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ELEVENTH PARLIAMENT – SECOND SESSION - 2014

SELECT COMMITTEE ON DELEGATED LEGISLATION

**REPORT ON THE
NATIONAL TRANSPORT AND SAFETY AUTHORITY
(OPERATION OF PUBLIC SERVICE VEHICLES)
REGULATIONS, 2014**

**NATIONAL ASSEMBLY,
PARLIAMENT BUILDINGS,
NAIROBI**

July, 2014

1.0 PREFACE

The Select Committee on Delegated Legislation was constituted on 21st May, 2013 and comprises of the following members:-

- | | | |
|--|---|-------------------------|
| 1. Hon. William Cheptumo, M.P | - | Chairperson |
| 2. Hon. Joseph Gitari, M.P | - | Vice Chairperson |
| 3. Hon. Kabando wa Kabando, M.P | | |
| 4. Hon. Mohamed Aden Huka, M.P | | |
| 5. Hon. Ngikor Nicholas Nixon, M.P | | |
| 6. Hon. Michael Kiso Manthi, M.P | | |
| 7. Hon. Ibrahim Abdi Saney, M.P | | |
| 8. Hon. Zainabu Chidzuga, M.P | | |
| 9. Hon. John Waiganjo, M.P | | |
| 10. Hon. Yussuf Hassan, M.P | | |
| 11. Hon. Paul Koinange, M.P | | |
| 12. Hon. George Theuri, M.P | | |
| 13. Hon. Elisha Busienei, M.P | | |
| 14. Hon. Alfred Keter, M.P | | |
| 15. Hon. Eusilah Jepkosgei, M.P | | |
| 16. Hon. Paul Bii, M.P | | |
| 17. Hon. William Kisang, M.P | | |
| 18. Hon. Bernard Shinali, M.P | | |
| 19. Hon. Eng. Shadrack Manga, M.P | | |
| 20. Hon. Charles Gimose, M.P | | |
| 21. Hon. Vincent Musau, M.P | | |
| 22. Hon. Peter Kaluma, M.P | | |
| 23. Hon. Rachael Ameso, M.P | | |
| 24. Hon. Simba Arati, M.P | | |
| 25. Hon. Neto Agostinho, M.P | | |
| 26. Hon. Wetangula Timothy Wanyonyi, M.P | | |
| 27. Hon. Marcus Mutua Muluvi, M.P | | |
| 28. Hon. Tom J. Kajwang, M.P | | |
| 29. Hon. Hassan Aden, M.P | | |

1.1 Committee's Mandate

The Committee on Delegated Legislation is a Select Committee established pursuant to provisions of the Standing Order No. 210 whose mandate is to consider in respect of any statutory instrument whether it:-

- Is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;

- b. Infringes on fundamental rights and freedoms of the public;
- c. Contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- d. Contains imposition of taxation;
- e. Directly or indirectly bars the jurisdiction of the court;
- f. Gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
- g. Involves expenditure from the consolidated fund or other public revenues;
- h. Is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- i. Appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- j. Appears to have had unjustifiable delay in its publication or laying before Parliament;
- k. Makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- l. Makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- m. Inappropriately delegates legislative powers;
- n. Imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- o. Appears for any reason to infringe on the rule of law;
- p. Inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and;
- q. Accords to any other reason that the Committee considers fit to examine.

Standing Order No. 210 (4) provides that if the Committee:-

- a. Resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument;
- b. Does not acceded to the statutory instrument, the Committee may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled;
- c. The Clerk shall submit the resolution under paragraph 4(b) above to the relevant state department or the authority that published the statutory instrument.

1.2 The National Transport and Safety Authority Regulations, 2014

The National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014 (hereinafter "the Regulations") were submitted to the National Assembly on 18th March 2014 by the Cabinet Secretary for Transport and Infrastructure. The overall objective of the Regulations is to regulate the operation of public service vehicles in order to enhance compliance with the law and improve safety on the roads.

1.3 Committee Meetings

The Committee held a number of sittings during which the National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014 were considered in accordance to the Constitution, the Standing Orders 210(4) of the National Assembly, the provisions of the Statutory Instruments Act (Act No. 23 of 2012) and other relevant written laws.

The Committee finds that the Statutory Instrument (The National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014, is not in accord with the mandatory requirements of the provisions of the Constitution, Statutory Instruments Act, 2013, the parent Act to which it is made and other relevant written laws.

Pursuant to Standing Order 210(4) (b) and the provisions of the Statutory Instruments Act, 2013, the Committee recommends to the House that the National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014 be annulled.

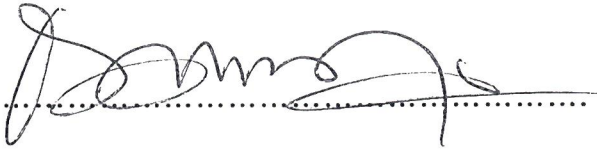
1.4 Acknowledgement

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

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their useful and immense contribution in scrutinizing the National Transport

The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

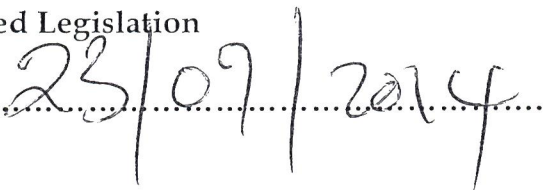
Finally it is my pleasant duty and privilege, on behalf of the Select Committee on Delegated Legislation to introduce this report to the House.

Signed.....

Hon. William Cheptumo, M.P

(Chairperson)

Committee on Delegated Legislation

Date.....

- **Section 19** provides that in cases where Parliament has adopted a report or a resolution that a statutory instrument be revoked, the statutory instrument shall stand revoked and the regulation making authority shall publish the revocation within fourteen days.
- **Section 24(1)** provides that a statutory instrument shall not be inconsistent with the provisions of the enabling legislation or of any Act. Such a statutory instrument shall be void to the extent of the inconsistency.
- **Section 24 (5)** provides that there may be annexed to the breach of a statutory instrument a penalty not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months or both which the regulation-making authority may think fit.
- **Section 25(1)** provides that a statutory instrument may provide for the imposition of fees and charges on any matter for which such provision is made in the enabling legislation.

(ii) *The Interpretation and General Provisions Act*

- **Section 36 (1)** allows the President, by an order to transfer the exercise of a power or performance of a duty to a Cabinet Secretary where the exercise of a power or performance of a duty has been conferred on the President by an Act of Parliament.
- **Section 37** deals with the execution of duties of a Cabinet Secretary or public officer during periods of their temporary absence from office or inability to perform such duties. It provides that such powers and duties shall be performed by a Cabinet Secretary designated by the President, or a person named by, or by the public officer holding an office designated by the Cabinet Secretary. The Cabinet Secretary or the person or public officer so designated shall have and exercise those powers and shall perform those duties subject to such conditions, exceptions and qualifications as the President or Cabinet Secretary may direct.
- **Section 38** deals with delegation of powers. It provides that where an Act of Parliament confers the exercise of a power or the performance of a duty on the President, the Attorney-General or a Cabinet Secretary, the President, the Attorney-General or the Cabinet Secretary, may, unless by law expressly prohibited from doing so, delegate the exercise of the power or the performance of the duty by notice in the Gazette to a person by name or to the person for the time holding an office specified in the notice subject to such conditions,

exceptions or qualifications as the President, the Attorney-General or the Cabinet Secretary may specify on the notice.

(iii) Provisions which empower the Cabinet Secretary to make the Regulations

The Regulations are made pursuant to the powers conferred to the Cabinet Secretary under section 54 of the National Transport and Safety Authority Act, No. 33 of 2012 ("the Act") which allows the Cabinet Secretary to in consultation with the Board, to make regulations for the better carrying into effect of the provisions of this Act.

The functions of the Authority under the Act are:

- (a) advise and make recommendations to the Cabinet Secretary on matters relating to road transport and safety;
- (b) implement policies relating to road transport and safety;
- (c) plan, manage and regulate the road transport system in accordance with the provisions of this Act;
- (d) ensure the provision of safe, reliable and efficient road transport services; and
- (e) administer the Act of Parliament set out in the First Schedule and any other written law.

3.0 COMMITTEE OBSERVATIONS

Upon scrutiny with reference to the considerations set out in the Statutory Instruments Act, the Interpretation and General Provisions Act and the enabling provisions of the National Transport and Safety Authority Act set out above, the Committee noted that:-

- (a) there was no explanatory memorandum attached to the Regulations contrary to section 11 (2) of the Statutory Instruments Act, 2013;
- (b) in light of (a) above, there is no evidence of the preparation of a regulatory impact statement as provided for under section 6 of the Statutory Instruments Act nor of consultation with stakeholders as provided for under section 5 (1) of the Statutory Instruments Act;
- (c) in the absence of an explanatory memorandum, the Committee was unable to decipher whether there was public participation as envisaged by Article 118 (1) (b) of the Constitution;

(d) proposed regulation 5 (1) and 6 which requires a person desirous of operating public service vehicles to be a member of a body corporate contravenes article 36 (2) of the Constitution. Article 36 (2) of the Constitution states that: "A person shall not be compelled to join an association of any kind."

In addition, regulation 5 (2) gives the Authority too wide a discretion to determine who to licence and, therefore, creates an avenue for corruption and abuse by the Authority;

(e) by providing for a penalty exceeding twenty thousand shillings and an imprisonment term exceeding six months, regulation 15 (1) of the Regulations contravenes section 24 (5) of the Statutory Instruments Act and is, therefore *ultra vires*;

(f) regulation 2 of the Regulations dealing with definitions is defective in its drafting contrary to section 13 (h) of the Statutory Instruments Act. There are no margin notes reflecting the Chapter Numbers accompanying the words "city, public service vehicle and urban area;"

(g) regulation 9 of the Regulations extends criminal liability to the operator of a commuter service vehicle for acts committed by a driver, conductor or other member of staff. This is against the rules of natural justice which require for a person to be individually responsible for any criminal acts they commit.

In addition, it contravenes section 2 of the Employment Act (Cap 226) which recognizes an employee as a person employed for wages or a salary and a casual employee as a person whose terms of engagement provide for his payment at the end of each day and who is not engaged for a period longer than twenty four hours yet an operator of a public service vehicle is not allowed to engage staff on commission basis;

(h) regulation 10 of the Regulations does not outline the criteria to be used in granting or refusing to grant a licence in order to operate a long distance night time passenger service and, therefore, contravenes Standing Order 210 (3) (i) in that it appears to make unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;

(i) regulation 11 (e) and (f) of the Regulations are in contravention of Standing Order 210 (3) (i) in that it appears to make unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made. This is because it disallows the use of carriers by public service vehicles and thus

limits and inconveniences passengers who may not be able to afford other means of transporting their goods.

This is also in contravention of article 46 (1) (d) of the Constitution which safeguards the rights of consumers to the protection of their health, safety and economic interests. The economic interests of both the public service vehicles and passengers are limited by these provisions;

- (j) regulation 12 (1) (a) of the Regulation does not spell out the criteria to be used by the Authority to certify drivers to ply a particular route and the Committee may not be able to determine the appropriateness of this provision in the absence of the information;

4.0 COMMITTEE RECOMMENDATIONS

In view of the Committee's observations under 3 (a) to (j) above, the Committee finds that the Statutory Instrument (The National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014), is not in accord with the mandatory requirements of the provisions of the Constitution, Statutory Instruments Act, 2013, the parent Act to which it is made and other relevant written laws.

Pursuant to Standing Order 210(4) (b) and the provisions of the Statutory Instruments Act, 2013, the Committee recommends to the House that the National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014 be annulled.

*****END*****

The largest pie (E,F,G,H) –

135,814 jobs

Kikuyu	19.79%
Kalenjin	17.43%
Luhya	10.15%
Kamba	9.83%
Luo	8.22%
Kisii	6.58%
Meru	6.04%
Miji Kenda	3.31%
Somali	3.07%
Embu	1.82%

7. Conclusions

On the whole, these figures represent a healthy 60% of Kenya's household energy requirements and demonstrate a healthy energy demand.

The above figures are consistent with the target share of 60% of household energy requirements and demonstrate a healthy energy demand.

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