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PARLIAMENT OF KENYA

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THE NATIONAL ASSEMBLY

THE DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT
ON
PRE-PUBLICATION SCRUTINY OF A LEGISLATIVE PROPOSAL ON
THE TRAFFIC (AMENDMENT) BILL, 2018

Clerks Chambers,
Parliament Buildings
NAIROBI.

November, 2018



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1 INTRODUCTION

1.1 Mandate of the Committee

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.

Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-

- a) Transport;
- b) Roads;
- c) Public works;
- d) Construction and maintenance of roads, rails and buildings;
- e) Air and seaports; and
- f) Housing.

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.

1.2 Referral to the Committee

Pursuant to the provisions of Standing order 114(3) (a), the Hon. Speaker directed that the Legislative Proposal on the Traffic (Amendment) Bill, 2018, by Hon. Jude Njomo, M.P. be referred to the Departmental Committee on Transport, Public Works and Housing for pre-publication scrutiny and comments.

1.3 Meetings of the Committee

The Committee considered the Legislative Proposal on the Traffic (Amendment) Bill, 2018, by Hon. Jude Njomo, M.P. in its meeting held on 5th September, 2018. The Committee scrutinized the proposal and thereafter made its observations and recommendations.

1.4 Presentation of Legislative proposals for scrutiny

Standing Order 114 provides for the procedure on how Bills can be introduced into the National Assembly. For private Members' bills, they must either go through the relevant Departmental Committees for comments or go Budget and Appropriations Committee for costing in cases of Money Bills. Committees are obligated to report to the Speaker within fourteen days of receipt of the legislative proposals.

In processing the legislative proposals, the Departmental Committees for which they have been committed are required to examine the policy issues each Bill is proposing and advise the Speaker on their suitability for publication. While doing that, the Committee is also obligated to consult the Kenya Law Reform Commission and the Attorney General among others before conclusions are drawn.

2 OBJECT OF THE PROPOSED BILL

The proposed Traffic (Amendment) Bill, 2018 seeks to amend the Traffic Act, Cap 407 so as to make provision for the regulation of the use of all roads classified as superhighways. The Bill seeks to define certain terms like "dual carriageway", "highway", "superhighway", and "slow moving vehicle". The Bill further seeks to provide for the criteria for classifying a road as a superhighway.

3 CONSIDERATION OF THE LEGISLATIVE PROPOSAL

While considering the Bill, the Committee met with the sponsor of the Bill and called for comments from the Kenya Law Reform Commission and the Attorney General via a letter REF:KNA/DC.TPWH/CORR/2018/053 dated 28th June, 2018. However, only the Kenya Law Reform Commission submitted its comments.

3.1 Briefing from the Hon. Jude Njomo, MP

The Hon. Jude Njomo, MP appeared before the Committee to brief it on the provisions of the Bill. In his presentation he stated that the Bill seeks to amend the Traffic Act, Cap 407 so as to make provision for the regulation of the use of all roads classified as superhighways. That the Bill further seeks to provide for the criteria for classifying a road as a superhighway as follows; the road must

be classified either as a Class A or B road; the road must have a lane to the extreme left reserved for slow moving vehicles; and have a maximum speed limit of 100KM/H for public service vehicles including buses, mini-buses, coaches, motorcycles and light commercial vehicles and 130KM/H for motor-cars.

3.2 Comments from the Kenya Law Reform Commission

Through his letter dated 6th July, 2018, the Chief Executive Officer of the Kenya Law Reform Commission, Mr. Joash Dache, submitted his comments as follows:

- 1) Class A and B are not terms for definition but means of classification hence the classification as provided for in the Schedule to the Kenya Roads Act, No.2 of 2007 should suffice.
- 2) The amendments as proposed in Clause 2 of the Bill add no value and are unnecessary since they serve no specific value.
- 3) The Bill fails to take into consideration the principle that amending legislation should be drafted in the same style and manner as the Principal Act; and

The proposal is unnecessary since the same issue could be effectively taken care of under the Highway Code which is to be prepared by the minister as provided for in section 68 of the Traffic Act

4 COMMITTEE OBSERVATIONS

The Committee made the following observations with regard to the Legislative Proposal-

- 1) The current speed limits for the various classes of vehicles are prescribed in Regulations i.e. the Traffic (Speed Limit) Rules, 2012 for ease of review by the Cabinet Secretary so as to allow for amendment depending on the circumstances. To anchor the same in law would require an amendment to the Traffic Act before revision and also provision in law of the speed limits for the various other classes of vehicles.
- 2) The Kenya Roads Bill, 2017 which is currently at the Senate has introduced **Class S** Roads which are highways connecting two or more cities meant to carry safely a large volume of traffic at the highest legal speed of operation. The Kenya Roads Act, 2007 describes **Class A** roads as international trunk roads linking Centres of international importance and

crossing international boundaries or international ports while **Class B** roads are national trunk roads linking nationally important centres.

5 COMMITTEE RECOMMENDATIONS

Based on the comments received and the Committee's analysis of the proposed bill, the Committee recommends that the Bill should not be published.

Signed.....

HON. MOSES KURIA, M.P.

(VICE CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

DATED THIS th 30 DAY OF November 2018



REPUBLIC OF KENYA

PARLIAMENT

**NATIONAL ASSEMBLY
LEGISLATIVE PROPOSALS**
(Legislative Proposal No.....of 2018)

**THE TRAFFIC (AMENDMENT)
LEGISLATIVE PROPOSAL, 2018**

(This Legislative Proposal, if approved under S.O 114(8) of the
National Assembly Standing Orders, will be published in the Kenya
Gazette as a Bill)



The Traffic (Amendment) Bill, 2018

or other public place within the area where such by-laws are in force;

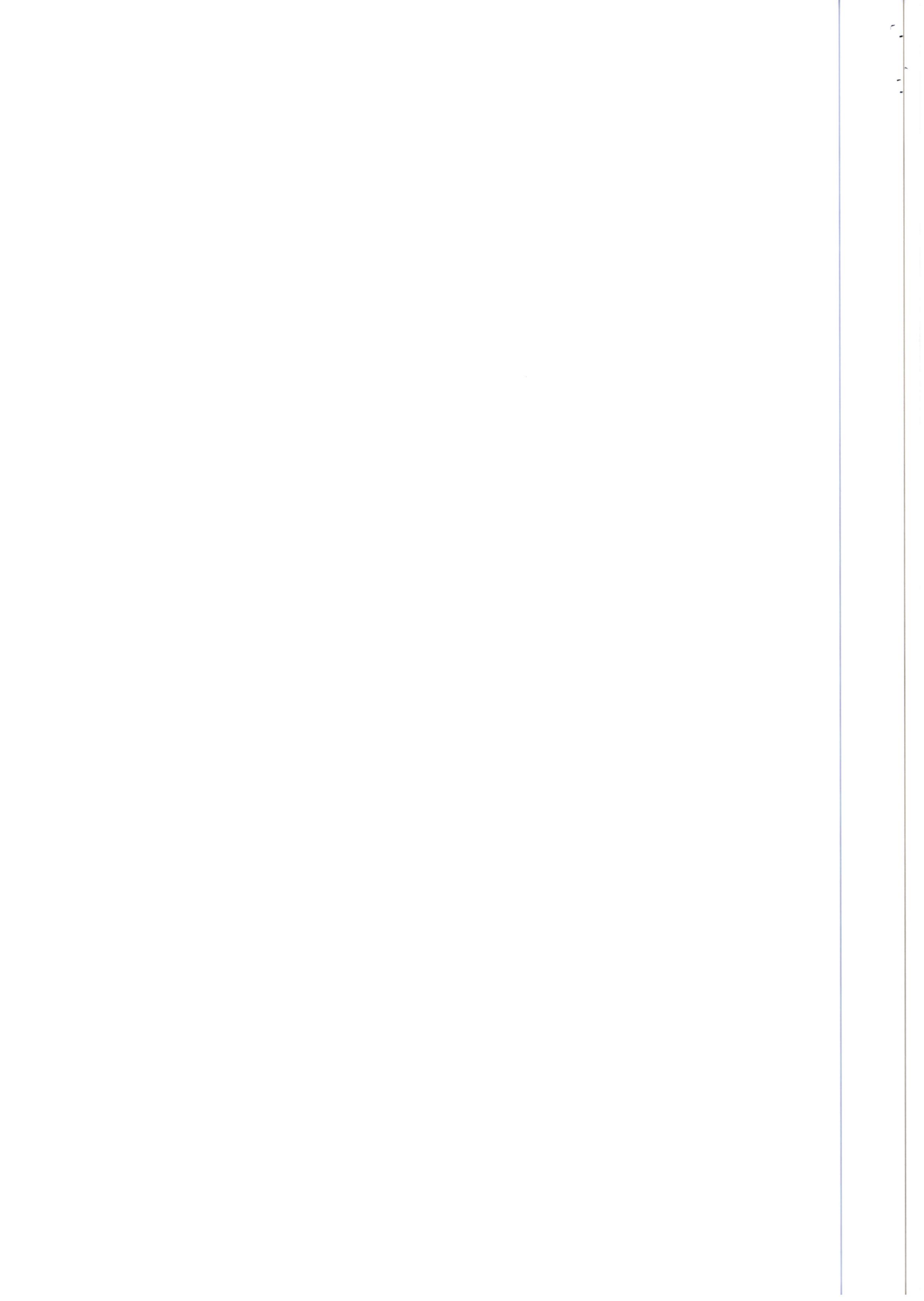
“**tractor**” means a motor vehicle constructed or adapted for the purpose of hauling trailers but which is not itself designed to carry goods or passengers;

“**trailer**” means any vehicle designed to be drawn by a motor vehicle, but does not include a sidecar attached to a motorcycle;

“**traffic signs**” means any sign, notice, signal, light or other device erected or in any way displayed by or with the consent of the highway authority, for the purpose of regulating, restricting or prohibiting traffic and vehicles of any kind, on a road:
Provided that all traffic signs shall conform to any regulations as to size, colour and type which may be prescribed by rules made under this Act;

“**vehicle**” includes a motor vehicle, a trailer and any other conveyance used on a road;

“**vehicle licence certificate**” means a certificate issued under section 20A of this Act.



The Traffic (Amendment) Bill, 2018

or other public place within the area where such by-laws are in force;

“**tractor**” means a motor vehicle constructed or adapted for the purpose of hauling trailers but which is not itself designed to carry goods or passengers;

“**trailer**” means any vehicle designed to be drawn by a motor vehicle, but does not include a sidecar attached to a motorcycle;

“**traffic signs**” means any sign, notice, signal, light or other device erected or in any way displayed by or with the consent of the highway authority, for the purpose of regulating, restricting or prohibiting traffic and vehicles of any kind, on a road:

Provided that all traffic signs shall conform to any regulations as to size, colour and type which may be prescribed by rules made under this Act;

“**vehicle**” includes a motor vehicle, a trailer and any other conveyance used on a road;

“**vehicle licence certificate**” means a certificate issued under section 20A of this Act.

The Traffic (Amendment) Bill, 2018

exclusive of the driver, such vehicle not being a taxicab or matatu;

“**public service vehicle**” means any motor vehicle which—

- (a) is licensed under Part XI to carry passengers for hire or reward; or
- (b) plies for hire or reward or is let out for hire or reward; or
- (c) is carrying passengers for hire or reward;

“**Registrar**” deleted by Act No. 33 of 2012, s. 62(a);

“**registration certificate**” means a certificate issued under section 6(5);

“**road**” means any public road within the meaning of the Public Roads and Roads of Access Act (Cap. 399), and includes any other road or way, wharf, car park, footpath or bridle-path on which vehicles are capable of travelling and to which the public has access;

“**tare weight**” means the weight of a vehicle when unladen, inclusive of the weight of the body and all parts (the heavier being taken when alternative bodies or parts are used) which are necessary to or ordinarily used with the vehicle when used on the road;

“**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

The Traffic (Amendment) Bill, 2018

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

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

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

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

“**plying for hire**” includes—

(a) standing on any public taxi stand;

(b) being offered for hire by any notice, advertisement or announcement; (c) standing or travelling whilst exhibiting a “For Hire” notice of any kind;

“**provisional licence**” means a licence issued under section 32;

“**private hire vehicle**” means any public service vehicle constructed or adapted to carry not more than seven passengers,

The Traffic (Amendment) Bill, 2018

whom the Minister delegates powers subject to such terms and conditions as he may deem appropriate;

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

“inspection certificate” means a certificate affixed to a vehicle under section 17A;

“inspector” means any person appointed to be an inspector of vehicles under subsection (3) of section 3;

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

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

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

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

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

The Traffic (Amendment) Bill, 2018

“**dealer**” means any person who deals by way of business in motor vehicles or trailers;

“**dealer’s general licence**” means a licence issued under section 23;

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

“**drive**”, in relation to a motor vehicle, includes the steering of a motor vehicle;

“**driver**” means any person who drives or guides, or is in actual physical control of, any vehicle or cattle on any road;

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

“**driving test examiner**” means any person appointed to be a driving test examiner under subsection (3) of section 3;

“**heavy commercial vehicle**” means a commercial vehicle whose tare weight exceeds six thousand seven hundred and twenty pounds;

“**highway authority**” means the Minister for the time being responsible for Public Roads or any other Authority or body to

The Traffic (Amendment) Bill, 2018

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

2. Interpretation

In this Act, unless the context otherwise requires—

“**Authority**” means the National Transport and Safety Authority established under the National Transport and Safety Authority Act;

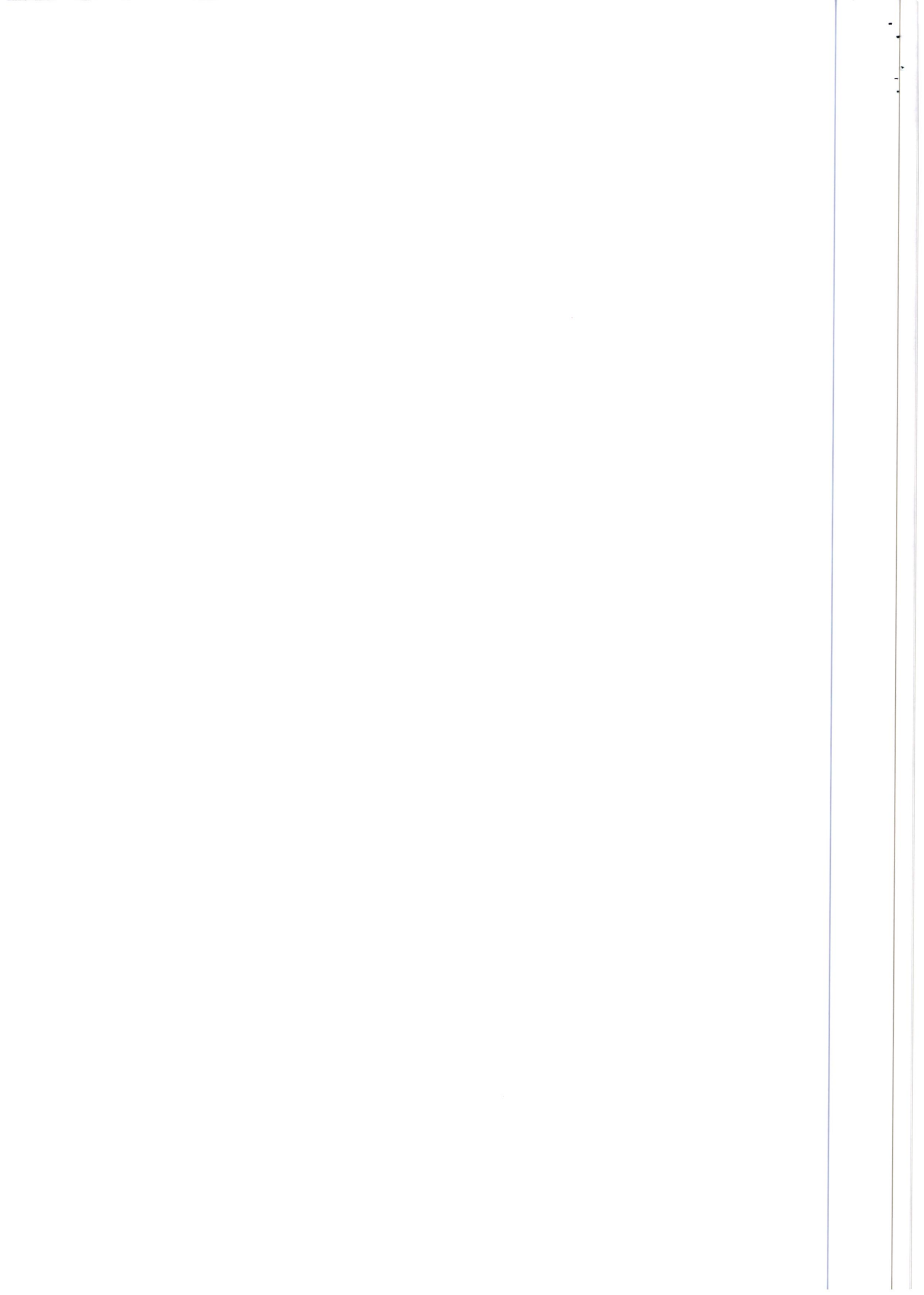
“**bicycle**” means any bicycle or tricycle not self-propelled;

“**cattle**” includes oxen, bulls, cows, horses, camels, mules, asses, sheep, goats and swine;

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

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

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



The Traffic (Amendment) Bill, 2018

MEMORANDUM OF OBJECTS AND REASONS

Statements of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Traffic Act to make provision for the standardization of the use of all roads classified as superhighways.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

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

Statement of how the Bill concerns county governments

The Bill does not concern county governments in terms of Article 109(3) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

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

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

Dated the, 2018.

JUDE NJOMO
Member of Parliament.

The Traffic (Amendment) Bill, 2018

vehicles travelling at high speeds over long distances;

“slow moving vehicle” means a vehicle travelling at a speed of below seventy kilometres per hour.

Insertion of a new section after section 94 of Cap. 403.

3. The principal Act is amended by inserting the following new section immediately after section 94—

94A. (1) Every superhighway shall—

(a) be classified either as Class A or Class B roads;

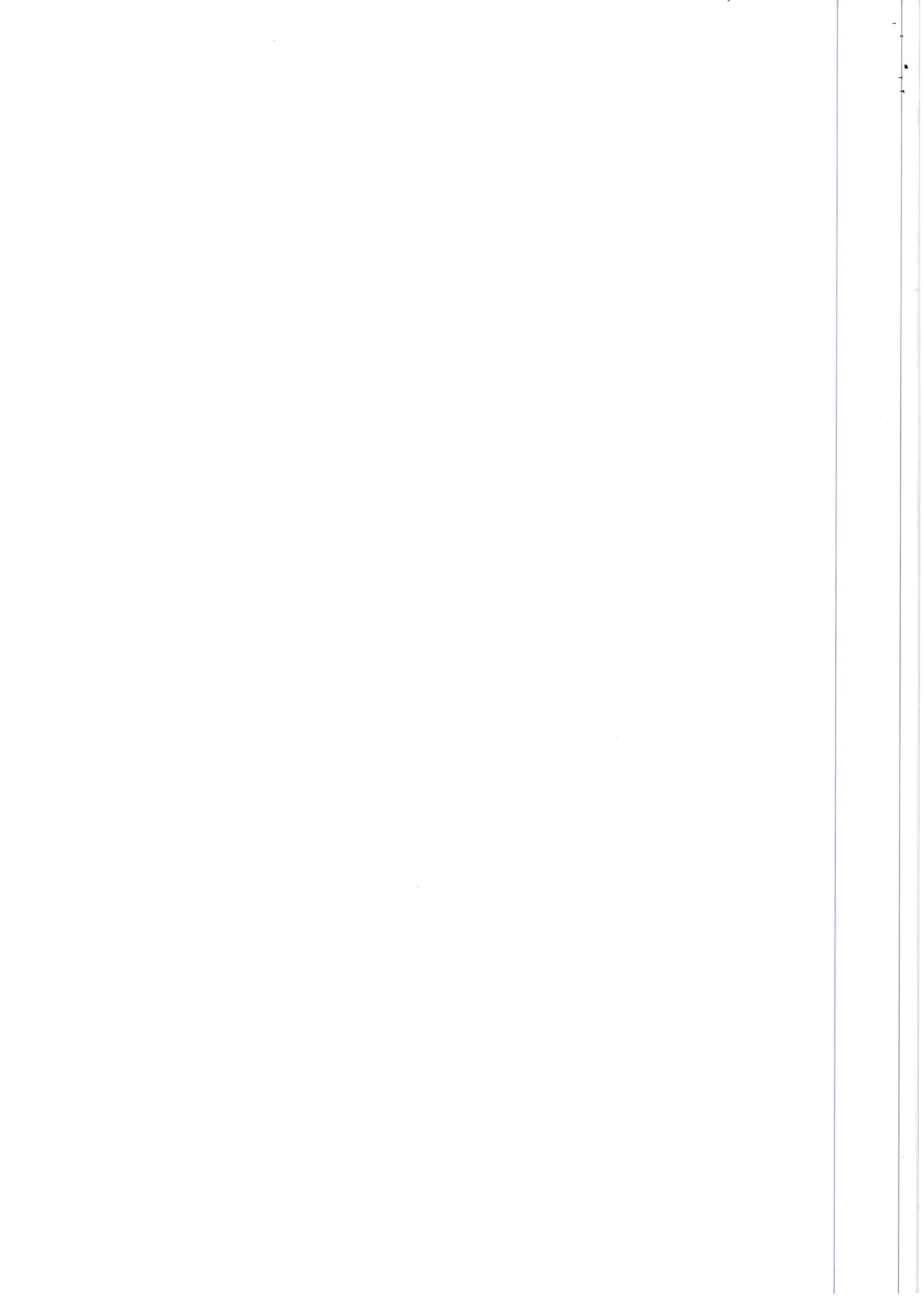
(b) have the lane to the extreme left reserved for slow moving vehicles;

(c) have the maximum speed limit set as follows—

(i) one hundred kilometers per hour for public service vehicles including buses, mini-buses, coaches, motorcycles and light commercial vehicles; and

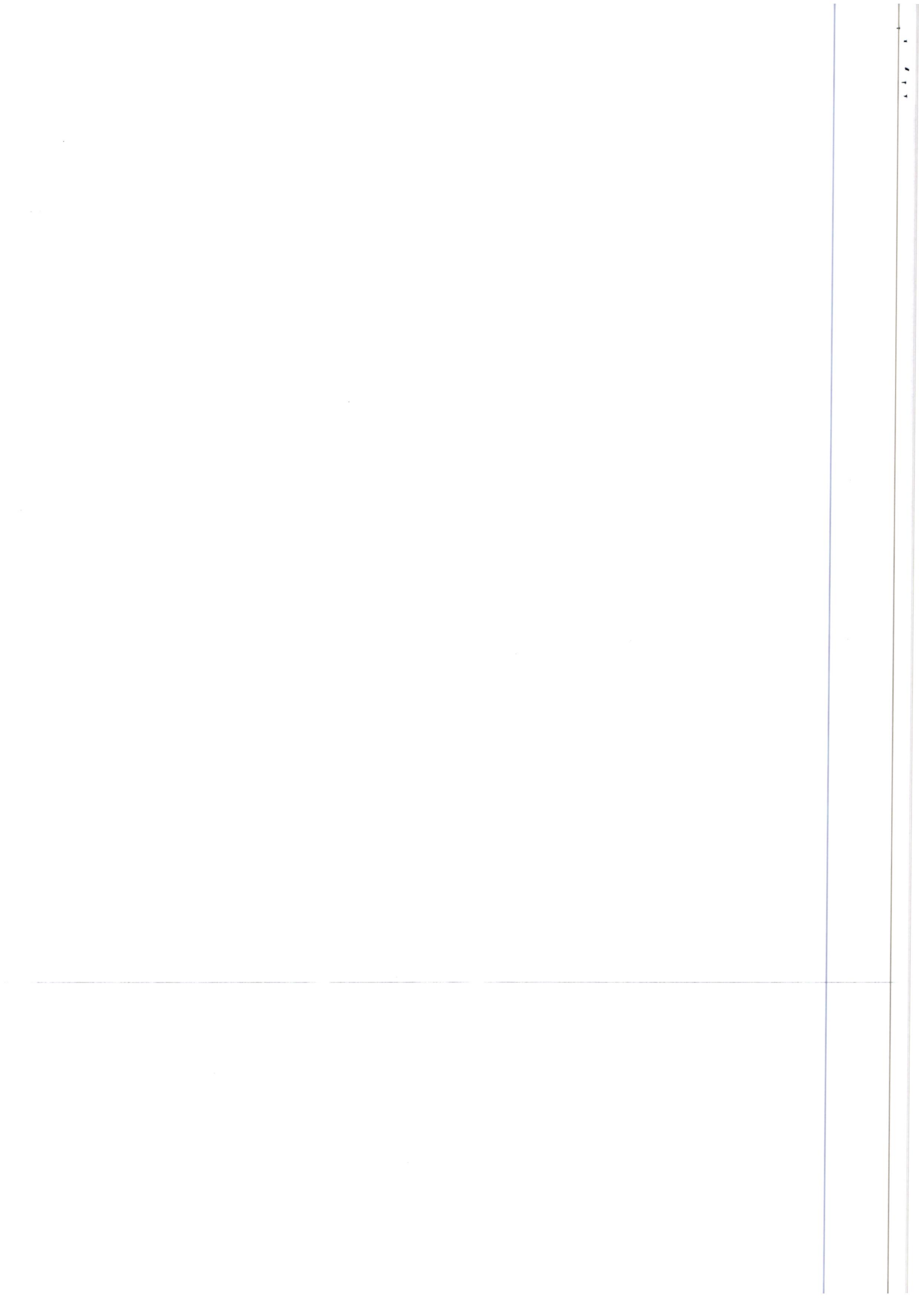
(ii) one hundred and thirty kilometers per hour for motor -cars.





ANNEXURE 1

THE TRAFFIC (AMENDMENT)
LEGISLATIVE PROPOSAL, 2018



ANNEXURE 2

LEGAL BRIEF



REPUBLIC OF KENYA



LEGAL BRIEF :

TRAFFIC (AMENDMENT) LEGISLATIVE PROPOSAL, 2018

SUBMITTED BY:

DIRECTORATE OF LEGAL SERVICES

NATIONAL ASSEMBLY

RE: THE TRAFFIC (AMENDMENT) LEGISLATIVE PROPOSAL, 2018

Background

Pre-publication scrutiny is conducted pursuant to S. Order 114(3), prior to publication of the legislative proposal as a Bill so as to test the acceptability of the proposal by Members prior to publication so as to save the time of the House from frivolous proposals. The committee interrogates the policy behind the legislative proposal and the appropriateness of the legislative measures proposed in it.

The Committee then reports to the Speaker with recommendations for the publication of the proposal, proposing amendments to the proposal or recommending whether to publish or not to publish the proposal, giving reasons for its recommendations.

Analysis

The Bill seeks to amend the Traffic Act, Cap 407 so as to make provision for the regulation of the use of all roads classified as superhighways. The Bill seeks to define certain terms like “dual carriageway”, “highway”, “superhighway”, and “slow moving vehicle”.

The Bill further seeks to provide for the criteria for classifying a road as a superhighway as follows-

- 1) The road must be classified either as a Class A or B road;

- 2) The road must have a lane to the extreme left reserved for slow moving vehicles; and
- 3) Have a **maximum speed limit** of 100KM/H for public service vehicles including buses,mini-buses,coaches ,motorcycles and light commercial vehicles and 130KM/H for motor-cars.

The current speed limits for the various classes of vehicles are prescribed in Regulations i.e the Traffic (Speed Limit) Rules, 2012 for ease of review by the Cabinet Secretary so as to allow for amendment depending on the circumstances. To anchor the same in law would require an amendment to the Traffic Act before revision and also provision in law of the speed limits for the various other classes of vehicles.

It is also worth noting that the Kenya Roads Bill,2017 which is currently at the Senate has introduced **Class S** Roads which are highways connecting two or more cities meant to carry safely a large volume of traffic at the highest legal speed of operation. The Kenya Roads Act, 2007 describes **Class A** roads as international trunk roads linking centres of international importance and crossing international boundaries or international ports while **Class B** roads are national trunk roads linking nationally important centres.

The Kenya Roads Bill, 2017 further gives a comprehensive description of Class A and B roads i.e **Class A** roads are roads forming strategic routes and corridors, connecting international boundaries at identified immigration entry and exit points and international terminals such as international air or sea ports; while **Class B** roads are roads forming important national routes, linking national trading or economic hubs, County headquarters and other nationally important centres to each other and to the national capital or to Class A roads.

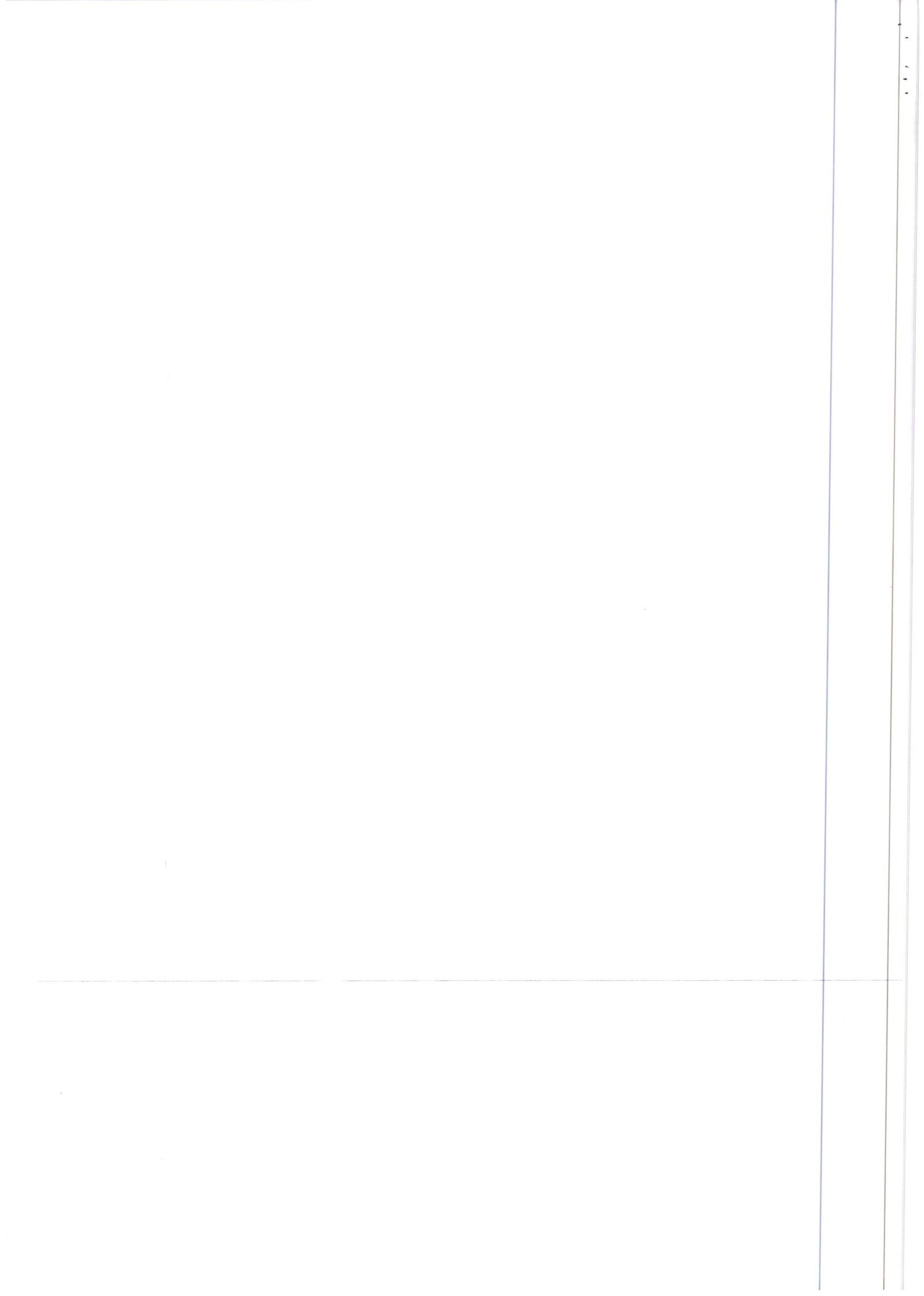
Mercy Khisa Wanyonyi

Legal Counsel, Departmental Committee on Transport, Public Works and Housing

31/July/2018

ANNEXURE 3

LETTER TO ATTORNEY GENERAL
AND THE KENYA LAW REFORM
COMMISSION



REPUBLIC OF KENYA



Telegraphic Address:
"Bunge", Nairobi
Telephone: 254-020-2848000
Fax: 254-020-243694
E-mail: clerk@parliament.com

Clerk's Chambers
National Assembly
Parliament Buildings
P O Box 41842-00100
NAIROBI, Kenya

NATIONAL ASSEMBLY

When replying please quote
NA/DCS/TPWH/CORR/2018/053

28th June 2018

Justice Paul Kihara Kariuki
Attorney General of the Republic of Kenya,
Office of the Attorney General and Department of Justice,
Sheria House, Harambee Avenue,
NAIROBI

Mr. Joash Dache
Secretary,
Kenya Law Reform Commission,
Reinsurance Plaza, 3rd floor,
Taifa Road,
NAIROBI

Dear Sir,

**RE: PRE-PUBLICATION SCRUTINY OF THE TRAFFIC (AMENDMENT) BILL, 2018
BY HON. JUDE NJOMO**

The above subject refers.

The Legislative Proposal (The Traffic (Amendment) Bill, 2018) was referred to the Departmental Committee on Transport, Public Works and Housing on 13th June 2018 for pre-publication scrutiny in accordance with the provisions of the Standing Order 114(3)(a)(i). (Copy attached)

The purpose of this letter is to request you to submit your comments on the said legislative proposal for consideration by the Committee before publication.

It will be appreciated if your written submissions are received on or before **Friday, 6th July 2018**.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'J. Ndombi'.

JEREMIAH NDOMBI
FOR: THE CLERK OF THE NATIONAL ASSEMBLY



ANNEXURE 4

COMMENTS FROM THE KENYA
LAW REFORM COMMISSION



KENYA LAW REFORM COMMISSION



② TUNGO
pls deal
FA 09/7/18

Kenya Law Reform Commission
Telegrams: LAWREFORM NAIROBI
Telephone: Nairobi: +254 20 2241186/2241201
Fax: +254 20 2225786
www.klrc.go.ke

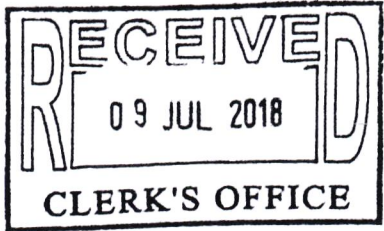
KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
FAH A ROAD
P.O. Box 1999 00100
NAIROBI, KENYA

When replying please quote
KLRC/RES/93 (50)
Ref No. _____
and Date _____

① Dicom-It
8
9/7

6th July, 2018

The Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI



Dear *Bw' Clerk,*

RE: THE PROPOSED TRAFFIC (AMENDMENT) BILL, 2018

We acknowledge receipt of your letter Ref. NA/DCS/TPWH/CORR/2018/053 dated 28th June, 2018 on the above subject.

Enclosed herewith kindly find the Commission's comments on the Proposed Traffic (Amendment) Bill, 2018.

As always, we thank you for your continued support to the Commission.

Yours *Sincerely,*
[Signature]

Joash Dache, MBS
SECRETARY/CEO

Encl.

Comments on the Proposed Traffic (Amendment) Bill, 2018

Introduction

The Traffic (Amendment) Bill, 2018 hereinafter referred to as the "Bill", proposes to amend section 2 of the Traffic Act, Cap 403, and also proposes to insert an additional clause thereon. The Traffic Act is the substantive law dealing with all matters relating to traffic on the roads. Below is therefore a clause by clause analysis of the proposed amendments to the Traffic Act.

Cause 2 (definitions)

The Bill proposes to amend section 2 of the Traffic Act by inserting the following new definitions; "Class A", "Class B", "dual carriageway", "highway", "superhighway" and "slow moving vehicles". It is important to note that the phrase "Class A & B" are not terms for definitions but a means of classification and therefore the classification as provided in the First schedule to the Roads Act, No. 2 of 2007, should suffice. Further, neither the Traffic Act nor the Bill uses the term "dual carriageway" hence need not be defined. As for the definition of the terms, "highway", "superhighway" and "slow moving vehicles", the contextual meaning as opposed to the given meaning should suffice hence no need to again define them.

In legislation, definitions are mostly found in clause 2, otherwise referred to as the interpretation clause, and are mostly used for the following purpose;

- (a) to avoid/clear ambiguities; and
- (b) to avoid unnecessary repetitions.

The interpretation clause usually defines only those terms as used in the legislation and only where necessary that the term be defined. These terms may be given their ordinary or contextual meaning. It is therefore common to find most interpretation clauses beginning with the phrase, "In this Act, unless the context otherwise requires.....". It is therefore proper to conclude that the contextual meaning is usually given prominence over the definition as given. To this end, we are of the considered view that, the amendments as proposed in clause 2 of the Bill, are unnecessary and serves no specific purpose.

Clause 3 (Section 94A)

The Bill fails to take into consideration, the principle that the amending Bill must be drafted in the same style and language as the principal Act, by failing to use the section headings as used in the principal Act. Although section headings or marginal notes do not form part of the Act, they are often used as a guide on the subject matter in question. Whereas the Traffic Act uses section headings, the Bill neither uses a section heading nor marginal notes a guide to its readers. It is our considered view therefore,

that the Bill ought to adopt the use of section heading for purposes of aligning it with the principal Act. Similarly, the proposed clause 94A is misplaced since traffic regulation and in particular the highway code, is covered under part VI of the Act and not part X as proposed in the Bill.

Conclusion

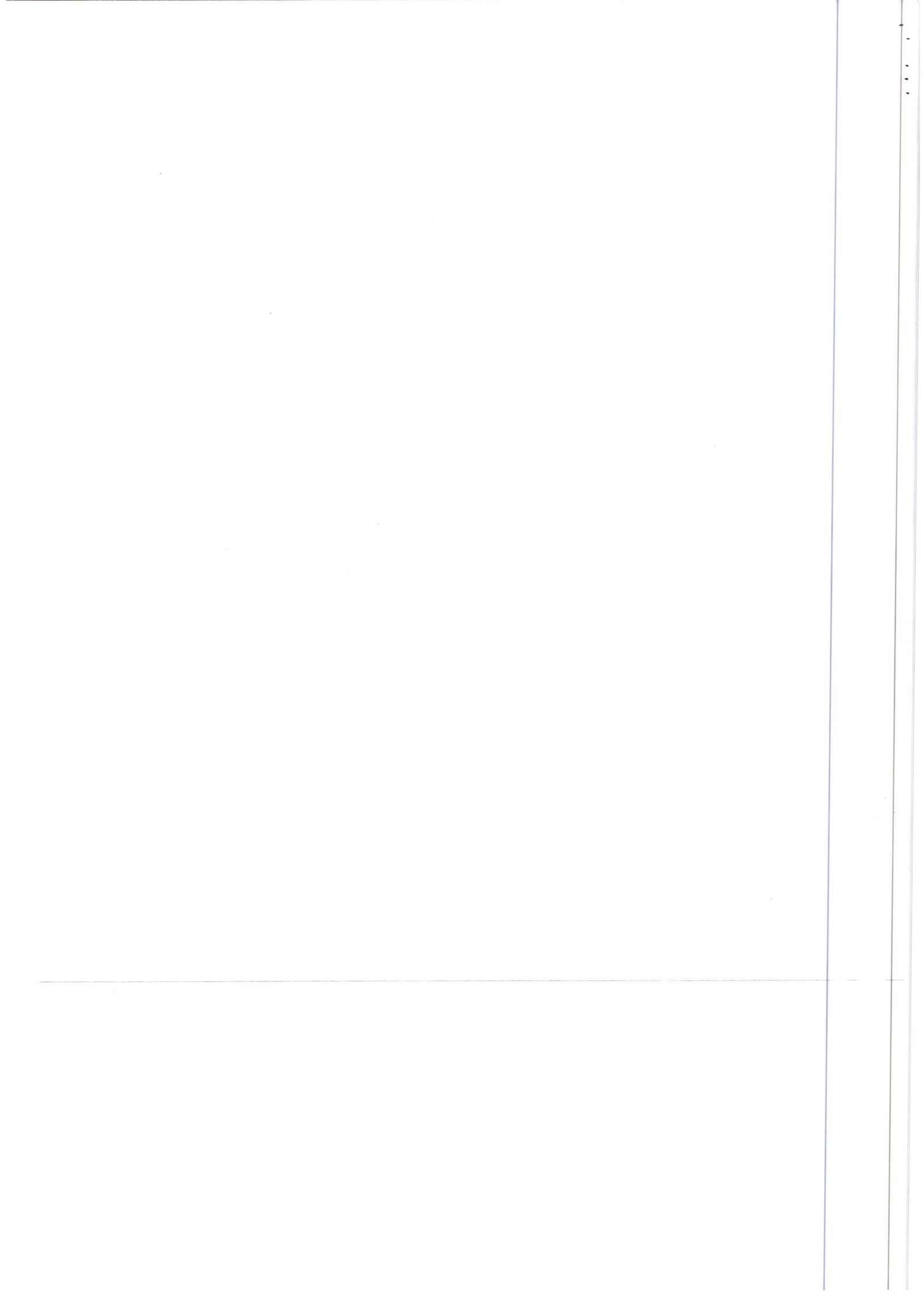
In conclusion, we are of the considered opinion that the proposed amendments are unnecessary for the reason that the proposal could be effectively taken care of under the highway code as proposed under Section 68 of the Traffic Act.

Section 68 of the Traffic Act states as follows-

68.(1) The Minister shall prepare a code (in this section referred to as the highway code) comprising such directions as appear to him to be proper for the guidance of persons using roads, and may from time to time revise the highway code by revoking, varying, amending or adding to the provisions thereof in such manner as he thinks fit.

(2) The highway code and any alterations proposed to be made in the provisions thereof shall be laid before the National Assembly, and, if a resolution of the National Assembly is passed within thirty days of their being so laid that such code be revoked or amended in accordance with such resolution, such code shall be deemed to be revoked or amended accordingly, but without prejudice to anything previously done or suffered by virtue thereof.

(3) A failure on the part of any person to observe any provisions of the highway code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal, and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.



ANNEXURE 5

COMMITTEE MINUTES



MINUTES OF THE FORTY FIRST (41ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 31ST JULY 2018 AT 10.00 A.M. IN CDF BOARDROOM, 8TH FLOOR, HARAMBEE SACCO BUILDING, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. Samuel Arama
3. Hon. Suleiman Dori Ramadhani
4. Hon. Ahmed Abdisalan Ibrahim
5. Hon. Ahmed Bashane Gaal
6. Hon. Dominic Kipkoech Koskei
7. Hon. Johnson Manya Naicca
8. Hon. Kulow Maalim Hassan
9. Hon. Peris Pesi Tobiko
10. Hon. Rigathi Gachagua
11. Hon. Tom Mboya Odege
12. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria - Vice Chairperson
2. Hon. Rehema Dida Jaldesa
3. Hon. Savula Ayub Angatia
4. Hon. Mugambi Murwithania Rindikiri
5. Hon. David Njuguna Kiaraho
6. Hon. Shadrack John Mose
7. Hon. Gideon Mutemi Mulyungi

SECRETARIAT

- | | | |
|-----------------------------|---|---------------------|
| 1. Ms. Chelagat Aaron Tungo | - | Clerk Assistant I |
| 2. Mr. Ahmed Salim A. | - | Clerk Assistant III |
| 3. Ms. Mercy Wanyonyi | - | Legal Counsel |
| 4. Mr. James Muguna | - | Researcher |
| 5. Mr. Eugene Luteshi | - | Audio Officer |
| 6. Mr. Yezziel Jillo | - | Sergeant at arm |

MIN No. TPWH 178/2018: PRELIMINARIES

The Chairperson called the meeting to order at twelve minutes past ten o'clock, with a word of prayer from Hon. Rigathi Gachagua MP. The Chairperson informed the Committee that the agenda of the meeting was to consider any memoranda and any available information ahead of the vetting process for the Principal Secretary nominee for State Department of Transport, Ms. Esther Koimett, to consider the Committee's workplan for the first quarter of the financial year 2018/2019, and to consider the Traffic (Amendment) Legislative Proposal, 2018 by Hon. Jude Njomo. Members adopted the agenda, the proposer being Hon. Rigathi Gachagua and the seconder being Hon. Dominic Koskei.

MIN No. TPWH 179/2018: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of the minutes of the previous sittings was deferred to the 4th August 2018 during the Committee's retreat in Mombasa.

MIN No. TPWH 180/2018: PREPARATIONS FOR VETTING PROCESS FOR THE PRINCIPAL SECRETARY NOMINEE FOR STATE DEPARTMENT OF TRANSPORT, MS. ESTHER KOIMETT

Members of the Committee went through the curriculum vitae of the nominee and went through the provisions of the Public Appointments (Parliamentary Approval) Act, 2011. The Committee noted that by the time of the meeting, no memoranda has been received from the public on the

suitability of the nominee. It was the opinion of the Committee that the nominee had an impressive curriculum vitae and that any questions and queries will be directed towards the nominee on the day of vetting.

MIN No. TPWH 181/2018: COMMITTEE'S WORK PLAN FOR THE FIRST AND SECOND QUARTER OF THE FINANCIAL YEAR 2018/2019

Members were taken through the Committee's work plan, and they adopted it with a few amendments. Adoption was proposed by Hon. Samuel Arama and seconded by Hon. Rigathi Gachagua.

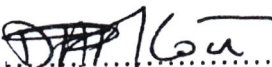
MIN No. TPWH 182/2018: THE TRAFFIC (AMENDMENT) LEGISLATIVE PROPOSAL, 2018


The Committee went through the proposed Bill which, if published, seeks to amend the Traffic Act, Cap. 407 as to make provision for the regulation of the use of all roads classified as superhighways.

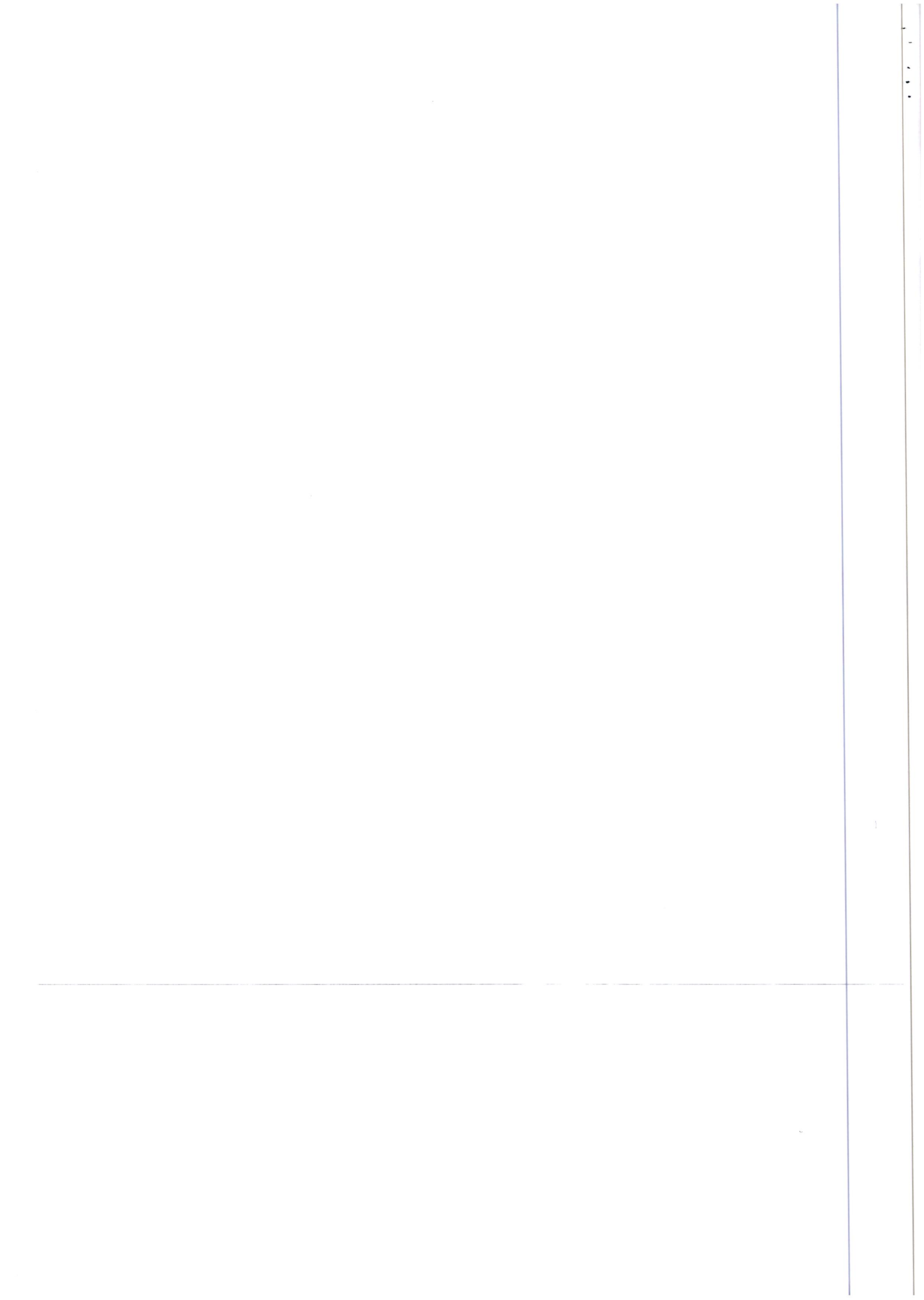
The Committee resolved that the Committee considers the Bill during the Committee retreat in Mombasa, scheduled for the 3rd to 5th August 2018.

MIN No. TPWH 183/2018: ADJOURNMENT

There being no other business, the sitting was adjourned at ten minutes past noon. The next meeting to be held on Thursday, 2nd August 2018

Signed..... .....
(Chairperson)

Date..... .....



MINUTES OF THE FIFTY FOURTH (54TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON WEDNESDAY, 5TH SEPTEMBER 2018 AT 10.00 A.M. IN 2ND FLOOR BOARDROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. Samuel Arama
3. Hon. Johnson Many Naicca
4. Hon. Peris Pesi Tobiko
5. Hon. Ahmed Bashane Gaal
6. Hon. Dominic Kipkoech Koskei
7. Hon. Gideon Mutemi Mulyungi
8. Hon. Shadrack John Mose
9. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria - Vice Chairperson
2. Hon. Rehema Dida Jaldesa
3. Hon. Kulow Maalim Hassan
4. Hon. Tom Mboya Odege
5. Hon. Savula Ayub Angatia
6. Hon. David Njuguna Kiaraho
7. Hon. Suleiman Dori Ramadhani
8. Hon. Ahmed Abdisalan Ibrahim
9. Hon. Mugambi Murwithania Rindikiri
10. Hon. Rigathi Gachagua

SECRETARIAT

- | | | |
|-----------------------|---|---------------------|
| 1. Ms. Chelagat Tungo | - | Clerk Assistant I |
| 2. Mr. Ahmed Salim A. | - | Clerk Assistant III |
| 3. Mr. Abdinasir Moge | - | Fiscal Analyst |
| 4. Mr. James Muguna | - | Researcher |
| 5. Mr. Eugene Luteshi | - | Audio Officer |
| 6. Mr. Moses Kariuki | - | Sergeant at arm |

IN ATTENDANCE

- | | | |
|------------------------|---|--|
| 1. Mr. Samuel Kimaru | - | Traffic Commandant, Kenya Police Service |
| 2. Mr. Henry Barmau | - | Director, Operations; Kenya Police Service |
| 3. Mr. Martin Eshiwani | - | Director, State Department of Transport |
| 4. Mr. Francis Meja | - | Director General, NTSA |
| 5. Ms. Njeri Waithaka | - | Director, Safety; NTSA |

MIN No. TPWH 237/2018: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes to ten o'clock, with a word of prayer from Hon. Bashane Gaal, MP. The Chairperson informed the Committee that the agenda of the meeting was to deliberate on rising cases of traffic accidents in the Country, to consider Committee amendments on the Urban Areas and Cities Amendment Bill, 2018 as well as consider the Proposed Traffic Amendment Bill (Legislative Proposal by Hon. Jude Njomo, MP.) Members adopted the agenda, the proposer being Hon. Samuel Arama and the seconder being Hon. Dominic Koskei.

MIN No. TPWH 238/2018: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

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

MIN No. TPWH 239/2018: MEETING WITH THE MINISTRY, NTSA AND TRAFFIC COMMANDANT TO DELIBERATE ON THE RISING CASES OF TRAFFIC ACCIDENTS IN THE COUNTRY.

The Committee was concerned that a comparative analysis of July/ August 2017 data and July/ August, 2018 data indicates that there was a sharp increase in accidents in 2018. This was attributed to human error, and other factors such as interference with speed governors, boda boda menace, total disregard of traffic rules by motorists and overloading of passengers as submitted by the Director General, NTSA.

The DG further submitted that there was need for regulations of heavy commercial vehicles as they are also involved in the accidents. He regretted that up to date there was no specific licensing regime for the heavy commercial vehicles, since the proposed regulations had been annulled by Parliament.

In addition, it was noted that poor infrastructure was a contributing factor and thus there was a need to rework and redesign the hazardous spots.

In the same meeting, the Commandant in charge of traffic reported that, traffic officers do not fall under the Traffic Commandant, instead, they report directly to the OCPDs and the OCSs who then report to the County Commanders. The County Commanders reports directly to the Regional Police Commandants who then reports directly to the Deputy Inspector General of Kenya Police.

The Committee was informed that under the Government Check Unit, the Commandant is in charge of School and Parastatal Vehicles as well as Security.

In the absence of the Inspector General, the Committee directed the Traffic Commandant to inform him to appear before the Committee on 10th September, 2018 at 10.00 a.m. to enable the Committee conclude on the matter.

MIN No. TPWH 240/2018:

**CONSIDERATION OF COMMITTEE'S
AMENDMENTS TO THE URBAN AREAS AND
CITIES (AMENDMENT) BILL, 2017 (SENATE BILL
NO. 4 OF 2017)**

The Committee went through the Bill and proposed two amendments as indicated in the table below;

Section	Proposed amendment	Specific amendments proposed	Justification
Section 49 of the principal Act	Add section 49b National Urban Development Fund (on the marginal notes)	<p>49 (b). (1) There is established a fund to be known as the National Urban Development Fund which shall be administered by the Directorate of Urban Development and Management,</p> <p>(2) There shall be paid into the Fund</p> <p>(a) any monies appropriated by Parliament for the purposes of urban development, including informal settlements upgrading, urban infrastructure urban regeneration and other human settlement programmes;</p> <p>(b) any funds provided by bilateral or multilateral donors, for the purpose of urban development and management;</p> <p>(c) grants, donations or endowments as may be given to the directorate for the purpose of the Fund;</p> <p>(d) monies that may be borrowed by the national treasury for the purposes of the Fund;</p> <p>(3) The fund shall provide conditional grants to the counties</p> <p>(4) The Fund shall be applied to the following purposes-</p> <p>(a) to improve enabling environment for sustainable, inclusive urban development and enhancing infrastructure service delivery in secondary towns, including-</p> <p>i. provision of urban and metropolitan infrastructure, informal settlements upgrading, urban regeneration and other human settlements.</p> <p>ii. provision high priority capital</p>	<p>The role and contribution of urban areas and cities in the development of the national and county economies needs to be enhanced.</p> <p>This fund will help to fill the glaring gap in the development and provision of key urban infrastructure development services for sustainable development of urban areas and cities in Kenya</p> <p>Through the fund, the National Government will deepen its impact of county development by directly supporting the drivers of urban economy through financing and other resources needed to thrive in long-term.</p> <p>It will fill a financial gap which has widened in recent years as a result of the continual revenue shortfall in counties and inability by counties to fund major foundation priority projects that propel urban centres as engines of innovation excellence and drivers of economic development.</p> <p>Kenya has subscribed to the new urban agenda 2016 and the agenda 2030 for sustainable development. The fund will boost Kenya's commitment to the agenda to effectively address urbanization and human settlement challenges</p>
		<p>When well-managed, urbanization fosters social and economic advancement and improved quality of life for all. The current model of urbanization is unsustainable and there is need for a special facility that will continuously provide for the actualization of the national urban development policy implementation and</p>	

		<p>expenditure projects, some which are inter/intra county beyond the scope and budgetary allocation of counties including, storm water, solid waste landfills, and urbanisation planning, urban development and related core urban programs.</p> <ul style="list-style-type: none"> iii. development of operation and maintenance of national urban observatory and associated capacity development. iv. county capacity development support in urban planning, urban management, and development of urban areas v. urban disaster risk mitigation, and human settlement safety including urban resilience to climate change and urban integrated flood protection vi. provide for research, documentation and dissemination of the state of urbanization in Kenya vii. provide for management and administration of towns and municipalities that cuts across two counties viii. any other purpose that would enhance the development and promotion of urban development programmes that may be determined by the directorate of urban development and management <p>(5) the fund shall provide counterpart funding for donor funding of urban development programmes</p> <p>(6) The Fund shall be administered in accordance with the provisions relating to public funds under the law relating to public finance management.</p>	<p>coordination.</p> <p>The directorate oversees the implementation of this policy, guides urbanization and acts as regulator on urban development and management standards</p> <p>Best practice examples in the world show that any country that has achieved middle-income status has done so because of effective urbanization. The fund will help the country towards realization of the vision 2030 goal</p>
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<p>Designated towns and gazette county headquarters</p>	<p>Amend section 60 to become section 60 (1) Mombasa and Kisumu</p> <p>Insert Section (60) 2</p>	<p>60 (1) becomes Mombasa and Kisumu.</p> <p>Insert 60 (2) (i) all towns designated and gazetted as county headquarters or having a population of between 50,000 and 249,999 shall be conferred the status of special municipalities or municipalities by formation of municipal boards</p> <p>(ii) There shall be appointed by the county public service board municipal managers and other key staff within two (2) years.</p> <p>(iii) All towns with a population of 10, 000 to 49,990 shall be conferred town status through formation of Town Committees and appointment of Town Managers within 3 years.</p> <p>insert 60 (3) Notwithstanding the provisions of the subsections 2 and 3 above all towns and municipalities not meeting the above provisions, their governance and management shall revert to the state and the national government in consultation with council of governors shall appoint a multidisciplinary committee to manage such towns.</p>	
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The Committee noted that the proposed amendments have financial implications and therefore it was important to seek the views of the Parliamentary Budget Office before the Committee concludes on the agenda. The Legal Counsel was tasked with liaising with the Budget office on the same report the progress to the Committee.

MIN No. TPWH 241/2018:

CONSIDERATION OF THE PROPOSED TRAFFIC
AMENDMENT BILL 2018 (LEGISLATIVE
PROPOSAL BY HON. JUDE NJOMO

The Hon. Member informed the Committee that the proposal had been conceived in the 11th Parliament but no progress was made to move the process forward.

In his briefing, he indicated that the Law as it is currently has not adjusted accordingly to accommodate the new rules/ regulations on the Traffic Act.

The Proposed Bill seeks to categorize roads, introduce dual carriageways, and change speed limits. He proposes to increase the speed limits of PSVs on super highways and highways from 80km p/hr to 100km p/hr.

He further submitted that there was need to have in place a system which can monitor speeds on the roads.

The Committee observed that it was important to carry out a research on matters over speeding is a vis traffic accidents in order to make an informed decision regarding the proposal.

MIN No. TPWH 242/2018:


ANY OTHER BUSINESS

The Committee noted that the proposed visit to Lamu to visit the LAPPSET project from 6th to 9th September 2018 would take place as planned.

MIN No. TPWH 243/2018:

ADJOURNMENT

There being no other business, the sitting was adjourned at fifteen minutes to two o'clock. The next meeting to be held on Monday 10th September, 2018

Signed..........

(Chairperson)

Date..........



MINUTES OF THE SIXTY EIGHTH (68TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 30TH NOVEMBER 2018 AT 3.00 P.M. IN THE BARAZA CONFERENCE ROOM, WHITESANDS HOTEL, MOMBASA

MEMBERS PRESENT

1. Hon. Moses Kuria - Vice Chairperson (**Chairing**)
2. Hon. Johnson Many Naicca
3. Hon. Peris Pesi Tobiko
4. Hon. Suleiman Dori Ramadhani
5. Hon. Savula Ayub Angatia
6. Hon. Ahmed Bashane Gaal
7. Hon. Ahmed Abdisalan Ibrahim
8. Hon. Gideon Mutemi Mulyungi
9. Hon. Kulow Maalim Hassan
10. Hon. Rehema Dida Jaldesa

MEMBERS ABSENT WITH APOLOGY

1. Hon. David Pkosing - Chairperson
2. Hon. Samuel Arama
3. Hon. David Njuguna Kiaraho
4. Hon. Rigathi Gachagua
5. Hon. Vincent Kemosi Mogaka
6. Hon. Mugambi Murwithania Rindikiri
7. Hon. Shadrack John Mose
8. Hon. Dominic Kipkoech Koskei
9. Hon. Tom Mboya Odege

SECRETARIAT

1. Ms. Tungo Aaron - Clerk Assistant I
2. Ms. Nuri Nataan - Clerk Assistant III
3. Mr. Abdinasir Moge - Fiscal Analyst II

- | | | |
|-----------------------|---|----------------------|
| 4. Ms. Mercy Wanyonyi | - | Legal Counsel II |
| 5. Mr. James Muguna | - | Research Officer III |
| 6. Mr. Eugene Luteshi | - | Audio Officer |
| 7. Mr. Yeziel Jilo | - | Sergeant at Arm |
| 8. Ms. Alice Kitur | - | Secretary |

MIN No. TPWH 315/2018: PRELIMINARIES

The session resumed at three o'clock chaired by Hon. Moses Kuria, MP.

MIN No. TPWH 316/2018: TRAFFIC AMENDMENT (LEGISLATIVE PROPOSAL) 2018 BY HON. JUDE NJOMO, MP

Having considered the legislative proposal and meeting with various stakeholders, the Committee adopted the report with the following observations and recommendations, that:-

Observations

1. The current speed limits for the various classes of vehicles are prescribed in Regulations i.e. the Traffic (Speed Limit) Rules, 2012 for ease of review by the Cabinet Secretary so as to allow for amendment depending on the circumstances. To anchor the same in law would require an amendment to the Traffic Act before revision and also provision in law of the speed limits for the various other classes of vehicles.
2. The Kenya Roads Bill, 2017 which is currently at the Senate has introduced **Class S** Roads which are highways connecting two or more cities meant to carry safely a large volume of traffic at the highest legal speed of operation. The Kenya Roads Act, 2007 describes **Class A** roads as international trunk roads linking Centres of international importance and crossing international boundaries or international ports while **Class B** roads are national trunk roads linking nationally important centres.

Recommendation

Based on the comments received and the Committee's analysis of the proposed bill, the Committee recommends that the Bill should not be published.

MIN No. TPWH 317/2018: ADJOURNMENT

The sitting was adjourned at thirty five minutes past five o'clock to be reconvened on Saturday 1st December, 2018 at 9.30am in the same venue.

Signed.....

(Chairperson)

Date.....

