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TABLED
BY:

Hon. David Pkosing MP
Chairperson

THE NATIONAL ASSEMBLY

CLERK AT
THE TABLE:

A. Shibuko

TWELFTH PARLIAMENT

THIRD SESSION, 2019

THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON THE COUNTY ROADS, WALKWAYS AND PARKING BAYS) BILL, (SENATE
BILL NO.18 OF 2018).

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

DECEMBER, 2019



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A. ABBREVIATIONS AND ACRONYMS

KeRRA- Kenya Rural Roads Authority

KURA- Kenya Urban Roads Authority

B. CHAIRPERSON'S FOREWORD

The County Roads, Walkways and Parking Bays Bill, 2018 (Senate Bill No. 18) was read a first time on 3rd April, 2019 and was subsequently committed to the Departmental Committee on Transport, Public Works and Housing for consideration and facilitation of public participation pursuant to Standing Order 127.

The Clerk of the National Assembly placed adverts in the print media on 10th April, 2019 seeking for comments from the public on the Bill pursuant to Article 118 of the Constitution. The Committee received memoranda from one (1) stakeholder, the Ministry of Transport.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Ministry of Transport for responding to the Committee's advert inviting the public to present their views on the Bill.

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the County Roads, Walkways and Parking Bays Bill, 2018 (Senate Bill No. 18).

THE HON. DAVID PKOSING, MP, CBS

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

C. EXECUTIVE SUMMARY

The County Roads, Walkways and Parking Bays Bill, 2018 (Senate Bill No. 18) originated in the Senate and is sponsored by Sen. Ledama Ole Kina, MP.

The Bill Seeks to provide a legislative framework for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and pavements in each county. It also provides for the proper planning and placement of access-ways to commercial buildings along major roads within counties;

It confers on the County Executive Committee (CEC) Member responsible for matters relating to roads in each county is incomplete. It therefore delegates limited and conditional legislative powers and does not limit fundamental rights and freedoms.

Further, the Bill mandates county governments to plan, construct and maintain county roads, streets, lanes, alleys, parking bays, drainage systems and pavements within the respective counties.

The Bill concerns county governments in terms of Article 110(1) (a) of the Constitution as it contains provisions that affect the functions and powers of the county governments with respect to county transport, county roads, parking, and public road transport as set out under paragraph 5 of part 2 of the Fourth Schedule to the Constitution. The Bill therefore affects the functions and powers of county governments as provided under the Constitution; and is not a money Bill within the meaning of Article 114 of the Constitution.

The Committee made some of the following observations;

- 1) **Objects of the Bill**—There were already in place other laws/ Acts of Parliament that address all the issues captured in the Preamble such as the Physical Planning Act, Kenya Roads Act, 2007, the Traffic Act, the Public Roads and Roads of Access Act, the Street Adoption Act, the Persons with Disabilities Act and Urban Areas and Cities Act;
- 2) **Interpretation**— The Bill concerns county governments in terms of Article 110(1) (a) of the Constitution as it contains provisions that affect the functions and powers of the county governments with respect to county transport, county roads, parking, and public road transport as set out under paragraph 5 of part 2 of the Fourth Schedule to the Constitution. On the other hand, pursuant to paragraph 18 of part 1 of the Fourth Schedule to the Constitution, the national

government's powers and functions with regard to transport and communications include, among other things setting standards for the construction and maintenance of other roads by counties.

- 3) **Standards of construction**—The Bill has not stipulated the standards of construction and maintenance of county roads by counties which is a national government function in accordance with paragraph 18 of part 1 of the Fourth Schedule to the Constitution;
- 4) **Roles of State Agencies**—It was also observed that the roles of Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA) should be in line with the division of functions between the two levels of government in accordance with the Constitution. Further, in metropolitan areas, some county road network may serve as Rapid Transit Corridors.

1 PREFACE

1.1 Establishment of the Committee

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

1.2 Mandate of the Committee

2. The Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-
 - i. Transport;
 - ii. Roads;
 - iii. Public works;
 - iv. Construction and maintenance of roads, rails and buildings;
 - v. Air and seaports; and
 - vi. Housing.

3. In executing this mandate, the Committee oversees various State Departments, namely:
 - i. The State Department of Transport;
 - ii. The State Department of Infrastructure;
 - iii. The State Department of Housing and Urban Development;
 - iv. The State Department of Public Works; and
 - v. The State Department of Shipping and Maritime Affairs.

1.3 Committee Membership

The Committee was constituted by the House in December, 2017 and comprises of the following Members:-

Chairperson

Hon. David Pkosing, M.P.
Member for Pokot South Constituency

Jubilee Party

Vice-Chairperson

Hon. Moses Kuria, M.P.
Member for Gatundu North Constituency

Jubilee Party

Members

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

Hon. Peris Tobiko, M.P.
Member for Kajiado East Constituency
Jubilee Party

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

Hon. Mugambi Murwithithania Rindikiri,
M.P.
Member for Buuri Constituency
Jubilee Party

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

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

Hon. Rigathi Gachagua M.P.
Member for Mathira Constituency
Jubilee Party

Hon. Rehema Dida Jaldesa M.P.
Member for Isiolo County
Jubilee Party

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

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

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

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

Hon. Suleiman D. Ramadhani M.P.
Member for Msambweni Constituency
Orange Democratic Movement Party

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

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

Hon. Vincent Kemosi Mogaka M.P.
Member for West Mugirango Constituency
Ford Kenya Party

Hon. Savula Ayub Angatia M.P.
Member for Lugari Constituency
Amani National Congress Party

1.4 Committee Secretariat

The Committee is resourced by the following members of the secretariat:-

Ms. Chelagat Tungo Aaron
First Clerk Assistant
Lead Clerk

Mr. Ahmed Salim Abdalla
Second Clerk Assistant

Mr. Abdinasir Moge Yusuf
Fiscal Analyst

Ms. Mercy Wanyonyi
Legal Counsel

Ms. Noelle Chelangat
Media Relations Officer

Mr. James Muguna
Research Officer III

Mr. Collins Mahamba
Audio Recording Officer

Ms. Zainabu Wario
Sergeant at Arms

2.0 INTRODUCTION

4. The County Roads, Walkways and Parking Bays Bill, 2018 was read a first time and committed to the Standing Committee on 11th September 2019.
5. Pursuant to Article 118 (1) (b) of the Constitution and Standing Order No. 127, of the National Assembly Standing Orders, the Departmental Committee on Transport, Public Works and Housing invited interested members of the public to submit any representations that they may have on the Bill on Thursday, 11th October, 2019 at Kenyatta International Convention Centre (KICC). The Committee invited submissions from members of the public on the Bill through an advertisement in the Daily Nation Newspaper and the Standard Newspaper of Monday, 8th October, 2019.
6. The principal objective of the Bill is to provide a legislative framework for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and pavements in each county. It also provides for the proper planning and placement of access-ways to commercial buildings along major roads within counties.
7. The Bill seeks to provide a framework for county roads planning with regard to economic development and accessibility of services. This is in line with Article 174(f) of the Constitution, which states that one of the core goals of devolution is the promotion of social and economic development and the provision of easily accessible services throughout Kenya.

2.1 OVERVIEW OF THE BILL

8. The Constitution of Kenya ushered in a new system of governance that created various duties between the national government and the county governments. Transport is a shared function as per the Fourth Schedule of the Constitution. The County Roads, Walkways and Parking Bays Bill, 2018 seeks to provide for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and pavements. The Bill also is intended to provide for proper planning of access ways to commercial buildings along major roads.
9. Clause 6, 7 and 8 of the Bill contains provisions on the construction and maintenance of streets, lanes alleys, parking bays and walkways by the county government. The responsibility for the construction of these amenities lies with the county executive member responsible for matters relating to roads.
10. Clause 9 of the Bill states that the County Executive Member shall designate areas for use by pedestrians for the purpose of crossing a county road in the county in a manner that does not interfere with the flow of traffic and complies with national and county legislation. This clause requires the CEC to ensure the construction of footbridges or any other convenience for use by pedestrians to cross a major road.
11. Clause 10 of the Bill contains provisions on access ways to commercial buildings. In this clause, the owners of a commercial building situated along a county road shall ensure access ways are constructed in a manner that does not obstruct county roads and shall allocate adequate space for access to commercial buildings in accordance with the Physical Planning Act and any other written law.
12. In clause 11 and 12, there are provisions on the construction and maintenance of walkways and parking bays by the owners of commercial buildings. Clause 13 deals with the use of walkways whereas clause 14 is on the rules of parking of motor vehicles.
13. The issue of designated parking is addressed in clause 15. In this clause, there shall be parking bays for heavy commercial vehicles and petroleum tanker vehicles. A person who contravenes this provision commits an offence and is liable, on conviction, in accordance with section 52A of the Traffic Act.
14. Clause 16 of the Bill empowers the County Executive Member, in consultation with the Cabinet Secretary and all the relevant stakeholders, to make regulations for the better carrying out of the Act. These regulations shall be on prescription of the conditions for the use of parking bays

and walkways in the county as well as prescription of the procedure for the application of any approval provided in the Act.

2.2 CONSEQUENCES OF THE BILL

15. The Bill seeks to significantly alter the planning and construction of buildings and county roads in a manner that will enhance the accessibility of services. Once enacted, the Bill confers responsibility for ensuring accessibility to these services on the County Executive Committee Member responsible for matters relating to roads.

2.3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

16. Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 127, the Committee held a one day public hearing on Thursday, 11th October, 2019 and received the following representations:-

2.3.1 PRINCIPAL SECRETARY, STATE DEPARTMENT OF INFRASTRUCTURE

1. Long Title:

Views and Recommendations

- i. Planning for Roads is guided by standards and specifications provided by the National Government. This is well covered under part 2 of the 4th Schedule of the Constitution, and inbuilt in the Draft Kenya Roads Bill 2017.
- ii. Spatial Plans inform the Transport Plan, and Commercial Zones are approved and developed, accordingly. Major Roads needs to be defined to avoid conflict with existing institutional framework.

2. Clause 2 (*Interpretation*)

Views and Recommendations

- i. The proposed definitions and classifications for the 'Minor' 'National' and 'County Roads' differ from those that are contained in the Kenya Roads Bill, 2017 that is undergoing enactment before the house. It is therefore important to await the enactment of the Kenya Roads Act 2017, before consideration of a County statute that may be counter to National Legislation.

- ii. It is also advisable to note that in metropolitan areas, some county network may serve as Rapid Transit Corridors.

3. Clause 3 (*Object and purpose of the Act*)

Views and Recommendations

- i. It is critical to embrace comprehensive planning and avoid splitting infrastructure into bits of facilities (Walkways, Parking Bays and Drainage)
- ii. There is a need to provide a clear distinction of the role of the County Governments and that of the National Government in so far as access ways are concerned.
- iii. Accessibility and other purposes therewith are the sole responsibility of the National agencies that are mandated to construct such roads as per the Fourth Schedule to the Constitution of Kenya 2010.
- iv. The issue of Access to Major roads (National Roads) lies in the jurisdiction of the National Agency under whose mandate the road lies.

4. Clause 4 (*Application*)

Views and Recommendations

The Application of the Act seems to allow the County CECs authority over major roads contrary to the Fourth Schedule of the Constitution of Kenya, 2010. It also has no reference to the National Legislation on management of Roads.

5. Clause 5 (*Duties of the county executive committee member.*)

Views and Recommendations

A list of related Duties and Responsibilities are well captured in the Kenya Roads Bill, 2017 which is before the Senate and has undergone wider public consultation processes

6. Clause 8 (*Construction and maintenance of pavements by the county government*)

Views and Recommendations

Existing Roads agencies responsible for the National Roads have the mandate and jurisdiction for the walkways/foot paths, cycle tracks and footbridges on the road networks within their purview.

7. Clause 10 (*Access ways to commercial buildings.*)

Views and Recommendations

The proposed accesses can only be developed with the concurrence, guideline and direction of the National government agency responsible for the road network.

8. Clause 13 (*Use of pavements*)

Views and Recommendations

A clear definition that distinguishes a pavement from a walkway is necessary to avoid confusion.

9. Clause 14 (*Parking of motor-vehicles*)

Views and Recommendations

Provisions for parking are best handled by legislation promulgated under County Assemblies.

10. Clause 15 (*Designated parking*)

Views and Recommendations

These provisions are best enacted after exhaustive and robust consultations with the members of the Transport Industry (haulage) and the Energy sector otherwise they will move the Judiciary and have these provisions expunged from the Act.

11. Clause 16 (*Regulations*)

Views and Recommendations

In so far as the regulations touch on Standards for the enumerated civil works they are unconstitutional as that is a function of the National Government as per the Fourth Schedule to the Constitution of Kenya, 2010.

3.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1 OBSERVATIONS

18. After the presentation of the Bill and upon review from stakeholders and internal deliberations, the Committee made the following observations–

- I. The Bill concerns County Governments in terms of Article 110(1) (a) of the Constitution as it contains provisions that affect the functions and powers of the County Governments with respect to county transport, county roads, parking, and public road transport as set out under paragraph 5 of part 2 of the Fourth Schedule to the Constitution. On the other hand, pursuant to paragraph 18 of part 1 of the Fourth Schedule to the Constitution, the National Government’s powers and functions with regard to transport and communications include, among other things setting standards for the construction and maintenance of other roads by counties.
- II. There were already in place other laws/ Acts of Parliament that address all the issues captured in the Preamble such as the Physical Planning Act, Kenya Roads Act, 2007, the Traffic Act, the Public Roads and Roads of Access Act, the Street Adoption Act, the Persons with Disabilities Act and Urban Areas and Cities Act.
- III. The Bill stipulates the standards of construction and maintenance of county roads by counties contrary to the provisions of paragraph 18 of part 1 of the Fourth Schedule to the Constitution which provides that standards of construction and maintenance of other roads by counties is a national government function.
- IV. In metropolitan areas, some county road network may serve as Rapid Transit Corridors.
- V. That certain clauses in the Bill were a duplication of existing laws like the Physical Planning Act. The Committee further noted that the existing laws simply need to be enforced.
- VI. That if the Bill was enacted would significantly impact physical planning and development.


3.2 RECOMMENDATIONS

19. The Committee, having considered the Bill clause by clause proposes that the Bill may not be passed.

SIGNED.....*[Signature]*..... DATE.....*03/12/2019*.....

THE HON. DAVID PKOSING, MP, CBS
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND
HOUSING

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: <i>04 DEC 2019</i>	DAY: <i>WED</i>
TABLED BY:	<i>Chairperson, DC Transport Hon. David Pkosing, MP</i>
CHECKED THE SECRETARY	<i>A. Shiluko</i>

Annexures

- 1) Report Adoption List
- 2) Proposed Committee Stage Amendments
- 3) Committee Minutes
- 4) Stakeholders submissions
- 5) Public advert

Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing have today 2nd December, 2019 adopted this Report on the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018), for consideration and approval by the House Pursuant to Standing Order 199.

1. Hon. David Pkosing, M.P. -Chairperson 

2. Hon. Moses Kuria, M.P. -Vice Chairperson

3. Hon. Samuel Arama, M.P.

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

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

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

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

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

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

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

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

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

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

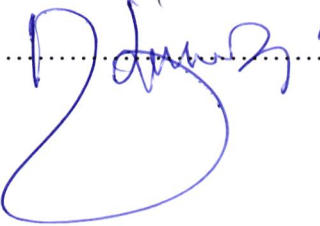
14. Hon. Mugambi M. Rindikiri, M.P. 

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

16. Hon. Rigathi Gachagua, M.P.

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

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

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

MINUTES OF THE SIXTIETH (60TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 17TH SEPTEMBER 2019 AT 9.30 A.M. ON 4TH FLOOR, PROTECTION HOUSE

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Ahmed Abdisalan Ibrahim, M.P.
6. Hon. Ahmed Bashane Gaal, M.P.
7. Hon. Dominic Kipkoech Koskei, M.P.
8. Hon. Kulow Maalim Hassan, M.P.
9. Hon. Rigathi Gachagua, M.P.
10. Hon. Shadrack John Mose, M.P.
11. Hon. Tom Mboya Odege, M.P.
12. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Mugambi Murwithania Rindikiri, M.P.
3. Hon. David Njuguna Kiaraho, M.P.
4. Hon. Suleiman Dori Ramadhani, M.P.
5. Hon. Johnson Many Naicca, M.P.
6. Hon. Gideon Mutemi Mulyungi, M.P.
7. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Mr. Ahmed Salim - Clerk Assistant II
3. Mr. Collins Mahamba - Audio Officer

4. Ms. Zainab Wario - Sergeant-at-arm

MIN No. TPWH 308/2019: PRELIMINARIES

The meeting was called to order at forty five minute past nine o'clock, with a word of prayer from the Hon. Rigathi Gachagua. Members confirmed the agenda as consideration of the Committee Work plan and any other business.

MIN No. TPWH 309/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS

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

MIN No. TPWH 310/2019: CONSIDERATION OF THE COMMITTEE WORKPLAN

The Committee Members went through the draft Committee Work Plan and adopted it as presented. It was noted that the nature of the Committee work was fluid and quite unpredictable and therefore the work plan was simply to guide the expected output although the actual committee work is dependent on many factors including day to day activities in the entire sector and the country at large.

MIN No. TPWH 311/2019: LEGAL BRIEF ON THE COUNTY ROADS, WALKWAYS AND PARKING BAYS BILL (SENATE BILL NO. 18 OF 2018)

The Committee was taken through the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018) by the Legal Counsel and resolved to invite the Ministry of Transport to submit their views on the Bill on Tuesday, 15th October 2019 at 10.00 a.m.

MIN No. TPWH 312/2019: ANY OTHER BUSINESS

The Committee noted that:

- 1) Members were concerned that some heads of departments in different agencies of the Ministry have been acting for a long time.
- 2) Status report on roads project has never been submitted to the Committee by the Ministry.



MINUTES OF THE SIXTY SECOND (62ND) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 24TH SEPTEMBER 2019 AT 9.30 AM. IN 4TH FLOOR, CONTINENTAL HOUSE, WITHIN PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David Njuguna Kiaraho, M.P.
2. Hon. Kulow Maalim Hassan, M.P.
3. Hon. Rehema Dida Jaldesa, M.P.
4. Hon. Dominic Kipkoech Koskei, M.P.
5. Hon. Shadrack John Mose, M.P.
6. Hon. Vincent Kemosi Mogaka, M.P.
7. Hon. Gideon Mutemi Mulyungi, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Moses Kuria, M.P. - Vice Chairperson
3. Hon. Suleiman Dori Ramadhani, M.P.
4. Hon. Rigathi Gachagua, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Ahmed Abdisalan Ibrahim, M.P.
7. Hon. Tom Mboya Odege, M.P.
8. Hon. Ahmed Bashane Gaal, M.P.
9. Hon. Samuel Arama, M.P.
10. Hon. Mugambi Murwithania Rindikiri, M.P.
11. Hon. Savula Ayub Angatia, M.P.
12. Hon. Johnson Many Naicca, M.P.

SECRETARIAT

1. Ms. Chelagat Tungo Aaron - Clerk Assistant I
2. Ms. Mercy Wanyonyi - Legal Counsel
3. Mr. James Muguna - Research Officer
4. Ms. Noelle Chelagat - Media Relations Officer
5. Ms. Zainab Wario - Sergeant-at-arm

IN ATTENDANCE

1. Mr. Martin Eshiwani - Director Road Transport

- | | | |
|-----------------------|---|---|
| 2. Mr. David Oleshege | - | Director, State Department of Transport |
| 3. Mr. Francis Meja | - | Director General, NTSA |
| 4. Mr. Tom Abuga | - | Legal Manager, NTSA |
| 5. Ms. Brenda Mwangi | - | State Counsel, SD of Transport |

MIN No. TPWH 324/2019: PRELIMINARIES

The Chairman called the meeting to order at 10.00 am. The meeting was then opened with a word of prayer. Members were informed that the agenda of the meeting was to consider the National Transport and Safety (Amendment) Bill, 2019 (Legislative Proposal); the Traffic (Amendment) Bill, 2019 (National Assembly Bills No. 28) and the Kenya Roads (Amendment) Bill, 2018 (Legislative Proposal)

MIN No. TPWH 325/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The confirmation of minutes of the previous sitting was deferred to a later date.

MIN No. TPWH 326/2019: CONSIDERATION OF THE NATIONAL TRANSPORT AND SAFETY (AMENDMENT) BILL, 2019 (LEGISLATIVE PROPOSAL)

The Committee invited the Hon. Silvanus Osoro Onyiego, who was the sponsor of the National Transport and Safety (Amendment) Bill, 2019 (Legislative Proposal) to give an overview of the Legislative Proposal before receiving views from the Ministry.

He informed the meeting that the Bill seeks to prohibit public officers serving in the National Government, County Governments and the public service from operating commercial vehicles more so police officers as this result in conflict of interest as they regulate the public transport system in the Nation.

Article 260 of the Constitution defines a **public office** as “an office in the national government, a county government or the public service, if the remuneration and benefits from the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament.

Further, “**public service**” is defined as the collectivity of all individuals, other than State officers, performing a function within a State organ.

The proposal is general and too wide since it doesn’t limit its application to only police officers, which is the intention according to the memorandum of objects and reasons, but public officers or those in public service.

Further, the proposal ought to specify the circumstances for its application e.g if there is any conflict between personal interests and public or official duties.

The Ministry submitted to the Committee as follows;

That the recommendation to insert Section 26 1 (A) the following section:

“A public officer serving in the national government, county government or public service shall not be allowed to operate any class of vehicle as public service vehicles while in service”

This provision aims at making it illegal for the public officers working the National and County Governments to operate public service vehicles. While this suggestion is aimed at addressing conflict of interest, it is discriminatory hence unconstitutional. This amendment discriminates against public officers who have no relations to PSV licensing and traffic law enforcement. Teachers, land officers, health professional, agriculture officers will be affected yet they have no conflict of interest.

The Bill should propose the barring of Officers in NTSA and National Police Service who interact with PSVs in order to discourage engagement in the operation of PSV’s.

The Ministry therefore proposes that the amendment be re-drafted to state as follows:

“Any National Government or County Officer who is directly or indirectly involved in enforcement of transport policies and laws or in the inspection or licensing of both public service vehicles and commercial service vehicles shall not be allowed to operate any class of vehicle including private vehicles as public service vehicles and commercial service vehicles”

**MIN No. TPWH 327/2019: CONSIDERATION OF THE TRAFFIC
(AMENDMENT) BILL, 2019 (NATIONAL
ASSEMBLY BILLS NO. 28)**

The Committee invited the Hon. Jude Njomo who was the sponsor of the Traffic (Amendment) Bill, 2019 (National Assembly Bills No. 28) to give a brief over view of the Bill before inviting the Ministry for their comments on the same.

The meeting was informed that the Bill seeks to define certain terms like “dual carriageway”, “highway”, “superhighway” and slow moving vehicle that have been used in the Bill which have not been defined in the Kenya Roads Act.

The proposed amendment seeks to ensure that every superhighway is classified either as Class A or Class B roads.

The Kenya Roads Act, 2007 defines Class A and B roads as:

Class A International trunk roads linking centres of international importance and crossing international boundaries or terminating at international ports.

Class B National trunk roads linking nationally important centres.

The proposed amendment further seeks to ensure that each superhighway has a lane to the extreme left reserved for slow moving vehicles and a maximum speed limit for public service vehicles and motor-cars prescribed.

The Traffic Act defines a motor-car as a motor vehicle having seating accommodation for **not more than ten passengers** excluding the driver, but does not include a motorcycle;

There is need to incorporate a marginal note as a guide on the contents of the new section. Further, the relevant section of the Act ought to be amended i.e. section 42 as opposed to section 94.

The Ministry submitted to the Committee as follows;

1.1 Proposal to Amendment of Section 2 of the Traffic Act to include definition of “slow moving vehicle” – means a vehicle travelling at a speed or below seventy kilometers per hour”

The Kenya Highway Code provides that every driver should keep to the left unless road signs or markings indicate otherwise or unless the driver is overtaking or wants to turn right or pass parked vehicles or pedestrians on the road.

They recommended that the definition should not be inserted as it offends the road traffic rules.

1.2 Amendment to include section 94A Traffic Act

This amendment proposes to increase the speed limit for PSVs including buses, minibuses, coaches, motorcycles and light commercial vehicles to 100 kph, and 130kph for motor-cars.

The operational speeds in any class of road are set during construction and in accordance to the road designs. Where need arises to change speed on any class of a road then the Cabinet Secretary gazettes the appropriate speed based on evidential data

Section 42(4) (b) of the Traffic Act, CAP 403 provides that:

The Minister has the right;

“To impose on any road or area, either permanently or for such time as he considers appropriate, such lower limit of speed as may be necessary to prevent damage to the road or for the safety of the public having regard to any permanent or temporary hazards, the alignment or characteristics of the road, the width of streets, nature of traffic or general development of the area:

Provided that, in any case whilst such lower limit is in force under this subsection, indication of the maximum speed permitted shall be given by prescribe traffic signs erected and maintained so

as plainly to indicate to drivers entering or leaving such restricted road where the lower speed limit begins and ends.”

They objected to this amendment as road crashes have been attributed to high speeds of motor vehicles on Kenyan roads. The speed limits should be maintained as currently provided for.

1.3 Section 2 of the Traffic Act (as proposed) duplicates the definitions provided for under the Traffic Act, Cap 403. However there are omissions and inclusions. We should amend by inserting or deleting the following:

- a) **“authorised officer”** means a person appointed as such under section 3(4);- This clause should be inserted; this definition is already provided for in the Act and is missing in the attached amendments.
- b) **“highway authority”** means the Minister for the time being responsible for Public Roads or any other Authority or body to whom the Minister delegates powers subject to such terms and conditions as he may deem appropriate; - should read the ‘‘Cabinet Secretary responsible for Public Roads’’
- c) The provisions of the amendments define **“driving test examiner”** as **“any person appointed to be a driving test examiner under subsection 3 of section 3”** Section 3(3) provides that
“The Authority may appoint such number of suitably qualified persons to be inspectors of motor vehicles as it may deem necessary for purposes of this Act.”
This section makes reference to inspectors and not driving test examiners hence the amendment should be deleted and the definition should read as it is currently provided as follows;
“driving test examiner” *deleted by Statute Law (Miscellaneous Amendment Act No. 18 of 2018, .;-*

Section 39 of the Traffic Act, provides that

“Driving tests for the purpose of this Act shall be conducted by the Authority”

They proposed that the amendment including the definition of the words “driving test examiner” should be abandoned as the amendment has already be made.

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

The words any **by-laws** should be replaced by the words **County Laws** as currently County Governments enact County Laws and not by-laws.

MIN No. TPWH 328/2019:

**CONSIDERATION OF THE KENYA ROADS
(AMENDMENT) BILL, 2018 (LEGISLATIVE
PROPOSAL)**

The Committee invited the Hon. Jude Njomo who was the sponsor of the Kenya Roads (Amendment) Bill, 2018 (Legislative Proposal) to give his views on the Legislative Proposal and he informed the Committee that;

The Kenya Roads Act, in this Act referred to as “the principal Act” is amended in section 2 by inserting the following definitions in proper alphabetical sequence–

“**dual carriageway**” means a road which has two or more lanes of traffic travelling in opposite directions and is separated by a central strip of grass or concrete down the middle to separate the two lots of traffic;

“**highway**” means a long road giving fast connection between two places; and

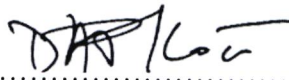
“**superhighway**” means a dual carriageway highway, having at least four lanes, with two lanes on either side, and used for travelling at high speeds over long distances.

The Bill seeks to define certain terms like “dual carriageway” and “highway”, “superhighway” which have not been defined in the Kenya Roads Act.

MIN No. TPWH 329/2019:

ADJOURNMENT

There being no other business to transact, the sitting adjourned at half past eleven o’clock.

Signed.....

(Chairperson)

Date.....

MINUTES OF THE SIXTY SEVENTH (67TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 15TH OCTOBER 2019 AT 10.00 A.M. IN COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Suleiman Dori Ramadhani, M.P.
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Ahmed Abdisalan Ibrahim, M.P.
6. Hon. Ahmed Bashane Gaal, M.P.
7. Hon. Dominic Kipkoech Koskei, M.P.
8. Hon. Kulow Maalim Hassan, M.P.
9. Hon. Mugambi Murwithania Rindikiri, M.P.
10. Hon. Gideon Mutemi Mulyungi, M.P.
11. Hon. Rehema Dida Jaldesa, M.P.
12. Hon. Shadrack John Mose, M.P.
13. Hon. Tom Mboya Odege, M.P.
14. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. David Njuguna Kiaraho, M.P.
3. Hon. Rigathi Gachagua, M.P.
4. Hon. Johnson Many Naicca, M.P.
5. Hon. Savula Ayub Angatia, M.P.

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant II
2. Ms. Mercy Wanyonyi - Legal Counsel
3. Ms. Zainab Wario - Sergeant-at-arm

4. Mr. Collins Mahamba - Audio Officer

IN ATTENDANCE

1. Eng. Francis Gitau - Secretary, Infrastructure, SDI
2. Eng. Enoch Ariga - Director - Planning, Design & Environment
3. Eng. Wilson K. Kosgey - Senior Manager, Technical Compliance, KRB
4. Mr. Michael Labot - Liaison Officer, State Dept. for Infrastructure

MIN No. TPWH 357/2019: PRELIMINARIES

The meeting was called to order at twenty minutes past ten o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as meeting the Ministry to receive views from on the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018). The meeting was informed that due to other exigencies, the Principal Secretary for Transport Infrastructure had sent his apologies and will be represented by other Ministry officials.

MIN No. TPWH 358/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS

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

MIN No. TPWH 359/2019: MINISTRY'S SUBMISSION ON THE COUNTY ROADS, WALKWAYS AND PARKING BAYS BILL (SENATE BILL NO. 18 OF 2018)

In their views before the Committee, the Ministry submitted that they were opposed to the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018) for the reasons that:

- 1) Planning for Roads is guided by standards and specifications provided by the National Government. This is well covered under part 2 of the 4th Schedule of the Constitution. The Ministry was therefore of the view that it was critical to embrace comprehensive planning and avoid splitting infrastructure into bits of facilities (Walkways, Parking Bays and Drainage);
- 2) There was a need to provide a clear distinction of the role of the County Governments and that of the National Government in so far as access ways are concerned. Accessibility

and other purposes therewith are the sole responsibility of the National agencies that are mandated to construct such roads as per the Fourth Schedule to the Constitution of Kenya 2010;

- 3) The issue of Access to Major roads (National Roads) lies in the jurisdiction of the National Agency under whose mandate the road lies;
- 4) Existing Roads agencies responsible for the National Roads have the mandate and jurisdiction for the walkways/foot paths, cycle tracks and footbridges on the road networks within their purview;
- 5) A clear definition that distinguishes a pavement from a walkway is necessary to avoid confusion;
- 6) In so far as the regulations touch on Standards for the enumerated civil works they are unconstitutional as that is a function of the National Government as per the Fourth Schedule to the Constitution of Kenya, 2010.

Action Point:

The Committee resolved to hold a retreat on a day to be determined later by the Committee to consider:

- 1) The constitutional provisions on the functions between the National and the County Governments in relation to the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018);
- 2) Whether the provisions in the Bill exist in other legislations such as the Urban Areas and Cities Act of 2011, the Physical Planning Act among others; and
- 3) Whether some provisions in the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018) were unnecessary and therefore be dealt under County Laws.

MIN No. TPWH 360/2019:

ANY OTHER BUSINESS

The Committee noted that:

- 1) It was important to invite the State Department for Housing to interact on a number of issues such as the Railway and BRT Master plan for Nairobi and the country, among other issues;
- 2) Members were going for a short recess and therefore no meeting or Committee activity will be planned for the period between 18th and 28th October 2019;

- 3) It was important for the Ministry to engage the Committee on information basis regarding major activities planned by the Ministry; and
- 4) The President was expected to launch the Nairobi Expressway on Wednesday, 16th October 2019. It is a four lane dual carriageway project undertaken by KeNHA, to be financed through a Public Private Partnership and the China Roads and Bridges Corporation (CRBC) will be the concessionaire. All Members were invited to the ceremony.

MIN No. TPWH 361/2019: ADJOURNMENT

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

Signed..... .....

(Chairperson)

Date..... 03/12/2019.....