by an authorized employee, the authority is to compensate the land owner for damages. Clause 44 gives the Authority power to enter and alter the position of any electric, telephone, telegraphic, fibre optic or other wire of any nature, or the position of any drain or sewer. Before such entry, notice must be given to the owner of the land. The road authorities also have the power to remove pipe, wire, and infrastructure utilities within road reserves as per clause 45. In this event, adequate notice must be given to the owner of the land. Service of notice shall be through a newspaper of wide circulation in Kenya.

The road authorities may occupy private land in carrying out its activities such as development, construction, rehabilitation and maintenance of a road. Clause 46(2) states that the road authorities shall give the owner of the land adequate notice of intention to occupy the land at least thirty days before the occupation. In matters of urgency, a road authority is exempted from giving such notice. Clause 47 states that the roads authorities also have the power to take any water from any natural watercourse subject to the provisions of the Water Act 2002.

Clause 48 of the Bill stated that a road authority may enter upon land and remove any soil, clay, rock, gravel, murram, lime, sand, shale, shingle, slate or surface soil, and may carry across any land, by a route to be agreed between the owner. In the event of failure to agree, the road authority shall compulsorily acquire such land, and remove such material, and may provide within the land in connection with such functions labour or other camps, works buildings, access roads, and space for stockpiling, and may erect machinery and other gear for the purpose of quarrying any such material. In the exercise of these powers, a road authority shall not be liable to payment of any levies and charges that have not been imposed by the national government.

Clause 48(3) provided that a county exercising its authority may enter land only within the county. Clause 50 states that where a railway is to be constructed or has been constructed, the Authority shall require the owner or operator of the railway to erect such gates and to execute such other works as may be necessary for the safety of the public. In the case of national trunk roads, the owner or operator of the railway shall construct the railway in such a manner that it does not cross the road on the level and the owner or operator of the railway shall comply with such requirements.

Clause 51 stated that the Authority has the power to require owners of any land to remove trees or trim any plant growth that interferes with roads. Clause 52 deals with inter-county bridges and states that each county government shall be jointly responsible to maintain an inter-county road. Clause 53(3) states that where a county road crosses or runs along the boundaries of more than one county government, the concerned county governments may enter into an agreement stating the manner in which the inter-county road shall be constructed or maintained. Clause 53 states that a driver or a person in charge of a vehicle shall not drive or haul a vehicle or cause it to be driven or hauled over any bridge on or near a conspicuous notice which has been placed to the effect that such bridge is insufficient to carry traffic in excess of a specified weight, unless the gross weight of the vehicle and any trailer attached thereto is less than the weight specified or the driver or person in charge of the vehicle has obtained the consent, in writing, of the relevant Authority.

Clause 54 stated that the Cabinet Secretary, in consultation with the Authority may declare a national trunk road, bridge or tunnel or a portion thereof as a national toll road

Clause 55 (1)stated that the Authority may establish and maintain national toll bridges, together with, approaches, ramps and other essential appurtenances, for the passage or carriage of passengers, animals, goods and vehicles on any road in which it is responsible. The establishment of a ferry boat service shall require the approval of the Cabinet Secretary and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary. Clause 55(3) also stated that an agreement, in which a private party develops, operates or maintains a ferry boat service on behalf of an Authority or Kenya Wildlife Service shall be approved under the Public Private Partnerships Act.

VI. Financial Provisions

The financial year of each Authority shall be the period of twelve months commencing on the 1st of July in every year and ending on the 30th of June in the next succeeding year as per clause 57. Clause 58 states that the funds and resources of each Authority shall consist of monies paid to it from the Road Fund, any other monies appropriated by Parliament, funds accruing from investments made by the Authority, grants, loans, gifts or donations from the Government or any other source, made with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance, revenue earned from the activities of the Authority under this Act; and any other funds received by the Authority in the performance of its functions under this Act.

Clause 59 states that the receipts, earnings or accruals of each Authority and the balances at the end of each financial year shall be retained for the purposes for which the respective Authority is established. Regarding the investment of the Authority's Fund, clause 60 states that subject to the written approval of the Cabinet Secretary and regulations made by the National Treasury, an Authority may invest any part of its funds in such a manner as it may consider appropriate. The Bill at clause 61 also states that an authority may borrow money required for the exercise of its functions and for meeting its obligations after approval by the Cabinet Secretary. Clause 62 states that at least the road authorities shall prepare their financial estimates at least three months before the commencement of each financial year. Under clause 63, the road authorities shall keep

proper books of account and audit which shall be reported in line with the law relating to audit.

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

Clause 65 states that the Cabinet Secretary shall, once in every five years, in consultation with the national and county governments and the Kenya Roads Board, cause to be prepared a road investment program for approval by the Cabinet Secretary responsible for finance. The road investment programme outlines development and maintenance priorities costed with respect to stated sections of the road, and also aggregated by class, traffic loading or such other detail as may be specified. Clause 67 of the Bill provides that each Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services or for the use of road reserves under its jurisdiction. Such charges must be published in the Gazette. These charges as per the provisions of clause 68, shall be published in the Gazette and shall come into operation at least thirty days after publication.

VII. Miscellaneous Provisions

Under clause 71, an Authority or a county government may transfer any function relating to roads in accordance with the provisions of Article 187 of the Constitution and Part III of the Intergovernmental Relations Act, 2012.

In this regard, an Authority may, in accordance with the relevant roads implementation program, carry out or enter into contract on behalf of the National government with other persons including county governments or agencies of the Government for the carrying out of, among others, road works on a national trunk road or on land that is intended to become a national trunk road; the operation of a national trunk road and road works on a county road in accordance with an agreement between the Authority and the county

government. Clause 72 states that a road authority may enter into agreement with any person including a county government for the sharing of the cost of acquisition of land for road construction, operation and associated purposes. Clause 73 states that with the approval of the Cabinet Secretary, a road authority may enter into an agreement with a county government under which the authority supplies funds to the county for road works on a county road, for other works that contribute to the effectiveness and efficiency of the road network or for the operation of a county road.

Clause 74 states that if a county government considers that improvements to a national trunk road in its area would be beneficial to the county road network, the county government may make financial arrangements with the relevant authority for the improvements to be made. Clause 75 further states that a county government shall obtain the respective Authority's written approval if it intends to carry out road works on a county road or make changes to the management of a county road where the works or changes would require the carrying out of road works on a national trunk road, have a significant adverse impact on a national trunk road or have a significant impact on the planning of a national trunk road or a future national trunk road. Clause 75(6) states that the permission criteria may include conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes shall have. If a county government contravenes clause 75(1) or a condition that applies to it under this section, the county government is liable to compensate the Authority for the cost of road works to national trunk roads that are reasonably required as a result of the contravention

Clause 78 outlines the rules that govern the types of structures and other works on, over and below roads or certain other land. The liability of an owner and driver for damages to a road or road furniture is outlined in clause 79. These damages are payable to a road authority. Clause 81(2) states that a road authority shall encourage community and private sector participation in road construction, maintenance and management under its supervision and guidance. Accommodation works are also provided for in clause 83 where a road authority shall construct and maintain works for the benefit of the owners and occupiers of land adjoining those on which the road is constructed. Clause 84

outlines the acts that constitute major offences under the Bill and the penalty for persons found guilty of committing these acts. The penalty stipulated in the bill is imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred thousand shillings, or to both. Clause 85 further outlines the other acts that are deemed to be minor offences and stipulates that the imprisonment for a term not exceeding six months, or to a fine not exceeding fifty thousand shillings, or to both.

Clause 87 states that the Cabinet Secretary may, by notice in the Gazette, exempt State vehicles or any category of State vehicles from the provisions of the Bill or any regulations made under this Bill. The Bill provides in clause 88 that no action shall lie in respect of nuisance by reason only of the noise and vibration caused by vehicles or construction plant and equipment on a public road.

The Bill provides in clause 91 that any action that may lie against the Authority must be brought at least one month after notice containing particulars of claim has been given to the Authority and such action must be instituted within twelve months after the alleged act, neglect, default complained of and within six months next after the cessation of a continuing injury or damage.

The Bill also exempts execution or attachment with respect to orders made against the Authorities but requires the Director General to pay out of the revenue of the Authority amounts awarded against the Authority. Clause 95 states that upon application to the Cabinet Secretary responsible for finance, each authority shall be entitled to exemption from duty chargeable under the law relating to payment of stamp duty in respect of any instrument executed by or on behalf of, or in favour of the Authority. Clause 96 states that each Authority shall publish and publicise all important information within its mandate. A citizen may make a request for information in public interest and in doing so shall follow the procedure outlined in clause 96(2)(a). Clause 96(3) states that an authority may decline to give information to a person in a number of circumstances. These circumstances are where the request is unreasonable in the circumstances, if the information requested is at a deliberative stage by the Authority, if there is failure of payment of the prescribed fee or the person fails to satisfy any confidentiality

requirements determined by the Authority. Clause 99 states that the Cabinet Secretary shall review and revoke all legal notices establishing the former authorities, and departments whose functions fall under the purview of the powers and functions of an Authority. This is in order to enable the transfer of the functions, assets, and liabilities of the former authorities to the respective Authority, as contemplated under the Bill.

VIII. Responsibilities of County Governments

Part IX of the Bill outlines the responsibilities of county governments. Clause 100 states that each county government shall, within its area of jurisdiction be responsible for the construction and maintenance of the county roads in accordance with the provisions of Part 2 of the Fourth Schedule to the Constitution and Part B of the First Schedule to the Bill.

Clause 100(2) of the Bill provides for the functions and duties of the county government as follows—

(a) constructing, upgrading, rehabilitating and maintaining county roads;

(b) managing reserves and facilitating access to roadside developments with respect to county roads;

(c) implementing road policies in relation to county roads;

(d) ensuring adherence to the rules and guidelines on axle load control as prescribed under the Traffic Act and any Regulations made under this Act;

(e) ensuring that the quality of county road works is in accordance with national standards issued by the Cabinet Secretary;

(f) overseeing the management of traffic and road safety on county roads in collaboration with the county government;

(g) collecting and collating all such data related to the use of county roads as may be necessary for efficient planning under this Act;

(h) monitoring and evaluating the use of county roads;

(i) planning the development and maintenance of county roads;

(j) preparing the county investment programme and annual county road works programmes for county roads; and

(k) coordinating with road Authorities or agencies

Clause 100(3) states that the national government shall be responsible for the standard for the construction and maintenance of county roads by county governments. Under clause 101 of the Bill, each county government is required, by county legislation, to establish a County Roads Agency as a department or division under the auspices of the County Executive Committee Member for roads. The agency shall be responsible for the management, development and maintenance of County Roads.

IX. Transitional Provisions

Clause 102(2) states that persons who immediately before the commencement of this Act were employees of the former Roads Authorities shall, upon the commencement of this Act, be deemed to be the employees of the Kenya National Highways Authority, Kenya National Secondary Roads Authority and the Kenya National Urban Roads Authority.

The Bill states in clause 102(5) that upon its enactment, the following changes shall take place:

(a) the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority shall stand dissolved on the appointed date;

(b) all the rights, duties, obligations, assets, liabilities and staff of the former authorities existing at the enactment of the new Act shall be automatically and fully transferred to the respective Authority;

(c) any reference to any of the former authorities in any written law, contract, document or instrument of any nature shall, on the commencement of the new Act, be read and construed as a reference to the respective Authority;

(d) the annual estimates of the former Kenya National Highways Authority, shall be deemed to be the annual estimates of the Kenya National Highways Authority under the new Act and the annual estimates of the former Kenya Urban Roads Authority shall be deemed to be the annual estimates of the Kenya National Urban Roads Authority under the new Act and the annual estimates of the former Kenya Rural Roads Authority shall be deemed to be the annual estimates of the Kenya

National Secondary Roads Authority under the new Act for the remainder of that financial year;

(e) any administrative direction made by any of the former authorities which was in force immediately before the commencement of the new Act shall, as long as they are consistent with the new Act, have force as if it was a direction made under the new Act by the respective Authority, as the case may be;

(f) all contracts, deeds, bonds, agreements, arrangements, guarantees and other instruments made or entered into, on behalf of, or in relation to the former authorities, shall have effect as if made or entered into by, on behalf of or in relation to, the respective Authority, as the case may be; and

(g) all actions, claims, arbitrations, applications and other proceedings, including proceedings on appeal or review, pending or existing immediately before the commencement of the new Act, by, against, or in relation to any of the former authorities, or former boards shall have effect as if they were proceedings by, against, or in relation to the respective Authority, as the case may be, and may be continued and completed accordingly.

X. Classification of Public Roads

The First Schedule of the Bill classifies the public roads into National Trunk Roads and County Roads. National trunk roads include class S, classes A, B, H, J and C. County roads are classified into class D, E, F, G, K, L, M, N and P.

XI. Allocation of the Roads Fund

In the third schedule, the Bill amends the Kenya Roads Board Act to provide for the allocation of the Roads Fund by providing that no more than-

(1) thirty five (35%) per centum is allocated to the Kenya National Highways Authority in such proportions as the Board may determine with the approval of the Cabinet Secretary in respect of primary national trunk roads Classes S,A and B;

(2) twenty eight (28%) per centum is allocated to the Kenya National Secondary Roads Authority in respect of secondary national trunk roads and the said per centum shall be equally distributed to the Constituencies;

(3) ten (10%) per centum is allocated to the National Urban Roads Authority

(4) sixteen (16%) per centum is allocated to the county governments equally as conditional grants in respect of county roads;

(5) one (1%) per centum is allocated to the Kenya Wildlife Services in respect of roads in national parks and reserves;

(6) seven (7%) per centum is allocated annually by the Board with the approval of the Cabinet Secretary to priority projects derived from the road investment programmes including support road standards, technical assistance and shall include –

(a) one (1%) per centum for material development and training; and

(b) one (1%) per centum for research and testing.

(7) one (1%) per centum to be allocated to the National Transport and Safety Authority to support road safety programmes; and

(8) two (2%) per centum to the Kenya Roads Board in respect of the recurrent expenditure of the Board.

CONSEQUENCES OF THE BILL

The Bill seeks to repeal the Kenya Roads Act 2007 and amend the Kenya Roads Board Act No.7 of 1999 and the Physical Planning Act No.6 of 1996. The Bill will also affect the way counties currently undertake their roads function as they will be required to adhere to standards set by the Cabinet Secretary and to also seek for approvals from the relevant Authority if it intends to carry out road works on a county road where such works would have an effect on a national trunk road or a future national trunk road.

WAY FORWARD

The Committee was advised that, pursuant to standing order 134(5) of the Senate Standing Orders, the Standing Committee on Roads and Transportation shall facilitate public participation and shall take into account the views and recommendation of the public when the committee submit its report to the Senate.

Further, pursuant to standing order 137(1) of the Senate standing orders, the committee was required to submit its report to the Senate within thirty (30) calendar days of the committal of the Bill to the committee, which is by **15th June 2018.**

Concerns raised by the Committee

The Committee raised issues with the following Clauses and provisions;

1) The composition and representation of the Public Roads Standards Board;
2) The Identity of the National agency responsible for testing and research on Roads;
3) The exclusion of KeRRA from the Board;
4) The role of the Principal Secretary responsible for Roads;
5) The Bill was a duplication of the Kenya Roads Board Act which equally comprises of KENHA, KURA and KeRRA;
6) The powers of the Cabinet Secretary on the classification of roads and further the intention and purpose of classification (Clause 10(2) and (3);
7) the classification of roads and distribution of resources between the National and County Governments;
8) The provisions in the Transitional Clauses and their impact on the lifespan of the existing agencies and whether the Bill would allow the current Boards to complete their full term as opposed to dissolution;

Resolutions by the Committee

The Committee resolved as follows;

1) **To invite submission of memoranda from targeted stakeholders such as the Ministry of Transport, Infrastructure, Housing and Urban Development, the Council of Governors (CoG) and the relevant agencies within one week;**
2) **To conduct Public Hearing/Receipt of Memoranda on Tuesday 12th June, 2018 at 10am.**
3) **Organize a retreat to consider the views made during the presentations on the Bill and write the report;**

MIN/ 062/SCRT/2018: **ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting adjourned at 12.15pm and the next meeting was set for Wednesday 6th , June, 2018 at 10.30am.

SIGNED: .....

CHAIRPERSON –Sen. Wamatangi Kimani Paul, MP,

DATE: 18/6/2018

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COUNCIL OF GOVERNORS

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THE SENATE CLERK'S OFFICE RECEIVED 13 JUN 2018 P.O. BOX 41842 - 00100, NAIROBI

THE SENATE RECEIVED 13 JUN 2018 SENIOR DEPUTY CLERK

Ref: COG/6/41 Vol.3 (12)

11th June, 2017

Jeremiah Nyegenye,
The Clerk of the Senate'
P.O. Box 41842-00100
Parliament Buildings
Nairobi

Dear Dr. Nyegenye,

LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE KENYA ROADS BILL, 2017

DHS
(1) DCom
Please deal.
13/06/18

The above matter refers.

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable. Based on these principles, the Council of Governors has reviewed the Kenya Roads bill, 2017 and would like to forward for your consideration the following legislative memorandum attached herein.

The Council of Governors through the Intergovernmental Budget and Economic Council (IBEC), chaired by H.E Deputy President signed an intergovernmental agreement which provided for the following:

i. That the Fuel Levy Fund shall be increased from the current 15% annual allocation to 20% to take care of the increased need of road maintenance in the counties; and
ii. That all Class D roads are county roads and this should be reflected in the Roads Bill 2017 that was under consideration by the National Assembly.(Enclosed is the joint communiqué)

We have also attached the decision of the High Court of Kenya **Petition No. 472 of 2014 Council of Governors vs. The Attorney General& Others** and the **Transition Authority Legal Notice No.2 of 2016** for your reference.

Yours Sincerely,

Jacqueline Mogeni
Chief Executive Officer

(2) Clerk Assist – Roads & Transport
Please bring to the attention of the Committee
13/06/18

THE SENATE RECEIVED 13 JUN 2018 DIRECTOR COMMITTEE SERVICES

COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE KENYA ROADS (NATIONAL ASSEMBLY BILL NO 47 OF 2017)

TO

THE SENATE

FROM

THE COUNCIL OF GOVERNORS

INFRASTRUCTURE AND ENERGY COMMITTEE

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of the Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (hereafter referred to as "the Council", which expression shall where the context admits so include its successors and assigns) on the other part;

In recognition of the fact that the Constitution sets out the functions of County Governments under Part II of the Fourth Schedule to include county public works, county roads, street lighting, traffic, parking, public road transport, ferries and harbors.

In further recognition of the need to align the Roads Bill 2017 to the Constitution of Kenya (2010) and the IBEC Agreement signed on 15th February 2018 meant to ensure consultation and cooperation in the sector and for effective implementation in the counties, ; and

Aware of the need for coordinated action between the national and county governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

The Council of Governors therefore proposes the following amendments to the Roads Bill 2017:

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Clause 7 (1) Composition of the Board	The Board shall consist of a representative from each of the following bodies — (a) the State Department responsible for public roads; (b) the State Department responsible for matters relating to devolution; (c) the Inter-governmental Relations Technical Committee; (d) the Kenya National Highways Authority; (e) the Kenya National Urban Roads Authority; (f) the Kenya National Secondary Roads Authority; (g) the Kenya Roads Board;	1. Include a County representative nominated by the Council of Governors.	County Governments are directly responsible for the construction and maintenance of County Roads and as such, should have a representative in the Board.

	(h) the Institution of Engineers of Kenya; (i) the National Agency responsible for testing and research on roads; and (j) the National Transport and Safety Authority.		
Clause 9(1) Roads Standards	The Cabinet Secretary shall by regulations prescribe standards for testing, design, construction and maintenance of national trunk roads by the roads authorities and county roads by county Governments.	The Cabinet Secretary, in consultation with County Governments, shall by regulations prescribe standards for testing, design, construction and maintenance of national trunk roads by the roads authorities and county roads by county Governments.	In the spirit of consultation and cooperation under Article 6(2) of the Constitution, this will ensure that the standards prescribed are implemented/implementable by the county governments
Clause 10 (2) Classification of national trunk and county roads	Where a new road is established, the responsible Authority or county government shall submit to the Cabinet Secretary a request for classification of the road, and the Cabinet Secretary shall assign the road in accordance with the classification that accurately reflects the function served…	Where a new road is established, the Authority or county government shall give a proposal on the classification and assignment of roads and submit to the Cabinet Secretary for National Inventory and mapping	The role of the Cabinet Secretary to classify roads as proposed in this clause will ensure uniformity of road classifications in the Country. However, this role should be done respecting the Constitutionally assigned functions of both levels of government.
Clause 10(3) Classification of national trunk and county roads	The Cabinet Secretary may, from time to time, review the classification and assignment of public roads under subsection (2)…..	The Cabinet Secretary may, from time to time, and in consultation with county governments, review the classification and assignment of public roads under subsection (2)…..	The roads function is a function of both levels of government therefore in the spirit of Article 6(2) of the Constitution, the Cabinet Secretary should consult with the County Governments when reviewing the classification of roads.

Clause 41 **Acquisition of land. No.6 of 2012.**	Where an Authority requires any land for its purposes, the Cabinet Secretary shall submit a request for the acquisition to the National Land Commission, and the provisions of Part VIII of the Land Act, 2012 shall apply, provided that an Authority may in consultation with the National Land Commission pay directly any compensation due to any person whose land or property is acquired under the Land Act, 2012 for purposes of the Authority.	Include provision for the approval of the county government in the event the land being acquired is under the county government	Under Article 62(2) and Article 63 of the Constitution, county governments are in charge of public land held in trust for the people resident in the county and they are also in charge of unregistered community land in the counties. For this reason, if any of the land being acquired is under the administration of the county government, it is prudent to ensure that they consult with the county government before the acquisition of such land.
Clause 44 **Power to enter, and to alter position of pipes, etc.**	Subject to the provisions of this section, an Authority, or any of its authorized employees may, for the purposes of the Authority, enter on any land and alter the position of any electric, telephone, telegraphic, fibre optic or other wire of any nature, or the position of any drain or sewer.	The alteration of electric, telephone poles, drainage and sewer should be in consultation and with approval of the relevant County Government	The function of county public works, county planning, gas and energy reticulation are functions of the county governments therefore if the Authority wants to alter such infrastructure, there is need to consult the relevant county governments.
Clause 47 **Power to take water.** **No.8 of 2002.**	An Authority may, for its purposes, take any water from any natural watercourse subject to the Water Act, 2002.	An Authority may, for its purposes, and in consultation with the relevant county government, take any water from any natural watercourse subject to the Water Act, 2016.	Under the Fourth Schedule of the Constitution, County governments are in charge of implementing policies that conserve natural resources and the environment particularly on water and soil conservation. For this reason, an Authority should first consult with the relevant county government.

			The current Water Act is 2016 and not 2002
Clause 55(2) National toll bridges.	The establishment of a ferry boat service under subsection (1) shall require the approval of the Cabinet Secretary and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary.	The establishment of a ferry boat service under subsection (1) shall require the approval of the relevant county government and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary and the relevant county government.	Under the Fourth Schedule of the Constitution, the function of county transport includes ferries and harbours. For this reason, the establishment of a ferry boat service, its operations and charges should be done by the relevant county government
Clause 56(1) Road user charges	The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads.	The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary and County Governments, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads.	In the spirit of consultation and cooperation under Article 6(2) of the Constitution, this will ensure that the road user charges prescribed are implemented/implementable by the county governments in respect to county roads.
Clause 67 Fees and charges	The Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services under their jurisdiction or for the use of road reserves.	Delete the phrase "... or for the use of road reserves..."	According to the Final Report on the Transfer of Functions by the Transition Authority, reserves for County roads and access to roadside developments are functions of the county governments and the Authority should not impose any fees on

			them without the approval of the county government. Additionally, in the ***Constitutional Petition No. 300 Of 2014: Real Deals Ltd Vs Kenya National Highways Authority*** the Real Deals Ltd challenged the move by KeNHA to exercise control over advertising on bill boards within the road reserves in Kenya. The court in this case as well as in ***Council of Coun Governments v AG & 4 others (Petition 472 of 2014)***, held that in light of the Fourth Schedule, County governments are in charge of outdoor advertising.
Clause 75 **Impact of certain county government decisions on national trunk roads**	(1) A county government shall obtain the relevant/respective Authority's written approval if — (a) it intends to carry out road works on a county road or make changes to the management of a county road where (b)the works or changes would— (i) require the carrying out of road works on a national trunk road; or (ii) otherwise have a significant adverse impact on a national trunk road; or (iii) have a significant impact on the planning of a national trunk road or a future national trunk road.	(1) A county government may consult the relevant/respective Authority's if — (a) it intends to carry out road works on a county road or make changes to the management of a county road where (b)the works or changes would— (i) require the carrying out of road works on a national trunk road; or (ii) otherwise have a significant adverse impact on a national trunk road; or (iii) have a significant impact on the planning of	This consultation will ensure that the activities of both levels of government are in tandem and that alterations by the county governments to county roads does not adversely af t the plans of national trunk roads

		a national trunk road or a future national trunk road.	
Clause 77 **Cabinet Secretary's power of direction**	The Cabinet Secretary shall oversee the performance of the activities of each Authority, under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of this Act.	The Cabinet Secretary shall in consultation with County Governments oversee the performance of the activities of the Authority, under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of this Act.	The powers of the Cabinet Secretary should only be limited to the Kenya National Highways Authority. Other roles performed by the county governments should be considered in intergovernmental forums.
use 98 (1) **Regulations**	The Cabinet Secretary may, in consultation with the respective Authority make Regulations for the better carrying out of the provisions of this Act.	The Cabinet Secretary may, in consultation with County Governments and the Authority, make Regulations for the better carrying out of the provisions of this Act.	This will ensure that the prescribed Regulations are implemented effectively at the national and county level
Clause 99 **Review and revocation of certain legal notices**	The Cabinet Secretary shall review and revoke all legal notices establishing the former authorities, and departments whose functions, by virtue of this Act, falls under the purview of the powers and functions of an Authority, in order to enable the transfer of the functions, assets, and liabilities of the former authorities to respective Authority, as contemplated under this Act.	The Cabinet Secretary shall, in consultation with County Governments, review and revoke all legal notices establishing the former authorities, and departments whose functions, by virtue of this Act, falls under the purview of the powers and functions of an Authority, in order to enable the transfer of the functions, assets, and liabilities of the former authorities to respective Authority, as contemplated under this Act	These authorities and assets are under the ambit of both the national and county government therefore the review or revocation of their establishing legal notices should be conducted through intergovernmental forums and in consultation with county governments.

First Schedule Classification of public roads	This Schedule provides that the National Government is in charge of Class S, A, B, C, D, H and J as National trunk roads while county roads include Class E, F, G, K, L, M, N and P.	Amend to provide that the National Government retain Class S, A, B, C and J as National trunk roads while county governments be in charge of Class D, E, F, G, K, L, M, N and P. The definition of Class D roads should be retained as the Roads Bill that was in the National Assembly i.e. roads linking constituency headquarters, Municipal or Town Council Centers and other towns to each other and to higher class roads. Required to collect local traffic from lower class roads and channel it to the higher class roads.	The Council of Governors through the Intergovernmental forum known as the Intergovernmental Budget and Economic Council (IBEC), chaired by H.E. Deputy President signed an Intergovernmental Agreement which provided that Class D roads are county Government roads. Unfortunately after this agreement, the National Assembly reclassified the Class C and D roads under this Bil . former description of Class D roads is now described as Class C road which is under the National Government.
Third Schedule **(S. 104)** **S. 6(2)(d)**	Determine the allocation of the Fund to ensure that not more than— (1)Thirty five (35%) per centum is allocated to the Kenya National Highways Authority in such proportions as the Board may determine with the approval of the Cabinet Secretary in respect of primary national trunk roads Classes S,A and B; (2)Twenty-Eight (28%) per centum is allocated to the Kenya National Secondary Roads Authority in respect of secondary national trunk roads and the said per centum shall be equally	Amend subsection (2) to read as follows: (2) Twenty (20%) per centum is allocated to County Governments equitably in respect of County Roads;	The Council of Governors through the Intergovernmental forum known as the Intergovernmental Budget and Economic Council (IBEC), chaired by H.E. Deputy President signed an Intergovernme l Agreement which provided tnat which provided for the Fuel Levy Fund to be increased from the current fifteen (15%) per centum annual allocation to twenty (20%) to take care of the increased need of road maintenance in the Counties. This was after the COG agreed to compromise the Ksh 8 billion meant to be transferred as the costs of the Class D roads

	distributed to the Constituencies; (3)Ten (10%) per centum is allocated to the National Urban Roads Authority (4)Sixteen (16%) per centum is allocated to the county governments equally in respect of county roads; (5)One (1%) per centum is allocated to the Kenya Wildlife Services in respect of roads in national parks and reserves; (6) Seven (7%) per centum is allocated annually by the Board with the approval of the Cabinet Secretary to priority projects derived from the road investment programmes including support road standards, technical assistance; (7) One (1%) per centum to be allocated to the National Transport and Safety Authority to support road safety programmes; and (8) Two (2%) per centum to the Kenya Roads Board in respect of the recurrent expenditure of the Board.		transferred via Legal Notice No 24 dated 22nd January 2016.

Recommendations

The Bill's objects and purposes exhibit a level of micro-management on the part of the National Government. The distinctness of counties has been emphasized in Article 6 (2) of the Constitution, and therefore this Bill should be revised and amended to conform to the provisions of the Constitution on devolution and particularly as far as the constitution provides for the Roads function.

REPUBLIC OF KENYA

JOINT COMMUNIQUE

BETWEEN

COUNCIL OF GOVERNORS

AND THE

MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT

ON

ALLOCATION OF ROAD MAINTENANCE FUEL LEVY FUND

12TH FEBRUARY 2018

HARAMBEE HOUSE ANNEX, 2ND FLOOR BOARDROOM

JOINT COMMUNIQUE

Introduction

This joint communique is a general understanding agreed upon between the Council of Governors represented by the Vice Chairperson of the Council and the Ministry of Transport, Infrastructure, Housing and Urban Development represented by the Cabinet Secretary agreed upon in a meeting of the Intergovernmental Budget and Economic Council (IBEC), to facilitate implementation of the various resolutions emanating from negotiations relating to the allocation of the road maintenance levy funds.

Joint Position

1. THAT the Road Maintenance Levy Fund (RMLF) allocation to County Governments be increased from the current 15% to 20%. To achieve this, 5% will be hived off from Kenya National Secondary Roads Authority's allocation and these funds will be committed to the County paved network through a conditional grant.

2. THAT Class D roads be categorized as county roads.

3. THAT Kenya Roads Board liaise with the Commission on Revenue Allocation to derive an allocation framework, to ensure equitable sharing of the fund among County Governments.

4. THAT the Ministry jointly with the County Governments will develop project specific conditions on the utilization of the RMLF in line with the Guidelines of Intergovernmental Fiscal Transfers already developed under the auspice of the Intergovernmental Budget and Economic Council.

5. THAT the State Department of Infrastructure will explore measures for resource mobilization to sustain development and maintenance of the roads network.

Signed this 15TH **day of February 2018**

H. E. Governor, Anne Waiguru, EGH
Vice-Chairperson:
Council of Governors

.....

James Macharia, EGH
Cabinet Secretary:
Ministry of Transport,
Infrastructure, Housing and
Urban Development

.....

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310833
NAIROBI Telephone: 2252299
When Replying Please Quote Ref.

THE NATIONAL TREASURY
P O BOX 30007 - 00100

REF No: IGFR/BILLS/01(25) **Date:** 24th April 2018

Hon. Josphat Nanok
Chairman, Council of Governors
Westlands Delta House, 2nd Floor,
Waiyaki Way
NAIROBI

CHIEF EXECUTIVE OFFICER
COUNCIL OF GOVERNORS
29 MAY 2018
RECEIVED
P.O. Box 40401 - 00100, NAIROBI

Dear Governor,

RE: INCLUSION OF THE ROAD MAINTENANCE FUEL LEVY (RMFL) FUND IN THE DIVISION OF REVENUE BILL 2018

Please refer to your letter of **Ref. COG/6/41 Vol.3(22),** dated **20th March, 2018** on the above subject matter.

As you are aware, annual allocations to county governments from the Roads Maintenance Fuel Levy (RMFL) Fund is at the moment pegged at 15%. The Ministry of Transport, Infrastructure, Housing and Urban Development proposed to Parliament that Kenya Roads Bill, 2017, which is currently before Parliament, be amended to increase the allocation to 20%.

Please note that the National Assembly passed the Bill but only approved a marginal increase of annual county allocations from the RMFL Fund from 15% to 16%. The Bill has been transmitted to the Senate for consideration and approval.

In light of this development, we feel that there is need to engage Parliament to adopt the position of the Intergovernmental Budget and Economic Council (IBEC). We

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further advise that the proposal to amend the Division of Revenue Act, 2018 and the County Allocation of Revenue Bill, 2018 to increase the county allocation from the RMFL Fund to 20% will depend on the decision of Parliament in the context of the approved Kenya Roads Bill, 2017.

Yours Sincerely,

HENRY K. ROTICH, EGH
CABINET SECRETARY / NATIONAL TREASURY & PLANNING

c.c. **Mr. James Macharia**
Cabinet Secretary
Ministry of Transport, Infrastructure,
Housing and Urban Development
NAIROBI

Mr. Patrick Omutia, CBS
Special Secretary
Intergovernmental Budget and Economic Council
Office of the Deputy President
NAIROBI

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COUNCIL OF GOVERNORS

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P.O. BOX 40401-00100,
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NATIONAL ASSEMBLY
MAIN RECORDS UNIT
16 MAR 2018
RECEIVED (2)
NAIROBI – KENYA

Our Ref: **COG/6/11 (49)**

15th March, 2018

Mr. Michael Sialai
Clerk of National Assembly
Main Parliament Building
NAIROBI

Dear Mr. Sialai,

RE: MEMORANDUM ON THE DIVISION OF REVENUE BILL 2018

The Council of Governors recognizes that Article 6(2) of the Constitution provides that the two levels of government are distinct but inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. It is on this premise that the Council of Governors officially submits it recommendations on the published National Assembly's Bill on the Division of Revenue 2018.

The Council would want to note that the County Governments' equitable share of revenue raised nationally for the Financial Year 2018/19 was arrived at by calculating the County Governments' equitable share for 2017/18 of KSh. 302 billion by a growth factor of 4.0 per cent. This yields an adjustment of KSh. 12 billion. This growth factor was agreed through consensus following consultations under the Intergovernmental Budget and Economic Council (IBEC) meeting held on 6th February 2018. The Council of Governors as a member of IBEC does not intend to propose a different figure to that which had already been agreed upon through the intergovernmental process.

Secondly, with regards to the Conditional grants, the Council notes that the Bill has proposed additional conditional allocation from the Road Maintenance Fuel Levy Fund at KSh. 8.3 billion to County Governments. To this end, the Council would want to bring to your attention of the joint agreement between the Ministry of Transport, Infrastructure, Housing and Urban Development and the Council of Governors on the allocation of Road Maintenance Fuel Levy Fund for the 2018/19 financial year. The proposal is to increase the grant from the current 15% to 20%.

The Council therefore proposes for the consideration of this intergovernmental agreement which is hereby attached for your reference.

Yours Sincerely,

H.E Hon. Josphat Nanok
Chairman, Council of Governors

Copy to: All Excellency Governors

Kenya National Highways Authority

Quality Highways, Better Connections

THE KENYA ROADS BILL, 2017- PRESENTATION ON DRAFT 2.

Kenya National Highways Authority
Quality Highways, Better Connections

KeNHA COMMENTS ON THE KENYA ROADS BILL, 2017- DRAFT 2.

BACKGROUND:

The Kenya Roads Bill (National Assembly Bills No. 47 of 2017) (formerly Kenya Roads Bill 2015, National Assembly Bills No. 26 of 2015), was introduced to the National Assembly by the Leader of Majority, Hon. Aden Duale on 6th December, 2017.

The National Assembly, through the office of the Clerk of National Assembly, requested for comments from all the stakeholders and members of the public to be submitted on or before 5th January, 2018 whereby KeNHA submitted its comments thereto.

THE OBJECTS OF THE BILL:

The Kenya Roads Bill (2017) seeks to give effect to the provisions of the Fourth Schedule of the Constitution of Kenya 2010 in relation to the functions on roads and to review and rationalize the legal and institutional framework for the management of the road network in Kenya.

Part A and Part B of the First Schedule present a list of the roads under the established Road Agencies and those under the County Governments respectively.

The current Kenya Roads Bill (2007) was enacted before the promulgation of the Constitution of Kenya 2010 and does not therefore recognize the dual level functions between the National Government and the Counties as regards roads.

The Bill seeks to remedy this gap with a view to reflecting this new constitutional order and to ensure seamless delivery of services by both levels of Government.

OVERVIEW OF THE BILL- KEY HIGHLIGHTS:

The First Draft of the 2017 Bill gave provision to classification of roads as set out under the First Schedule. The Schedule classified roads into:

* **Primary National Trunk Roads**- Classes S, A, B, H and J.

* **Secondary National Trunk Roads**- Classes C and D.

* **County Roads**- Classes E, F, G, K, L, M, N and P.

Under Part III of the Bill, the Cabinet Secretary shall be responsible for classification and assignment of roads into various categories/classes upon request or upon his/her own scheduled review.

The Bill establishes various roads agencies being the Public Roads Standards Board (PRSB), the Kenya National Highways Authority (KeNHA), the Kenya National Urban Roads Authority (KeNURA) and the Kenya National Secondary Roads Authority (KeNSRA).

Under Section 101, each County Government is required (through County Legislation) to establish a County Roads Agency as a Department under the County Executive Committee (CEC) in charge of roads.

The Bill seeks to repeal the Kenya Roads Act 2007. It further seeks to amend the Physical Planning Act No. 6 of 1996. Of utmost importance is that it seeks to amend the Kenya Roads Board Act Section 6(2)(d) which provides for the allocation of the Fund caps as follows;

1). **KeNHA (35%) -** (KeNHA had however proposed 40%). **(Subsequently, the percentage is 35% in the 2nd Draft).**

2). **KeNURA (10%) -** (KeNHA had proposed 7.5%). **(Percentage is 10% in the 2nd Draft).**

3). **KeNSRA (30%) -** (KeNHA had proposed 27.5%). **(28% in the 2nd Draft).**

4). **County Govts.** (15%). (No change had been proposed by KeNHA). **(16% in 2nd Draft).**

5). **KWS (Kenya Wildlife Services) - (1%).** (No change had been proposed). **(1% in 2nd Draft).**

6). **Priority Road Projects (6%).** No change had been proposed. **(7% in 2nd Draft).**

7). NTSA (1%). No change had been proposed.**(1% in 2nd Draft).**

8). KRB (Kenya Roads Board). (2%). No change had been proposed. **(2% in 2nd Draft).**

CONSEQUENCES OF THE BILL - KEY CONSEQUENCES:

i. The Bill will affect the way Counties undertake their road functions in that, they will henceforth be required to adhere to the standards set by the C.S. and to seek approval from the relevant Authority should their works on County roads have an effect on any existent or future National Trunk Road.

ii. Another key consequence is that, under Section 102 (5) (a)- (Transitional Provisions), the Boards of the various roads agencies will stand dissolved upon commencement of the Bill/Act which we had earlier opined would present a crisis in the daily operations of the Agencies **The 2nd Draft did not implement our recommendation on this aspect.**

iii. Another notable Section (48(1)), provides for the access and removal of material from any land for road purposes. KeNHA has proposed exemptions from cess, levies and other charges which we opine ought to be regulated by Parliament to provide for seamless road works between the Agencies and County Governments. **The 2nd Draft has implemented this recommendation.**

KeNHA submitted its comments and proposals to the Clerk of the National Assembly on 5th January, 2018. This paper is a subsequent summary of KeNHA's comments on the **2nd Draft** and a representation of the status of implementation of KeNHA's recommendations to the Bill. The same is as depicted in the **last (rightmost column)** of the table below:

SCHEDULE

KeNHA SCHEDULE OF COMMENTS ON THE KENYA ROADS BILL, 2017- SECOND DRAFT (DRAFT 2).

(ANNEXURE- THE (REVISED- DRAFT 2) KENYA ROADS BILL, 2017/2018).

NO.	SECTION:	PROVISIONS:	OBSERVATIONS:	OUR EARLIER PROPOSAL:	STATUS IN THE SECOND DRAFT:
1.	Arrangement of Clauses.	Arrangement of Clauses (Second Schedule.) on **Page 1507** of the Act.	The Second schedule is indicated to contain "Nominating Bodies" whereas this is not the case. The Second Schedule contains "Provisions Relating to The Conduct of Business and Affairs of the Board.	Delete the Words "Nominating Bodies" and Replace with "Provisions relating to the Conduct of Business and Affairs of the Board".	*(NB: Page 1507 is now Page 1560).* **Implemented. (Recommendation Adopted and Included in Draft 2).**
2.	Part I: Preliminary. Section 2: "Interpretation".	Section 2: "Interpretation".	Under the Definitions of "Class, Construction, County Executive Committee, County Road, National Trunk Road, Public Road, Road Agency, Roadside Development Toll Road, Toll Station	The definitions ought to all commence with upper-case letters for proper drafting and clarity.	**Not Implemented.** **Low Risk Level.**

			and Vehicle", the first letters are in lower-case letters.		
3.	Section 2. "Interpretation".	Definition of "Public Road".	The Bill recognizes public roads as outlined and classified under the First Schedule. The reference to the Public Roads and Roads of Access Act (under the Bill) needs to be effected through a consequential amendment to the Acts to reflect the public roads aspect.	To avert this, we propose a definition of Public roads under this Bill to read as follows: "Public road means all roads falling under the classifications under Schedule I and any other subsequently classified roads".	**Not Implemented.** **Low Risk Level.**
4.	Section 10(1).	Annotation.	The Annotation reads "Classification of National Trunk and County Roads".	There is need to amend the annotation at Section 10(1) to read "Classification of Public Roads" since the classification will extend to other classes of roads as well and not only national trunk and county roads.	**Implemented.**
5.	Section 12(3).	Headquarters of the Authority.	The section provides that "the headquarters of the Authority shall be in the capital city, but the Authority **may** establish such administrative	We propose a deletion of the words "in each County" such as to leave it to the discretion of the Authority to determine whether to set up an administrative office in a certain County depending on the need.	**Not Implemented.** **Risk: Possible Financial Implications if Authority is to have Administrative Offices in each County. However, key word is "may".**

			offices in **each county**, as may be necessary for the furtherance of its functions under this Act".		
6.	Section 13 (2) (d).	Enforcement of Axle Load Regulations.	The section provides for KeNHA's function being, "..ensuring adherence to the rules and guidelines on axle load control as provided under the Traffic Act"; This does not give effect to Axle Load Regulations.	We propose to include the words "..and any other subsequent regulations under this Act" after the words "Traffic Act" to incorporate the Axle Load Regulations.	**Implemented.** **See New Section 13(2) (e).**
7.	Section 13 (2).	Functions and roles of KeNHA.	We observe that there is no clear function of KeNHA as regards operation of tolling roads and stations whereas KeNHA is currently implementing toll projects and toll roads. Without this provision, or without it being made abundantly	We propose that we include a function/role that clearly mandates the Authority to operate toll roads to read as follows: "controlling, operating and managing toll roads under its jurisdiction".	**Implemented.** **See New Section 13(2) (f).**

			clear, there is a risk that an Authority's mandate and actions in involving itself in such activities may be challenged as having derogated from its core mandate which is primarily construction and maintenance of roads.		
8.	Section 14(2) (f).	Board Composition of KeNHA. Members Nominated by certain Organizations.	We note that KeNHA's Board does not provide for a representative from Kenya Association of Manufacturers (KAM) which we believe would be a great value addition than KEPSA (which is quite wide and not sector-specific). We opine that a representative from KAM would have expertise on and advise on urban	We propose that consideration be given on dropping KEPSA from the list and in its place, engaging a representative of KAM in line with the government's "Big Four Agenda" for economic development.	**Partially Implemented.** **-KEPSA, ICPAK, LSK dropped from the list of institutions.** **-IEK and ISK retained.** **-New Subsection (g) added which provides for two persons to be appointed by the CS and the appointments to take account of ethnic diversity.**

			planning of roads to meet the needs of manufacturing businesses which are the drivers of the economy.		
9.	Section 14(5).	Board Composition of KeNHA. Members Nominated by certain Organizations	The Section provides that "Despite subsection (1), the Principal Secretary in the Ministry or State department responsible for matters Board of the Kenya National Highways Authority relating to roads and the Principal Secretary in the ministry or State department responsible for matters relating to transport or their alternates may both not be members of the Board if they serve under the same Cabinet Secretary".	We propose that this be amended such that the two Principal Secretaries be represented individually even if under the Same Cabinet Secretary. We opine that their roles are quite different (one being on Transport Policy while the other on Infrastructure) and each would be a value addition in their own individual right. This would also solve the issue of quorum and the number of Members in the Board.	**Not Implemented.** **Risk: Low Risk Level provided the requisite skills can still be afforded to the Authority by the attendees and the quorum maintained.**

10.	Section 17 (1) (f) (v).	Composition of the Board of the KNURA.	The section provides for a Member of the Board to be nominated by the Kenya Institute of *Physical* Planners. The Institute's proper name is the Kenya Institute of Planners. This may create confusion and/or cause lack of clarity.	We propose deletion of the word "Physical" from the entity's name. Similarly, we propose the change to also apply to Section 20(2)(f)(v).	**Implemented.** **Implemented.**
11.	Section 22(1) (a).	Qualifications for appointment as Chairperson of the Board of an Authority.	The section provides for the Chairperson to be a holder of a degree from a University recognized in Kenya. The section provides for *any* degree which may not be ideal.	We propose that the degree be in a field relevant to the Authority's interests and core mandate. The meaning of "relevant field" can also be defined. We propose that the relevant fields be: Civil Engineering, Accountancy, Law, Survey and Management. Similarly under Section 22(1) (b), there is need to set clear guidelines on what 'relevant field" means and we propose that the above be adopted.	**Implemented through Section 22(1) (a).** **Partially Implemented:** **"Civil Engineering" has been left at only "Engineering". Accountancy, Law, Survey and Management have been recognized as relevant fields.** **The "Planning" discipline has been introduced as a relevant field.** **"Relevant Field" has however not been expressly defined in the definitions.**

12.	Section 22 (3).	Procedure for appointment of the Chairperson and Members.	The section provides that the procedure for the appointment of the Chairperson and members of the Authority under sections 14, 17 and 20 shall be as set out in Part C of the Second Schedule to this Act. However, the Second Schedule does not contain a "Part C". Similarly, the Second Schedule does not provide for appointment procedures but provides for "the Provisions relating to the Conduct of Business and Affairs of a Board".	There is need to provide for the Procedure for appointment as envisaged herein. Similarly, Section 22 (3) needs to be amended accordingly to make reference to the correct section/schedule.	**Partially Implemented:** **Section 22 (3) deleted in its entirety.**
13	Section 29.	The Director General Qualifications.	Under Section 29 (2)(a), the requirement for "Highway Engineering" field has been dropped which is in the 2007 Act.	We propose that the requirement for **Highway Engineering** field be retained to enable the Director General be well conversant with the core day to day workings of the Authority.	**Not Implemented:** **Retained "Civil Engineering" in the place of the proposed "Highway Engineering".** **Risk: May present a lack of a specialized qualification that**

			Similarly, the ten (10) years' experience do not indicate the date of commencement of measuring the experience.	Under Section 29(2)(b), we also propose an amendment for the section to now read; "has had at least ten years' post-registration experience and at least ten years' experience in a management level in the roads sector".	**specifically targets roads and highways. However, this may be mitigated by the recruiting panel who may evaluate the candidates based on a higher standard of specialization.**
14	Section 30.	Functions of the Director-General.	We note that there is no provision that effectively gives power to the Director General to delegate his duties as in Section 28 and 32.	We propose a Clause similar in wording to Clause 28 that allows the Director General to delegate his duties subject to ratification by the Board of the Delegation Matrix but with a proviso that he still remains overally responsible for his duties.	**Not Implemented.** **Low Risk- DG may still mitigate this through issuance of legally registered Powers of Attorney Documents delegating powers and authority to delegates.**
15.	Section 45 (3).	Notice before exercising power of ordering removal of utilities.	The Section provides for the removal of the utility within sixty (60) days of such notice by the Authority. The sixty (60) days period in our opinion would be prejudicial to KeNHA especially in an instance where costs are	We propose a shorter time period of fourteen (14) days depending on the reasonable time required to move such utility.	**Partially Implemented:** **No. of days has been reduced from 60 to 30. We had proposed 14 days.**

			constantly being incurred as a result of the delay of such relocation or where the utility poses a safety threat to road users.		
16.	Section 46(1) (a).	Occupation of Private Land.	The section provides that "..a road Authority may — (a) in the development, construction, rehabilitation or maintenance of a road;	We propose to include the word "or" after the words "…road;" for clarity.	**Not Implemented.** **Low Risk Level.**
17.	Section 48 (1).	Access to Material sites etc.	The section provides as follows: (1) Subject to the Constitution an Authority, by its agents and officers, for the purpose of the construction and maintenance of roads or the carrying out of any works which it is empowered under this Act or under any agreement,	We propose to include a proviso that the exemption of any cess, levies and charges (in the movement of the materials) which are not imposed by an Act of Parliament. To read as follows: (1) Subject to the Constitution an Authority, by its agents and officers, for the purpose of the construction and maintenance of roads or the carrying out of any works which it is empowered under this Act or under any agreement, direction,	**Implemented.** **See new Section 48 (2).**

			direction, delegation or transfer entered into, given or made under this Act to carry out, may enter upon land and remove there from any soil, clay, rock, gravel, murram, lime, sand, shale, shingle, slate or surface soil, and may carry across any land, by a route to be agreed between the owner and in the event of failure to agree, cause to be acquired compulsorily such land, and remove such material, and may provide within the land in connection with such functions labour or other camps, works buildings, access roads, and space for stockpiling, and	delegation or transfer entered into, given or made under this Act to carry out, may enter upon land and remove there from any soil, clay, rock, gravel, murram, lime, sand, shale, shingle, slate or surface soil, and may carry across any land, by a route to be agreed between the owner and in the event of failure to agree, cause to be acquired compulsorily such land, and remove such material, and may provide within the land in connection with such functions labour or other camps, works buildings, access roads, and space for stockpiling, and may erect machinery and other gear for the purpose of quarrying any such material.; (2) Provided that any removal therefrom of and carrying away or across any land of any soil, clay, rock, gravel, murram, lime, sand, shale, shingle, slate or surface soil, by any route, may not result on the imposition on the	

			may erect machinery and other gear for the purpose of quarrying any such material.	Authority of any cess, levies and charges which are not imposed by an Act of Parliament	
18.	Section 48(7).	Fencing to avert danger.	There is a typographical error on the second last line of the subsection.	We propose amendment of the word "adequately" to "adequate".	**Implemented.** **See new Section 48 (8).**
19.	Section 52 (4).	Disputes between Counties on inter-county roads and bridges.	The Section provides that: Where the relevant county governments are not able to agree as provided under subsection (3), any county government may refer the matter to the Intergovernmental Relations Technical Committee under the Intergovernmental Relations Act for determination by the Council of Governors, on any matter including —	We propose to include a provision of the Act to the effect that the decision of the IRTC shall be final and binding to avert unnecessary litigation in judicial courts between counties leading to stalled Authority Projects.	**Not Implemented.** **Risk: Possible lengthy litigation battles between Counties (with multiple Appeals) which may lead to stalling of Authority's projects.**

			(a)whether a road, bridge, drain or other service is required; (b)the standard of construction or maintenance; (c)each county government's share of construction or maintenance costs; or (d)which county government should exercise management and control of the road.		
20.	Section 56 (4).	Regulations for Road User Charges.	Subsection 4 provides for the provisions that may be contained under the Regulations under the Act. We however note that an important factor, which is the penalties (and the legality thereof) and manner of charging the same, is left out. This has been a cause of numerous litigation where the	We propose inclusion of a provision to cater for "the penalties (and the legality thereof) and manner of charging road charges to avert the Constitutional litigation that hinder the Authority from discharging its mandate. We therefore propose a new addition under subsection 4 to read as follows: "the penalties and the legality thereof and manner of charging the same that allow the Authority to charge any fees, overload fees	**Implemented.** **See new Section 56(4)(f).** **Subsections (h) and (i) have also been added.** **Section 56 (5) has been included to enable the Authority prescribe penalties through regulations.** **However, the proposed 'bypassing'of judicial determination' was rejected possibly due to the underlying principles of fair hearing contained in**

			constitutionality of the fines by KeNHA are challenged on the basis that KeNHA is the judge, jury and executor who condemns a Party unheard- which is allegedly against the Rule of Law.	and/or fines and other charges without judicial determination".	**the Constitution and those contained in the Fair Administrative Actions Act.**
21.	Section 66	Principles of Operation.	The Section provides that "Each Authority shall perform its functions in accordance with the financial principles and shall ensure, as far as reasonably practicable, that its expenditure is chargeable on its revenue."	We propose to add the word "sound" between the words "in accordance with the" and the words "financial Principles". This will now make reference to **sound** financial principles.	**Implemented.**
22.	Section 67.	Fees and Charges.	The section provides that "Each Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services	We propose an additional different section giving power to the Authority to charge fines and penalties/fees in the event of Axle Load violations which is currently costing the Authority a lot of money in defending legal suits where the Constitutionalism of the fines and fees are challenged in	**Not Implemented.** **Risk: The Authority had hoped to ease its legal battles through having weighbridge records as prima facie proof but the proposal has been rejected.**

			or for the use of road reserves under their jurisdiction".	judicial Courts. We need to also provide that the weighbridge records showing the weight levels and the overload records by KeNHA be prima facie proof of violation/offence. See also section 98.	**However, on a separate note, notably, Section 67(2) has been included to cater for regulation and enforcement of Axle Load violations in PPP Projects. In this regard, Project Agreement Terms will prevail over the Act.**
23.	Section 69.	Consultation before declaration.	The Section provides that, "Before making or revoking a declaration under **section 55**, the Cabinet Secretary shall — (a) notify each county government which, in the opinion of the Cabinet Secretary's would be affected by the proposed declaration or revocation; and Principles of operation. Fees and Charges. Charges and fees to be Gazetted. Consultation before declaration…"	We propose that the Section be amended from "Section 55" to "Section 54". Cross-referencing error.	**Implemented.**

			However, this appears to be an error in cross-referencing. We opine that the correct section is Section 54 based on the content of the cross-reference.		
24.	Section 70.	(Side) Annotation.	The annotation to the section currently reads; "Authority to have power of a county government for National trunk roads."	Having read the spirit of what the section intends to achieve, we propose, for clarity, to reword the annotation to read: "Authority to have power over national trunk roads similar to the power of a County Government for/over county roads."	**Not Implemented.** **Risk: Possible friction between Counties and the Authority in road Projects within Counties. Can be mitigated through proper dialogue and stakeholder engagements with Counties.**
25.	Section 74.	Improvement of National Trunk Road vis a vis County Road.	The Section provides that "If a county government considers that improvements to a national trunk road in its area would be beneficial to the county road network, the county government may make financial arrangements with the relevant/	Currently as worded, the County consults with the Authority after it has made financial arrangements. We however propose that before a County even makes financial arrangements for a road, it must consult with the Authority.	**Not Implemented.** **Risk: (Same as above)- Possible friction between Counties and the Authority in road Projects within Counties. Can similarly be mitigated through proper dialogue and stakeholder engagements with Counties.**

			respective authority for the improvements to be made."		
26.	Section 75 (9).	Approval by Chief Executive.	The Section makes reference to the Chief Executive rather than the Director General who has been defined under the Interpretations section.	We propose a change from the "Chief Executive" to the "Director General".	**Implemented.**
27.	Section 75(10(b).	Where an approval is sought and the Authority does not respond.	The Section provides for an implied approval by silence or non-responsiveness of the Authority.	We propose a deletion of this subsection 10 in its entirety as there are a number of issues that the Authority needs to consider and silence cannot be implied to be consent.	Not Implemented. **However, a provision has been added that gives the Authority leeway to have more time to respond simply by notifying the Party (within 21 days) that it will require more time.**
28	Section 76.	County Government Powers.	The Section Provides that "A county government may exercise, for a national trunk road in its area, all the powers that it may exercise for a county road in its area: Provided notification of the actions or powers	We propose a deletion of the entire Section 76 which we opine will only serve to create confusion over the mandate of the Authority with regards to roads under its jurisdiction.	**Not Implemented.** **Low Risk. Can be mitigated by constant and positive engagement with the County Governments in projects.**

			intended has been provided and consented to by the National Agency with delegated powers over the road."		
29.	Section 78 (4).	Notice required prior to removal or unauthorized and/or illegal structures on a road reserve.	The Section provides that "Where a person, without the permission required by subsection (1), or contrary to any permission given thereof, erects, constructs, lays or establishes a structure or other thing, or makes a structural alteration or addition to a structure or other thing, the Authority may, by notice in writing, direct that person to remove the unauthorized structure, other thing, alteration or addition within a reasonable period which shall be	We propose that where the structures have been erected without following the necessary procedure, the Authority be given the power to eject/demolish the same without notice and at the cost of the person who erected the same. This will improve on compliance.	**Not Implemented.** **Low Risk- Provided the Authority gives adequate notice, it could still act effectively to achieve its mandate albeit slightly delayed.**

			stated in the notice but which may not be shorter than thirty days calculated from the date of the notice".		
30.	Section 79(1).	Liability of Owner and Driver for damage.	The Section provides that " **(1)** Where a road is damaged— "... However, we note that "road" is not defined under the Act/Bill to include road furniture or at all.	We therefore propose to include the words "and road furniture" immediately after the word "road".	**Implemented.**
31.	Section102 (5) (a).	Transitional Provisions- The Board.	The Section Provides that "Upon the commencement of this Act— (a)the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority shall stand	In this regard, we propose that this Section be amended to provide that the current Board Members shall complete their tenures and thereafter, their replacements be subject to the Act. The Boards ought not be dissolved as this will create a crisis in terms of Management of the Authority.	**Not Implemented.** **High Risk. The transition period when the New Act comes into effect may jeopardize/paralyzed the operations of the Authority.**

			dissolved on the appointed date;" This would adversely affect the operations of the Authority (ies) and we propose that the same be amended.		
32.	Third Schedule.	Consequential Amendments.	The section provides and inter alia, that " (1)Thirty five (35%) per centum is allocated to the Kenya National Highways Authority in such proportions as the Board may determine with the approval of the Cabinet Secretary in respect of primary national trunk roads Classes S,A and B; (2)Thirty (30%) per centum is allocated to the Kenya National Secondary Roads Authority in	We propose changes in the per centum allocation to the effect that KeNHA is allocated 40%, KeNSRA is allocated 27.5%, KeNURA is allocated 7.5% and the rest remain as is. This, we opine, will enable the various authorities discharge their functions effectively and efficiently.	**Partially Implemented.** **KeNHA had proposed 40% but the 2nd Draft has maintained the allocation to KeNHA at its original 35%. This is a positive outcome considering there were proposals during the Hearings to even slash the budget below 35%.**

			respect of secondary national trunk roads and the said per centum shall be equally distributed to the Constituencies; (3)Ten (10%) per centum is allocated to the National Urban Roads Authority		

RATIONALE FOR THE KEY PROPOSALS ABOVE:

- KeNHA had proposed a revision to its allocation under the Fund to 40% based on the fact that Classes A and B (which are under its jurisdiction) endure the heaviest loads and heaviest traffic thereby requiring higher standards and are subsequently costly.

- In addition, KeNHA's road network has now increased from the previous 14,200 kms to 18,549 kms and it is responsible for International and County connection roads.

- KeNHA's road network will be instrumental in achieving the government's "Big Four" Development Agenda of Manufacturing, Affordable Housing, Health Care and Food Security.

- In that regard, KeNHA's network and infrastructure will be key in ensuring there is adequate infrastructure to deliver the above national targets through connecting the hinterland with the port (s) and other key sectors.

~END~

Submitted by:

THE KENYA NATIONAL HIGHWAYS AUTHORITY (KeNHA).

CORPORATION SECRETARY/LEGAL SERVICES DEPARTMENT.

Slo-N.



MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT

STATE DEPARTMENT OF INFRASTRUCTURE

REPORT TO THE SENATE ON KENYA ROADS BILL

JUNE 2018

I. SUMMARY OF MAIN ISSUES RAISED

- Court case filed by Council of Governors

-On 11th December 2015 Lady Justice Mumbi Ngugi in Nbi HC Constitutional and Human Rights Petition No. 472 of 2014 gave orders directing the Attorney General to gazette within 90 days, the transfer of functions to the County governments as contained in the *Report of the Sessional Committee on Devolved Government on Appeals for Transfer of Functions to Counties.*

-In compliance of the said order the Transition Authority held a meeting attended by all stakeholders including the Council of Governors. As a result of the meeting classification of roads and their allocation between National and County Government was agreed upon.

-The report on Transfer of Functions was forwarded to the Attorney General and gazetted vide Legal Notice No. 2 of 22nd January 2016. The classification and allocation was as follows:

- Road Classes A, B, C (National Trunk Roads)
- Road Classes D, E, F, G and others (County Roads)

CLASS D ROADS TRANSFERRED TO COUNTIES

A road Inventory and Condition Survey, and Reclassification was conducted from 2004 to 2009. Kenya's road network was established to be 160,886 long with 471 Km proposed (road reserve > 9m).
About 62,020kms were initially the only roads classified while the remaining 98,866 km were unclassified.
Before the re-classification the Road Classification System used was developed over 30 years ago and had six road classes; Classes A, B,C,D E, and, Special Purpose Road class; G,L & S.

Each class was defined mainly by functional criteria related to connectivity and to connections to administrative centres.

The system did not cover the entire road network.

The Classes of Roads were

- Class A: **International Trunk Roads -** Linking centres of international importance and cross international boundaries or terminate at international ports (e.g. Mombasa, or JKIA)
- Class B : **National Trunk Roads -** Linking nationally important centres (e.g. Provincial headquarters)
- Class C: **Primary Roads** Link provincially important centres to each other or to higher class roads (e.g. District headquarters)
- Class D : **Secondary Roads** Link locally important centres to each other, or to more important centres or to a higher class road (e.g. divisional headquarters)
- Class E :**Minor Roads -** linking local community centres.
- Class G, L, S : S**pecial Purpose Roads** Include Rural Access Roads, Government Roads, Settlement Roads, Forest Roads and agricultural produce roads (sugar, tea, wheat roads etc.)

Need to review the Classification System.

Reasons:

- The road network had grown rapidly and changed in character.
- There had been rapid growth and urbanisation of the population.
- There had been a significant expansion of the road network.
- There was need for "ad hoc" addition of road classes to provide for "special purpose" roads.
- Introduction of new administrative centres (new districts at the time of review).
- The existence of the large rural and urban road network of 98,866 km that was not classified.
- The successive changes in administration boundaries, affecting the validity of the original functional classification in terms of administrative centres, notably at district level.
- The perception of some anomalies in class assignment, whereby some higher classes of roads have significantly lower standards or lower traffic volume than some lower classes of roads.
- Only one criteria was used for the classification, functionality.
- The system was static and difficult to adjust to changing circumstances.
- Rational planning and allocation of scarce resources to the road system, requires a more objective and quantifiable basis for prioritizing groups of roads than a simple functional classification system can provide.

Review of Classification

- Due to the reasons above, The Ministry responsible for roads through Kenya Roads Board, with funding from the Nordic Development Fund(NCTIP), commissioned a Consultant to develop a new Road Classification System in October 2006.
- The Consultant reviewed the current classification system and compared with best international practices to develop a proposed new classification system.
- The proposed reclassification system was presented to a stakeholder's meeting in July 2007 where it was adopted.

The current classification system

- The new classification system covers all public roads and extends to the presently unclassified rural and urban roads.
- The main thrust of the approach is to make the classification more objective and consistent by specifying quantifiable parameters (traffic, population, spacing) to guide in the selection of appropriate road classes.
- the classification system **MUST** be dynamic, where road classes can be periodically reviewed to adapt to changes in traffic, functionality etc.
- The current Road Classification System groups the road network into two distinct networks
  New Classification:
- Although the new classification system retains A,B,C,D and E classes, the system has been extended to include additional classes from F to G.
- It should be noted that some roads as presently classified do not necessarily retain their road classes under the new classification. Some roads were downgraded on account of traffic volume while others were upgraded.

- Board Transition – the Boards shall not be dissolved when the Act comes into effect, instead they should be dissolved when new Boards are constituted under the new Act.

- Changes in Board Composition.

KeNHA

-KEPSA, ICPAK, LSK dropped from the list of institutions.
-IEK and ISK retained.
-Engage a representative of KAM in line with the government's "Big Four Agenda" for economic development.
-New sub clause to be added which provides for two persons to be appointed by the CS and the appointments to take account of ethnic diversity.
- Principal Secretary responsible for Roads and Principal Secretary responsible for transport should both be members of the Board even if they serve under the same Cabinet Secretary. Their roles are quite different (one being on Transport Policy while the other on Infrastructure) and each would be a value addition in their own individual right.

Ministry's proposal

Kenya Roads Board Act Section 6(2)(d) – include the following provision "Seven (7%) per centum is allocated annually by the Board with the approval of the Cabinet Secretary to roads and emergencies including support to road standards, technical assistance and shall include,

(a) One (1%) per centum for research and testing
(b) One (1%) per centum for material development and training

- Inter- County disputes - Include a provision of the Act to the effect that the decision of the Intergovernmental Relations Technical Committee shall be final and binding to avert unnecessary litigation in judicial courts between counties leading to stalled Authority Projects.

- The provisions on powers to charge fees that are provided in the EAC Axel Load Regulations should be replicated in the Roads Bill. The Roads Authorities may impose fines and levies to those who violate axle load limits.

II. SUBMISSIONS BY ROAD AUTHORITIES AND KRB

KeNHA

NO.	SECTION:	PROVISIONS:	OBSERVATIONS:	OUR EARLIER PROPOSAL	REMARKS:
1.	Part I: Preliminary. Section 2: "Interpretation".	Section 2: "Interpretation".	Under the Definitions of "Class, Construction, County Executive Committee, County Road, National Trunk Road, Public Road, Road Agency, Roadside Development Toll Road, Toll Station and Vehicle", the first letters are in lower-case letters.	The definitions ought to all commence with upper-case letters for proper drafting and clarity.	**Low Risk Level.**
2.	Section 2. "Interpretation".	Definition of "Public Road".	The Bill recognizes public roads as outlined and classified under the First Schedule. The reference to the Public Roads and Roads of Access Act (under the Bill) needs to be effected through a consequential amendment to the Acts to reflect the public roads aspect.	To avert this, we propose a definition of Public roads under this Bill to read as follows: "Public road means all roads falling under the classifications under Schedule I and any other subsequently classified roads".	**Low Risk Level.**

3.	Section 12(3).	Headquarters of the Authority.	The section provides that "the headquarters of the Authority shall be in the capital city, but the Authority **may** establish such administrative offices in **each county**, as may be necessary for the furtherance of its functions under this Act".	We propose a deletion of the words "in each County" such as to leave it to the discretion of the Authority to determine whether to set up an administrative office in a certain County depending on the need.	**Risk: Possible Financial Implications if Authority is to have Administrative Offices in each County. However, key word is "may".**
4.	Section 13 (2) (d).	Enforcement of Axle Load Regulations.	The section provides for KeNHA's function being, "..ensuring adherence to the rules and guidelines on axle load control as provided under the Traffic Act"; This does not give effect to Axle Load Regulations.	We propose to include the words "..and any other subsequent regulations under this Act" after the words "Traffic Act" to incorporate the Axle Load Regulations.	**See New Section 13(2) (e).**
5.	Section 14(2) (f).	Board Composition of	We note that KeNHA's Board does not provide	We propose that consideration be given on	

		KeNHA. Members Nominated by certain Organizations.	for a representative from Kenya Association of Manufacturers (KAM) which we believe would be a great value addition than KEPSA (which is quite wide and not sector-specific). We opine that a representative from KAM would have expertise on and advise on urban planning of roads to meet the needs of manufacturing businesses which are the drivers of the economy.	dropping KEPSA from the list and in its place, engaging a representative of KAM in line with the government's "Big Four Agenda" for economic development.	**-KEPSA, ICPAK, LSK dropped from the list of institutions.** **-IEK and ISK retained.** **-New Subsection (g) added which provides for two persons to be appointed by the CS and the appointments to take account of ethnic diversity.**
6.	Section 14(5).	Board Composition of KeNHA. Members Nominated by certain Organizations	The Section provides that "Despite subsection (1), the Principal Secretary in the Ministry or State department responsible for matters Board of the Kenya National Highways Authority relating to roads and the Principal Secretary in the ministry or State department responsible	We propose that this be amended such that the two Principal Secretaries be represented individually even if under the Same Cabinet Secretary. We opine that their roles are quite different (one being on Transport Policy while the other on Infrastructure) and each would be a value addition in their own individual right. This would also solve the issue of quorum and the	**Risk: Low Risk Level provided the requisite skills can still be afforded to the Authority by the attendees and the quorum maintained.**

			for matters relating to transport or their alternates may both not be members of the Board if they serve under the same Cabinet Secretary".	number of Members in the Board.	
7.	Section 22 (3).	Procedure for appointment of the Chairperson and Members.	The section provides that the procedure for the appointment of the Chairperson and members of the Authority under sections 14, 17 and 20 shall be as set out in Part C of the Second Schedule to this Act. However, the Second Schedule does not contain a "Part C". Similarly, the Second Schedule does not provide for appointment procedures but provides for "the Provisions relating to the Conduct of Business and Affairs of a Board".	There is need to provide for the Procedure for appointment as envisaged herein. Similarly, Section 22 (3) needs to be amended accordingly to make reference to the correct section/schedule.	**Section 22 (3) deleted in its entirety.**

8.	Section 29.	The Director General Qualifications.	Under Section 29 (2)(a), the requirement for "Highway Engineering" field has been dropped which is in the 2007 Act. Similarly, the ten (10) years' experience do not indicate the date of commencement of measuring the experience.	We propose that the requirement for **Highway Engineering** field be retained to enable the Director General be well conversant with the core day to day workings of the Authority. Under Section 29(2)(b), we also propose an amendment for the section to now read; "has had at least ten years' post- registration experience and at least ten years' experience in a management level in the roads sector".	**Retained "Civil Engineering" in the place of the proposed "Highway Engineering".** **Risk: May present a lack of a specialized qualification that specifically targets roads and highways. However, this may be mitigated by the recruiting panel who may evaluate the candidates based on a higher standard of specialization.**
9.	Section 45 (3).	Notice before exercising power of ordering removal of utilities.	The Section provides for the removal of the utility within sixty (60) days of such notice by the Authority. The sixty (60) days period in our opinion would be prejudicial to KeNHA especially in an instance where costs are constantly being incurred as a result of	We propose a shorter time period of fourteen (14) days depending on the reasonable time required to move such utility.	

			the delay of such relocation or where the utility poses a safety threat to road users.		
10.	Section 46(1) (a).	Occupation of Private Land.	The section provides that "..a road Authority may — (a) in the development, construction, rehabilitation or maintenance of a road;	We propose to include the word "or" after the words "...road;" for clarity.	
11.	Section 52 (4).	Disputes between Counties on inter-county roads and bridges.	The Section provides that: Where the relevant county governments are not able to agree as provided under subsection (3), any county government may refer the matter to the Intergovernmental Relations Technical Committee under the Intergovernmental Relations Act for determination by the Council of Governors, on any matter including —	We propose to include a provision of the Act to the effect that the decision of the IRTC shall be final and binding to avert unnecessary litigation in judicial courts between counties leading to stalled Authority Projects.	**Risk: Possible lengthy litigation battles between Counties (with multiple Appeals) which may lead to stalling of Authority's projects.**

			(a)whether a road, bridge, drain or other service is required; (b)the standard of construction or maintenance; (c)each county government's share of construction or maintenance costs; or (d)which county government should exercise management and control of the road.		
12.	New Section after Section 67.	Fees and Charges.	The section provides that "Each Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services or for the use of road reserves under their jurisdiction".	Introduce a new section to cater for penalties and fines. The new section may read as follows:- **"The Authorities may impose fines and penalties on those who violate axle load provisions".** We propose an additional different section giving power to the Authority to charge fines and penalties/fines in the event of Axle Load violations. Currently axle load violations is costing the Authority a lot of money in defending legal	**Risk: The Authority had hoped to ease its legal battles through having weighbridge records as prima facie proof but the proposal has been rejected.** **However, on a separate note, notably, Section 67(2) has been included to cater for regulation and enforcement of Axle Load violations in PPP Projects. In this regard, Project Agreement Terms will prevail over the Act.**

				suits where the Constitutionalism of the fines and fees are challenged in judicial Courts. We need to also provide that the weighbridge records showing the weight levels and the overload records by KeNHA be prima facie proof of violation/offence. See also section 98.	
13.	Section 70.	(Side) Annotation.	The annotation to the section currently reads; "Authority to have power of a county government for National trunk roads."	Having read the spirit of what the section intends to achieve, we propose, for clarity, to reword the annotation to read: "Authority to have power over national trunk roads similar to the power of a County Government for/over county roads."	**Risk: Possible friction between Counties and the Authority in road Projects within Counties. Can be mitigated through proper dialogue and stakeholder engagements with Counties.**
14.	Section 74.	Improvement of National Trunk Road vis a vis County Road.	The Section provides that "If a county government considers that improvements to a national trunk road in its area would be beneficial to the county road network, the county government may make financial arrangements with the	Currently as worded, the County consults with the Authority after it has made financial arrangements. We however propose that before a County even makes financial arrangements for a road, it must consult with the Authority.	**Risk: (Same as above)- Possible friction between Counties and the Authority in road Projects within Counties. Can similarly be mitigated through proper dialogue and stakeholder engagements with Counties.**

			relevant/ respective authority for the improvements to be made."		
15.	Section 75(10(b).	Where an approval is sought and the Authority does not respond.	The Section provides for an implied approval by silence or non-responsiveness of the Authority.	We propose a deletion of this subsection 10 in its entirety as there are a number of issues that the Authority needs to consider and silence cannot be implied to be consent.	**However, a provision has been added that gives the Authority leeway to have more time to respond simply by notifying the Party (within 21 days) that it will require more time.**
16.	Section 76.	County Government Powers.	The Section Provides that "A county government may exercise, for a national trunk road in its area, all the powers that it may exercise for a county road in its area: Provided notification of the actions or powers intended has been provided and consented to by the National Agency with delegated powers over the road."	We propose a deletion of the entire Section 76 which we opine will only serve to create confusion over the mandate of the Authority with regards to roads under its jurisdiction.	**Low Risk. Can be mitigated by constant and positive engagement with the County Governments in projects.**
17.	Section 78 (4).	Notice required prior to removal or unauthorized and/or illegal structures on a road reserve.	The Section provides that "Where a person, without the permission required by subsection (1), or contrary to any permission given	We propose that where the structures have been erected without following the necessary procedure, the Authority be given the power to eject/demolish the same	**Low Risk- Provided the Authority gives adequate notice, it could still act effectively to achieve its mandate albeit slightly delayed.**

			thereof, erects, constructs, lays or establishes a structure or other thing, or makes a structural alteration or addition to a structure or other thing, the Authority may, by notice in writing, direct that person to remove the unauthorized structure, other thing, alteration or addition within a reasonable period which shall be stated in the notice but which may not be shorter than thirty days calculated from the date of the notice".	without notice and at the cost of the person who erected the same. This will improve on compliance.	
18.	Section102 (5) (a).	Transitional Provisions- The Board.	The Section Provides that "Upon the commencement of this Act— (a)the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority shall stand	Board Transition – the Boards shall not be dissolved when the Act comes into effect, instead they should be dissolved when new Boards are constituted under the new Act.	**High Risk. The transition period when the New Act comes into effect may jeopardize/paralyzed the operations of the Authority.**

			dissolved on the appointed date;" This would adversely affect the operations of the Authority (ies) and we propose that the same be amended.		

KERRA

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
Third Schedule Consequential Amendments	a) 50% of the RMLF funds allocated to Kenya National Secondary Roads Authority to be distributed equally to all the constituencies for routine maintenance and spot improvement of National Trunk Road network within constituencies. a) 50% to be retained by the Kenya National Secondary Roads Authority for maintenance of the paved road network under the Authority's mandate.	The increased funding will provide for spot improvement of the unpaved road network (regravelling and construction of missing drainage structures including culverts, minor bridges and drifts). The amendment will ensure that there are adequate funds for maintenance of the national secondary trunk road network as prioritized by Constituency Roads Committees. This is to avoid deterioration of the network.

KRB

KENYA ROADS BILL, 2017

PROPOSED AMENDMENTS TO THE **Kenya Roads Board Act, No. 7, 1999.**

Amendment:

Sec 6(2)(l) Operational and Administrative expenses

- The amendment has quoted this section as Sec 6(2)(i). This should be replaced with Sec 6(2)(l).
- Once the above section is amended, section 6(2)(l)(ii) ceases to exist and therefore its amendment is not necessary as proposed.
- The numbering of the subsections inserted after subsection 2(l) bearing (j), (k), (l) and (m) should be re-numbered to reflect the correct sequence.

S12 (2). Appointment of the Executive Director.

The Amendment proposes as follows;

Delete and substitute therefor the following new subsection– (2) A person shall be qualified for appointment as the Executive Director if that person–

(a) holds a degree in finance, accounting, law or engineering from a university recognized in Kenya;

(b) has knowledge and at least ten years' experience in a relevant field;

(c) has served in a senior management position for a period of at least five years; and

(d) satisfies the requirements of Chapter Six of the Constitution.

The Position of KRB is that;

1. The object and purpose for which the Kenya Roads Board was established as given in section 6 (1) of the Kenya Roads Board Act, 1999, is to oversee the road network in Kenya and thereby coordinate development, rehabilitation and maintenance and to be the principle advisor to the Government on all matters related thereto. This has not changed to justify revisions to the requirements for appointment of the Executive Director.
   The Executive Director is the secretary to the Board and hence responsible for the day to day management of the functions of the Board, which are mainly to coordinate road maintenance policies, strategies and programs undertaken by Road Agencies.
   Further, County Governments which are at the moment managing, 121,000 Km of roads in the country, require technical assistance both at policy and operational level, to get them to attain professional practice in road maintenance/management like the current Road Authorities. To avoid collapse of the important road network managed by County Governments, Kenya Roads Board requires a technical Executive Director in the field of civil engineering to ensure good road maintenance.
   In this regard, the appropriate academic and professional qualifications to fulfil this object and purpose of the Board are in the civil engineering profession.
2. The proposed amendment targets to open up the position of the Executive Director to two specific fields, namely law and finance/accounting. There is no rationale of opening it up from civil engineering, to only include these two fields. Other professions like Economics, Planning, Survey, Business Management and Social Sciences would also play a role if at all the position should be held by professions other than Civil Engineering.
   Further, the amendments do not stipulate professional requirements which dilutes the qualifications and professional accountability of the person appointed as Executive Director.
3. The requirements proposed except (d) are not in parity with the requirements for appointment of Director Generals in the Road Authorities (holder of a Bachelor's degree in civil engineering, Masters degree and registered engineer) as stipulated in section 29 of the Kenya Roads Bill, 2017.
4. Requirement No. (c), for the holder to have served in a **senior management** position for a period of at least five years could be construed to target certain individuals in an organization. Should the amendment be allowed, the word **'senior'** should be **expunged** so that this requirement is at per with that adopted in this Bill for Director Generals of Road Authorities.

OUR PROPOSAL

Based on the above, we recommend that the requirements as stipulated in the current KRB Act remain as is and that the proposed amendment is withdrawn from the Kenya Roads Bill, 2017.

ADOPTED CLASSIFICATION SYSTEM

- The System then divides Rural and Urban road networks into three broad functional groups;

  - Arterial Roads,
  - Collector Roads, and,
  - Local Roads

- These functional groups are then divided into Road Classes as summarized in the following table

FUNCTIONAL SYSTEM	LEVEL OF SERVICE PROVIDED	RURAL ROAD CLASS	URBAN ROAD CLASS
Arterial	Provides highest Level of Service at the greatest permissible speed for the longest uninterrupted distance, with total control of access	S	-
		A	H
		B	J
Collector	Provides lower Level of Service than arterial roads at lower permissible speeds over shorter distances, with limited access control. Meant to collect traffic from local roads and connect it with arterials	C	K
		D	L
Local	Consists of all roads not defined as arterials or collectors; primarily provides access to residential, commercial or industrial areas with little, or no, through movement	E	M
		F	N
		G	P

Comparison of the Old System and the Current

COMPARISON OF OLD VS NEW CLASSIFICATION

OLD CLASS	LENGTH	NEW CLASS	LENGTH	
		S	80.9	+80.9
A	3,577.3	A	7,485.1	+3,908.1
B	2,642.9	B	10,209.8	+7,566.9
C	7,851.5	C	9,293.7	+1,442.2
D	10,718.7	D	12,354.6	+1,635.9
E	26,724.1	E	20,703.9	-6,020.2
SPR	10,506.0	F	9,115.9	
U	98,865.9	G	79,145.9	
Grand Total	**160,886.4**	H	227.4	
		J	312.5	
		K	2,138.8	

KENYA RURAL ROADS AUTHORITY

PROPOSED AMENDMENTS TO THE KENYA ROADS BILL, 2017

PRESENTED BY THE KENYA RURAL ROADS AUTHORITY

TO THE SENATE STANDING COMMITTEE ON ROADS AND TRANSPORTATION

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
18(1) & 19(1)	The clauses are retained in the Bill.	Research conducted prior to the formation of Roads Authorities in 2007 demonstrated the need for ownership of roads as an asset by specialized agencies. In the bill, Kenya National Secondary Roads Authority has been allocated class C roads.
		The ownership by the specialized agencies ensures proper management of the road assets.

En uka K. Kimeli
Acting Director General,
21/06/2018

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
		The roads allocated to the Kenya National Secondary Roads Authority in the Bill (Class C) are unique in terms of their purpose hence need for a specialized agency to manage them. Majority of the population in Kenya lives in the areas covered by this network hence the need for the network to be assigned to a specialized agency at national level for the proper management of the network. Prior to the formation of Kenya Rural Roads Authority - the precursor of Kenya National Secondary Roads Authority, the road network in these parts of the country had been neglected leading to deterioration. The defunct Local Authorities had neglected many of these roads before the national Government took over. However, due to the huge network, the National Government could not cope with maintenance of these

Eng[redacted]uka K. Kimeli
Acting Director General,

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
		roads. This led to the establishment of Kenya Rural Roads Authority to manage part of the network. Since the formation of Kenya Rural Roads Authority there has been remarkable improvement of the National Secondary Road Network spurring developments in far flung areas of the Country. Class C roads are critical for support of the primary growth sectors of the economy such as Agriculture, tourism and the extractives industries. The Authority is currently implementing the Roads 10,000 Low Volume Seal Programme under which the National Government intends to upgrade 10,000 Kms of roads to bitumen standard. To date 950 Kms of roads have been upgraded to Bitumen Standard. The ongoing contracts so far are for 6,300 Kms and 3,700 Kms are under procurement.

En ika K. Kimeli
Acting Director General,

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
		The Low Volume Seal Programme being undertaken by the Authority is critical to the delivery of the National Government's Big Four Agenda. This is in respect to Job creation, food security, provision of health and increased shelter. The opening up of these key Secondary Roads have allowed the population to live in more affordable housing away from urban centres and still access critical Government services. The Authority has been instrumental in the construction of the missing drainage structures across the Country particularly those linking Constituencies.

En ıka K. Kimeli
Acting Director General,

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
104 Third Schedule Consequential Amendments	Clause 2 is amended by deleting paragraph 2 and inserting "Thirty-two percent (32%) is allocated to the Kenya National Secondary Roads Authority in respect of Secondary National Trunk roads and the said per centum to be distributed as follows;	Secondary National Trunks Roads have not attracted substantial donor funds. It is therefore proposed that the allocations for maintenance of these critical link roads be increased from the Road Maintenance Levy Fund, being the only source of funding currently. The road network for the Secondary National Trunk Roads is a combination of both paved roads and unpaved roads and because of their economic and social function, the maintenance needs for the roads is higher. The maintenance backlog over the years is also high owing to minimal budgetary allocation. Most paved roads have continued to deteriorate over the years yet budgetary allocations for resealing, regravelling or recarpetting could have extended the lifespan of such roads by an additional five (5) years or more.

En[illegible]ka K. Kimeli
Acting Director General,

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
Third Schedule Consequential Amendments		Critical drainage structures are still missing on some roads while the existing ones constructed during the pre-independence era require replacement owing to the aging factor and the increase in the traffic loading using such roads. With the explanation indicated above, Kenya National Secondary Roads Authority will require additional funding to address both the historical challenges of a poorly maintained network and also plan to maintain the network that is currently being upgraded to bitumen standards

En ika K. Kimeli
Acting Director General,

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
Third Schedule Consequential Amendments	a) 50% to be distributed equally to all the constituencies for routine maintenance and spot improvement of National Trunk Road network within constituencies. a) 50% to be retained by the Kenya National Secondary Roads Authority for maintenance of the paved road network under the Authority's mandate.	The increased funding will provide for spot improvement of the unpaved road network (regravelling and construction of missing drainage structures including culverts, minor bridges and drifts). The amendment will ensure that there are adequate funds for maintenance of the national secondary trunk road network as prioritized by Constituency Roads Committees. This is to avoid deterioration of the network.

ENG. LUKA K. KIMELI
AG. DIRECTOR GENERAL 12/06/018

En uka K. Kimeli
Acting Director General,

PRESENTATION TO THE

THE SENATE COMMITTEE ON ROADS AND TRANSPORTATION

ON THE

CONSIDERATION OF THE KENYA ROADS BILL, 2017

FROM

KENYA URBAN ROADS AUTHORITY (KURA)

12TH JUNE, 2018

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1.0 EXECUTIVE SUMMARY

- The Constitution of Kenya 2010 defines roads as either National Trunk Roads or County Roads.
- The Kenya Roads Act, 2007 was enacted before the promulgation of the Constitution of Kenya 2010 and efforts to align it accordingly commenced with the draft Roads Bill 2015 under the 11th Parliament.
- The Roads Bill 2017 was re-submitted to the 12th Parliament and has gone through the National Assembly
- In general Kenya Urban Roads Authority is in agreement with the contents of the Roads Bill, 2017 as passed by the National Assembly
- Reforms in the road management started with the World Bank's Road Management Initiative (RMI) and the Sessional Paper No.5 of 2006 on sustainable Management and Development of the road sector which informed the enactment of the Roads Act, 2007 that created road agencies including KURA.
- The Road Maintenance Initiative (RMI) recognized the policy shift in road management and maintenance, through four basic building blocks namely stable financing, ownership, clear responsibilities and commercialized management of roads
- Since its inception, KURA has Road Assets in urban areas that has grown from Kshs. 200 Billion in 2009 to approximately at Kshs. One (1) Trillion currently.
- KURA has established over time an optimum structure with staff spread across the counties and gained experience in the design and implementation of complex urban roads projects. This has contributed to its overall operational efficiency for instance in 2016/17 out of a total budget of sh. 20billion only sh. 1billion (5%) was spend on operational costs.
- Since its inception, KURA has executed its mandate to successfully deliver safe and efficient urban road transport infrastructure. The achievements include; construction of 172km of new roads, rehabilitation of 167.7km, provision of 36 bridges and interchanges constructed, 288.8km of pedestrian walkways constructed, 431.8km put under periodic maintenance and 9,797km of roads under routine maintenance (an average of 1,322km annually)
- The Authority is implementing Intelligent Transport Systems (ITS) and has developed a strong in-house human resource capacity and modern technology.

- Kenya Urban Roads Authority has initiated a Bus Rapid Transit (BRT) concept and design in Kenya with Feasibility studies and Engineering Designs of Lines 3, 4 and 5 at advance stages in collaboration with development partners and other Government agencies.
- KURA has established links with development partners on both ongoing and planned projects hence the need to safeguard.
- KURA has provided and will continue to provide professional and technical assistance aimed at building capacity to the County Governments on matters related to urban road management.
- There are technical and socio-economic considerations that make urban road management unique in terms of design and construction as compared to other roads.
- Economic analysis by the Kenya Road Sector Investment Programme (2010 – 2024) determined the benefit-cost ratio for urban roads developed and managed by KURA at 16.8 as compared to the national average of 2.6, KeNHA's 4.8, KeRRA's 2.1 and KWS 1.0. This corresponds to a higher economic return for every shilling invested in urban roads. As highlighted, every shilling invested in urban roads gives an economic return of 16.8 Kenya Shillings.

- Best practices in management of urban roads in modern cities and urban areas, require mandating an Autonomous agency like KURA with this task that will bear fruits in terms of development and efficient management of an urban road network
- It is therefore justifiable to further enhance the Mandate of KURA to manage National urban roads which constitute major arterials within cities and urban areas. These roads are the ones classified as classes H and J in the road reclassification totaling to about 3,500km.
- To provide adequate and sustainable resources for more efficient development and management of national urban roads in Kenya, it is therefore proposed that a proportion of **28%** of Road Maintenance Levy Fund as determined in the RSIP be allocated to KURA to facilitate sustainable management and maintenance of urban roads.

2.0 BACKGROUND

The reforms in the management of roads started in 1990s, through adoption of World Bank's Road Management Initiative (RMI) pillared on stable financing, defined ownership, clear responsibility and commercialized management.

The Government in the year 2003 instituted measures that led to a paradigm shift in policy. An Economic Recovery for Wealth creation Strategy was adopted which emphasized the need for improved infrastructure development.

Consequently, Sessional Paper No. 5 of 2006 on Sustainable Management and Development of the Roads Sector similar to the World Bank's RMI was developed and adopted and provided overall guide as relates to the roads sector.

The above efforts led to enactment of Kenya Roads Act, 2007 that created KURA, KeRRA and KeNHA.

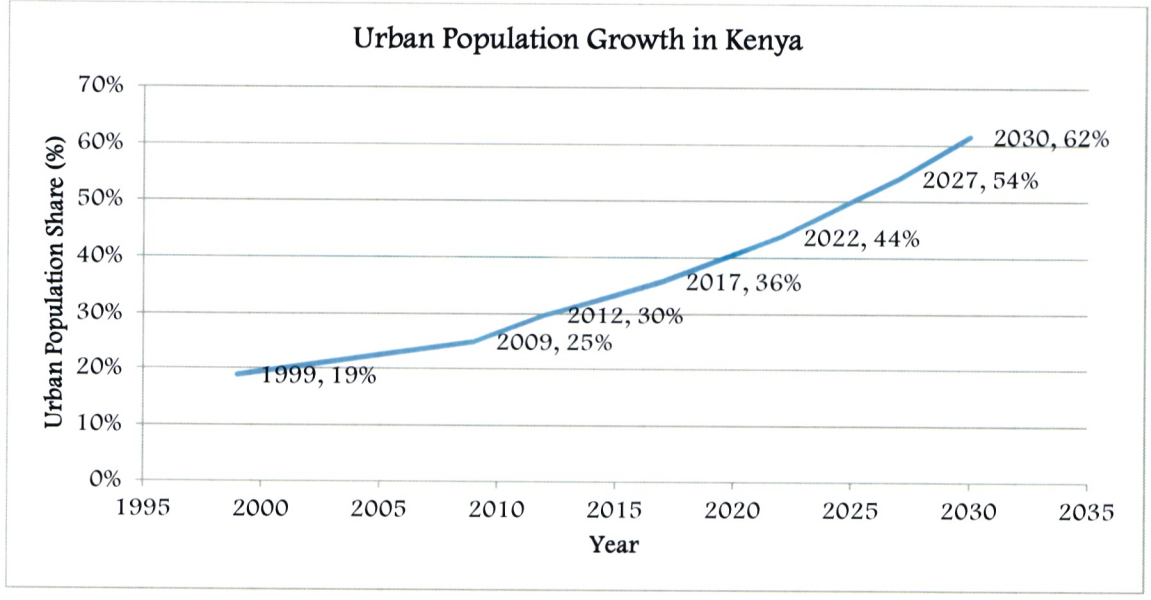
KURA took over the responsibilities of Roads in the 46 Municipalities and the City of Nairobi. KeNHA was assigned to manage national highways, while KeRRA was in charge of rural roads. Consequently the Kenya Roads Board Act, 1999 was amended to provide for allocation of funds to the three roads authorities.

The Kenya Roads Act, 2007 was enacted before the promulgation of the Constitution of Kenya 2010 and efforts to align it accordingly commenced with the draft Roads Bill 2015. The enactment process went through the National Assembly during the 11th Parliament and forwarded to the Senate for consideration. However the Bill was not fully processed by the Senate. In the course of its life in the last Parliament, the Bill was subjected to various stakeholder engagements, participation and consultation. It was in the course of these engagements that the current institutional setup of road agencies to manage the National Trunk roads was adopted namely Kenya Urban Roads Authority (KURA), Kenya National Highways Authority (KeNHA) and Kenya Rural Roads Authority (KeRRA).

3.0 ROADS AND URBANIZATION

The importance and uniqueness of National Trunk roads in urban areas cannot be overemphasized as:-

1. It is envisaged that 60% of the Population will be living in urban areas by year 2030 as illustrated in the graph below (Kenya Vision 2030).



Source: Nairobi Metro 2030

Provision of efficient infrastructure for this population is one of the biggest challenges to the government.

2. The enactment of the Urban Areas and Cities Act, 2012 is evidence of the importance the Country is putting in the critical role these urban areas play in overall development of the Country. With the amendments to this Act, KURA's mandate will be expanded to include more urban areas as will be qualified per the criteria.
3. Cities and Urban Areas are economic power houses of countries worldwide. They are centres of production and consumption, transport hubs and the nodes of international trade and commerce which constitute 80% of the world's economic output (Nairobi Metro 2030).
4. In Kenya, approximately 70% of the GDP is contributed by urban areas (Kenya Vision 2030). For instance, the City of Nairobi alone contributes over 45% of the National Gross Domestic Product (Nairobi Metro 2030). This indicates that ensuring well-being of urban areas has a stronger multiplier effect on the economy compared to other areas. An efficient road network is a key enabler to GDP growth.

5. For liveable urban areas, there's need to have a developed and well managed transport system especially roads. This is because according to the Kenya's Integrated National Transport Policy 2009, over 93% of the transport demand (freight and passenger travel needs) in Kenya is met by road. Current capacity and efficiency to undertake and manage the National Trunk road in urban areas have been established and harnessed under KURA as outlined in Chapter 6 of this report.

Based on the RMI requirements, we wish to present a case to the Senate for consideration while considering the Roads Bill, 2017 aiming at ensuring the vital assets in urban areas (Roads) need to be properly managed to conform to the best practices in the world as the Government moves to align the management of roads in the country to the Constitution of Kenya 2010.

The main focus of this submission is to justify the need for The Roads Bill 2017 to recognize and consider the continuity in the provision of national urban road network by Kenya Urban Roads Authority. This will build on the existing experience and achievements of the Authority. In the context of evolving policy environment including legal framework and the need to harmonize KURA's mandate to the Constitution of Kenya 2010, the Roads Bill 2017 will play a critical role in bridging this gap.

4.0 URBAN ROADS NETWORK IN KENYA AND PROPOSED MANAGEMENT

Upon attaining independence, Kenya embarked on an ambitious road development program to support the envisioned social- economic growth. This program outstripped the rate of road maintenance resulting in deterioration and ultimate loss of road asset and increased vehicle operating cost. The Road Maintenance Initiative (RMI) conference held in 1992 noted the need for policy shift in road management and maintenance, through four basic building blocks as outlined below:-

1. ***Stable financing:*** – Securing adequate and stable flow of funds to the road sub-sector. This pillar was achieved through enactment of Kenya Roads Board Act, 1999 which established the Road Maintenance Levy Fund (RMLF) dedicated to road maintenance leaving allocations from exchequer to the sub-sector for development of roads purposes. KURA in addition to putting these funds to the intended use has secured funds for development of roads from development partners and is currently undertaking negotiations with private sector investors for Public Private Partnership (PPP) infrastructure financing.
2. ***Ownership:***- through involvement of road users in the management of roads thereby winning their active support. This pillar is embedded in our constitution through the right to information and stakeholder participation requirements. Apart from conduct of consultative forums with stakeholders within the proximity of project roads, project affected persons, government institutions and opinion leaders, KURA has adopted consultative framework for identification and prioritization of development and maintenance projects. This consultative program is continuously being improved and with expanded role of KURA, to include county headquarters and upcoming urban areas Strategic consultative framework is being developed to ensure flow of information to the citizens especially through their representatives e.g. M.Ps.
3. **Clarified responsibility**: - through clear mandate and legal identity for each organization involved in the sub-sector. The pillar was addressed through establishment of the three road agencies under The Roads Act, 2007 with clear mandates and specified road network to manage. This has enhanced development, maintenance and securing of road assets and eliminated duplication of roles and neglect of some roads in the past where the responsibility was lamped together and vested in the Ministry.
4. **Commercialized management**: - The Authority has provided effective and business-like approach to road management through prudent financial management and engagement of partners in road development due to the autonomous nature of the structure. This has

allowed KURA to adopt best ICT systems in management of roads e.g. ERP and modern risk management systems as well as the adoption of the PPP financing model.

According to the fourth schedule of the Roads bill 2017, major urban roads are classified as follows:

Class H: Urban major arterials highways meant to carry through traffic and relatively long distance traffic between widely separated parts of the urban areas. They are required to provide mobility within an urban area as opposed to access. This category of roads include, Ngong road, Jogoo Road, Outer Ring Road, Enterprise Road, Uhuru Highway in Nairobi and other similar highways in other cities and urban areas including county headquarters.

Class J: Minor arterials meant to carry traffic between different zones of the urban area and include the principal urban bus routes. They include roads within economic zones that are planned by the National Government and roads within State Houses and Lodges including their access roads. They are required to provide mobility as opposed to access. Examples of this category include Valley road, Likoni road and special purpose roads of national importance.

In the roads classification; roads Class H and J are proposed to be National Trunk Roads and to be managed together with National Trunk Roads (Class S, A, B & C) while the rest are proposed to be county roads to be managed by County Governments. Under this proposal KURA is assigned to manage classes H & J totaling **3,500km** due to their urban nature and high volumes of traffic both motorized and non-motorized.

Under the current roads sub-sector management the country has realized renewal of existing road assets, improved standards of road network, reduction in maintenance backlog, improved accessibility to residential, business and industrial areas, spread of road development to smaller urban areas and otherwise marginalized areas as well as opening up of informal settlements within urban areas. These developments were executed while addressing and mitigating environmental and social impact/concerns. These achievements were realized in Cities and Urban Areas under auspices of Kenya Urban Roads Authority (KURA). With KURA mandate expanding to cover all County Headquarters and the new urban areas qualified under the amended Cities and Urban Areas Act, 2012, more urban areas are expected to realize great infrastructure developments within these centres.

5.0 UNIQUENESS OF URBAN ROADS

Historically, urban roads were managed by both the National Government and the Local Authorities. However the Local Authorities could not efficiently address the infrastructure challenges to support the urban economic activities. This situation is partly associated with lack of special attention for development and management of urban roads due to competition for resources by other services then. This resulted into dilapidation and deterioration of roads in the urban areas due to poor management. This informed the reforms in the road sub-sector as mentioned in the background.

Since the establishment of KURA under the Roads Act, 2007 there has been a remarkable paradigm shift in the development and management of urban roads in the Country. There has been orderly development, management and maintenance of urban roads due to the business-like approach adopted by KURA arising from its professionalism, effective systems, procedures and managerial accountability. The Authority has since made significant achievements as outlined in section 6.0 overleaf.

The Constitution of Kenya, 2010 defines roads into National Trunk roads and County Roads. The National Trunk roads traverse both urban and rural setups and the National Government proposes that the national roads within urban areas be managed by a specialized institution to safe guard the gains realized since the reforms in the sector in terms of technical capacity and infrastructural improvements.

Some of the unique characteristics of National urban roads which justify special attention include the following:-

5.1 Road Design

Urban roads are specially designed to cater for the unique needs and character of the urban population. As such the design of these roads is based on specific guidelines as opposed to national trunk roads and rural roads. Urban roads follow the guidelines of Road Design Manual Part 2, among other engineering best practices, while both rural and national highway roads are designed based on Road Design Manual Part 1. The difference is that while rural and national highway roads emphasize on high speed flow with or without access requirements, urban designs emphasize on mobility defined by levels of service and access. Safety in the urban road design is also paramount and the design speed is mostly capped at 50km/hr unlike the other categories of roads where design speeds up to 110km/hr are allowed.

5.2 Urban Roadway Components

Urban roads components are different from the Highways and Rural roads because of high traffic volumes in urban areas, the unique nature of the environment within which the road is located, the road function and the road users. These includes carriageway, covered drains designed to drain the adjoining environment, pedestrian facilities i.e walkways, pedestrian crossings, foot bridges including ramps to cater for PLWD, cycle tracks, specialized junctions in form of interchanges, over/under passes, mass transport systems such as the bus rapid transport (BRT) lanes and traffic management systems such as Intelligent Transport Systems (ITS) among others. The urban design is geared towards the principle where road is being shared by both motorized and non-motorized traffic putting into consideration safety and convenience of all users while ensuring mass movement of people and goods. To execute these requirements KURA has developed technical capacity and inculcated urban design culture over the years among its human resource and this is an asset to be sustained going forward.

On the contrary, experience has shown that roads developed within urban areas with highways and rural designs have not catered for requisite facilities for urban setups thus compromising on efficient mobility of both motorized and non-motorized transport as well as safety of road users.



City mortuary roundabout on Ngong Road Phase 1 project

5.3 Socio – Economic and Environmental Safeguards

Provision of infrastructure in Cities and Urban areas present challenging socio-economic activities owing to dense population and the competing user needs resulting to limited flexibility of road alignment routing and use of road reserve. The road corridor in most cases is a shared space having to accommodate utility services (water, sewer, electricity and communication cables). The complex nature and interests of stakeholders encountered in urban areas is diverse in terms of living standards, culture and needs. KURA has developed in-house capacity, skills and competence for effective engagement of these diverse stakeholders and their complex needs in compliance with the general spirit and principles of the Constitution as well as international best practices. KURA undertakes measures to protect and safeguard the integrity of the urban environment and vulnerable communities.

To this end, the expertise of KURA has enabled successful integration of social and environment safe guards in all of its development projects funded by the GoK and Development Partners. These roads include the Nairobi Western Ring Roads, Ngong Road Phase I, Nairobi Eastern Missing Link Roads and Non-Motorized Traffic Facilities, Meru Bypass, Outer Ring Road and Bombolulu - Bakarani Road in Mombasa, among others.

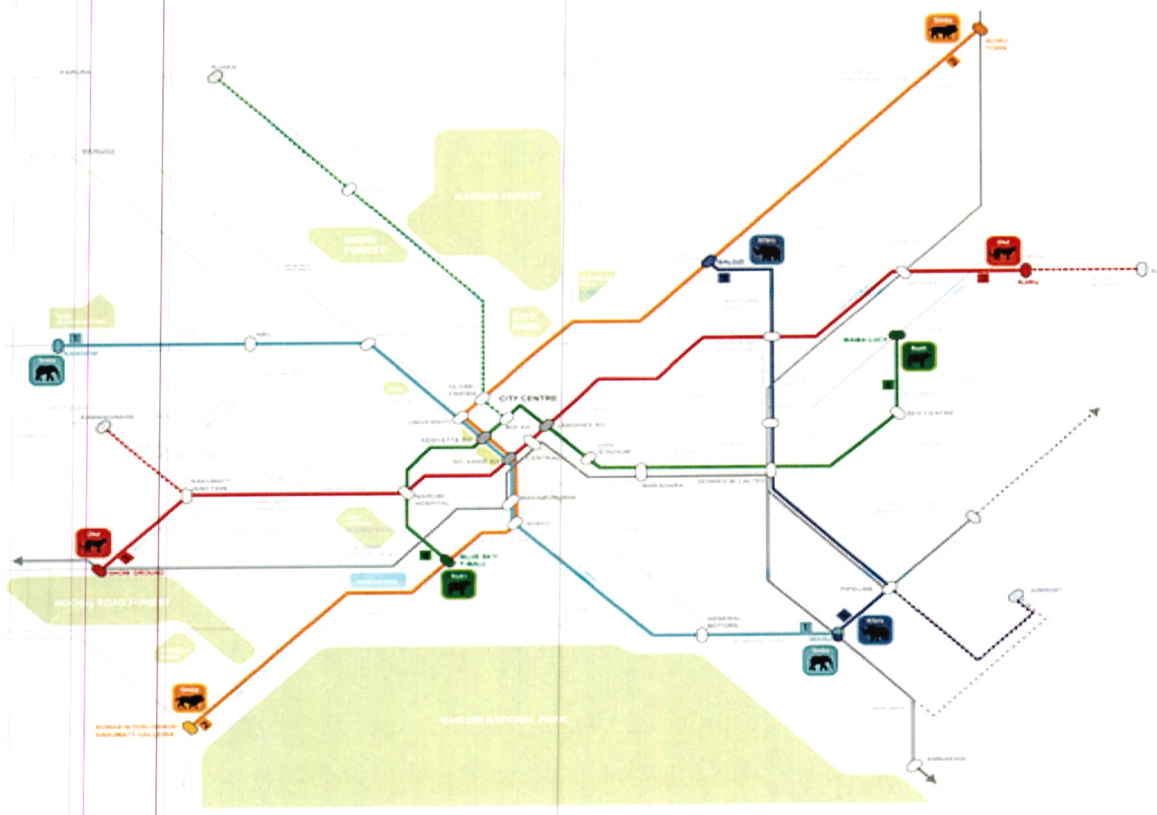


Plate 1: A section of the Meru Bypass under construction

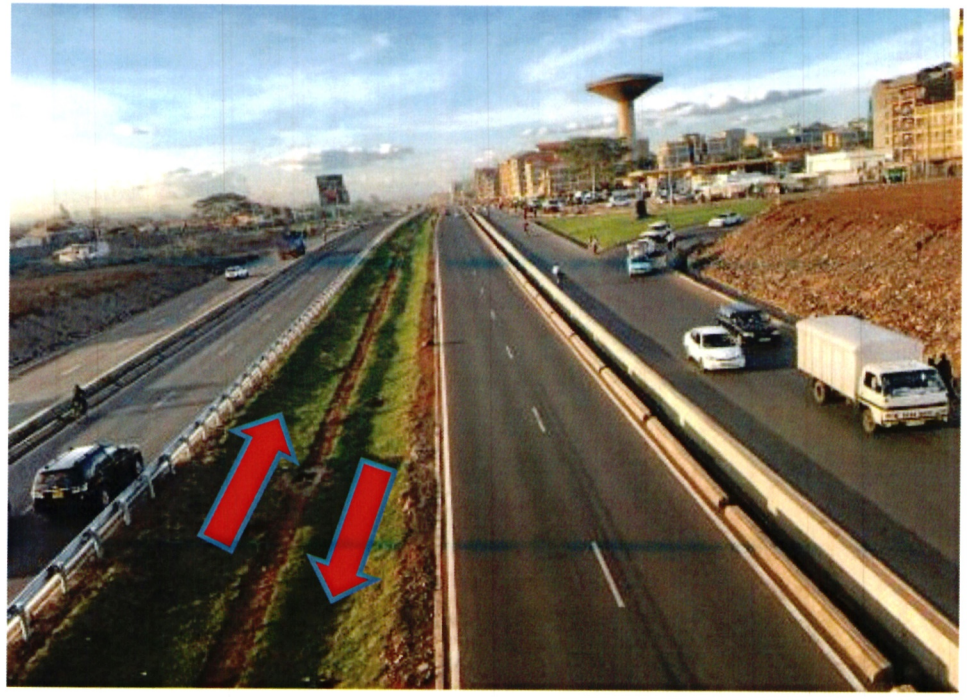
5.4 Bus Rapid Transit (BRT) Infrastructure

One of the mitigation measures for congestion in the urban areas is to provide mass rapid transport systems. To this end, Kenya Urban Roads Authority (KURA), in liaison with development partners, has pioneered the Bus Rapid Transit (BRT) concept and initiated Feasibility studies and Engineering Designs for Lines 3, 4 and 5 **(details as captioned in sketch map below)** that are at advance stages for the development of BRT infrastructure.

The BRT facilities once developed would be handed over to Nairobi Metropolitan Area Transport Agency (NAMATA) for operation of the rolling stock and policy matters. This is because the mandate of KURA is to develop infrastructure while NAMATA's mandate is policy, regulation and operation. Indeed KURA has already developed Ngong Road and Outer Ring with the concept of BRT. The newly constructed carriageway between Kenya National Library and Prestige was designed to carry BRT and will be converted to serve the purpose once outer vehicular lanes are constructed while on the Ngong Road phase II project, the southern part of the road corridor has been set aside for additional lanes to cater for BRT system.



Proposed Bus Rapid Transit routes



Section of Outer Ring Road showing space left out for future BRT lanes

5.5 Intelligent Transport Management Systems

Considerable challenges of congestion, air pollution and traffic accidents are witnessed daily in urban areas with an ever-increasing trend. These challenges can be attributed to high growth rate in urban population, inadequate mobility options, insufficient road network capacity, lack of enforcement of traffic rules and a lack of traffic management and control measures among others. As such, there is dire need for urban areas transport infrastructure that incorporates sophisticated specialized, robust, modern traffic management systems similar to those developed in modern cities and urban areas worldwide. Projects such as Intelligent Transport Management System (ITS) where traffic management and Control measures including enforcement are interlinked are essential in addressing the challenges experienced in urban areas. ITS is an integrated traffic management system which relays real-time traffic information on roads and gives priority to most congested arm at a junction and at the same time delay arrival of more traffic to reduce further pilling up. This is controlled at a Traffic Management Centre (TMC).

As part of KURA's mandate to oversee (in collaboration with Traffic Police, Nairobi City County Government, NAMATA and NTSA) the management of traffic and road safety on roads under its jurisdiction, KURA has carried out studies which estimate that with the installation of a modern ITS, the network capacity and safety of the roads in Nairobi city may be enhanced substantially.

In this regard; KURA in collaboration with the World Bank, has identified 400 junctions in Nairobi for installation of ITS. Feasibility studies and designs of 100 junctions was been carried out and financing for the same has been arranged for construction of a Traffic Management Centre (TMC) and some of the junctions.

In preparation for the above scheme, KURA has started with a pilot project of 8 junctions complete with ITS infrastructure on Nairobi Western Ring Roads and construction of a model TMC financed by GoK. In addition, KURA in collaboration with JICA, recently installed standalone traffic signalizations on Ngong Road phase 1. For works on Ngong Road phase 2, KURA will also install ITS infrastructure on 4 junctions interlinked with the 8 junctions on Nairobi Western Ring Roads and the model TMC. To this end KURA has established an Intelligent Transport System Department to manage the implementation of ITS in Cities and urban areas. The ITS infrastructure being installed includes the following;

- Traffic signal systems, vehicle detectors and a surveillance system comprising multiple Closed Circuit TV (CCTV) cameras and a communication network.
- E-Police cameras to record violations
- A traffic management centre (TMC) to house the equipment and staff to operate the system.
- Incorporate as required those components and devices that are associated with the upcoming Bus Rapid Transit (BRT).

KURA has become the pioneer not only in Kenya but also in the region on the implementation of ITS with a strong in-house human resource capacity and modern technology. This has generated a lot of interests from development partners who are looking forward to financing ITS Projects in Kenya through KURA. KURA plans to undertake ITS designs in other major cities and urban areas in preparation of rolling out the program.



Plate 2: ITS Pilot Project on Nairobi Western Ring Roads



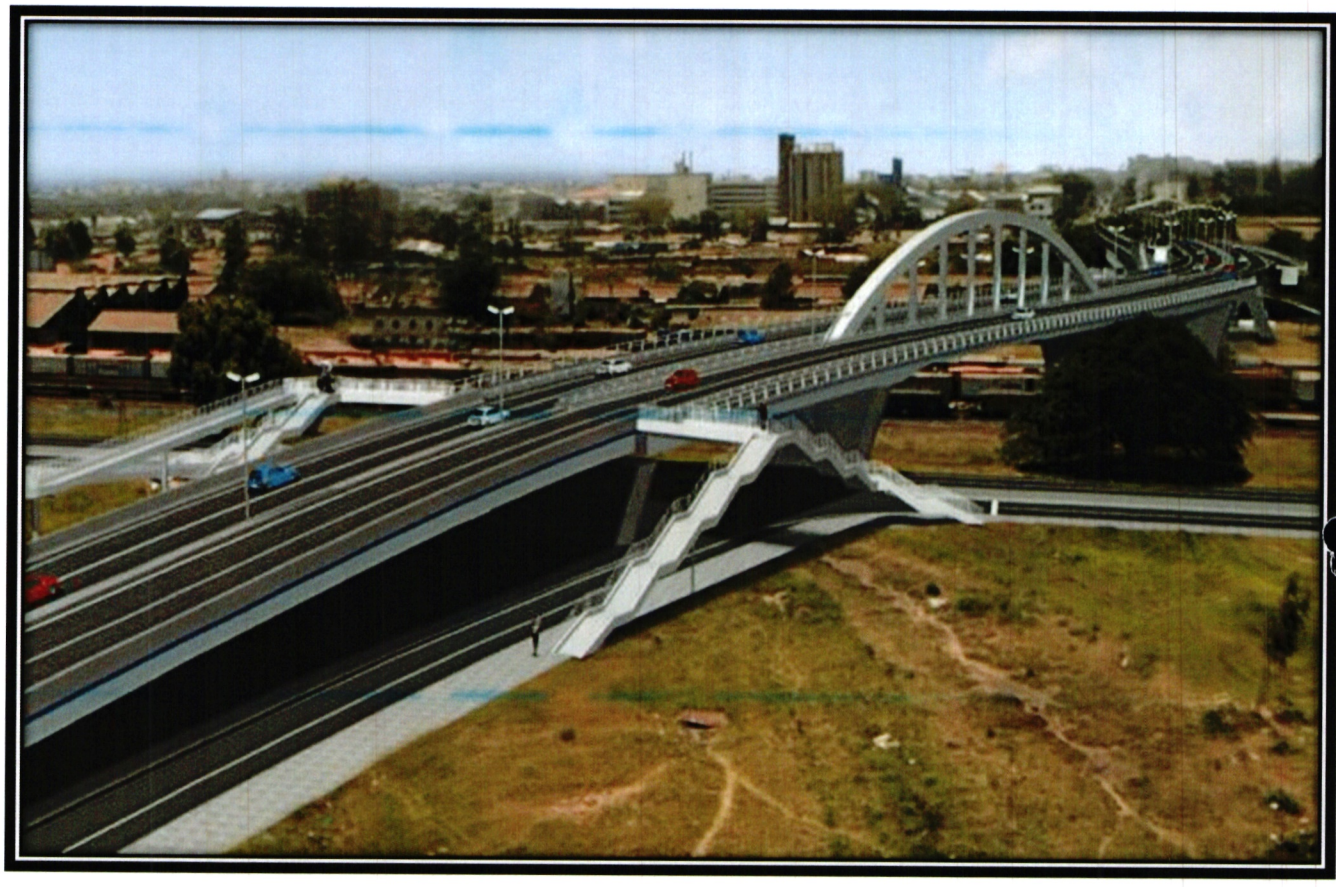
Plate 3: TMC at KURA – Live screenshots

5.6 Established Strategic Development Partnerships

Some development partners have specific interests in urban infrastructure development and require dedicated teams for implementation of specific projects. Since inception in the year 2009, KURA has consistently engaged with development partners on urban roads development which has resulted in high level donor confidence in KURA as witnessed in successful implementation of several road projects. These projects include; Nairobi Western Ring Roads and Dualling of Ngong Road (JICA), Outer Ring Road (AfDB), Meru Bypass (WB), Construction of Nairobi Eastern Missing Links (EU). Upcoming projects under donor funding include; Dualling of Ngong road phase 2, Dualling of Eastern and Northern Bypasses, Construction of Nairobi Eastern Interchanges, Intelligent Transport Management System (ITS) and Nairobi Viaducts projects. Further, KURA is in the process of securing development partner support in bridging the financing gaps in developing National Trunk Urban roads in marginalized areas.

To further this confidence, a fully-fledged department of Special Projects was setup to specifically deal with donor funded projects, a move which was welcomed by the development partners.

The support of development partners which is a major complimentary development source of financing to the Government is pegged on the level of confidence of these partners, which need to be nurtured and sustained. It is therefore prudent to ensure continuity of this working relationship for the benefit of development of National Trunk Urban roads.



Proposed Viaduct across Railway City (Haile Selassie Rd – Enterprise Rd)

5.7 Cost of Construction

Arising from the unique road-way components and design as elaborated in 4.1 and 4.2 above, the unit cost of development of urban roads is high compared to other types of roads. From the comparison of cost of recent road developments in Kenya, the unit cost for development of 1km of urban road is equivalent to the cost of 4km of rural road and 3.2km of National trunk road currently under KeRRA and KeNHA respectively. The situation is exacerbated by issues unique to urban areas such as; relocation of services and project affected persons, high cost of land acquisition and capital intensive structures that are constructed such as interchanges, overpasses, underpasses, road over rail, pedestrian walkways and cycle tracks among others. These structures are necessary to assist in the reduction of conflicts due to high traffic concentration and thus ensure sustainable levels of service and reduction of negative transportation impacts such as congestion and air pollution which are rampant in urban areas. The high level of traffic volumes

on urban roads leads to high rate of dilapidation and therefore requires a well-organized and sustainable financing and maintenance system under a dedicated institution.

Financing the urban road infrastructure thus requires keen attention without any competing interests as would be the case if the urban roads management was merely a unit of an institution instead of a dedicated agency like KURA.

5.8 Return on Investment (ROI)

Economic analysis by the Kenya Road Sector Investment Programme (RSIP 2010 – 2024) determined the benefit-cost ratio for urban roads developed and managed by KURA at 16.8 as compared to the national average of 2.6, (KeNHA's 4.8, KeRRA's 2.1 and KWS 1.0). This corresponds to a higher economic return for every shilling invested in urban roads. As highlighted, every shilling invested in urban roads gives an economic return of 16.8 Kenya Shillings. This makes national urban roads a better facilitator of positive national economic development.

Further, traffic growth forecasts for urban areas are projected to grow faster than both rural and inter-urban areas between 2010 and 2030. The projected traffic growth calls for commensurate provision of infrastructure in cities and urban areas. The table overleaf presents the projections in traffic growth.

Traffic Growth	Inter-urban (National Trunk Roads)			Urban			Rural Roads		
% per annum	2005-10	2010-20	2020-30	2005-10	2010-20	2020-30	2005-10	2010-20	2020-30
Cars	6.8%	7.0%	7.3%	8.1%	8.4%	8.9%	6.1%	6.1%	5.8%
Matatu	6.0%	6.1%	5.5%	7.3%	7.5%	7.1%	5.3%	5.2%	4.1%
Other Light	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
Trucks	6.3%	6.3%	6.3%	6.3%	6.3%	6.3%	6.3%	6.3%	6.3%
Buses	5.5%	5.5%	5.5%	6.8%	6.8%	7.1%	4.8%	4.6%	4.1%

Source: Kenya Roads Sector Investment Programme (2010 – 2024)



Outering Road before and after construction

5.9 Global Best Practice in the Roads Sub-sector

In the development of the institutional framework for management of roads, best practice gives consideration to the function and the economic importance of the roads as opposed to the size of the road network.

In Japan for instance, the national express ways are managed by the National Expressway Companies (NEXCOs) who take charge of specific important roads. These institutions are normally fully fledged companies complete with pool of staff and adequate budget among other resources.

In South Africa, the South Africa National Roads Agency Limited (SANRAL) manages a total of 200km in the South Africa while in Ethiopia there are several road authorities whose operations are regional based and each manages less than 200km of road network. The roads in the countries mentioned herein are well managed compared to the Kenyan case where an Authority has more road network to manage. For instance, before the reclassification of roads, KURA was responsible for over 12,000 Km of Roads in 46 municipalities and the City of Nairobi. However the Authority on average managed to maintain only about 1,400km of roads annually. This is partly due to inadequate road maintenance funding to cover the whole network.

After reclassification, KURA was assigned to manage 3,500Km of National urban road network which compares favorably with the best practices mentioned above.

5.10 Projected Resource allocation

Financial resource requirements and proposed projected RMLF allocation in the Kenya Road Sector Investment Programme (2010 – 2024) is as follows:

Agency	Allocation as per RMLF Act 2007 (%)	RSIP Projected allocation 2014 (%)	RSIP Projected allocation 2024 (%)
KeNHA	40	34.4	28.7
KeRRA	32	37.8	28.0
KURA	15	26.2	30.9
KWS	1	1.7	2.8

Source: Kenya Road Sector Investment Programme (2010 – 2024)

These projections are in line with the effects of urbanization trends in Kenya on the demand for road transport infrastructure in Urban Areas. ***From the above projections it is estimated that the optimal allocation requirements for KURA in 2018 would be 28%.***

6.0 ACHIEVEMENT OF KURA TO DATE

6.1 Construction and maintenance of roads

Since its establishment in 2009, KURA has executed its mandate to successfully deliver safe and efficient urban road transport infrastructure. With the enactment of the Kenya Roads Act, 2007 all roads in the 46 municipalities and in the City of Nairobi were taken over by the Kenya Urban Roads Authority under whose watch 172km of new roads have been developed, 167.7km reconstructed and rehabilitated, 36 bridges and interchanges constructed, 288.8km of pedestrian walkways constructed, 431.8km put under periodic maintenance and 9,797km of roads under routine maintenance (an average of 1,322km annually).

The Authority's infrastructure footprint include:-

- The construction of the Northern and Eastern Bypasses,
- Improvement of Outer Ring Road,
- Dualling of Ngong Road Phase I,
- Construction Meru Bypass,
- Upgrading of Eastleigh Roads,
- Construction of Lodwar Town Roads
- Construction of Kapsoya Roads in Eldoret,
- Expansion of Langata Road (KWS-Bomas of Kenya),
- Construction of Kabarnet Town Roads,
- Construction of the Nairobi Eastern Missing Link Roads,
- Construction of Garissa Town Roads,
- Construction of Mokowe town roads and
- Improvement of Upper Hill Roads in Nairobi.
- Improvement of roads within Voi Town
- Improvement of roads within Kapenguria Town; among others

The expansion of the urban road network including bypasses has proved very attractive especially for motorists and transit traffic on the Eastern side of Nairobi City. Since Northern and Eastern bypasses are rerouting significant portion of transit traffic away from Nairobi Central Business District (NCBD), they have partly assisted decongesting the City.

In the same vein, KURA also completed the rehabilitation of several roads which have significantly changed the face of Nakuru Town. These roads include: Oginga Odinga Road, Government Road, General Kariba Road and West Road among others. In achieving the successes mentioned herein, KURA used a total of Kshs.25.58 Billion to carry out Periodic and routine maintenance and Kshs.37 Billion from Gok and Kshs.16Billion from Development partners to construct new urban roads.

Summary of achievements of the Authority are tabulated overleaf.

Summary of KURA Achievements for last 5years:-

Financial Year	Designs (KM)	New Construction of roads (KM)	Upgrading and Rehabilitation of urban roads (KM)	Bridges and Interchanges (No.)	Footpaths and NMT (KM)	Periodic Maintenance (KM)	Routine Maintenance (KM)
2012/13	120	15.5	20.06	0	31	8.7	212
2013/14	71.3	22.15	27.45	4	33.4	31.65	544.2
2014/15	23.2	26.88	12.01	5	36.11	26.7	1,722.62
2015/16	49.5	25.97	17.51	2	28.77	37.64	1,464.25
2016/17	76	12.99	16.7	25	29.93	90.35	1,559.78
Total	**340**	**177.2**	**167.71**	**36**	**288.81**	**431.82**	**9,797.5**

Source: Kenya Urban Roads Authority Annual Report FY 2016/2017

6.2 Capacity Building and Consultancy Services to Counties

In addition to the links with development partners, KURA has also worked closely with County Government in the design and construction of urban roads. KURA intends to strategically offer technical assistance aimed at capacity building of the County Governments by providing consultancy services.

The Counties that have collaborated with KURA include:

1. Turakana — for the design and construction of Lodwar Town roads
2. Wajir — design and supervision of Wajir Town roads
3. Mandera — design and supervision of Mandera Town roads project
4. Uasin Gishu — training of staff under internships program
5. Marsabit — sponsoring of youths for training courses

Other Counties that have requested for consideration of expanded reclassification of roads within Urban Areas include; intergovernmental agreements as well as memorandum of understanding

6. *Bomet*
7. *Kitui*
8. *Turkana*
9. *Busia*
10. *Isiolo*
11. *Nyeri*

7.0 KURA' s CONTRIBUTION TO THE ACHIEVEMENT OF THE GOVERNMENTS' AGENDA

In the immediate term, KURA plays a significant role in the realization of the governments' big four agenda by supporting value addition in manufacturing; the provision of universal, quality and affordable health care; access to adequate and affordable housing; and ensuring food security.

i) **Manufacturing:** - KURA continues to develop roads in industrial towns. Notable examples are the recent upgrading of roads within the industrial area of Nairobi City County, access to Infinity Industrial Park in Nairobi and access to UNSOA/Refinery road in Mombasa. KURA will thus continue to provide access to planned industrial zones and parks in the country.

ii) **Affordable health care:** - KURA has improved access to major health facilities in the recent past. KURA is upgrading the Mbagathi link road which has improved accesses within and around the biggest referral hospital in the country, Kenyatta National Hospital. KURA also upgraded the road to Mama Lucy Hospital in Nairobi City and Chuka level 5 Hospital in Chuka town. KURA also rehabilitated and improved access roads within Mathari Hospital and Karatina Hospital loop in Nyeri County. KURA has planned to rehabilitate and maintain major accesses to health facilities of national importance to support the government agenda for access to universal healthcare.

iii) **Affordable housing:** - The government will soon launch the prototype project for the construction of 8,000 low cost houses. KURA is currently constructing the Mlolongo – Kware – Katani road in the vicinity of the proposed locations and plans to undertake other road projects within and around subsequent housing projects in the Country.

iv) **Food Security:** - Food security not only forms parts of the Governments agenda but is also key in the realization of Vision 2030. KURA is currently constructing roads in the food baskets of the country to facilitate movement of goods to and from these areas. Notable examples include Improvement of Kitale township roads, Improvement of Kapenguria roads, Improvement of Bungoma township roads and Improvement of Eldoret township roads, among others.

8.0 WAY FORWARD

8.1 Current Strategic Management

From the foregoing, it is clear that Cities and Urban Areas are important and major contributors to national economic growth and national pride. Urbanization rates are very high and this calls for sustained efforts to ensure that our urban areas are livable, providing quality and healthy lives to the citizens.

Management of urban roads is quite challenging and complex. The provision of effective and efficient road network for urban clientele is a basic necessity for any modern city. This can only be achieved in an all-inclusive, collaborative and integrated governance system as envisaged under the Constitution. A dedicated agency like KURA is best placed to ensure development and maintenance of road infrastructure that satisfies the urban demands building on the best practices, achievements and existing structures. The following establishes the proposed way forward with regard to the policy direction on the development and management of urban roads in Kenya:-

i) From the experiences of best practices in management of urban roads in modern cities and urban areas, it is evident that mandating an Autonomous agency like KURA with this task will bear fruits in terms of development and efficient management of an urban road network

ii) The progressive review of legal instruments to provide for the establishment of a state corporation with the mandate over major urban roads in Kenya will ensure continuity of service provision and secure the gains made over the years. It is therefore justifiable to further enhance the Mandate of KURA to manage National urban roads which constitute major arterials within cities and urban areas. These roads are the ones classified as classes H and J in the road reclassification totaling to about 3,500km.

iii) The need to provide adequate and sustainable resources for more efficient development and management of national urban roads in Kenya. This is informed by the relatively high unit cost of development of urban roads in comparison to highways and rural roads coupled with the importance of these urban areas in national development. It is therefore proposed that a proportion of **28%** of Road Maintenance Levy Fund as determined in the

RSIP be allocated to KURA to facilitate sustainable management and maintenance of urban roads.

8.2 KURA Strategic Plan 2018 – 2022

Arising from various polices and in particular the MTP III, the Authority's goals for the next five years are:

i) To uphold and enhance national values of social justice, inclusivity, equity, nondiscrimination and protection of the marginalized through balancing of regional distribution of urban road network;
ii) To improve the supply of urban road network in all cities and urban areas to match up with the demands created through rapid urbanization and level of motorization, and thereby close the existing road infrastructure gap in the country;
iii) To improve accessibility to industries, markets and pools of labor so as to spur economic growth and job creation;
iv) To develop and deploy latest technological solutions in road design, construction and monitoring such as ITS;
v) To improve transport affordability and sustainability through rapid expansion and maintenance of NMT and mass transit facilities;
vi) To reduce the negative impacts of road transport, including traffic congestion, and road accidents as well as environmental pollution within cities and urban areas;
vii) To ensure timely maintenance of the existing network.
viii) To become a leading Consulting Organization on Urban Road network development providing professional and technical services to the Citizens of Kenya.

8.3 Proposed inputs to the Roads Bill, 2017

Section	Position in the Draft Bill	Observations/Remarks	Proposed Amendments
Section 16(2)(g)	Empowers KURA to oversee the management of Traffic and Road Safety on the road network under its jurisdiction in collaboration with NTSA.		It may be prudent to amend that section to include the **Traffic Police Department** as such matters of enforcement are by law vested in the police.
Third Schedule	The allocation of RMLF is dealt with at the Third Schedule under Consequential Amendments as follows:- **KeNHA 35%** **KeNSRA 28%** **KeNURA 10%** **County Governments 16% (equally to all Counties)** **KWS 1%** **Priority Projects under CS approval 7% (to include 1%**	The current allocation to KURA as provided by the Roads Act of 2007 is 15%.	Although the RSIP projected the allocation for **KeNURA** at **28%** of total RMLF collection by 2018; we propose to retain the allocation to KeNURA at **15%**. This proposal is premised on the impact of urban roads on the national economic and social pillars, the sector investment needs, current maintenance back log and unique nature of urban roads development and maintenance requirements. Urban areas being centres of production and consumption, and the nodes of international trade and commerce, the following established facts need consideration to inform funding proportion to

Section	Position in the Draft Bill	Observations/Remarks	Proposed Amendments
	material development and 1% research and testing) NTSA 1% KRB 2%		Urban roads:- - Urban centers are major contributors to National Gross Domestic Product with Nairobi alone contributing about 45% annually. The contribution is expected to increase with upcoming major urban areas in the amended Cities and Uban areas Act as well as the Resort Cities such as Konza Techno City, Lamu, Isiolo, Turkana and the envisaged regional metropolis of Nairobi, Kisumu- Kakamega, Kitui-Mwingi-Meru and Nakuru – Eldoret, Malindi/Kilifi/Mombasa/Kwale - The urban population share currently stands at 36% and is projected to increase to 62% by the year 2030 (Nairobi Metro 2030 report) - Sophisticated, robust and efficient transport

Section	Position in the Draft Bill	Observations/Remarks	Proposed Amendments
			infrastructure is key pillar for a strong economy and modern society. Considering that 93% of transport demand in Kenya is met by road, ensuring proper management of roads especially in existing and upcoming urban centres holds key to the realization of the Kenya Vision 2030 dream. - It is important to note that from comparison of recent road development costs in Kenya it was established that the unit cost for development of 1km of urban road is equivalent to the cost 4km of rural road and 3.2km of National trunk road currently under KeRRA and KeNHA respectively. This is due to the sophisticated nature of urban roads with such components as pedestrian walkways, cycle trucks, grade separated junctions, service ducts, service

Section	Position in the Draft Bill	Observations/Remarks	Proposed Amendments
			relocations, lined drains and unique road furniture. - Management of urban roads is quite challenging and expensive in that KURA with allocation of 15% of RMLF managed to maintain on average 1,700km annually.

KENYA ROADS BILL, 2017

SUBMISSION BY KENYA ROADS BOARD TO THE SENATE STANDING COMMITTEE ON ROADS & TRANSPORTATION

PROPOSED AMENDMENTS TO THE **Kenya Roads Board Act, No. 7, 1999.**

Amendment:

Sec 6(2)(l) Operational and Administrative expenses

- The amendment has quoted this section as Sec 6(2)(i). This should be replaced with Sec 6(2)(l).
- Once the above section is amended, section 6(2)(l)(ii) ceases to exist and therefore its amendment is not necessary as proposed.
- The numbering of the subsections inserted after subsection 2(l) bearing (j), (k), (l) and (m) should be re-numbered to reflect the correct sequence.

S12 (2). Appointment of the Executive Director.

The Amendment proposes as follows;

Delete and substitute therefor the following new subsection– (2) A person shall be qualified for appointment as the Executive Director if that person–

(a) holds a degree in finance, accounting, law or engineering from a university recognized in Kenya;

(b) has knowledge and at least ten years' experience in a relevant field;

(c) has served in a senior management position for a period of at least five years; and

(d) satisfies the requirements of Chapter Six of the Constitution.

The Position of KRB is that;

1. The object and purpose for which the Kenya Roads Board was established as given in section 6 (1) of the Kenya Roads Board Act, 1999, is to oversee the road network in Kenya and thereby coordinate development, rehabilitation and maintenance and to be the principle advisor to the Government on all matters related thereto. This has not changed to justify revisions to the requirements for appointment of the Executive Director.
   The Executive Director is the secretary to the Board and hence responsible for the day to day management of the functions of the Board, which are mainly to coordinate road maintenance policies, strategies and programs undertaken by Road Agencies.
   Further, County Governments which are at the moment managing, 121,000 Km of roads in the country, require technical assistance both at policy and operational level, to get them to attain professional practice in road maintenance/management like the current Road Authorities. To avoid collapse of the important road network managed by County Governments, Kenya Roads Board requires a technical Executive Director in the field of civil engineering to ensure good road maintenance.

In this regard, the appropriate academic and professional qualifications to fulfil this object and purpose of the Board are in the civil engineering profession.

2. The proposed amendment targets to open up the position of the Executive Director to two specific fields, namely law and finance/accounting. There is no rationale of opening it up from civil engineering, to only include these two fields. Other professions like Economics, Planning, Survey, Business Management and Social Sciences would also play a role if at all the position should be held by professions other than Civil Engineering.
   Further, the amendments do not stipulate professional requirements which dilutes the qualifications and professional accountability of the person appointed as Executive Director.
3. The requirements proposed except (d) are not in parity with the requirements for appointment of Director Generals in the Road Authorities (holder of a Bachelor's degree in civil engineering, Masters degree and registered engineer) as stipulated in section 29 of the Kenya Roads Bill, 2017.
4. Requirement No. (c), for the holder to have served in a **senior management** position for a period of at least five years could be construed to target certain individuals in an organization. Should the amendment be allowed, the word **'senior'** should be **expunged** so that this requirement is at per with that adopted in this Bill for Director Generals of Road Authorities.
5. Based on the above, it is recommended that the requirements as stipulated in the current KRB Act remain as is and that the proposed amendment is withdrawn from the Kenya Roads Bill, 2017.

Eng. Jacob Ruwa, OGW
Executive Director, Kenya Roads Board.

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   The Executive Director is the secretary to the Board and hence responsible for the day to day management of the functions of the Board, which are mainly to coordinate road maintenance policies, strategies and programs undertaken by Road Agencies.
   Further, County Governments which are at the moment managing, 121,000 Km of roads in the country, require technical assistance both at policy and operational level, to get them to attain professional practice in road maintenance/management like the current Road Authorities. To avoid collapse of the important road network managed by County Governments, Kenya Roads Board requires a technical Executive Director in the field of civil engineering to ensure good road maintenance.

In this regard, the appropriate academic and professional qualifications to fulfil this object and purpose of the Board are in the civil engineering profession.

2. The proposed amendment targets to open up the position of the Executive Director to two specific fields, namely law and finance/accounting. There is no rationale of opening it up from civil engineering, to only include these two fields. Other professions like Economics, Planning, Survey, Business Management and Social Sciences would also play a role if at all the position should be held by professions other than Civil Engineering.
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KENYA ROADS BILL, 2017

SUBMISSION BY KENYA ROADS BOARD TO THE SENATE STANDING COMMITTEE ON ROADS & TRANSPORTATION

PROPOSED AMENDMENTS TO THE **Kenya Roads Board Act, No. 7, 1999.**

Amendment:

Sec 6(2)(l) Operational and Administrative expenses

- The amendment has quoted this section as Sec 6(2)(i). This should be replaced with Sec 6(2)(l).
- Once the above section is amended, section 6(2)(l)(ii) ceases to exist and therefore its amendment is not necessary as proposed.
- The numbering of the subsections inserted after subsection 2(l) bearing (j), (k), (l) and (m) should be re-numbered to reflect the correct sequence.

S12 (2). Appointment of the Executive Director.

The Amendment proposes as follows;

Delete and substitute therefor the following new subsection– (2) A person shall be qualified for appointment as the Executive Director if that person–

(a) holds a degree in finance, accounting, law or engineering from a university recognized in Kenya;

(b) has knowledge and at least ten years' experience in a relevant field;

(c) has served in a senior management position for a period of at least five years; and

(d) satisfies the requirements of Chapter Six of the Constitution.

The Position of KRB is that;

1. The object and purpose for which the Kenya Roads Board was established as given in section 6 (1) of the Kenya Roads Board Act, 1999, is to oversee the road network in Kenya and thereby coordinate development, rehabilitation and maintenance and to be the principle advisor to the Government on all matters related thereto. This has not changed to justify revisions to the requirements for appointment of the Executive Director.
   The Executive Director is the secretary to the Board and hence responsible for the day to day management of the functions of the Board, which are mainly to coordinate road maintenance policies, strategies and programs undertaken by Road Agencies.
   Further, County Governments which are at the moment managing, 121,000 Km of roads in the country, require technical assistance both at policy and operational level, to get them to attain professional practice in road maintenance/management like the current Road Authorities. To avoid collapse of the important road network managed by County Governments, Kenya Roads Board requires a technical Executive Director in the field of civil engineering to ensure good road maintenance.

In this regard, the appropriate academic and professional qualifications to fulfil this object and purpose of the Board are in the civil engineering profession.

2. The proposed amendment targets to open up the position of the Executive Director to two specific fields, namely law and finance/accounting. There is no rationale of opening it up from civil engineering, to only include these two fields. Other professions like Economics, Planning, Survey, Business Management and Social Sciences would also play a role if at all the position should be held by professions other than Civil Engineering.
   Further, the amendments do not stipulate professional requirements which dilutes the qualifications and professional accountability of the person appointed as Executive Director.
3. The requirements proposed except (d) are not in parity with the requirements for appointment of Director Generals in the Road Authorities (holder of a Bachelor's degree in civil engineering, Masters degree and registered engineer) as stipulated in section 29 of the Kenya Roads Bill, 2017.
4. Requirement No. (c), for the holder to have served in a **senior management** position for a period of at least five years could be construed to target certain individuals in an organization. Should the amendment be allowed, the word **'senior'** should be **expunged** so that this requirement is at per with that adopted in this Bill for Director Generals of Road Authorities.
5. Based on the above, it is recommended that the requirements as stipulated in the current KRB Act remain as is and that the proposed amendment is withdrawn from the Kenya Roads Bill, 2017.

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Executive Director, Kenya Roads Board.

KENYA ROADS BILL, 2017

COMMENTS ON PROPOSED CLASSIFICATION OF PUBLIC ROADS

1. Background

The classification system in the First Schedule of the Bill is generally based on L.N. 2/2016. The legal notice was issued by the Transitional Authority under the Transition to Devolve Government Act No. 1 of 2012. It provides for:

i) A functional classification system which includes a level of service to be provided at each functional level as follows:

Functional System	Level of Service Provided	Rural Road Class	Urban Road Class
Arterial	Provide highest level of service at the greatest permissible speed for the longest uninterrupted distance, with access control.	S	-
		A	H (Au)
		B	J (Bu)
Collector	Provides lower level of service than arterial roads at lower permissible speeds over shorter distances with limited access control. Meant to collect traffic from local roads and connect it with arterials.	C	K (Cu)
		D	L (Du)
Local	Consist of all roads not defined as arterials or collectors: primarily provides access to residential, commercial or industrial areas with little or no through movement.	E	M (Eu)
		F	N (Fu)
		G	P (Gu)

ii) Assignment of functions to the National Government and County Governments in accordance with the Fourth Schedule of the Constitution based on the above classification as follows:

Government	Road Network	Road Classes
National Government	National Trunk Roads	A, B and C
County Governments	County Roads	D, E, F, G and Others

iii) Roads Registers for classes A, B and C under the National trunk roads network and classes D, E, F, G and others under each of the Counties' road network.

2. Comments

The shortfalls in the road classification in L.N. 2/2016 and the Kenya Roads Bill, 2017 are presented below.

(a) Classification and Register of Roads in the Fourth Schedule of L.N. 2/2016

(i) The classification system was based on the draft updated Road Design Manual Part I, 2009 which is under review and not approved, and not in accordance with the classification system in the approved Road Design Manual Part I, 1979.

(ii) The classification system provides for three functional levels, specifies a level of service at each functional level and a rural and urban road classes under each level of service. However, it specifies the same level of service for all road classes under each functional level yet a road class is specific to a level of service i.e. road classes S, A, B under Arterial cannot have the same level of service.

(iii) The road classes adopted are too many compared to the existing classification systems.

(iv) It does not provide descriptions for the road classes under each of the functional levels;

(v) It defines both road classes C and D as Collector roads and assigns Class C roads as a National Trunk Road which is inconsistent with the adopted functional classification system and assignment of functions under the Fourth Schedule of the Constitution because a collector road is neither a Trunk nor an Arterial Road.

However, the assignment of class C road as National Trunk Road is actually consistent with the existing classification system based on the Roads Act, 2007 and the Road Design Manual Part 1, 1979 that defines class C roads as primary roads linking Provincially important centres to each other or to higher class roads and should therefore be defined as a trunk/Arterial road and not collector road.

(vi) The classification systems and the road register for National trunk roads does not take cognizance of the existing international trunk road routes in Kenya which were assigned at Africa and Eastern Africa regional levels and cannot therefore be changed at National level. For example the register in the Legal notice reclassifies Malaba - Eldoret – Nakuru – Nairobi – Voi – Mombasa road as A8 whereas this road has two Trans–African highways routes traversing Kenya.

The routes are the A104 Road which runs from Cape Town in South Africa to Alexandria in Egypt through the Kenyan towns of Namanga, Athi River, Nairobi, Nakuru, Eldoret and Malaba and the A109 Road which runs from Mombasa to Lagos in Nigeria through the Kenyan towns of Athi River, Nairobi, Nakuru, Eldoret and Malaba. The A104 and the A109 routes run concurrently from Athi River in Kenya to Tororo in Uganda. From Tororo the A109 continues to Lagos through Kampala and the A104 to Nemule then Juba in South Sudan.

(vii) The classification systems and the trunk road register is not in accordance with the spirit of the Treaty for the Establishment of the East African Community which requires adoption of a common definition of classes of roads and route numbering systems as envisaged under Article 90(b) of the Treaty; For example the following Alphanumeric numbering system have been adopted for the international trunk roads:

- The Trans-African Highways are designated with letter "A" and three-digit number i.e. A104 and A109; and,

- Eastern African Highways are designated with letter "A" and one or two-digit number i.e. A1, A2, A3, A14 and A23.

(viii) It does not provide for a route numbering or naming system to guide classification of new roads and road identification by road users; and,

(ix) The assigned road numbers in the register are not linked with the previous road numbers and the description provided is not comprehensive enough to enable route identification i.e. the new route numbers are not supported by metadata.

(x) The register assigns a route number for a single carriage way and the left hand side carriage way for dual sections. It assigns the same route number and a suffix "-R" followed by number e.g. A8–R1 for the left hand side carriageway of dual sections. It also assigns A8-SOUTH for a loop road or circumferential section of the main road. The numbering system is confusing and not consistent with international practice.

(b) Classification of Public Roads in the First Schedule of the Kenya Roads Bill, 2017

(i) The classification system does not define the functional road classification system adopted in line with the international road classification system provided in L.N. 2/2016. It has a mix-up of classification system and ambiguous description of road classes has shown in the table below.

Road Network	L.N. 2/2016	First Schedule of Roads Bill 2017 as Amended by National Assembly on 18th April, 2018
National Trunk Roads	• Rural arterials roads (classes S, A, B) • Rural collector roads (class C) • Urban arterials roads (H and J) • Urban collector roads (class K)	• Primary National Trunk roads – Highway (class S) – International trunk road (class A) – National trunk roads (class B) – Major and minor urban arterials (class H and J) • Secondary National trunk roads – roads forming important regional routes (class C)
County Roads	• Rural collector roads (class D) • Local rural roads (classes E, F, and G) • Urban collector roads (class L) • Local urban roads (classes M, N and P)	• Collector Roads (class D) • Major and Minor feeder roads (class E and F) • Roads linking farms to market (class G) • Major and Minor urban collector roads (class K and L) • Main business and shopping streets in Urban areas (classes M) • Direct access to individual or group of properties and residential areas (Class N)

Road Network	L.N. 2/2016	First Schedule of Roads Bill 2017 as Amended by National Assembly on 18th April, 2018
		• Provides direct access to group or residential properties (Class P)

(ii) Further observations based on the above table are as follows:

- There is inconsistency in use of terminologies, for example L.N. 2/2016 classified roads in terms of functions i.e. arterials, collectors and locals whereas the First Schedule uses different terminologies i.e. primary and secondary trunk roads and introduces the terms major and minor feeder roads and it also uses minor and major urban arterials and collectors;

- In the Kenya Roads Bill, 2017 road classes "C" and "D" are described without indicating their functions i.e. arterial, collector or local;

- Whereas L.N. 2/2016 assigns only class C rural collector and class K urban collector as National trunk roads, the First Schedule of the Kenya Roads Bill assigns only class C rural collector as a National trunk road and class K urban collector as county road;

(iii) The mix up in terminologies and assignment of functions calls for harmonisation of terminologies in the Bill with International classification in the Legal notice and the road class assignments in accordance with the Fourth Schedule of the Constitution;

(iv) Based on the international classification system adopted in L.N. 2/2016, National Trunk Roads are functionally the Arterials and County Roads are functionally Collectors and Locals; to harmonise sub categorisation of the functional system to include Major, Minor and Urban should be introduced in a structured way without causing ambiguity;

(v) The Bill does not make provisions for publications and updating of the road registers for National trunk roads and County roads;

(vi) The Schedule does not provide for a route numbering or naming system to guide classification of new roads and identification by road agencies and users;

(vii) The description of class S roads is based on a level of service to be provided and does not conform to the classification system forming the basis for the other classes e.g. Class A is international trunk road, class B is trunk road forming important national routes, class C is roads forming important regional routes etc.; and,

(viii) The road classes adopted are not sequential and are too many.

Based on the international classification system, Collector and Local roads should be assigned as County Roads. However, historically these roads have been developed by National government or private developers and handed over to local governments for maintenance. The National government will still therefore be required to assist the

County government to development their networks and help them build capacity in development and maintenance of roads.

Further the County governments especially municipalities are best suited to undertake routine maintenance of the National Trunk Roads passing though their jurisdiction especially off-carriageway maintenance e.g. maintenance of the drainage systems.

The Bill should therefore provide for modalities for provision of technical support to the Counties governments by the National government through the national road agencies with respect to planning and development and provision of agency maintenance of National Trunk Roads sections located in municipalities by County governments.

3. Recommendations

In light of the above, the following amendments are proposed:

i) Replacement of the First Schedule of the Bill with the Schedule that provides for:

- A classification system based on international road classification system and the Fourth Schedule of the Constitution;
- Assignment of functions between National Government and County Governments with respect to the Fourth Schedule of the Constitution;
- Assignment of functions between the national Roads Authorities proposed for establishment under the Bill with respect to the National Trunk Roads;
- A route numbering or naming system to guide classification of new roads and road identification by road agencies and road users;

ii) Amendment to the Bill to provide for:

- Provision of technical support to the Counties governments by the National government through the national road agencies; and,
- Provision for agency routine maintenance of National Trunk Roads sections located in municipalities by County governments
- Publication and updating of road registers for National Trunk Roads and County Roads.

4. Proposed Amendments the Kenya Roads Bill, 2017

Item No.	Provision of Kenya Roads Bill, 2017			Comments
	Page	Section	Subject	
1.	1513	13(1)	Functions of the Kenya National Highways Authority	*Delete the characters* "S," *appearing in the third line.*
2.	1514	13(2)(b)		*Insert the words* "Classes A and B" *after the words* "national trunk roads"
3.	1514	13(2)(c)		*Insert the words* "Classes A and B" *after the words* "national trunk roads"
4.	1516	16(1)	Functions of the	*Delete the phrase* "primary national

Item No.	Provision of Kenya Roads Bill, 2017			Comments
	Page	Section	Subject	
			Kenya National Urban Roads Authority	trunk roads Classes H and J" *and replace therefore with the words* "secondary national trunk roads Class UA"
5.	1516	16(2)(b)		*Delete the phrase* "primary national trunk roads Classes H and J" *and replace therefore with the words* "secondary national trunk roads Class UA"
6.	1516	16(2)(c)		*Delete the phrase* "primary national trunk roads Classes H and J" *and replace therefore with the words* "secondary national trunk roads Class UA"
7.	1519	19(1)	Functions of the Kenya National Secondary Roads Authority	*Delete the words* "and D" *appearing after the words* "classes C"
8.	1519	19(2)(b)		*Insert the words* "Class C" *after the words* "secondary national trunk roads"
9.	1519	19(2)(c)		*Insert the words* "Class C" *after the words* "secondary national trunk roads"
10.	1558	First Schedule	Classification of Public Roads	*Delete the First Schedule and replace therefor with the schedule below*

FIRST SCHEDULE (s.10)
CLASSIFICATION OF PUBLIC ROADS

PART I: CLASSIFICATION SYSTEM

Road Function	Functional Category	Road Class	Class Description
National Trunk Roads	Major Arterial	A	International highways
		B	National strategic highways
	Minor Arterial	C	Inter-county highways
		UA	Minor Urban Arterials streets in municipalities and cities
County Roads	Major Collector	D	Inter-Sub county road
	Minor Collector	E	Intra-Sub county roads
	Minor and Major Urban Collectors	UC	Urban Collector Streets
	Local Rural	F	Rural access roads linking farms to market centres
		G	Direct rural access to institutions
	Local Urban	UL	Local Urban streets providing access to commercial properties and residential areas

PART II – NATIONAL TRUNK ROADS

Category	Class	Description
Major Arterial Roads	Class A	International highways forming parts of the Trans African and Eastern Africa Regional Highways routes including: i) Bypasses or connecting routes and full or partial circumferential beltways around and within urban areas; and ii) Supplemental radial and spar routes in urban areas connecting with the main route at one end, etc.
	Class B	National highways forming national strategic routes linking major national centres to each other or to class A roads including: i) Bypasses or connecting routes and full or partial circumferential beltways around and within urban areas; and ii) Supplemental radial and spar routes connecting with the main route at one end.
Minor Arterial Roads	Class C	Intercounty highways linking major regional centres to each other or to higher class roads.
	Class UA	Urban arterial road providing mobility between different zones of a city or a major urban centre and forming principal urban bus routes.

PART III – COUNTY ROADS

Category	Class	Description
Rural Roads	D	Major county collector roads linking centres within a county to each other or to higher class roads.
	E	Minor county collector roads linking centres within a sub-county to each other or to higher class roads.
	F	Local roads providing access to villages, market centres and commercial properties.
	G	Local roads providing direct access to public institutions.
Urban Roads	UC	Urban collector streets connecting to other collector roads or higher class roads.
	UL	Local urban streets providing direct access to businesses, public institutions or residential areas.

PART IV – ROUTE NUMBERING SYSTEM

Class	Description	Route Numbering System
A	(1) Trans African Highways routes including: i) Bypasses or connecting routes and full or partial circumferential beltways around and within urban areas; and ii) Supplemental radial and spar routes connecting with the main route at one end.	(i) Main route: Designated with letter "A" and three-digit number i.e. A104 and A109. (ii) Bypasses or connecting routes and full or partial circumferential beltways around and within urban areas: Designated with the number of the main route and an even number suffix preceded by dash e.g. A104-2, with suffixes for each county assigned progressively from West to East. (iii)Supplemental radial & spur routes connecting with the main route at one end: Designated with the number of the main route and an odd number suffix preceded by dash e.g. A104-1, with suffixes for each county assigned progressively from West to East.
	(2) Eastern Africa Regional Highways routes including: i) Bypasses or connecting routes and full or partial circumferential beltways around and within urban areas; and ii) Supplemental radial and spar routes connecting with the main route at one end.	(i) Main route: Designated with letter "A" and one or two-digit number i.e. A1, A2, A3, A14 and A23. (ii) Bypasses or connecting routes and full or partial circumferential beltways around and within urban areas: Designated with the number of the main route and an even number suffix preceded by dash e.g. A1-2, with suffixes for each county assigned progressively from West to East. (iii)Supplemental Radial & Spur routes connecting with the main route at one end: Designated with the number of the main route and an odd number suffix preceded by dash e.g. A1-1, with suffixes for each county assigned progressively from West to East.

Class	Description	Route Numbering System
B	National strategic routes linking principal towns to each other or to class A roads and include: iii) Bypasses or connecting routes and full or partial circumferential beltways around and within urban areas; and iv) Supplemental radial and spar routes connecting with the main route at one end.	(i) Main routes: Designated with letter "B" and a number from 1 to 19 progressively from West to East. (ii) Bypasses or connecting routes and full or partial circumferential beltways around and within urban areas: Designated with the number of the main route and an even number suffix preceded by dash e.g. B1-2. To avoid duplication, progressive prefixes are used from South to North for North bound routes and West to East for East bound routes. (iii)Supplemental radial & spur routes connecting with the main route at one end: Designated with the number of the main route and an odd number suffix preceded by dash e.g. B1-1. To avoid duplication, progressive prefixes are used from South to North for North bound routes and West to East for East bound routes.
C	Intercounty routes linking major regional centres to each other and to higher class roads.	Designated with letter "C" and a number from 100 to 899 progressively from West to East e.g. C100
UA	Urban arterial road providing mobility between different zones of a city or a major urban centre and forming principal urban bus routes.	Road Name and alphanumeric code prefix having county number, municipality (city) number and road number road number from 1 to 99 e.g. 47 / 003 UA1 — **KENYATTA AVENUE**
D	Inter-sub county routes linking centres within a county to each other or to higher class roads.	County number followed by "D" and a number designation ranging from 1 to 9 e.g. 01D01, 47D9 etc.
E	Intra Sub county roads linking centres within a sub-county to each other or to higher class roads.	County number followed by "E" and a number designation ranging from 10 to 99 e.g. 01E10, 47E91 etc.
UC	Urban collector streets connecting to other connector roads or higher class roads.	Road Name and alphanumeric code prefix having county number, municipality (city) number and road number e.g. 47 **WABERA**

Class	Description	Route Numbering System
		001 | UC2 | **STREET**
F	Rural roads providing access to villages, market centres and commercial properties.	County number followed by "F" and a three-digit designation from 100 to 999 e.g. 01F100 etc.
G	Local roads providing direct access to public institutions.	County number followed by "G" and a number designation from 1 to 99 e.g. 01G99
UL	Urban street providing direct access to businesses, public institutions or residential areas.	Road Name and alphanumeric code prefix having county number, municipality (city) number and road number e.g. 47 / 003 | UL1 | **MACHAKOS ROAD**