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Rt. Hon. Speaker
The report is in order.
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22/11/24



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

PUBLIC PETITIONS COMMITTEE

PARLIAMENT
OF KENYA
LIBRARY

REPORT ON-

**CONSIDERATION OF PUBLIC PETITION NO. 41 of 2023 REGARDING PUNITIVE
CHARGES LEVIED BY THE KENYA NATIONAL HIGHWAYS AUTHORITY, BY HON.
FRANCIS NGUGA, MCA**

NOVEMBER 2024

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	
DAY: Wednesday	
TABLED BY:	Hon. Nimrod Mbari (Chairperson)
CLERK-AT THE-TABLE:	Lomale

Directorate of Legislative & Procedural Services
Clerk's Chambers
Main Parliament Buildings
NAIROBI

TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD.....	2
PART ONE	3
1 PREFACE	3
1.1 Establishment and Mandate of the Committee.....	3
1.2 Committee Membership	4
1.3 Committee Secretariat.....	5
PART TWO	6
2 BACKGROUND OF THE PETITION	6
2.1 Introduction	6
2.2 Prayers	6
PART THREE	7
3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION	7
3.1 Petitioners	7
3.2 Kenya National Highways Authority.....	7
3.3 Kenya Transport Association	11
3.4 Site Visit	12
4 COMMITTEE OBSERVATIONS.....	17
PART FIVE.....	18
5 COMMITTEE RECOMMENDATIONS	18
ANNEXURES	19

CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it was my pleasant privilege and honour to present this House the Report of the Public Petitions Committee regarding Punitive Charges Levied by the Kenya National Highways Authority. The petition was conveyed to the House in accordance with Standing Order 225(2)(b) by the Speaker of the National Assembly on 14th June, 2023.

The Petitioner prayed that the National Assembly, through the Public Petitions Committee engages KENHA to; review the KENHA licensing framework for abnormal loads transportation by involving all relevant stakeholders, consider consolidating exemption licenses to be paid annually instead of quarterly, and release abnormal load transportation vehicles held at various police stations on account of non-conformity to the existing KENHA's licensing framework pending the review.

In consideration of the Petition, the Committee engaged the Petitioner, KENHA and undertook a site visit inquiry. Upon considering the petition, the Committee observed that rationale for special permits or licenses for abnormal loads is deterrence for the protection of the public road network and the provision of revenue streams for the maintenance of these roads.

The Committee recommends that the Cabinet Secretary in charge of Ministry of Roads and Transport undertakes the review of Kenya Roads (KENHA) Regulations of 2013 for the licensing of transportation of abnormal loads.

The Committee expresses appreciation to the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support during the discharge of its duties. The Chairperson extends gratitude to the Committee Members for their devotion and commitment to duty throughout the consideration of the petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date.....20/11/2024.....

PART ONE

1 PREFACE

1.1 Establishment and Mandate of the Committee

The Public Petitions Committee was established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency
United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency
Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency
Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

1.3 Committee Secretariat

The Public Petitions Committee was facilitated members of the secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Principal Clerk Assistant II

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Ms. Roselyne Njuki
Senior Serjeant-at-Arms

Mr. Paul Shana
Serjeant-at-Arms

Mr. Calvin Karungo
Media Relations Officer III

Mr. Peter Mutethia
Audio Officer

PART TWO

2 BACKGROUND OF THE PETITION

2.1 Introduction

1. Public Petition No. 41 of 2023 regarding Punitive Charges Levied by the Kenya National Highways Authority was conveyed by the Honourable Speaker on Tuesday, 14th June, 2023 on behalf of Hon. Francis Ngunga, the Member of County Assembly (MCA) for Mua Ward in Machakos County.
2. The Petitioner called for consolidation of licences issued by the Kenya National Highways Authority (KENHA) as well as comprehensive review of KENHA's licensing and levies regime. He was aggrieved by KENHA's issuance of exemption permits/licences for transport of abnormal loads that include road construction equipment such as excavators, bulldozers, rollers, and graders and other over-dimensional or heavy cargo. The Petitioner averred that KENHA unfairly instituted double charges that were punitive and regressive.
3. Hon. Ngunga described that KENHA charged low loaders for carrying loads that do not exceed ten tonnes but proceeded to levy additional charges if the load in question was a grader or a roller despite the grader or roller not exceeding the ten-tonne limit already paid for hence occasioning double charges and related inconveniences.

2.2 Prayers

4. The Petitioner prayed that the Committee engages KENHA to—
 - (i) Review the KENHA licensing framework for abnormal loads transportation by involving all relevant stakeholders;
 - (ii) Consider consolidating exemption licenses to be paid annually instead of quarterly; and
 - (iii) Release abnormal load transportation vehicles held at various police stations on account of non-conformity to the existing KENHA's licensing framework pending the review.

PART THREE

3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 Petitioners

On Thursday, 28th September 2023, the Petitioners led by Hon. Francis Ngunga, appeared before the Committee and submitted as follows—

5. The petition was occasioned by the double charges levied by KeNHA on low loader transporters, which is punitive and regressive, thereby affecting the business operations of transporters.
6. KeNHA issued exemption licenses for transportation of abnormal loads including road construction equipment such as bulldozers, excavators, rollers and graders.
7. KeNHA charged low loaders for carrying loads not exceeding ten tonnes and proceeded to levy charges on machinery such as graders and rollers even when the set-out weight limit of ten tonnes was not exceeded.
8. A 17.5-meter low loader was being charged Kshs. 10,000 per month totalling to Kshs. 120,000 per year while a 19-meter low loader was being charged Kshs. 20,000 per machine per quarter year which was more expensive in permit payments.
9. The Traffic Act was meant for transporters carrying machinery to carry a particular weight and length and not the nature of the load carried.
10. KeNHA needed to review their licensing framework to have them issue annual consolidated licenses as opposed to quarterly ones and to release impounded low loader vehicles pending the review.

3.2 Kenya National Highways Authority

On 22nd November 2023, the Director General of KeNHA, Eng. Kungu Ndungu appeared before the Committee and submitted on the Petition as follows—

The Authority in conducting its mandate to manage, develop, rehabilitate and maintain national roads was guided by the Kenya Roads Act No. 2 of 2007, Traffic Act (Cap 403) and the East African Community Vehicle Load Control Act, 2016 and the accompanying Regulations.

11. The Authority had set up eleven (11) Static Weighbridge Stations, twenty-three (23) Virtual Weighbridge Stations on the National Trunk Road Network and twenty-three (23) mobile weighbridge teams across the country to monitor and ensure adherence to Axle Load Laws.

12. The concern of long queues at the weighbridges had been addressed by the installation of high-speed weighing motion. The system was able to flag suspected overloading which was then subjected to weighing and any violation was then prosecuted as per the provisions of the law. Further, the virtual weighbridges were able to collect and relay data hence minimizing inconveniences caused by long queues.
13. The exemption permits for movement of special vehicles were provided including weight or dimensions and were issued in writing to be carried with the vehicle in question during transportation under the authority of that permit. Additionally, various machinery had different dimensions hence the need for declaration for proper allocation of permits.
14. The transporters were allowed to apply for permits covering various equipment they were to transport. However, there was a challenge of some transporters carrying machinery that was not declared in the permit as a way of additional business which was against the law.
15. Vide Legal Notice No. 86 of 2013, the then Minister in charge of Roads gave approval for the Authority to charge levies for the issuance of exemption permits for movement of abnormal or oversized loads.
16. The charges levied were based on the weight of the cargo and not the vehicle itself as alluded to in the petition. The system would pick the higher measure between weight and dimensions and use that to generate only one invoice at a time.
17. Noting that vehicles had different configurations, and the weight of the load varied as well, licenses and permits were issued for a particular cargo or load and no double charges were therefore incurred. This curbed overload and general safety of the road is maintained.
18. Initially the permit was issued as a one-off document for a particular journey but after extensive stakeholder engagements the Authority now issues quarterly permits, that allow for an unlimited number of trips during the period, for the movement of such special loads.
19. The adoption of quarterly as opposed to annual exemption permits was after consultation with the previous stakeholder engagement which included the transporters. Additionally, the application for the permits through the KENHA portal was seamless and enabled transporters to finalize the process online. Thereafter, the applicants were able to print the permit for verification while undertaking their transportation business on the roads.
20. To facilitate trade and faster movement of vehicles, the Authority had automated the exemption permits application process where customers can access the

services from the comfort of their homes and get a permit within 24 working hours of application.

21. Oversized vehicles or protruding machinery carried on low-loaders could lead to the destruction of bridges and powerlines hence the need for the regulations to provide proper routes and timing for such kinds of transportation.
22. The regulations and administrative guidelines were aimed at protecting the expensive road assets worth about Kshs. 3 trillion and safeguard the safety of the public and structures during transportation of abnormal and special loads.
23. The Authority was cognizant of the need for review of the existing licensing framework and was in the process of drafting proposed levies for forward to the Cabinet Secretary in charge of the Ministry for Roads and Transport pursuant to section 22(d) of the Kenya Roads Act, 2007. Additionally, all stakeholders would be involved by way of public participation pursuant to the provisions of the Constitution.
24. The vehicles impounded for non-conformity with the licensing framework followed due process and the accused persons issued with notices to attend court within seven (7) days and the vehicles could only be released with leave of the court.
25. Additionally, there were only three (3) vehicles in custody awaiting prosecution in court. After impounding the vehicles in violation of the regulations, KENHA referred them to Office of the Director of Public Prosecutions (ODPP) for prosecution in court which had the discretion on the fines charged of up to Kshs. 400,000 depending on the infringement.
26. The revenue collected by KENHA through permits, levies, or fines was ploughed back into the operations of the Authority. The Authority was collecting about Kshs. 320 million to Kshs. 370 million annually from exemption permits.
27. Despite measures put in place on road safety both at the design and construction stages to reduce road accidents, vandalism of road signs and driver behaviour remained major challenges. The Authority also acknowledged the need to standardize road bumps by the Department of Road Safety as a measure of reducing road accidents. The Authority was strict on the use of auxiliary lanes and did not allow vehicles weighing more than 3.5 tonnes on the auxiliary lanes.

On 15th December 2023, the Director Policy, Strategy and Compliance, Eng. Njuguna Gatitu, on behalf of the Director General appeared before the Committee and submitted as follows—

28. There was need for harmonization of the Traffic Act with East Africa Community (EAC) Vehicle Load Control (VLC) Act, 2016 on vehicle loading, a significant policy shift which required the input of the Cabinet Secretary for the Ministry of Roads and Transport.

29. The EAC VLC Act 2016 decriminalized overloading and hence a vehicle once determined to be overloaded was required to pay overload fees and thereafter correct the offending load before exiting the weighbridge. This was meant to facilitate trade among the EAC Partner States as weighbridges were deemed to be non-tariff barriers within the region.

30. The compliant trucks could be released as soon as they complied, a process which would take an hour or days, depending on how fast the transporter moved to clear the violation. This was an alternative to the lengthy court processes when dealing with cases of overloading. The Traffic Act was applicable in other road networks not covered by the EAC VLC, Act. Whereas overloading was decriminalized under the EAC VLC, Act, the issue of excessive dimensions remained criminalized under both Acts.

31. There was also need for amendment of the Traffic Act to decriminalize overloading on all public roads to promote and entrench the alternative dispute resolution (ADR) mechanism with regard to vehicle loading. However, the issue of dimensions remained under the criminal jurisdiction as is the case under the EAC Act to deter motor vehicle owners from altering vehicle dimensions in workshops.

32. The Authority has proposed amendment to the Traffic Act as follows:

- (i) Amendment to sections 55, 56 and 58 of the Traffic Act, Cap 403 to decriminalize overloading and replace with the provisions of Section 17 of the EAC VLC Act, 2016 which decriminalized overloading to avert resolution of disputes through the court process and create a harmonious way of doing business;
- (ii) Introduction of the provisions of section 3 of the EAC VLC Act, 2016 to the Traffic Act to be applicable to all public roads. (Section 3 under EAC VLC Act only identified the Regional Trunk Road Network as set out in the First Schedule where EAC VLC Act was applicable);
- (iii) Introduction of the provisions of sections 4,5,6,7 and 8 of the EAC VLC Act, 2016 into the Traffic Act Cap 403 on Legal Load Limits on all public roads and overloading fees; and
- (iv) Amendment to the Traffic (Amendment) Rules, 2013 by aligning it with the East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 to align to the harmonized Traffic Act and EAC VLC Act, 2016.

33. The Annual Revenue collected from Exemption Permits amounted to Kshs. 363,694,474.00 in FY202 1/2022 and Kshs. 386,726,418.00 in FY 2022/2023, whereas monies collected from other charges i.e. fines, overload fees, weighbridge parking fees, road cuttings, road user fees and sale of tender documents amounted to Kshs 919,976,294.00 and Kshs 756,196,843.00

respectively over the same period. The monies were factored in the Authority's operational budget and the budget to support Axle Load Operations.

34. Regarding the reduction in annual revenue collection for fine and other charges from Kshs. 910,976,2894 in FY 2021/2022 to Kshs. 756,196,843 in FY 2022/2023, the Authority indicated that a reduction of the charges on fines was an indication of improved compliance.
35. Regarding the traffic experienced at different weighbridges, KeNHA indicated that there was limited congestion of any kind in the weighbridges and invited the Committee to visit sampled weighbridges to establish. The Authority had automated its systems to allow for weighing on motion and reduced human interaction. The data was transmitted real time to the headquarters. The axle loading system in place was exemplary as even other EAC Partner States were benchmarking with Kenya.
36. Regarding the heavy transporters using roads outside the KeNHA network, the Authority indicated that it was working with other roads agencies to curb noncompliance. For instance, the other road agencies were using mobile weighbridges. That about 98 per cent of transporters interacted with the weighbridges. However, the Authority was targeting to win the transporters into compliance by arrangements such as a two-tone allowance on weight to cater for extra weight occasioned by for example rains. The Authority was also working with the SACCOs of the local transporters to ensure compliance.

3.3 Kenya Transport Association

On 15th December 2023, the Chief Executive Officer (CEO), Ms. Mercy Ireri appeared before the Committee and submitted as follows—

37. Kenya Transporters Association Limited (KTA) was a business association of road transporters whose broad objective was to provide a common voice to articulate business constraints facing its members, while also contributing towards the realization of a safe, reliable, efficient, professional and environmentally friendly road freight industry in Kenya. The KTA involved transporters across the East African Community and even those transporting up to South Africa.
38. The laws allowed for exemption permits for abnormal cargo, but the KeNHA regulations were punitive when insisting on classifying cargo by their nature and not weight.
39. Despite the provision for online application of exemption permits, the process was draining, and transporters could not establish when their cargo would be released at the port due to the delay in processing of the permits.

3.4 Site Visit

On Friday, 13th September, 2024, the Committee conducted site visit at the KENHA headquarters at Barabara Plaza to observe the operations, coordination and management of the data centre for weighbridges across the country. The Committee also visited Mlolongo Weighbridges in Machakos County to observe the operations and management.

Submissions by KENHA during the Site Visit

40. KENHA was committed to protecting and preserving the road networks despite challenges posed by long queues at weighbridges across the country. They focused on developing systems to manage the weighbridges efficiently, minimizing inconvenience to road users.



Figure 1. KENHA team undertaking the Committee through the operations of the data centre.

41. There are a total of 11 static stations equipped with physical weighing scales for trucks, and 23 virtual stations that measure weight digitally. All data from these stations is transmitted to a central data centre, reducing the need for human intervention. The system is secure and can be audited to detect any violations related to axle load control.

42. When a vehicle is weighed, the system collects data such as the registration number, origin and destination, cargo type, axle weight, and an image of the vehicle. This information is processed for ticketing purposes. The system

automatically identifies compliant vehicles and flags noncompliant ones, which are then impounded until they meet the required standards.

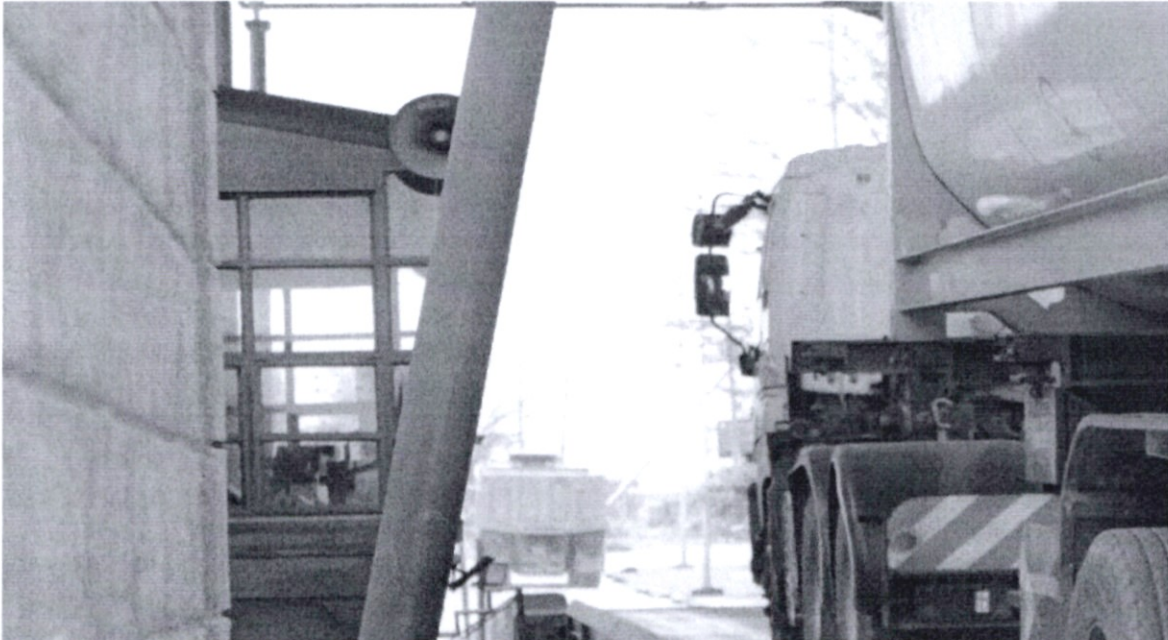


Figure 2. A vehicle undergoing axel load weight check at Mlolongo Weighbridge during the Committee's visit.

43. KENHA contracted different private companies to manage and monitor the data centre and the weighbridges.
44. The virtual system, introduced in 2018, has weighed over 251,338,000 vehicles and counting. It can also detect violations related to axle overload and gross vehicle overload, helping to assess the extent of road damage caused by these factors.
45. The data collected from the weighbridge systems also aids other government agencies, such as the Directorate of Criminal Investigations (DCI) and the Kenya Revenue Authority (KRA), in resolving cases, including fraud investigations.
46. The virtual weighbridge system, incorporated in 2018, was authorized by the East African Community Vehicle Load Control Act of 2016 and the Traffic Act of 2013. These laws allow the installation of digital devices to monitor road compliance. Additionally, the Traffic Act 2013 introduced Rule 41, which outlines the schedule of overload fines. The system was designed to comply with all existing regulations.
47. Virtual weighbridge stations do not have on-site resources to impound violators. However, both virtual and static stations are integrated, allowing overloaded vehicles detected at virtual stations to be flagged at static weighbridges. If a vehicle has a history of violations, it can still be impounded and held based on

previous offenses. Patrol vehicles are also deployed to track violators and ensure accountability.

48. The management, maintenance, and operation of weighbridge stations have been outsourced by KENHA. The management contractor is responsible for system operations, impounding violators, and imposing fines, while enforcement remains the responsibility of the police. Outsourcing has improved system efficiency by reducing internal interference, though the outsourced services remain under the supervision of KENHA, which retains overall responsibility.
49. KENHA has integrated its systems with other government agencies such as KRA to facilitate the collection of transit goods information. NTSA is also integrated into certain aspects of the system, while the DCI and Traffic Police can access information on a need basis.
50. Special goods that cannot be offloaded at a weighbridge, such as dangerous goods, incur fines that are four times higher for overloading, and repeat offenders are fined five times the standard penalty.
51. A permissible axle weight overload of 5% is allowed, as the law accounts for cargo shifting during transit. This tolerance is embedded within the system.
52. To facilitate faster trade among Partner States, the EAC Act requires transporters to clear impounded goods within three days, after which parking fees of USD 50 per day are charged.
53. In cases of overloaded vehicles, the EAC Act allows for the payment of overload fees through e-Citizen, in line with the law's schedule, and Rule 41 of the Traffic Act specifies overload charges. For example, overloading up to 1,000 kgs results in a Kshs 10,000 fine, while an overload of 10 tonnes or more is fined Kshs 400,000. Depending on the applicable road network, the violator is then cleared and released. If the overload exceeds five tonnes, a relief truck is used to offload the excess cargo before both trucks are weighed again to ensure compliance.
54. At static weighbridges, high-speed sensors filter out approximately 90% of compliant vehicles, reducing traffic on the manual weigh scales. Vehicles are only pulled in for manual weighing if noncompliance is detected by the sensors or if the sensors are not functioning. Road users have been sensitized on the use of the weighbridge lanes, but the ultimate solution is to equip every static station with a high-speed weighing sensor.
55. Revenue generated from overloading fines is automated and linked to the e-Citizen platform, where it is managed by the National Treasury. The income is then returned to KENHA as part of its budget. Automation has significantly reduced integrity concerns, as users are aware that fines can only be paid through the system.

56. The Authority has implemented measures to ensure the system's cybersecurity, including routine audits, reconfiguring access to reduce breach attempts, and enhancing firewalls for data protection.
57. The weighbridges were equipped with road sensors that detect details such as weight, length, and speed. This information is transmitted live to mini servers at the stations and then relayed to the data centre via internet connectivity. As a result, the facility can collect traffic data nationwide and ensure compliance with axle load control regulations.
58. Although the system can capture speed violations, KENHA cannot impound road users for speeding, as that falls under the mandate of the NTSA. The lack of enabling regulations prevents KENHA from enforcing speed-related violations, but the system can still assist with issuing instant fines.
59. KENHA proposed the decriminalization of overloading to enhance compliance by allowing offenders to offload excess cargo, pay the fine, and proceed without the need for court processes.
60. Since other agencies, such as KURA and KERRA, do not operate under the same EAC Act, KENHA has proposed a joint approach to ensure that all related agencies function under the same legal framework.

Observations

61. The axle load control centre receives real-time data from 11 static stations and 23 virtual stations, which are integrated to enable centralized monitoring around the clock.
62. The weighbridge is equipped with cameras to capture vehicle images. However, the road sensors were not functional at the Mlolongo Weighbridge following the interruptions occasioned by the construction of the Expressway.



Figure 3. *High speed weighing lane at Mlolongo Weighbridge*

63. At the weighbridge station, vehicles are physically weighed on a scale, but the same data is simultaneously visible at the data centre in real time. The system categorizes vehicles in accordance with legal requirements, including passenger vehicles, trucks, buses, and others.



Figure 4. *Committee members during the site visit at Mlolongo weighbridge*

PART FOUR

4 COMMITTEE OBSERVATIONS

64. Arising from the engagement with the Petitioner and Kenya National Highways Authority (KENHA), and the site visit, the Committee made observations that—

- (i) The rationale for special permits or licenses for abnormal loads is deterrence for the protection of the public road network and the provision of revenue streams for the maintenance of these roads.
- (ii) The levies for exemption permits are specific to the nature of the abnormal load, such that graders and rollers require different permits. These levies were introduced because exemption permits were previously exploited for more than one specified load.
- (iii) Previously permits or licences were issued for each specific passage, however, to improve efficiency and reduce non-tariff barriers to trade they were reviewed to apply on a quarterly basis. The process of application and renewal of the exemption permits for the transportation of abnormal loads has been made easy and accessible through the KENHA virtual portal.
- (iv) The Traffic Act, 2013 applies to all roads within the country, while the EAC Vehicle Load Control Act only applies to regional road trunk network as provided for in the First Schedule to the Act.
- (v) Under the provisions of the Traffic Act, overloading is criminalised, with recourse through the courts while in the EAC Vehicle Load Control Act, recourse on overloading is determined administratively by an authorised officer and fines are paid to the Authority.

PART FIVE

5 COMMITTEE RECOMMENDATIONS


65. Pursuant to the provisions of Standing Order 227, the Committee makes the following recommendations—

- (i) The Cabinet Secretary in charge of Ministry of Roads and Transport undertakes the review of Kenya Roads (KENHA) Regulations of 2013 for the licensing of transportation of abnormal loads and report on its findings to the House within ninety (90) days of tabling of this report.
- (ii) The Committee notes that the existing framework provides for quarterly renewal of licences was effected recently and has been made easy and accessible through the KENHA virtual portal. Therefore, the Committee rejects this prayer.
- (iii) The Committee notes that impounded vehicles are required to ensure compliance within three days as per the provisions of section 17 (6) of the East Africa Community (EAC) Vehicle Load Control (VLC) Act, 2016 and regulation 13 (2) of the EAC VLC (Enforcement) Regulations, 2018. Therefore, the Committee recommends that KENHA strictly adheres to the timelines for release of impounded vehicles.
- (iv) The Cabinet Secretary in charge of the Ministry of Roads and Transport makes legislative and policy proposals on harmonization of the relevant aspects of the Traffic Act with East Africa Community (EAC) Vehicle Load Control (VLC) Act, 2016 and present to the National Assembly within (90) days of tabling of this report.

Signed: _____



THE HON. NIMROD MITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	DAY: Wednesday
TABLED BY: 20/11/2024	Hon. Nimrod Mbai (Chairperson)
CLERK AT THE TABLE:	h. male.

ANNEXURES

- Annex 1: Adoption list
- Annex 2: Public Petition No. 41 of 2023 regarding Punitive Charges Levied by the Kenya National Highways Authority, by Hon. Francis Nguga, MCA
- Annex 3: Minutes of the 65th Sitting held on 28th September, 2023
- Annex 4: Minutes of the 83rd Sitting held of 22nd November 2023
- Annex 5: Minutes of the 92nd Sitting held on 15th December, 2023
- Annex 6: Minutes of the 58th Sitting held on 8th November, 2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 41 of 2023
REGARDING PUNITIVE CHARGES LEVIED BY THE KENYA NATIONAL HIGHWAYS
AUTHORITY

DATE.....8TH NOVEMBER 2024

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of Public Petition No. 41 of 2023 regarding Punitive Charges Levied by the Kenya National Highways Authority to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY (SECOND SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 23 of 2023)

**REGARDING PUNITIVE CHARGES LEVIED BY THE
KENYA NATIONAL HIGHWAYS AUTHORITY**

- 1. Honourable Members,** Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member.
- 2.** In this regard, **Honourable Members,** I wish to report to the House that my office has received a petition from Hon. Francis Ngunga, who is the Member of County Assembly (MCA) for Mua Ward in Machakos County, calling for *consolidation of licences issued by the Kenya National Highways Authority as well as comprehensive review of KeNHA's licensing and levies regime.*
- 3. Honourable Members,** the Petitioner is aggrieved by KeNHA's issuance of exemption permits/ licences for the transport of abnormal loads that include road construction equipment such as excavators, bulldozers, rollers and graders as well as other over-dimensional or heavy cargo. He avers that KeNHA unfairly institutes double charges that are punitive and regressive with regard to the said licences.
- 4.** The Petitioner describes how KeNHA charges low loaders for carrying loads that do not exceed ten tonnes, but further proceeds to levy additional charges if the load in question is a grader or a roller, notwithstanding the fact that the said grader or roller does not exceed the ten tonne limit that has already been paid for.

- 5. Honourable Members**, in light of these woes occasioned by double charges and related inconveniences, the Petitioner seeks the urgent intervention of the National Assembly in reviewing KeNHA's licencing framework for abnormal loads transport, consolidating KeNHA's exemption licences and having them issued annually as opposed to quarterly, and the release of abnormal load transport vehicles from police stations pending the review of KeNHA's licencing and levies regime.
- 6. Honourable Members**, having established that the matter raised in the Petition is well within the authority of this House; and further, that the matters raised in this Petition are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.
- 7.** The Committee is required to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

I thank you.

THE RT. HON. MOSES WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Date:




REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 65TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, SEPTEMBER 28, 2023, IN COMMITTEE ROOM 12 ON GROUND FLOOR, NEW WING, MAIN PARLIAMENT BUILDINGS AT 3:00 PM

PRESENT

- | | | |
|---------------------------------------|---|------------|
| 1. Hon. John Bwire Okano, M.P. | - | (Chairing) |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. Maisori Marwa Kitayama, M.P. | | |
| 4. Hon. Caleb Mutiso Mule, M.P. | | |
| 5. Hon. Suzanne Ndunge Kiamba, M.P. | | |

APOLOGIES

- | | | |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. John Walter Owino, M.P. | | |
| 3. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 4. Hon. Patrick Makau King'ola, M.P. | | |
| 5. Hon. Ernest Ogesi Kivai, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Bidu Mohamed Tubi, M.P. | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Peter Mbogho Shake, M.P. | | |
| 10. Hon. Sloya Clement Logova, M.P. | | |

SECRETARIAT

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Mr. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Mr. Muchiri Mwangi | - | Audio Officer |

INATTENDANCE

PETITIONERS

- | | | |
|-------------------------|---|----------------------|
| 1. Hon. Francis Nguga | - | MCA, Machakos County |
| 2. Mr. Boniface Maene | - | Businessman |
| 3. Mr. Joseph Musami | - | Businessman |
| 4. Mr. Dougulus Musyoka | - | Businessman |

MIN./PPETC/2023/422: PRELIMINARIES

The Chairperson called the meeting to order at 3:00 pm and the Hon. Suzanne Ndunge Kiamba, M.P. said the prayers.

MIN./PPETC/2023/423: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition No. 23 of 2023 regarding punitive charges levied by the Kenya National Highway Authority**
-Meeting with the Petitioner (Hon. Francis Nguga, MCA, Machakos County)
6. Any Other Business
7. Adjournment

MIN./PPETC/2023/424: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2023/425: CONSIDERATION OF PUBLIC PETITION NO. 23 OF 2023 REGARDING PUNITIVE CHARGES LEVIED BY THE KENYA NATIONAL HIGHWAY AUTHORITY

The Petitioners made the following submissions –

- i.) That, the Petition was occasioned by the charges levied by Kenya National Highways Authority (KENHA) on low-loader transporters which was affecting the business operations of transporters. That KENHA issued exemption permits/licences for transportation of abnormal loads including road construction equipment such as excavators, bulldozers, rollers, and graders. However, the low-loader transporters are charged double hence punitive and regressive.
- ii.) That, KENHA charges low-loaders for carrying loads not exceeding ten tonnes but further proceeds to levy charges for some machinery load such as graders and rollers even when the said machinery did not exceed the required weight of ten tonnes which is already paid for.
- iii.) That a 17.5-meter low-loader is currently charged Kshs. 10,000 per month totaling to Kshs120,000 per year while a 19-meter low-loader was charged Kshs. 20,000 per machine quarterly in a year which was more expensive in permit payments. The Traffic Act was meant for transporters carrying machinery to carry a particular weight and length and not the nature of the load carried.
- iv.) That an urgent intervention be made to review KENHA's licensing framework to have them issue consolidated annual licenses instead of quarterly licenses and release impounded low-loader vehicles pending the review. Further, the licensing considered the weight and length and not the nature of the load as well as allowing for yearly and not quarterly licensing.

Committees Concerns

Why KENHA reviewed the licensing framework

The Committee sought to understand why KENHA had made changes in licensing to establish the current model. The Petitioners submitted that in the year 2000, one permit would exempt carrying of any weight provided you a transporter had one machinery. Later, the consideration of axels was introduced to manage excess weight on the roads as well as additional tyres for long vehicles. The KENHA reviewed the licensing model to manage the damage on the roads by heavy carriers. However, the heavy transporters were not complaining because their charges were not punitive.

The small transporters are within the weight of a maximum of seven tonnes. Therefore, there was need for different licenses for every business through categorization of machineries being carried.

The intention of KENHA

The Committee made an inquiry regarding the intention of KENHA in the change of the model. The Petitioners indicated that, they appreciated the intention of KENHA coming up with the new licensing model, the fines charged on the low-loaders were hefty and the regulations had excesses impeding transportation businesses. That the purpose of the levies was to ensure maintenance of the roads. Further, section 57 of the Traffic Act CAP 403 provided for exemptions based on weight or dimensions and not the type of load.

Petitioners' proposal

The Committee sought clarification regarding their proposals regarding the matter. The Petitioners indicated that they were praying for the machineries carried to be charged on weight and not type of loader whether it is a loader, roller or whatever machinery as the fees paid were too much. Further, that the licenses be consolidated and issued annually to avoid the tedious paperwork involve in quarterly license renewal which took about two weeks. The Petitioners further proposed an annual fee of Kshs60,000 for small machinery transporters.

Whether there was a pending court case

The Committee sought clarity regarding a court case over the matter. The Petitioners stated that the court case was submitted by the business people but the matter was concluded. The Petitioners stated that after failing in court, there was need to address the concerns through other ways including petitioning.

Effect of the high charges

The Committee inquired about how the increased charges affected the transporters. The Petitioners indicated that the ripple effect of the excess charges was affecting the consumers as the cost was transferred to them hence leading to loss of business. Further, due to the high cost of doing business, the profit margins of the transporters had been slashed.

Committee Way forward

After the deliberations, the Committee resolved that the Petitioners submit a detailed proposal on the categorization of the machinery, licenses, current fees charged by KENHA, and a proposed fair charge for the various categories of machinery.

MIN./PPETC/2023/426: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 12:30 p.m. The next meeting will be held on Tuesday, 28th September 2023 at 3.00 p.m.

Sign:
(CHAIRPERSON)

Date..... 5/12/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 83RD SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, NOVEMBER 22, 2023, IN COMMITTEE ROOM 12, GROUND FLOOR, MAIN PARLIAMENT BUILDINGS, AT 12.00 P.M

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. Joshua Chepyegon Kandie, M.P
4. Hon. John Walter Owino, M.P.
5. Hon. Maisori Marwa Kitayama, M.P
6. Hon. Bidu Mohamed Tubi, M.P.
7. Hon. Edith Vethi Nyenze, M.P.
8. Hon. Caleb Mutiso Mule, M.P.
9. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
10. Hon. Suzanne Ndunge Kiamba, M.P.
11. Hon. Sloya Clement Logova, M.P.
12. Hon. John Bwire Okano, M.P.

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Peter Mbogho Shake, M.P.

SECRETARIAT

1. Ms. Ahmed Kadhi - Senior Clerk Assistant
2. Mr. Willis Obiero - Clerk Assistant III
3. Mr. Shadrack Omondi - Legal Counsel II
4. Ms. Lilian Mburugu - Media Relations Officer III
5. Ms. Kevin Sakani - Audio Officer

IN ATTENDANCE

KENYA NATIONAL HIGHWAYS AUTHORITY (KeNHA)

1. Eng. Kungu Ndungu - Director General
2. Mr. James Bowen - Director, Corporate Services
3. Eng. Daniel Cherono - Director, Maintenance
4. Eng. Michael Ngala - Deputy Director, Road Control
5. Eng. Christopher Nzioka - Deputy Director, Highway Design

MIN./PPETC/2023/522: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 p.m. and Hon. Edith Vethi Nyenze, M.P. said the prayers.

MIN./PPETC/2023/523: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition regarding Punitive charges levied by the Kenya National Highways Authority**
-Meeting with Director General, KENHA
6. **Consideration and Adoption of the Report of Public Petition No. 3 of 2022 regarding Degazettement of Hola Irrigation Scheme Land**
7. Any Other Business
8. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. (Eng.) Bernard Muriuki Nebart, M.P. and seconded by Hon. Ernest Ogesi Kivai, M.P.

MIN./PPETC/2023/524: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2023/525: CONSIDERATION OF PUBLIC PETITION REGARDING PUNITIVE CHARGES LEVIED BY THE KENYA NATIONAL HIGHWAYS AUTHORITY

Meeting with Director General, KENHA

The Director General of KENHA, Eng. Kungu Ndungu appeared before the Committee and submitted as follows—

Background

- i. The Authority in conducting its mandate to manage, develop, rehabilitate, and maintain national roads was guided by the Kenya Roads Act, No. 2 of 2007, the Traffic Act (Cap. 403), and the East African Community Vehicle Load Control Act, 2016, and the accompanying Regulations.
- ii. The Authority had set up eleven (11) Static Weighbridge Stations, twenty-three (23) Virtual Weighbridge Stations on the National Trunk Road Network, and 23 mobile weighbridge teams across the country to monitor and ensure adherence to Axle Load Laws.

- iii.) The aim was to protect the expensive road assets whose worth is about Kshs. 3 trillion developed using public funds and safeguarding the safety of the public and structures during the transportation of abnormal and special loads. Weight limits were therefore necessary to safeguard the road infrastructure from deterioration resulting from heavy loads.
- iv.) Exemption permits for the movement of special vehicles were also provided including weight dimensions.
- v.) The permits were issued in writing and carried with the vehicle in question whenever the vehicle was being used under the authority of that permit.
- vi.) The Authority had powers with the approval of the Cabinet Secretary to determine, impose, and levy rates, tolls, charges, dues, or fees for any of its services or for the use by any person of its facilities.
- vii.) Pursuant to Section 22 (2) (d) of the Kenya Roads Act, the then Minister for Roads, Hon Franklin Bett published Legal Notice No. 86 of 2013 on 10th May 2013, which gave powers to the Authority to charge levies for the issuance of exemption permits for movement of abnormal or oversize loads. The charges were captured under Part 1, Schedule D of the Legal Notice No. 86 of 2013.
- viii.) The charges were based on the weight of the cargo and not the vehicle itself as alluded in the petition and dimensions of the vehicle loaded. The system would pick the highest between the two categories (weight or dimensions) and generate only one invoice at a time.
- ix.) The permit issued was specific to a particular cargo or load and there were no double charges being levied for a cargo or load. The Authority did not issue general licenses or permits. Vehicles had different wheels (conventional or super single), and axle configurations, and the weight of loads varied as well. The permits issued did not allow for overload or breach of safety, environmental, and health requirements.
- x.) A permit ought to be a one-off document issued for a particular journey. After extensive stakeholder engagements, the Authority issues quarterly permits for the movement of such special loads. For a vehicle to be issued with exemption permits, the transporter needed to provide a copy of the logbook, a copy of inspection certificates, a copy of insurance certificates, and a photograph of the front and side of the loaded vehicle permit application in the Authority's online permit system.
- xi.) Under the East African Community Vehicle Load Control (Special Loads) Regulations, 2018 an exemption permit was to be issued for a maximum two-way (one-off) charged at USD 20 compared to the current quarterly permits being issued by the Authority where a transporter could make an unlimited number of trips within that period.
- xii.) The Authority had a Customer Service Deliver Charter where it committed to serving the customers in an efficient and efficient manner. Under the Customer Service Charter, the Authority endeavored to process the exemption permits upon application within seven (7) working days. To facilitate trade and faster movement of vehicles, the Authority has automated the exemption permits application process where customers apply, pay, and autogenerate the permits from the comfort of their homes within 24 working hours of application.

Response to the prayers raised in the Petition.

i.) Review of the licensing framework by KENHA.

The exemption permit levy charges by the Authority had been due for review since their publication in 2013. The Authority was drafting the proposed exemption permit levies which would be forwarded to the Cabinet Secretary for publishing pursuant to Section 22 (2) (d) of the Kenya Roads Act, 2007. In the review process, all relevant stakeholders would be involved through public participation as required by the Constitution of Kenya, 2010.

ii.) Consolidation of exemption licenses to be issued annually as opposed to quarterly.

The exemption permit was a conditional document that allowed special-purpose vehicles that exceeded the maximum permissible dimensions or weights as set out under Section 55 (2) and the 12th Schedule of the Traffic Act (Cap. 403 Laws of Kenya) to operate on the roads. From the previous public engagement between the Authority and relevant stakeholders, it was agreed that the three-month period for exemption permits was sufficient.

The Authority was implementing the East African Community Vehicle Load Control (Special Loads) regulations, 2018, which required that an exemption permit be issued for a maximum two-way (one-off) and be charged at USD 20. The quarterly permits and levies charged by the Authority offered a major reprieve to transporters since they were charged in Kenya Shillings and for a longer period.

iii.) Release of vehicles held for non-conformity to the licensing framework.

It was an offence both under the Traffic Act and the East African Community Vehicle Load Control Act, 2016 to operate a vehicle on the road exceeding the permissible or allowable dimension limits. The Authority did not detain any vehicle without following due process. Any vehicle exceeding the permissible dimensions or weight set out in the law was required to apply for an exemption permit pursuant to Section 57 of the Traffic Act.

A vehicle that violated the permit conditions or used any public road without a valid exemption permit committed an offence chargeable in a court of law. The accused persons were normally issued with notices to attend court within seven (7) days as directed by the Office of the Director of Public Prosecutions. Any vehicle impounded for violating the law and having been charged could only be released with leave from the court.

Committee Concerns

- i.) Regarding the challenges KENHA had experienced in the implementation of the levies and charges as well as other policies,** the DG stated that oversized vehicles or protruding machinery carried on low-loaders could lead to the destruction of bridges and powerlines hence the need for such regulations to provide proper routes and timing for such kinds of transportation.
- ii.) Regarding the regulations in place,** the DG stated that there was a need for a review and new regulations to take care of the new developments in the industry. Therefore, the Authority was in the process of drafting proposed new regulations which would be subjected to public participation and stakeholder engagement before gazettelement by the Ministry.
- iii.) Regarding the release of vehicles being held for non-conformity,** the DG clarified that there were only three vehicles held awaiting prosecution in court. Further, after impounding the vehicles in violation of the regulations, KENHA referred them to ODPP for prosecution

in court. The courts had the discretion on the fines charged up to Kshs. 400,000 depending on the infringement.

- iv.) **Regarding long queues experienced at various weighbridges across the country**, the DG stated that the concern had been addressed by the installation of high-speed weighing motion. The system was able to flag suspected overloading which was then subjected to weighing and any violation was then prosecuted as per the provisions of the law. Further, the virtual weighbridges were able to collect and relay data hence minimizing inconveniences caused by long queues.
- v.) **Regarding the adoption of quarterly as opposed to annual exemption permits**, the DG clarified that it was due to the previous stakeholder engagement which included the transporters. Further, application of the permits was seamless through the KENHA portal which enabled transporters to finalize the process online and print the permit for verification while undertaking their business on the roads.
- vi.) **Regarding the usage of the levies and fines charged by KENHA**, the DG stated that the Authority was collecting about Kshs. 320 million to Kshs. 370 million annually from exemption permits. All revenue collected either through permits, levies, or fines was plowed back into the operations of KENHA.
- vii.) **Regarding the consolidation of the fees and the need for disclosure of equipment carried**, the DG stated that various machinery had different dimensions hence the need for declaration for proper allocation of permits. The transporters were allowed to apply for permits covering various equipment they were to transport. However, the challenge was that some transporters wanted to transport machinery that was not declared in the permit as a way of additional business which was against the law.
- viii.) **Regarding road safety concerns**, the DG stated that measures were put in place both at the design and construction stages to reduce road accidents. However, vandalism of road signs and driver behaviour were major challenges. However, there was a need to standardize bumps and the role was domiciled in the Department of Road Safety. Further, KENHA was strict on the use of auxiliary lanes by not allowing vehicles weighing more than 3.5 tonnes. The Authority was also engaged in the clearing of road reserves.

Committee Resolution

After the deliberations, the Committee resolved that KENHA submits a response to the following issues: -

- i.) The proposals on the Alternative Dispute Resolution (ADR) mechanism to address some of the concerns between transporters and the Authority.
- ii.) The revenue KENHA collects from exemption charges annually and whether there would be a change in revenue with the review of the policy.

MIN./PPETC/2023/526:

**CONSIDERATION AND ADOPTION OF THE REPORT OF
PUBLIC PETITION NO. 3 OF 2022 REGARDING
DEGAZETEMENT OF HOLA IRRIGATION SCHEME
LAND**

The Agenda was deferred.

MIN./PPETC/2023/527:

ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 2:15 p.m. The next meeting will be held on Thursday, 23rd November, 2023 at 12.00 p.m.

Sign: .....
(CHAIRPERSON)

Date..... 29/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 92ND SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON FRIDAY, DECEMBER 15, 2023, IN KALAMA HILL CONFERENCE ROOM, PRIDE INN PLAZA HOTEL AND CONFERENCE CENTER, MACHAKOS COUNTY AT 10.00 A.M

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. Maisori Marwa Kitayama, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Joshua Chepyegon Kandie, M.P.
4. Hon. John Walter Owino, M.P.
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
8. Hon. Peter Mbogho Shake, M.P.
9. Hon. Suzanne Ndunge Kiamba, M.P.
10. Hon. John Bwire Okano, M.P.

SECRETARIAT

1. Mr. Ahmed Kadhi - Senior Clerk Assistant
2. Mr. Willis Obiero - Clerk Assistant III
3. Mr. Shadrack Omondi - Legal Counsel II
4. Ms. Lilian Mburugu - Media Relations Officer III
5. Mr. Martin Sigei - Research Officer III
6. Ms. Winfred Nyaga - Secretary
7. Ms. Rehema Koech - Audio Officer

IN ATTENDANCE

KENYA NATIONAL HIGHWAYS AUTHORITY

- | | | |
|------------------------|---|---|
| 1. Eng. Njuguna Gatitu | - | Director, Polic, Strategy and Compliance, Representing the Director General |
| 2. Eng. Daniel Cheron | - | Director Maintenance |
| 3. Eng. Michael Ngala | - | DD, Axel Load Control |
| 4. Mr. Samuel Kumba | - | Director Communications |

KENYA TRANSPORTERS ASSOCIATION

- | | | |
|-----------------|---|-----|
| Ms. Mercy Ileri | - | CEO |
|-----------------|---|-----|

MIN./PPETC/2023/574: PRELIMINARIES

The Chairperson called the meeting to order at 2:00 p.m. and Hon. Ernest Ogesi Kivai, M.P. said the prayers.

MIN./PPETC/2023/575: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition No. 23 Of 2023 Regarding Punitive Charges Levied by The Kenya National Highways Authority**
 - *Meeting with Kenya Transport Association (KTA)*
 - *Meeting with DG, KENHA*
6. **Consideration of Public Petition No. 15 of 2023 Regarding the Declaration of Mukutani Forest as a Public Forest**
 - *Meeting with the Chief Conservator of Forests*
7. Any Other Business
8. Adjournment

MIN./PPETC/2023/576: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

A. Meeting with the Kenya National Highways Authority

The KeNHA led by the Director, Policy, Strategy and Compliance Eng. Njuguna Gatitu appeared before the Committee to address additional questions on the Petition as follows:

a) Proposal regarding Alternative Dispute Resolution on weighbridge matters

The Authority proposed to the Committee as follows:

- i. Harmonization of the Traffic Act with East Africa Community Vehicle Load Control Act, 2016 on vehicle loading as a significant policy shift requiring the input of the Cabinet Secretary, Ministry of Roads and Transport.

The EAC VLC Act 2016 decriminalized overloading and hence a vehicle once determined to be overloaded was required to pay overload fees and thereafter correct the offending load before exiting the weighbridge. This was meant to facilitate trade among the EAC Partner States as weighbridges were deemed to be non-tariff barriers within the region.

The compliant trucks could be released as soon as they complied which would take an hour or days depending on how fast the transporter moves to clear the violation. This avoided the lengthy court processes which was the only way under the Traffic Act which criminalizes overloading. The Traffic Act was applicable on other road networks which were not covered by the EAC VLC, Act. Whereas overloading was decriminalized under the EAC VLC, Act, the issue of excessive dimensions remained criminalized under both Acts.

- ii. Amendment of the Traffic Act to decriminalize overloading on all public roads to promote and entrench the ADR mechanism with regard to vehicle loading. However, the issue of dimensions to remained under the criminal jurisdiction as is the case under the EAC Act to deter motor vehicle owners from altering vehicle dimensions in workshops. The proposals to amend the Traffic would be as follows:

- Amend Section 55, 56 and 58 of the Traffic Act, Cap 403 to decriminalize overloading and replace with the provisions of Section 17 of the EAC VLC Act, 2016 which decriminalized overloading to avert resolution of disputes through the court process and create a harmonious way of doing business.
- Introduce the provisions of Section 3 of the EAC VLC Act, 2016 to the Traffic Act to be applicable to all public roads. (*Section 3 under EAC VLC Act only identified the Regional Trunk Road Network as set out in the First Schedule where EAC VLC Act was applicable*).
- Introduce the provisions of Sections 4,5,6,7 and 8 of the EAC VLC Act, 2016 into the Traffic Act Cap 403 on Legal Load Limits on all public roads and overloading fees.

- Amend the Traffic (Amendment) Rules, 2013 by Replacing with The East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 to align to the harmonized Traffic Act and EAC VLC Act, 2016.

b) Annual revenue collected by KeNHA from exemption permits and other charges

The Annual Revenue collected from Exemption Permits amounted to Kshs. 363,694,474.00 in FY2021/2022 and Kshs. 386,726,418.00 in FY 2022/2023, whereas monies collected from other charges i.e. fines, overload fees, weighbridge parking fees, road cuttings, road user fees and sale of tender documents amounted to Kshs 919,976,294.00 and Kshs 756,196,843.00 respectively over the same period. The monies were factored in the Authority's operational budget and also the budget to support Axle Load Operations.

Committees Concerns

- i. **Regarding the traffic experienced at different weighbridges**, KeNHA indicated that there was limited congestion of any kind in the weighbridges and invited the Committee to visit sampled weighbridges to establish. The Authority had automated its systems to allow for weighing on motion and reduced human interaction. The data was transmitted real time to the headquarters. The axle loading system in place was exemplary as even other EAC Partner States were benchmarking with Kenya.
- ii. **Regarding the reduction in annual revenue collection for fine and other charges from Kshs. 910,976,2894 in FY 2021/2022 to Kshs. 756,196,843 in FY 2022/2023**, the Authority indicated that a reduction of the charges on fines was an indication of improved compliance.
- iii. **Regarding the heavy transporters using roads outside the KeNHA network**, the Authority indicated that it was working with other roads agencies to curb noncompliance. For instance, the other road agencies were using mobile weighbridges. That about 98 per cent of transporters interacted with the weighbridges. However, the Authority was targeting to win the transporters into compliance by arrangements such as a two-tone allowance on weight to cater for extra weight occasioned by for example rains. The Authority was also working with the SACCOs of the local transporters to ensure compliance.

B. Meeting with the Kenya Transporters Association

The CEO, Kenya Transporters Association, Ms. Mercy Ileri appeared before the Committee and submitted as follows:

- i. That the Kenya Transporters Association Limited (KTA) was a business association of road transporters whose broad objective was to provide a common voice to articulate business constraints facing its members, while also contributing towards the realization of a safe, reliable, efficient, professional and environmentally friendly road freight industry in Kenya. The KTA involved transporters across the East African Community and even those transporting up to South Africa.
- ii. That the laws allowed for exemption permits for abnormal cargo but the KeNHA

regulations were punitive when insisting on classifying cargo by their nature and not weight.

- iii. That despite the provision for online application of exemption permits, the process was draining and transporters could not establish when their cargo would be released at the port due to the delay in processing of the permits.
- iv. That KTA was ready to present further evidence to support the claim that the KeNHA regulations were punitive and transporters were frustrated. The CEO, KTA requested for additional two weeks to present the evidence and comprehensive submission to the Committee.

Committee Concerns and Resolution

After the deliberations the Committee acceded to the request for additional two weeks for KTA to present evidence and comprehensive submission on the Petition and sought the following:

- i. How the charges were punitive yet the transporters could build up the rates onto the customers;
- ii. The permit application process;
- iii. Evidence on interaction with KeNHA; and
- iv. Efforts by KTA to ensure compliance of its members;

MIN./PPETC/2023/578: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:30 p.m. The next meeting will be by notice.

Sign: 

(CHAIRPERSON)

Date..... 13 - 02 - 2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 58TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON FRIDAY, NOVEMBER 08, 2024, IN MEDUSA 2 ROOM, ENGLISH POINT MARINA AT 10.00. A.M

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Maisori Marwa Kitayama, MP
4. Hon. Edith Vethi Nyenze, M.P
5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
6. Hon. Suzanne Ndunge Kiamba, M.P.
7. Hon. Ernest Ogesi Kivai, M.P.
8. Hon. Joshua Chepyegon Kandie, M.P
9. Hon. Bidu Mohamed Tubi, M.P.
10. Hon. Peter Mbogho Shake, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Caleb Mutiso Mule, M.P.
4. Hon. John Bwire Okano, M.P.
5. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Samuel Kalama | Principal Clerk Assistant II |
| 2. Mr. Ahmad Kadhi | Principal Clerk Assistant II |
| 3. Ms. Roselyn Njuki | Senior Sergeant at Arms I |
| 4. Ms. Anne Shibuko | Clerk Assistant I |
| 5. Ms. Patricia Gichane | Legal Counsel II |
| 6. Mr. Isaac Nabiswa | Legal Counsel II |
| 7. Mr. Willis Obiero | Clerk Assistant III |
| 8. Ms. Nancy Akinyi | Research Officer III |
| 9. Mr. Calvin Karungo | Media Relations Officer III |
| 10. Mr. Benson Muchiri | Audio Officer |

MIN./PPETC/2024/363: PRELIMINARIES

The Chairperson called the meeting to order at 11:00 a.m. and proceedings began with prayers by Hon. Joshua Kandie, M.P.

MIN./PPETC/2024/364: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 10 of 2023 regarding Resettlement of Residents of Muthanga Farm
6. Consideration of Public Petition No. 23 of 2023 regarding Punitive Charges levied by The Kenya National Highways Authority
7. Consideration of Public Petition No. 82 of 2023 regarding Delay in the completion of Jomvu Kuu-Jitoni-Rabai Road in Jomvu Sub County
8. Consideration of Public Petition No. 4 of 2023 regarding Delayed Adjudication and Settlement of Squatters After the Expiry of Lease of Macalder Mines Limited Land
9. Any Other Business
10. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Ernest Kagesi, M.P. and seconded by Hon. Marwa Kitayama, M.P.

MIN./PPETC/2024/365: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda was deferred.

MIN./PPETC/2024/366: CONSIDERATION OF PUBLIC PETITION NO. 10 OF 2023 REGARDING RESETTLEMENT OF RESIDENTS OF MUTHANGA FARM

Observations

The Committee considered the draft Report and made the following observations:

- (i) A similar petition was presented to the House by the Member for Gatundu South Constituency, Hon. Joseph Ngugi Nyumu, MP on 23rd October 2013. In its report, the Departmental Committee on Lands recommended that the government purchase the land from the owners and allocate to the settlers or squatters.
- (ii) In the court judgement dated 12th June 2020 in *Nairobi ELC Suit No.1159 of 2000 Michael Mutune and 9 others vs Luka Kimeu Mutevu and 6 others and Royal Capital Ltd* the Court ruled with respect to the Plaintiff's parcels of land Makuyu/ Kambiti/ Blocks 1/17,44,6,27,48,83,20,15,32,43. The court held that the squatters had trespassed on the Muthanga Farm Ltd's land and their claim under adverse possession did not meet the threshold of 12 years of uninterrupted occupation.

- (iii) The Multiagency Committee led by the Deputy Commissioner of Muranga Subcounty considered the matter extensively by capturing data, validating the data and undertaking in valuation of the land as of 11th June 2024.
- (iv) The members of Muthanga Farm Ltd. disputed the valuation report and cited the need for their own independent valuation. The members were willing to cede 270 acres to government at market rate to settle the squatters.
- (v) There is hostility between the squatters and the members of Muthanga Farm Ltd. who are unable to access the land despite several court rulings.

Recommendation

The Committee recommended that the Ministry of Lands, Public Works, Housing and Urban Development National in consultation with National Lands Commission compensates Muthanga Farm Ltd for the part occupied by the squatters as per the valuation report of the Multiagency Committee and settles the squatters within the Financial Year 2025/2026.

MIN./PPETC/2024/367: CONSIDERATION OF PUBLIC PETITION NO. 23 OF 2023 REGARDING PUNITIVE CHARGES LEVIED BY THE KENYA NATIONAL HIGHWAYS AUTHORITY

Observations

The Committee considered the draft Report and made the following observations:

- (i) The rationale for special permits or licenses for abnormal loads is deterrence for the protection of the public road network and the provision of revenue streams for the maintenance of these roads.
- (ii) The levies for exemption permits are specific to the nature of the abnormal load, such that graders and rollers require different permits. These levies were introduced because exemption permits were previously exploited for more than one specified load.
- (iii) Previously permits or licences were issued for each specific passage, however, to improve efficiency and reduce non-tariff barriers to trade they were reviewed to apply on a quarterly basis. The process of application and renewal of the exemption permits for the transportation of abnormal loads has been made easy and accessible through the KENHA virtual portal.
- (iv) The Traffic Act, 2013 applies to all roads within the country, while the EAC Vehicle Load Control Act only applies to regional road trunk network as provided for in the First Schedule to the Act.

- (v) Under the provisions of the Traffic Act, overloading is criminalised, with recourse through the courts while in the EAC Vehicle Load Control Act, recourse on overloading is determined administratively by an authorised officer and fines are paid to the Authority.

Recommendations

Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- (i) The Cabinet Secretary in charge of Ministry of Roads and Transport undertakes the review of Kenya Roads (KENHA) Regulations of 2013 for the licensing of transportation of abnormal loads and report on its findings to the House within ninety (90) days of tabling of this report.
- (ii) The Committee notes that the existing framework provides for quarterly renewal of licences was effected recently and has been made easy and accessible through the KENHA virtual portal. Therefore, the Committee rejects this prayer.
- (iii) The Committee notes that impounded vehicles are required to ensure compliance within three days as per the provisions of section 17 (6) of the East Africa Community (EAC) Vehicle Load Control (VLC) Act, 2016 and regulation 13 (2) of the EAC VLC (Enforcement) Regulations, 2018. Therefore, the Committee recommends that KENHA strictly adheres to the timelines for release of impounded vehicles.
- (iv) The Cabinet Secretary in charge of the Ministry of Roads and Transport makes legislative and policy proposals on harmonization of the relevant aspects of the Traffic Act with East Africa Community (EAC) Vehicle Load Control (VLC) Act, 2016 and present to the National Assembly within (90) days of tabling of this report.

MIN./PPETC/2024/368: CONSIDERATION OF PUBLIC PETITION NO. 82 OF 2023 REGARDING DELAY IN THE COMPLETION OF JOMVU KUU-JITONI-RABAI ROAD IN JOMVU SUB COUNTY

Observations

The Committee considered the draft Report and made the following observations:

- (i) The Jomvu Kuu-Jitoni-Rabai Road is classified as an urban road and pursuant to the provisions of section 10 of the Kenya Roads Act, the road falls under the responsibility of the Kenya Urban Roads Authority.
- (ii) The contract for construction of the road to bitumen standards was awarded to M/S Associated Construction Limited and the contract period was 24 months.

- (iii) The tarmacking of Jomvu Kuu Jitoni-Rabai Road in Mombasa County was yet to be completed as the contractor suspended works due to delayed payment to the contractor.
- (iv) The untarmacked section of the road was in a dilapidated state, with poor drainage systems and dusty condition affecting the wellbeing of the residents in the area including businesses.
- (v) According to Report of the Auditor-General on Kenya Urban Roads Authority for the year ended 30th June, 2022:
 - a. an audit inspection exercise carried out in February, 2023 revealed that the project implementation was behind schedule going by the project extended completion date of 21st March, 2022. The works had stalled, and the contractor was not on site.
 - b. Some completed sections of the road had been worn out and required to be redone. In the circumstances, the project completion was behind schedule as approximately 11 months had elapsed from the revised project completion date of 21st March, 2022.
- (vi) The project was extended six times for a period totalling 80 months as of 11th June 2024. This would adversely impact on realization of value for money by the citizens.

Recommendations

Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- (i) The National Treasury disburses the remaining funds to KURA in the Financial Year 2024/2025 or through a Supplementary budget, if any, to enable completion of the road; and
- (ii) KURA to undertake measures with a view to making the remaining section of the road passable, and mitigate the environmental concerns, including dust.

MIN./PPETC/2024/369: CONSIDERATION OF PUBLIC PETITION NO. 4 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS AFTER THE EXPIRY OF LEASE OF MACALDER MINES LIMITED LAND

The Committee considered the draft Report and noted that—

- (i) through Legal Notice 85 of 2023 dated 13th June, 2023, the Cabinet Secretary in the Ministry of Environment, Climate Change and Forestry, declared the subject land as a forest area pursuant to section 31(2) of the Forest Conservation and Management Act.

(ii) there was a suit filed at the Environment and Land Court at Migori challenging the declaration of the subject land as forest area.

Committee Resolution

The Committee deliberated on the matter and agreed to have a round table discussion with—


- (i) the Cabinet Secretary, Ministry of Lands, Housing and Urban Development;
- (ii) the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry; and
- (iii) the County Government of Migori County.

The Committee would utilise the round table discussion to have the above parties withdraw the suit and allow the parliamentary process to be concluded.

MIN./PPETC/2024/370:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:00 p.m. The next meeting will be held on Friday, 8th September 2024 at 02:00 p.m.

Sign: 

for (CHAIRPERSON)

Date..... 19-11-2024