

LEGAL NOTICE NO. 141

THE KENYA ROADS BOARD ACT

(No. 7 of 1999)

THE KENYA ROADS BOARD (GENERAL) RULES, 2022

ARRANGEMENT OF RULES

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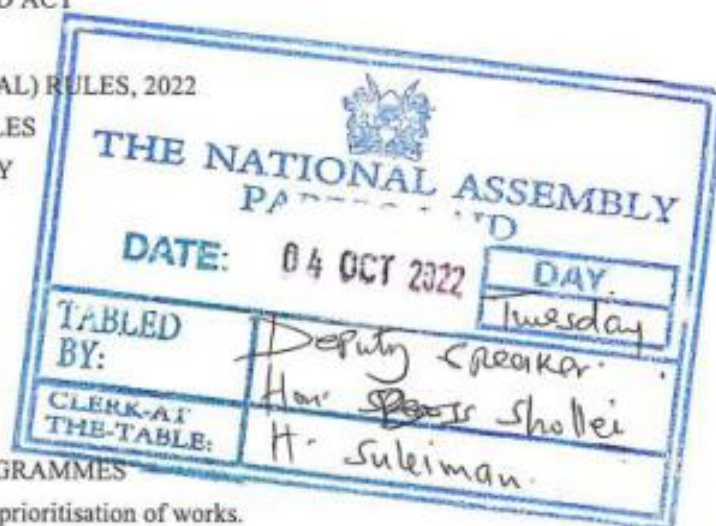
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Forms

THE KENYA ROADS BOARD ACT

(No. 7 of 1999)

THE KENYA ROADS BOARD (GENERAL) RULES, 2022

IN EXERCISE of the powers conferred by section 37 of the Kenya Roads Board Act, 1999, the Kenya Roads Board, with the approval of the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works, makes the following Rules—

THE KENYA ROADS BOARD (GENERAL) RULES, 2022

PART I—PRELIMINARY

1. These Rules may be cited as the Kenya Roads Board (General) Rules, 2022. Citation.

2. In these Rules, unless the context otherwise requires— Interpretation.

“contract” means a contract for the supply of goods, works or services;

“Inspector” means a person designated as such by the Director-General under section 26 (1) of the Act;

“periodic maintenance” means maintenance works carried out within a period of between five and ten years including resealing or recarpeting of roads, overlays of less than one hundred millimetres, fog sprays and shoulder reforming but not including pavement layer reconstruction or addition of a pavement layer;

“road maintenance” means the preservation of roads, structures and related facilities within the road reserve as nearly as possible to their original condition or as subsequently improved; and

“routine maintenance” means maintenance works required continuously or at intervals on every road whatever its engineering characteristics or traffic volume.

3. These Rules shall apply to the designated road agencies set out in the Third Schedule to the Act. Application.

4. The object of these Rules shall be to— Object of these Rules.

- (a) facilitate the co-ordination of road maintenance, rehabilitation and development; and
- (b) ensure accountability, efficiency, transparency and effective application and utilisation of the Fund by—
 - (i) establishing procedures for the preparation and submission of road works programmes by road agencies;
 - (ii) prescribing the format and detail of records and information; and
 - (iii) prescribing the manner and conduct of monitoring and evaluation of road maintenance, rehabilitation, and

development through technical, financial and performance audits.

5. The Board shall—

Duties of the Board.

- (a) one year before the commencement of the financial year, notify each road agency of the funds that are likely to be available for road maintenance, rehabilitation, and development;
- (b) inform each road agency of the priorities in the allocation of funds and criteria to be applied in making the allocations;
- (c) at the commencement of each financial year, develop a disbursement programme that is guided by the projected cashflow, public roads programme and budget of the Fund; and
- (d) release monies to each road agency in the manner provided in the Act and these Rules.

6. Subject to section 21 of the Act, each road agency shall, for the purposes of utilising funds received from the Fund—

Duties of road agencies.

- (a) maintain, rehabilitate and develop the categories of roads within its mandate;
- (b) establish and implement quality control and quality assurance systems;
- (c) utilise disbursed funds to implement the approved Annual Public Roads Programme;
- (d) maintain and submit such records and reports as may be directed by the Board in such format and detail as may be specified by the Board; and
- (e) supervise and monitor road works within the area of jurisdiction of the road agency.

PART II—ANNUAL ROADS PROGRAMMES

7. (1) Each road agency shall, not more than six months before the commencement of the financial year, submit to the Board an Annual Roads Programme in Form A as set out in the Schedule.

Submission of annual road programmes and prioritisation of works.

(2) Each road agency shall, in respect of an Annual Roads Programme, indicate the funding requirements for a project contained in the Programme that is intended to be implemented in more than one financial year.

(3) When developing the Annual Roads Programme under sub-rule (1), each road agency shall be guided by the cost estimation manual issued by the Board.

(4) The road agency, during the preparation of the Annual Roads Programme, shall—

- (a) ensure that the programme conforms with the funds that the road agency was notified would be available for road maintenance, rehabilitation and development under rule 5;

- (b) conduct an Annual Roads Inventory Condition Survey to determine the proportion of the road network that requires maintenance and submit the information to the Board in Form B as set out in the Schedule;
- (c) take into consideration the five-year Road Sector Investment Programme prepared by the Board;
- (d) hold stakeholder meetings to determine the order of priority of road works and submit the minutes and resolutions thereof to the Board;
- (e) in determining the order of priority of road works under paragraph (d), follow the following sequence of activities—
 - (i) routine maintenance;
 - (ii) rehabilitation;
 - (iii) spot improvement; and
 - (iv) periodic maintenance; and
- (f) allocate at least twenty per cent of the road works to be undertaken through use of local labour-based methods.

(5) The Board shall not approve an Annual Roads Programme that does not comply with these notify the road agency in writing within seven days of the decision.

(6) A road agency may, where the Board has refused approval for an Annual Roads Programme, within thirty days of being notified of the decision of the Board, and in any event not later than the 31st December of the year, whichever is earlier, review and resubmit the Annual Roads Programme to the Board.

(7) The Board shall, upon receiving the Annual Roads Programmes from all road agencies, consolidate the programmes into an Annual Public Roads Programme by the 28th February of each year.

(8) The Board shall, not later than the 30th April of each year, submit to the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance the Annual Public Road Programme for approval.

(9) The Board shall publish the Annual Public Roads Programme.

(10) Each road agency shall, in prioritising road works under these Rules, adhere to the requirements prescribed by the Board.

8. (1) Each road agency shall submit to the Board a Road Inventory and Condition Survey for the portion of the road network it is responsible for not later than the 30th September of each year.

Road inventory and condition survey.

(2) The survey submitted under sub-rule (1) shall be in Form B as set out in the Schedule.

(3) The road agency shall use the Road Inventory and Condition Survey submitted under this rule for the conduct of a road maintenance needs assessment for prioritisation under rule 6 (10).

9. (1) A road agency shall not amend the Annual Road Works Programme submitted under these Rules without the written approval of the Board.

Revision of annual roads programme.

(2) Where a road agency proposes to amend an Annual Road Works Programme, the amendment shall be undertaken in accordance with rule 6.

(3) The road agency shall submit the amended Annual Road Works Programme to the Board on or before the 31st January.

(4) The Board shall not approve the implementation of an Annual Road Works Programme that has been amended by a road agency if the amended Programme does not comply with the requirements of the Act or these Rules.

(5) Where the Board does not approve an amendment to the annual road works programme of a road agency, it shall notify the road agency in writing and specify the reasons for the refusal.

PART III—DISBURSEMENT, RELEASE AND WITHHOLDING OF FUNDS

10. (1) Every road agency shall, not more than three months before the beginning of the financial year, submit to the Board an annual expenditure programme for the financial year.

Disbursement programme.

(2) The expenditure programme submitted by the road agency shall be divided into four periods of three months each.

(3) The Board shall, at the beginning of the financial year, notify each road agency of the cash flow projections with respect to the expenditure programme submitted by the road agency.

11. (1) The Board shall release funds to a road agency which has complied with the Act and these Rules.

Release of funds and withholding of funds.

(2) The Board shall withhold the release of funds to a road agency which has not complied with the Act and these Rules until compliance is achieved.

(3) The Board may take such remedial measures as may be necessary to ensure implementation of the Annual Public Roads Programme by a road agency.

12. The Board may, with the approval of the Cabinet Secretary, impose the sanctions specified in section 30 of the Act where a road agency fails to comply with the provisions of the Act or these Rules.

Sanctions and penalties.

PART IV—ROADS PROGRAMME MANAGEMENT AND REPORTING

13. Each road agency shall—

Delivery of road works.

- (a) comply with the design and construction standards for road works issued by the Cabinet Secretary;

- (b) establish and implement a quality management system for the delivery of road works including materials testing and supervision;
- (c) ensure that any planned work is executed within time, cost, set standards and specifications; and
- (d) shall procure goods, works, and services in a manner that promotes economy, efficiency, effectiveness and equity.

14. (1) Each road agency shall supervise road works in accordance with design and construction standards for road works issued by the Cabinet Secretary and the relevant contractual documents.

Supervision of works.

(2) Each road agency shall maintain project supervision records which shall be made available to the Board as and when required.

15. (1) Each road agency shall plan for road safety activities and establish and implement safety management plans for road works.

Site safety.

(2) Each road agency shall maintain road works safety records which shall be made available to the Board as and when required.

16. Each road agency shall develop and implement an environmental and social management plan in respect of each maintenance project before commencement of works.

Environmental and social management.

17. (1) Each road agency shall set aside in their workplan reasonable amounts for immediate intervention works.

Immediate intervention works.

(2) Where a road agency determines that a road under its jurisdiction requires immediate intervention works, the road agency may request approval from the Board to undertake such works.

(3) For the purposes of this rule, "immediate intervention works" means road works that require to be undertaken immediately by a road agency in respect of a road that occurs before the scheduled period as specified in the road works programme submitted by the road agency.

18. Each road agency shall keep and maintain a contract file in respect of road works which shall contain the following—

Contract project file.

- (a) copies of the procurement plans;
- (b) site photographs;
- (c) site instructions;
- (d) minutes of meetings relating to resolution and decisions made by the road agency;
- (e) a copy of the contract agreement between the road agency and any person undertaking road works for the road agency;
- (f) payment certificates for payments made by the road agency in respect to the contract;
- (g) monthly progress reports and quality control records; and
- (h) any other relevant correspondence between the road agency and any other person in respect of the contract.

19. (1) Each road agency shall, within thirty days after the end of each period of three months, submit to the Board a report of all works and projects implemented in the preceding period of three months in Form C as set out in the Schedule.

Reporting.

(2) The Board shall not release funds to a road agency that fails to submit the report specified in sub-rule (1).

PART V—MONITORING AND EVALUATION

20. (1) The Board shall conduct technical, financial and performance audits of all works, goods and services funded by the Fund in accordance with section 26 of the Act.

Technical, financial and performance audits.

(2) The Board may conduct a special technical, financial and performance audits.

(3) There shall be entry and exit meetings between the Inspector and Road Agencies and the minutes of these meetings shall be signed off by both parties.

(4) An Inspector may, with the permission of the Board, suspend or postpone an audit under this rule in the following circumstances—

- (a) the failure by a road agency to provide a conducive work area;
- (b) the failure by a road agency to avail documents and information;
- (c) the failure by a road agency to provide such officers as may be required for field visits;
- (d) any threats made by any person against the inspector in respect of the audit;
- (e) where the site intended to be audited is insecure or unsafe; or
- (f) failure or refusal of officers, directors or employees to be present during the audit when required to do so.

(5) The Inspector shall, within seven days after suspending or postponing an audit under this rule, prepare and submit to the Director-General a report thereon and specify the reasons for suspending or postponing the audit in the report.

21. (1) Each road agency shall, when required to do so by the Board or an Inspector authorized by the Board to conduct an audit, produce and make available books, accounts, records and other documents in accordance with section 26 of the Act:

Duty to avail documents and information to the Inspector.

Provided that—

- (a) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced; and
- (b) the Inspector may make copies of any books, accounts, records and other documents required for purposes of its report.

(2) Where Board directs that a special audit be undertaken, the relevant road agency shall provide the information specified in section 26 of the Act.

(3) The Inspector shall, within ninety days after commencing an audit, issue an audit report.

(4) Where necessary, the Inspector shall give the relevant road agency a notice of fourteen days within which to produce any required additional information in respect of an audit.

22. A road agency that fails to comply with the directions issued under rule 20 shall be liable to the sanctions specified in section 30 of the Act.

Penalties for failure to comply.

23. (1) Where an audit has been conducted under the Act and these Rules, the road agency shall, within thirty days after being notified of the results and recommendations of the audit, submit to the Director-General a written action plan specifying the period within which the recommendations set out in the audit report shall be addressed or implemented.

Audit action plans by road agencies.

(2) The Director-General shall, after receiving the action plan under sub-rule (1), submit the audit report and action plan to the Board for adoption.

(3) A road agency that fails to implement the action plan submitted under sub-rule (1) in the manner proposed in the action plan shall be liable to the sanctions specified in section 30 of the Act.

FORM A - ANNUAL ROADS PROGRAMME FORM

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[illegible]

SCHEDULE

(Rules 7, 8, 19)

FORM A – ANNUAL ROADS PROGRAMME FORM

FORM C– ANNUAL PUBLIC ROADS PROGRAMME IMPLEMENTATION
REPORT FORM

Note:

Type of Works: Routine Maintenance/ Periodic Maintenance/New
Construction/Structures/Administrative

Source of funds: Agency allocation/10% CS allocation/ Savings/Bond proceeds

Made on the 25th July, 2022.

RASHID MOHAMED,
*Secretary to the Board/Director-General,
Kenya Roads Board.*



**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS**

**EXPLANATORY MEMORANDUM TO THE KENYA ROADS BOARD (GENERAL)
RULES 2022**

PART I

Name of the Statutory Instrument:	The Kenya Roads Board (General) Rules, 2022
Name of the parent Act:	The Kenya Roads Board Act, 1999
Enacted Pursuant to:	Section 37
Name of the Ministry	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
Gazetted on:	29 th July, 2022
Tabled on:	

PART II

1. THE PURPOSE OF THE KENYA ROADS BOARD (GENERAL) RULES, 2022

The purpose of the The Kenya Roads Board (General) Rules, 2022 is to provide details and clarity on provisions which have been left open by the Kenya Roads Board Act 1999, to fill in gaps inherent in the management of the Kenya Roads Board Fund and further make provisions to—

- (a) facilitate the preparation of Annual Roads Programmes by requiring road agencies to submit Annual Roads Programmes and prioritization of works and the carrying out of road inventory condition survey.
- (b) Provide for procedure for preparation of the disbursement programme, Release of funds as well as instances when the same may be withheld.

- (c) Expound on the roads programme management through supervision, maintenance of records and reporting to the Board.
- (d) Facilitate monitoring and evaluation of roads programmes through technical audits and fund inspection.

2. LEGISLATIVE CONTEXT

These Rules have been developed in accordance with the provisions of the Kenya Roads Board (No.7) Act, 1999. The Act empowers the Board, with the approval of the Cabinet Secretary, to make Rules for the better carrying out of its functions under the Act. The development of the Regulations recognized and considered the following:

- i. Principles of public finance as enshrined in Article 201 of Constitution of Kenya and Section 15 of the Public Finance Management Act, 2012;
- ii. Prudent management of the Kenya Roads Board Fund established under Section 31 of the Act and the reporting obligations provided for thereinunder.
- iii. The need for special provisions to enable the Board carry out its mandate under the Act as well as clearly outline the roles and responsibilities of Road Agencies in the management of the Kenya Roads Board Fund.

3. POLICY BACKGROUND

The Kenya Roads Act (1999) established the Kenya Roads Board as a statutory corporation with, among others, the mandate of:

- overseeing the road network in Kenya;
- coordinating the maintenance, rehabilitation and development of roads funded by the Roads Maintenance Levy Fund (RMLF) and the optimal utilization of the Fund in the implementation of programmes; and
- monitoring and evaluating the delivery of goods, works and services funded by the Fund through technical, financial and performance audits.

The Kenya Roads Board (General) Rules 2022 aim to strengthen KRB's capacity for the discharge of its mandate. Currently, KRB is governed by the Kenya Roads Board Act 1999 with its subsidiary legislation L.N93/2003 which makes provision for the Urban Development Department of the Ministry of Local Government and covers road maintenance, rehabilitation and development projects in the Nairobi City Council, and the Mombasa, Kisumu, Nakuru, Eldoret municipal councils as they were previously known under the pre-2010 constitutional dispensation in Kenya. Presently, KRB performs its

oversight function over road agencies through the use of Technical, Financial and Performance Audit manuals and guideline as published regularly.

4. CONSULTATIVE OUTCOME

- a) The development of the Rules considered inputs and comments from the relevant Government ministries, Road Agencies, private sector, the general public and development partners. Comments were received from, among others, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, Kenya National Highways Authority, Kenya Urban Roads Authority, Kenya Rural Roads Authority, Kenya Wildlife Service, the forty seven (47) counties and the general public. Due to the COVID-19 pandemic, the Board was not able to conduct physical public participation meetings with stakeholders.
- b) Generally, the stakeholders supported the development of Rules. The other comments were considered and the Regulations updated where appropriate. Consultative meetings were held with stakeholders as follows:
 - i. Internal Stakeholder Consultative Forum on Draft KRB Rules- 30th August 2019, Radisson Blu, Nairobi which informed the contents of the Draft Rules.
 - ii. Presentation of the Draft Rules to stakeholders: The Board held a series of Meetings with Road Agencies and the County Governments on Draft KRB Rules:
 - 25 – 29 November, 2019 in Naivasha
 - 2 – 6 December, 2019 in Kisumu
 - 9 – 13 December, 2019 in Mombasa; and
 - 16 – 17 December, 2019 in Nakuru
 - iii. Consultative meeting with the Committee on Delegated Legislation was held on 4th to 8th March, 2022 where the Draft Rules were considered by Members of the National Assembly and their comments noted.
 - iv. On 24th March, 2021, the Board, vide a notice in the local dailies, invited members of the public to review and provide feedback on the draft Rules. Comments from the members of public were noted and informed the draft herein.
 - v. Further, the Board on 28th March, 2022 engaged Road Agencies to disseminate the Draft Rules and obtained their comments.

The list of attendees and the reports of the consultations is attached as Appendix 1.

5. GUIDANCE

The Board will sensitize all the relevant stakeholders on the provisions of the Rules to ensure adherence to the law as well as achievement of the objectives of the Act.

6. IMPACT

The Rules do not infringe on any fundamental rights and freedoms of the public as enshrined in the Constitution of Kenya.

The Rules provide for prioritization of works, monitoring and evaluation through technical and performance audits and the general management of the Kenya Roads Board Fund;

The net impact of the proposed statutory instrument is positive on Road Agencies and the management of the Kenya Roads Board Fund.

7. REVIEW OF THE REGULATIONS

The Board will regularly review and monitor the implementation of the Rules

8. CONTACT

Rashid K. Mohamed, MBS
The Director General
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Date:

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Kenya Roads Board

STAKEHOLDERS ENGAGEMENT-DRAFT KENYA ROADS BOARD (NATIONAL TRUNK ROADS) RULES 2022

HELD ON 28TH MARCH, 2022 AT SERENA HOTEL, NAIROBI

REPORT

1.0 INTRODUCTION

The Board has, pursuant to Section 37 of the Kenya Roads Board Act, developed Rules for efficiency and effective execution of its mandate. The Draft Rules have been developed in consultation with the key stakeholders and with input from the general citizenry.

On 20th September, 2021, the Board disseminated the Draft Rules to DG's of Road Agencies for their comments. The Draft Rules have since been reviewed to address issues raised during the forum.

On 28th March, 2022 the revised Draft Rules was presented before the Director General's Forum on 28th March, 2022 for their concurrence before submission to the CS-MOTIHUD & PW.

2.0 PROVISIONS OF UNDER THE REVISED DRAFT RULES

PART I	PRELIMINARY
Rules 1-5	This Part covers the citation, application of rules as well as interpretation of terms used. It also provides for; 1. The object and purpose of these Rules which is <i>inter alia</i> to facilitate oversight of the road network and coordination of road maintenance, rehabilitation, and development. 2. Duties of the Board to Road Agencies on disbursements of funds.
PART II	ANNUAL ROADS PROGRAMMES
Rules 6-8	This Part provides for; 1. Procedure for submission of Annual Roads Programme as well as prioritization of works; 2. The conducting of Road Inventory and Condition Survey as well procedure for reviewing the same.
PART III	FINANCIAL PROVISIONS
Rules 9-34	This Part provides for; 1. Duties of Road Agencies in the maintenance, rehabilitation and develop of roads within their mandate, utilize disbursed funds to implement APRP, supervise and monitor road works within their area of jurisdiction among others. 2. Opening of Bank Accounts, deposits and payments; All Agencies shall cause to be opened bank accounts know as 'Name of Agency-Road Maintenance Levy Fund'. Accounting

	Officer shall be the mandatory signatory to all payments from the account. The account shall not be overdrawn. 3. Budget Ceilings and disbursement programme: the Board shall before 31st day of July of the financial year proceeding the year to which budgetary ceilings relate, issue budgetary ceilings for the following financial year as well as inform agencies an annual expenditure projection for every three (3) in the financial year. 4. Release of funds to agencies that has utilized at least 70% of funds allocated in the previous financial year. Also, the rules provides for partial release of funds to an agency pending approval of ARWP. 5. Road Agencies are required to keep and maintain financial records, including, records of bank accounts, cashbooks, imprests in accordance with the PFM Act. Annual financial reports and statements shall be maintained in accordance with the format prescribed by the PSASB. It also calls for strict control of records. 6. Non-compliance with the Rules attracts sanctions spelt out under Section 30 of the Act.
PART IV	ROADS PROGRAMMES MANAGEMENT & REPORTING
Rules 35-42	This Part provides for the following; 1. For efficiency and effective delivery of road works; the rules provide for compliance with design and construction standards, material testing, supervision; procurement in accordance with the Public Finance Management Act & Public Procurement & Asset Disposal Act, site safety, environmental management. 2. Immediate interventions may be carried out upon approval by the Board. The Board shall establish procedure on how to access and account for funds disbursed for emergency/immediate interventions. 3. Keeping and maintenance of Contract project files and submission of quarterly reports in a format provided for under the 2nd Schedule
PART V	MONITORING AND EVALUATION
Rule 43-46	This Part provides for the following; 1. Technical compliance, financial and performance audits by the Board on all works, goods and services funded by the Fund; 2. Road agencies have a duty to avail documents and information to the Inspector;

	3. RAs shall submit responses and action plan to the DG-KRB on all queries in the inspection. Failure to do so shall attract penalties and sanctions set out under Section 30 of the Act.
PART VI	MISCELLANEOUS
Rules 47-50	1. Provides for complaint handling mechanism by the Board. This covers complaints arising from the implementation of projects funded by the Fund. The same will be handled in accordance with the provisions of the Commission on Administrative Justice Act, 2012 and the Fair Administrative Action Act, 2015. 2. Appeals to any decision made by the Board lies with the Cabinet Secretary 3. First Schedule; Road Agencies and their designated road network, 4. Second Schedule; FORMS

Annexed hereto is the presentation by R. Mohamed, MBS -DG

WAY FORWARD;

The DG's advised on the finalization and submission of the revised Draft Rules to the CS-MOTIHUD & PW for gazettelement.

Catherine Kassim
DDL



ATTENDANCE REGISTER

STAKEHOLDERS' MEETING - PRESENTATION OF DRAFT RULES OF THE KRB ACT, 1999

HELD AT NAIROBI SERENA HOTEL ON 28TH MARCH 2022

	NAME	ORGANIZATION	EMAIL	TELEPHONE	SIGNATURE
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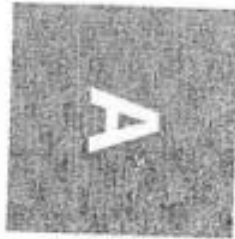
DRAFT KENYA ROADS BOARD (NATIONAL TRUNK ROADS) RULES, 2022

**PRESENTED BY:
R. Mohamed, MBS
DIRECTOR GENERAL**

28th March, 2022



Presentation Outline



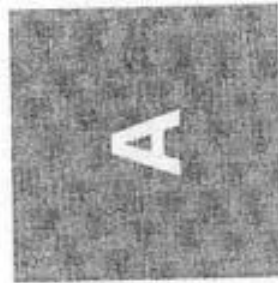
Background



Arrangement of
Rules



Proposed Way
Forward



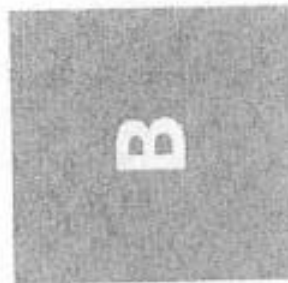
Background





1. Background

- Kenya Roads Board is a statutory body established by the Kenya Roads Board Act, 1999 and manages the Road Maintenance Fuel Levy Fund. Section 37 of the Act allows the Board to make rules prescribing anything required by the Act or generally for the better carrying out of its functions under the Act.
- The Draft Rules have been developed in consultation with key stakeholders and including the general citizenry. This was done through consultative workshops held with Road Agencies, County Governments and Parliamentary Committee on Delegated Legislation. Views from the public were sought through public media advertisement.
- Comments were reviewed and considered to inclusion.
- 1st Draft was submitted to the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works in June, 2021 for concurrence.



Arrangement of Rules





2. Arrangement of the Rules , 2022

- a) Part I Preliminary
- b) Part II Annual Roads Programme
- c) Part III Financial Provisions
- d) Part IV Roads Programmes Management & Reporting
- e) Part V Monitoring and Evaluation
- f) Part VI Miscellaneous provisions
- g) Schedules

PART I: Preliminary (Rule 1-5)



- ☐ Part I provides for definition of terms used as well as the application and scope of the Rules.
- ☐ Regulation 3 thereof, specifies that these rules shall apply to all Road Agencies responsible for National Trunk Roads as specified in the 4th Schedule of the Constitution of Kenya.
- ☐ The Object and purpose of these Rules is to facilitate the oversight of the road network and coordination of road maintenance, rehabilitation and development. As well as provide for means of administering the powers vested on DG-KRB as outlined under the RMLF, KRB, PFM Acts and other related legislation. xxxxx



Part II: Annual Roads Programme (Rule 6-8)

- ☐ Regulation 6 provides for submission of Annual Road Works Programme (ARWPs) and prioritization of works by Road Agencies in the manner and prescribed format as set out.
- ☐ The Rules call for carrying out of the Road Inventory and Condition Survey and reports submitted to the Board not later than 30th September of each year.
- ☐ A Road Agency shall not revise or vary the ARWP without the express authorization by the Board. In any event, any revision shall be requested for not later than 31st day of January of each year.



Part III: Financial Provisions (Rule 9-34)

This part sets out the duties of Road Agencies in the management and utilization of funds allocated.

☐ Duties of Road Agencies in the maintenance, rehabilitation and development of roads within their mandate, utilize disbursed funds to implement APRP, supervise and monitor road works within their area of jurisdiction, among others.

☐ Opening of Bank Accounts, deposits and payments; All Agencies shall cause to be opened bank accounts know as 'Name of Agency-Road Maintenance Levy Fund'. Accounting Officer shall be the mandatory signatory to all payments from the account. The account shall not be overdrawn.

☐ Budget Ceilings and disbursement programme: the Board shall before 31st day of July of the financial year proceeding the year to which budgetary ceilings relate, issue budgetary ceilings for the following financial year as well as inform agencies of the cashflow projections for every three (3) months in the financial year.



Part III: Financial Provisions..Contd'

- ☐ Release of funds to agencies that has procured at least 70% of funds allocated in the previous financial year. Also, the rules provides for partial release of funds to an agency pending approval of ARWP.
- ☐ Road Agencies are required to keep and maintain financial records, including, records of bank accounts, cashbooks, imprests in accordance with the PFM Act. Annual financial reports and statements shall be in compliance with reporting standards issued by the Public Sector Accounting Standards Board.
- ☐ Administrative expenses are guided by Section 6 of the KRB Act while expenditure shall be limited to the amount approved in the budget.



PART IV: Roads Programmes Management & Reporting (Rule. 35-42)

This Part provides for;

- ☐ For efficiency and effective delivery of road works; the rules provide for compliance with design and construction standards, material testing, supervision; procurement in accordance with the Public Finance Management Act & Public Procurement & Asset Disposal Act, site safety, environmental management.
- ☐ Immediate interventions may be carried out upon approval by the Board. The Board shall establish procedure on how to access and account for funds disbursed for emergency/immediate interventions.
- ☐ Keeping and maintenance of Contract project files in accordance with the PFM Act & PPAD Act
- ☐ It also provides for the submission of reports in formats prescribed under the 2nd Schedule



Part V: Monitoring and Evaluation (Rule. 43-46)

This Part provides for:

- ☐ Technical compliance, financial and performance audits by the Board on all works, goods and services funded by the Fund;
- ☐ Road agencies have a duty to avail documents and information to the Inspector;
- ☐ Road Agencies shall submit responses and action plan to the DG-KRB on all queries raised during the inspection. Failure to do so shall attract penalties and sanctions set out under Section 30 of the Act.



Part VI: Miscellaneous & Schedules (Rule 47-50)

☐ Part VI provides for complaint handling mechanism by the Board. This covers complaints arising from the implementation of projects funded by the Fund. The same will be handled in accordance with the provisions of the Commission on Administrative Justice Act, 2012 and the Fair Administrative Action Act, 2015.

☐ Appeals to any decision made by the Board lies with the Cabinet Secretary

☐ First Schedule; Road Agencies and their designated road network,

☐ Second Schedule; FORMS

Form A: Annual Road Works Programme Form

Form B: Annual Road Inventory & Condition Survey Form

Form C: Annual Public Roads Programme Implementation Report Form

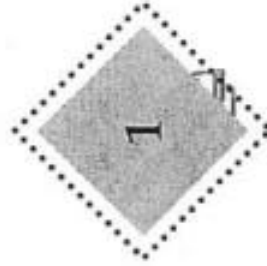


Proposed Way Forward

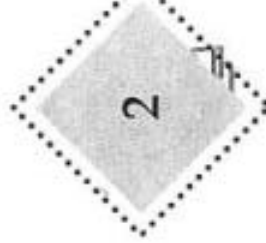


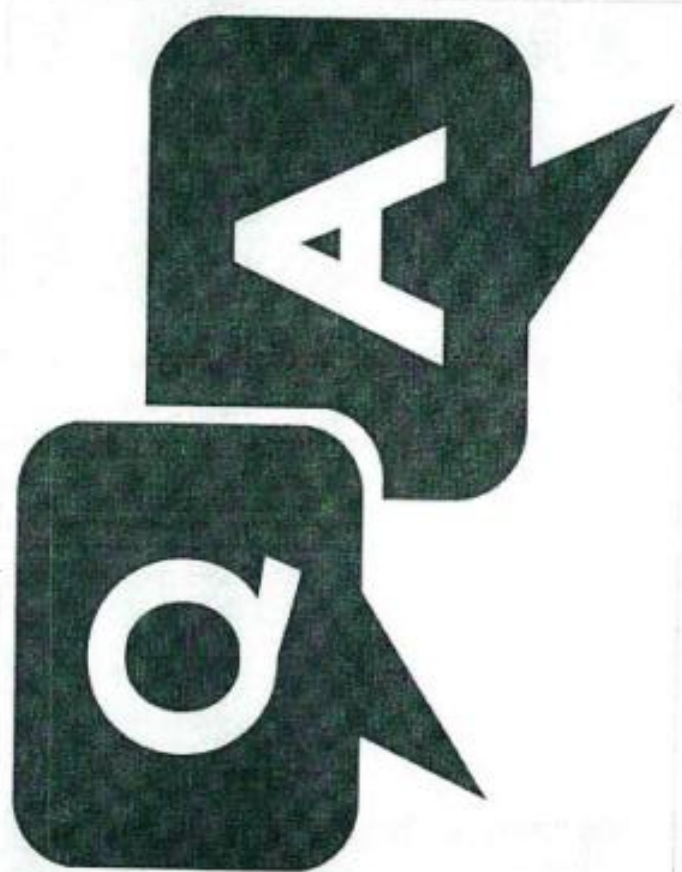
Way Forward

Meeting with Parliamentary Committee on Transport, Public Works & Housing – March, 2022



Submission of the final Rules to the CS, MOTIHUDPW for gazettelement – 14th April, 2022.







**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS
STATE DEPARTMENT OF INFRASTRUCTURE
*Office of the Principal Secretary***

Telephone: (020) 2723232
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Website: www.transport.go.ke

Works Building
NGONG ROAD
P.O. Box 30260 - 00100
NAIROBI

Ref: MOTIHUD/I/A35.38 VOL.V

16th June 2022

Kennedy Ogeto, CBS
Solicitor General
Office of the Attorney General &
Department of Justice
P.O. BOX 40112-00100
NAIROBI

Dear *KC*,

RE: KENYA ROADS BOARD (NATIONAL TRUNK ROADS) RULES, 1999

The above subject matter refers.

Attached herewith please find the gazette notice signed by the CS, MOTIHUD & PW on the above matter, for your further necessary action.

The Rules define the priority intervention areas for better management of Road Maintenance Levy Fund and define working relationships between the Board and the road maintenance implementing agencies (Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA), Kenya Wildlife Services (KWS).

The Rules were developed in close collaboration with the committee of delegated legislation of the National Assembly, the Attorney General's office, the Road Agencies and all other relevant stakeholders.

Submitted for your relevant action.

Yours

Sincerely,


Prof Arch. Paul Maringa (PhD), CBS, F.A.A.K, MKIP
PRINCIPAL SECRETARY

Kenya Roads Board (National Trunk Roads) Rules, 2022

LEGAL NOTICE NO.....

THE KENYA ROADS BOARD ACT

(No. 7 of 1999)

IN EXERCISE of the powers conferred by section 37 of the Kenya Roads Board Act, 1999 the Cabinet Secretary for the Transport, Infrastructure, Housing, Urban Development & Public Works makes the following Rules –

**THE KENYA ROADS BOARD (NATIONAL TRUNK ROADS)
RULES, 2022**

PART 1— PRELIMINARY

Citation

Interpretation.

No. 7 of 1999;

No. 18 of 2012;

1. These Rules may be cited as the Kenya Roads Board (National Trunk Roads) Rules, 2022
2. In these Rules, unless the context otherwise requires—

“Act” means the Kenya Roads Board Act

“Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act, 2012

“Board” means the Kenya Roads Board as established under Section 4 of the Act;

“Board of Directors” means the Board established under section 7 of the Act;

"Cabinet Secretary" means the Cabinet Secretary for the time responsible for matters related to roads;

"Contract" means the contract for supply of goods, works or services under discussion;

"Fund" means the Kenya Roads Board Fund established by Section 31 of the Act;

"Inspector" means such person duly appointed by the Director General in writing whether public officer or otherwise, whether by name or title of office to be Inspector in accordance with provisions of Section 26 of the Act, and to perform such functions as specified in sections 26, 27 and 28 of the Act.

"Monitoring and evaluation" means examining and verifying by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund.

"Periodic Maintenance" means all the maintenance works carried out in a periodic cycle of five (5) to ten (10) years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming but does not include pavement layer reconstruction or the addition of a pavement layer;

"Road Agency" means any organisation or body specified in the Third Schedule to the Act with responsibilities for defined categories of roads;

"Roadside development" means a physical structure or facility on land within or adjoining a road reserve;



No. 9 of 1993

"Road Maintenance Levy Fund" means the Fund established by Section 7 of the Road Maintenance Levy Fund Act, 1993;

"Road Maintenance" means the preservation of roads, structures and related facilities within the road reserve as nearly as possible to their original condition or as subsequently improved.

"Road Network" means the road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described;

"Routine Maintenance" means all maintenance works required continuously or at interval on every road whatever its engineering characteristics or traffic volume.

Application

3. These Rules shall apply to —

- (a) all Road Agencies responsible for national trunk roads that receive financing from the Board and shall cover all goods, works and services funded by the Fund; and
- (b) the Roads Department of Kenya Wildlife Services responsible for roads within national parks and game reserves.

Object and Purpose of these Rules.

4. The object and purpose of these Rules is to —

- (a) facilitate oversight of the road network and coordination of road maintenance, rehabilitation and development.
- (b) provide means of administering the powers vested on the Director General, Kenya Roads Board under the Road Maintenance Levy Fund Act, Kenya Roads Board Act, the Public Finance Management Act and any other related legislation;
- (c) ensure accountability, efficiency, transparency and effective application and utilization of the Fund by;
 - (i) providing procedures for preparation and submission of road works programmes by Road Agencies;
 - (ii) providing such formats and detail of proper books, records, accounts and information - as may be specified by the Board from time to time; and

No. 9 of 1993,
No. 7 of 1999
No. 18 of 2012

6

Duties of the Board to Road
Agencies on disbursements

- (iii) prescribing the manner and conduct of monitoring and evaluation through technical, financial and performance audits

5. (1) The Board shall —

- (a) one year before the beginning of the financial year, inform the Road Agencies of the funds likely to be available for road maintenance, rehabilitation and development;
- (b) inform all Road Agencies the priorities in the funds allocation and criteria to be applied in making the allocations;
- (c) at the beginning of each financial year, develop an annual disbursement programme guided by the annual projected cash flows and annual public roads programme and the Fund budget;
- (d) release monies in such manner as may be provided for under the Act or these Rules.

(2) A Road Agency may at any time apply to the Board to consider any works or programme to be funded under the Fund.

(3) Where the Board having considered the application has reason to believe that any works programme does not comply with the requirements of the Act or these Rules, the Board —

- (a) may reject the application; and
- (b) shall communicate its decision to the applicant in writing, citing the grounds for rejection.

PART II- ANNUAL ROADS PROGRAMMES

Submission of Annual Roads
Programme and
Prioritization of Works.

6. (1) Every Road Agency shall, not later than six months before the commencement of every financial year, submit the Annual Road Works Programme in the manner set out in the Second Schedule.

(2) Every Road Agency shall provide adequate budget for multi-year projects spread over the contract period.

(3) Every Road Agency shall, in coming up with Annual Road Works Programme and implementation of works, be guided by the cost estimation manual published by the Board from time to time.

(4) A Road Agency shall, in developing the Annual Road Works Programme —



Road Inventory and
Condition Survey.

7. (1) Every Road Agency shall submit to the Board an updated Road Inventory and Condition Survey for the road network under its jurisdiction not later than 30th day of September of each year which shall be in a form set out in the Second Schedule.

(2) A Road Inventory and Condition Survey submitted under this Rule shall form the basis for a roads maintenance needs assessment for prioritization under Rule 7.

Revision of Annual Public
Roads Programme.

8. (1) A Road Agency shall, having submitted their programme, not vary the Annual Road Works Programme without written approval of the Board.

(2) Where a Road Agency requires to revise its Annual Road Works Programme, the agency shall do so in accordance with Rule 6 of these Rules and in any event not later than 31st day of January each year.

(3) Any person, being an officer of an agency, who without approval of the Board attempts to vary or varies any Implementation of works which is not included in the Annual Road Works Programme, commits an offence and shall be liable on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No. 18 of 2012
No. 33 of 2015.

PART III – FINANCIAL PROVISIONS

Duties of Road Agencies.

9. Notwithstanding any obligation imposed on a Road Agency under these Rules, a Road Agency shall, for the purposes of utilising funds received from the Fund –
- (a) maintain, rehabilitate and develop the categories of roads within its mandate;
 - (b) utilise disbursed funds to implement the approved Annual Public Road Programme;
 - (c) put in place and implement quality control and quality assurance systems;
 - (d) supervise and monitor road works within their area of jurisdiction
 - (e) maintain and submit such records and reports as may be directed by the Board in such format and detail as may be specified by the Board from time to time

- (a) Comply with the budget ceilings issued in accordance with Rule 5;
 - (b) Conduct Annual Roads Inventory Condition Survey, to determine the maintainable portion of the road network and submit the data to the Board in the form set out in the Second Schedule.
 - (c) Hold stakeholder meetings for prioritization of road works and submit minutes of the meetings to the Board;
 - (d) Ensure it is informed by the approved five -year Road Sector Investment Programme;
 - (e) Ensure the order of prioritization of road works follows the sequence of routine maintenance, spot improvement, periodic maintenance and rehabilitation; and
 - (f) Ensure at least twenty percent of the road works are carried out through use of local labour-based methods.
- (5) The Board shall upon receipt of the Annual Roadworks Programme from a Road Agency, review the programme to ensure compliance with requirements provided under these Rules.
- (6) Any Annual Roads Works Programme that does not comply with these Rules shall be rejected by the Board and communicated to the Road Agency within seven (7) days of the decision to reject such Annual Road Works Programme.
- (7) A Road Agency may, where an Annual Road Works Programme has been rejected pursuant to these Rules, within thirty days of receiving the decision of the Board in writing, and in any event not later than the 31st day of December of the Calendar year, whichever is earlier, review and resubmit the Annual Road Works Programme to the Board.
- (8) The Board shall upon receiving all the Annual Roads Work Programmes, consolidate the programmes into the Annual Public Roads Programme by February of each calendar year.
- (9) The Board shall not later than the thirtieth day of April each year submit to the Cabinet Secretaries responsible for Roads and the National Treasury the Annual Public Roads Programme for approval.
- (10) The Board shall publish, publicize and disseminate Annual Public Roads Programme.
- (11) Every Road Agency shall, in prioritization of road works, adhere to the requirements as may be directed by the Board from time to time.
- f

Opening of Bank Accounts.

10. (1) Each Road Agency shall cause to be opened a bank account for the funds disbursed from the Fund to be known as 'Name of Agency -Road Maintenance Levy Fund'.
- (2) The Board shall suspend funding to a Road Agency that fails to open a Bank account as stipulated in Rules 10 (1) and 11 (1), until the said Road Agency complies.
- (3) All bank accounts shall be opened, operated and closed in accordance with Section 28(1) of the Public Finance Management Act, 2012 and its applicable Regulations.

Deposits into the Bank Account.

11. (1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account.
- (2) A Road Agency may prudently invest money in a fixed deposit provided that no delays in implementation of road works will be occasioned as a result of the investment. Such investments shall be made in compliance with government regulations and circulars.

Payments from the Bank Account.

12. (1) All Road Agencies shall make payments related to the Annual Public Roads Programme approved in accordance with Rule 6 from their respective Road Maintenance Levy Fund bank account.
- (2) Payments may be done either by instructions or electronic fund transfer in accordance with the Public Finance Management Act, 2012 and its Regulations.

No. 18 of 2012

Signatories to the Bank Account.

13. (1) The accounting officer of a Road Agency for matters related to roads shall be a mandatory signatory to all electronic payments and fund transfers from the Road Maintenance Levy Fund Bank account.
- (2) The accounting officer in charge of the Road Agency may designate other signatories and any changes in signatories shall be effected in accordance with the Public Finance Management Act 2012 and its Regulations.

No. 18 of 2012

Budget Ceilings.

14. The Board shall on or before the 31st day of July of the financial year preceding the year to which the budgetary ceilings relate, issue to the Road Agencies budgetary ceilings for the following financial year as

Borrowings

15. (1) No borrowing shall be made from the Road Agency Road Maintenance Levy Fund allocations.
(2) Where a Road Agency has borrowed money from the funds allocated to it in any financial year to support other government projects, the Road Agency shall treat such borrowing as a receivable in its financial statements.
(3) The Road Agency shall seek approval from Kenya Roads Board for such borrowings.
(4) Such borrowings shall be refundable to the Road Agency's Road Maintenance Levy Fund in the following financial year.

Additional Allocations,
Savings and Interest Earning

16. (1) The Board may allocate additional funds to Road Agencies upon approval by the Parent Ministry and the National Treasury.
(2) Where a Road Agency realises savings and or interest earnings from its annual work program and operations budget, the funds shall be declared and utilized for the purposes for which the Fund was intended.
(3) All Interest Earnings received by a Road Agency shall be apportioned to road works and its operations on the basis as was apportioned in that financial year's Annual Work Programme.
(4) Every Road Agency shall submit a work plan for the any additional allocation by the Board, savings and interest earnings for approval by the Board before spending.
(5) Any member or officer of a Road Agency that fails to declare or seek approval for the expenditure of savings and earnings in accordance with the Act and these Rules commits an offence and shall be liable, on conviction, to the penalties prescribed under Part VII of the Public Finance Management Act, 2012 and Part XVI of the Public Procurement and Asset Disposal Act, 2015.

No. 18 of 2012
No. 33 of 2015

Disbursement programme.

17. (1) Every Road Agency shall within three months before the beginning of the financial year submit to the Board an annual expenditure projection for every three months in the financial year.

(2)The Board shall indicate to Road Agencies at the beginning of each financial year, cash flows projections with respect to Rule 17 (1).

(3)The Board shall monitor receipt of funds from Road Maintenance Levy Fund and allocate each tranche to the respective Road Agency in accordance with Rule 5.

Release of Funds and
Withholding of Funds.

18. (1) The Board shall release funds to Road Agencies who have complied with the provisions of these Rules provided that the Road Agency has procured at least seventy percent of the works in the APRP for previous financial year.

(2)The Board shall withhold the release of funds to Road Agencies who have not complied with these Rules until such a time compliance is achieved.

(3)The Board may take remedial, supplementary or alternative measures to ensure implementation of the Annual Public Roads Programme by a Road Agency that has persistently failed to discharge its functions with regard to the Annual Public Roads Programme.

(4)Any Road Agency which is aggrieved by any decision under this Rule may appeal to the Cabinet Secretary for a review of the decision.

Partial Release of Funds.

19. Where the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a financial year, the Board may release on account, of not more than thirty (30) percent of the funds allocated to the Road Agency for the year to which it relates.

Utilization of funds

20. Any funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme.

Administrative Expenses.

21. (1) A Road Agency shall not exceed the overheads and administrative expenses thresholds specified in section 6 (2) (1) of the Act.

(2) A person who utilizes any Administrative expenses in any manner in contravention to the provisions under Rule 22 (1) commits an offence and shall be liable, on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI

of the Public Procurement and Asset Disposal Act
2015.

Expenditure Limits.

22. (1) Any expenditure incurred by a Road Agency budgeted line items shall be limited to the amount approved in the budget.

(2) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may upon request or application by a Road Agency, approve such excess after being satisfied that there are compelling reasons for the same.

(3) Any excess approved under Rule 22 (2) shall be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded.

Reallocation of funds to
overheads

23. A Road Agency shall not use the amount allocated for road works in a particular project towards payment of overheads whether relating to that or any other project.

Authority to incur
expenditures.

24. (1) No person other than the accounting officer to whom the "Authority to Incur Expenditure" has been issued, in whatever form, shall commit or incur expenditure against that Road Agency.

(2) A person authorised to incur expenditure may with the approval of the Authority delegate the responsibility to an officer of the Authority to commit or incur expenses.

Bank balances and ongoing
commitments at the end
financial year.

25. At the end of each financial year and not later than sixty calendar days from the end of the financial year, every Road Agency shall submit to the Board its assets and liabilities and income and expenditure in the format prescribed by the Public Sector Accounting Standards Board.

Funds not to be applied as
security for borrowing.

26. A Road Agency shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.

Account not to be
overdrawn.

27. The Road Agencies Road Maintenance Levy Fund Bank Account shall not be overdrawn.

Payment vouchers,
adjustment journals, banking
and issuance of receipts.

28. All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-



numbered receipt, which shall be signed, stamped and dated.

Annual Reports and
Financial Statements.

29. (1) The accounting officer of a Road Agency shall prepare annual reports and financial statements with respect to the Road Maintenance Levy Fund Account in compliance with the relevant reporting format as shall be prescribed by the Public Sector Accounting Standards Board established pursuant to Sections 192 and 193 of Public Finance Management Act 2012 and its Regulations.

(2) A financial statement prepared by Road Agencies under Rule 29 (1) shall report on transactions in respect of the Fund with specific reference to funds received from the Board.

Sanctions and Penalties

30. (1) The Board may where it has reason to believe that an agency has failed to adhere to any provisions of the Act or these Rules, declare the agency to be non-compliant.

(2) Where a Road Agency is non-compliant, the Board may impose such penalties and sanctions as prescribed under section 30 of the KRB ACT

PART IV – ROADS PROGRAMMES MANAGEMENT AND REPORTING

Efficient and Effective
delivery of road works.

31. (1) Every Road Agency shall ensure compliance with design and construction standards for road works issued by the Cabinet Secretary from time to time.

(2) Each Road Agency shall establish and implement quality management systems for delivery of road works including materials testing and supervision.

(3) Each Road Agency shall ensure that any planned work is executed within time, cost, set standards and specifications.

(4) Goods, works, and services shall be procured in a manner that promotes economy, efficiency, effectiveness and equity and in accordance with the Public Procurement and Asset Disposal Act, 2015 and its Regulations.

No 33 of 2015

Supervision of Works.

32. (1) Road Agencies shall ensure that road works are supervised in accordance with design and construction standards for road works issued by the

Cabinet Secretary from time to time and the relevant contractual documents.

(2) Road Agencies shall maintain project supervision records which shall be made available to the Board as and when required.

Site Safety.

33. (1) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works.

(2) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.

Environment.

34. Each Road Agency shall develop and implement Environmental and Social Management Plan for maintenance projects before commencement of works.

Immediate Interventions

35. (1) Each Road Agency shall set aside in their workplan reasonable amounts to immediate intervention works

(2) Where a Road Agency considers that a section of the road under its jurisdiction requires immediate intervention works, the Road Agency may request approval from the Board to undertake such works.

Contracts Format.

36. All contracts for goods, works and services funded by the Fund shall be in accordance with the Public Finance Management ACT 2012 and the Public Procurement and Assets Disposal ACT 2015

No. 18 of 2012
No. 33 of 2015

Contract project file

37. (1) Each Road Agency shall keep and maintain a contract file.

(2) The contract file under Rule 37 (1) shall contain the following –

- (a) copies of procurement plan;
- (b) site photographs;
- (c) site instructions;
- (d) minutes of meetings;
- (e) a copy of the contract agreement;
- (f) payment certificates;
- (g) Monthly progress reports and quality control records
- (h) any other relevant correspondences for inspection and audit.

Reporting

38. (1) Road Agencies shall within 30 days from the end of every quarter submit reports of all works and projects implemented in the preceding quarter in a format provide for under the Second Schedule.
- (2) The Board shall not release any funds to a Road Agency that fails to submit reports stipulated under this Rule.

PART V – MONITORING AND EVALUATION

Technical Compliance,
Financial and Performance
Audits

39. (1) The Board shall conduct technical, financial and performance audits of all works, goods and services funded by the Fund in accordance with section 26 of KRB Act.
- (2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time.
- (3) There shall be entry and exit meetings between the Inspector and Road Agencies and the minutes of these meetings shall be signed off by both parties.
- (4) An Inspector may call off or postpone an audit in the following circumstances;
- (a) Failure to provide a conducive work area;
 - (b) Failure to avail documents and information;
 - (c) Failure to provide such officers as may be required for field visits;
 - (d) Physical threats;
 - (e) Insecurity;
 - (f) Absent auditee.
- (5) In the event of suspension or calling off an audit under Rule 39 (4) the Inspector shall within seven (7) days prepare and submit report to the Director General.

Duty to avail documents and
information to the Inspector.

40. (1) Each Road Agency shall produce and make available all records and information to the Inspector as provided for under section 26 of the Act

Provided that –

- (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced;
- 

(ii) the Inspector may make copies of any books, accounts, records and other documents required for purposes of its report;

(2) Where a special audit is ordered, the Road Agency shall avail information as provided for under Section 26 of the KRB Act.

(3) The Inspector shall within ninety (90) days of commencing an audit issue an audit report.

(4) Any clarifications sought shall be availed to the Inspector within fourteen (14) days.

Penalties for Failure to
Comply

41. (1) Where a Road Agency fails to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information, the Director General shall direct the Road Agency to comply within fourteen (14) days.

(2) A Road Agency that fails to comply with the directions issued under Rule 41 (1) shall be held non-compliant and liable for such penalties and sanctions as have been specified under section 30 of the Act.

(3) A person being an authorised officer of a Road Agency who fails to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information commits an offence and shall be liable on conviction to the penalties specified under the Public Finance Management Act, 2012 and such fines as prescribed under section 27 (3) and (4) of the Act.

No. 18 of 2012
No. 7 of 1999

Responses and
Implementation of
Inspection report
Recommendations

42. (1) Each Road Agency shall submit to the Director General written responses and an action plan stipulating the time frame for addressing the recommendations and queries in the inspection reports within thirty (30) days from the date of receipt of the reports.

(2) Upon expiry of the thirty (30) days, the Director General shall conclude the inspection report and submit it to the Board.

(3) Failure to implement the action plan stipulated under Rule 42 (1) shall amount to a non-compliance and shall attract such penalties and sanctions as prescribed under Section 30 of the Act.



PART VI – MISCELLANEOUS

Lodging of Complaints.

43. Any member of the public may lodge a complaint or allegation of misappropriation of funds from the Fund or on the quality of road works or on irregular procurement with the Board against any Road Agency.

Procedure for handling complaints.

44. The Board shall within fourteen days of receipt of a complaint, request the Road Agency to respond within twenty one (21) days from the date of such notice with a report of action taken to address complaints

Investigations

45. (1) Notwithstanding the provisions of Rule 43, the Board may, where it deems necessary, institute investigations into a complaint received.

- (2) A Road Agency aggrieved by the decision of the Director General shall appeal to the Cabinet Secretary.

- (3) All complaints and investigations conducted by the Board shall be in accordance with the Commission on Administrative Justice Act, 2011 and Fair Administrative Action Act, 2015.

No. 23 of 2011
No. 4 of 2015

Forms

46. The Board may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Rules in accordance with Section 26 of the Statutory Instruments Act, 2013.

No. 23 of 2013.



**FIRST SCHEDULE
DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads.
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Class C roads.
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Classes H, J and K roads (equivalent Urban Classes A, B and C roads)
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.



FORM A – ANNUAL ROAD WORKS PROGRAMME FORM

(Rule 6 (1))

[illegible]

Signed
by:

Designation

District

Significance

Q

(Rule 7 (1))



DATE OF SURVEY:

[illegible][illegible]

Overall Condition:

b

**FORM C – ANNUAL PUBLIC ROADS PROGRAMME IMPLEMENTATION
REPORT FORM**

ANNUAL PUBLIC ROADS PROGRAMME IMPLEMENTATION REPORT FY.....												
Road Condition	Type of Works	Road Length (km)	APRP Budget Allocation FY 20/21	Source of funds	Date of Procurement Notice	Award Date	Commencement date	Contract period	Completion date	Name of Contractor	Contract Sum (Kshs)	Savings (APRP Budget less Contract Sum)

(Rule 43 (1))

Note:

Type of Works: Routine Maintenance/ Periodic Maintenance/New Construction/Structures/Admin

Source of funds: Agency allocation/10% CS allocation/ Savings/Bond proceeds

Made on 13th June 2022



Mr. James W. Macharia, EGH
Cabinet Secretary
for Transport, Infrastructure, Housing, Urban
Development & Public Works

FORM C – ANNUAL PUBLIC ROADS PROGRAMME IMPLEMENTATION REPORT FORM

ANNUAL PUBLIC ROADS PROGRAMME IMPLEMENTATION REPORT FY.....																							
Sn	Contract No.	Road ID.	Road Name	Location	Road surface type	Road Condition	Type of Works	Road Length (km)	APRP Budget Allocation FY 20/21	Source of funds	Date of Procurement Notice	Award Date	Commencement date	Contract period	Completion date	Name of Contractor	Contract Sum (Ksh)	Savings (APRP Budget less Contract Sum)	Variation Order (Yes/No)	Achieved Outputs	Certified Amount	Payments Made	Status of Completion (%)
1																							
2																							

Note:

Type of Works: Routine Maintenance/ Periodic Maintenance/New Construction/Structures/Admin

Source of funds: Agency allocation/10% CS allocation/ Savings/Bond proceeds

Dated this...13th.....day of...June.....2022



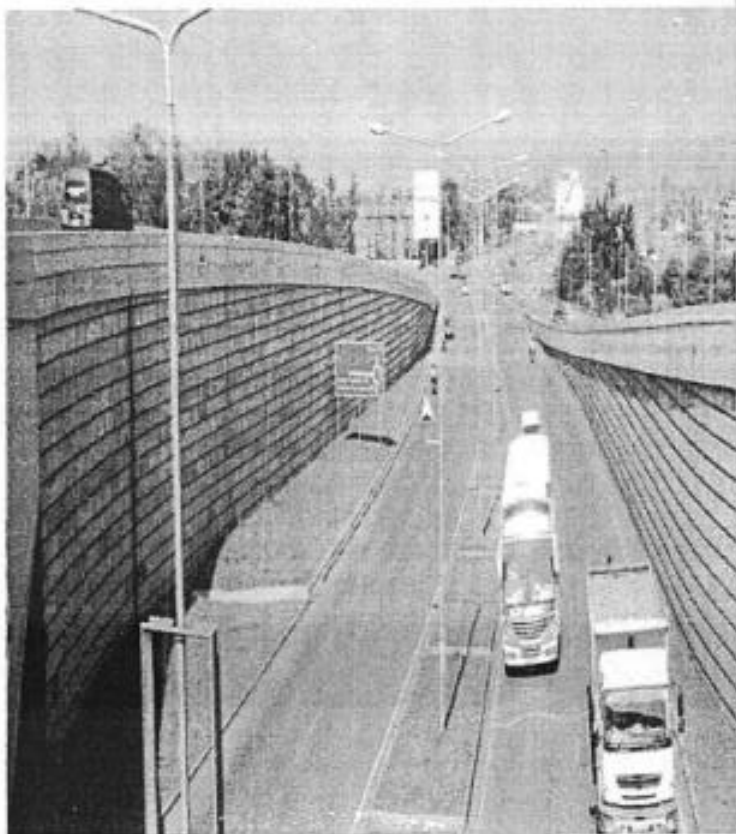
Mr. James W. Macharia, EGH
Cabinet Secretary
for Transport, Infrastructure, Housing, Urban Development & Public Works



1

2019

CONSULTATIVE WORKSHOP REPORT



DEVELOPMENT
OF REGULATIONS
TO THE KENYA
ROADS BOARD
ACT, 1999

Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999 Report

About this publication:

This Report summarises the discussions and conclusions from the Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999 on the 28th June 2019. The workshop was jointly organised by the law firm of Prof. Albert Mumma and Company Advocates and the Kenya Roads Board (KRB). It took place at the Radisson Blu Hotel, in Upper Hill, Nairobi, Kenya.



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Disclaimer:

This Report summarises discussions held in a forum setting. The views expressed are those of the individual participants who took part.

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ABBREVIATIONS

ACRONYM	DESCRIPTION
APRP	Annual Public Roads Programme
ARICS	Annual Road Inventory and Condition Survey
ARWP	Annual Roads Work Programme
CARA	County Allocation of Revenue Act
CEC	County Executive Committee
CG	County Government
COK	Constitution of Kenya
CS	Cabinet Secretary
GOK	Government of Kenya
KRB	Kenya Roads Board
KRBF	Kenya Roads Board Fund
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Service
MTEF	Medium Term Expenditure Framework
M&E	Monitoring and Evaluation
RA	Road Agency
RIS	Regulatory Impact Statement
RMLF	Road Maintenance Levy Fund
RMS	Road Maintenance Management System
TOR	Terms of Reference

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1. INTRODUCTION

1.1 Background

THE FOURTH SCHEDULE

The Schedule of the Constitution that distributes functions between the national government and county governments. The development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

The Road Maintenance Levy Fund (RMLF) was established in 1993 through an Act of Parliament (Revised 1994.). The RMLF was primarily established for both routine and periodic maintenance of public roads. The Kenya Roads Board Act No. 7 of 1999 on its part establishes the Kenya Roads Board (KRB) as a statutory body to oversee the road network and coordinate the maintenance, rehabilitation and development funded by the Kenya Roads Board Fund (KRBF) and to advise the Cabinet Secretary (CS) on Transport & Infrastructure and on all matters related thereto. The Act empowers KRB to manage the KRBF financed primarily from the proceeds of the RMLF comprising the Fuel Levy and Transit Toll collections. The Act further designates the implementing agencies namely Kenya Rural Roads Authority (KeRRA), Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA) and Kenya Wildlife Service (KWS) to support the management and utilization of road funds.

Since the enactment of the KRB Act 1999 and the establishment of the RMLF, Kenya has undergone a number of key legislative changes that have implications for the road sector.

The promulgation of the Constitution of Kenya 2010 (COK 2010) has created two levels of government namely the national government and county governments. The Fourth Schedule of the COK 2010 distributes functions between the national government and county governments in recognition of the fact that the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments. In particular, the Fourth Schedule provides that the national government is tasked with the construction and operation of national trunk roads and the formulation of standards for the construction and maintenance of other roads by counties. On their part, the functions and powers of the county include county roads. The mandates and functions of county governments are prescribed for under the County Government Act 2012 (CGA).

Through the County Allocation of Revenue Act 2015 (CARA), Parliament has prescribed that fifteen per cent (15%) of the RMLF be allocated to County governments for the maintenance of county roads. In addition, Article 219 of the COK 2010 provides that 'a county's share of revenue raised by the national government shall be transferred to the county without undue and without deduction, except when the transfer has been stopped under the Article 225'. Other key legislative reforms also include the enactment of the Public Procurement and Disposal Act (Cap 412C) in 2005, the Finance Act 2009, the Public Finance and Management Act 2015 among other key legislative amendments.

It is within this legislative landscape that the KRB must exercise its mandates and functions as provided for by Section 6 of the KRB Act No. 7 of 1999.

1.2 Consultancy Objectives

For the effective operationalization of the KRB mandate, Section 37 of the KRB Act 1999 empowers KRB to make regulations with respect to any matter which is necessary for the better carrying out or giving effect to the functions of the Board as prescribed by the provisions of the Act. KRB thus seeks to introduce legislative reforms to facilitate among others, a further interpretation and full implementation of the KRB Act 1999. Consequently, KRB has engaged the Consultant in this assignment which involves the development of subsidiary legislation namely the Kenya Roads Board Regulations 2019.

The main aims of this subsidiary legislation will be to –

- (1) Provide further details and clarity on provisions which have been left open in the Kenya Roads Board Act No. 7, 1999; and
- (2) Fill existing gaps (if any) in the Draft regulations and the Technical, Financial and Performance Audit Manuals developed by management

In line with these overarching aims, the key deliverables for this consultancy include –

Key Deliverable 1 (KD-1) Review of the draft Regulations, Technical, Financial and Performance Audit Manuals among others developed by management against the mandate of KRB to ensure they are complete and if there are gaps to be identified and filled.

Key Deliverable 2 (KD-2): Conduct a research and benchmark with other local and international fund managers (Desk exercise) based on the literature available.

Key Deliverable 3 (KD-3): Facilitate engagement of Stakeholders in coming up with the Rules.

Key Deliverable 4 (KD-4): Draft the Rules as by law requires from (KT-1) above.

Key Deliverable 5 (KD-5): Conduct Stakeholder's Validation Workshops.

Key Deliverable 6 (KD-6): Conduct an impact assessment of the Rules on mandates of KRB and functions of Road Agencies or any other stakeholders and prepare a report.

To perform these tasks, the Consultant will conduct a desk review and diagnosis of the KRB Act 1999, the Draft Regulations prepared by KRB, the Technical, Performance and Financial Audit manuals among other key legislative frameworks and policy documents affecting the road sector, including benchmarking materials from local and international fund managers. In summary the analysis will involve an assessment of –

- Relevant literature and pertinent cases studies in the management and operation of road funds both locally and internationally;
- The legislative gaps in the *Kenya Roads Board Act No. 7 1999* and a further identification of issues that require legislative clarity;

- Issues relating to the efficiency of the Kenya Roads Board Act No. 7 1999 including streamlining with the Constitution of Kenya 2010, the County Government Act 2012 among other key pieces of legislation affecting the road sector;
- Gaps in road sector guidelines in particular the technical, financial and audit manuals;
- Key policy documents in the road sector and infrastructure development; and
- Road sector and multi-sectoral implications of the proposed KRB Regulation 2019.

1.3 The Inception Meeting

Prior to the Consultative Workshop for the Development of Regulations to KRB Act, 1999, an inception meeting was held with the KRB team and the Consultant in which the terms of reference (TOR), the approach & methodology, key staff, key deliverables, contract price and payment schedule with regard to the assignment were discussed. Specific details regarding the assignment are provided for in the *Inception Report*.

1.4 Consultative Workshop for the Development of Regulations to KRB Act, 1999

In keeping with the constitutional requirement regarding public participation, a Consultative Workshop with representatives from KRB, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the designated Road Agencies (RAs), was held on the 28th June 2019 at Radisson Blu Hotel, in Upper Hill, Nairobi.

The primary goal of this stakeholder engagement was to inform and present to this targeted section of road sector stakeholders the aims of the proposed subsidiary legislation. The Consultative Workshop further sought to provoke reflection and critical evaluation of key challenges within the road sector. Moreover, the Workshop sought to inspire and motivate the attendees to share knowledge, collaborate and to help in the development of the subsidiary legislation.

The workshop began at 9.41am with an opening prayer. The attendees introduced themselves and thereafter opening remarks were proffered by Ms Lucy Gathika, the General Manager Legal & Corporate Affairs.

Ms Lucy Gathika officially opened the session by welcoming those in attendance. She thanked the representatives of the KRB, the Ministry and the RAs for their presence at the venue and highlighted the importance of the Consultative Workshop. The General Manager of Legal & Corporate Affairs further conveyed that the views of the issues from the perspective of the implementers was critical to the development of effective regulations.

Ms Lucy Gathika also highlighted a number of salient issues –

- The funding capabilities of the KRB: collections into the RMLF totalled 70 Billion Kenya Shillings.
- The development of rules to enhance the management of the fuel levy.

- How the interface between the roles of national and county governments can be addressed.
- The expectations of Kenyans for the efficient management of the fund.
- The need to give value to the public and improving Kenyan's livelihoods through a credible, efficient and reliable fund.
- The willingness of Kenyans to pay more for public services that are efficient and not wasteful.
- The need to have rules and regulations that will guide the KRB and the road sector stakeholders.

Following the opening remarks, Ms Lucy Gathika introduced the Lead Consultant and Legal Specialist for the assignment, Prof. Albert Mumma to (1) commence his presentation, (2) to further facilitate the presentations to be made by members of the KRB Team and (3) to guide the ensuing plenary discussions.

This report provides a detailed summary of the Consultative Workshop with KRB, the Ministry, and the designated RAs. It provides an overview of the Consultation objectives, highlights the major discussion points as well as detailing the feedback and recommendations following from the discussion.

2. CONSULTATIVE WORKSHOP OBJECTIVES

Public Participation is a crucial and imperative component of the legislative process. The primary purpose of the *Consultative Workshop for the Development of Regulations to KRB Act, 1999* is to facilitate the drafting of the Kenya Roads Board Regulations 2019 from the recommendations, endorsements and general views of the relevant stakeholders within the road sector. Figure 1 below highlights the key objectives of the *Consultative Workshop for the Development of Regulations to KRB Act, 1999*:-

WORKSHOP OBJECTIVES

- ❑ Outline the objectives of the consultancy
- ❑ Explain the key deliverables for the consultancy
- ❑ Provide an outline of the approach and methodology
- ❑ Provide a realistic Work Plan
- ❑ Engage Stakeholders
- ❑ Receive input from KRB Staff on thematic areas namely -
 - i. Works Programming
 - ii. Funds Management
 - iii. Technical Compliance Performance and Financial Audits

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



Figure 1: Objectives of the Workshop

3. STRUCTURE OF THE PRESENTATION

The figure below illustrating the Consultant's stakeholder engagement strategy to inform the drafting of the Subsidiary legislation was designed to attain meaningful participation and involvement that would enable the road sector stakeholders to actively contribute to the discussion and the development of ideas and expose relevant issues that need to be addressed in the subsidiary legislation.

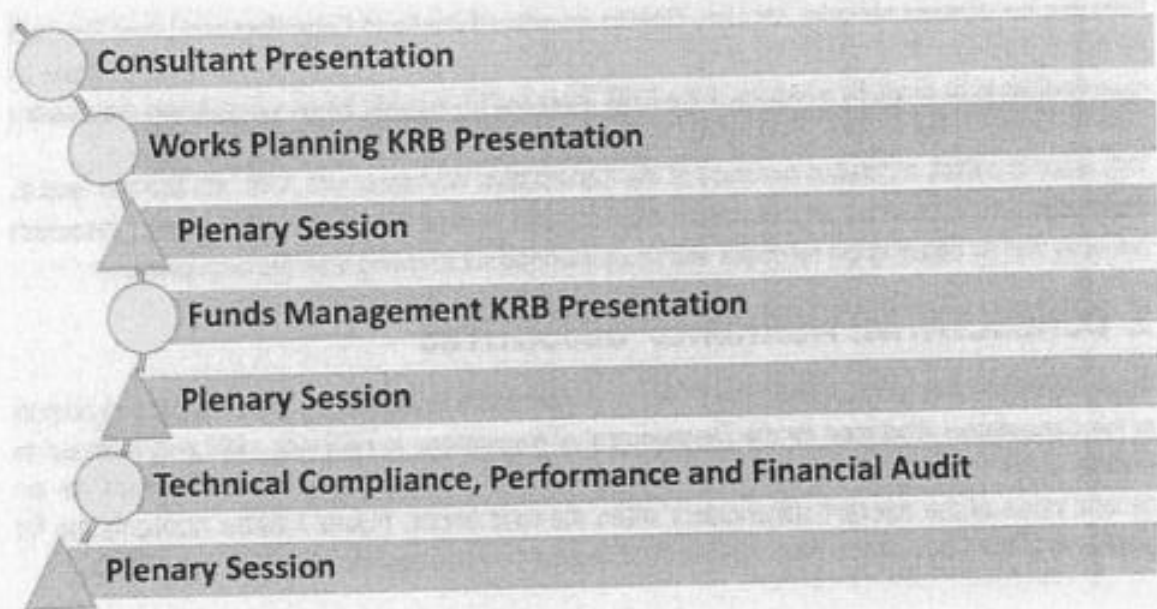


Figure 2: Structure of the Presentation

Consultant's Presentation: The purpose of the Consultant's presentation was to guide the road sector stakeholders in attendance through the legislative process and the requirements for the assignment. This exercise enabled the stakeholder to familiarize themselves with the objectives of the assignment, including the approach and methodology, work plan, deliverables and the key staff undertaking the assignment.

Works Planning Presentation: The purpose of the KRB presentation related to Works Planning was to inform the road sector attendees of the APRP Planning & Reporting Cycle, the Assessment of Road Maintenance Needs, the Prioritization of Road Maintenance Works, the Guidelines for ARWP Preparation & Submission, the Implementation Reporting & Monitoring of APRP, the Web-based Road Management System and Future Directions.

Funds Management Presentation: The purpose of the KRB presentation related to Funds Management was to guide the road sector stakeholders through the procedures governing the management of the KRBF. These included but were not limited to the deposits and payments from bank accounts, annual estimates and budget ceilings, the disbursement program, conditions for the release of funds to road agencies, among other issues.

Technical Compliance, Performance and Financial Audits Presentation: The purpose of the KRB presentation was to inform the attendees on the guidelines followed by KRB auditors engaged in technical, financial and performance audits of road works activities. The attendees were informed of the

audit methodology in general, namely the audit considerations and the procedure followed. Moreover, the attendees were exposed to proposed regulations to govern technical, financial and performance audits.

Plenary Sessions: The floor was opened to plenary discussions facilitated by the Consultant after each of the KRB team presentations. These plenary sessions provided the road sector stakeholders in attendance an opportunity to focus attention and deliberate on the prevailing issues within the sector. The participants were able to question and seek clarification on issues that were unclear and to submit detailed views and proposals on areas that the subsidiary legislation should address. The plenary session enabled the road sector stakeholders to make additional inputs, comments and ask the KRB Team further questions for better clarity. The KRB Team then responded to questions, comments and suggestions raised by the attendees.

The Programme for the Consultative Workshop for the Development of Regulations to KRB Act, 1999, showing how the Workshop was structured is attached as **Annex I**.

4. CONSULTATIVE WORKSHOP PRESENTATIONS

The presentations made by the Consultant and the KRB Team covered the following

- (1) *Objectives of the Consultancy and the Consultative Workshop* - Consultant
- (2) *Works Planning* – KRB Team
- (3) *Funds Management* – KRB Team
- (4) *Technical Compliance, Performance and Financial Audits* – KRB Team

Each of the presentations by the KRB Team was followed by a Plenary Session. The mode of presentation was to further aid the road sector stakeholders to deal with the crucial and substantive details to be addressed in the proposed Regulations. The views of these participants was to be exposed in the open and interactive plenary for deliberation.

4.1 OBJECTIVES OF THE CONSULTANCY AND THE CONSULTATIVE WORKSHOP

The introductory presentation made by Prof. Albert Mumma provided a brief background of the consultancy, which is clustered into six (6) Key deliverables. The Consultant highlighted the aims and objectives of the consultancy and discussed the process of the development of subsidiary legislation.

The Consultant addressed the legal requirements imposed by the Statutory Instruments Act 2013 which is a Parliamentary Act providing for the making, scrutiny, publication and operation of statutory instruments and other connected matters.

The Consultant reiterated that as a requirement imposed by the Statutory Instruments Act 2013, the process of making rules must be a consultative process involving stakeholder engagement and public participation. The importance of this requirement was highlighted in light of the fact that the proposed KRB Regulations are likely to have a direct or substantially indirect effect on business. Moreover, it was stressed that the consultation process would be imperative to draw knowledge from the road sector

experts and later ensure that persons likely to be affected by the proposed KRB Regulations will have an adequate opportunity to comment on the proposed content. Given that the new constitutional dispensation has led to devolved functions thus placing the mandate on County roads on to the respective 47 Counties, the Consultant aptly submitted that the inclusion of the County Governments (CGs) in the process is integral to satisfying the requirement on public participation imposed by the Statutory Instruments Act 2013. The Consultant also pointed out the legal requirement to prepare Regulatory Impact Statements (RIS) due to the fact that the proposed KRB regulations are likely to impose significant costs on the community or part of the community. These costs may be monetary but may also include environmental, social and cultural impacts.

The Consultant proceeded to identify the key legislation and road sector guidelines, manuals and subsidiary legislation to be reviewed to inform the drafting of the regulations. A non-exhaustive list of the key instruments for review is shown in Figure 3 below.

Inventory of Key Legislation, Policies and other materials	
Legislation	
1	The Constitution of Kenya, 2010
2	Kenya Roads Act 2007
3	Kenya Roads Board Act No. 7 1999
4	Kenya Roads Bill 2017
5	County Government Act 2012
6	County Allocation of Revenue Act 2015
7	Public Finance Management Act 2015
Road Sector Guidelines, Manuals and Draft Subsidiary Legislation	
8	Technical Financial and Performance Audit Manual
9	Annual Public Roads Programme Planning and Reporting Manual
10	Draft Kenya Roads Board Rules, Regulations Procedures and Guidelines February 2018



Figure 3: Inventory of Key legislation, Policies and Other Materials

Moreover in order to fulfil Key Task 1 (KT-1) of the assignment, the Consultant submitted that a review of key policy documents affecting the road sector is necessary to inform the development of the regulations. In addition, in order to meet the deliverable in Key Task 2 (KT-2), a review of the literature addressing experiences of both local and international fund managers would be important in order to bench mark best practices. A sample of the key policy documents and the literature identified by the Consultant is shown in Figure 4 below. *N.B. The list is not exhaustive.*

Inventory of Key Legislation, Policies and other materials cont'd

11	Kenya Vision 2030
12	Road Sector Policy 2016
13	Ministry of Transport Infrastructure Housing Urban Development and Public Works Draft Strategic Plan 2018 - 2022
14	Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020
15	Sessional Paper of 2006 on The Development and Management of the Roads Sub-Sector for Sustainable Economic Growth
16	Sessional Paper No. 9 of 2012 on The National Industrialization Policy Framework For Kenya 2012 - 2030.
17	Integrated National Transport Policy: Moving a Working Nation 2009
Other Materials	
18	Transportation and Communications Bulletin for Asia and the Pacific No. 75 "Roads Board Nepal: A Sustainable Approach to Road Maintenance Management"
19	Transport and Communications Bulletin for Asia and the Pacific, No. 86 "Sustainable Rural Access"
20	Transport and Communications Bulletin for Asia and the Pacific, No. 88 "Intelligent Transport Systems"
21	The Law Library of Congress, Global Legal Research Centre "National Funding of Road Infrastructure" (March 2014)
22	World Bank Technical Report - Management and Financing of Roads An Agenda for Reform
23	IMF Paper on Policy Analysis and Assessment: "Dedicated Road Funds: A Preliminary View on a World Bank Initiative"
24	Involvement of Road Users In the Management of Roads, Public Private Partnerships - The Zambia Roads Board Experience

Figure 4: Key Policies and Other Literature

The Consultant further addressed the approach and methodology to be followed in the development of the regulations. Figure 5 below summarizes the phases to be undertaken by the consultant.

APPROACH AND METHODOLOGY

- The specific methodology is split in four phases namely:

PHASE 1: Project Planning, initiation and mobilization;

PHASE 2: Development of an assessment toolkit & Comparative analysis and status review of the draft regulations, Technical Compliance Manual, Planning manual, & Finance manual, research & Bench mark with local & international fund managers, and engagement of Stake Holders.

PHASE 3: Drafting of Rules & Regulations regulatory impact assessment and thereafter validation by Stakeholders

PHASE 4: Revision and submission of Final Report

Kenya Roads Board: Consultative Workshop for Development of Regulations to Kenya Roads Board Act, 1999



Figure 5: Approach and Methodology

The Consultant concluded by summarizing the Work Plan and the roles of the members of the consulting team. The Consultant's full Presentation is attached in Annex II.

4.2 KRB PRESENTATIONS and PLENARY SESSIONS

Following the Consultant's Presentation, Prof. Albert Mumma invited members of the KRB Team to conduct their presentations. These presentations addressed certain key areas namely –

- i. Works Planning
- ii. Funds Management
- iii. Technical Compliance, Performance and Financial Audits

At the end of each of the presentations, a plenary session moderated by Prof. Albert Mumma was held. The following sections of this report address these presentations and discussions.

4.2.1 WORKS PLANNING

Eng. Margaret Ogai began the presentation on Works Planning by stating that the Kenyan roads network is an important asset and is one of the biggest in the region. She cited that Kenya Vision 2030 recognizes that roads are an enabler. Moreover, roads contribute to sustained economic development and enhance productivity and competitiveness by lowering transport costs.

Eng. Margaret Ogai remarked on the following areas;

ITEM	PRESENTATION
Road Management Systems (RMS)	➤ Requirement for standards and procedures for processes
Mandates of various agencies	➤ State Dept. of Infrastructure in MoTIHUD & PW - Policy formulation, oversight & coordination; Setting standards ➤ KRB - Managing Road Maintenance funds (RMLF, transit tolls), Coordination of maintenance programs, Technical & Financial audits ➤ RAs - Management, development, rehabilitation and maintenance of National Trunk Roads (39,996km) ➤ CGs - Management, development, rehabilitation and maintenance of County Roads (121,456km) ➤ Departments in Ministry - Provision of equipment (Mechanical & Transport Dept.), materials testing and research (Materials Testing & Research Dept.), provide technical training (Kenya Institute of Highways & Building Technology)
Importance of Road Maintenance	➤ Roads deteriorate over time; require regular maintenance. Reinstatement is 3 or more times the cost of regular maintenance. The benefits of road maintenance include: ➤ Providing road users with an acceptable level of service by addressing defects promptly; ➤ Preserving the huge investment made over the years in the road network; ➤ Minimizing the life cycle road development and maintenance costs; ➤ Minimizing road user costs - vehicle operating costs, associated travel time costs, road accident costs, harmful emissions); ➤ Enhancing road user safety.
APRP Reporting Cycle	➤ Ceiling given to RAs ➤ RAs required to prepare surveys of maintenance requirements ➤ Not enough consultations with the counties

	➤ Revision of work plans – lack of formalized cycle and need for more synchronicity ➤ Revisions should be justified - Some reasons include: ➤ Change in the scope of works ➤ Some roads in the annual work plan having been planned by other road agencies ➤ Significant variation between planned costs and procured costs of works resulting in budget deficits or savings. Etc.
ARICS	➤ Standardization of procedures is required ➤ KeNHA is implementing best practices ➤ Assessment of Road Maintenance Needs Rating Procedure is outlined in the APRP Manual
Prioritization	➤ Mandates of the RAs are preservation, restoration, improvement and development ➤ Restoration is a prevailing issue and there is conflict between prioritizing preservation ➤ Maintenance is a high priority
ARWP	➤ Need for clarity as to which section of road is being addressed (geo-data referencing) ➤ The road register helps to avoid duplication and overlaps ➤ Activity code is also important for standardization
Prevailing and emerging issues	➤ Overlapping mandates between RAs and counties ➤ Technical capacity issues at the county level ➤ Carry over works and carry over monies ➤ Road Register ➤ Regulations should address – ➤ M&E framework ➤ Employment and gender related issues ➤ Road safety ➤ Training and Capacity building ➤ HIV/AIDS Awareness

Table 1: Summary of Presentation on Work Planning

The full KRB presentation by Eng. Margaret Ogai on *Work Planning* is herewith attached in *Annex III*.

Eng. Margaret Ogai presentation on *Work Planning* was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 2 below illustrates the general comments and proposals made by the participants:-

Question/Comment by Participants
➤ Life cycle costs of related infrastructure (access roads criteria required) ➤ Assignment of roads to RAs needs clarity ➤ 10% allocation to KWS is not sufficient particularly in regards to trunk roads ➤ There is an overlap in mandates between KWS and other RAs (access roads) ➤ Deterioration and Rehabilitation period should be addressed

➤ Area abutting the road corridor has been neglected.
➤ Road side development needs to be controlled (too many bumps)
➤ M&E is important and should be continuous throughout the development process
➤ Upscale monitoring to more periodic intervals
➤ Interventions during implementation should be done when results are not being met
➤ More accuracy is required with regards to conditions of paved and unpaved roads (better system for determining deteriorating conditions)
➤ There is need for stricter interrogation of RAs work plans
Response by Eng. Margaret Ogai
➤ Detailed information on criteria is available
➤ Purposing to move forward on M&E and strengthening the procedure
➤ The views on classification of roads is taken on board. A number of RAs took part in a consultative process on classification and reclassification
➤ There are no limitations on Work Plans. KRB will give guidance on corridor management and road side management
➤ The percentage on allocation of funds is a policy issue
➤ There is need for the development of roads but the focus should be on maintenance of road infrastructure.
➤ Long road maintenance regime is necessary

Table 2: Plenary on Work Planning

4.2.2 FUNDS MANAGEMENT

CPA Margaret Muinde presided over the presentation on Funds Management. The presentation covered the proposed KRB (Road Fund Management) Rules and Regulations financial provisions and administration. CPA Margaret Muinde remarked on the following areas -

ITEM	PRESENTATION
Opening Bank Accounts	➤ Requirement for RAs to open bank accounts ➤ Penalty for RAs failure to open a bank account ➤ Bank accounts to be opened, operated and closed with KRB and National Treasury authorization
Deposits and Payments from Bank Accounts	➤ Receipts from Fund to be deposited in RAs RMLF bank account ➤ Mode of Payment: instructions, cheque, electronic or fund transfer
Annual estimates and budget ceilings	➤ KRB to prepare annual revenue projections (3 year forward basis) and submit to National treasury

	➤ KRB to give RAs budgetary ceilings for the following year and request preparation for ARP ➤ RAs within 3 months before beginning of financial year to submit annual expenditure projections on a month to month basis to KRB
Disbursement Program	➤ KRB to indicate to RAs at the beginning of each financial year monthly cash flows ➤ KRB to monitor receipt of funds from RMLF and allocate each tranche to respective RA in accordance with the disbursement program provided that RA is in compliance with KRB requirements
Release of Funds by KRB and RAs	➤ KRB to release to compliant RAs in accordance with disbursement schedule and within 30 days from the date following the end of the month ➤ KRB may withhold disbursements if RA is not in compliance with KRB rules, regulations, procedures and guidelines ➤ KRB may partially release funds (not more than 30%) if the ARWP for RA is yet to be approved at the beginning of the financial year.
Conditions for Release of funds	➤ Submission of quarterly and annual progress/expenditure reports as required by KRB in accordance with Clause 65 of these Regulations. ➤ An ARWP duly approved by KRB. ➤ Responses to all audit queries in accordance with Clause 63 of these Regulations. ➤ An RA has failed to comply with Section 19 (2) of the Act
Expenditure	➤ Reallocation of funds for works: RAs shall not apply the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of KRB ➤ Authority to incur expenditure: Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that RA.
Savings and Earnings	➤ Where an RA has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. ➤ RAs to submit a work plan for the savings and or interest earnings to KRB before spending.
Carry Over Funds	➤ Carry-over funds – bank balances for financial year can be retained for use in the following year ➤ The carry over funds and associated road works to be included in the ARWP for the following year
Maintenance of Cash Books	➤ RAs to maintain cash book of KRB ➤ RAs to maintain registers and records of bank accounts, cash books and imprest

Annual Reports and Financial Statements	➤ Accounting officer to prepare annual reports and financial statements ➤ RAs within six months of the end of financial year to submit to KRB audited accounts
Sanctions and Penalties	➤ Failure to abide by KRB Act and rules amounts to non-compliance ➤ KRB may – i. Suspend funding to RA ii. Appoint another RA and release funds allocated to it for the works that were to be carried out by non-compliant RA to newly appointed RA iii. Institute measures to recover amounts misappropriated by public officer ➤ Take legal action against the officer
Challenges	➤ Overreliance on the RMLF ➤ Inadequate funds ➤ Identification of tangible outputs ➤ Prioritization criteria is necessary

Table 3: Summary of Presentation on Funds Management

The full KRB presentation by CPA Margaret Muinde on *Funds Management* is herewith attached in Annex IV.

CPA Margaret Muinde on *Funds Management* was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 4 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	Response
➤ Salaries and Wages: current practice on cap depends on the agency ➤ Percentage should be increased to accommodate technical capacity	• What is ideal for the sector? PFM Act stipulates the cap. Sector should come up with guidelines. • Percentages are based on overall fund
➤ Clarification – the percentage refers to the fund	
➤ Distribution to counties where the authorities have changed - how will this particular issue be addressed? ➤ Will this be through amendment or through the regulations?	➤ County Allocation – amended by County Revenue Allocation Act (KeRRA and KURA are the principal agencies affected)
➤ Administration and operational expenses do not only include salaries and wages	➤ Administrative expenses: 5% of the allocation to be made RAs ➤ Clarification from the Office of the Attorney General that it is 5% from total fund

➤ Regulations should be made regarding excess allocations	➤ Excess collection: interest earned forms part of the fund. Amounts over the budget are transferable to the following financial year
➤ PBC projects are a grey area as to what can be termed as a 'saving'	➤ PBC – can be dealt with on the rules on savings
➤ Regulations should address KWS	
➤ There is need for realignment with other key legislation such as the Wildlife Management and Conservation Act	

Table 4:: Plenary on Funds Management

4.2.3 TECHNICAL COMPLIANCE, PERFORMANCE AND FINANCIAL AUDITS

The presentation on Technical Compliance, Performance and Financial Audits by Eng. David Orwenyo included an overview of the mandate for audits, the purpose of KRB Audits, Types of Audits and proposed regulations to govern technical compliance, performance and financial audits. Eng. David Orwenyo remarked on the following areas -

Item	Presentation
Mandate for Audit	➤ Clause 6(2)(g) KRB Act mandates KRB to monitor and evaluate by means of technical, financial and performance audits the delivery of goods, works and services funded by the fund ➤ Clause 26(1) provides that KRB will direct an inspector to regularly perform audits of any RA
Purpose of Audits	➤ To independently verify that proceeds from the KRBF have been applied to the purpose for which they were intended and that the use of such resources is economical, efficient and effective to achieve value for money. ➤ The application of these funds should also be efficient, transparent and in accordance with the principles, procedures and requirements of KRB and sound professional practice. ➤ ARICS are required of all RAs
Types of Audits	➤ Technical Audit: Evaluates the programming, planning and delivery of works undertaken by RAs /CGs. It is a step by step assessment of road mtnce and development efforts / activities to determine the level of economy, efficiency and effectiveness. ➤ Financial Audit: This is the review of accounting records, internal control systems and applicable laws and regulations with the sole purpose of providing an assurance on the application of funds and that proper books of accounts have been maintained. Financial audits should be effectively addressed in the financial provisions of the regulations.

	➤ Performance Audit: Systematic process to obtain and evaluate evidence objectively, to be able to give performance appraisal of economy and operation effectiveness. Performance audits should be undertaken in terms of the 3 'E's'. ➤ Procurement Audit: An independent review and systematic examination of the procurement and disposal process to determine whether management practices, systems and controls result in goods, works and services being acquired is in accordance with the Constitution and the PP&AD Act, regulations and other guidelines. ➤ Environmental and Social Audits: The ESMP is a process guided by regulations for assessing the potential environmental and social impacts of proposed projects, evaluating alternatives and designing appropriate mitigation and monitoring measures. These should encompass issues such as HIV/AIDS awareness, gender issues etc. ➤ Road Safety Audit: A road safety is defined as a formal road safety performance examination of an existing or future road by an independent multidisciplinary team. It qualitatively estimates and reports on potential road safety issues and identifies opportunities for improvements in safety for all road users' in particular vulnerable road users. This is an important role for the RAs.
Areas to be considered in the Proposed Regulations	➤ Implementation of Works: efficient and effective delivery of road works ➤ Supervision of works ➤ Monitoring and Evaluation ➤ Procurement guidelines ➤ Provisions of specifications ➤ Record keeping ➤ Criteria for road works contractors ➤ Sanctions and penalties for providing fraudulent or misleading information etc.

Table 5: Summary of Presentation on Technical Compliance, Financial and Performance Audits

The full presentation of the Technical Compliance, Financial and Performance Audit is herewith attached in Annex V.

The presentation of the Technical Compliance, Financial and Performance Audit by Eng. David Orwenyo was followed by a plenary session in which comments, suggestions and recommendations were invited from the participants. Table 6 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	
➤ Legal Compliance audit has not been addressed	This is currently not part of the process

➤ Lack of consistency in the auditing function due to outsourcing – there is need for standardization	• Auditing process depends on the information that is available
➤ Need for expansion of scope to include procurement audits	• TORs detail approach to the audit
Further Comments by Participants	
➤ Regulations should be informed by the current reports ➤ Section 37 on penalties is ineffective ➤ KRB needs to be empowered	

Table 5: Plenary on Technical Compliance, Financial and Performance Audit

4.3 General Commentary on the Consultative Workshop

The Presentation to the road exhaustively presented to this particular group of stakeholders the key elements to be addressed in the proposed subsidiary legislation to support KRB further implement the KRB Act 1999.

Way Forward: KRB and the Consultant team welcomes the comments received and will continue to engage road sector stakeholders. The participants were informed that their participation is a part of the ongoing process for the development of the proposed Kenya Roads Board Regulations.

It has been acknowledged that some of the issues raised and which may not be provided for in the subsidiary legislation will form important recommendations for legislative amendments.

5. Annexes

Annex I: Consultative Workshop for the Development of Regulations to KRB Act, 1999 Programme



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA ROADS BOARD ACT, 1999

28th June 2019, RADISSON BLU HOTEL UPPER HILL, NAIROBI

PROGRAMME

TIME	ACTIVITY	FACILITATOR
8.00 - 8.15 A.M.	Arrival & Registration	KRB Team
8.15 - 8.30 A.M.	Opening Prayers & Introduction	KRB Team
8.30 - 8.45 A.M.	Opening Remarks	Ms. Lucy Gathika General Manager Legal & Corporate Affairs
8.45 - 9.00 A.M.	Objectives of the Workshop	Prof. Albert Mumma
9.00- 10.00 A.M.	Works Planning	Eng. Margaret Ogai General Manager Planning & Programming
10.00-10.15 A.M.	Plenary	Prof. Albert Mumma
10.20 - 11.00 A.M.	HEALTH BREAK	KRB Team
11.00-12:00 P.M.	Funds Management	CPA Margaret Muinde Financial Controller
12.00-12.15 P.M.	Plenary	Prof. Albert Mumma
12.15-1.00 P.M.	Technical Compliance Performance and Financial Audits	Eng. David Orwenyo General Manager, Technical Compliance
1.00-1.15 P.M.	Plenary	Prof. Albert Mumma
1.15P.M.	Closing Remarks	Ms. Lucy Gathika General Manager Legal & Corporate Affairs
1.30 P.M.	LUNCH	

Annex II: Consultant's PowerPoint Presentation

Development of Regulations to strengthen the capacity of the Kenya Roads Board to Discharge its Mandate Under the Kenya Roads Board Act, 1999

CONSULTATION WORKSHOP

**RADISSON BLU, UPPER HILL NAIROBI
30th AUGUST 2019**

KENYA ROADS BOARD

Presented by

PROF. ALBERT MUMMA & COMPANY ADVOCATES



Presentation

- 1. INTRODUCTION**
- 2. OBJECTIVES OF THE WORKSHOP**
- 3. SCOPE OF THE ASSIGNMENT**
 - Aims and Objectives**
 - The Key Deliverables**
- 4. APPROACH & METHODOLOGY**
- 5. WORK PLAN**
- 6. PROJECT TEAM AND ASSIGNED TASKS**
- 7. KRB STAFF PRESENTATION**

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



INTRODUCTION

- Infrastructural development is the principal factor in the exploitation of the growth potential in numerous sectors. Kenya's road networks are a key element of infrastructural development.
- The Kenya Roads Board Act No. 7 of 1999 establishes the Kenya Roads Board (KRB) as a statutory body to oversee the road network and coordinate the maintenance, rehabilitation and development funded by the fund and to advise the Cabinet Secretary on Transport & Infrastructure on all matters related thereto. The Act designates road agencies to support the management and utilization of road funds.
- Successful road fund initiatives are dependent on effective road agencies. Therefore they must be supported by rules and procedures that govern proper financial management systems, timely funding, financial discipline, sound procurement systems and procedures among others.

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



WORKSHOP OBJECTIVES

- ❑ Outline the objectives of the consultancy
- ❑ Explain the key deliverables for the consultancy
- ❑ Provide an outline of the approach and methodology
- ❑ Provide a realistic Work Plan
- ❑ Engage Stakeholders
- ❑ Receive input from KRB Staff on thematic areas namely -
 - i. *Works Programming*
 - ii. *Funds Management*
 - iii. *Technical Compliance Performance and Financial Audits*

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



SCOPE OF THE ASSIGNMENT

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



1. AIMS AND OBJECTIVES

- ▶ Section 6 of the Kenya Roads Board Act No. 7 of 1999 outlines the mandate and functions of KRB. Section 37 of the Act empowers KRB to make rules for the better carrying out of its functions.
- ▶ To fully operationalize the Act, KRB is required to develop rules.
- ▶ KRB has procured the services of the Consultant in order to facilitate the development of rules as envisioned in the Act and in line with the Constitution.

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999





The Kenya Roads Board Regulations

- The main aims of this subsidiary legislation will be to:
1. Provide further details and clarity on provisions which have been left open or omitted entirely in the Kenya Roads Board Act No. 7, 1999; and
 2. Fill in existing gaps in the draft regulations and as well as identify any gaps relating to the Technical, Financial and Performance Audit Manuals that need to be filled.

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999

2. KEY DELIVERABLES

Key Task	Deliverable
KT-1	Review the draft Regulations, Technical Compliance Manual, Planning Manual, Financial Manual among others developed by management against the mandate of KRB to ensure they are complete and if there are gaps to be identified and filled.
KT-2	Conduct a research and benchmark with other local and international fund managers (Desk exercise) based on the literature available.
KT-3	Facilitate engagement of Stakeholders in coming up with the Rules.
KT-4	Draft the Rules as by law requires from (KT-1) above.
KT-5	Conduct Stakeholder's Validation Workshops.
KT-6	Conduct an Impact assessment of the Rules on mandates of KRB and functions of Road Agencies or any other stakeholders and prepare a report.
KT-7	Present Draft final rules to the Board of Directors and submit final rules to the Executive Director.

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



Inventory of Key Legislation, Policies and other materials

Legislation

1. The Constitution of Kenya. 2010
2. Kenya Roads Act 2007
3. Kenya Roads Board Act No. 7 1999
4. Kenya Roads Bill 2017
5. County Government Act 2012
6. County Allocation of Revenue Act 2015
7. Public Finance Management Act 2015

Road Sector Guidelines, Manuals and Draft Subsidiary Legislation

8. Technical Financial and Performance Audit Manual
9. Annual Public Roads Programme Planning and Reporting Manual
10. Draft Kenya Roads Board Rules, Regulations Procedures and Guidelines February 2018



Inventory of Key Legislation, Policies and other materials cont'd

Key Policy Documents

11. Kenya Vision 2030
12. Road Sector Policy 2016
13. Ministry of Transport Infrastructure Housing Urban Development and Public Works Draft Strategic Plan 2018 - 2022
14. Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020
15. Sessional Paper of 2006 on The Development and Management of the Roads Sub-Sector for Sustainable Economic Growth
16. Sessional Paper No. 9 of 2012 on The National Industrialization Policy Framework For Kenya 2012 - 2030.
17. Integrated National Transport Policy: Moving a Working Nation 2009

Other Materials

18. Transportation and Communications Bulletin for Asia and the Pacific No. 75 "Roads Board Nepal: A Sustainable Approach to Road Maintenance Management"
19. Transport and Communications Bulletin for Asia and the Pacific, No. 86 "Sustainable Rural Access"
20. Transport and Communications Bulletin for Asia and the Pacific, No. 88 "Intelligent Transport Systems"
21. The Law Library of Congress, Global Legal Research Centre "National Funding of Road Infrastructure" (March 2014)
22. World Bank Technical Report - Management and Financing of Roads An Agenda for Reform
23. IMF Paper on Policy Analysis and Assessment: "Dedicated Road Funds: A Preliminary View on a World Bank Initiative"
24. Involvement of Road Users in the Management of Roads, Public Private Partnerships - The Zambia Roads Board Experience

Inventory of Key Legislation, Policies and other materials cont'd

23. Financing of Road Maintenance in Sub-Saharan Africa - Reforms and progress towards second generation road funds (Discussion Paper No. 6 Road Management and Financing Series - RMF Series)
24. Conference of European Directors of Roads - Funding formulas for roads: Inventory and assessment (March 2017)
25. The World Bank and Economic Commission for Africa - A Review of Road Sector Reforms in Tanzania (Sub-Saharan Africa Transport Policy Program - SSATP Discussion Paper No. 2)
26. Management of New Zealand National Roads Fund (Paper Presented to Philippines Country Level Workshop on Institutional Development for the Maintenance of National Road Networks).
27. Private Sector Involvement in Road Financing (SSATP Working Paper No. 102)
28. World Bank Report - Maintaining Road Assets: A fresh look at the World Bank's 1988 Policy Paper "Road Deterioration in Developing Countries"
29. Economic Growth through Effective Road Asset Management (Paper by Robert Geddes and Kingstone Gongera Presented at the International Conference on Transport and Road Research March 2016, Mombasa)

N.B. the above list is not exhaustive

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



APPROACH AND METHODOLOGY

- The specific methodology is split in four phases namely:

PHASE 1: Project Planning, initiation and mobilization;

PHASE 2: Development of an assessment toolkit & Comparative analysis and status review of the draft regulations, Technical Compliance Manual, Planning manual, & Finance manual, research & Bench mark with local & international fund managers, and engagement of Stake Holders.

PHASE 3: Drafting of Rules & Regulations regulatory impact assessment and thereafter validation by Stakeholders

PHASE 4: Revision and submission of Final Report

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



WORK PLAN

Name of activities	Twelve (12) months											
	1 st month	2 nd month	3 rd month	4 th month	5 th month	6 th month	7 th month	8 th month	9 th month	10 th month	11 th month	12 th month
Project Planning, Initiation and Mobilisation Delivery of inception report	■											
Client Feedback and agreement on inception Report		■										
1. Development of toolkit & Comparative analysis and status review of the draft regulations and manuals. 2. Research & Bench mark locally & internationally 3. Engagement of Stake Holders.		■	■	■	■							
Development of the Draft Rules & Regulations					■	■	■	■				
Preparation of regulatory impact assessment report									■			
Stakeholder workshops										■	■	
Revision and Submission of Final Report											■	■

PROJECT TEAM AND ASSIGNED TASKS

PROF. ALBERT MUMMA	Lead Advocate/ Team Leader	- Lead consultant for the consultancy. - Conceptualizing, drafting and designing subsidiary legislation for the consultancy - Drafting Regulatory Impact Statements (RIS) for subsidiary legislation for the Water Act 2016; - Drafting of the inception report, progress report, stakeholders workshop report and final report. - Providing directional leadership in the collection and compilation of data from research. - Compiling final legal research material. - Lead counsel engaging stake holders. - Lead draftsman of the draft rules and regulations. - Coordination with senior stakeholders throughout the drafting process. - Audit and review of legal documents; - Submission of the final rules and regulations. - Presentation of final rules and regulations to the Board and the Executive director.
NARION MOTARI	Assistant Team Leader/ Advocate	- Providing strategic legal advice to the client. - Compiling final reports for the team leader's consideration. - Oversee data and research collected by the Legal assistant. - Providing general legal and administrative support to the team leader. - Supervision of the legal assistants input.
YVONNA BONDI	Legal Assistant/ Advocate	- Legal research and drafting - Drafting of weekly reports. - Preparing status updates on the ongoing work. - Providing general legal and administrative support to the Team Leader and Assistant Team Leader.

KRB STAFF PRESENTATION

Facilitators

- ☐ Lucy Gathika General Manager Legal and Corporate Affairs
- ☐ Eng. Margaret Ogai - General Manager Planning and Programming
- ☐ Eng. David Orwenyo - General Manager Technical Compliance
- ☐ Margaret Muinde - Manager Finance

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KRB PRESENTATION

- ☐ Works Programming - 30 minutes
- ☐ Funds Management - 30 minutes
- ☐ Technical Compliance Performance and Financial Audits - 30 minutes

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Inception Report

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PROF. ALBERT MUMMA & COMPANY
ADVOCATES

Annex III: KRB Team PowerPoint Presentation – Works Planning



**APRP PLANNING
&
REPORTING MANUAL**

Presented By;

**Eng. Margaret Ogai – General
Manager, Planning & Programming**



Outline

1. Introduction
2. APRP Planning & Reporting Cycle
3. Assessment of Road Maintenance Needs
4. Prioritization of Road Maintenance Works
5. Guidelines for ARWP Preparation & Submission
6. Implementation Reporting & Monitoring of APRP
7. Web-based Road Management System
8. Future Directions



1. Introduction

- Roads are the primary mode of transport for majority of our citizens; over 90% passenger and cargo traffic. Kenya has road network of 161,452km.
- Roads facilitate cheaper and convenient movement of passengers, goods, services and technology from, and to, areas of economic and social importance.
- Roads provide last-mile connection for the other modes of transport such as railways, airports, ports and inland waterway transport.
- Contribute to sustained economic development and enhance productivity and competitiveness by lowering transport costs.
- Various actors in the roads sector are given in Table 1 below.

Mandated Responsibilities

AGENCY	RESPONSIBILITY
State Dept. of Infrastructure in MoTIHUD&PW	Policy formulation, oversight & coordination Setting standards
Kenya Roads Board	Managing Road Maintenance funds (RMLF, transit tolls), Coordination of maintenance programs, Technical & Financial audits
Road Authorities/ Agencies: -Kenya National Highways Authority -Kenya Urban Roads Authority -Kenya Rural Roads Authority -Kenya Wildlife Services	Management, development, rehabilitation and maintenance of National Trunk Roads (39,996km)
County Governments:	Management, development, rehabilitation and maintenance of County Roads (121,456km)
Departments in Ministry:	Provision of equipment (Mechanical & Transport Dept.), materials testing and research (Materials Testing & Research Dept), provide technical training (Kenya Institute of Highways & Building Technology)



1. Introduction

Importance of Road Maintenance:

Roads deteriorate over time; require regular maintenance. Reinstatement is 3 or more times the cost of regular maintenance. The benefits of road maintenance include:

- Providing road users with an acceptable level of service by addressing defects promptly;
- Preserving the huge investment made over the years in the road network;
- Minimizing the life cycle road development and maintenance costs;
- Minimizing road user costs - vehicle operating costs, associated travel time costs, road accident costs, harmful emissions);
- Enhancing road user safety.

1. Introduction



RMLF allocation

SN	AGENCY	ALLOCATION (%)	Purpose
1	KeNHA	40	To carry out works on National Trunk roads class A and B.
2	KeRRA	15	To be equally allocated to all Constituencies to carry out road works in all constituencies
		6.8	To be equally allocated to all Constituencies for maintenance / development of link roads
3	KURA	10.2	To be allocated for works on urban roads in cities and municipalities
4	KWS	1	To be used in maintenance of roads in the national parks and game reserves
5	47 CGs	15	Conditional Grant to County Governments to carry out works on County roads
6	KRB	2	To be allocated to KRB for its operations & recurrent expenditure
7	RSIP/CS	10	To be allocated by the Board with approval of the CS in charge of Roads.



2 APRP Planning & Reporting Cycle

APRP Preparation Cycle for National Road Agencies

Timeline	Activity
July	KRB issues funding ceilings to Road Agencies
August	RAs carry out Annual Road Inventory and Condition survey and prepare their Annual Road Works Plans
September	RAs submit draft ARWP to KRB for approval
November	KRB reviews the ARWPs. Non-compliant ARWPs will be sent back to the respective RAs for amendments and resubmission
December	RAs submit Final ARWPs to KRB for approval
February	KRB compiles ARWPs into APRP and submits to the Board for approval
April	Board submits APRP to the Cabinet Secretary for Roads and Finance for approval and signature
June	Board publishes and disseminates approved APRP to RAs



2. APRP Planning & Reporting Cycle

APRP preparation cycle for County Governments

Proposed timelines for CGs	Activity
----------------------------	----------

N.B. For CGs, ceiling letters are issued after assent of the County Allocation of Revenue Act (includes RMLF). This is done in the current year

August	Counties carry out Annual Road Inventory and Condition survey and submission their first draft Annual Roadwork Plans
September	KRB reviews the ARWPs. Non-compliant ARWPs will be sent back to the respective counties for amendments and resubmission.
October	Counties submit Final ARWPs
End of December	KRB compiles ARWPs into APRP and submits to the Board for approval



2. APRP Planning & Reporting Cycle

- Approved APRP forms the basis for disbursement of funds and Monitoring & Evaluation of works by the Board.
- Revisions to the Approved APRP should be justified. Some reasons include:
 - I. Change in the scope of works
 - II. Some roads in the annual work plan having been planned by other road agencies
 - III. Significant variation between planned costs and procured costs of works resulting in budget deficits or savings.
 - IV. Emergency works. This is required from time to time when sudden and unforeseen damage occurs on a road due to flood damage, landslides, road crash damage.



3. Assessment of Road Maintenance Needs

Annual Road Inventory and Condition Surveys (ARICS) is done to determine the road condition. Surveys are carried out in three ways:

- I. For paved roads, the surface condition will be carried out annually using suitable equipment measuring International Roughness Index (IRI). Visual inspection can also be employed where equipment is unavailable using the standard ARICS Forms.
- II. For unpaved roads, visual condition survey will be carried out annually for roads.
- III. Pavement strength testing will be carried out on all newly improved paved roads.

ARICS data is submitted to KRB by September each year for updating entire road network

✓ ARICS Form is attached to Annex I of APRP Manual



3. Assessment of Road Maintenance Needs

Road Maintenance Intervention Measures/ Treatment :

- a) **Routine maintenance** - works done regularly, ensures roads perform as designed;
- b) **Periodic maintenance** - activities undertaken at regular intervals to improve the riding quality, pavement strength, and drainage capacity;
- c) **Rehabilitation** - activities to restore/strengthen/extend the life of the road pavement;
- d) **Reconstruction** - construction of the entire road a new in order to restore the lost pavement;
- e) **Upgrading** - Refers to converting a lower standard road to a higher standard.
- f) **New Construction** - new roads, missing links, capacity improvement measures e.g. widening, provision of NMT facilities, dualling, interchanges, among others



3. Assessment of Road Maintenance Needs

Maintenance Treatment Selection based on Average Rate of Deterioration (KRB ARICS Forms - Annex I of APRP Manual)

- The condition of the road is rated from 1 (excellent) to 5 (very bad). Average Rate of Deterioration (ARD) computed over the entire road section,
- Based on the ARD, the maintenance treatments for paved roads and unpaved roads are selected
- All road sections with an ARD of 3 or less should be budgeted for routine maintenance



3. Assessment of Road Maintenance Needs

Sample filled ARICS Form:

ROAD CONDITION SURVEY - PAVED										ARICS P (F)					
REGION		CENTRAL		COUNTY		NAIROBI RWANDA									
ROAD NO.		B20		ROAD SECTION NAME		District Number		SECTION LENGTH (km)		98.7					
SECTION START CHAINAGE		0+000		LOCATION		Dundini									
SECTION END CHAINAGE		5+000		LOCATION		Machakos									
SHEET		1 OF 20		CARRIAGEWAY WIDTH		6.5m				F D A					
Distance per 200 meters	SPRINT LCR/4		CONCRETE CARRIAGEWAY (Rate of Distress)					REMARKS (Spot Improvement)	STRUCTURES						
	G	B	1	2	3	4	5		CULVERTS					REMARKS OTHER STRUCTURES	
									N	RD	MS	MS	G		B
0+200															
0+400															
0+600															
0+800															
1+000															
1+200															
1+400															
1+600															
1+800															
2+000															



4. Prioritization of Road Maintenance Works

Prioritization of road maintenance is necessary due to budgetary constraints. Under the Road Sector Investment Plan 2010 - 2024, road maintenance and development is prioritized in the following order:

- Road Asset Preservation:** This entails timely maintenance of the existing road assets through:
 - routine maintenance e.g. light grading, cleaning of drains, pothole patching, bush clearing
 - periodic maintenance e.g. re-sealing, overlay and re-gravelling etc.
- Road Asset Restoration:** Restore road assets to maintainable condition through rehabilitation and reconstruction.
- Road Improvement and Development:** As traffic demand grows, need to improve roads through upgrading, road widening, junction improvements and new construction. Non motorized traffic etc.



4. Prioritization of Road Maintenance Works

Detailed prioritization Criteria

- Prioritization of maintenance intervention of higher class roads on the classified road network (International and National trunk roads and Urban Arterial and Primary roads) should be based on economic and engineering considerations.
- Prioritization of low trafficked roads for improvement shall be based on socio economic analysis, community priorities and political considerations. When prioritizing low traffic roads, a community participation appraisal tool is preferred.



4. Prioritization of Road Maintenance Works

The following criteria in order of preference should be applied in prioritizing roads that will be considered for maintenance and improvement:-

- I. Maintaining the maintainable roads.
- II. Improving roads that provide security and connecting administrative and social centres (such as sub-county headquarters, health centres and educational centres).
- III. Improving roads that connect and provide access to the higher tier of the road network (classes A, B, C roads).
- IV. Improving roads that provide access to market centres.
- V. Providing basic access to the rural communities (by means of spot patching and spot improvement, construction of culverts and critical crossing points).



5. Preparation & Submission of ARWP

The following steps guide in ARWP Preparation:

- I. Conduct Annual Road Inventory and Condition Survey (ARICS).
- II. Make use of the ceilings issued by KRB to avoid preparation of ARWPs exceeding the budget ceilings
- III. Prioritize based on RSIP and stakeholders / public participation
- IV. Embrace the network approach, i.e. network connectivity between road networks and target terminal points;
- V. Liaise with other road agencies to check and avoid overlap of selected roads.



5. Preparation & Submission of ARWP

- VI. Use standard format with road names & ID consistent with the road register and the actual road length planned for maintenance;
- VII. Derive cost estimates for road works through reference to cost estimation manual and market Surveys
- VIII. Ensure the ARWP are approved by the County Executive Committee
- IX. Attach the evidences to the ARWPs and submit to KRB by 31st December of same year for review, approval and consolidation into APRPARWP

N/B: ARWP Template is attached to Annex III of APRP Manual



5. Preparation & Submission of ARWP

Sample filled work plan:

ROUTINE/PERIODIC MAINTENANCE & IMPROVEMENT ACTIVITIES - PLANNING AND REPORTING FOR KATUNDO COUNTY GOVERNMENT

ANNUAL ROAD WORKS PROGRAM	FINANCIAL YEAR/19
NAME OF COUNTY GOVERNMENT	COUNTY GOVERNMENT OF KATUNDO
COUNTY CODE	34
ANMP CYLING (KSH)	117,906,319.00
BUDGET BOTTLE NECK (KSH)	117,906,319.00

ITEM NO	ROAD No	SECTION/ ROAD NAME	SURFACE TYPE	SECTION LENGTH (KM)	ACTIVITY CODE	ACTIVITY DESCRIPTION	METHOD	UNIT MEASURE	PLANNED QUANTITY	PLANNED RATE	AMOUNT
1		Othmanya - Lema-Kahura Primary School Road	Earth	5	08-60-022	Culvert installation hatched 400mm Ø	L2	L2	6	15,000	120,000
					08-60-024	Culvert installation hatched 600mm Ø	L2	L2	24	18,000	432,000
					08-60-028	Culvert installation hatched 900mm Ø	L2	L2	6	22,000	132,000
					08-50-003	Grading	M2	M2	40,000	15	600,000
					08-60-004	Graveling	M2	M2	2,154	1,800	4,677,200
					Sub Total						6,000,000
2		Duka Moyo - Mawanda Road	Gravel	6	07-70-006	Provide and Place Gabions Boxes Chested	L2	No	20	10,000	200,000
					07-70-005	Provide and Place Rockfill to Gabions	L2	CM	40	1,500	60,000
					07-80-003	Construction of concrete drainage ducts Culvert	M2	M2	10	4,000	40,000
					08-60-022	Culvert installation hatched 400mm Ø	L2	L2	6	15,000	120,000
					08-60-024	Culvert installation hatched 600mm Ø	L2	L2	6	18,000	144,000
					08-60-028	Culvert installation hatched 900mm Ø	L2	L2	24	22,000	528,000
					08-50-003	Grading	M2	M2	40,000	15	720,000
					08-60-004	Graveling	M2	M2	1,729	1,800	3,112,400
					07-10-001	Gravel Tractor w.e. 500 - 140 - 160 HP	M2	No	6	10,000	60,000
					Sub Total						5,000,000



6. Works Implementation Reporting & Monitoring

- All Road Agencies to submit quarterly APRP Implementation Reports using prescribed formats to KRB by the 20th day following the end of each quarter.
- KRB also conducts scheduled and ad hoc field visits as part of monitoring of the APRP implementation and holds consultative meetings with road agencies to clarify any arising matter.
- KRB carries out half yearly monitoring and evaluation of the maintenance works under implementation. Counties to avail all project documents and field activities for review during the M&E exercise.



6. Works Implementation Reporting & Monitoring

Sample filled Quarterly Progress Report:

QUARTERLY PROGRESS REPORT		QUARTER 1 FY 2019	
NAME OF COUNTY GOVERNMENT		MUR	
COUNTY CODE		02	
BUDGET CODE		010000	

COUNTY GOVERNMENTS PROGRESS REPORT SHEET															
PLANNED WORKS						ACHIEVED WORKS									
COUNTY NAME	ROAD No.	ROAD NAME	ST.	KMs	AMOUNT PLANNED	QTR 1		QTR 2		QTR 3		QTR 4		TOTAL CUMULATIVE	
						KMs	Exp/Km	KMs	Exp/Km	KMs	Exp/Km	KMs	Exp/Km	KMs	Exp/Km
MUR	010000	Adausumbe-Cut	0	0	50,000.00	0	50,000.00							0	50,000.00
	0100	Nitole-Garise	Garise	47	2,124,159.37	16.75	35,814.39							16.75	35,814.39
	0200	Murto-Fompe	Garise	11	3,175,559.44	2.75	842,944.36							2.75	842,944.36
	0300	Kurita-Ngare	Garise	7	1,727,571.61	1.75	401,891.48							1.75	401,891.48
	0400	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	0500	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	0600	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	0700	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	0800	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	0900	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1000	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1100	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1200	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1300	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1400	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1500	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1600	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1700	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1800	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	1900	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2000	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2100	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2200	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2300	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2400	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2500	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2600	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2700	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2800	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	2900	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3000	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3100	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3200	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3300	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3400	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3500	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3600	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3700	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3800	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	3900	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4000	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4100	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4200	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4300	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4400	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4500	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4600	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4700	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4800	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	4900	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5000	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5100	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5200	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5300	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5400	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5500	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5600	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5700	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5800	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	5900	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6000	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6100	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6200	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6300	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6400	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6500	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6600	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6700	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6800	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	6900	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7000	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7100	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7200	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7300	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7400	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7500	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7600	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7700	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7800	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	7900	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	8000	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30							5	338,564.30
	8100	Nitole-Garise	Garise	20	2,124,275.00	5	338,564.30								



6. Works Implementation Reporting & Monitoring

- KRB management prepares APRP implementation reports (half year & annual) are and presents to the Board for adoption and follow up. APRP reports contain following information :
 - a) Works achieved compared to target
 - b) Funds utilization compared to targets
 - c) % Completion of targeted KMs
 - d) Number of KMs maintained as a percentage of total network
 - e) General condition of paved and unpaved roads classified as good, fair, poor or failed
-



7. Web-based Road Management System

Background

- KRB developed a Road Management system for work planning. KeRRA adopted its Planning, Management and reporting tool for all maintenance works in FY2009/10. KeNHA & KURA started using RMS in FY2010/11.
 - RMS has undergone improvements up to the current version 5.0. It is not web based and is also not integrated with GIS data.
 - KRB has procured a consultant to develop a web-based Road Management System (RMS).
-



7. Web-based Road Management System

Objective

The overall objective of the web-based RMS is to automate the process for work planning and reporting by RAs & CGs.

Specific objectives of the web-based RMS are:

- To enhance capacity and improve efficiency and consistency in reporting
- To improve KRB capability to monitor road maintenance programs being implemented by RAs and CGs
- To enable KRB track and form trends on the amount of resources being applied on maintenance of specific roads



7. Web-based Road Management System

User requirements of the web-based RMS

a) KRB

- To review work plans for compliance and consolidate them into APRP.
- To review and analyze progress reports (both Non-Financial and Financial).
- To prepare Management reports
- To track funds disbursements to RAs and CGs
- To integrate with other RMS systems including COSTES, KRB-GIS
- To report on the level of compliance with the APRP and monitor progress



7. Web-based Road Management System

b) County Governments

- To prepare and submit work plans including uploading supporting documents (e.g. approvals by CECM)
- To prepare and update progress report
- To submit work plans and progress reports to KRB.
- To capture road inventory and condition data
- To monitor project cost

c) Road agencies

- To submit work plans and progress reports to KRB.



8. Future directions

To improve delivery of road maintenance in the country, KRB will:

- Train Road Agencies on ARICS, work planning and reporting
- Publish RICS manual, revised APRP planning and reporting manual and disseminate to Counties.
- Revise format of ARWP to include Road ID as per Road Register 2016; to facilitate integration with KRB GIS
- Web-based Road Management System (RMS) expected to be rolled out by July 2019. Includes training of RAs and CGs on system.



The End.....

Thank you!

Annex IV: KRB Team PowerPoint Presentation – Fund Management



**KENYA ROADS BOARD(ROAD
FUND MANAGEMENT) RULES
AND REGULATIONS
FINANCIAL PROVISIONS AND
ADMINISTRATION**

PRESENTED BY: CPA RASHID MOHAMED, MBS

1



Opening of Bank Accounts.

- Each road agency shall cause to be opened a separate bank account for the funds disbursed from the Fund to be known as 'name of agency -road maintenance levy fund'.
- A Road Agency that fails to open a Bank account shall not receive funds
- All bank accounts shall be opened, operated and closed with authority from KRB and the National Treasury and in accordance with the PFM Act of 2012 and its pursuant Regulations.

5



Deposits and Payments from Bank Accounts

- All receipts from the Fund shall be deposited into the road agencies' Road Maintenance Levy Fund bank account.
- All payments made from the Bank account opened under regulation 5 above shall relate to Roads Works Programmes approved by KRB
- Payments may be done either by instructions, cheque, electronic or fund transfer in accordance with the PFM Act and its Regulations.

7



Signatories to the Bank Account.

- The accounting officer of a Road Agency shall be a mandatory signatory to all cheques, electronic payments and fund transfers.
- The accounting officer in charge of the road agency shall designate signatories and any changes in signatories in accordance with the PFM Act and Regulations.



Annual Estimates and Budget Ceilings

- **Annual Estimates:** KRB shall prepare annual revenue projections of the Fund on a three (3) years forward basis and submit to the National Treasury.
- **Budget Ceilings:** KRB shall give the Road Agencies budgetary ceilings for the following financial year and request them to commence the preparation of their respective Annual Roads Programmes by 1st July of the financial year preceding the year to which the budgetary ceilings relate.



Annual Estimates and Budget Ceilings/..

- The budget estimates for each Road Agency shall be in accordance with the allocation criteria set out under section 6(2)(d), (e) & (f) of the Act
- **Expenditure Projections:** Road agencies shall within three (3) months before the beginning of the financial year submit to the board an annual expenditure projection on a month to month basis.

12



Disbursement Program

- KRB shall indicate to the Road Agencies at the beginning of each financial year, cash flows for each month.
- KRB shall monitor receipt of funds from RMLF and allocate each tranche to the respective Road Agency in accordance with the disbursement program provided that the Road Agency shall have complied with all the requirements issued by KRB in accordance with these rules.

13



Release of Funds by KRB and Road Agencies

- **Release of Funds:** KRB shall release funds to compliant Road Agencies in accordance with the disbursement schedule and within thirty days from the date following the end of the month.
- KRB shall withhold release of funds to Road Agencies who have not complied with the KRB Act and these Regulations.
- **Withholding of Funds:** KRB, may withhold disbursements to a Road Agency if it does not comply with the laid down rules, regulations, procedures and guidelines, the KRB Act or other applicable laws and circulars or standards as set by the Cabinet Secretary

17



Release of Funds by KRB and Road Agencies

- **Partial Release of Funds:** In the event that the ARWP for a road agency has not been approved at the beginning of a financial year, KRB may approve release on account of not more than 30% of the funds based on the submitted draft ARWP, to enable the operations of the agency to continue, pending approval of the Annual Public Roads Programme (APRP).
- **Release of funds by RAs to Regional offices/Sub-agencies:** The Road Agencies shall forward funds to the regional offices/sub-agencies where applicable within two weeks after receipt from KRB.

19



Conditions for Release of Funds

The following specific criteria will be applied as a basis for release of funds

- Submission of quarterly and annual progress/expenditure reports as required by KRB in accordance with Clause 65 of these Regulations.
- An ARWP duly approved by KRB.
- Responses to all audit queries in accordance with Clause 63 of these Regulations.
- A Road Agency has failed to comply with Section 19 (2) of the Act



Conditions for Release of Funds/...

- Timely implementation of the approved ARWP to the specifications, that is where not more than 30% of the funds cumulatively released is held by the respective Road Agency
 - A Road Agency or Officer is guilty of an offence under Section 27 of the Act.
 - Confirmation that the funds are being used wholly and exclusively for the intended purposes and that no funds whatsoever are being diverted for use in other unrelated activities.
- Non-compliance with the criteria will result in the funds being withheld



Expenditure

- **Utilization of the fund/ expenditure:** The funds should only be utilized for road development, rehabilitation and maintenance as approved in the APRP
 - **Expenditure limit:** The expenditure on budgeted line items is limited to the amount approved in the budget.
 - **Board approval to exceed budget:** Where there are compelling reasons to exceed the budgeted amount in a specific budget line, KRB may approve such excess after being satisfied that there are compelling reasons for the same
 - **Overall category ceiling not to be exceeded:** any excess approved under the preceding paragraph must be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded
-



Expenditure

- **Reallocation of funds for works:** Road Agencies shall not apply the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of KRB
 - **Authority to incur expenditure:** Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that Road Agency
-



Expenditure

- **Funds not to be Applied as Security for borrowing:** Road Agencies shall not apply, or permit to be applied, the funds in the KRB Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.



Expenditure

- **Funds Disbursed through Constituency Road Fund Accounts:** For funds disbursed through Constituency Road Fund accounts, the KeRRA accounting officer who manages the funds at the constituency shall be responsible and accountable for the funds
- **Constituency Road Committee and Constituency Roads Tender Committee members** may be paid such allowances as may be prescribed by the Government from time to time.





Administrative Expenses

- Road Agencies shall not exceed the overheads and administrative expenses thresholds specified in the KRB Act. Clarify specify admin expense check if covered by PFM Act-Margaret to advise
 - (i) Salaries and wages.
 - (ii) development costs shall not exceed the limits specified under the PFM Regulations and other circulars issued by the National Treasury from time to time
 - (iii) Road agencies shall ensure regional offices are allocated funds for administration from the overall administration expenses of the road agency



Fixed Assets Register

- Every Road Agency shall maintain a Fixed Assets Register relating to the Fund wherein various details of fixed assets will be recorded
- The Fixed Assets Register shall contain the following details:
 - (i) Type of asset;
 - (ii) Cost of asset, supplier and date of acquisition;
 - (iii) Serial numbers, title documents of the asset and provision for licenses where applicable;
 - (iv) Rates of depreciation;
 - (v) Accumulated depreciation up to close of financial year;
 - (vi) Written down value as at the end of the financial year;
 - (vii) Value of the asset (as per the last valuation);
 - (viii) Date of disposal and the net realizable values;
 - (ix) Profit or loss on disposal;
 - (x) The exact location of the asset, and;
 - (xi) Identification numbers of the assets (to be coded on the basis of category, location etc. of the assets).



Savings and Earnings

- Where a Road Agency has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended.
 - Road agencies shall submit a work plan for the savings and or interest earnings to KRB before spending.
-



Carry Over Funds

- At the end of each financial year all road agencies shall submit to KRB bank balances and corresponding road works for which the funds were to be utilized.
 - The carry over funds and associated road works shall be included in the ARWPs for the following financial year.
-



Maintenance of Cash Books

- Road Agencies shall maintain a cash book for the KRB Fund Account to be written and balanced daily and the cash in hand verified by the officer in charge of the cash book. All monies received shall be recorded serially in the cash book with adequate details of the transaction.
 - The Road Agencies shall maintain registers and records of bank accounts, cash books and imprest in accordance with the PFM Act 2012 and its pursuant Regulations.
-



Maintenance of Cash Books

- **Cash Book to be Checked Daily:** The Cash Book shall be checked on a daily basis by a senior officer of the Road Agency and at these checks he should sign the cash book at the last entry examined to signify that he has satisfied himself as to the correctness of all entries made since the last signature.
 - **Bank Reconciliation:** The cash book balance must be reconciled with the bank balance at the end of every month.
 - **Account not to be Overdrawn:** The road agencies' RMLF Bank Account shall not be overdrawn as stipulated in the PFM Act 2012 and its regulations
-



- **Cashing of Personal Cheques:** Cashing of personal cheques from funds received from or through KRB, whether drawn by civil servants, directors, staff members, or members of the public is not permitted
 - **Payment vouchers, adjustment journals, banking and Issuance of Receipts:** All receipts of monies from KRB shall be acknowledged promptly on an authorized pre-numbered receipt, which should be signed, stamped and dated.
-



- All payment vouchers, adjustment journals and receipts shall comply with the provisions of the PFM Act and regulations.
 - All cash and cheques received must be receipted and banked intact into the road agency's RMLF Bank Account within five days from the day receipt is acknowledged
 - **Amounts to tally:** The amounts in words and figures must tally and shall not be altered or amended
-



- Financial records and automation of financial operations: Financial records may be maintained in manual or electronic form and shall be kept in accordance with the PFM Act and regulations



Annual Reports and Financial Statements

- The accounting officer shall prepare annual reports and financial statements with respect to the RMLF Fund in compliance with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.
- Every road agency shall, within six months of the end of each financial year submit to KRB its audited accounts for that financial year.



Accountable Documents

- Accountable documents whether manual or electronic shall be under strict control at all times and they shall include –
 - (i) local purchase order;
 - (ii) local service order,
 - (iii) authority to incur expenditure;
 - (iv) cheques;
 - (v) receipt books; and
 - (vi) imprest warrants; etc.



Accounts and Records to be Kept and Preservation

- Road agencies and sub-agencies shall maintain the following accounts and records in the format prescribed hereunder:
 - (i) Cashbook, bank statements and bank reconciliations
 - (ii) Payment vouchers
 - (iii) Ledgers
 - (iv) Fixed assets register
 - (v) Quarterly and annual reports and financial statements and non - financial reports
 - (vi) Quarterly ARWP Progress reports
 - (vii) Approved ARWP
 - (viii) Procurement documents, LSOs/ LPOs/ contract
 - (ix) Inspection and verification reports
 - (x) Measurements sheets, etc.
- Accountable documents, books and records shall be preserved in accordance with the provisions of the PFM Act and regulations.



Sanctions and Penalties

- Failure to adhere to the Kenya Roads Board Act and these regulations shall amount to non-compliance.
 - Where a road agency is non-compliant, KRB may
 - (i) Suspend funding to the road agency
 - (ii) Appoint another Road Agency, and release the funds allocated to it for the works that were to be carried out by the non-compliant agency, to the newly appointed agency.
 - (iii) Institute measures to recover any amounts misappropriated by the public officer.
 - Take legal action against the officer.
-



END



Annex V: KRB Team PowerPoint Presentation – Technical Compliance, Performance and Financial Audits



**CONSULTATIVE WORKSHOP FOR THE
DEVELOPMENT REGULATIONS TO KENYA
ROADS BOARD ACT, 1999**

PRESENTATION ON TECHNICAL COMPLIANCE & AUDITS

BY

ENG. DAVID ORWENYO
General Manager, Technical Compliance

30th August 2019



Presentation Outline

- Mandate for Audits
 - Purpose of KRB Audits
 - Types of Audits
 - Proposed Regulations to govern T,F&P Audits
 - Implementation of Works
 - Monitoring and Evaluation
-



Mandate for carrying out technical & financial Audits

KRB Act 1999 as amended by the Roads Act, 2007 and Finance Act of 2009

- ☐ Clause 6 (2)(g) mandates the Board to monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund
- ☐ Clause 26 (1) of the Act provides that the Board shall regularly cause a technical, financial and performance audit to be made on works, goods and services financed by the Fund by an inspector authorized by the Executive Director in writing, of any road agency and of those books, accounts and records relating thereto

5



Purpose of KRB Audits

KRB Act 1999 as amended by the Roads Act, 2007 and Finance Act of 2009

To independently verify that proceeds from the KRB Fund have been applied to the purpose for which they were intended and that the use of such resources is economical, efficient and effective to achieve value for money.

The application of these funds should also be efficient, transparent and in accordance with the principles, procedures and requirements of Kenya Roads Board and sound professional practice.

7



Types of Audits

☐ Technical Audit

Evaluates the programming, planning and delivery of works undertaken by RAs /CGs. It is a step by step assessment of road mtc and development efforts / activities to determine the level of economy, efficiency and effectiveness.

☐ Financial Audit

This is the review of accounting records, internal control systems and applicable laws and regulations with the sole purpose of providing an assurance on the application of funds and that proper books of accounts have been maintained.

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Types of Audits (cont.)

☐ Performance Audit

Systematic process to obtain and evaluate evidence objectively, to be able to give performance appraisal of economy and operation effectiveness.

☐ Procurement Audit

An independent review and systematic examination of the procurement and disposal process to determine whether management practices, systems and controls result in goods, works and services being acquired in accordance with the Constitution and the PP&AD Act, regulations and other guidelines.

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Types of Audits (cont.)

□ Environmental and Social Audits

The ESMP is a process guided by regulations for assessing the potential environmental and social impacts of proposed projects, evaluating alternatives and designing appropriate mitigation and monitoring measures.

□ Road Safety Audit

A road safety is defined as a formal road safety performance examination of an existing or future road by an independent multidisciplinary team. It qualitatively estimates and reports on potential road safety issues and identifies opportunities for improvements in safety for all road users' in particular vulnerable road users.

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Proposed Regulations to govern T,F&P Audits

1. Implementation of Works

- i. Efficient and effective delivery of road works
 - a) Compliance with design & specifications of road works
 - b) Quality management systems
 - c) Adhering to procurement guidelines
 - RAs should share their procurement plan with KRB
 - RAs to procure in line with the procurement plan
 - d) Proper record keeping (All procurement, work implementation records and payment records)
 - e) Availability of documents to the inspector

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Proposed Regulations to govern T,F&P Audits (cont.)

1. Implementation of Works (cont.)

ii. Supervision of works

- a) Adequacy of supervision staff and resources (No. & relevant skills)
- b) Competence and qualification of contractors staff
- c) Adequacy of supervision
- d) Environmental issues to comply with EMCA, 1999
- e) Compliance with OSH, Act

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Proposed Regulations to govern T,F&P Audits (cont.)

2. Monitoring and Evaluation

i. Technical, financial and performance

- a) KRB shall conduct audits semi-annually
- b) KRB may conduct a special or ad hoc audits when need arises
- d) KRB shall inform RAs of the intended audits two weeks in advance unless a special or ad hoc audit is ordered
- e) There shall be entry and exit meetings between the auditor and RAs and the minutes of these meetings shall be signed by both parties
- f) The auditee shall provide working space during the Audit

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Proposed Regulations to govern T,F&P Audits (cont.)

2. Monitoring and Evaluation (cont.)

i. Technical, financial and performance (cont.)

- f) The auditee shall avail appropriate officers to accompany the auditors for the field visits.
- g) Circumstances under which an audit may be called off;
 - Uncooperative RAs
 - Failure to receive documents and information
 - Risks / physical threats
 - Insecurity
 - Absent auditee

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Proposed Regulations to govern T,F&P Audits (cont.)

2. Monitoring and Evaluation (cont.)

ii. Duty to avail documents and information to the auditor

- a) Avail all the books, accounts, records and other documents
- b) Any clarifications sought shall be availed to the auditor within thirty days.

iii. Duty to avail documents and information to the auditor

- a) Penalties as provided in section 27 of the KRB shall apply

iv. Responses to audit report

- a) RAs shall submit to KRB written responses to audit reports and queries within 30 days.

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Proposed Regulations to govern T,F&P Audits (cont.)

2. Monitoring and Evaluation (cont.)

iv. Responses to audit report (cont.)

- b) Upon expiry of the 30 days, KRB shall conclude the audit report and submit the audit report to the PS, Depart. of Infrastructure.
- c) The submitted audit report to the PS shall be final & binding.

v. Implementation of audit recommendations

- a) RAs shall submit an action plan for addressing the deficiencies identified in the audit reports.
- b) KRB shall monitor the implementation of the action plans
- c) RAs shall submit to KRB a status report on implementation of audit recommendations by 31st January of each year.



THE END

Annex VI: Consultative Workshop for the Development of Regulations to KRB Act, 1999 List of Participants



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATIONS TO KENYA ROADS BOARD ACT, 1999
HELD ON 30TH AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI

ATTENDANCE REGISTER

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9						
10						



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATIONS TO KENYA ROADS BOARD ACT, 1999
HELD ON 30TH AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI

ATTENDANCE REGISTER

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8						
9						
10						



**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATIONS TO KENYA ROADS BOARD ACT, 1999
HELD ON 30TH AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI**

ATTENDANCE REGISTER

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Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999, Radisson Blu Hotel, Upper Hill, Nairobi, 28th June 2019

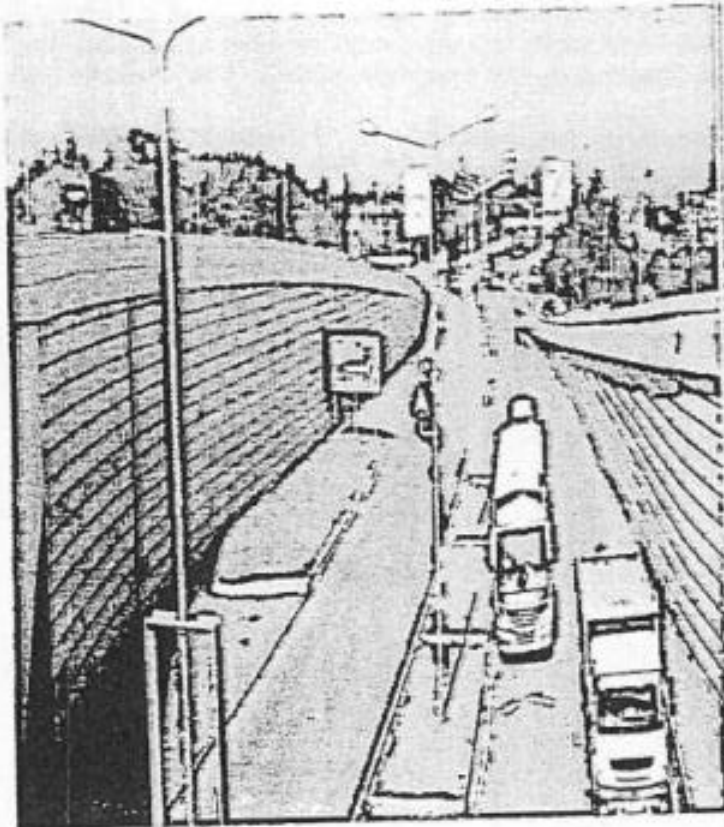
- *Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999, Radisson Blu Hotel, Upper Hill, Nairobi, 28th June 2019*

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2019

**REPORT ON REGIONAL CONSULTATIONS ON THE DEVELOPMENT
OF REGULATIONS TO THE KENYA ROADS BOARD ACT 1999: Held
between 25th November – 17th December 2019**



**DEVELOPMENT
OF REGULATIONS
TO THE KENYA
ROADS BOARD
ACT, 1999**

Regional Consultative Workshops for the Development of Regulations to Kenya Roads Board Act 1999

Report

This Report summarises the discussions of Regional Consultative Workshops organized by the Kenya Roads Board (KRB) in 2019 for the development of Regulations to the Kenya Roads Board Act 1999. The workshops were held in various cities and attended by different road sector representatives as summarized below:

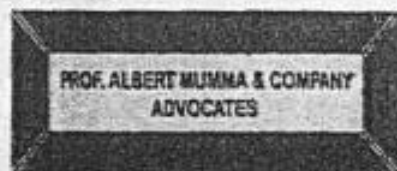
- i. **Workshops held at Enashipai Resort in Naivasha on 25 – 29 November 2019:** These were attended by participants drawn from Road Agencies (KenHA, KWS, KURA and KeRRA) based in the Eastern Region (namely Machakos, Kitui, Makueni, Embu, Tharaka Nithi, Meru, Isiolo & Marsabit) and those at headquarters; and by representatives from counties in the Central, North Eastern and Nairobi regions (namely Kiambu, Nyeri, Kirinyaga, Murang'a, Nyandarua, Garissa, Wajir, Mandera and Nairobi).
- ii. **Workshops held at Acacia Premier Hotel in Kisumu on 2 – 6 December 2019:** These were attended by participants drawn from Road Agencies (KenHA, KWS, KURA and KeRRA) based in the in the North Rift, Central, Eastern and South Rift Regions and representatives from counties in North Rift (namely Baringo, Nandi, Uasin Gishu, Elgeyo Marakwet, Trans Nzoia, Turkana, and West Pokot) and from South Rift (namely Kericho, Nakuru, Laikipia and Samburu).
- iii. **Workshops held at Whitesands Hotel in Mombasa on 9 – 13 December 2019:** These were attended by participants drawn from Road Agencies (KenHA, KWS, KURA and KeRRA) based in Nyanza and Coast Regions and representatives from counties in Nyanza (namely Homa Bay, Kisumu, Kisii, Migori, Nyamira, and Siaya) and from Coast (namely Kilifi, Kwale, Lamu, Mombasa, Taita Taveta and Tana River).
- iv. **Workshops held at Sarova Woodlands Hotel in Nakuru on 16 – 17 December 2019:** These were attended by participants drawn from Road Agencies (KenHA, KWS, KURA and KeRRA) based in Western Region and representatives from counties of the same Region namely Kakamega, Bungoma, Busia and Vihiga.



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Disclaimer:

This Report summarises discussions held in a workshop setting. The views expressed are those of the individual participants who took part.



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ABBREVIATIONS

ACRONYM	DESCRIPTION
APRP	Annual Public Roads Programme
ARWP	Annual Roads Work Programme
CDF	Constituency Development Fund
CRC	Constituency Road Committee
KRB	Kenya Roads Board
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Service
MP	Member of Parliament
NCA	National Construction Authority
PFM Act	Public Finance Management Act
QCBS	Quality Cost based Selection
RA	Road Agency
RMLE	Road Maintenance Levy Fund

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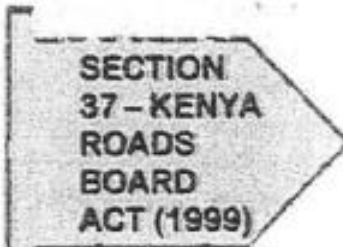
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1. INTRODUCTION

1.1 Background

The Kenya Roads Board (KRB) was established by section 4 of the Kenya Roads Act 1999 as a statutory corporation with the mandate of overseeing the road network in Kenya; coordinate the maintenance,



SECTION 37 - KENYA ROADS BOARD ACT (1999)

S. 37 of the Kenya Roads Board Act 1999 empowers KRB, with the approval of the Cabinet Secretary, to make rules for the better carrying out of its functions under the Act.

rehabilitation and development of roads funded by the Roads Maintenance Levy Fund (RMLF); coordinating the optimal utilization of the Fund in the implementation of programmes relating to the maintenance, rehabilitation and development of the road network in Kenya; and to monitor and evaluate the delivery of goods, works and services funded by the Fund through technical, financial and performance audits, among other functions. The KRB seeks to significantly improve and rationalize decision making and allocation of resources in the roads sector; and to make the best use of public funds in preserving road networks in Kenya at an acceptable level of serviceability. In order to achieve this, KRB requires to strengthen its capacity for the discharge of its mandate by putting in place Regulations pursuant to provisions of s.37 of the Kenya Roads Board Act 1999. The objectives of these Regulations will be to provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act, to fill in gaps inherent in Technical, Financial and Performance Audit Manuals and Guidelines and to provide a collaborative framework between national governments and county governments in executing their respective mandates and functions relating to road development, maintenance and rehabilitation.

It is within this context that KRB organized a series of 1 (one) day regional consultative workshops for the development of Regulations to the Kenya Roads Board Act 1999, which were held in:

- Naivasha from 25 to 29 November 2019;
- Kisumu from 2 to 6 December 2019;
- Mombasa from 9 to 13 December 2019, and
- Nakuru from 16 to 17 December 2019.

Regional Participation

Participants to the workshops held in Naivasha were drawn from Road Agencies (KenHA, KWS, KURA and KeRRA) based in the Eastern Region (namely Machakos, Kitui, Makueni, Embu, Tharaka Nithi, Meru, Isiolo & Marsabit) and those from headquarters; and by representatives from counties in the Central, North Eastern and Nairobi regions (namely Kiambu, Nyeri, Kirinyaga, Murang'a, Nyandarua, Garissa, Wajir, Mandera and Nairobi). Those attending workshops held in Kisumu were drawn from Road Agencies based in the in the North Rift, Central, Eastern and South Rift Regions and representatives from counties in North Rift (namely Baringo, Nandi, Uasin Gishu, Elgeyo Marakwet, Trans Nzoia, Turkana, and West Pokot) and from South Rift (namely Kericho, Nakuru, Laikipia and Samburu). Participants to the Mombasa workshops were drawn from Road Agencies (based in Nyanza and Coast Regions and representatives from counties in Nyanza (namely Homa Bay, Kisumu, Kisii, Migori, Nyamira, and Siaya) and from Coast (namely Kilifi, Kwale, Lamu, Mombasa, Taita Taveta and Tana River). And

finally, those attending the Nakuru workshops were drawn from Road Agencies based in Western Region and representatives from counties of the same Region namely Kakamega, Bungoma, Busia and Vihiga.

About this Report:

This report provides the details of the regional consultative workshops held in the four cities – Naivasha, Kisumu, Mombasa and Nakuru. It provides an overview of the workshop objectives, highlights the major discussion points as well as detailing the feedback and recommendations resulting from the discussions. The workshops were moderated/facilitated by KRB staff and the presentations of the draft subsidiary legislation in Naivasha, Mombasa and Nakuru were made by Ms Marion Motari from the firm of Professor Albert Mumma & Co. Advocates, who is the Assistant Team Leader for the Project. The Presentations in Kisumu were made by Ms Rael Osiemo. A sample workshop program, slide presentation and full list of attendees for all the regional consultations are provided in Annexures I to III.

1.2 Workshop Objectives

In accordance with the national values and principles relating to public participation and as enshrined in Articles 10 and 232 of the Constitution, stakeholder consultation is an indispensable part of the process of developing and drafting subsidiary legislation on behalf of the Cabinet Secretary. Additionally, in accordance with the requirements of the Statutory Instruments Act 2013 the process of making rules, especially those likely to have a substantial impact on business, must be a consultative process involving stakeholder engagement and public participation. The aim of these regional workshops was to gain preliminary insights into what were viewed by this group of stakeholders as prevailing issues or concerns to be addressed by this legislative reform process. Other objectives included -

- To present the draft proposed Kenya Roads Board Regulations;
- To facilitate stakeholder participation in the development of the Regulations;
- To obtain feedback on the draft Regulations;
- To address all issues and concerns raised by stakeholders relating to proposed draft Regulations;

Issues raised at this stakeholder consultation will be factored in the drafting and development of the regulations.

1.3 Structure of Consultation Workshop

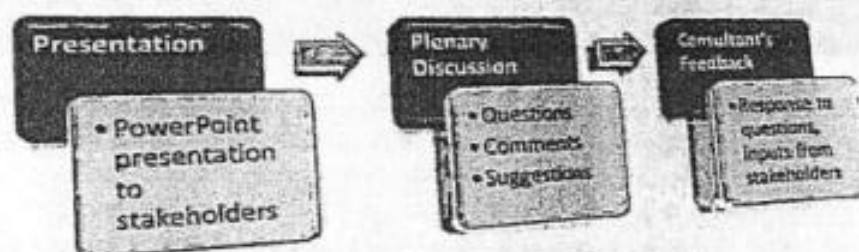


Figure 1: Structure of the presentation

Figure 1 above illustrates the approach adopted by the Consultant during the stakeholder consultation workshops to ensure that they achieved optimum results: -

Presentations

The purpose of the presentations was to guide the stakeholders through the provisions of the draft Kenya Roads Board Regulations 2019. This enabled the stakeholders to get acquainted with the content of the draft subsidiary legislation and to enable them submit their views on additional issues that need to be either addressed, clarified and/or disregarded.

Plenary Discussions, Questions and Answers

Presentations were followed by discussions and questions, which provided stakeholders an opportunity to question and seek clarification on issues that were unclear and to submit detailed views and proposals on specific provisions of the drafts. The plenary session allowed stakeholders to make additional inputs, comments and ask the Consultant further questions for better clarity. The Consultant then responded to questions, comments and suggestions raised by stakeholders.

The programme structure was similar for all regional consultation workshops and a sample is herewith attached as Annex 1.

1.4 Presentation

The presentation made by the Consultant covered the following:

- a) Introduction and project overview
- b) Presentation of the draft Regulations

a) Introduction and project overview

The introductory part of the presentation provided a brief background of the project, including the rationale and objective for developing Regulations to the Kenya Roads Board Act 1999 and the scope of work currently being undertaken by Consultants as summarized in Figure 2 below. It was noted that this project has been underway since June 2019 and a number of activities have already been undertaken by the Consultant namely holding an initial stakeholder consultation meeting held in Radisson Blu Hotel in Nairobi on 30th August 2019; desk research and benchmarking exercise of KRB with similar local and international fund managers with the aim of developing a best practise for KRB; and collation of provisions found in different KRB manuals and guidelines into a draft Regulations document, which formed the basis of presentations made at the current Regional Consultative workshops.

The Consultant informed participants that views and suggestions made during the current round of consultations will inform the Consultant's work in revising the draft Regulations which will be presented at a series of validation workshops that will be held in the first quarter of 2020. The Consultant also informed participants that the Regulations will be subjected to a Regulatory Impact Assessment exercise in accordance with provisions of the Statutory Instruments Act 2013. The Draft Final Regulations will be presented to the KRB Board of Directors and eventually to the KRB Executive Director who will present them to the CS for publishing in the Kenya Gazette. Figure 2 below summarizes the scope of work for the project.



Scope of work:

- Review draft Regulations & Manuals developed by KRB to ensure completeness
- Conduct research and benchmark with local and international fund managers
- Stakeholder engagement
- Draft Rules
- Conduct Stakeholder validation workshops
- Conduct a Regulatory Impact Assessment of the Regulations
- Present Draft Final Rules to the KRB Board of Directors -> Final Rules to Executive Director

Figure 2: Background – Scope of Work

b) Presentation of draft regulations

The presentations highlighted key provisions of the proposed draft Regulations. The proposed Regulations will be cited as the Kenya Roads Board Regulations and its substantive provisions are organized in 8 Parts (Parts I – VIII). Part I covers definitions, while Parts II to VIII cover the Annual Public Roads Programme (APRP), Finance and Administration, Implementation of Works, Contract Management, Monitoring and Evaluation, Reporting and Miscellaneous respectively. A summary of the presentation of draft Regulation is shown in Figure 3 below. The full presentation is herewith attached as Annex II.



Provisions of the KRB Regulations, 2019

- Cited as: Kenya Roads Board Regulations, 2019
- Parts II - VIII:
 - II - Annual Public Roads Programme
 - III - Financial Provisions and Administration
 - IV - Implementation of Works
 - V - Contract Management
 - VI - Monitoring and Evaluation
 - VII - Reporting
 - VIII - Miscellaneous
 - Schedules - 1st to 5th

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Figure 3: Provisions of the KRB Regulations, 2019

1.5 Feedback and recommendations

This section summarizes the questions, suggestions and recommendations made during the series of workshops held in Naivasha, Kisumu, Mombasa and Nakuru. The Consultant notes that some of the issues raised and suggestions made at the workshops will be addressed through amendments to the provisions of the draft subsidiary legislation presented at the stakeholders' forum.

1.5.1 Comments from workshops held in Naivasha

a) Issues raised on Day 1 – 25 November 2019

One participant observed that the proposal made under Rule 59 of the Regulations requiring Road Agencies to respond to audit queries within 30 days was very difficult for Road Agencies to adhere to. The participant proposed that a time limit of 90 days would work better.

b) Issues raised on Day 4 – 26 November 2019

- i) A participant requested clarification on what the provision in Rule 46 requiring every road agency to maintain a record of road inspectors meant. He sought to have a definition included in the Regulations of who road inspectors are and their qualifications. It was clarified references to a road inspector in the Regulations is to be understood in the context of s.27 of the Kenya Roads Board Act 1999. The importance of defining what is meant by road inspector and providing the requisite qualification was noted by the Consultant. This definition will be provided by the Regulations.
- ii) A concern was raised relating to the proposed requirement under Rule 49 which provides that road agencies will only be able to carry over only 20% of works from one financial year to another. The participant raising this concern indicated that sometimes carry over works result from factors beyond the road agencies control which limited their ability to execute work plans. A staff from KRB responded to this concern by indicating that KRB discourages carry over works to ensure that works planned are carried within the financial year. He encouraged participants to address underlying causes that lead to failure of timely fund absorption.
- iii) A question was also raised concerning procurement of works whereby the participant stated that procurement rules required road agencies to procure works from the lowest bidder, which in effect meant that a lot of funds are left unabsorbed. In response to this concern it was noted that section 124 of the Public Procurement Act 2015 provides that a procuring entity may award a tender using the Quality and Cost Based Selection (QCBS) method which does not necessarily mean the 'lowest bidder'. In this regard it was emphasized that the guiding principle in procuring works should be maximisation of value for money as espoused in s. 3 (h) of the Procurement Act.
- iv) Finally, a participant stated that road agencies are compelled by the Finance Act to work with Constituency Roads Committees (CRC). The concern here was that CRC members did not generally understand the law and the legal framework governing the road sector. The participant requested that the Regulations make provision for allocation of funds from KRB to cover training of CRC members. In response to this request, it was pointed out that the Kenya Roads Act, 2007 makes provision for administrative funds which covers training costs. A further question was raised following this as to the appropriate percentage of administration funds that should be set aside for training.

c) Issues raised on Day 5 – 27 November 2019

- i) A question was raised touching on the provision requiring road agencies to maintain a register of road inspectors and whether this was another burden being imposed on counties. It was clarified that this was in reference to road inspectors within the context of s.27 of the Kenya Roads Board Act 1999.
- ii) A question was raised concerning the provisions of Rule 44 on sanctions and penalties and particularly R.44 (2) (a) which states that road agency that is found to be non-compliant to provisions of the Kenya Roads Board Act 1999 and these Regulations may face funds suspension. Here the concern was that sometimes funds are released late to counties, who in turn fail to absorb the funds

within the financial year. It was felt that it is unfair to penalize counties for something they were not responsible for. This question elicited a lively debate as most participants observed that poor absorption rates of funds was necessitated by the delayed release of funds by KRB and by the County Treasury.

- iii) A participant enquired about the measures that the Regulations would put in place for capacity building in the counties.
- iv) It was pointed out that the Regulations should elaborate a framework for collaboration and consultation between agencies and counties due to the shared mandate and functions in the road sector between the national government and county governments.
- v) Another participant pointed out that short rains tend to affect county approved work plans. He then asked whether the Regulations would provide leeway for changing approved work plans based on challenges brought about by short rains. The consultant responded by indicating that the Regulations made provision in r.8 for road agencies to apply for revision of their portion of the APRP before 31st January of each year and in the case of unforeseen eventualities (emergencies) brought about by short rains, road agencies can apply for emergency repair funds under r.50.
- vi) There was a question on the criteria applied in determining the limit of carry over works allowable from one financial year to the next at 20%.
- vii) A question was raised on whether counties were eligible for emergency funding. In response to this question, the Consultant pointed out that the provision in r.50 was only in reference to road agencies and not county governments. It was clarified that in reference to counties, the applicable law was the County Allocation of Revenues Act. Counties were therefore encouraged to work together with road agencies so that emergency works are addressed through and with road agencies.
- viii) There was a request for the introduction of a contingency fund of approximate 5% of the Annual Roads Work Programme (ARWP) that could be used for purchase of supervision vehicles.
- ix) Clarification was sought on whether r.44 on sanctions and penalties under the Regulations where it was indicated that where a road agency is found to be noncompliant to the law KRB may appoint and fund another road agency to execute the works of the noncompliant road agency, applied to counties. It was clarified that the wording of this rule meant that it applied only to road agencies.
- x) Finally there was a question touching on the requirement under r.46 on qualifications of contractors and whether these regulations intend to introduce another layer of requirements besides those of the National Construction Authority (NCA) Act 2011. It was clarified that it was not the intention of the Regulations to introduce new requirements but rather to put in place a framework for coherence with the requirements of the NCA Act.

1.5.2 Comments from workshops held in Kisumu

- i) A participant sought clarification on whether the proposed Regulations would apply to all counties. It was clarified that since the Kenya Roads Board Act was enacted in 1999 before the devolved system of government was established; therefore the Regulations will take this into account and seek to put in place a framework for collaboration between the national governments and county governments in meeting their respective road sector mandates under Schedule 4 of the Kenya Constitution.
- ii) There was a question on whether the Regulations would provide for road sector procurement processes. The Consultant clarified procurement is governed by the Public Procurement and Disposal of Assets Act 2015 and these Regulations would only further buttress its provisions but not contradict the Act.
- iii) There was a question on whether the Regulations would make provision for a county governor to nominate one member to the CRC. The Consultant clarified that the composition of CRC is given under s17 of the KRB Act and the aim of these Regulations will not be to contradict the Act but to supplement it.

1.5.3 Comments from workshops held in Mombasa

a) Issues raised on Day 1 – 9 December 2019

- i) A question was raised about the provision on the revision of work plans in R.8 which states that road agencies may have their portion of the work plans revised before 31 January as opposed to 31 December of the preceding year. A staff from KRB clarified that this provision is informed by feedback from the experience of stakeholders and allows for an extra month to allow for revisions to take place.
- ii) Further to the question above, it was observed that these timelines would be affected by the action/inaction of the CRCs in accordance to s.17 of the Kenya Roads Board Act 1999. The question raised was what would be the recourse for road agencies such as KeRRA?

b) Issues raised on Day 2 – 10 December 2019

- i) One participant pointed out that it was difficult at the county level to perform road prioritization exercises since the work plan has to go through the county assembly. He indicated that this was a challenge since the exercise was marred with politicization. The question raised was whether the Regulations could address the issue of road prioritization by for example setting a criteria to be considered when developing a work plan.

c) Issues raised on Day 3 – 11 December 2019

- ii) Another participant observed that r.54 provided that road agencies will be required to maintain a force account project file. The question raised was whether KRB will give road agencies leeway, as a result, to implement projects through force accounts? It was clarified by KRB that the preference is delivering works through contracting.
- iii) Another participant observed that sometimes road agencies are forced to have 100% carry over due to political interference at the county level from MPs and CDF members. It was observed that there is a need to sensitize politicians on the impact of their actions.
- iv) It was also noted that some road sector constituencies do not have class C roads and require to operate by use of Memorandum of Understanding (MoU) with counties. The question asked was whether these Regulations would address this.
- v) A clarification was sought on what the Regulations mean by the terms 'technical capacity' which are also referenced in the KRB manuals but have never been defined. It was suggested that these Regulations should go beyond the traditional definition of technical capacities.
- vi) It was suggested that the Regulations should capture 'equity' as part of the principles that should be espoused in delivery of works under r.45; in addition to efficiency, economy and effectiveness.
- vii) It was observed that there was a need for the Regulations to cover aspects of emerging technologies, which are not adequately covered by existing manuals.

d) Issues raised on Day 4 – 13 December 2019

- i) It was observed that in accordance with county regulations and the PFM Act, Funds must be deposited in the CRF account. The question raised here was whether it was possible for the Regulations to come up with special provisions to enable KRB to deposit directly to RMLF since depositing to the CRF most often led to delays in the release of funds.
- ii) It was observed that road agencies are not currently time bound to respond to audit queries; and hence it was proposed that the Regulations should introduce timelines within which road agencies should respond queries instead of leaving it open-ended.
- iii) There was a suggestion that the Regulations should introduce the need for tracking and monitoring value for money.
- iv) A participant observed that the threshold of allowable carry over works at 20% was too low and hence a suggestion that the Regulations should provide some exceptions where a higher % of allowable carry over works would be allowed.

1.5.4 Comments from workshops held in Nakuru

a) Issues raised on Day 1 – 16 December 2019

- i) One participant observed that there seemed to be lack of clear demarcation of county roads and KeRRA roads because the road network criss-crosses each other without clear distinction of responsibility for respective road agencies. The participant asked whether the proposed Regulations could address the issue of classification, distinguishing and allocation of networks to KeRRA, KURA, KWS, county governments because some constituencies have no roads.
- ii) Another observation was on the role of politicians in affecting timelines for submitting timelines, particularly Members of Parliament who have to approve the work-plan. It was suggested that the Regulations make provision for compelling MPs to approve the work plan in a timely manner.
- iii) In addition to the observation above on the implementation of the work plan, one participant indicated that timely implementation of the APRP was to some extent controlled by climate conditions of the year, which sometimes posed a challenge once the 'window of good weather' in a year was missed.
- iv) A question was raised touching on the provision of proposed R. 50 on emergency road repairs, which implies that emergency road works are not done in accordance with specified regulatory standards. The Consultant clarified that indeed that the intention of that provision was to ensure that despite the nature of emergency works, they are still required by law to meet the required design and supervision standards.
- v) A participant requested for clarification on what was meant by 'road inspector'? It was clarified that this was in accordance with s27 of the Kenya Roads Board Act 1999. It was suggested that this be defined by the Regulations since the Act does not define who road inspectors are.

b) Issues raised on Day 2 – 17 December 2019

- i) It was suggested that the Regulations should make it clear that counties cannot borrow money from the Fund for payments unrelated to road construction, maintenance and rehabilitation.
- ii) In reference to the issue raised above and the fact that funds should be spent only on road construction, maintenance and rehabilitation a question was raised on whether these funds could be spent on administrative costs such as court cases. It was clarified that the law was very clear on the types of activities that can be covered by the fund. A KRB staff further clarified this point by making reference to Article 206 of the Constitution, which stipulates that national public funds should not be withdrawn unless such withdrawal is authorised by an Act of Parliament.
- iii) A question was raised touching on the proposed RR.59 & 60 on audit queries and whether there was a way that different acts of non-compliance could be 'weighted' so that penalties are not uniformly applied to all forms/categories of non-compliance.
- iv) Additionally, it was stated that penalties should go hand in hand with rewards and that the Regulations were silent on rewards for compliant road agencies.
- v) There was a lively debate on the requirements of the proposed R.46 which state that road works are to be supervised by suitably qualified and adequate professionals. A participant observed that it was difficult to get engineers registered with the Engineers Registration Board since there is a shortage of them countrywide. The participant suggested that the Regulations should instead be framed in a manner that recognizes 'efforts towards registration' and not registration itself. The Consultant explained that this type of wording would not be appropriate in law as this would create subjectivity and ambiguity.
- vi) A suggestion was made in reference to R.8 which makes provision for revision of the ARWP. It was suggested that the regulations should clarify to what extent revision is allowable, what can be revised and what cannot be revised.
- vii) Finally, it was suggested that the Regulations should provide clarity on the release of funds for emergency road works under proposed R.50. It was suggested that a timeline should be stipulated within which the funds can be released.

5. Annexes

Annex I: Programme for Regional Consultative Workshops for the Development of Regulations to the Kenya Roads Board Act, 1999

KENYA ROADS BOARD

REGIONAL WORKSHOPS FOR TECHNICAL, FINANCIAL AND PERFORMANCE AUDITS

DATE	TIME	ACTIVITY	RESPONSIBILITY
	08:00 a.m. - 08:30 a.m.	Registration	KRB
	Session 1: Preliminaries & Presentation		
	08:30 a.m. - 08:45 a.m.	Prayers & Introduction	KRB
	08:45 a.m. - 09:00 a.m.	Welcome Address/Brief on Workshop	ED, KRB
	09:00 a.m - 09:15 a.m	KRB Proposed Rules, Regulations & Guidelines on RMLF	GML&CA - KRB
	09:15 a.m - 09:35 a.m	Presentation on COSTES - PP	GMPP - KRB
	09:35 a.m. - 10:05 a.m.	Presentation - Kenya National Highways Authority	Consultant
	10:05 a.m. - 10:30 a.m.	Presentation - Kenya Wildlife Service	Consultant
	10:30a.m. - 11:00 a.m.	HEALTH BREAK	
	Session 2: Presentations & Discussions		
	11:00 a.m. - 11:30 a.m.	Presentation - Kenya Urban Roads Authority	Consultant
	11:30 a.m. - 12:30 p.m.	Presentation - Kenya Rural Roads Authority	Consultant
	12:30 p.m. - 01:00 p.m.	Presentation - Baseline Study Findings	Consultant
	01:00 p.m. - 02:00 p.m.	LUNCH BREAK	
	Session 3: Discussions		
	02:00 p.m. - 02:30 p.m.	Response by KeNHA/Discussions	GMPP - KRB
	02:30 p.m. - 02:45 p.m.	Response by KWS/Discussions	GMPP - KRB
	02:45 p.m. - 03:15 p.m.	Response by KURA/Discussions	GMPP - KRB
	03:15 p.m. - 04:15 p.m.	Response by KeRRA/Discussions	GMPP - KRB
	04:15 p.m. - 04:30 p.m.	Conclusion & Way Forward	GMTC - KRB
	4:30 p.m.	TEA & DEPARTURE	

Annex II: Consultant's PowerPoint Presentation



**Regional Consultation Workshops for the Development of the Kenya
Roads Board Act, 1999**

KENYA ROADS REGULATIONS (Draft) 2019



Table of Contents

- Context Setting
- Objectives – Why we need Regulations
- Scope of Work
- Provisions of the Draft Regulations



Context setting

- KRB aims to:

- i. significantly improve and rationalize decision-making and allocation of resources in the roads sector
- ii. Make best use of public funds in preserving road networks at an acceptable level of serviceability

THEREFORE

- KRB requires the development of rules and regulations to strengthen its capacity in the discharge of its mandate under the KRB Act 1999
-



Kenya Roads Board Act (1999)

- S.4 - Establishes KRB as a statutory corporation
 - S.6 - makes provision for KRB's mandate as to:
 - I. To oversee the roads network
 - II. Coordinate maintenance, rehabilitation and development programmes funded by the Fund
 - III. To advise the CS in charge on any matter
-



Objectives - Why we need Regulations

- S.37 of the Act empowers KRB to make rules for the better carrying out of its functions
 - Main aims of the subsidiary legislation:
 - i. Provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act No. 7 1999; and
 - ii. Fill in existing gaps in Draft Regulations prepared by KRB and address issues relating to Technical, Financial and Performance Audit Manuals that need to be addressed.
-



Scope of work:

- Review draft Regulations & Manuals developed by KRB to ensure completeness
 - Conduct research and benchmark with local and international fund managers
 - Stakeholder engagement
 - Draft Rules
 - Conduct Stakeholder validation workshops
 - Conduct a Regulatory Impact Assessment of the Regulations
 - Present Draft Final Rules to the KRB Board of Directors - > Final Rules to Executive Director
-



Provisions of the KRB Regulations, 2019

- Cited as Kenya Roads Board Regulations, 2019

- Parts II - VIII:

- II - Annual Public Roads Programme
- III - Financial Provisions and Administration
- IV - Implementation of Works
- V - Contract Management
- VI - Monitoring and Evaluation
- VII - Reporting
- VIII - Miscellaneous
- Schedules - 1st to 5th



Part II – Annual Public Roads Programme (APRP)

- S.4 – Annual Roads Work Programme (ARWP) specifying: Relevant financial year, Road agency's identity, Locality, Road ID and section Name, Section Length, Type of intervention; description of the works, Allocated Budget (Current and next 3 years), Current condition and surface type.
- S.5 – Road Inventory and Condition Survey (RICS)
- S.7 Submission and Approval of ARWP
- S.8 Revisions of the APRP



Part III – Financial Provisions & Administration

- S.9 Duties of Roads Agencies
 - S.17 Disbursement program
 - S.18 Release of Funds & Withholding Funds
 - S.19 Conditions for Release of Funds
 - S.22 Utilization of the Fund
 - S.24 Expenditure Limit
 - S.25 Approval for exceeding budget
 - S.44 Sanctions and Penalties
-



Part IV: Road Maintenance & Development

- S.45 Efficient and effective delivery of road works
 - S. 46 Supervision of works
 - S.49 Carry over works
 - S.50 Emergency repair works
 - S.51 Spot improvement
-



Part V: Contract Management

- S.53 Contracts Format
- S.54 Contract project file & force account
- S.55 Contract portfolios



Part VI- Monitoring & Evaluation

- S. 56 Conduct of Technical, Financial & Performance Audits
- S.57 Availing documents and information to auditor
- S.58 Penalties and failure to comply
- S.59 Responses to audit reports
- S.60 Implementation of Audit Report



Part VII - Reporting

- S.61 - Submission of Reports

Part VIII - Miscellaneous

- S.62 Register of complaints
 - S.63 Procedure for handling cases
 - S.64 investigations
 - S.65 Offences
 - S.66 Transitional arrangements
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END





CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA ROADS BOARD ACT,
1999

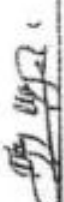
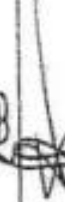
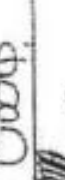
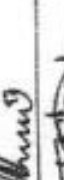
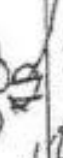
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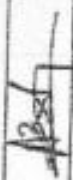
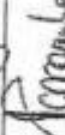
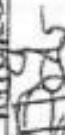
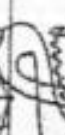
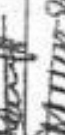
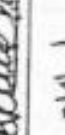
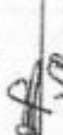
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CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA ROADS BOARD ACT,
1999

(SOUTH RIFT COUNTIES)

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CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA ROADS BOARD ACT,
1999

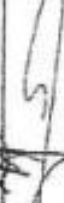
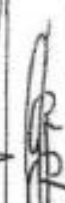
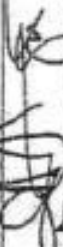
(SOUTH RIFT REGION)

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CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA ROADS BOARD ACT, 1999

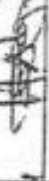
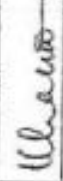
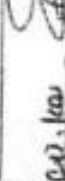
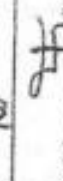
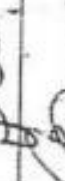
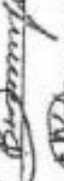
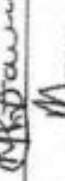
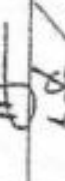
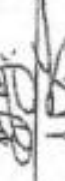
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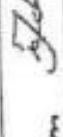
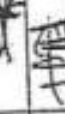
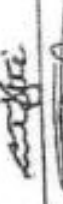
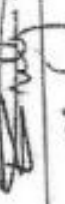
HELD ON 2ND DECEMBER 2019, AT ACACIA HOTEL, KISUMU

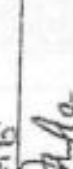
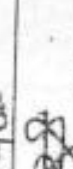
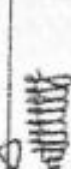
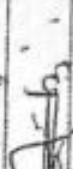
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CONSULTATIVE WORKSHOP ON DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

HELD ON 25TH NOVEMBER AT ENASHIPAE RESORT, NAIVASHA

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6	Ngac Kige	KERRA	

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19	Grace W. Njiru	KERRA	Grace
20	Chas Patience Njiru	KERRA	Chas

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999**

(CENTRAL REGION COUNTIES)

HELD ON 29TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NAIROBI REGION-ROAD AGENCIES)*

HELD ON 28TH NOVEMBER, 2019 AT ENASHIPAE RESORT, NAIVASHA

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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(NAIROBI REGION-ROAD AGENCIES)*

HELD ON 28TH NOVEMBER, 2019 AT ENASHIPAE RESORT, NAIIVASHA

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999
(FOR THE ROAD AGENCIES HEADQUARTERS & KENHA CORRIDORS)**

HELD ON 27TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999
(FOR THE ROAD AGENCIES HEADQUARTERS & KENHA CORRIDORS)**

HELD ON 27TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999
(FOR THE ROAD AGENCIES HEADQUARTERS & KENHA CORRIDORS)**

HELD ON 27TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

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CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999

(CENTRAL REGION COUNTIES)

HELD ON 29TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIIVASHA

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CONSULTATIVE WORKSHOP ON DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

HELD ON 25TH NOVEMBER AT ENASHIPAE RESORT, NAIVAASHA

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5.	JARED OMONDI	KERRA / MARSA BIT	<i>Jared Omondi</i>
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17	ALI HASSAN	KENYA (LE)	KENYA
18	FREDRICK MONTU	KENYA (LE)	KENYA
19	Risper Waga	KURA - LE	KURA

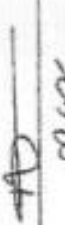
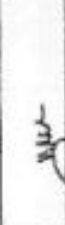


CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999

(COAST COUNTIES)

HELD ON 13TH DECEMBER 2019, AT WHITESANDS HOTEL, MOMBASA
ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(COAST ROAD AGENCIES)*

HELD ON 11TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(COAST ROAD AGENCIES)*

HELD ON 11TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(COAST ROAD AGENCIES)*

HELD ON 11TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999

(COAST ROAD AGENCIES)

HELD ON 11TH DECEMBER 2019, AT WHITESANDS HOTEL, MOMBASA
ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(NYANZA COUNTIES)*

HELD ON 10TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999

(COAST ROAD AGENCIES)

HELD ON 11TH DECEMBER 2019, AT WHITESANDS HOTEL, MOMBASA
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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(COAST ROAD AGENCIES)*

HELD ON 11TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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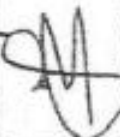
**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(NYANZA ROAD AGENCIES)*

HELD ON 9TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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12	Philip Oganda	KURA - HQ	0722626819	
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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA ROAD AGENCIES)*

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ATTENDANCE REGISTER

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5	Edwin Mwangi	KRB - SCMO	0722225667	

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George Morara	KURA - Sur Assistant	0700160491	1601
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Silas Chacha	KERRA - CEO	0723247440	1601
Samuel Aronga	KERRA - CEO	0760773635	1606
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James Mamyale	KERRA - ADO	0712128612	1601
Anna Weethale	KERRA - ADO	0721227777	1601
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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA ROAD AGENCIES)*

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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA COUNTIES)*

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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA COUNTIES)*

HELD ON 10TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(NYANZA COUNTIES)*

HELD ON 10TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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(Legislative Supplement No. xxx)

LEGAL NOTICE NO.

THE KENYA ROADS BOARD ACT (No. 4 of 1999)	
THE KENYA ROADS BOARD REGULATIONS, 2019	
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THE KENYA ROADS BOARD ACT

(No. 4 of 1999)

IN EXERCISE of the powers conferred by Section 37 of the Kenya Roads Board Act 1999, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Regulations—

THE KENYA ROADS BOARD REGULATIONS, 2020

PART I: PRELIMINARY	
Citation.	1. These Regulations shall be cited as Kenya Roads Board Regulations, 2020.
Interpretation.	2. In these Regulations, unless the context otherwise requires— “Act” means the Kenya Roads Board Act No. 7 of 1999; “Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act 2012 “Board” means the Kenya Roads Board as established under Section 4 of the Kenya Roads Board Act, 1999; “Board of Directors” means the Board established under section 7 of the Act; “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for roads; “Contract” means the contract for the works under discussion; “Fund” means the Kenya Roads Board Fund established by Section 31 of the Act; “Monitoring” means examining and verifying that the road works are being executed in accordance with the performance agreement; “Periodic Maintenance” means all the maintenance works carried out in a periodic cycle of five (5) to ten (10) years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming. For purposes of these Regulations, pavement layer reconstruction or the addition of a pavement layer do not constitute periodic maintenance; “Road Agency” means any organisation or body specified in the Fourth Schedule and includes all bodies receiving monies from

	the Board for the purposes for which the Board is established and includes County Governments established pursuant to provisions of Articles 6.1 and 176.1 and as outlined in the First Schedule of the Constitution of Kenya 2010; "Roadside development" means a physical structure or facility on land within or adjoining a road reserve; "Road Maintenance Levy Fund" means the Fund established by Section 7 of the Road Maintenance Levy Fund Act, 1993 (No. 9 of 1993); "Road Maintenance" means the preservation of roadways, roadsides and structures as nearly possible to their original condition or as subsequently improved and the operation of road facilities and services to provide satisfactory and safe transportation; "Road Network" means the entire road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described; "Routine Maintenance" means all maintenance works required continuously or at interval on every road whatever its engineering characteristics or traffic volume, and comprises activities such as grass cutting, drain cleaning, culvert and bridge cleaning and maintenance, road furniture and bridge guard rails maintenance, paved road patching, edge repair, crack sealing, and line marking, and also unpaved road grading, shaping and pothole repair.
Application of the Rules.	3. These regulations shall apply to – (a) all Road Agencies responsible for national trunk roads that receive financing from the Board and shall cover all goods, works and services funded by the Fund; and (b) Roads departments responsible for county roads networks; and (c) Roads Department of Kenya Wildlife Services responsible for roads within national parks and game reserves (d) Classified and Unclassified roads receiving funds from the Fund
PART II- ANNUAL PUBLIC ROADS PROGRAMME	
Submission of Annual Roads Programme and	4. (1) Road Agencies and roads departments of County Governments shall submit six (6) months before the commencement of every

Prioritization of Works.

financial year, the Annual Roads Work Programme (ARWP) to the Board which shall contain -

- (a) Financial year to which the ARWP relates;
- (b) The Road Agency's identity or the county name as the case may be;
- (c) Locality;
- (d) Road identity including name and number, and section name; (chainages)
- (e) Section Length;
- (f) Type of intervention/ description of the works;
- (g) Estimated budget costs for the current and the next three (3) years;
- (h) Current condition; and
- (i) Surface type

(2) Roads included in the ARWP shall be contained in the road register.

(3) Road Agencies shall provide adequate budget for multi-year projects spread over the contract period.

(4) In coming up with ARWP and implementation of works, Road Agencies and county governments shall apply the cost estimation manual published by the Board from time to time.

(5) Road Agencies shall set aside funds for designs process, road safety, axle load control, ARICS and environmental conservation.

(6) In developing the ARWP, Road Agencies shall -

- (a) comply with the budget ceilings issued pursuant to provisions of Regulation 15 of these Regulations.
- (b) carry out Annual Roads Inventory Condition Survey, (ARICS) pursuant to provisions of these Regulations using the format provided in Schedule/Form 1, to determine the maintainable portion of the road network.
- (c) hold stakeholder meetings for prioritization of road works and submit minutes of these meetings to the Board.

	(d) be based on approved 5-year RSIP and the order of prioritization of road works will be routine maintenance, spot improvement, periodic maintenance and rehabilitation. (e) allow at least 20% of the road works procurement budget for labour based methods of delivery (Roads 2000 Strategy) (7) All the Annual Roads Work Programmes received shall be consolidated into the Annual Public Roads Programme and submitted by February of each calendar year to the Board of Directors for approval. (8) The approved Annual Public Roads Programme shall be submitted to the Cabinet Secretary and the National Treasury for signing by April each year as required under Section 19(5) of the Act; (9) The Board shall publish and disseminate to Road Agencies the Annual Public Roads Programme Planning and Reporting as the Board of Directors shall specify from time to time. (10) In prioritization of road works, road agencies shall adhere to the requirements of the "APRP Planning and Reporting Manual" published by the Board from time to time. (11) Preparation of the ARWP shall start at the lowest implementing unit of the road agency.
Road Inventory and Condition Survey.	5. (1) The Board shall conduct a Roads Inventory and Condition Survey (RICS) every five (5) years. (2) Road Agencies shall carry out an Annual Roads Work Programme (ARWP) Condition Survey and produce a road maintenance needs assessment report and submit to the Board annually. (3) Every road agency, the KWS and county roads departments shall submit to the Board its updated Road Inventory and Condition Survey (RICS) for the road network under its jurisdiction by September of each year in order for the Board to update the entire road network register. (4) Road Agencies may seek approval for the inclusion of roads not in current road register in their Annual Roads Work Programme using Form 2 provided in the First Schedule of these Regulations.
Format and Details of Annual	6 An Annual Roads Work Programme prepared by a Road Agency, pursuant to Rule 4 above, shall be in the format

Roads Work Programme.	provided in Form 3 set out in the First Schedule of these Regulations.
Approval of Annual Roads Work Programme.	7 (1) The Board shall upon receipt of the Annual Roads Work Programme from a Road Agency review it to ensure compliance with requirements provided in Regulation 4 of these Regulations. (2) The Board shall communicate approval of submitted Annual Roads Work Programmes or specify any corrections, additions or clarifications that are required to facilitate approval, within four weeks from the date of receipt. (3) Road agencies shall, upon request by the Board, respond to queries raised in the process of approval within four weeks. Once the Board is satisfied with the response from a Road Agency, its Annual Road Works Programme will be approved for inclusion into the Annual Public Roads Programme. (4) In the event that the Board raises queries on an Annual Roads Work Programme, it shall communicate its approval or otherwise following submission of responses to concerned Road Agencies after receiving responses on or before 31st December. (5) The Board shall impose penalties as stipulated in the Fifth Schedule to these Regulations on Road Agencies for failure to submit compliant Annual Road Works Programmes within stipulated timelines above.
Revision of Annual Public Roads Programme.	8 (1) Road Agencies may apply for revision of their portion of the Annual Public Roads Programme before 31st January of each year. No revisions shall be permitted thereafter. (2) The Board shall communicate its approval or otherwise to the respective Road Agencies of the revisions to the APRP within one month of the request (3) Road Agencies shall not implement any works outside the APRP without seeking prior approval from the Board. (4) The Board shall impose penalties as stipulated in the Fifth Schedule to Road Agencies for implementation of works outside approved APRP.
PART III – FINANCIAL PROVISIONS AND ADMINISTRATION	
Duties of Road Agencies	9 Notwithstanding any obligation imposed on a Road Agency under these Regulations, a Road Agency shall, for the purposes of utilising funds received from the Fund –

	(a) maintain, rehabilitate and develop the categories of roads within its mandate; (b) prepare the Annual Road Works Programme using the prescribed format issued by the Board from time to time; (c) utilise disbursed funds to implement the approved Annual Roads Work Programme; (d) put in place and implement quality control and quality assurance system; (e) manage road reserve; (f) supervise and monitor road works within their area of jurisdiction; and (g) perform any other duties as the Ministry may direct from time to time
Duties of County Governments	10. County CECs' shall be responsible for: a. Approving County roads work plans b. Provide public notices for purposes of traffic management during the works implementation c. Ensure the final inspection and issuance of defect liability certificates upon completion of designated works under the works programme d. Ensure that illegal structures are cleared out of the road reserve and encroachment has stopped e. Ensure assessment of property within the right of way and compensation to owners where necessary is paid or duly discharged before commencement of any designated works under the works programme provided that such compensation shall not be paid out of the funds allocated for works programme f. Not in any way alter the agreed works programme without prior consent of the Board g. Furnish the Board with such reports as may be required for the review of the works programme. Following each such review, the county shall each promptly and diligently in order to take, or assist the Board in taking any corrective action deemed necessary to remedy any shortcoming noted in the

	implementation of the works programme or to implement or assist the Board in implementing such other measures as may be necessary for the furtherance of the objectives of the works programme h. At the request of the Board exchange views with regard to the progress of the works, programme, the performance of its obligations and other matters relating to the objectives of the works programme i. Promptly inform the Board of any condition which interferes or threatens to interfere with the progress of the works programme or the performance of its obligations j. Maintain or cause to be maintained, separate records and accounts in accordance with sound accounting practices k. Retain all records (contract, orders, invoices, bills, receipts and other documents) as evidencing expenditures and enable and assist the Board to examine such records. l. Cause to be opened and operated as separate bank account for the Funds disbursed by such account to be known as the Road Maintenance Levy Agency Account (RMLFAA) m. Not to use or permit to be used, the RMLFAA aforementioned as security or otherwise for borrowing of any funds and engaging any activity not directly associated with the works programme n. Carry out the works programme with due diligence, safety, efficiency, be cost conscious in order to get value for money and in an environmentally friendly manner, and in conformity with appropriate administrative and financial practices
Opening of Bank Accounts.	11 (1) Each Road Agency shall cause to be opened a separate bank account for the funds disbursed from the Fund to be known as '<i>Name of Agency - Road Maintenance Levy Fund</i>'. (2) A Road Agency that fails to open a Bank account shall not receive funds. (3) All bank accounts shall be opened, operated and closed with authority from the Board and the National Treasury, in accordance

		with Section 28 (1) Public Finance Management Act, 2012 and its applicable Regulations.
Deposits into the Bank Account.	12	(1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account. (2) A Road Maintenance Levy Bank Account shall not be a fixed deposit account and neither shall funds held in a Road Maintenance Levy bank account in any circumstances be held in a fixed deposit account.
Payments from the Bank Account.	13	(1) All Road Agencies shall make payments related to the Roads Works Programmes approved by the Board from their respective Road Maintenance Levy Fund bank account. (2) Payments may be done either by instructions, cheque, electronic or fund transfer in accordance with the Public Finance Management Act 2012 and its Regulations.
Signatories to the Bank Account.	14	(1) The accounting officer of a Road Agency shall be a mandatory signatory to all cheques, electronic payments and fund transfers. (2) The accounting officer in charge of the road agency shall designate other signatories and any changes in signatories in accordance with the Public Finance Management Act 2012 and its Regulations. (3) For county road works, the chief officer in charge of roads shall be a signatory to the bank account.
Annual Estimates.	15	The Board shall prepare annual revenue projections of the Fund on a three (3) years forward basis and submit it to the National Treasury.
Budget Ceilings.	16	(1) The Board shall give the Road Agencies and constituencies (counties) budgetary ceilings for the following financial year and request them to commence the preparation of their respective Annual Road Works Programmes by 1st July of the financial year preceding the year to which the budgetary ceilings relate. (2) The budget estimates for each Road Agency and constituency, shall be in accordance with the allocation criteria set out in Section 6(2) (d), (e) and (f) of the Act. (3) The ceilings for county governments shall be determined each year after the passing of the Annual Division and Allocation of Revenue Bill in accordance with provisions of Article 218 of the Constitution.
Expenditure Projections.	17	Road agencies shall within three (3) months before the beginning of the financial year submit to the Board an annual expenditure projection for each month in the financial year.
Disbursement Program.	18	(1) The Board shall indicate to Road Agencies at the beginning of each financial year, cash flows for each month.

	(2) The Board shall monitor receipt of funds from RMLF and allocate each tranche to the respective Road Agency in accordance with the disbursement program
Release of Funds and Withholding of Funds.	19 (1) The Board shall release funds to compliant Road Agencies within one month after approval by the Board and in compliance with the disbursement schedule. (2) The Board shall withhold release of funds to Road Agencies who have not complied with the prescribed rules, regulations, procedures and guidelines, the Act, or other applicable laws.
Conditions for Release of Funds.	20 (1) Without prejudice to the generality of the foregoing, the specific criteria in subsection (2) will be applied as a basis for release of funds. (2) The specific criteria for the release of funds include - (a) Submission of quarterly and annual progress/expenditure reports as required by the Board in accordance with these Regulations. (b) Submission of an Annual Road Works Programme duly approved by the Board in accordance with Section 19(2) of the Act. (c) In the event of audit queries, provide responses to all audit queries raised in accordance with these Regulations. (d) Timely implementation of the approved Annual Road Work Programme and absorption of up to 70% of the annual budgetary allocation (e) Complied with requests made under section 27 of the Act by an inspector ; (f) Confirmation that the funds are being used wholly and exclusively for the intended purposes and that no funds whatsoever are being diverted for use in other unrelated activities.
Release of Funds by Road Agencies to regional offices/sub-agencies.	21 A Road Agency shall forward funds to its regional offices/sub-agencies where applicable within two (2) weeks after receipt from the Board.
Partial Release of Funds.	22 In the event that the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a financial year, the Board may approve release on account of not more than 30% of the funds based on the submitted draft ARWP, to enable the

	operations of the agency to continue, pending approval of the Annual Public Roads Programme (APRP).
Utilization of the Fund.	23 Funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme (APRP).
Administrative Expenses.	24 (1) Road Agencies shall not exceed the overheads and administrative expenses thresholds specified in Section 6 (2) (i) of the Act. (2) Road Agencies shall ensure regional offices are allocated funds for administration from the overall administration expenses of the Road Agency.
Expenditure Limit.	25 The expenditure on budgeted line items is limited to the amount approved in the budget.
Board approval to exceed budget.	26 (1) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may approve such excess after being satisfied that there are compelling reasons for the same. (2) Any excess approved under the subsection (1) must be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded.
Reallocation of funds for works.	27 Road Agencies shall not use the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of the Board.
Authority to incur expenditures.	28 Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that Road Agency.
Fixed Assets Register.	29 (1) Every Road Agency shall maintain a Fixed Assets Register relating to the Fund wherein various details of fixed assets will be recorded. (2) The Fixed Assets Register shall contain the following details: (a) Type of asset; (b) Cost of asset, supplier and date of acquisition; (c) Serial numbers, title documents of the asset and provision for licenses where applicable; (d) Rates of depreciation; (e) Accumulated depreciation up to close of financial year; (f) Written down value as at the end of the financial year;

	(g) Value of the asset (as per the last valuation); (h) Date of disposal and the net realizable values; (i) Profit or loss on disposal; (j) The exact location of the asset; and, (k) Identification numbers of the assets (to be coded on the basis of category, location etc. of the assets).
Savings and Earnings.	30 (1) Where a Road Agency has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. (2) Road agencies shall submit a work plan for the savings and or interest earnings to the Board before spending.
Carry over funds.	31 (1) At the end of each financial year all road agencies shall submit to the Board bank balances and corresponding road works for which the funds were to be utilized. (2) The carry over funds and associated road works shall be included in the Annual Road Works Programme for the following financial year.
Funds not to be applied as security for borrowing.	32 Road Agencies shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.
Funds disbursed through Constituency Road Fund.	33 For funds disbursed through Constituency Road Fund accounts, the Kenya Rural Roads Authority (KeRRA) accounting officer who manages the funds at the constituency shall be responsible and accountable for the funds.
Maintenance of Cash Books.	34 (1) Road Agencies shall maintain a cash book for The Kenya Road Board Fund Account to be written and balanced daily and the cash in hand verified by the officer in charge of the cash book. All monies received shall be recorded serially in the cash book with adequate details of the transaction. (2) The Road Agencies shall maintain registers and records of bank accounts, cash books and imprest in accordance with the Public Finance Management Act 2012 and its pursuant Regulations.
Cash Book.	35 (1) The Cash Book shall be checked on a daily basis by a senior officer of the Road Agency and at these checks he should sign the cash book at the last entry examined to signify that he has satisfied himself as to the correctness of all entries made since the last signature. (2) The cash book balance must be reconciled with the bank balance at the end of every month.

Account not to be overdrawn.	36 The Road Agencies' RMLF Bank Account shall not be overdrawn as stipulated in the Public Finance Management Act 2012 and its Regulations.
Cashing of Personal Cheques.	37 (1) Personal cheques shall not be deposited into an official bank account. (2) Cashing of personal cheques from funds received from or through the Board, whether drawn by civil servants, directors, staff members, or members of the public is not permitted.
Payment vouchers, adjustment journals, banking and issuance of receipts.	38 (1) All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-numbered receipt, which should be signed, stamped and dated. (2) All payment vouchers, adjustment journals and receipts shall comply with the provisions of the PFM Act and regulations. (3) All cash and cheques received must be receipted and banked intact into the road agency's RMLF Bank Account within five days from the day of receipt.
Amounts to tally.	39 The amounts in words and figures must tally and shall not be altered or amended.
Banking of Receipts.	40 All cash and cheques received must be receipted and banked intact into the Road Agency's RMLF Bank Account within five days from the day receipt is acknowledged.
Financial Records and automation of financial operations.	41 Financial records may be maintained in manual or electronic form and shall be kept in accordance with the Public Finance Management Act 2012 and its Regulations.
Annual Reports and Financial Statements.	42 (1) The accounting officer shall prepare annual reports and financial statements with respect to the RMLF account in compliance with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time. (2) Every road agency shall, within six months of the end of each financial year submit to the Board its audited accounts for that financial year.
Books of Account	43 Accountable documents whether manual or electronic shall be under strict control at all times and they shall include— (a) local purchase order; (b) local service order (c) authority to incur expenditure; (d) cheques; (e) cash receipt and payment books;

	(f) and (g) imprest warrants etc.
Accounts and records to be kept and preserved.	44 (1) Road agencies and sub-agencies shall maintain the following accounts and records in the format prescribed hereunder – (a) Cashbook, bank statements and bank reconciliations; (b) Payment vouchers (c) Ledgers; (d) Fixed assets register; (e) Quarterly and annual reports and financial statements and non – financial reports; (f) Quarterly ARWP Progress reports; (g) Approved ARWP (h) Procurement documents, LSOs/LPOs/contract; (i) Inspection and verification reports; (j) Measurements sheets, etc. (2) Accountable documents, books and records shall be preserved in accordance with the provisions of the Public Finance and Management Act 2012 and its Regulations. (3) The books of account kept and maintained under this regulation shall be made available to the Board for monitoring. (4) The Board shall suspend disbursement of funds to a Road Agency which contravenes the provisions of this regulation.
Sanctions and Penalties.	45 (1) Failure to adhere to the Act and these regulations shall amount to non-compliance. (2) Where a road agency is non-compliant, the Board may - (a) Suspend funding to the road agency; (b) Appoint another Road Agency, and release funds allocated for works by the non-compliant Road Agency, to the newly appointed agency'

	(c) Institute measures to recover any amounts misappropriated by a public officer. (d) Take legal action against a officer. (3) Any member of the public may lodge a complaint of allegation of misuse of funds with the Board against any Road Agency (4) Without prejudice to subsection (2) the Board may, where it is satisfied of the complaint against misuse of funds allocated for any road work, conduct a special investigation for the purposes of determining the truth of the complaint or allegation. (5) Notwithstanding subsection (2) the Board may on its own motion conduct a special investigation where it has reason to believe that there is a misuse of funds by a Road Agency.
PART IV –ROAD MAINTENANCE AND DEVELOPMENT	
Efficient and Effective delivery of road works.	46 (1) Road Agencies shall ensure compliance with design and supervision standards for road works as issued by the Ministry from time to time. (2) Road Agencies shall establish and implement quality management systems for delivery of road works including materials testing and adequate supervision. (3) Road Agencies shall ensure that any planned work is executed within the time, cost, set standards and specifications. (4) Road Agencies shall ensure compliance with contract conditions in accordance with Part V of these Regulations. (5) Goods, works, and services shall be procured in a manner that promotes economy, efficiency, effectiveness and equity in accordance with relevant rules and regulations as may be prescribed from time to time. (6) The RAs shall ensure that the above documents are available to the inspectors appointed under Section 26 (1) of the Act for inspection whenever required.
Supervision of Works.	47 (1) Road works shall be supervised by suitably qualified and adequate staff. (2) Road Agencies shall maintain records available to the inspectors appointed under Section 26 (1) of the Act for inspection whenever required. (3) Road Agencies shall ensure that site supervision staff have adequate resources to carry out supervision.

	(4) Road Agencies shall maintain staff records as provided in Form 4 set out in the First Schedule to these Regulations. (5) The Board shall conduct field visits every quarter and will give at least two weeks' notice in advance to Road Agencies. (6) Road Agencies shall avail appropriate officers to accompany the Board monitoring team for field visits and provide information as may be required.
Safety.	48 (1) Road Agencies shall ensure compliance with Occupational Safety and Health Act No. 15 of 2007. (2) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works. (3) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.
Environment.	49 (1) Road Agencies are to have an Environmental and Social Management Plan for maintenance projects which shall be clustered at regional levels. (2) Road Agencies shall ensure compliance with Environmental Management and Coordination Act of 1999. (3) Road Agencies shall prepare and implement safety and environmental management plans for road works before commencement of works.
Carry over works.	50 (1) Road Agencies may with approval of the Board, carry over works from one financial year to another provided that the same does not exceed 20% of the Annual Public Roads Programme. (2) In order to avoid duplication of road works and to differentiate works for prior and current Financial Year, Road Agencies shall submit a revised Annual Roads Work Programme for all carry over works and savings to the Board for approval by end of July of every financial year.
Emergency repair works	51 (1) Road agencies shall carry out emergency works or repairs in accordance with design and supervision standards for road works as issued by the Ministry. (2) In carrying out emergency repair works, the Roads Agency shall request for emergency funds from the Board. (3) The Board shall establish and cause to be followed transparent and objective procedures to access and account for emergency funds.

Spot improvements	52 Road Agencies shall carry out spot improvements on short road sections that are in poor conditions for the purposes of maintaining accessibility for such roads.
Road related administrative costs	53 (1) A Road Agency shall use the percentage funds to be allocated by the Board to cover road related administrative costs. (2) The roads related administrative costs in subsection (1) shall include – (a) supervision costs; (b) administration costs; and (c) any other related costs to be determined by the Board.
PART V- CONTRACT MANAGEMENT	
Contracts Format.	54 (1) Road Agencies shall enter into contractual; arrangements for road works, goods and services which should specify the following, inter alia – (a) Parties to the contract; (b) Contract price and period; (c) Scope of works, bills of quantities, drawings and specifications (d) Conditions of contract as prescribed by Public Procurement Regulatory Authority. (2) Any payments by Road Agencies for contracts which do not comply with the above shall be considered ineligible expenditure and shall be recoverable from the Road Agency.
Contract project file and force account	55 (1) A Road Agency shall keep and maintain the following project files – (a) Contract file; and (b) Force account (2) The contract project file in subsection (1) shall contain the following – (d) copies of procurement documents; (e) site photographs; (f) site instructions; (g) minutes of meetings;

	(h) a copy of the contract agreement; (i) payment certificates; (j) record of force account; (k) any other relevant correspondences for inspection and audit. (3) The project file for the force account shall contain the following – (a) approval of the tender; (b) site photographs; (c) drawings; (d) bill of quantities; (e) record of inputs namely – i. materials purchased ii. labour iii. equipment hired; iv. fuel v. supervision costs; and vi. any other costs which the Board may determine; and (f) completion reports
Contracts portfolio.	56 (1) The Board shall establish and maintain a contract portfolio for all works in the approved Annual Public Roads Programme. (2) Projects not included in the portfolio shall not be eligible for financing. (3) All contracts for works, good and services shall be in writing and executed in the form as shall be prescribed by the Board from time to time. (4) Road Agencies shall submit to the Board copies of all signed contract documents for road works above Kenya Shillings 100 million and bridges above Kenya Shillings 10 million not later than two weeks after contract signing including all VOs when they occur. Road Agencies shall submit quarterly summary contract reports for all other works. (5) Road Agencies shall submit to the Board quarterly progress reports for all projects over Kenya Shillings 100 million. Road agencies shall submit to the Board quarterly summary reports for

	all projects procured under the Fund in the format prescribed in the first schedule. (6) Road Agencies shall invite the Board for project kick off and substantial completion inspection meetings for all projects over Kenya Shillings 100 million. (7) Road Agencies shall submit to the Board minutes of substantial completion inspection meeting and handing over certificates for all projects over Kenya Shillings 100 million. (8) Road Agencies shall prepare final completion report upon completion of all RMLF funded projects
PART VI – MONITORING AND EVALUATION	
Technical, Financial and Performance Audits.	57 (1) The Board shall conduct technical, financial and performance audits of the Board funded programs undertaken by the Road Agencies after every six months. (2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time. (3) The audits shall be conducted by such persons as may be authorized by the Executive Director in writing. (4) The Board shall inform Road Agencies of the intended audits two weeks in advance unless a special or ad hoc audit is ordered. The notice shall spell out the audit scope, objectives, basis, information required, audit checklist and audit program. (5) There shall be entry and exit meetings between the auditor and Road Agencies and the minutes of these meetings shall be signed by both parties. (6) The Road Agencies shall provide necessary facilitation for the audits including venue for entry and exit meetings, conducive working space for the auditors. (7) Road Agencies shall avail appropriate officers to accompany the auditors for the field visits. (8) An auditor may call off or postpone an audit in the following circumstances; (a) Uncooperative Road Agencies; (b) Failure to receive documents and information; (c) Risks / physical threats;

	(d) Insecurity; (e) Absent auditee. (9) The Auditor shall inform the Executive Director who shall escalate the same to the Cabinet Secretary with recommendation.
Duty to avail documents and information to the auditor..	58 (1) The Road Agencies shall make available to the auditor all of the following information - (a) books; (b) accounts; (c) records and other documents; (d) correspondence; (e) statements and information relating to goods; (f) works and services financed by the Fund; and (g) any other information as determined by the Board and as may be required by the auditor Provided that - (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced; (ii) the auditor may make copies of any books, accounts, records and other documents required for the purposes of its report; and (iii) all information obtained in the course of the M&E shall be treated as confidential and used solely for the purposes of the Act and these Regulations. (2) Where M&E is under a special audit, the Road Agency shall avail information in subsection (1) upon immediate request of the auditor. (3) Any clarifications sought shall be availed to the auditor within thirty days.
Penalties for Failure to Comply.	59 (1) The Board shall notify Road Agencies which fail to comply with the auditor's request or hinders an auditor from carrying out audits or gives false information after expiry of allowed period and specify the penalties to be applied for non-compliance. (2) If Road Agencies do not respond satisfactorily to the issues raised above within 30 days, the Board shall institute the penalties as prescribed in the Fifth Schedule of these Regulations. (3) Road Agencies which fail to comply with the auditor's request or hinders an auditor from carrying out audits or gives false

	information, shall be liable and the penalties as prescribed in Schedule set out in the schedules to these rules. (4) Develop rules for uncooperative auditee/ limitation of scope.
Responses to audit report.	60 (1) Road Agencies shall submit to the Board written responses to audit reports and queries within thirty (30) days as per the prescribed format in the schedules to these rules. (2) Upon expiry of the 30 days, the Board shall conclude the audit report and submit to Cabinet Secretary for roads. The approval of the CS shall be final and binding
Implementation of Audit report.	61 (1) Road Agencies shall submit an action plan for addressing the deficiencies identified in the audit reports. (2) The Board shall impose penalties as stipulated in the Fifth Schedule to these Regulations to Road Agencies which fail to implement audit recommendations satisfactorily. (3) The Board shall monitor the implementation of the action plans (4) Road Agencies shall submit to the Board a status report on implementation of audit recommendations by 31st January of each year.
PART VII – REPORTING	
Submission of Reports.	62 (1) Road Agencies shall prepare and submit quarterly APRP implementation reports together with supporting documents by the 20th day after end of each quarter. (2) The Reports must be approved by the Director General of the Road Agency before submission. (3) The Board shall review the report to check compliance with approved APRP. (4) The Board will acknowledge receipt of the quarterly reports and seek clarifications, if any, from Road Agencies. (5) The Road Agencies shall, upon request by the Board, respond to the queries raised within two weeks. (6) Based on the reports, the Board shall prepare and publish half year and annual APRP implementation reports. (7) Road Agencies shall submit to the Board road network management data as in the format and detail prescribed in Form 6 in the First Schedule to these Regulations.

	(8) Road Agencies shall submit to the Board ad hoc and special reports as may be requested from time to time. (9) The Board shall publish an annual APRP implementation report of projects above Kshs. 100m. (10) The Board shall impose penalties as stipulated in these Regulations to Road Agencies for non-compliance with reporting requirements.
PART VIII – FRAMEWORK FOR ENGAGING COUNTY GOVERNMENTS	
Procurement by County Governments	63 (1) Roads departments in county governments shall act in accordance with provisions of the Act and shall adhere to provisions of the Public Procurement Act 2015 and the Public Finance and Management Act 2012 and as may be amended from time to time. (2) County governments shall use only the standard documents and procedures of tender and/or contract approved and provided by the Kenya Roads Board (hereinafter referred to as "the Board") and where not provided those given by the Director of Public Procurement.
PART VIII – MISCELLANEOUS	
Register of Complaints.	64 (1) A person, public agency and or stakeholder ('the Complainant') aggrieved by any decision of the Board shall lodge a complaint in the prescribed form and the same shall be recorded in the Complaints Handling Register. (2) The Board shall establish a Complaint Management Committee chaired by an officer who shall be the custodian of the Register. (3) The complainant shall attach or provide any documents necessary to support the complaint. (4) Notwithstanding the foregoing, a complaint may be made anonymously or treated in such a manner as to protect the identity of, or particulars of the complainant where necessary, as may be directed by the Executive Director.
Procedure for handling a complaint.	65 In the determination of complaints under these Regulations, the Board shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.
Investigations.	66 (1) Where the complaint has been admitted, or where the Committee has taken up a matter on its own initiative, the Executive Director may commission an investigation by an officer of the Board or any public office or investigation agency.

	(2) The Committee may, subject to the direction and control of the Board, issue the requisition of information in a form to be determined by the Board. (3) Upon completion of the investigation, the Committee shall prepare a report with recommendations and submit it to the Executive Director. (4) The Board shall keep a record of each investigation and may publish the findings and recommendations pursuant to an investigation and may include these in its Statutory Report. (5) Appeals from the decisions of the Executive Director which are covered under the Act and these Regulations, shall lie before the Board of Directors.
Offences	67(1) A person who hinders the powers of the inspector pursuant to section 27 of the Act shall be guilty of an offence on conviction and be liable to a fine of one hundred thousand shillings or to imprisonment for three months or to both. (2) If the offence in subsection (1) is a continuing offence, in addition to the penalty prescribed, the person shall be liable to a fine of one thousand shillings for each day during which the offence continues.
Transitional Arrangements.	68 The Board may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Regulations.
Dated the 2020 JAMES WAINAINA MACHARIA, E.G.H Cabinet Secretary Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works	

FIRST SCHEDULE

Rules 5(3), 5(4), 6(1), 46(5), 55(5), 61(7)

FORM 1 – FORMAT FOR ROAD INVENTORY CONDITION SURVEY (RICS)**FORM 2 – FORMAT FOR APPROVAL FOR INCLUSION OF ROADS NOT IN
CURRENT ROAD REGISTER****FORM 3 – FORMAT FOR DRAFT ARWP****FORM 4 – STAFF RECORDS****FORM 5 – SUMMARY OF CONTRACT INFORMATION****FORM 6 – ROAD MANAGEMENT DATA****SECOND SCHEDULE**

Rule 15(2)

**BUDGET ESTIMATES FOR ROAD AGENCIES, COUNTIES AND ROAD SECTOR
INVESTMENT PROGRAMME (RSIP)**

S/NO	AGENCY	ALLOCATION (%)	PURPOSE
1.	Kenya National Highways Authority (KeNHA)	xx	To carry out works on National Trunk Roads Class A and B.
2.	Kenya Rural Roads Authority (KeRRA)	xx	To be equally allocated to all Constituencies to carry out road works in all constituencies.
		xx	To be equally allocated to all Constituencies for maintenance or development of link roads
3.	Kenya Urban Roads Authority (KURA)	xx	To be allocated for works on urban roads in cities and municipalities
4.	Kenya Wildlife Service (KWS)	xx	To be used in maintenance of roads in the national parks and game reserves.
5.	47 Counties	xx	Conditional grant to County Governments to carry out works on County Roads.
6.	RSIP/Cabinet Secretary	xx	To be allocated by the Board with approval of the Cabinet Secretary in charge of roads

THIRD SCHEDULE**Rule 46(3)****CLASSIFICATION OF WORKS****FOURTH SCHEDULE****DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads (referred to as Primary National Trunk Roads)
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes C
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes H, J.
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.
4.	County Governments	Management, development, rehabilitation and maintenance of County Roads Classes D, E, F, G, K, L, M, N, P.

FIFTH SCHEDULE**PENALTIES FOR SPECIFIED OFFENCES**

Relevant Rules	Offence	Minimum Penalty	Maximum Penalty
	Failure to submit ARWP within specified timeline		Pay a maximum of Ksh xxx and or xxx months imprisonment
	Implementation of Works outside approved APRP		Pay a maximum of Ksh xxx and or x months imprisonment

	Failure to comply with the auditor's request		Pay a maximum of Ksh xxx and or xx months imprisonment
	Hindering auditor from carrying out audits		Pay a maximum of Ksh xxx and or xxx months imprisonment
	Giving false information to auditor		Pay a maximum of Ksh xxx and or xxx months
	Failure to implement audit recommendations		Pay a maximum of Ksh xxx and or xxx months
	Non-compliance with reporting requirements		Pay a maximum of Ksh xxx and or xxx months

THE KENYA ROADS BOARD



KENYA ROADS BOARD
3RD FLOOR, KENYA RE-TOWERS
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**REGULATORY IMPACT ASSESSMENT REPORT
PROPOSED KENYA ROADS BOARD
REGULATIONS, 2020
DC FY2019/2020
JULY 2019 – JUNE 2020**

1

Regulatory Impact
Statement

April 2020

Republic of Kenya



MINISTRY OF TRANSPORT,
INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS

PROPOSED KENYA ROADS BOARD REGULATIONS,
2020

PROPOSED KENYA ROADS BOARD REGULATIONS 2020

Regulatory Impact Statement

April 2020

Prepared by:

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PROPOSED
KENYA ROADS BOARD REGULATIONS 2020

Regulatory Impact Statement

**Prepared by the Ministry of Transport, Infrastructure, Housing, Urban
Development & Public Works**

2020

This Regulatory Impact Statement (RIS) on the proposed Kenya Roads Board Regulations, 2020 has been prepared in compliance with Part III of the Statutory Instruments Act (No. 23 of 2013).

The purpose of the RIS is to inform the Cabinet Secretary, Members of Parliament, and the Kenyan society of the potential impacts of adopting the proposed Kenya Roads Board Regulations 2020. It provides an assessment and analysis of possible positive and negative effects of the regulatory proposals made on Kenyan society. The analysis is underpinned on information, suggestions and feedback received from public consultation processes that have been undertaken in the process of drafting these regulations.

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EXECUTIVE SUMMARY

The Constitution of Kenya 2010 creates a devolved system of government, which comprises of a national government and county governments. The Fourth Schedule of the Constitution distributes functions between the national and county governments and assigns the construction and operation of national trunk roads; and setting standards for the construction and maintenance of other roads by counties to the national government, while county governments are assigned the responsibility of overseeing county roads. The Kenya Roads Act (1999) established the Kenya Roads Board as a statutory corporation with, among others, the mandate of:

- overseeing the road network in Kenya;
- coordinating the maintenance, rehabilitation and development of roads funded by the Roads Maintenance Levy Fund (RMLF) and the optimal utilization of the Fund in the implementation of programmes; and
- monitoring and evaluating the delivery of goods, works and services funded by the Fund through technical, financial and performance audits.

The Kenya Roads Board (KRB) uses funds from the Roads Maintenance Levy Fund (RMLF) to fund the management, development, rehabilitation and maintenance of roads by Road Agencies (Authorities) namely the Kenya National Highways Authority (KeNHA) which is responsible for Classes S, A and B roads also known as Primary National Trunk Roads; the Kenya Rural Roads Authority (KeRRA) which is responsible for Class C roads which are Secondary National Trunk Roads; the Kenya Urban Roads Authority (KURA) which is responsible for classes H and J roads which are Secondary National Trunk Roads; the Kenya Wildlife Service (KWS) which is responsible for roads in national parks and game reserves; and County Governments which are responsible for classes D, E, F, G, K, L, M, N, P roads.

The Kenya Roads Board (KRB) seeks to enact the Kenya Roads Board Regulations 2020, whose objectives are to provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act 1999, to fill in gaps inherent in the Technical, Financial and Performance Audit Manuals and Guidelines, and to provide a collaborative framework between national government and county governments in executing their respective mandates in relation to road development, maintenance and rehabilitation.

This Regulatory Impact Statement (RIS) examines the costs and benefits of implementing the proposed Regulations and concludes that if properly implemented, they will serve to significantly improve and rationalize KRB's decision-making processes and allocation of resources resulting in the optimal use of

public funds in preserving road networks in Kenya and maintaining them at an acceptable level of serviceability.

The Regulations have been developed following multiple rounds of stakeholder consultations and support. They are organized in 8 Parts (Parts I - VIII). Part 1 covers sections on citation, interpretation and application of the Regulations. Parts II to VIII cover the Annual Public Roads Programme (APRP), Financial Provisions and Administration, Road Maintenance and Development, Contract Management, Monitoring and Evaluation, Reporting, and Miscellaneous provisions respectively.

1. INTRODUCTION

The proposed Kenya Roads Board Regulations 2020 aim to strengthen KRB's capacity for the discharge of its mandate. The Regulations seek to provide further details and clarity on provisions, which have been left open by the Kenya Roads Board Act 1999. They also seek to align the Kenya Roads Board Act 1999 with the provisions of the Constitution of Kenya (CoK) 2010 by making provision for a collaborative framework between the national government and county governments in executing their respective mandates and functions as prescribed by the Fourth Schedule of the CoK, 2010; and to address gaps and challenges inherent in the Technical, Financial and Performance Audit Manuals and Guidelines that have been in use hitherto.

The main source of funding road maintenance is the Road Maintenance Levy Fund (RMLF), which comprises the Fuel Levy and Transit Toll collections. The RMLF is used for both routine and periodic maintenance of public roads. Section 31 of the Kenya Roads Board Act 1999 establishes the Kenya Roads Board Fund (KRBF) into which funds from the RMLF are to be deposited. The funds deposited into the KRBF are to be utilized towards the maintenance of the road network in Kenya. As a statutory corporation, the KRB under the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, administers the RMLF and thereby finances road maintenance, rehabilitation and development through various road agencies, and carries out monitoring and evaluation (M&E) of funded works and services. These road agencies include Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA), the Kenya Wildlife Service (KWS) and departments responsible for roads in County Governments.

Currently, KRB is governed by the Kenya Roads Board Act 1999 with its subsidiary legislation L.N93/2003 which makes provision for the Urban Development Department of the Ministry of Local Government and covers road maintenance, rehabilitation and development projects in the Nairobi City Council, and the Mombasa, Kisumu, Nakuru, Eldoret municipal councils as they were previously known under the pre-2010 constitutional dispensation in Kenya. Presently, KRB performs its oversight function over road agencies through the use of Technical, Financial and Performance Audit manuals and guideline as published regularly.

Section 37 of the Kenya Roads Board Act 1999 empowers KRB to make rules for the better carrying out of its functions. Consequently, having the experience of using manuals and guidelines for a period of over 20 years and taking into account the institutional learning that has taken place within KRB itself and

in road agencies, KRB considers the use of subsidiary legislation as the best option/instrument that can better align the sector with requirements of the Constitution of Kenya 2010 and address issues and challenges arising out of the use of manuals and guidelines to govern the sector.

The legislation is not finalized and changes based on stakeholder comments and public consultations will help to ensure that the final Kenya Roads Board Regulations 2020 presented to Parliament deliver the best outcomes.

This RIS sets out the substantive proposals made by these Regulations and identifies their likely socio-economic impacts and the costs and/or benefits for stakeholders and Kenyans in general.

2. OBJECTIVES OF THE PROPOSED KENYA ROADS BOARD REGULATIONS 2020

2.1 Compliance with the Constitution of Kenya 2010 and the County Government Act 2012

The promulgation of the Constitution of Kenya 2010 created two levels of government, namely the national government and the county government. The Fourth Schedule of the Constitution distributes functions between the national government and county government. Whereas the national government is responsible for the construction and operation of trunk roads and setting standards for the construction and maintenance of other roads by counties, the county governments are tasked with the construction, maintenance and rehabilitation of county roads. Therefore, pursuant to the Fourth Schedule, the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

Under the former constitutional dispensation, road development, maintenance and rehabilitation fell under the responsibility of the then local governments namely municipal councils, under the oversight of the District Road Committees. This function has now been moved to county governments under the County Government Act 2012.

The development of the Kenya Roads Board Regulations 2020 is an imperative element in creating a collaborative framework between the national government and county governments for executing their respective mandates and functions relating to road development, maintenance and rehabilitation. These regulations are in compliance with the overall objectives of devolved functions of both levels of government under the constitution.

2.2 Objectives of the proposed Regulations

Kenya Roads Board seeks to significantly improve and rationalize decision-making and allocation of resources for the roads sector, and to make the best use of public funds in preserving road networks in Kenya at an acceptable level of serviceability. In order to achieve this, KRB requires to strengthen its capacity for the discharge of its mandate by putting in place Regulations pursuant to provisions of s.37 of the Kenya Roads Board Act 1999.

The objectives of these Regulations is to provide further details and clarity on provisions which have been left open by the Kenya Road Boards Act, to fill in gaps inherent in the Technical, Financial and Performance Audit Manuals and Guidelines, and to align the sector to provisions of CoK, 2010.

In the process of developing the proposed Regulations KRB conducted a review and benchmarking exercise of similar local and international fund managers with the aim of developing best practices. Table 1 below highlights the detailed issues addressed by the proposed regulations.

Table 1: Issues addressed by the proposed Kenya Roads Board Regulations 2020

No.	Topic/Key Principle	The Parent Act	Proposed Legislation: Kenya Roads Board Regulations 2020	Comments/Explanation
1	Applicable Legislation	Kenya Roads Act 1999	Kenya Roads Board Regulations 2020	Legislation is based on s.37 of the Kenya Roads Board Act 1999 and is aimed for the better functioning of KRB.
2	Application of the Kenya Roads Board Regulations 2020		The regulations apply to: a. Road Agencies namely the: i) Kenya National Highways Authority (KenHA) ii) Kenya Rural Roads Authority (KeRRA) iii) Kenya Urban Roads Authority (KURA) b. Kenya Wildlife Service (KWS) c. Departments of County Governments responsible for roads	The regulations align the management of the road sector with provisions of the Constitution of Kenya 2010 on devolved government and reflect lessons learnt by KRB for the past 20 years of applying manuals and guidelines.
3.	Annual Public Roads Programme (APRP)	Part II of the Regulations make provisions for the process of preparing and submitting Annual Public Roads Programmes (APRP).	Road Agencies will be required to submit to KRB, 6 months before the commencement of every financial year, a works programme for the development, rehabilitation and maintenance of roads in its jurisdiction, which shall include only those roads contained in the gazetted Road Register. In formulating an APRP, Road Agencies shall be required to: i) undertake an Annual Roads Inventory Condition Survey (ARIC)	

			ii) Hold stakeholder meetings for prioritization of road works. iii) Take into account the approved 5 year road sector investment plan iv) Take into account the Road Management System User Manual Road Agencies may not implement any road works outside of the APPRP without seeking approval from KRB. A Road Agency may revise it's APPRP in instances where the road works in question have been or are to be implemented by another Road Agency, savings have been made necessitating an inclusion of additional roads to the Road Agency's APPRP, or due to the occurrence of an unforeseen emergency.	
4.	Financial Provisions and Administration	Part III focuses on financial and administrative provisions.	Road Agencies are required to use funds received from KRB for: i) maintaining, rehabilitating and developing roads included in the Annual Roads Work Programme (ARWP), ii) putting in place and implement a quality control and quality assurance system iii) managing road reserves iv) road designing processes, safety, and axle load control v) undertaking environmental conservation activities vi) supervising and monitoring road works Road Agencies shall maintain separate bank	

			accounts for funds disbursed from KRB for the implementation of the ARWP. These bank accounts shall be opened, operated and closed with authority from KRB, National Treasury and the Board of the Road Agency. KRB shall give Road Agencies budgetary ceilings for each financial year on the basis of which Road Agencies shall prepare ARWPs. The budget estimates for each Road Agency shall be in accordance with the allocation criteria set out in S.6 of the KRB Act, while those for county governments shall be determined annually after the passing of the Annual Division and Allocation of Revenue Bill in accordance with Art 218 of the Constitution. KRB may withhold the release of funds to a Road Agency which has not complied with prescribed law, rules and regulations. The condition for release of funds to a Road Agency include: - submission of quarterly and annual progress/expenditure reports - submission of ARWP in accordance with s19(2) of the KRB Act - satisfactory responses to audit queries whenever they are raised - timely implementation of the ARWP and proof of absorption of up to 70% of the
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		v) previous year's budgetary allocation confirmation that funds are used exclusively for the intended purposes In the event that a Road Agency's ARWP has not been approved at the beginning of a financial year, KRB may approve release not more than 30% of the submitted draft ARWP to facilitate the Road Agency's operations pending approval. A Road Agency shall not utilize funds received from KRB for purposes of paying salaries and other employment remuneration and allowances for personnel or for offsetting the cost of offsetting overhead expenses of its regional, sub-regional or sub-county offices. A Road Agency may however utilize funds received from KRB for purposes of offsetting the costs of supervision of road works and other incidentals and allied costs arising from implementing approved road projects. Road Agencies shall procure goods, services and works in accordance with provisions of the Public Finance and Management Act, 2012 and the Public Procurement and Asset Disposal Act 2015. A Road Agency shall not, without prior approval of the Board, reallocate funds earmarked for a particular road project to another road project. Where a Road Agency is not compliant with the financial and administrative provisions, the Board	
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5.	Road Maintenance and Development	Part IV covers road maintenance and development	may: i) suspend funding to the Road Agency ii) appoint another road agency to implement the offending Road Agency's works programme iii) Institute measures to recover any amounts misappropriated by a public officer, or iv) Take legal action against an officer Any member of the public may lodge a complaint of allegation of misuse of funds with KRB against any Road Agency, which shall be in written and provide details of the nature of complaint Road Agencies will be required to ensure compliance with design and supervision standards for road works as issued by the Ministry. They shall be required to: i) establish and implement quality management systems for delivery of road works including materials testing and adequate supervision ii) ensure that all planned works is executed within the time, cost and set standards and specifications iii) ensure compliance with contract conditions iv) ensure that goods, works and services are procured in a manner that promotes economy, efficiency, effectiveness and equity Road Agencies shall ensure that road works are	
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			supervised by suitably qualified and adequate staff All Road Agencies shall ensure compliance with the provisions of the Occupational Health and Safety Act 2007 Road Agencies shall be required to conduct Environmental Social Impact Assessments (ESIA) for road projects in accordance with guidelines set out by the National Environment Management Authority (NEMA) A Road Agency may with the approval of KRB carry over works from one financial year to the next provided that it does not exceed 20 % of the APRP. Road Agencies shall carry out emergency works or repairs in accordance with design and supervision standards for road works as issued by the Ministry.	
6.	Contract Management	Part V of the Regulations makes provision for Contract Management	Road Agencies are required to enter into contract arrangements for road works, goods and services which shall specify the parties, the contract price and period, the scope of works, bills of quantities, drawings and specifications, and conditions prescribed by the Public Procurement Regulatory Authority. Prior to entering into a road works contract, a Road Agency shall seek a 'non-objection' from KRB Road Agencies shall not issue any variations	

			exceeding 10% of the original contract sum without prior approval from KRB Road Agencies shall keep and maintain for inspection and audit the following: i) contract file which shall contain copies of procurement documents, site photographs, site instructions, minutes of meetings, copy of contract agreement, payment certificates, record of force account and any other relevant documents Road Agencies shall submit to KRB copies of all signed contract documents for road works exceeding KES100million and bridges for amounts exceeding KES10million, or such other amounts as KRB may from time to time notify. Road Agencies shall submit to KRB quarterly progress reports for all projects for amounts exceeding KES100 million or such other amount as the Board may notify from time to time. Road Agencies shall also submit to KRB minutes of substantial completion inspection meeting and copies of handing over certificates for all projects for amounts exceeding KES 100 million.	
7.	Monitoring and Evaluation	Part VI of the regulations covers Monitoring and Evaluation	Every 6 months, the Board shall conduct technical, financial and performance audits of programmes it funds and implemented by Road Agencies.	

			The Board may also perform <i>ad hoc</i> technical, financial and performance audits from time to time. The Board shall notify a Road Agency of the intended audit two weeks in advance of the audit except in instances of a special or <i>ad hoc</i> audit, in which case the Board need not give notice. A notice of an intended audit shall be issued by the Board and shall specify the scope, objectives, basis, information required, audit checklist and audit programme. An auditor may call off or postpone an audit in case of: i) lack of cooperation from the implementing agency ii) failure of the implementing agency to provide documents and information iii) risks physical threats to the auditor iv) insecurity threatening the safety of the auditor v) absence of the relevant officer of the Road Agency to be audited. Failure by a Road Agency to comply with the Auditor's request, hindering an auditor from carrying out audits or gives false information to the auditor shall be deemed to be non-compliance with the terms and conditions upon which funds are disbursed A Road Agency is required to submit an action plan
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			for addressing issues raised in an audit report. The Board shall impose penalties on a Road Agency, which fails to implement audit recommendations satisfactorily.	
8.	Reporting	Part VII makes provision for reporting	Road Agencies and counties are required to prepare and submit quarterly APRP implementation reports together with supporting documents by the 20 th day after the end of each quarter. These reports must be approved by the Road Agency's Accounting Officer	
9.	Miscellaneous	Finally the Regulations make provision in its Part VIII for miscellaneous provisions	A person, public agency and or any other stakeholder aggrieved by any decision of the Board shall lodge a complaint, which shall be recorded in the Complaints Handling Register The Board shall establish a Complaint Management Committee who shall be the custodian of the Register Where a complaint has been admitted, or where the Committee has taken up a matter on its own initiative, the Executive Director may commission an investigation by an officer of KRB or any public office or investigation agency. Upon completion of the investigation the Committee shall prepare a report with recommendations and submit it to the Executive Director.	

3 IMPACT OF THE PROPOSED REGULATIONS

The main impact of the proposed Kenya Roads Board Regulations 2020 is their contribution to the attainment of Kenya's Vision 2030, which is anchored on three pillars namely, economic, social and political development. The economic pillar identifies key sectors for overall economic growth such as tourism, agriculture, wholesale and retail trade, business process offshoring, manufacturing and financial services. Infrastructural development is the principal factor in the exploitation of growth potential all the above-mentioned sectors. Kenya's road networks are a key element of infrastructural development, given that land freight and passenger traffic accounts for over 80% of road transport. Construction of roads is capital-intensive thus proper maintenance, management and rehabilitation is both logical and economically sensible.

Following comments on the proposed Kenya Roads Board Regulations 2020 from stakeholders, KRB will review the changes in terms of their advantages and disadvantages to Kenya. The cost-benefit analysis is a key step in evaluating the potential impacts on stakeholders and the economy.

3.1 COST-BENEFIT ANALYSIS

This section presents an analysis of the costs and benefits associated with the proposed Kenya Roads Board Regulations 2020. This includes a characterization of the potential benefits and a qualitative assessment of benefits (monetized where possible). The section will also identify the costs associated with the implementation of the proposed Regulations.

3.1.1 Benefits

The general benefits resulting from the proposed Kenya Roads Board Regulations 2020 are highlighted in Table 3.1 below.

Table 31: Characterization of Potential Benefits

Consistency and clarity in the law	
Aligning the road sector to provisions of the Constitution on devolved functions	Clarification of roles, mandates and functions of national government and county governments in the development, maintenance and rehabilitation of roads.
Streamlining procurement processes in Road Agencies to comply with existing law	Road Agencies will henceforth be required to comply with provisions of the Public Procurement Act 2015, and particularly s.3 (h) which emphasizes that the guiding principle in procuring works should be maximization of value for money

Clarity on conditions for approval and revision of Annual Roads Work Programme (ARWP)	Road Agencies will operate with clarity on the necessary steps to be undertaken in developing an ARWP, the types of information that should be included, how to conduct an Roads Inventory and Conditions Survey (RICs)
Increased Efficiency and Accountability in the Road Sector	
Timely absorption of Funds by Road Agencies	Introduction of sanctions for failure by Road Agencies to absorb funds and implement projects in a timely fashion and limiting carry over works allowable for each financial year to 20%
Supervision of works by qualified professionals and contractors	Regulations require that works be supervised by suitably qualified and adequate professionals which would enhance accountability in the quality of road works implemented including emergency works
Transparency and accountability in the use of Funds	The Regulations put in place requirements for Road Agencies to use funds from KRB in an accountable way and only for the

The following sections provide information on possible costs associated with the proposed legislation.

3.1.2 Compliance Costs

The proposed regulations may result in an increase in compliance costs for Road Agencies. These changes may occur in 'set-up' costs or in 'ongoing' costs associated with the changes.

Set-up or establishment costs will relate to the implementation of the legislation, such as new processes and updating systems that will be required when the legislation is implemented. These costs will fall to Road Agencies in the transition and implementation of the legislation.

The implementation of the proposed regulations will require stakeholders to familiarize themselves with the provisions of the regulation. Associated costs will also further include designing of implementation systems and developing and implementing staff-training and adapting to new internal process.

3.2 SOCIAL AND ECONOMIC IMPACTS

3.2.1 Social Impacts

Availability of serviceable roads has a direct impact on access to healthcare, markets and places of economic activity and social connectivity. Positive impacts may include urbanization of rural areas and opening them up for investment. There is potential for negative social impacts that may arise through the implementation of the road works, which may include disruption of livelihoods.

3.2.2 Economic Impacts

The construction, maintenance and rehabilitation of roads is likely to increase travel and tourism in the country. A good road network is likely to increase economic activity between regions in the country particularly through movement of goods and people.

The proposed regulations will have a further economic impact through indirect expenditures made by road construction businesses. The regulations make provision for regular repair and maintenance of roads. In order to undertake such activities the purchase of necessary equipment and machinery from manufacturers will be required. This will also further create demand for primary materials from other suppliers thus spurring sector-wide economic activity. Investment in road works will increase spending by inter-related industry and add to Kenya's national economic activity.

In the short, road infrastructure is crucial to achieving economic growth. The proposed Regulations seek to support the development, maintenance and rehabilitation of road infrastructure in Kenya, but to keep it in a state of good repair. Investments will generate jobs, increase the competitiveness of Kenyan businesses and lead to a significant injection of economic activity throughout the country.

In the long-term numerous sectors will benefit from improvements in the reliability and efficiency of water storage and harvesting systems.

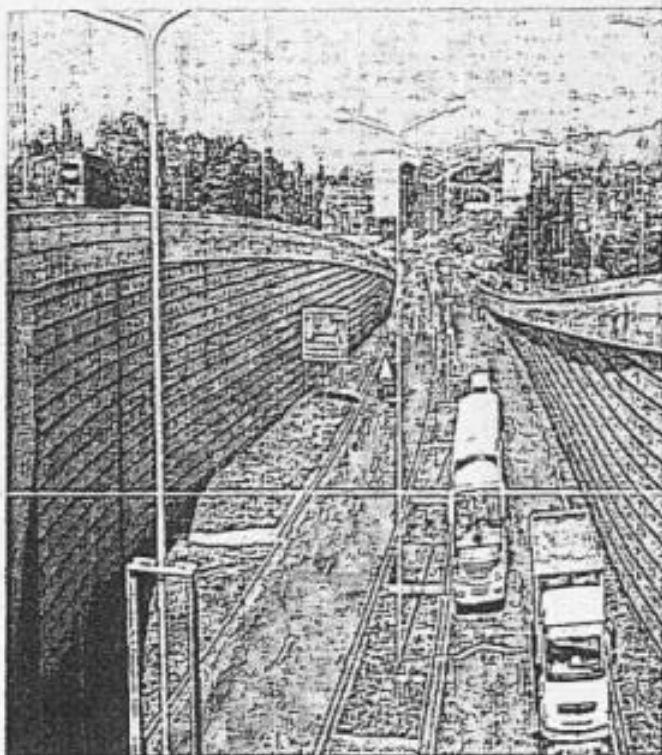
4. CONCLUSION

This Regulatory Impact Assessment supports the enactment of the proposed Kenya Roads Board Regulations 2020 as the most optional policy vehicle for the Ministry of Transport, Infrastructure, Housing and Urban development and Public works, through KRB to achieve the aim of improving and rationalizing decision-making and resource allocation for the roads sector in the country.



2019

CONSULTATIVE WORKSHOP REPORT



DEVELOPMENT
OF REGULATIONS
TO THE KENYA
ROADS BOARD
ACT, 1999

Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999, Radisson Blu Hotel, Upper Hill, Nairobi, 30th August 2019

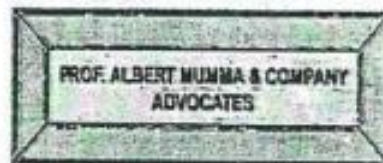
Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999 Report

About this publication:

This Report summarises the discussions and conclusions from the Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999 on the 30th August 2019. The workshop was jointly organised by the law firm of Prof. Albert Mumma and Company Advocates and the Kenya Roads Board (KRB). It took place at the Radisson Blu Hotel, in Upper Hill, Nairobi, Kenya.



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Disclaimer:

This Report summarises discussions held in a forum setting. The views expressed are those of the individual participants who took part.

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ABBREVIATIONS

ACRONYM	DESCRIPTION
APRP	Annual Public Roads Programme
ARICS	Annual Road Inventory and Condition Survey
ARWP	Annual Roads Work Programme
CARA	County Allocation of Revenue Act
CEC	County Executive Committee
CG	County Government
COK	Constitution of Kenya
CS	Cabinet Secretary
GOK	Government of Kenya
KRB	Kenya Roads Board
KRBF	Kenya Roads Board Fund
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Service
MTEF	Medium Term Expenditure Framework
MGE	Monitoring and Evaluation
RA	Road Agency
RIS	Regulatory Impact Statement
RMLF	Road Maintenance Levy Fund
RMS	Road Maintenance Management System
TOR	Terms of Reference

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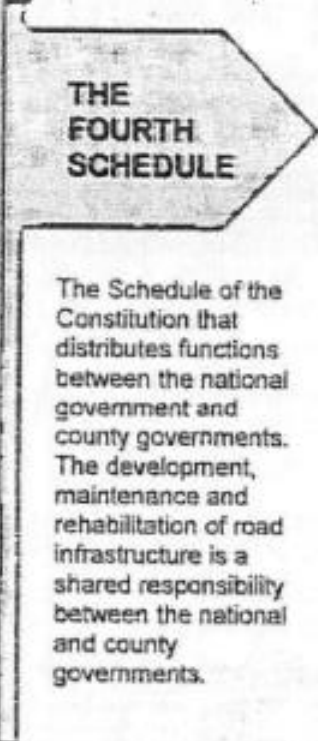
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1. INTRODUCTION

1.1 Background



THE FOURTH SCHEDULE

The Schedule of the Constitution that distributes functions between the national government and county governments. The development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

The Road Maintenance Levy Fund (RMLF) was established in 1993 through an Act of Parliament (Revised 1994.). The RMLF was primarily established for both routine and periodic maintenance of public roads. The Kenya Roads Board Act No. 7 of 1999 on its part establishes the Kenya Roads Board (KRB) as a statutory body to oversee the road network and coordinate the maintenance, rehabilitation and development funded by the Kenya Roads Board Fund (KRBF) and to advise the Cabinet Secretary (CS) on Transport & Infrastructure and on all matters related thereto. The Act empowers KRB to manage the KRBF financed primarily from the proceeds of the RMLF comprising the Fuel Levy and Transit Toll collections. The Act further designates the implementing agencies namely Kenya Rural Roads Authority (KeRRA), Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA) and Kenya Wildlife Service (KWS) to support the management and utilization of road funds.

Since the enactment of the KRB Act 1999 and the establishment of the RMLF, Kenya has undergone a number of key legislative changes that have implications for the road sector.

The promulgation of the Constitution of Kenya 2010 (COK 2010) has created two levels of government namely the national government and county governments. The Fourth Schedule of the COK 2010 distributes functions between the national government and county governments in recognition of the fact that the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments. In particular, the Fourth Schedule provides that the national government is tasked with the construction and operation of national trunk roads and the formulation of standards for the construction and maintenance of other roads by counties. On their part, the functions and powers of the county include county roads. The mandates and functions of county governments are prescribed for under the County Government Act 2012 (CGA).

Through the County Allocation of Revenue Act 2015 (CARA), Parliament has prescribed that fifteen per cent (15%) of the RMLF be allocated to County governments for the maintenance of county roads. In addition, Article 219 of the COK 2010 provides that 'a county's share of revenue raised by the national government shall be transferred to the county without undue and without deduction, except when the transfer has been stopped under the Article 225'. Other key legislative reforms also include the enactment of the Public Procurement and Disposal Act (Cap 412C) in 2005, the Finance Act 2009, the Public Finance and Management Act 2015 among other key legislative amendments.

It is within this legislative landscape that the KRB must exercise its mandates and functions as provided for by Section 6 of the KRB Act No. 7 of 1999.

1.2 Consultancy Objectives

For the effective operationalization of the KRB mandate, Section 37 of the KRB Act 1999 empowers KRB to make regulations with respect to any matter which is necessary for the better carrying out or giving effect to the functions of the Board as prescribed by the provisions of the Act. KRB thus seeks to introduce legislative reforms to facilitate among others, a further interpretation and full implementation of the KRB Act 1999. Consequently, KRB has engaged the Consultant in this assignment which involves the development of subsidiary legislation namely the Kenya Roads Board Regulations 2019.

The main aims of this subsidiary legislation will be to –

- (1) Provide further details and clarity on provisions which have been left open in the Kenya Roads Board Act No. 7, 1999; and
- (2) Fill existing gaps (if any) in the Draft regulations and the Technical, Financial and Performance Audit Manuals developed by management

In line with these overarching aims, the key deliverables for this consultancy include –

Key Deliverable 1 (KD-1) Review of the draft Regulations, Technical, Financial and Performance Audit Manuals among others developed by management against the mandate of KRB to ensure they are complete and if there are gaps to be identified and filled.

Key Deliverable 2 (KD-2): Conduct a research and benchmark with other local and international fund managers (Desk exercise) based on the literature available.

Key Deliverable 3 (KD-3): Facilitate engagement of Stakeholders in coming up with the Rules.

Key Deliverable 4 (KD-4): Draft the Rules as by law requires from (KT-1) above.

Key Deliverable 5 (KD-5): Conduct Stakeholder's Validation Workshops.

Key Deliverable 6 (KD-6): Conduct an impact assessment of the Rules on mandates of KRB and functions of Road Agencies or any other stakeholders and prepare a report.

To perform these tasks, the Consultant will conduct a desk review and diagnosis of the KRB Act 1999, the Draft Regulations prepared by KRB, the Technical, Performance and Financial Audit manuals among other key legislative frameworks and policy documents affecting the road sector, including benchmarking materials from local and international fund managers. In summary the analysis will involve an assessment of –

- Relevant literature and pertinent cases studies in the management and operation of road funds both locally and internationally;
- The legislative gaps in the Kenya Roads Board Act No. 7 1999 and a further identification of issues that require legislative clarity.

- Issues relating to the efficiency of the Kenya Roads Board Act No. 7 1999 including streamlining with the Constitution of Kenya 2010, the County Government Act 2012 among other key pieces of legislation affecting the road sector;
- Gaps in road sector guidelines in particular the technical, financial and audit manuals;
- Key policy documents in the road sector and infrastructure development; and
- Road sector and multi-sectoral implications of the proposed KRB Regulation 2019.

1.3 The Inception Meeting

Prior to the Consultative Workshop for the Development of Regulations to KRB Act, 1999, an inception meeting was held with the KRB team and the Consultant in which the terms of reference (TOR), the approach & methodology, key staff, key deliverables, contract price and payment schedule with regard to the assignment were discussed. Specific details regarding the assignment are provided for in the *Inception Report*.

1.4 Consultative Workshop for the Development of Regulations to KRB Act, 1999

In keeping with the constitutional requirement regarding public participation, a Consultative Workshop with representatives from KRB, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the designated Road Agencies (RAs), was held on the 30th August 2019 at Radisson Blu Hotel, in Upper Hill, Nairobi.

The primary goal of this stakeholder engagement was to inform and present to this targeted section of road sector stakeholders the aims of the proposed subsidiary legislation. The Consultative Workshop further sought to provoke reflection and critical evaluation of key challenges within the road sector. Moreover, the Workshop sought to inspire and motivate the attendees to share knowledge, collaborate and to help in the development of the subsidiary legislation.

The workshop began at 9.41am with an opening prayer. The attendees introduced themselves and thereafter opening remarks were proffered by Ms Lucy Gathika, the General Manager Legal & Corporate Affairs.

Ms Lucy Gathika officially opened the session by welcoming those in attendance. She thanked the representatives of the KRB, the Ministry and the RAs for their presence at the venue and highlighted the importance of the Consultative Workshop. The General Manager of Legal & Corporate Affairs further conveyed that the views of the issues from the perspective of the implementers was critical to the development of effective regulations.

Ms Lucy Gathika also highlighted a number of salient issues –

- The funding capabilities of the KRB: collections into the RMLF totalled 70 Billion Kenya Shillings.
- The development of rules to enhance the management of the fuel levy.

- How the interface between the roles of national and county governments can be addressed.
- The expectations of Kenyans for the efficient management of the fund.
- The need to give value to the public and improving Kenyan's livelihoods through a credible, efficient and reliable fund.
- The willingness of Kenyans to pay more for public services that are efficient and not wasteful.
- The need to have rules and regulations that will guide the KRB and the road sector stakeholders.

Following the opening remarks, Ms Lucy Gathika introduced the Lead Consultant and Legal Specialist for the assignment, Prof. Albert Mumma to (1) commence his presentation, (2) to further facilitate the presentations to be made by members of the KRB Team and (3) to guide the ensuing plenary discussions.

This report provides a detailed summary of the Consultative Workshop with KRB, the Ministry, and the designated RAs. It provides an overview of the Consultation objectives, highlights the major discussion points as well as detailing the feedback and recommendations following from the discussion.

2. CONSULTATIVE WORKSHOP OBJECTIVES

Public Participation is a crucial and imperative component of the legislative process. The primary purpose of the *Consultative Workshop for the Development of Regulations to KRB Act, 1999* is to facilitate the drafting of the Kenya Roads Board Regulations 2019 from the recommendations, endorsements and general views of the relevant stakeholders within the road sector. Figure 1 below highlights the key objectives of the *Consultative Workshop for the Development of Regulations to KRB Act, 1999*: -

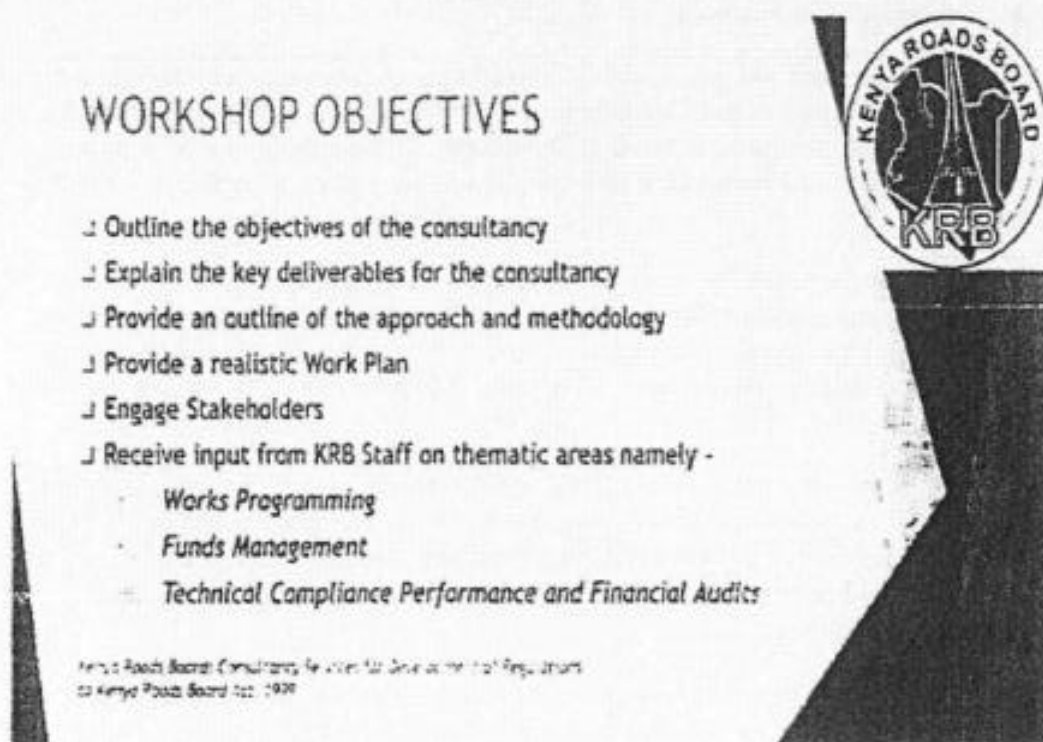


Figure 1: Objectives of the Workshop

3. STRUCTURE OF THE PRESENTATION

The figure below illustrating the Consultant's stakeholder engagement strategy to inform the drafting of the Subsidiary legislation was designed to attain meaningful participation and involvement that would enable the road sector stakeholders to actively contribute to the discussion and the development of ideas and expose relevant issues that need to be addressed in the subsidiary legislation.

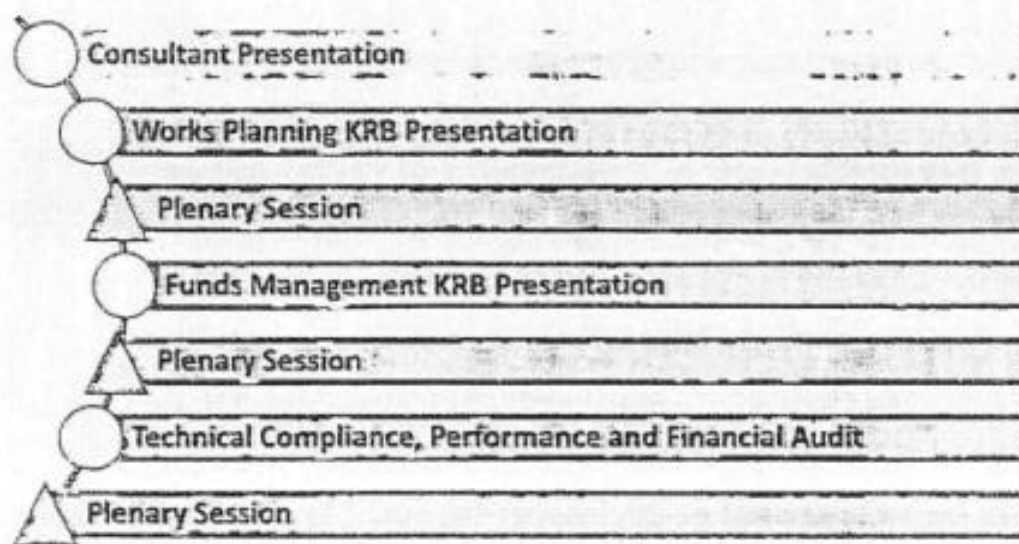


Figure 2: Structure of the Presentation

Consultant's Presentation: The purpose of the Consultant's presentation was to guide the road sector stakeholders in attendance through the legislative process and the requirements for the assignment. This exercise enabled the stakeholder to familiarize themselves with the objectives of the assignment, including the approach and methodology, work plan, deliverables and the key staff undertaking the assignment.

Works Planning Presentation: The purpose of the KRB presentation related to Works Planning was to inform the road sector attendees of the APRP Planning & Reporting Cycle, the Assessment of Road Maintenance Needs, the Prioritization of Road Maintenance Works, the Guidelines for ARWP Preparation & Submission, the Implementation Reporting & Monitoring of APRP, the Web-based Road Management System and Future Directions.

Funds Management Presentation: The purpose of the KRB presentation related to Funds Management was to guide the road sector stakeholders through the procedures governing the management of the KRBF. These included but were not limited to the deposits and payments from bank accounts, annual estimates and budget ceilings, the disbursement program, conditions for the release of funds to road agencies, among other issues.

Technical Compliance, Performance and Financial Audits Presentation: The purpose of the KRB presentation was to inform the attendees on the guidelines followed by KRB auditors engaged in technical, financial and performance audits of road works activities. The attendees were informed of the

audit methodology in general, namely the audit considerations and the procedure followed. Moreover, the attendees were exposed to proposed regulations to govern technical, financial and performance audits.

Plenary Sessions: The floor was opened to plenary discussions facilitated by the Consultant after each of the KRB team presentations. These plenary sessions provided the road sector stakeholders in attendance an opportunity to focus attention and deliberate on the prevailing issues within the sector. The participants were able to question and seek clarification on issues that were unclear and to submit detailed views and proposals on areas that the subsidiary legislation should address. The plenary session enabled the road sector stakeholders to make additional inputs, comments and ask the KRB Team further questions for better clarity. The KRB Team then responded to questions, comments and suggestions raised by the attendees.

The Programme for the Consultative Workshop for the Development of Regulations to KRB Act, 1999, showing how the Workshop was structured is attached as **Annex I**.

4. CONSULTATIVE WORKSHOP PRESENTATIONS

The presentations made by the Consultant and the KRB Team covered the following

- (1) *Objectives of the Consultancy and the Consultative Workshop* - Consultant
- (2) *Works Planning* – KRB Team
- (3) *Funds Management* – KRB Team
- (4) *Technical Compliance, Performance and Financial Audits* – KRB Team

Each of the presentations by the KRB Team was followed by a Plenary Session. The mode of presentation was to further aid the road sector stakeholders to deal with the crucial and substantive details to be addressed in the proposed Regulations. The views of these participants was to be exposed in the open and interactive plenary for deliberation.

4.1 OBJECTIVES OF THE CONSULTANCY AND THE CONSULTATIVE WORKSHOP

The introductory presentation made by Prof. Albert Muma provided a brief background of the consultancy, which is clustered into six (6) Key deliverables. The Consultant highlighted the aims and objectives of the consultancy and discussed the process of the development of subsidiary legislation.

The Consultant addressed the legal requirements imposed by the Statutory Instruments Act 2013 which is a Parliamentary Act providing for the making, scrutiny, publication and operation of statutory instruments and other connected matters.

The Consultant reiterated that as a requirement imposed by the Statutory Instruments Act 2013, the process of making rules must be a consultative process involving stakeholder engagement and public participation. The importance of this requirement was highlighted in light of the fact that the proposed KRB Regulations are likely to have a direct or substantially indirect effect on business. Moreover, it was stressed that the consultation process would be imperative to draw knowledge from the road sector

experts and later ensure that persons likely to be affected by the proposed KRB Regulations will have an adequate opportunity to comment on the proposed content. Given that the new constitutional dispensation has led to devolved functions thus placing the mandate on County roads on to the respective 47 Counties, the Consultant aptly submitted that the inclusion of the County Governments (CGs) in the process is integral to satisfying the requirement on public participation imposed by the Statutory Instruments Act 2013. The Consultant also pointed out the legal requirement to prepare Regulatory Impact Statements (RIS) due to the fact that the proposed KRB regulations are likely to impose significant costs on the community or part of the community. These costs may be monetary but may also include environmental, social and cultural impacts.

The Consultant proceeded to identify the key legislation and road sector guidelines, manuals and subsidiary legislation to be reviewed to inform the drafting of the regulations. A non-exhaustive list of the key instruments for review is shown in Figure 3 below.

Inventory of Key Legislation, Policies and other materials	
Legislation	
1.	The Constitution of Kenya, 2010
2.	Kenya Roads Act 2007
3.	Kenya Roads Board Act No. 7 1999
4.	Kenya Roads Bill 2017
5.	County Government Act 2012
6.	County Allocation of Revenue Act 2015
7.	Public Finance Management Act 2015
Road Sector Guidelines, Manuals and Draft Subsidiary Legislation	
8.	Technical Financial and Performance Audit Manual
9.	Annual Public Roads Programme Planning and Reporting Manual
10.	Draft Kenya Roads Board Rules, Regulations Procedures and Guidelines February 2018



Figure 3: Inventory of Key legislation, Policies and Other Materials

Moreover in order to fulfil Key Task 1 (KT-1) of the assignment, the Consultant submitted that a review of key policy documents affecting the road sector is necessary to inform the development of the regulations. In addition, in order to meet the deliverable in Key Task 2 (KT-2), a review of the literature addressing experiences of both local and international fund managers would be important in order to bench mark best practices. A sample of the key policy documents and the literature identified by the Consultant is shown in Figure 4 below. *N.B. The list is not exhaustive.*

Inventory of Key Legislation, Policies and other materials cont'd

Key Documents	
11.	Kenya Vision 2030
12.	Road Sector Policy 2016
13.	Ministry of Transport Infrastructure Housing Urban Development and Public Works Draft Strategic Plan 2018 - 2022
14.	Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020
15.	Sessional Paper of 2006 on The Development and Management of the Roads Sub-Sector for Sustainable Economic Growth
16.	Sessional Paper No. 9 of 2012 on The National Industrialization Policy Framework For Kenya 2012 - 2030.
17.	Integrated National Transport Policy: Moving a Working Nation 2009
Other References	
18.	Transportation and Communications Bulletin for Asia and the Pacific No. 73 "Roads Board Nepal: A Sustainable Approach to Road Maintenance Management"
19.	Transport and Communications Bulletin for Asia and the Pacific, No. 86 "Sustainable Rural Access"
20.	Transport and Communications Bulletin for Asia and the Pacific, No. 88 "Intelligent Transport Systems"
21.	The Law Library of Congress, Global Legal Research Centre "National Funding of Road Infrastructure" (March 2014)
22.	World Bank Technical Report - Management and Financing of Roads An Agenda for Reform
23.	UNF Paper on Policy Analysis and Assessment: "Dedicated Road Funds: A Preliminary View on a World Bank Initiative"
24.	Involvement of Road Users in the Management of Roads, Public Private Partnerships - The Zambia Roads Board Experience

Figure 4: Key Policies and Other Literature

The Consultant further addressed the approach and methodology to be followed in the development of the regulations. Figure 5 below summarizes the phases to be undertaken by the consultant.

APPROACH AND METHODOLOGY

- The specific methodology is split in four phases namely:

PHASE 1: Project Planning, initiation and mobilization;

PHASE 2: Development of an assessment toolkit & Comparative analysis and status review of the draft regulations, Technical Compliance Manual, Planning manual, & Finance manual, research & Bench mark with local & international fund managers, and engagement of Stake Holders.

PHASE 3: Drafting of Rules & Regulations regulatory impact assessment and thereafter validation by Stakeholders

PHASE 4: Revision and submission of Final Report

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



Figure 5: Approach and Methodology

The Consultant concluded by summarizing the Work Plan and the roles of the members of the consulting team. The Consultant's full Presentation is attached in Annex II.

4.2 KRB PRESENTATIONS and PLENARY SESSIONS

Following the Consultant's Presentation, Prof. Albert Mumma invited members of the KRB Team to conduct their presentations. These presentations addressed certain key areas namely –

- i. Works Planning
- ii. Funds Management
- iii. Technical Compliance, Performance and Financial Audits

At the end of each of the presentations, a plenary session moderated by Prof. Albert Mumma was held. The following sections of this report address these presentations and discussions.

4.2.1 WORKS PLANNING

Eng. Margaret Ogai began the presentation on Works Planning by stating that the Kenyan roads network is an important asset and is one of the biggest in the region. She cited that Kenya Vision 2030 recognizes that roads are an enabler. Moreover, roads contribute to sustained economic development and enhance productivity and competitiveness by lowering transport costs.

Eng. Margaret Ogai remarked on the following areas:

ITEM	PRESENTATION
Road Management Systems (RMS)	➤ Requirement for standards and procedures for processes
Mandates of various agencies	➤ State Dept. of Infrastructure in MoTIHOD & PW - Policy formulation, oversight & coordination; Setting standards ➤ KRB - Managing Road Maintenance funds (RMLF, transit tolls), Coordination of maintenance programs, Technical & Financial audits ➤ RAs - Management, development, rehabilitation and maintenance of National Trunk Roads (39,996km) ➤ CGs - Management, development, rehabilitation and maintenance of County Roads (121,456km) ➤ Departments in Ministry - Provision of equipment (Mechanical & Transport Dept.), materials testing and research (Materials Testing & Research Dept.), provide technical training (Kenya Institute of Highways & Building Technology)
Importance of Road Maintenance	➤ Roads deteriorate over time; require regular maintenance. Reinstatement is 3 or more times the cost of regular maintenance. The benefits of road maintenance include: ➤ Providing road users with an acceptable level of service by addressing defects promptly; ➤ Preserving the huge investment made over the years in the road network; ➤ Minimizing the life cycle road development and maintenance costs; ➤ Minimizing road user costs - vehicle operating costs, associated travel time costs, road accident costs, harmful emissions); ➤ Enhancing road user safety.
APRP Reporting Cycle	➤ Ceiling given to RAs ➤ RAs required to prepare surveys of maintenance requirements ➤ Not enough consultations with the counties

	> Revision of work plans – lack of formalized cycle and need for more synchronicity > Revisions should be justified - Some reasons include: > Change in the scope of works > Some roads in the annual work plan having been planned by other road agencies > Significant variation between planned costs and procured costs of works resulting in budget deficits or savings. Etc.
ARICS	> Standardization of procedures is required > KeNHA is implementing best practices > Assessment of Road Maintenance Needs Rating Procedure is outlined in the APRP Manual
Prioritization	> Mandates of the RAs are preservation, restoration, improvement and development > Restoration is a prevailing issue and there is conflict between prioritizing preservation > Maintenance is a high priority
ARWP	> Need for clarity as to which section of road is being addressed (geo-data referencing) > The road register helps to avoid duplication and overlaps > Activity code is also important for standardization
Prevailing and emerging issues	> Overlapping mandates between RAs and counties > Technical capacity issues at the county level > Carry over works and carry over monies > Road Register > Regulations should address – > M&E framework > Employment and gender related issues > Road safety > Training and Capacity building > HIV/AIDS Awareness

Table 1: Summary of Presentation on Work Planning

The full KRB presentation by Eng. Margaret Ogai on Work Planning is herewith attached in Annex III.

Eng. Margaret Ogai presentation on Work Planning was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 2 below illustrates the general comments and proposals made by the participants:-

Question/Comment by Participants
> Life cycle costs of related infrastructure (access roads criteria required) > Assignment of roads to RAs needs clarity > 10% allocation to KWS is not sufficient particularly in regards to trunk roads > There is an overlap in mandates between KWS and other RAs (access roads) > Deterioration and Rehabilitation period should be addressed

➤ Area abutting the road corridor has been neglected.
➤ Road side development needs to be controlled (too many bumps)
➤ M&E is important and should be continuous throughout the development process
➤ Upscale monitoring to more periodic intervals
➤ Interventions during implementation should be done when results are not being met
➤ More accuracy is required with regards to conditions of paved and unpaved roads (better system for determining deteriorating conditions)
➤ There is need for stricter interrogation of RAs work plans
Response by Eng. Margaret Ogai
➤ Detailed information on criteria is available
➤ Purposing to move forward on M&E and strengthening the procedure
➤ The views on classification of roads is taken on board. A number of RAs took part in a consultative process on classification and reclassification
➤ There are no limitations on Work Plans. KRB will give guidance on corridor management and road side management
➤ The percentage on allocation of funds is a policy issue
➤ There is need for the development of roads but the focus should be on maintenance of road infrastructure.
➤ Long road maintenance regime is necessary

Table 2: Plenary on Work Planning

4.2.2 FUNDS MANAGEMENT

CPA Margaret Muinde presided over the presentation on Funds Management. The presentation covered the proposed KRB (Road Fund Management) Rules and Regulations financial provisions and administration. CPA Margaret Muinde remarked on the following areas -

ITEM	PRESENTATION
Opening Bank Accounts	➤ Requirement for RAs to open bank accounts ➤ Penalty for RAs failure to open a bank account ➤ Bank accounts to be opened, operated and closed with KRB and National Treasury authorization
Deposits and Payments from Bank Accounts	➤ Receipts from Fund to be deposited in RAs RMLF bank account ➤ Mode of Payment: instructions, cheque, electronic or fund transfer
Annual estimates and budget ceilings	➤ KRB to prepare annual revenue projections (3 year forward basis) and submit to National treasury

	> KRB to give RAs budgetary ceilings for the following year and request preparation for ARP > RAs within 3 months before beginning of financial year to submit annual expenditure projections on a month to month basis to KRB
Disbursement Program	> KRB to indicate to RAs at the beginning of each financial year monthly cash flows > KRB to monitor receipt of funds from RMLF and allocate each tranche to respective RA in accordance with the disbursement program provided that RA is in compliance with KRB requirements
Release of Funds by KRB and RAs	> KRB to release to compliant RAs in accordance with disbursement schedule and within 30 days from the date following the end of the month > KRB may withhold disbursements if RA is not in compliance with KRB rules, regulations, procedures and guidelines > KRB may partially release funds (not more than 30%) if the ARWP for RA is yet to be approved at the beginning of the financial year.
Conditions for Release of funds	> Submission of quarterly and annual progress/expenditure reports as required by KRB in accordance with Clause 65 of these Regulations. > An ARWP duly approved by KRB. > Responses to all audit queries in accordance with Clause 63 of these Regulations. > An RA has failed to comply with Section 19 (2) of the Act
Expenditure	> Reallocation of funds for works: RAs shall not apply the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of KRB > Authority to incur expenditure: Only the accounting officer to whom the 'Authority to Incur Expenditure' has been issued (in whatever form) is permitted to commit or incur expenditure against that RA.
Savings and Earnings	> Where an RA has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. > RAs to submit a work plan for the savings and or interest earnings to KRB before spending.
Carry Over Funds	> Carry-over funds – bank balances for financial year can be retained for use in the following year > The carry over funds and associated road works to be included in the ARWP for the following year
Maintenance of Cash Books	> RAs to maintain cash book of KRB > RAs to maintain registers and records of bank accounts, cash books and imprest

Annual Reports and Financial Statements	➤ Accounting officer to prepare annual reports and financial statements ➤ RAs within six months of the end of financial year to submit to KRB audited accounts
Sanctions and Penalties	➤ Failure to abide by KRB Act and rules amounts to non-compliance ➤ KRB may – i. Suspend funding to RA ii. Appoint another RA and release funds allocated to it for the works that were to be carried out by non-compliant RA to newly appointed RA iii. Institute measures to recover amounts misappropriated by public officer ➤ Take legal action against the officer
Challenges	➤ Overreliance on the RMLF ➤ Inadequate funds ➤ Identification of tangible outputs ➤ Prioritization criteria is necessary

Table 3: Summary of Presentation on Funds Management

The full KRB presentation by CPA Margaret Muinde on *Funds Management* is herewith attached in Annex IV.

CPA Margaret Muinde on *Funds Management* was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 4 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	Response
➤ Salaries and Wages: current practice on cap depends on the agency ➤ Percentage should be increased to accommodate technical capacity	• What is ideal for the sector? PFM Act stipulates the cap. Sector should come up with guidelines. • Percentages are based on overall fund
➤ Clarification – the percentage refers to the fund	
➤ Distribution to counties where the authorities have changed - how will this particular issue be addressed? ➤ Will this be through amendment or through the regulations?	➤ County Allocation – amended by County Revenue Allocation Act (KeRA and KURA are the principal agencies affected)
➤ Administration and operational expenses do not only include salaries and wages	➤ Administrative expenses: 5% of the allocation to be made RAs ➤ Clarification from the Office of the Attorney General that it is 5% from total fund

➤ Regulations should be made regarding excess allocations	➤ Excess collection: interest earned forms part of the fund. Amounts over the budget are transferable to the following financial year
➤ PBC projects are a grey area as to what can be termed as a 'saving'	➤ PBC – can be dealt with on the rules on savings
➤ Regulations should address KWS	
➤ There is need for realignment with other key legislation such as the Wildlife Management and Conservation Act	

Table 4:: Plenary on Funds Management

4.2.3 TECHNICAL COMPLIANCE, PERFORMANCE AND FINANCIAL AUDITS

The presentation on Technical Compliance, Performance and Financial Audits by Eng. David Orwenyo included an overview of the mandate for audits, the purpose of KRB Audits, Types of Audits and proposed regulations to govern technical compliance, performance and financial audits. Eng. David Orwenyo remarked on the following areas -

Item	Presentation
Mandate for Audit	➤ Clause 6(2)(g) KRB Act mandates KRB to monitor and evaluate by means of technical, financial and performance audits the delivery of goods, works and services funded by the fund ➤ Clause 26(1) provides that KRB will direct an inspector to regularly perform audits of any RA
Purpose of Audits	➤ To independently verify that proceeds from the KRF have been applied to the purpose for which they were intended and that the use of such resources is economical, efficient and effective to achieve value for money. ➤ The application of these funds should also be efficient, transparent and in accordance with the principles, procedures and requirements of KRB and sound professional practice. ➤ ARICS are required of all RAs
Types of Audits	➤ Technical Audit: Evaluates the programming, planning and delivery of works undertaken by RAs /CGs. It is a step by step assessment of road mice and development efforts / activities to determine the level of economy, efficiency and effectiveness. ➤ Financial Audit: This is the review of accounting records, internal control systems and applicable laws and regulations with the sole purpose of providing an assurance on the application of funds and that proper books of accounts have been maintained. Financial audits should be effectively addressed in the financial provisions of the regulations.

	> Performance Audit: Systematic process to obtain and evaluate evidence objectively, to be able to give performance appraisal of economy and operation effectiveness. Performance audits should be undertaken in terms of the 3 'E's'. > Procurement Audit: An independent review and systematic examination of the procurement and disposal process to determine whether management practices, systems and controls result in goods, works and services being acquired is in accordance with the Constitution and the PP&AD Act, regulations and other guidelines. > Environmental and Social Audits: The ESMP is a process guided by regulations for assessing the potential environmental and social impacts of proposed projects, evaluating alternatives and designing appropriate mitigation and monitoring measures. These should encompass issues such as HIWAIDS awareness, gender issues etc. > Road Safety Audit: A road safety is defined as a formal road safety performance examination of an existing or future road by an independent multidisciplinary team. It qualitatively estimates and reports on potential road safety issues and identifies opportunities for improvements in safety for all road users' in particular vulnerable road users. This is an important role for the RAs.
Areas to be considered in the Proposed Regulations	> Implementation of Works: efficient and effective delivery of road works > Supervision of works > Monitoring and Evaluation > Procurement guidelines > Provisions of specifications > Record keeping > Criteria for road works contractors > Sanctions and penalties for providing fraudulent or misleading information etc.

Table 5: Summary of Presentation on Technical Compliance, Financial and Performance Audits

The full presentation of the Technical Compliance, Financial and Performance Audit is herewith attached in Annex V.

The presentation of the Technical Compliance, Financial and Performance Audit by Eng. David Orwenyo was followed by a plenary session in which comments, suggestions and recommendations were invited from the participants. Table 6 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	
> Legal Compliance audit has not been addressed	• This is currently not part of the process

➤ Lack of consistency in the auditing function due to outsourcing – there is need for standardization	• Auditing process depends on the information that is available • TORs detail approach to the audit
➤ Need for expansion of scope to include procurement audits	•
Further Comments by Participants	
➤ Regulations should be informed by the current reports ➤ Section 37 on penalties is ineffective ➤ KRB needs to be empowered	

Table 5: Plenary on Technical Compliance, Financial and Performance Audit

4.3 General Commentary on the Consultative Workshop

The Presentation to the road exhaustively presented to this particular group of stakeholders the key elements to be addressed in the proposed subsidiary legislation to support KRB further implement the KRB Act 1999.

Way Forward: KRB and the Consultant team welcomes the comments received and will continue to engage road sector stakeholders. The participants were informed that their participation is a part of the ongoing process for the development of the proposed Kenya Roads Board Regulations.

It has been acknowledged that some of the issues raised and which may not be provided for in the subsidiary legislation will form important recommendations for legislative amendments.

5. Annexes

Annex I: Consultative Workshop for the Development of Regulations to KRB Act, 1999 Programme



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA ROADS BOARD ACT, 1999

30th AUGUST 2019, RADISSON BLU HOTEL UPPER HILL, NAIROBI

PROGRAMME

TIME	ACTIVITY	FACILITATOR
8.00 – 8.15 A.M.	Arrival & Registration	KRB Team
8.15 – 8.30 A.M.	Opening Prayers & Introduction	KRB Team
8.30 – 8.45 A.M.	Opening Remarks	Ms. Lucy Gathika General Manager Legal & Corporate Affairs
8.45 – 9.00 A.M.	Objectives of the Workshop	Prof. Albert Mumma
9.00– 10.00 A.M.	Works Planning	Eng. Margaret Ogai General Manager Planning & Programming
10.00-10.15 A.M.	Plenary	Prof. Albert Mumma
10.20 – 11.00 A.M.	HEALTH BREAK	KRB Team
11.00-12:00 P.M.	Funds Management	CPA Margaret Muinde Financial Controller
12.00-12.15 P.M.	Plenary	Prof. Albert Mumma
12.15-1.00 P.M.	Technical Compliance Performance and Financial Audits	Eng. David Orwenyo General Manager, Technical Compliance
1.00-1.15 P.M.	Plenary	Prof. Albert Mumma
1.15P.M.	Closing Remarks	Ms. Lucy Gathika General Manager Legal & Corporate Affairs
1.30 P.M.	LUNCH	

INTRODUCTION

- ▶ Infrastructural development is the principal factor in the exploitation of the growth potential in numerous sectors. Kenya's road networks are a key element of infrastructural development.
- ▶ The Kenya Roads Board Act No. 7 of 1999 establishes the Kenya Roads Board (KRB) as a statutory body to oversee the road network and coordinate the maintenance, rehabilitation and development funded by the fund and to advise the Cabinet Secretary on Transport & Infrastructure on all matters related thereto. The Act designates road agencies to support the management and utilization of road funds.
- ▶ Successful road fund initiatives are dependent on effective road agencies. Therefore they must be supported by rules and procedures that govern proper financial management systems, timely funding, financial discipline, sound procurement systems and procedures among others.

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



WORKSHOP OBJECTIVES

- Outline the objectives of the consultancy
- Explain the key deliverables for the consultancy
- Provide an outline of the approach and methodology
- Provide a realistic Work Plan
- Engage Stakeholders
- Receive input from KRB Staff on thematic areas namely -
 - i. *Works Programming*
 - ii. *Funds Management*
 - iii. *Technical Compliance Performance and Financial Audits*

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



Annex II: Consultant's PowerPoint Presentation

Development of Regulations to strengthen the capacity of the Kenya Roads Board to Discharge its Mandate Under the Kenya Roads Board Act, 1999

CONSULTATION WORKSHOP

**RADISSON BLU, UPPER HILL NAIROBI
30th AUGUST 2019**

KENYA ROADS BOARD

**Presented by
PROF. ALBERT MUMMA & COMPANY ADVOCATES**



Presentation

- 1. INTRODUCTION**
- 2. OBJECTIVES OF THE WORKSHOP**
- 3. SCOPE OF THE ASSIGNMENT**
 - ☐ Aims and Objectives
 - ☐ The Key Deliverables
- 4. APPROACH & METHODOLOGY**
- 5. WORK PLAN**
- 6. PROJECT TEAM AND ASSIGNED TASKS**
- 7. KRB STAFF PRESENTATION**

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



SCOPE OF THE ASSIGNMENT

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



1. AIMS AND OBJECTIVES

- ▶ Section 6 of the Kenya Roads Board Act No. 7 of 1999 outlines the mandate and functions of KRB. Section 37 of the Act empowers KRB to make rules for the better carrying out of its functions.
- ▶ To fully operationalize the Act, KRB is required to develop rules.
- ▶ KRB has procured the services of the Consultant in order to facilitate the development of rules as envisioned in the Act and in line with the Constitution.

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



The Kenya Roads Board Regulations

► The main aims of this subsidiary legislation will be to:

1. Provide further details and clarity on provisions which have been left open or omitted entirely in the Kenya Roads Board Act No. 7, 1999; and
2. Fill in existing gaps in the draft regulations and as well as identify any gaps relating to the Technical, Financial and Performance Audit Manuals that need to be filled.

Kenya Roads Board Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



2. KEY DELIVERABLES

Key Task	Deliverable
KT-1	Review the draft Regulations, Technical Compliance Manual, Planning Manual, Financial Manual among others developed by management against the mandate of KRB to ensure they are complete and if there are gaps to be identified and filled.
KT-2	Conduct a research and benchmark with other local and international fund managers (Desk exercise) based on the literature available.
KT-3	Facilitate engagement of Stakeholders in coming up with the Rules.
KT-4	Draft the Rules as by law requires from (KT-1) above.
KT-5	Conduct Stakeholder's Validation Workshops.
KT-6	Conduct an Impact assessment of the Rules on mandates of KRB and functions of Road Agencies or any other stakeholders and prepare a report.
KT-7	Present Draft final rules to the Board of Directors and submit final rules to the Executive Director.

Kenya Roads Board Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



Inventory of Key Legislation, Policies and other materials

Legislation	
1.	The Constitution of Kenya, 2010
2.	Kenya Roads Act 2007
3.	Kenya Roads Board Act No. 7 1999
4.	Kenya Roads Bill 2017
5.	County Government Act 2012
6.	County Allocation of Revenue Act 2015
7.	Public Finance Management Act 2015
Road Sector Guidelines, Manuals and Draft Subsidiary Legislation	
8.	Technical Financial and Performance Audit Manual
9.	Annual Public Roads Programme Planning and Reporting Manual
10.	Draft Kenya Roads Board Rules, Regulations Procedures and Guidelines February 2018



Inventory of Key Legislation, Policies and other materials cont'd

Key Policy Documents	
11.	Kenya Vision 2030
12.	Road Sector Policy 2016
13.	Ministry of Transport Infrastructure Housing Urban Development and Public Works Draft Strategic Plan 2018 - 2022
14.	Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020
15.	Sessional Paper of 2006 on The Development and Management of the Roads Sub-Sector for Sustainable Economic Growth
16.	Sessional Paper No. 9 of 2012 on The National Industrialization Policy Framework For Kenya 2012 - 2030.
17.	Integrated National Transport Policy: Moving a Working Nation 2009
Other Materials	
18.	Transportation and Communications Bulletin for Asia and the Pacific No. 75 "Roads Board Nepal: A Sustainable Approach to Road Maintenance Management"
19.	Transport and Communications Bulletin for Asia and the Pacific, No. 86 "Sustainable Rural Access"
20.	Transport and Communications Bulletin for Asia and the Pacific, No. 88 "Intelligent Transport Systems"
21.	The Law Library of Congress, Global Legal Research Centre "National Funding of Road Infrastructure" (March 2014)
22.	World Bank Technical Report - Management and Financing of Roads An Agenda for Reform
23.	WFP Paper on Policy Analysis and Assessment: 'Dedicated Road Funds: A Preliminary View on a World Bank Initiative'
24.	Involvement of Road Users in the Management of Roads, Public Private Partnerships - The Zambia Roads Board Experience

Inventory of Key Legislation, Policies and other materials cont'd

1. Financing of Road Maintenance in Sub-Saharan Africa - Reforms and progress towards second generation road funds (Discussion Paper No. 6 Road Management and Financing Series - RMAF Series)
2. Conference of European Directors of Roads - Funding formulas for roads: Inventory and assessment (March 2017)
3. The World Bank and Economic Commission for Africa - A Review of Road Sector Reforms in Tanzania (Sub-Saharan Africa Transport Policy Program - SSATP Discussion Paper No. 2)
4. Management of New Zealand National Road Fund (Paper Presented to Philippines Country Level Workshop on Institutional Development for the Maintenance of National Road Networks).
5. Private Sector Involvement in Road Financing (SSATP Working Paper No. 102)
6. World Bank Report - Maintaining Road Assets: A fresh look at the World Bank's 1988 Policy Paper "Road Deterioration in Developing Countries"
7. Economic Growth through Effective Road Asset Management (Paper by Robert Geddes and Kingsstone Gonyera Presented at the International Conference on Transport and Road Research March 2016, Mombasa)

N.B. the above list is not exhaustive

Kenya Roads Board, Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



APPROACH AND METHODOLOGY

- The specific methodology is split in four phases namely:

PHASE 1: Project Planning, initiation and mobilization;

PHASE 2: Development of an assessment toolkit & Comparative analysis and status review of the draft regulations, Technical Compliance Manual, Planning manual, & Finance manual, research & Bench mark with local & international fund managers, and engagement of Stake Holders.

PHASE 3: Drafting of Rules & Regulations regulatory impact assessment and thereafter validation by Stakeholders

PHASE 4: Revision and submission of Final Report

Kenya Roads Board, Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



WORK PLAN

Twelve (12) months												
	1 st month	2 nd month	3 rd month	4 th month	5 th month	6 th month	7 th month	8 th month	9 th month	10 th month	11 th month	12 th month
Project Planning, Initiation and Mobilisation Delivery of Inception report												
Client Feedback and agreement on inception Report												
1. Development of toolkit & Comparative analysis and status review of the draft regulations and materials. 2. Research & Bench mark locally & internationally 3. Engagement of Stake Holders.												
Development of the Draft Rules & Regulations												
Preparation of regulatory impact assessment report												
Stakeholder workshops												
Revision and Submission of Final Report												

PROJECT TEAM AND ASSIGNED TASKS

PROF. ALBERT MUMBA	Lead	- Lead consultant for the consultancy. - Conceptualizing, drafting and designing Subsidary Legislation for the consultancy
	Advocate/ Team Leader	- Drafting Regulatory Impact Statements (RIS) for subsidiary legislation for the Water Act 2016. - Drafting of the inception report, progress report, stakeholders workshop report and final report. - Providing directional leadership in the collection and compilation of data from research. - Compiling final legal research material. - Lead counsel engaging stake holders. - Lead draftsman of the draft rules and regulations. - Coordination with senior stakeholders throughout the drafting process - Audit and review of legal documents. - Submission of the final rules and regulations. - Presentation of final rules and regulations to the Board and the Executive Director.
MARION MUTHI	Associate Team	Providing strategic legal advice to the client.
	Legal/ Advocate	- Compiling final reports for the team leader's consideration. - Oversee data and research collected by the legal assistants. - Providing general legal and administrative support to the team leads. - Supervision of the Legal Assistants input.
VYOMBA BIRCH	Legal	Legal research and drafting
	Assistant/ Advocate	- Drafting of weekly reports. - Reporting status updates on the ongoing work. - Providing general legal and administrative support to the Team Leader and Associate Team Leader.

KRB STAFF PRESENTATION

Facilitators

- ☐ Lucy Gathika General Manager Legal and Corporate Affairs
- ☐ Eng. Margaret Ogai - General Manager Planning and Programming
- ☐ Eng. David Orwenyo - General Manager Technical Compliance
- ☐ Margaret Muinde - Manager Finance

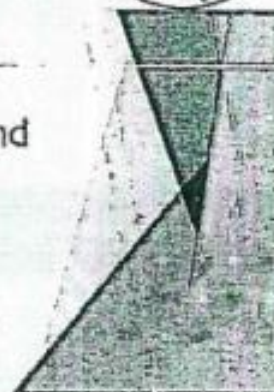
Kenya Roads Board: Consultative Services for Development of Regulations to Kenya Roads Board Act, 1999



KRB PRESENTATION

- ☐ Works Programming - 30 minutes
- ☐ Funds Management - 30 minutes
- ☐ Technical Compliance Performance and Financial Audits - 30 minutes

Kenya Roads Board: Consultative Services for Development of Regulations to Kenya Roads Board Act, 1999

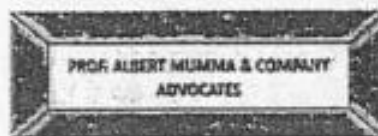


Prof. Albert Mumma & Company Advocates

Inception Report

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NAIROBI - KENYA

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E-MAIL: amumma@albertmumma.com



Annex III: KRB Team PowerPoint Presentation – Works Planning



**APRP PLANNING
&
REPORTING MANUAL**

Presented By;

**Eng. Margaret Ogai – General
Manager, Planning & Programming**

Outline



1. Introduction
2. APRP Planning & Reporting Cycle
3. Assessment of Road Maintenance Needs
4. Prioritization of Road Maintenance Works
5. Guidelines for ARVFP Preparation & Submission
6. Implementation Reporting & Monitoring of APRP
7. Web-based Road Management System
8. Future Directions

1. Introduction



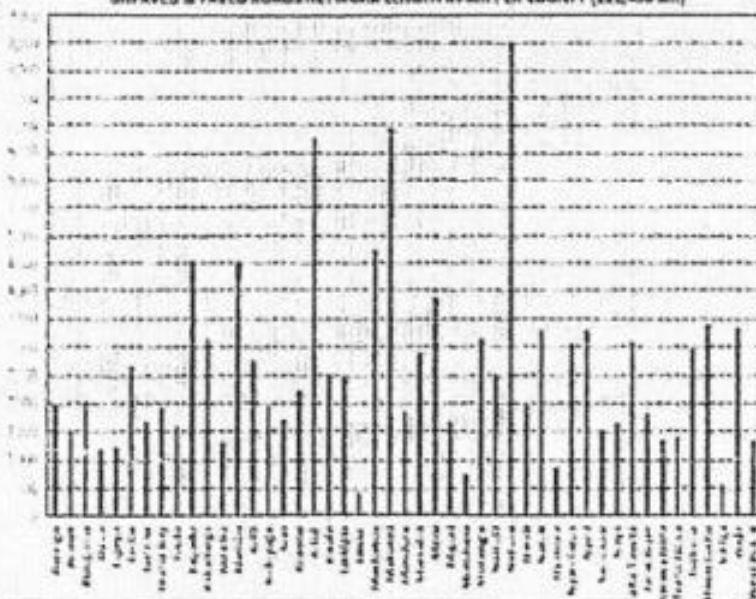
- Roads are the primary mode of transport for majority of our citizens; over 90% passenger and cargo traffic. Kenya has road network of 161,452km.
- Roads facilitate cheaper and convenient movement of passengers, goods, services and technologies from, and to, areas of economic and social importance.
- Roads provide last-mile connection for the other modes of transport such as railways, airports, ports and inland waterway transport
- Contribute to sustained economic development and enhance productivity and competitiveness by lowering transport costs.
- Various actors in the roads sector are given in Table 1 below.

AGENCY

RESPONSIBILITY

State Dept. of Infrastructure in MoTHUD&PW	Policy formulation, oversight & coordination Setting standards
Kenya Roads Board	Managing Road Maintenance funds (RMLF, trust funds), Coordination of maintenance programs, Technical & Financial audits
Road Authorities/ Agencies: -Kenya National Highways Authority -Kenya Urban Roads Authority -Kenya Rural Roads Authority -Kenya Wildlife Services	Management, development, rehabilitation and maintenance of National Trunk Roads (39,996km)
County Governments:	Management, development, rehabilitation and maintenance of County Roads (121,56km)
Departments in Ministry:	Provision of equipment (Mechanical & Transport Dept.), materials testing and research (Materials Testing & Research Dept.), provide technical training (Kenya Institute of Highways & Building Technology)

UNPAVED & PAVED ROADS NETWORK LENGTH IN KM PER COUNTY (131,454 km)





1. Introduction

Importance of Road Maintenance:

Roads deteriorate over time; require regular maintenance. Reinstatement is 3 or more times the cost of regular maintenance. The benefits of road maintenance include:

- Providing road users with an acceptable level of service by addressing defects promptly;
- Preserving the huge investment made over the years in the road network;
- Minimizing the life cycle road development and maintenance costs;
- Minimizing road user costs - vehicle operating costs, associated travel time costs, road accident costs, harmful emissions);
- Enhancing road user safety.



1. Introduction

RMLF allocation

SN	AGENCY	ALLOCATION (%)	Purpose
1	KeNHA	40	To carry out works on National Trunk roads class A and B.
2	KeRRA	15	To be equally allocated to all Constituencies to carry out road works in all constituencies
		6.8	To be equally allocated to all Constituencies for maintenance / development of link roads
3	KURA	10.2	To be allocated for works on urban roads in cities and municipalities
4	KWS	1	To be used in maintenance of roads in the national parks and game reserves
5	47 CGs	15	Conditional Grant to County Governments to carry out works on County roads
6	KRB	2	To be allocated to KRB for its operations & recurrent expenditure
7	RSIP/CS	10	To be allocated by the Board with approval of the CS in charge of Roads.



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATION TO KENYA ROADS BOARD ACT, 1999
HELD ON 30th AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI

ATTENDANCE REGISTER

No.	NAME	DESIGNATION/AGENCY	ADDRESS	CONTACTS	EMAIL	SIGNATURE
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4	Josphat Kilian	KWS	"	0722552588	jkilian@kws.go.ke	
5	Ortencia Kasein	KRB				
6	Eng. Howard A. M.	KENHTA		0721788180	hward@kenhta.co.ke	
7	Eng. K.N. Mwangi	KENHTA	48151 NLE	0721788180	kenhta@kenhta.co.ke	
8						
9						
10						



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATION TO KENYA ROADS BOARD ACT, 1999
HELD ON 30th AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI

ATTENDANCE REGISTER

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7	CPA Paul Kibet	SMTC		KRB	0724451515	paul.kibet@gmail.com	
8	Eng. Wilson K. Kinyanjui	SMTC		KRB	0722561337	wilson.kinyanjui@gmail.com	
9	Eng. Victor Odhiambo	MPN		KRB	0724451504	victor.odhiambo@gmail.com	
10	Eng. Emily Mathew	DMTC		KRB	0724451504	emily.mathew@gmail.com	

Annex VI: Consultative Workshop for the Development of Regulations to KRB Act, 1999 List of Participants



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATIONS TO KENYA ROADS BOARD ACT, 1999
HELD ON 30th AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI

ATTENDANCE REGISTER

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4	S.W. C. Irondia	C.S.E (R) MB	30260-44	0722228693	swc@kra.go.ke	[Signature]
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7	CPK James Bando	DD - KRA		0722751411	james.bando@kra.go.ke	[Signature]
8						
9						
10						



Proposed Regulations to govern T,F&P Audits (cont.)

2. Monitoring and Evaluation (cont.)

iv. Responses to audit report (cont.)

- b) Upon expiry of the 30 days, KRB shall conclude the audit report and submit the audit report to the PS, Depart. of Infrastructure.
- c) The submitted audit report to the PS shall be final & binding.

v. Implementation of audit recommendations

- a) RAs shall submit an action plan for addressing the deficiencies identified in the audit reports.
- b) KRB shall monitor the implementation of the action plans
- c) RAs shall submit to KRB a status report on implementation of audit recommendations by 31st January of each year.



THE END

(3)

Regulatory Impact Statement

March 2021

Republic of Kenya



MINISTRY OF TRANSPORT,
INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS

PROPOSED KENYA ROADS BOARD REGULATIONS,
2021

PROPOSED KENYA ROADS BOARD REGULATIONS 2021

Regulatory Impact Statement

March 2021

Prepared by:

Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works

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PROPOSED
KENYA ROADS BOARD REGULATIONS 2021

Regulatory Impact Statement

Prepared by the Ministry of Transport, Infrastructure, Housing, Urban
Development & Public Works

2021

This Regulatory Impact Statement (RIS) on the proposed Kenya Roads Board Regulations, 2021 has been prepared in compliance with Part III of the Statutory Instruments Act (No. 23 of 2013).

The purpose of the RIS is to inform the Cabinet Secretary, Members of Parliament, and the Kenyan society of the potential impacts of adopting the proposed Kenya Roads Board Regulations 2021. It provides an assessment and analysis of possible positive and negative effects of the regulatory proposals made on Kenyan society. The analysis is underpinned on information, suggestions and feedback received from public consultation processes that have been undertaken in the process of drafting these regulations.

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EXECUTIVE SUMMARY

The Constitution of Kenya 2010 creates a devolved system of government, which comprises of a national government and county governments. The Fourth Schedule of the Constitution distributes functions between the national and county governments and assigns the construction and operation of national trunk roads; and setting standards for the construction and maintenance of other roads by counties to the national government, while county governments are assigned the responsibility of overseeing county roads. The Kenya Roads Act (1999) established the Kenya Roads Board as a statutory corporation with, among others, the mandate of:

- overseeing the road network in Kenya;
- coordinating the maintenance, rehabilitation and development of roads funded by the Roads Maintenance Levy Fund (RMLF) and the optimal utilization of the Fund in the implementation of programmes; and
- monitoring and evaluating the delivery of goods, works and services funded by the Fund through technical, financial and performance audits.

The Kenya Roads Board (KRB) uses funds from the Roads Maintenance Levy Fund (RMLF) to fund the management, development, rehabilitation and maintenance of roads by Road Agencies (Authorities) namely the Kenya National Highways Authority (KeNHA) which is responsible for Classes S, A and B roads also known as Primary National Trunk Roads; the Kenya Rural Roads Authority (KeRRA) which is responsible for Class C roads which are Secondary National Trunk Roads; the Kenya Urban Roads Authority (KURA) which is responsible for classes H and J roads which are Secondary National Trunk Roads; the Kenya Wildlife Service (KWS) which is responsible for roads in national parks and game reserves; and County Governments which are responsible for classes D, E, F, G, K, L, M, N, P roads.

The Kenya Roads Board (KRB) seeks to enact the Kenya Roads Board Regulations 2021, whose objectives are to provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act 1999, to fill in gaps inherent in the Technical, Financial and Performance Audit Manuals and Guidelines, and to provide a collaborative framework between national government and county governments in executing their respective mandates in relation to road development, maintenance and rehabilitation.

This Regulatory Impact Statement (RIS) examines the costs and benefits of implementing the proposed Regulations and concludes that if properly implemented, they will serve to significantly improve and rationalize KRB's decision-making processes and allocation of resources resulting in the optimal use of

public funds in preserving road networks in Kenya and maintaining them at an acceptable level of serviceability.

The Regulations have been developed following multiple rounds of stakeholder consultations and support. They are organized in Six (6) Parts (Parts I - VI). Part 1 covers sections on citation, interpretation and application of the Regulations. Parts II to VI cover the Annual Public Roads Programme (APRP), Financial Provisions and Administration, Project Management and Reporting, Monitoring and Evaluation, and Miscellaneous provisions respectively.

1. INTRODUCTION

The proposed Kenya Roads Board Regulations 2021 aim to strengthen KRB's capacity for the discharge of its mandate. The Regulations seek to provide further details and clarity on provisions, which have been left open by the Kenya Roads Board Act 1999. They also seek to align the Kenya Roads Board Act 1999 with the provisions of the Constitution of Kenya (CoK) 2010 by making provision for a collaborative framework between the national government and county governments in executing their respective mandates and functions as prescribed by the Fourth Schedule of the CoK, 2010; and to address gaps and challenges inherent in the Technical compliance, Financial and Performance Audit Manuals and Guidelines that have been in use hitherto.

The main source of funding road maintenance is the Road Maintenance Levy Fund (RMLF), which comprises the Fuel Levy and Transit Toll collections. The RMLF is used for both routine and periodic maintenance of public roads. Section 31 of the Kenya Roads Board Act 1999 establishes the Kenya Roads Board Fund (KRBF) into which funds from the RMLF are to be deposited. The funds deposited into the KRBF are to be utilized towards the maintenance of the road network in Kenya. As a statutory corporation, the KRB under the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, administers the RMLF and thereby finances road maintenance, rehabilitation and development through various road agencies, and carries out monitoring and evaluation (M&E) of funded works and services. These road agencies include Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA), the Kenya Wildlife Service (KWS) and departments responsible for roads in County Governments.

Currently, KRB is governed by the Kenya Roads Board Act 1999 with its subsidiary legislation L.N93/2003 which makes provision for the Urban Development Department of the Ministry of Local Government and covers road maintenance, rehabilitation and development projects in the Nairobi City Council, and the Mombasa, Kisumu, Nakuru, Eldoret municipal councils as they were previously known under the pre-2010 constitutional dispensation in Kenya. Presently, KRB performs its oversight function over road agencies through the use of Technical, Financial and Performance Audit manuals and guideline as published regularly.

Section 37 of the Kenya Roads Board Act 1999 empowers KRB to make rules for the better carrying out of its functions. Consequently, having the experience of using manuals and guidelines for a period of over 20 years and taking into account the institutional learning that has taken place within KRB itself and in

road agencies, KRB considers the use of subsidiary legislation as the best option/instrument that can better align the sector with requirements of the Constitution of Kenya 2010 and address issues and challenges arising out of the use of manuals and guidelines to govern the sector.

The legislation is not finalized and changes based on stakeholder comments and public consultations will help to ensure that the final Kenya Roads Board Regulations 2021 presented to Parliament deliver the best outcomes.

This RIS sets out the substantive proposals made by these Regulations and identifies their likely socio-economic impacts and the costs and/or benefits for stakeholders and Kenyans in general.

2. OBJECTIVES OF THE PROPOSED KENYA ROADS BOARD REGULATIONS 2021

2.1 Compliance with the Constitution of Kenya 2010 and the County Government Act 2012

The promulgation of the Constitution of Kenya 2010 created two levels of government, namely the national government and the county government. The Fourth Schedule of the Constitution distributes functions between the national government and county government. Whereas the national government is responsible for the construction and operation of trunk roads and setting standards for the construction and maintenance of other roads by counties, the county governments are tasked with the construction, maintenance and rehabilitation of county roads. Therefore, pursuant to the Fourth Schedule, the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

Under the former constitutional dispensation, road development, maintenance and rehabilitation fell under the responsibility of the then local governments namely municipal councils, under the oversight of the District Road Committees. This function has now been moved to county governments under the County Government Act 2012.

The development of the Kenya Roads Board Regulations 2021 is an imperative element in creating a collaborative framework between the national government and county governments for executing their respective mandates and functions relating to road development, maintenance and rehabilitation. These regulations are in compliance with the overall objectives of devolved functions of both levels of government under the constitution.

2.2 Objectives of the proposed Regulations

Kenya Roads Board seeks to significantly improve and rationalize decision-making and allocation of resources for the roads sector, and to make the best use of public funds in preserving road networks in Kenya at an acceptable level of serviceability. In order to achieve this, KRB requires to strengthen its capacity for the discharge of its mandate by putting in place Regulations pursuant to provisions of s.37 of the Kenya Roads Board Act 1999.

The objectives of these Regulations is to provide further details and clarity on provisions which have been left open by the Kenya Road Boards Act, to fill in gaps inherent in the Technical, Financial and Performance Audit Manuals and Guidelines, and to align the sector to provisions of CoK, 2010.

In the process of developing the proposed Regulations KRB conducted a review and benchmarking exercise of similar local and international fund managers with the aim of developing best practices. Table 1 below highlights the detailed issues addressed by the proposed regulations.

Table 1: Issues addressed by the proposed Kenya Roads Board Regulations 2021

No.	Topic/Key Principle	The Parent Act	Proposed Legislation: Kenya Roads Board Regulations 2021	Comments/Explanation
1	Applicable Legislation	Kenya Roads Act 1999	Kenya Roads Board Regulations 2021	Legislation is based on s.37 of the Kenya Roads Board Act 1999 and is aimed for the better functioning of KRB.
2	Application of the Kenya Roads Board Regulations 2021	Part I covers terminologies, object and purpose of the Regulations as well as responsibilities of the Board	The regulations apply to: a. Road Agencies namely the: i) Kenya National Highways Authority (KeNHA) ii) Kenya Rural Roads Authority (KeRRA) iii) Kenya Urban Roads Authority (KURA) b. Kenya Wildlife Service (KWS) c. Departments of County Governments responsible for roads d. Classified and unclassified roads receiving funds from the Fund	The regulations align the management of the road sector with provisions of the Constitution of Kenya 2010 on devolved government and reflect lessons learnt by KRB for the past 20 years of applying manuals and guidelines.
3.	Object and purpose of these Regulations		(1) The object and purpose of these regulations is to operationalize the Kenya Roads Board Act, 1999 on the oversight of the road network and coordination of road maintenance, rehabilitation and development. (2) Without prejudice to the generality of the foregoing, these regulations shall:	

				(a) Provide means of administering the powers vested on the Director General, Kenya Roads Board under the Road Maintenance Levy Fund Act, Kenya Roads Board Act, the Public Finance Management Act and any other related legislation; (b) Ensure accountability, efficiency, transparency and effective application and utilization of the Road Maintenance Levy Fund; (c) Harmonise and standardize formats and contents of works plans and reports on the Fund; (d) Provide guidelines for the compiling works programmes to the Road agencies; (e) Provide a list of required records, books and reports needed to enable effective monitoring and evaluation; (f) Provide means of realization of the word and spirit of the Constitution	
4.	Responsibilities of Kenya Roads Board		Kenya Roads Board shall;	a) One year to the beginning of the Financial year, inform the Road Agencies the Funds likely to be available for road maintenance, rehabilitation and development;	

			b) Inform all Road Agencies the priorities in the funds allocation and criteria to be applied in making the allocations; c) At the beginning of each financial year, develop a disbursement programme, which is a cash flow projection for one year and allocations to every Road Agency and County Government; d) After every three (3) months, release monies as provided for under Regulation 5 (3) above, and provided such release is not prohibited by the Act or these Regulations. (1) Reject any works programme that does not comply with the provisions of the Act and these Regulations.	
5.	Annual Public Roads Programme (APRP)	Part II of the Regulations make provisions for the process of preparing and submitting Annual Public Roads Programmes (APRP).	Road Agencies will be required to submit to KRB, 6 months before the commencement of every financial year, a works programme for the development, rehabilitation and maintenance of roads in its jurisdiction, which shall include only those roads contained in the gazetted Road Register. In formulating an APRP, Road Agencies shall be required to: i) undertake an Annual Roads Inventory Condition Survey (ARIC) ii) Hold stakeholder meetings for prioritization of road works, iii) Take into account the approved 5 year road sector investment plan	

			iv) Take into account the Road Management System User Manual Road Agencies may not implement any road works outside of the APRP without seeking approval from KRB. A Road Agency may revise it's APRP in instances where the road works in question have been or are to be implemented by another Road Agency, savings have been made necessitating an inclusion of additional roads to the Road Agency's APRP, or due to the occurrence of an unforeseen emergency.	
6	Financial Provisions and Administration	Part III focuses on financial and administrative provisions.	Road Agencies are required to use funds received from KRB for: i) maintaining, rehabilitating and developing roads included in the Annual Roads Work Programme (ARWP), ii) putting in place and implement a quality control and quality assurance system iii) managing road reserves iv) road designing processes, safety, and axle load control v) undertaking environmental conservation activities vi) supervising and monitoring road works Road Agencies shall maintain separate bank accounts for funds disbursed from KRB for the implementation of the ARWP.	

		These bank accounts shall be opened, operated and closed with authority from KRB, National Treasury and the Board of the Road Agency. KRB shall give Road Agencies budgetary ceilings for each financial year on the basis of which Road Agencies shall prepare ARWPs. The budget estimates for each Road Agency shall be in accordance with the allocation criteria set out in S.6 of the KRB Act, while those for county governments shall be determined annually after the passing of the Annual Division and Allocation of Revenue Bill in accordance with Art 218 of the Constitution. KRB may withhold the release of funds to a Road Agency which has not complied with prescribed law, rules and regulations. The condition for release of funds to a Road Agency include: i) submission of quarterly and annual progress/expenditure reports ii) submission of ARWP in accordance with s19(2) of the KRB Act iii) satisfactory responses to audit queries whenever they are raised iv) timely implementation of the ARWP and proof of absorption of up to 70% of the previous year's budgetary allocation v) confirmation that funds are used exclusively for the intended purposes
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			In the event that a Road Agency's ARWP has not been approved at the beginning of a financial year, KRB may approve release not more than 30% of the submitted draft ARWP to facilitate the Road Agency's operations pending approval. A Road Agency shall not utilize funds received from KRB for purposes of paying salaries and other employment remuneration and allowances for personnel or for offsetting the cost of offsetting overhead expenses of its regional, sub-regional or sub-county offices. A Road Agency may however utilize funds received from KRB for purposes of offsetting the costs of supervision of road works and other incidentals and allied costs arising from implementing approved road projects. Road Agencies shall procure goods, services and works in accordance with provisions of the Public Finance and Management Act, 2012 and the Public Procurement and Asset Disposal Act 2015. A Road Agency shall not, without prior approval of the Board, reallocate funds earmarked for a particular road project to another road project. Where a Road Agency is not compliant with the financial and administrative provisions, the Board may: i) suspend funding to the Road Agency
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			ii) appoint another road agency to implement the offending Road Agency's works programme iii) Institute measures to recover any amounts misappropriated by a public officer, or iv) Take legal action against an officer Any member of the public may lodge a complaint of allegation of misuse of funds with KRB against any Road Agency, which shall be in written and provide details of the nature of complaint	
7.	Project Management and Reporting	Part IV covers Project Management and Reporting	Road Agencies will be required to ensure compliance with design and supervision standards for road works as issued by the Ministry. They shall be required to: i) establish and implement quality management systems for delivery of road works including materials testing and adequate supervision ii) ensure that all planned works is executed within the time, cost and set standards and specifications iii) ensure compliance with contract conditions iv) ensure that goods, works and services are procured in a manner that promotes economy, efficiency, effectiveness and equity Road Agencies shall ensure that road works are supervised by suitably qualified and adequate staff	

			All Road Agencies shall ensure compliance with the provisions of the Occupational Health and Safety Act 2007 Road Agencies shall be required to conduct Environmental Social Impact Assessments (ESIA) for road projects in accordance with guidelines set out by the National Environment Management Authority (NEMA) A Road Agency may with the approval of KRB carry over works from one financial year to the next provided that it does not exceed 20 % of the APRP. Road Agencies shall carry out emergency works or repairs in accordance with design and supervision standards for road works as issued by the Ministry.	
			Road Agencies are required to enter into contract arrangements for road works, goods and services which shall specify the parties, the contract price and period, the scope of works, bills of quantities, drawings and specifications, and conditions prescribed by the Public Procurement Regulatory Authority. Prior to entering into a road works contract, a Road Agency shall seek a 'non-objection' from KRB Road Agencies shall not issue any variations exceeding 10% of the original contract sum without prior approval from KRB	

			Road Agencies shall keep and maintain for inspection and audit the following: i) contract file which shall contain copies of procurement documents, site photographs, site instructions, minutes of meetings, copy of contract agreement, payment certificates, record of force account and any other relevant documents Road Agencies shall submit to KRB copies of all signed contract documents for road works exceeding KES100million and bridges for amounts exceeding KES10million, or such other amounts as KRB may from time to time notify. Road Agencies shall submit to KRB quarterly progress reports for all projects for amounts exceeding KES100 million or such other amount as the Board may notify from time to time. Road Agencies shall also submit to KRB minutes of substantial completion inspection meeting and copies of handing over certificates for all projects for amounts exceeding KES 100 million.	
8.	Monitoring and Evaluation	Part V of the regulations covers Monitoring and Evaluation	Every 6 months, the Board shall conduct technical, financial and performance audits of programmes it funds and implemented by Road Agencies. The Board may also perform <i>ad hoc</i> technical, financial and performance audits from time to time.	

			The Board shall notify a Road Agency of the intended audit two weeks in advance of the audit except in instances of a special or ad hoc audit, in which case the Board need not give notice. A notice of an intended audit shall be issued by the Board and shall specify the scope, objectives, basis, information required, audit checklist and audit programme. An Inspector may call off or postpone an audit in case of: i) lack of cooperation from the implementing agency ii) failure of the implementing agency to provide documents and information iii) risks physical threats to the Inspector iv) insecurity threatening the safety of the Inspector v) absence of the relevant officer of the Road Agency to be audited. Failure by a Road Agency to comply with the Inspector's request, hindering an Inspector from carrying out audits or gives false information to the Inspector shall be deemed to be non-compliance with the terms and conditions upon which funds are disbursed A Road Agency is required to submit an action plan for addressing issues raised in an audit report.
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			The Board shall impose penalties on a Road Agency, which fails to implement audit recommendations satisfactorily. Road Agencies and counties are required to prepare and submit quarterly APRP implementation reports together with supporting documents by the 20th day after the end of each quarter. These reports must be approved by the Road Agency's Accounting Officer	
9.	Miscellaneous	Finally the Regulations make provision in its Part VI for miscellaneous provisions	A person, public agency and or any other stakeholder aggrieved by any decision of the Board shall lodge a complaint, which shall be recorded in the Complaints Handling Register The Board shall establish a Complaint Management Committee who shall be the custodian of the Register Where a complaint has been admitted, or where the Committee has taken up a matter on its own initiative, the Executive Director may commission an investigation by an officer of KRB or any public office or investigation agency. Upon completion of the investigation the Committee shall prepare a report with recommendations and submit it to the Executive Director.	

3 IMPACT OF THE PROPOSED REGULATIONS

The main impact of the proposed Kenya Roads Board Regulations 2021 is their contribution to the attainment of Kenya's Vision 2030, which is anchored on three pillars namely, economic, social and political development. The economic pillar identifies key sectors for overall economic growth such as tourism, agriculture, wholesale and retail trade, business process offshoring, manufacturing and financial services. Infrastructural development is the principal factor in the exploitation of growth potential all the above-mentioned sectors. Kenya's road networks are a key element of infrastructural development, given that land freight and passenger traffic accounts for over 80% of road transport. Construction of roads is capital-intensive thus proper maintenance, management and rehabilitation is both logical and economically sensible.

Following comments on the proposed Kenya Roads Board Regulations 2021 from stakeholders, KRB will review the changes in terms of their advantages and disadvantages to Kenya. The cost-benefit analysis is a key step in evaluating the potential impacts on stakeholders and the economy.

3.1 COST-BENEFIT ANALYSIS

This section presents an analysis of the costs and benefits associated with the proposed Kenya Roads Board Regulations 2021. This includes a characterization of the potential benefits and a qualitative assessment of benefits (monetized where possible). The section will also identify the costs associated with the implementation of the proposed Regulations.

3.1.1 Benefits

The general benefits resulting from the proposed Kenya Roads Board Regulations 2021 are highlighted in Table 3.1 below.

Table 31: Characterization of Potential Benefits

Consistency and clarity in the law	
Aligning the road sector to provisions of the Constitution on devolved functions	• Clarification of roles, mandates and functions of national government and county governments in the development, maintenance and rehabilitation of roads.
Streamlining procurement processes in Road Agencies to comply with existing law	• Road Agencies will henceforth be required to comply with provisions of the Public Procurement Act 2015, and particularly s.3 (h) which emphasizes that the guiding principle in procuring works should be maximization of value for money

Clarity on conditions for approval and revision of Annual Roads Work Programme (ARWP)	Road Agencies will operate with clarity on the necessary steps to be undertaken in developing an ARWP, the types of information that should be included, how to conduct an Roads Inventory and Conditions Survey (RICs)
Increased Efficiency and Accountability in the Road Sector	
Timely absorption of Funds by Road Agencies	Introduction of sanctions for failure by Road Agencies to absorb funds and implement projects in a timely fashion and limiting carry over works allowable for each financial year to 20%
Supervision of works by qualified professionals and contractors	Regulations require that works be supervised by suitably qualified and adequate professionals which would enhance accountability in the quality of road works implemented including emergency works
Transparency and accountability in the use of Funds	The Regulations put in place requirements for Road Agencies to use funds from KRB in an accountable way and only for the

The following sections provide information on possible costs associated with the proposed legislation.

3.1.2 Compliance Costs

The proposed regulations may result in an increase in compliance costs for Road Agencies. These changes may occur in 'set-up' costs or in 'ongoing' costs associated with the changes.

Set-up or establishment costs will relate to the implementation of the legislation, such as new processes and updating systems that will be required when the legislation is implemented. These costs will fall to Road Agencies in the transition and implementation of the legislation.

The implementation of the proposed regulations will require stakeholders to familiarize themselves with the provisions of the regulation. Associated costs will also further include designing of implementation systems and developing and implementing staff-training and adapting to new internal process.

3.2 SOCIAL AND ECONOMIC IMPACTS

3.2.1 Social Impacts

Availability of serviceable roads has a direct impact on access to healthcare, markets and places of economic activity and social connectivity. Positive impacts may include urbanization of rural areas and opening them up for investment. There is potential for negative social impacts that may arise through the implementation of the road works, which may include disruption of livelihoods.

3.2.2 *Economic Impacts*

The construction, maintenance and rehabilitation of roads is likely to increase travel and tourism in the country. A good road network is likely to increase economic activity between regions in the country particularly through movement of goods and people.

The proposed regulations will have a further economic impact through indirect expenditures made by road construction businesses. The regulations make provision for regular repair and maintenance of roads. In order to undertake such activities the purchase of necessary equipment and machinery from manufacturers will be required. This will also further create demand for primary materials from other suppliers thus spurring sector-wide economic activity. Investment in road works will increase spending by inter-related industry and add to Kenya's national economic activity.

In the short, road infrastructure is crucial to achieving economic growth. The proposed Regulations seek to support the development, maintenance and rehabilitation of road infrastructure in Kenya, but to keep it in a state of good repair. Investments will generate jobs, increase the competitiveness of Kenyan businesses and lead to a significant injection of economic activity throughout the country.

4. CONCLUSION

This Regulatory Impact Assessment supports the enactment of the proposed Kenya Roads Board Regulations 2021 as the most optional policy vehicle for the Ministry of Transport, Infrastructure, Housing and Urban development and Public works, through KRB to achieve the aim of improving and rationalizing decision-making and resource allocation for the roads sector in the country.



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Financing Road Maintenance

KRB/SP/1/A/VOL IX (97)

27th October, 2020

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Dear

RE: REQUEST FOR APPROVAL OF THE KENYA ROADS BOARD ACT
(REGULATIONS) 2020

As you are aware, Kenya Roads Board (KRB) is a statutory body established under the Kenya Roads Board Act, 1999. Section 37 of the Act, allows the Board to make regulations prescribing anything required by the Act or generally for better carrying into effect the provisions of the Act. The main objectives of the Regulations is to provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act No. 7 of 1999; and to fill in existing gaps in Manuals in use.

KRB has developed proposed regulations as attached hereto. The Regulation incorporate views of key stakeholders who were engaged in a series of consultative workshops throughout the country. A Regulatory Impact Assessment has also been conducted and

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(Legislative Supplement No xxx)

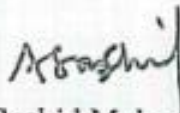
LEGAL NOTICE NO.

THE KENYA ROADS BOARD ACT	
<i>(No. 4 of 1999)</i>	
THE KENYA ROADS BOARD REGULATIONS, 2020	
ARRANGEMENT OF REGULATIONS	
<i>Regulation</i>	
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1.	Citation.
2.	Interpretation.
3.	Application of Rules
PART II- ANNUAL PUBLIC ROADS PROGRAMME	
4.	Prioritization of works.
5.	Road Inventory and Condition Survey.
6.	Format and Details of Annual Roads Work Programme.
7.	Approval of Annual Roads Work Programme.
8.	Revisions of Annual Public Roads Programme.
PART III- FINANCIAL PROVISIONS AND ADMINISTRATION	
9.	Duties of Road Agencies
10.	Duties of County Governments
11.	Opening of bank accounts.
12.	Deposits into the bank account.
13.	Payments from the bank account.
14.	Signatories to the bank account.
15.	Annual estimates.
16.	Budget ceilings.
17.	Expenditure projections.
18.	Disbursement programme.
19.	Release of and withholding of funds.
20.	Conditions for release of funds.
21.	Release of funds by Road Agencies to regional offices/sub-agencies.
22.	Partial release of funds
23.	Utilization of the fund.
24.	Administrative expenses.
25.	Expenditure limit.
26.	Board approval to exceed budget.
27.	Reallocation of funds for works.
28.	Authority to incur expenditure.
29.	Fixed Assets register.
30.	Savings and earnings.

concluded that the regulations when implemented will enhance value for money in the Road Sector. A Regulatory Impact Statement is enclosed herewith.

This is to request for your approval for the implementation of the KRB Regulations, 2020

Yours



Rashid Mohamed, MBS
Ag. EXECUTIVE DIRECTOR

//Encls

31.	Carry over funds.
32.	Funds not to be applied as security for borrowing.
33.	Funds disbursed through Constituency Road Fund Accounts.
34.	Maintenance of cash books.
35.	Cash books .
36.	Account not to be overdrawn.
37.	Cashing of personal cheques.
38.	Payment vouchers, adjustment journals, banking and issuance of receipts.
39.	Amounts to tally.
40.	Banking of receipts.
41.	Financial records and automation of financial operations.
42.	Annual reports and financial statements.
43.	Books of accounts.
44.	Accounts and records to be kept and preserved.
45.	Sanctions and penalties.
PART IV- ROAD MAINTENANCE AND DEVELOPMENT	
46.	Efficient and Effective delivery of road works.
47.	Supervision of works.
48.	Safety.
49.	Environment.
50.	Carry over works.
51.	Emergency repair works
52.	Spot improvements
53.	Road related administrative costs
PART V- CONTRACT MANAGEMENT	
54.	Contract format.
55.	Contract project file and force account
56.	Contracts Portfolio.
PART VI – MONITORING AND EVALUATION	
57.	Technical, Financial and Performance Audits.
58.	Duty to avail documents and information to the auditor.
59.	Penalties for failure to comply.
60.	Responses to audit report.
61.	Implementation of audit recommendations.
PART VII – REPORTING	
62.	Submission of reports.
PART VIII- FRAMEWORK FOR ENGAGING COUNTY GOVERNMENTS	
63.	Procurement by County Governments
PART VIII- MISCELLANEOUS	
64.	Register of complaints.
65.	Procedure for handling complaints. .

66.	Investigations.
67.	Offences.
68.	Transitional Arrangements.

SCHEDULES

First Schedule:	Forms
Second Schedule:	Budget Estimates for Road Agencies, Counties and Road Sector Investment Programme (RSIP)
Third Schedule:	Classification of Works
Fourth Schedule:	Designated Road Agencies
Fifth Schedule	Penalties

THE KENYA ROADS BOARD ACT

(No. 4 of 1999)

IN EXERCISE of the powers conferred by Section 37 of the Kenya Roads Board Act 1999, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Regulations—

THE KENYA ROADS BOARD REGULATIONS, 2020

PART I: PRELIMINARY	
Citation.	1. These Regulations shall be cited as Kenya Roads Board Regulations, 2020.
Interpretation.	2. In these Regulations, unless the context otherwise requires— “Act” means the Kenya Roads Board Act No. 7 of 1999; “Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act 2012 “Board” means the Kenya Roads Board as established under Section 4 of the Kenya Roads Board Act, 1999; “Board of Directors” means the Board established under section 7 of the Act; “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for roads; “Contract” means the contract for the works under discussion; “Fund” means the Kenya Roads Board Fund established by Section 31 of the Act; “Monitoring” means examining and verifying that the road works are being executed in accordance with the performance agreement; “Periodic Maintenance” means all the maintenance works carried out in a periodic cycle of five (5) to ten (10) years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming. For purposes of these Regulations, pavement layer reconstruction or the addition of a pavement layer do not constitute periodic maintenance; “Road Agency” means any organisation or body specified in the Fourth Schedule and includes all bodies receiving monies from

	the Board for the purposes for which the Board is established and includes County Governments established pursuant to provisions of Articles 6.1 and 176.1 and as outlined in the First Schedule of the Constitution of Kenya 2010; "Roadside development" means a physical structure or facility on land within or adjoining a road reserve; "Road Maintenance Levy Fund" means the Fund established by Section 7 of the Road Maintenance Levy Fund Act, 1993 (No. 9 of 1993); "Road Maintenance" means the preservation of roadways, roadsides and structures as nearly possible to their original condition or as subsequently improved and the operation of road facilities and services to provide satisfactory and safe transportation; "Road Network" means the entire road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described; "Routine Maintenance" means all maintenance works required continuously or at interval on every road whatever its engineering characteristics or traffic volume, and comprises activities such as grass cutting, drain cleaning, culvert and bridge cleaning and maintenance, road furniture and bridge guard rails maintenance, paved road patching, edge repair, crack sealing, and line marking, and also unpaved road grading, shaping and pothole repair.
Application of the Rules.	3. These regulations shall apply to – (a) all Road Agencies responsible for national trunk roads that receive financing from the Board and shall cover all goods, works and services funded by the Fund; and (b) Roads departments responsible for county roads networks; and (c) Roads Department of Kenya Wildlife Services responsible for roads within national parks and game reserves. (d) Classified and Unclassified roads receiving funds from the Fund
PART II- ANNUAL PUBLIC ROADS PROGRAMME	
Submission of Annual Roads Programme and	4. (1) Road Agencies and roads departments of County Governments shall submit six (6) months before the commencement of every

Prioritization of Works.	financial year, the Annual Roads Work Programme (ARWP) to the Board which shall contain – (a) Financial year to which the ARWP relates; (b) The Road Agency's identity or the county name as the case may be; (c) Locality; (d) Road identity including name and number, and section name; (chainages) (e) Section Length; (f) Type of intervention/ description of the works; (g) Estimated budget costs for the current and the next three (3) years; (h) Current condition; and (i) Surface type (2) Roads included in the ARWP shall be contained in the road register. (3) Road Agencies shall provide adequate budget for multi-year projects spread over the contract period. (4) In coming up with ARWP and implementation of works, Road Agencies and county governments shall apply the cost estimation manual published by the Board from time to time. (5) Road Agencies shall set aside funds for designs process, road safety, axle load control, ARICS and environmental conservation. (6) In developing the ARWP, Road Agencies shall - (a) comply with the budget ceilings issued pursuant to provisions of Regulation 15 of these Regulations. (b) carry out Annual Roads Inventory Condition Survey, (ARICS) pursuant to provisions of these Regulations using the format provided in Schedule/Form 1, to determine the maintainable portion of the road network. (c) hold stakeholder meetings for prioritization of road works and submit minutes of these meetings to the Board.
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	(d) be based on approved 5-year RSIP and the order of prioritization of road works will be routine maintenance, spot improvement, periodic maintenance and rehabilitation. (e) allow at least 20% of the road works procurement budget for labour based methods of delivery (Roads 2000 Strategy) (7) All the Annual Roads Work Programmes received shall be consolidated into the Annual Public Roads Programme and submitted by February of each calendar year to the Board of Directors for approval. (8) The approved Annual Public Roads Programme shall be submitted to the Cabinet Secretary and the National Treasury for signing by April each year as required under Section 19(5) of the Act; (9) The Board shall publish and disseminate to Road Agencies the Annual Public Roads Programme Planning and Reporting as the Board of Directors shall specify from time to time. (10) In prioritization of road works, road agencies shall adhere to the requirements of the "APRP Planning and Reporting Manual" published by the Board from time to time. (11) Preparation of the ARWP shall start at the lowest implementing unit of the road agency.
Road Inventory and Condition Survey.	5. (1) The Board shall conduct a Roads Inventory and Condition Survey (RICS) every five (5) years. (2) Road Agencies shall carry out an Annual Roads Work Programme (ARWP) Condition Survey and produce a road maintenance needs assessment report and submit to the Board annually. (3) Every road agency, the KWS and county roads departments shall submit to the Board its updated Road Inventory and Condition Survey (RICS) for the road network under its jurisdiction by September of each year in order for the Board to update the entire road network register. (4) Road Agencies may seek approval for the inclusion of roads not in current road register in their Annual Roads Work Programme using Form 2 provided in the First Schedule of these Regulations.
Format and Details of Annual	6 An Annual Roads Work Programme prepared by a Road Agency, pursuant to Rule 4 above, shall be in the format

Roads Work Programme.	provided in Form 3 set out in the First Schedule of these Regulations.
Approval of Annual Roads Work Programme.	7 (1) The Board shall upon receipt of the Annual Roads Work Programme from a Road Agency review it to ensure compliance with requirements provided in Regulation 4 of these Regulations. (2) The Board shall communicate approval of submitted Annual Roads Work Programmes or specify any corrections, additions or clarifications that are required to facilitate approval, within four weeks from the date of receipt. (3) Road agencies shall, upon request by the Board, respond to queries raised in the process of approval within four weeks. Once the Board is satisfied with the response from a Road Agency, its Annual Road Works Programme will be approved for inclusion into the Annual Public Roads Programme. (4) In the event that the Board raises queries on an Annual Roads Work Programme, it shall communicate its approval or otherwise following submission of responses to concerned Road Agencies after receiving responses on or before 31st December. (5) The Board shall impose penalties as stipulated in the Fifth Schedule to these Regulations on Road Agencies for failure to submit compliant Annual Road Works Programmes within stipulated timelines above.
Revision of Annual Public Roads Programme.	8 (1) Road Agencies may apply for revision of their portion of the Annual Public Roads Programme before 31st January of each year. No revisions shall be permitted thereafter. (2) The Board shall communicate its approval or otherwise to the respective Road Agencies of the revisions to the APRP within one month of the request (3) Road Agencies shall not implement any works outside the APRP without seeking prior approval from the Board. (4) The Board shall impose penalties as stipulated in the Fifth Schedule to Road Agencies for implementation of works outside approved APRP.
PART III – FINANCIAL PROVISIONS AND ADMINISTRATION	
Duties of Road Agencies	9 Notwithstanding any obligation imposed on a Road Agency under these Regulations, a Road Agency shall, for the purposes of utilising funds received from the Fund –

	(a) maintain, rehabilitate and develop the categories of roads within its mandate; (b) prepare the Annual Road Works Programme using the prescribed format issued by the Board from time to time; (c) utilise disbursed funds to implement the approved Annual Roads Work Programme; (d) put in place and implement quality control and quality assurance system; (e) manage road reserve; (f) supervise and monitor road works within their area of jurisdiction; and (g) perform any other duties as the Ministry may direct from time to time
Duties of County Governments	10 County CECs' shall be responsible for: a. Approving County roads work plans b. Provide public notices for purposes of traffic management during the works implementation c. Ensure the final inspection and issuance of defect liability certificates upon completion of designated works under the works programme d. Ensure that illegal structures are cleared out of the road reserve and encroachment has stopped e. Ensure assessment of property within the right of way and compensation to owners, where necessary, is paid or duly discharged before commencement of any designated works under the works programme provided that such compensation shall not be paid out of the funds allocated for works programme f. Not in any way alter the agreed works programme without prior consent of the Board g. Furnish the Board with such reports as may be required for the review of the works programme. Following each such review, the county shall act promptly and diligently in order to take, or assist the Board in taking any corrective action deemed necessary to remedy any shortcoming noted in the

	implementation of the works programme or to implement or assist the Board in implementing such other measures as may be necessary for the furtherance of the objectives of the works programme h. At the request of the Board exchange views with regard to the progress of the works, programme, the performance of its obligations and other matters relating to the objectives of the works programme i. Promptly inform the Board of any condition which interferes or threatens to interfere with the progress of the works programme or the performance of its obligations j. Maintain or cause to be maintained, separate records and accounts in accordance with sound accounting practices k. Retain all records (contract, orders, invoices, bills, receipts and other documents) as evidencing expenditures and enable and assist the Board to examine such records. l. Cause to be opened and operated as separate bank account for the Funds disbursed by such account to be known as the Road Maintenance Levy Agency Account (RMLFAA) m. Not to use or permit to be used, the RMLFAA aforementioned as security or otherwise for borrowing of any funds and engaging any activity not directly associated with the works programme n. Carry out the works programme with due diligence, safety, efficiency, be cost conscious in order to get value for money and in an environmentally friendly manner, and in conformity with appropriate administrative and financial practices
Opening of Bank Accounts.	11 (1) Each Road Agency shall cause to be opened a separate bank account for the funds disbursed from the Fund to be known as '<i>Name of Agency - Road Maintenance Levy Fund</i>'. (2) A Road Agency that fails to open a Bank account shall not receive funds. (3) All bank accounts shall be opened, operated and closed with authority from the Board and the National Treasury, in accordance

	with Section 28 (1) of Public Finance Management Act, 2012 and its applicable Regulations.
Deposits into the Bank Account.	12 (1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account. (2) A Road Maintenance Levy Bank Account shall not be a fixed deposit account and neither shall funds held in a Road Maintenance Levy bank account in any circumstances be held in a fixed deposit account.
Payments from the Bank Account.	13 (1) All Road Agencies shall make payments related to the Roads Works Programmes approved by the Board from their respective Road Maintenance Levy Fund bank account. (2) Payments may be done either by instructions, cheque, electronic or fund transfer in accordance with the Public Finance Management Act 2012 and its Regulations.
Signatories to the Bank Account.	14 (1) The accounting officer of a Road Agency shall be a mandatory signatory to all cheques, electronic payments and fund transfers. (2) The accounting officer in charge of the road agency shall designate other signatories and any changes in signatories in accordance with the Public Finance Management Act 2012 and its Regulations. (3) For county road works, the chief officer in charge of roads shall be a signatory to the bank account.
Annual Estimates.	15 The Board shall prepare annual revenue projections of the Fund on a three (3) years forward basis and submit it to the National Treasury.
Budget Ceilings.	16 (1) The Board shall give the Road Agencies and constituencies (counties) budgetary ceilings for the following financial year and request them to commence the preparation of their respective Annual Road Works Programmes by 1 st July of the financial year preceding the year to which the budgetary ceilings relate. (2) The budget estimates for each Road Agency and constituency, shall be in accordance with the allocation criteria set out in Section 6(2) (d), (e) and (f) of the Act. (3) The ceilings for county governments shall be determined each year after the passing of the Annual Division and Allocation of Revenue Bill in accordance with provisions of Article 218 of the Constitution.
Expenditure Projections.	17 Road agencies shall within three (3) months before the beginning of the financial year submit to the Board an annual expenditure projection for each month in the financial year.
Disbursement Program.	18 (1) The Board shall indicate to Road Agencies at the beginning of each financial year, cash flows for each month.

	(2) The Board shall monitor receipt of funds from RMLF and allocate each tranche to the respective Road Agency in accordance with the disbursement program
Release of Funds and Withholding of Funds.	19 (1) The Board shall release funds to compliant Road Agencies within one month after approval by the Board and in compliance with the disbursement schedule. (2) The Board shall withhold release of funds to Road Agencies which have not complied with the prescribed rules, regulations, procedures and guidelines, the Act, or other applicable laws.
Conditions for Release of Funds.	20 (1) Without prejudice to the generality of the foregoing, the specific criteria in subsection (2) will be applied as a basis for release of funds. (2) The specific criteria for the release of funds include - (a) Submission of quarterly and annual progress/expenditure reports as required by the Board in accordance with these Regulations. (b) Submission of an Annual Road Works Programme duly approved by the Board in accordance with Section 19(2) of the Act. (c) In the event of audit queries, provide responses to all audit queries raised in accordance with these Regulations. (d) Timely implementation of the approved Annual Road Work Programme and absorption of up to 70% of the annual budgetary allocation (e) Complied with requests made under section 27 of the Act by an inspector ; (f) Confirmation that the funds are being used wholly and exclusively for the intended purposes and that no funds whatsoever are being diverted for use in other unrelated activities.
Release of Funds by Road Agencies to regional offices/sub-agencies.	21 A Road Agency shall forward funds to its regional offices/sub-agencies where applicable within two (2) weeks after receipt from the Board.
Partial Release of Funds.	22 In the event that the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a financial year, the Board may approve release on account of not more than 30% of the funds based on the submitted draft ARWP, to enable the

	operations of the agency to continue, pending approval of the Annual Public Roads Programme (APRP).
Utilization of the Fund.	23 Funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme (APRP).
Administrative Expenses.	24 (1) Road Agencies shall not exceed the overheads and administrative expenses thresholds specified in Section 6 (2) (1) of the Act. (2) Road Agencies shall ensure regional offices are allocated funds for administration from the overall administration expenses of the Road Agency.
Expenditure Limit.	25 The expenditure on budgeted line items is limited to the amount approved in the budget.
Board approval to exceed budget.	26 (1) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may approve such excess after being satisfied that there are compelling reasons for the same. (2) Any excess approved under the subsection (1) must be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded.
Reallocation of funds for works.	27 Road Agencies shall not use the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of the Board.
Authority to incur expenditures.	28 Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that Road Agency.
Fixed Assets Register.	29 (1) Every Road Agency shall maintain a Fixed Assets Register relating to the Fund wherein various details of fixed assets will be recorded. (2) The Fixed Assets Register shall contain the following details: (a) Type of asset; (b) Cost of asset, supplier and date of acquisition; (c) Serial numbers, title documents of the asset and provision for licenses where applicable; (d) Rates of depreciation; (e) Accumulated depreciation up to close of financial year; (f) Written down value as at the end of the financial year;

	(g) Value of the asset (as per the last valuation); (h) Date of disposal and the net realizable values; (i) Profit or loss on disposal; (j) The exact location of the asset; and, (k) Identification numbers of the assets (to be coded on the basis of category, location etc. of the assets).
Savings and Earnings.	30 (1) Where a Road Agency has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. (2) Road agencies shall submit a work plan for the savings and or interest earnings to the Board before spending.
Carry over funds.	31 (1) At the end of each financial year all road agencies shall submit to the Board bank balances and corresponding road works for which the funds were to be utilized. (2) The carry over funds and associated road works shall be included in the Annual Road Works Programme for the following financial year.
Funds not to be applied as security for borrowing.	32 Road Agencies shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.
Funds disbursed through Constituency Road Fund.	33 For funds disbursed through Constituency Road Fund accounts, the Kenya Rural Roads Authority (KeRRA) accounting officer who manages the funds at the constituency shall be responsible and accountable for the funds.
Maintenance of Cash Books.	34 (1) Road Agencies shall maintain a cash book for The Kenya Road Board Fund Account to be written and balanced daily and the cash in hand verified by the officer in charge of the cash book. All monies received shall be recorded serially in the cash book with adequate details of the transaction. (2) The Road Agencies shall maintain registers and records of bank accounts, cash books and imprest in accordance with the Public Finance Management Act 2012 and its pursuant Regulations.
Cash Book.	35 (1) The Cash Book shall be checked on a daily basis by a senior officer of the Road Agency and at these checks he should sign the cash book at the last entry examined to signify that he has satisfied himself as to the correctness of all entries made since the last signature. (2) The cash book balance must be reconciled with the bank balance at the end of every month.

Account not to be overdrawn.	36 The Road Agencies' RMLF Bank Account shall not be overdrawn as stipulated in the Public Finance Management Act 2012 and its Regulations.
Cashing of Personal Cheques.	37 (1) Personal cheques shall not be deposited into an official bank account. (2) Cashing of personal cheques from funds received from or through the Board, whether drawn by civil servants, directors, staff members, or members of the public is not permitted.
Payment vouchers, adjustment journals, banking and issuance of receipts.	38 (1) All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-numbered receipt, which should be signed, stamped and dated. (2) All payment vouchers, adjustment journals and receipts shall comply with the provisions of the PFM Act and regulations. (3) All cash and cheques received must be receipted and banked intact into the road agency's RMLF Bank Account within five days from the day of receipt.
Amounts to tally.	39 The amounts in words and figures must tally and shall not be altered or amended.
Banking of Receipts.	40 All cash and cheques received must be receipted and banked intact into the Road Agency's RMLF Bank Account within five days from the day receipt is acknowledged.
Financial Records and automation of financial operations.	41 Financial records may be maintained in manual or electronic form and shall be kept in accordance with the Public Finance Management Act 2012 and its Regulations.
Annual Reports and Financial Statements.	42 (1) The accounting officer shall prepare annual reports and financial statements with respect to the RMLF account in compliance with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time. (2) Every road agency shall, within six months of the end of each financial year submit to the Board its audited accounts for that financial year.
Books of Account	43 Accountable documents whether manual or electronic shall be under strict control at all times and they shall include— (a) local purchase order; (b) local service order (c) authority to incur expenditure; (d) cheques; (e) cash receipt and payment books; and

	(f) imprest warrants etc.
Accounts and records to be kept and preserved.	44 (1) Road agencies and sub-agencies shall maintain the following accounts and records in the format prescribed hereunder – (a) Cashbook, bank statements and bank reconciliations; (b) Payment vouchers (c) Ledgers; (d) Fixed assets register; (e) Quarterly and annual reports and financial statements and non – financial reports; (f) Quarterly ARWP Progress reports; (g) Approved ARWP (h) Procurement documents, LSOs/LPOs/contract; (i) Inspection and verification reports; (j) Measurements sheets, etc. (2) Accountable documents, books and records shall be preserved in accordance with the provisions of the Public Finance and Management Act 2012 and its Regulations. (3) The books of account kept and maintained under this regulation shall be made available to the Board for monitoring. (4) The Board shall suspend disbursement of funds to a Road Agency which contravenes the provisions of this regulation.
Sanctions and Penalties.	45 (1) Failure to adhere to the Act and these regulations shall amount to non-compliance. (2) Where a road agency is non-compliant, the Board may - (a) Suspend funding to the road agency; (b) Appoint another Road Agency, and release funds allocated for works by the non-compliant Road Agency, to the newly appointed agency (c) Institute measures to recover any amounts misappropriated by a public officer.

	(d) Take legal action against an officer. (3) Any member of the public may lodge a complaint of allegation of misuse of funds with the Board against any Road Agency (4) Without prejudice to subsection (2) the Board may, where it is satisfied of the complaint against misuse of funds allocated for any road work, conduct a special investigation for the purposes of determining the truth of the complaint or allegation. (5) Notwithstanding subsection (2) the Board may on its own motion conduct a special investigation where it has reason to believe that there is a misuse of funds by a Road Agency.
PART IV –ROAD MAINTENANCE AND DEVELOPMENT	
Efficient and Effective delivery of road works.	46 (1) Road Agencies shall ensure compliance with design and supervision standards for road works as issued by the Ministry from time to time. (2) Road Agencies shall establish and implement quality management systems for delivery of road works including materials testing and adequate supervision. (3) Road Agencies shall ensure that any planned work is executed within the time, cost, set standards and specifications. (4) Road Agencies shall ensure compliance with contract conditions in accordance with Part V of these Regulations. (5) Goods, works, and services shall be procured in a manner that promotes the economy, efficiency, effectiveness and equity in accordance with relevant rules and regulations as may be prescribed from time to time. (6) The RAs shall ensure that the above documents are available to the inspectors appointed under Section 26 (1) of the Act for inspection whenever required.
Supervision of Works.	47 (1) Road works shall be supervised by suitably qualified and adequate staff. (2) Road Agencies shall maintain records available to the inspectors appointed under Section 26 (1) of the Act for inspection whenever required. (3) Road Agencies shall ensure that site supervision staff have adequate resources to carry out supervision. (4) Road Agencies shall maintain staff records as provided in Form 4 set out in the First Schedule to these Regulations.

	(5) The Board shall conduct field visits every quarter and will give at least two weeks' notice in advance to Road Agencies. (6) Road Agencies shall avail appropriate officers to accompany the Board monitoring team for field visits and provide information as may be required.
Safety.	48 (1) Road Agencies shall ensure compliance with Occupational Safety and Health Act No. 15 of 2007. (2) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works. (3) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.
Environment.	49 (1) Road Agencies are to have an Environmental and Social Management Plan for maintenance projects which shall be clustered at regional levels. (2) Road Agencies shall ensure compliance with Environmental Management and Coordination Act of 1999. (3) Road Agencies shall prepare and implement safety and environmental management plans for road works before commencement of works.
Carry over works.	50 (1) Road Agencies may with approval of the Board, carry over works from one financial year to another provided that the same does not exceed 20% of the Annual Public Roads Programme. (2) In order to avoid duplication of road works and to differentiate works for prior and current Financial Year, Road Agencies shall submit a revised Annual Roads Work Programme for all carry over works and savings to the Board for approval by end of July of every financial year.
Emergency repair works	51 (1) Road agencies shall carry out emergency works or repairs in accordance with design and supervision standards for road works as issued by the Ministry. (2) In carrying out emergency repair works, the Roads Agency shall request for emergency funds from the Board. (3) The Board shall establish and cause to be followed transparent and objective procedures to access and account for emergency funds.
Spot improvements	52 Road Agencies shall carry out spot improvements on short road sections that are in poor conditions for the purposes of maintaining accessibility for such roads.

Road related administrative costs	53 (1) A Road Agency shall use the percentage funds to be allocated by the Board to cover road related administrative costs. (2) The roads related administrative costs in subsection (1) shall include – (a) supervision costs; (b) administration costs; and (c) any other related costs to be determined by the Board.
PART V- CONTRACT MANAGEMENT	
Contracts Format.	54 (1) Road Agencies shall enter into contractual arrangements for road works, goods and services which should specify the following, inter alia – (a) Parties to the contract; (b) Contract price and period; (c) Scope of works, bills of quantities, drawings and specifications (d) Conditions of contract as prescribed by Public Procurement Regulatory Authority. (2) Any payments by Road Agencies for contracts which do not comply with the above shall be considered ineligible expenditure and shall be recoverable from the Road Agency.
Contract project file and force account	55 (1) A Road Agency shall keep and maintain the following project files – (a) Contract file; and (b) Force account (2) The contract project file in subsection (1) shall contain the following – (d) copies of procurement documents; (e) site photographs; (f) site instructions; (g) minutes of meetings; (h) a copy of the contract agreement; (i) payment certificates;

	(j) record of force account; (k) any other relevant correspondences for inspection and audit. (3) The project file for the force account shall contain the following – (a) approval of the tender; (b) site photographs; (c) drawings; (d) bill of quantities; (e) record of inputs namely – i. materials purchased ii. labour iii. equipment hired; iv. fuel v. supervision costs; and vi. any other costs which the Board may determine; and (f) completion reports
Contracts portfolio.	56 (1) The Board shall establish and maintain a contract portfolio for all works in the approved Annual Public Roads Programme. (2) Projects not included in the portfolio shall not be eligible for financing. (3) All contracts for works, good and services shall be in writing and executed in the form as shall be prescribed by the Board from time to time. (4) Road Agencies shall submit to the Board copies of all signed contract documents for road works above Kenya Shillings 100 million and bridges above Kenya Shillings 10 million not later than two weeks after contract signing including all VOs when they occur. Road Agencies shall submit quarterly summary contract reports for all other works. (5) Road Agencies shall submit to the Board quarterly progress reports for all projects over Kenya Shillings 100 million. Road agencies shall submit to the Board quarterly summary reports for all projects procured under the Fund in the format prescribed in the first schedule.

	(6) Road Agencies shall invite the Board for project kick off and substantial completion inspection meetings for all projects over Kenya Shillings 100 million. (7) Road Agencies shall submit to the Board minutes of substantial completion inspection meeting and handing over certificates for all projects over Kenya Shillings 100 million. (8) Road Agencies shall prepare final completion report upon completion of all RMLF funded projects
PART VI – MONITORING AND EVALUATION	
Technical, Financial and Performance Audits.	57 (1) The Board shall conduct technical, financial and performance audits of the Board funded programs undertaken by the Road Agencies after every six months. (2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time. (3) The audits shall be conducted by such persons as may be authorized by the Executive Director in writing. (4) The Board shall inform Road Agencies of the intended audits two weeks in advance unless a special or ad hoc audit is ordered. The notice shall spell out the audit scope, objectives, basis, information required, audit checklist and audit program. (5) There shall be entry and exit meetings between the auditor and Road Agencies and the minutes of these meetings shall be signed by both parties. (6) The Road Agencies shall provide necessary facilitation for the audits including venue for entry and exit meetings, conducive working space for the auditors. (7) Road Agencies shall avail appropriate officers to accompany the auditors for the field visits. (8) An auditor may call off or postpone an audit in the following circumstances; (a) Uncooperative Road Agencies; (b) Failure to receive documents and information; (c) Risks / physical threats; (d) Insecurity; (e) Absent auditee.

	(9) The Auditor shall inform the Executive Director who shall escalate the same to the Cabinet Secretary with recommendation.
Duty to avail documents and information to the auditor.	58 (1) The Road Agencies shall make available to the auditor all of the following information - (a) books; (b) accounts; (c) records and other documents; (d) correspondence; (e) statements and information relating to goods; (f) works and services financed by the Fund; and (g) any other information as determined by the Board and as may be required by the auditor Provided that - (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced; (ii) the auditor may make copies of any books, accounts, records and other documents required for the purposes of its report; and (iii) all information obtained in the course of the M&E shall be treated as confidential and used solely for the purposes of the Act and these Regulations. (2) Where M&E is under a special audit, the Road Agency shall avail information in subsection (1) upon immediate request of the auditor. (3) Any clarifications sought shall be availed to the auditor within thirty days.
Penalties for Failure to Comply.	59 (1) The Board shall notify Road Agencies which fail to comply with the auditor's request or hinders an auditor from carrying out audits or gives false information after expiry of allowed period and specify the penalties to be applied for non-compliance. (2) If Road Agencies do not respond satisfactorily to the issues raised above within 30 days, the Board shall institute the penalties as prescribed in the Fifth Schedule of these Regulations. (3) Road Agencies which fail to comply with the auditor's request or hinders an auditor from carrying out audits or gives false information, shall be held liable to pay penalties as prescribed in Schedule set out in the schedules to these rules. (4) Develop rules for uncooperative auditee/ limitation of scope.

Responses to audit report.	60 (1) Road Agencies shall submit to the Board written responses to audit reports and queries within thirty (30) days as per the prescribed format in the schedules to these rules. (2) Upon expiry of the 30 days, the Board shall conclude the audit report and submit to Cabinet Secretary for roads. The approval of the CS shall be final and binding
Implementation of Audit report.	61 (1) Road Agencies shall submit an action plan for addressing the deficiencies identified in the audit reports. (2) The Board shall impose penalties as stipulated in the Fifth Schedule to these Regulations to Road Agencies which fail to implement audit recommendations satisfactorily. (3) The Board shall monitor the implementation of the action plans (4) Road Agencies shall submit to the Board a status report on implementation of audit recommendations by 31st January of each year.

PART VII – REPORTING

Submission of Reports.	62 (1) Road Agencies shall prepare and submit quarterly APRP implementation reports together with supporting documents by the 20th day after end of each quarter. (2) The Reports must be approved by the Director General of the Road Agency before submission. (3) The Board shall review the report to check compliance with approved APRP. (4) The Board will acknowledge receipt of the quarterly reports and seek clarifications, if any, from Road Agencies. (5) The Road Agencies shall, upon request by the Board, respond to the queries raised within two weeks. (6) Based on the reports, the Board shall prepare and publish half year and annual APRP implementation reports. (7) Road Agencies shall submit to the Board road network management data as in the format and detail prescribed in Form 6 in the First Schedule to these Regulations. (8) Road Agencies shall submit to the Board ad hoc and special reports as may be requested from time to time.
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	(9) The Board shall publish an annual APRP implementation report of projects above Kshs. 100m. (10) The Board shall impose penalties as stipulated in these Regulations to Road Agencies for non-compliance with reporting requirements.
PART VIII – FRAMEWORK FOR ENGAGING COUNTY GOVERNMENTS	
Procurement by County Governments	63 (1) Roads departments in county governments shall act in accordance with provisions of the Act and shall adhere to provisions of the Public Procurement Act 2015 and the Public Finance and Management Act 2012 and as may be amended from time to time. (2) County governments shall use only the standard documents and procedures of tender and/or contract approved and provided by the Kenya Roads Board (hereinafter referred to as “the Board”) and where not provided those given by the Director of Public Procurement;
PART VIII – MISCELLANEOUS	
Register of Complaints.	64 (1) A person, public agency and or stakeholder (“the Complainant”) aggrieved by any decision of the Board shall lodge a complaint in the prescribed form and the same shall be recorded in the Complaints Handling Register. (2) The Board shall establish a Complaint Management Committee chaired by an officer who shall be the custodian of the Register. (3) The complainant shall attach or provide any documents necessary to support the complaint. (4) Notwithstanding the foregoing, a complaint may be made anonymously or treated in such a manner as to protect the identity of, or particulars of the complainant where necessary, as may be directed by the Executive Director.
Procedure for handling a complaint.	65 In the determination of complaints under these Regulations, the Board shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.
Investigations.	66 (1) Where the complaint has been admitted, or where the Committee has taken up a matter on its own initiative, the Executive Director may commission an investigation by an officer of the Board or any public office or investigation agency. (2) The Committee may, subject to the direction and control of the Board, issue the requisition of information in a form to be determined by the Board.

	(3) Upon completion of the investigation, the Committee shall prepare a report with recommendations and submit it to the Executive Director. (4) The Board shall keep a record of each investigation and may publish the findings and recommendations pursuant to an investigation and may include these in its Statutory Report. (5) Appeals from the decisions of the Executive Director which are covered under the Act and these Regulations, shall lie before the Board of Directors.
Offences	67(1) A person who hinders the powers of the inspector pursuant to section 27 of the Act shall be guilty of an offence on conviction and be liable to a fine of one hundred thousand shillings or to imprisonment for three months or to both. (2) If the offence in subsection (1) is a continuing offence, in addition to the penalty prescribed, the person shall be liable to a fine of one thousand shillings for each day during which the offence continues.
Transitional Arrangements.	68 The Board may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Regulations.

Dated the 2020

JAMES WAINAINA MACHARIA, E.G.H
Cabinet Secretary

Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

FIRST SCHEDULE

Rules 5(3), 5(4), 6(1), 46(5), 55(5), 61(7), 62 (7)

FORM 1 – FORMAT FOR ROAD INVENTORY CONDITION SURVEY (RICS)

FORM 2 – FORMAT FOR APPROVAL FOR INCLUSION OF ROADS NOT IN CURRENT ROAD REGISTER

FORM 3 – FORMAT FOR DRAFT ARWP

FORM 4 – STAFF RECORDS

FORM 5 – SUMMARY OF CONTRACT INFORMATION

FORM 6 – ROAD MANAGEMENT DATA

SECOND SCHEDULE

Rule 15(2)

BUDGET ESTIMATES FOR ROAD AGENCIES, COUNTIES AND ROAD SECTOR INVESTMENT PROGRAMME (RSIP)

S/NO	AGENCY	ALLOCATION (%)	PURPOSE
1.	Kenya National Highways Authority (KeNHA)	xx	To carry out works on National Trunk Roads Class A and B.
2.	Kenya Rural Roads Authority (KeRRA)	xx	To be equally allocated to all Constituencies to carry out road works in all constituencies.
		xx	To be equally allocated to all Constituencies for maintenance or development of link roads
3.	Kenya Urban Roads Authority (KURA)	xx	To be allocated for works on urban roads in cities and municipalities
4.	Kenya Wildlife Service (KWS)	xx	To be used in maintenance of roads in the national parks and game reserves.
5.	47 Counties	xx	Conditional grant to County Governments to carry out works on County Roads.
6.	RSIP/Cabinet Secretary	xx	To be allocated by the Board with approval of the Cabinet Secretary in charge of roads

THIRD SCHEDULE**Rule 46(3)****CLASSIFICATION OF WORKS****FOURTH SCHEDULE****DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads (referred to as Primary National Trunk Roads)
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes C
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes H, J.
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.
4.	County Governments	Management, development, rehabilitation and maintenance of County Roads Classes D, E, F, G, K, L, M, N, P.

FIFTH SCHEDULE**PENALTIES FOR SPECIFIED OFFENCES**

Relevant Rules	Offence	Minimum Penalty	Maximum Penalty
	Failure to submit ARWP within specified timeline		Pay a maximum of Ksh xxx and or xxx months imprisonment
	Implementation of Works outside approved APRP		Pay a maximum of Ksh xxx and or x months imprisonment

	Failure to comply with the auditor's request		Pay a maximum of Ksh xxx and or xx months imprisonment
	Hindering auditor from carrying out audits		Pay a maximum of Ksh xxx and or xxx months imprisonment
	Giving false information to auditor		Pay a maximum of Ksh xxx and or xxx months
	Failure to implement audit recommendations	Rule 61	Pay a maximum of Ksh xxx and or xxx months
	Non-compliance with reporting requirements		Pay a maximum of Ksh xxx and or xxx months

5



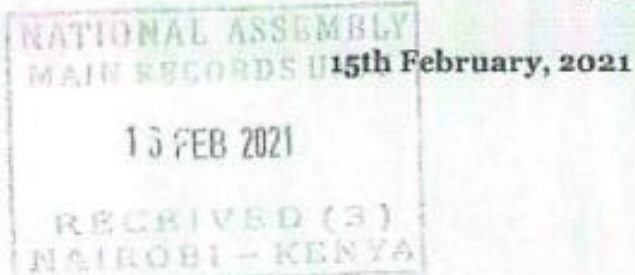
**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,
URBAN DEVELOPMENT AND PUBLIC WORKS
STATE DEPARTMENT OF INFRASTRUCTURE**

Office of the Principal Secretary

Telephone: (020) 2723232
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Website: www.infrastructure.go.ke

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NGONG ROAD
P.O. Box 30260 - 00100
NAIROBI

Ref: MOTIHUD/I/A35.38 VOL.V



Michael Sialai, CBS
Clerk of National Assembly
P.O Box 41842-00100
Parliament Buildings
NAIROBI

Dear Sir

**RE: CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF
REGULATIONS TO KENYA ROADS BOARD ACT, 1999**

Kenya Roads Board (the Board) is a statutory body established by the Kenya Roads Board Act, 1999 and manages the Road Maintenance Fuel Levy Fund. Section 37 of the Act allows the Board to make rules prescribing anything required by the Act or generally for the better carrying out of its functions under the Act. The Board commissioned the firm of Prof Albert Mumma and Company Advocates to facilitate the development of regulations.

The Board submitted the draft Regulations to the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works for gazettelement (*draft regulations attached*). The regulations require review and concurrence by the Parliamentary Committee on Delegated Legislation to ensure compliance with all existing laws and other regulations. The Board therefore proposes to hold a retreat outside Nairobi at a convenient date for the Committee.

The overall objective of the retreat is to define the priority intervention areas for the management of Road Maintenance Levy Fund and define working relationships between the Board and the road maintenance implementing agencies (Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA), Kenya Wildlife Services (KWS) and County Governments.

Specifically, the consultative workshop seeks to;

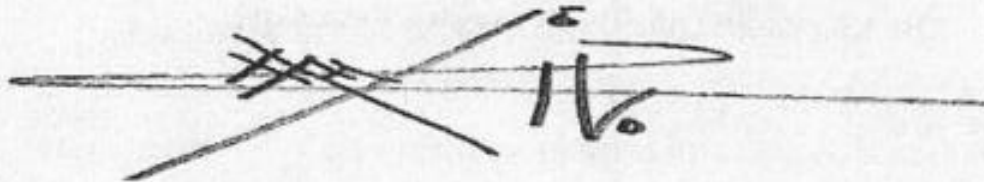
- (a) Review the draft Regulations, clarify outstanding issues and further strengthen the same for implementation;
- (b) Explore options for harmonization of the draft Regulations and identify overlaps, gaps and complementarities; and

(c) Agree on a roadmap for the finalization of the draft Regulations and their implementation.

The purpose of this letter is to request your office to assist the Board organize the consultative retreat. The Board is willing to meet the costs associated with the retreat.

Any queries and clarifications may be directed to **R. Mohamed, MBS (Director General, Kenya Roads Board)** on Tel No. 0725 318 716 or Email: dg@krb.go.ke.

Yours *Sincerely*

A handwritten signature in black ink, appearing to be 'P. Maringa', is written over a horizontal line. The signature is stylized with a large 'P' and a long horizontal stroke.

Prof. Arch. Paul Maringa (PhD), CBS, Corp. Arch (Maak), MKIP
PRINCIPAL SECRETARY

Kenya Roads Board (National Trunk Roads) Rules, 2021

Legal Notice No.

THE KENYA ROADS BOARD ACT
(No. 4 of 1999)
THE KENYA ROADS BOARD (NATIONAL TRUNK ROADS)
RULES, 2021

ARRANGEMENT OF RULES

Rule

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1. Citation.
2. Interpretation.
3. Application
4. Object and Purpose of these Regulations
5. Responsibilities of Kenya Roads Board

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6. Submission of Annual Roads Programme and Prioritization of works.
7. Road Inventory and Condition Survey.
8. Revisions of Annual Public Roads Programme.

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9. Duties of Road Agencies
10. Opening of bank accounts.
11. Deposits into the bank account.
12. Payments from the bank account.
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14. Budget ceilings.
15. Disbursement programme.
16. Release of funds and withholding of funds.

17. Partial release of funds
18. Utilization of the fund.
19. Administrative expenses.
20. Expenditure limit.
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23. Fixed Assets register.
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25. Carry over funds.
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28. Cash book
29. Account not to be overdrawn.
30. Payment vouchers, adjustment journals, banking and issuance of receipts.
31. Financial records and automation of financial operations.
32. Annual reports and financial statements.
33. Books of accounts.
34. Accounts and records to be kept and preserved.
35. Sanctions and penalties.

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36. Efficient and Effective delivery of road works.
37. Supervision of works.
38. Safety.
39. Environment.
40. Immediate interventions
41. Contract document format
42. Contract project file and force account
43. Reporting

PART V – MONITORING AND EVALUATION

- 44. Technical, Financial and Performance Audits.
- 45. Duty to avail documents and information to the Inspector.
- 46. Penalties for failure to comply.
- 47. Responses to audit report.
- 48. Implementation of audit recommendations.

PART VI- MISCELLANEOUS

- 49. Register of complaints.
- 50. Procedure for handling complaints
- 51. Investigations.
- 52. Forms

SCHEDULES

First Schedule:	Designated Road Agencies
Second Schedule	Penalties for specified offences
Second Schedule	Forms

THE KENYA ROADS BOARD ACT

(No. 7 of 1999)

IN EXERCISE of the powers conferred under section 37 of the Kenya Roads Board Act, 1999 the Board, with the approval of the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Rules —

THE KENYA ROADS BOARD (NATIONAL TRUNK ROADS) RULES, 2021

PART 1— PRELIMINARY

Citation

1. These Rules may be cited as the Kenya Roads Board (National Trunk Roads) Rules,

Interpretation .

2. In these Rules, unless the context otherwise requires—

In these Regulations, unless the context otherwise requires—

No. 7 of 1999;

“Act” means the Kenya Roads Board Act, 1999

No. 18 of 2012;

“Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act, 2012

“Board” means the Kenya Roads Board as established under Section 4 of the Act;

“Board of Directors” means the Board established

under section 7 of the Act;

"Cabinet Secretary" means the Cabinet Secretary for the time responsible for matters related to roads;

"Contract" means the contract for supply of goods or works or services under discussion;

"Fund" means the Kenya Roads Board Fund established by Section 31 of the Act;

"Inspector" means such person duly appointed by the Director General by gazette notice whether public officer or otherwise, whether by name or title of office to be Inspector in accordance with provisions of Section 26 of the Act, and to perform such functions as specified in sections 27 and 28 of the Act.

"Monitoring" means examining and verifying that the road works are being executed in accordance with the standards set by the Cabinet Secretary under relevant Act of Parliament and these Regulations;

"Periodic Maintenance" means all the maintenance works carried out in a periodic cycle of five to ten years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming but do not include pavement layer reconstruction or the addition of a pavement layer do not constitute periodic maintenance;

"Road Agency" means any organisation or body specified in the first Schedule to the Act and includes all bodies receiving monies from the Board for the purposes for which the Board is established;

"Roadside development" means a physical structure or facility on land within or adjoining a road reserve;

rejection.

PART II- ANNUAL PUBLIC ROADS PROGRAMME

Submission of Annual
Roads Programme and
Prioritization of Works.

6. (1) Every Road Agency shall, not later than six months before the commencement of every Financial Year, submit the Annual Road Works Programme in the manner set out in the Second Schedule.
- (2) An Annual Road Works Programme under this Rule shall contain —
 - (a) The Financial Year to which the Annual Road Works Programme relates;
 - (b) The locality of the road to which the programme relates;
 - (c) Road identity including name and number, and section name;
 - (d) The section length;
 - (e) The type of intervention or description of the works;
 - (f) An estimated budget costs for the current and the next three years;
 - (g) The current condition; and
 - (h) surface type of the road.
- (3) The Board shall upon receiving all the Annual Road Works Programme by the end of the stipulated time period, keep a register which shall contain the Works programmes received.
- (4) Every Road Agency shall provide adequate budget for multi-year projects spread over the contract period.
- (5) Every Road Agency shall, in coming up with Annual Road Works Programme and implementation of works, apply the cost estimation manual published by the Board from time to time.
- (6) A Road Agency shall, in developing the Annual Road Works Programme —
 - (a) Comply with the budget ceilings issued in accordance with Rule 5;
 - (b) Conduct Annual Roads Inventory Condition Survey, to determine the maintainable portion of the road network and submit the data to the Board in the form set out in the Second Schedule.
 - (c) Hold stakeholder meetings for prioritization of road works and submit minutes of the meetings to the Board;

- (d) Ensure it is within the approved five -year Road Sector Investment Programme;
 - (e) Ensure the order of prioritization of road works follows the sequence of routine maintenance, spot improvement, periodic maintenance and rehabilitation; and
 - (f) Ensure at least twenty percent of the road works are carried out through use of local labour-based methods.
- (7) The Board shall upon receipt of the Annual Roadworks Programme from a Road Agency, review the programme to ensure compliance with requirements provided under these Rules.
 - (8) Any Annual Roads Works Programme that does not comply with these Rules shall be rejected by the Board and communicated to the Road Agency within 3 days of the decision to reject such Annual Road Works Programme.
 - (9) A Road Agency may ,where an Annual Road Works Programme has been rejected pursuant to these Rules, within thirty days of receiving the decision of the Board in writing, and in any event not later than the 31st day of December of the Calendar year, whichever is earlier ,review and resubmit the Annual Road Works Programme to the Board.
 - (10) The Board shall upon receiving all the Annual Roads Work Programmes, consolidate the programmes into the Annual Public Roads Programme by February of each calendar year.
 - (11) The Board shall not later than the thirtieth day of April each year, submitted to the Cabinet Secretary and the National Treasury the Annual Road Works Programme for approval.
 - (12) The Board shall publish, publicize and disseminate Annual Road Works Programme.
 - (13) Every Road Agency shall, in prioritization of road works, adhere to the requirements of the "Annual Roads Work Programme Planning and Reporting Manual" published by the Board from time to time.

Road Inventory and
Condition Survey.

7. (1) Every Road Agency shall submit to the Board an updated Road Inventory and Condition Survey for the road network under its jurisdiction not later than 30th day of September of each year which shall be in a form set out in the second schedule.

(2) A Road inventory and Condition Survey submitted under this Rule shall form the basis for a roads

maintenance needs assessment for prioritization under Rule 6.

Revision of Annual
Public Roads Programme.

8. (1) A Road Agency shall, having submitted their programme, not vary the Annual Road Works Programme without written approval of the Board.

(2) Where a Road Agency requires to revise its Annual Road Works Programme, the agency shall do so in accordance with Rule 6 of these Rules and in any event not later than 31st day of January.

(3) Any person, being an officer of an agency, who without approval of the Board attempts to vary or varies any Implementation of works which is not included in the Annual Road Works Programme, commits an offence and shall be liable on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No 18 of 2012
No. 33 of 2015.

PART III – FINANCIAL PROVISIONS AND ADMINISTRATION

Duties of Road Agencies.

9. Notwithstanding any obligation imposed on a Road Agency under these Rules, a Road Agency shall, for the purposes of utilising funds received from the Fund –

- (a) maintain, rehabilitate and develop the categories of roads within its mandate;
- (b) utilise disbursed funds to implement the approved Annual Road Works Programme;
- (c) put in place and implement quality control and quality assurance systems;
- (d) supervise and monitor road works within their area of jurisdiction

Opening of Bank
Accounts.

10. (1) Each Road Agency shall cause to be opened a bank account for the funds disbursed from the Fund to be known as 'Name of Agency -Road Maintenance Levy Fund'.

(2) The Board shall suspend funding to a Road Agency that fails to open a Bank account as stipulated in Rules 10 (1) and

11 (1), until the said Road Agency complies.

(3) All bank accounts shall be opened, operated and closed in accordance with Section 28(1) of the Public Finance Management Act, 2012 and its applicable Rules.

Deposits into the Bank Account.

11. (1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account.

(2) A Road Maintenance Levy Bank Account shall not be a fixed deposit account and neither shall funds held in a Road Maintenance Levy bank account be held in a fixed deposit account.

Payments from the Bank Account.

12. (1) All Road Agencies shall make payments related to the Road Works Programmes approved in accordance with Rule 6 from their respective Road Maintenance Levy Fund bank account.

(2) Payments may be done either by instructions or electronic fund transfer in accordance with the Public Finance Management Act, 2012 and its Regulations.

No. 18 of 2012

Signatories to the Bank Account.

13. (1) The accounting officer of a Road Agency for matters related to roads shall be a mandatory signatory to all electronic payments and fund transfers.

(2) The accounting officer in charge of the Road Agency shall designate other signatories and any changes in signatories in accordance with the Public Finance Management Act 2012 and its Regulations.

No. 18 of 2012

Budget Ceilings.

14. (1) The Board shall on or before the 1st day of July of the Financial Year preceding the year to which the budgetary ceilings relate, issue to the Road Agencies budgetary ceilings for the following Financial Year.

Disbursement programme.

15. (1) Every Road Agency shall within three months before the beginning of the Financial Year submit to the Board an annual expenditure projection for every three months in the Financial Year.

(2) The Board shall indicate to Road Agencies at the beginning of each Financial Year, cash flows for every three months.

(3) The Board shall monitor receipt of funds from Road Maintenance Levy Fund and allocate each tranche to the respective Road Agency in accordance with the Rule 15 (2).

Release of Funds and
Withholding of Funds.

16. (1) The Board shall release funds to Road Agencies who have complied with the provisions of these Rules provided that the Road Agency has utilised at least seventy percent of the funds allocated in the previous Financial Year.

(2) The Board shall withhold the release of funds to Road Agencies who have not complied with these Rules until such a time compliance is achieved.

(3) The Board shall issue ninety days notice to any Road Agency that consistently fails to comply with these Regulations of its intention to appoint another Road Agency to implement its annual Roads Work programme.

(4) Upon the expiry of the notice issued under Rule 16 (3), the Board shall appoint a Road Agency to implement annual Roads Work programme and release all the funds withheld.

(5) Any Road Agency which is aggrieved by any decision under this Rule may appeal to the Cabinet Secretary for a review of the decision.

Partial Release of Funds.

17. Where the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a Financial Year, the Board may release on account, of not more than thirty percent of the funds allocated to the Road Agency for the year to which it relates.

Utilization of the Fund.

18. Any funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme.

Administrative Expenses.

19. (1) A Road Agencies shall not exceed the overheads and administrative expenses thresholds specified in section 6 (2) (1) of the Act.

(2) A person who utilizes any Administrative expenses in any manner in contravention to the provisions of Rule 19 (1) commits an offence and shall be liable, on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No. 18 of 2012
No. 33. of 2015

Expenditure Limit.

20. (1) Any expenditure incurred by a Road Agency budgeted line items shall be limited to the amount approved in the budget.

(2) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may upon request or application by a Road Agency, approve such excess after being satisfied that there are compelling reasons for the same.

- (2) Any excess approved under Rule 20 (1) shall be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded.

Reallocation of funds for works

21. A Road Agency shall not use the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or any other project.

Authority to incur expenditures.

22. (1) No person other than the accounting officer to whom the "Authority to Incur Expenditure" has been issued, in whatever form, shall commit or incur expenditure against that Road Agency.

(2) A person authorised to incur expenditure may with the approval of the authority delegate the responsibility to an officer of the Authority to commit or incur expenses.

Fixed Assets Register.

23. (1) Every Road Agency shall maintain a Fixed Assets Register relating to the Fund wherein various details of fixed assets will be recorded.

(2) The Fixed Assets Register shall contain the following details:

(a) the description and type of asset.

(b) the cost of the asset, supplier and date of acquisition.

(c) the serial numbers, title documents of the asset and provision for licenses where applicable.

(d) rates of depreciation;

(e) accumulated depreciation up to close of Financial Year;

(f) written down value as at the end of the Financial Year;

(g) Value of the asset, as per the last valuation;

(h) date of disposal and the net realizable values;

(i) profit or loss on disposal;

(j) the exact location of the asset; and,

(k) identification numbers of the assets, to be coded on the basis of category, and location of the assets.

Savings and Earnings.

24. (1) Where a Road Agency realises savings and or interest earnings from the work program and operations, the funds shall be declared and utilized for the purposes for which the Fund was intended.

(2) Every Road Agency shall submit a work plan for the savings and interest earnings to the Board before spending.

(3) Any member or officer of a Road Agency that fails to declare or seek approval for the expenditure of savings and earnings in accordance with the Act and these Rules commits an offence and shall be liable, on conviction, to the penalties prescribed under Part VII of the Public Finance Management Act, 2012 and Part XVI of the Public Procurement and Asset Disposal Act, 2015.

No. 18 of 2012
No. 33 of 2015.

Carry over funds.

25. (1) At the end of each Financial Year and not later than sixty calendar days from the end of the Financial Year, every Road Agencies shall submit to the Board bank balances and corresponding road works for which the funds were to be utilized.

(2) The carry over funds and associated road works shall be included in the Annual Road Works Programme for the following Financial Year.

Funds not to be applied as security for borrowing.

26. A Road Agency shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.

Maintenance of Cash Books. 27.

- (1) All Road Agencies shall maintain a cash book for the Kenya Road Board Fund Account to be written and balanced daily and the cash in hand verified by the officer in charge of the cash book.
- (2) All monies received shall be recorded serially in the cash book with adequate details of the transaction.
- (3) The Road Agencies shall maintain registers and records of bank accounts, cash books and impress in accordance with the Public Finance Management Act 2012 and its pursuant Regulations.

Cash Book.

28. (1) The Cash Book shall be checked on a daily basis by a senior accounts officer of the Road Agency who shall sign the cash book at the last entry examined to signify that he has satisfied himself as to the correctness of all entries made since the last signature.

(2) The cash book balance shall be reconciled with the bank balance at the end of every month.

Account not to be overdrawn.

29. The Road Agencies Road Maintenance Levy Fund Bank Account shall not be overdrawn.

Payment vouchers, adjustment journals, banking and issuance of receipts.

30. (1) All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-numbered receipt, which shall be signed, stamped and dated.

(2) All payment vouchers, adjustment journals and receipts shall comply with the provisions of the Public Finance Management Act 2012 and its regulations.

No.18 of 2012

Financial Records and automation of financial operations.

31. The Board and every agency shall keep Financial records may be maintain the records in manual or electronic form and shall be kept in accordance with the Public Finance Management Act 2012 and its Regulations

No. 18 of 2012

Annual Reports and Financial Statements.

32. (1) The accounting officer shall prepare annual reports and financial statements with respect to the Road Maintenance Levy Fund account in compliance with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

(2) A financial statement prepared by road agencies in subrule (1) shall report on transactions in respect of the Road Maintenance Levy Fund with specific reference to funds received from the Board.

Books of Account

33. All accounting documents whether manual or electronic shall be under strict control at all times and they shall include —

- (a) local purchase order;
- (b) local service order
- (c) authority to incur expenditure;
- (d) cheques;
- (e) cash receipt and payment books; and
- (f) the impress warrants.

Accounts and records to be kept and preserved.

34. (1) Every Road Agency shall maintain detailed accounts and records which shall include —

- (a) cashbook, bank statements and bank reconciliations;
- (b) payment vouchers
- (c) ledgers;
- (d) fixed assets register;
- (e) quarterly and annual reports and financial statements and non – financial reports;
- (f) quarterly Annual Road Works Programme Progress reports;
- (g) Approved Annual Road Works Programme
- (h) Procurement documents, Local Service Orders, Local Purchase Orders, and contract;
- (i) Inspection and verification reports; and
- (j) Measurements sheets.

(2) Accountable documents, books and records shall be preserved in accordance with the provisions of the Public Finance and Management Act 2012 and Regulations made thereunder.

No. 18 of 2012

- (3) The books of accounts kept and maintained under this regulation shall be made available to the Board for review.
- (4) The Board shall suspend disbursement of funds to a Road Agency which contravenes the provisions of these Rules.

35. (1) The Board may where it receives a complaint from any person or where it has reason to believe that an agency has failed to adhere to any provisions of the Act or these Rules, declare the agency to be non-compliant.

(2) Where a Road Agency is non-compliant, the Board may -

(a) suspend funding to the Road Agency;

(b) appoint another Road Agency, and release funds allocated for works by the non-compliant Road Agency, to the newly appointed Agency

(c) institute measures to recover any amounts misappropriated by a public officer.

(3) Any member of the public may lodge a complaint of allegation of misappropriation of funds with the Board against any Road Agency.

(4) Without prejudice to subrule (3) the Board may, where it is satisfied of the complaint against misuse of funds allocated for any road work, conduct a special investigation for the purposes of determining the veracity of the complaint or allegation.

(5) Notwithstanding subrule (3) the Board may on its own motion conduct a special investigation where it has reason to believe that there is misappropriation of funds by a Road Agency.

PART IV –PROJECT MANAGEMENT AND REPORTING

36. (1) Every Road Agency shall ensure compliance with design and supervision standards for road works issued by the Cabinet Secretary from time to time.

(2) Each Road Agency shall establish and implement quality management systems for delivery of road works including materials testing and supervision.

(3) Each Road Agency shall ensure that any planned work is executed within time, cost, set standards and specifications.

(4) Goods, works, and services shall be procured in a manner that promotes economy, efficiency, effectiveness and equity and in accordance with the Public Procurement and Asset Disposal Act, 2015.

Supervision of Works.

37. (1) Road works shall be supervised in accordance with supervision standards for road works issued by the Cabinet Secretary from time to time.

(2) Road Agencies shall maintain project supervision records which shall be made available to the Board as and when required.

Site Safety.

38. (1) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works.

(2) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.

Environment.

39. (1) Each Road Agencies shall develop and implement Environmental and Social Management Plan for maintenance projects.

(2) The Board may cause Environmental and Social Management Plans developed under Sub rule 1, to be clustered at regional levels for efficiency and economy.

(3) Each Road Agencies shall prepare and implement safety and environmental management plans for road works before commencement of works.

Immediate Interventions

40. (1) Where a Road Agency considers that a section of the road under its jurisdiction requires an immediate intervention works, the Road Agency may request approval from the Board to undertake such works.

(2) The Board shall establish and cause to be followed transparent and objective procedures to access and account for immediate interventions.

Contracts Format.

41. (1) All contracts for goods, works and services funded by the Fund shall be in writing

(2) Contracts entered into by Road Agencies for road works, goods and services shall specify *inter alia*, the following

(a) Parties to the contract;

(b) Contract price and period;

(c) Scope of works, bills of quantities, drawings and specifications

(d) Conditions of contract as prescribed by Public Procurement Regulatory Authority.

(3) Any payments by Road Agencies for contracts which do not comply with the above shall be

considered ineligible expenditure and shall be recoverable from the authorizing officer.

(4) Public Officers to authorize ineligible expenditure shall be subject to sanctions under Part VII of the Public Finance Management Act, 2012 and Part XVI of the Public Procurement and Asset Disposal Act, 2015.

No. 18 of 2012
No. 33. of 2015

Contract project file

42. (1) Each Road Agency shall keep and maintain a contract file.

(2) The contract file in subrule (1) shall contain the following –

- (a) copies of procurement plan;
- (b) site photographs;
- (c) site instructions;
- (d) minutes of meetings;
- (e) a copy of the contract agreement;
- (f) payment certificates;
- (g) record of force account;
- (h) any other relevant correspondences for inspection and audit.

Reporting

43. (1) Road Agencies shall submit to the Board copies of all signed contract documents for road works including all Variation Orders when they occur not later than two (2) weeks after project completion.

(2) Road Agencies shall 30 days from the end of every quarter submit reports of all works and projects implemented in the preceding quarter.

(3) The Reports must be approved by the Director General of the Road Agency before submission

(4) Subject to the provisions of the Act and these Regulations, Road Agencies shall report in a format provided for under the Second Schedule.

(5) The Board shall not release any funds to a Road Agency that fails to submit reports stipulated under Regulation

PART V – MONITORING AND EVALUATION

Technical Compliance,
Financial and
Performance Audits

44. (1) The Board shall conduct technical, financial and performance audits of all works, goods and services funded by the Fund.

(2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time.

(3) The audits shall be conducted by an Inspector.

(4) The Board shall issue two weeks notice prior to the intended audit to inform Road Agencies of the intended audits except where a special or ad hoc audit is ordered under Regulation 44 (2).

(5) The notice shall spell out the audit scope, objectives, basis, information required, audit checklist and audit program.

(6) There shall be entry and exit meetings between the Inspector and Road Agencies and the minutes of these meetings shall be signed off by both parties.

(7) The Road Agencies shall provide conducive work area with easy access to all records, books and reports as may be required by the Inspectors.

(8) Road Agencies shall avail such officers as may be required to accompany the Inspectors for field visits.

(9) An Inspector may call off or postpone an audit in the following circumstances;

- (a) Failure to provide a conducive work area;
- (b) Failure to avail documents and information;
- (c) Failure to provide such officers as may be required for field visits;
- (d) Physical threats;
- (e) Insecurity;
- (f) Absent auditee.

(10) In the event of suspension or calling off an audit in subrule (9) the Inspector shall prepare and submit report within 7 days to inform the Director General.

Duty to avail documents
and information to the
Inspector.

45. (1) Each Road Agency shall make available to the Inspector the following information -

- (a) books;
- (b) accounts;
- (c) records and other documents;
- (d) correspondence;
- (e) statements and records relating to goods; works and services financed by the Fund; and
- (f) any other information as determined by the Board and as may be required by the Inspector

Provided that –

- (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced;
- (ii) the Inspector may make copies of any books, accounts, records and other documents required for purposes of reporting; and
- (iii) all information obtained in the course of the audits shall be confidential and used solely for the purposes of the Act and these Regulations.

(2) Where a special audit is ordered, the Road Agency shall avail information in subrule (1) within seventy two hours of request of the Inspector.

(3) The Inspector shall within thirty days of commencing an audit issue an audit report.

(4) Any clarifications sought shall be availed to the Inspector within fourteen days.

Penalties for Failure to
Comply

46. (1) Where an inspection report under Rule 45 is filed with the Board, the Board shall notify Road Agencies which fail to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information after expiry of allowed period.

(2) A person being an authorised member of a Road Agency who fails to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information commits an offence and shall be liable on conviction to the penalties specified under the Public Finance Management Act, 2012.

No. 18 of 2012

(3) The Board may, in addition to the remedies provided for under Subrule (2), suspend funding to the Road Agency.

Responses to audit
Reports

47. (1) Each Road Agency shall submit to the Director General written responses to audit reports and queries within thirty days from the date of receipt of the reports.

(2) Upon expiry of the thirty days, the Director General shall conclude the audit report and submit it

Implementation of Audit
report and
Recommendations

to the Board.

48. (1) Each Road Agency shall submit an action plan within thirty days, stipulating the time frame for addressing the recommendations in the audit reports issued under Regulation 47, which shall be reviewed by the Director General.
(2) Failure to implement an action plan shall amount to non-compliance under regulation 47.

PART VI – MISCELLANEOUS

Register of Complaints.

49. (1) A person, public agency and or stakeholder aggrieved by any decision of a Road Agency may lodge a complaint to the Director General which shall be entered in a register of complaints established and maintained by the Director General.
(2) The complainant shall attach or provide any documents necessary to support the complaint.

Procedure for handling a
complaint.

- (3) Notwithstanding the foregoing, a complaint may be made anonymously or treated in such a manner as to protect the identity of, or particulars of the complainant where necessary, as may be directed by the Director General.
50. The Board shall within fourteen days of receipt of a complaint in Rule 49 notify the relevant Road Agency and request to respond within thirty days from the date of such notice with a report of action taken to address complaints filed under Rule 49.

Investigations

51. (1) Notwithstanding, the provisions of Rule 50 and 51, the Board may where it deems necessary institute investigations into a complaint received under Rule 51 (1).
(2) Where an investigation is instituted under sub rule 1, the Road Agency shall provide all books and records, required by the Board.
(3) The Director General shall send a report of the investigation to the Road Agency.
(4) The Road Agency shall implement the recommendations of the report as directed.
(5) Any Road Agency that fails to implement recommendations of the investigation report, shall be liable to penalties as prescribed in Rule 39.

- (6) A Road Agency aggrieved by the decision of the Director General shall appeal to the Cabinet Secretary.

Forms

52. The Board may from time to time determine any other forms for the better carrying out of the

No. 23 of 2013.

provisions of the Act and these Regulations in accordance with Section 26 of the Statutory Instruments Act, 2013.

**FIRST SCHEDULE
DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads (referred to as Primary National Trunk Roads)
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes C
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes H, J.
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.

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ARWP FORM

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Signed
for

Designation

Editor

Keywords:

(r 7.1)



IMPLEMENTATION
AGENCY:

ARCS CARRIED
OUT:

[illegible][illegible]

Overall Condition:

FORM C
(r 7.1)

PROJECTS BY TYPE		
QUARTERLY ROAD WORKS		
TRUCKS REPORT		
NAME OF ROAD AGENCY		
ROAD AGENCY CODE		
BUDGET (\$100)		

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flower

Dated the 2021

MR. RASHID KAMIS MOHAMMED,
Director General
KENYA ROADS BOARD



PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION)

COMMITTEE ON DELEGATED LEGISLATION

**CONSULTATIVE MEETING WITH REGULATION
MAKING AUTHORITIES TO CONSIDER PENDING
BUSINESS**

4 – 8th March, 2021

Published by
Office of the Clerk of the National Assembly
Parliament Buildings
NAIROBI

Whitesands Beach Resort, Mombasa County



TIME	ACTIVITY	RESPONSIBILITY
Day 1: Thursday, 4 March, 2021		
All day	Participants arrival at the retreat venue	
Day 2 Friday, 5 March, 2021		
9:00 - 9:30am	- Prayers and preliminary remarks by Chairperson, Committee on Delegated Legislation - Adoption of the Programme (<i>in-house meeting</i>)	Hon. Kassait Kamket, MP. (<i>Chairperson, CDL</i>)
9:30 - 1:00pm	Consideration of the draft Kenya Roads Board Regulations, 2020	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (<i>State Department for Infrastructure</i>) (<i>Kenya Roads Board</i>)
1:00 - 2:00pm	LUNCH BREAK	
2:00 - 4:30pm	Consideration of the draft Kenya Roads Board Regulations, 2020	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (<i>State Department for Infrastructure</i>) (<i>Kenya Roads Board</i>)
Day 2 Saturday, 6 March, 2021		
9:00 - 9:30am	Prayers and Preliminaries	Hon. Kassait Kamket, MP. (<i>Chairperson, CDL</i>)
9:30 - 11:15am	Consideration of the Civil Aviation (Regulatory Fees & Charges for Unmanned Aircraft Systems) Regulations, 2020 (<i>Legal Notice No. 4 of 2020</i>)	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (<i>State Department for Transport</i>) (<i>Kenya Civil Aviation Authority</i>)

TIME	ACTIVITY	RESPONSIBILITY
11:15 - 11:45am	<i>Health Break</i>	
11:45 - 1:00pm	Consideration of the Architects and Quantity Surveyors (Continuing Professional Development) By-Laws, 2020 (<i>Legal Notice No. 202 of 2020</i>)	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (<i>State Department for Public Works</i>) (<i>Board of Registration of Architects and Quantity Surveyors of Kenya</i>)
1:00 - 2:30 pm	LUNCH BREAK	
2:30 - 4:30pm	Consideration of the Standards (Verification of Standards to Conformity to Standards and Other Applicable Regulations of Imports) (Amendment) Order, 2020 (<i>Legal Notice No. 212 of 2020</i>)	Ministry of Industrialization, Trade and Enterprise Development (<i>State Department for Industrialization</i>) (<i>Kenya Bureau of Standards</i>)
Day 4: Sunday, 7 March, 2021		
10:00 - 10:15am	Prayers and preliminaries	Hon. Kassait Kamket, MP. (<i>Chairperson, CDL</i>)
10:15 - 12:30pm	Recap, Way Forward and Closing Remarks	Hon. Kassait Kamket, MP. (<i>Chairperson, CDL</i>)
12:30 - 2:00pm	LUNCH	

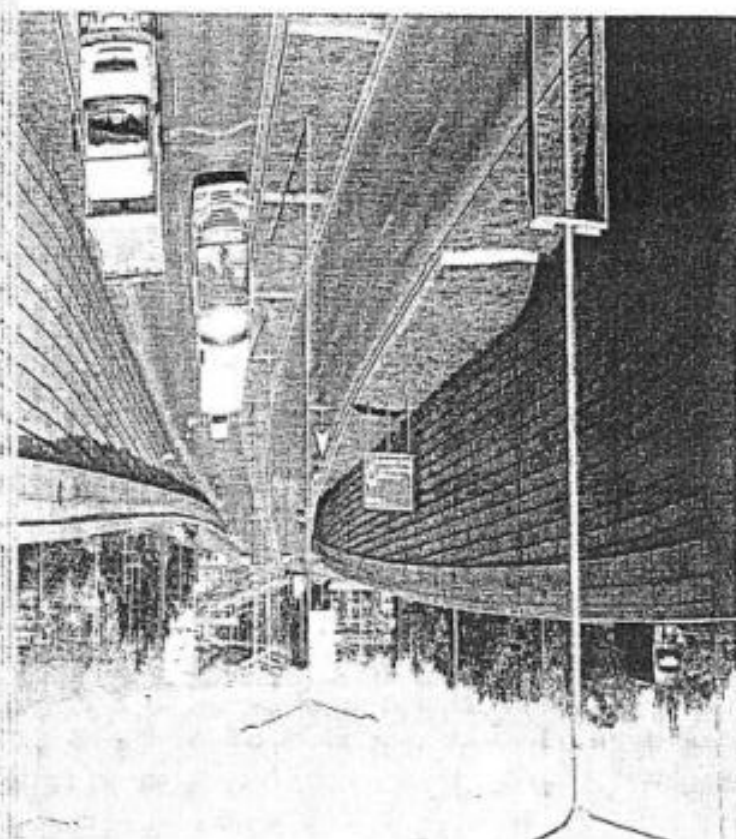
Monday, 8 March, 2021 - Departures

Programme Coordinators:

Ms. Susan Maritim, *Senior Clerk Assistant* - 0722677817
Mr. Jimale Mohammed, *Second Clerk Assistant* - 0711 124212

Rapporteurs:

1. Ms. Susan Maritim, *Senior Clerk Assistant*
2. Mr. Dima Dima, *Principal Legal Counsel*
3. Mr. Josephat Motono, *Final Analyst I*
4. Mr. Jimale Mohammed, *Second Clerk Assistant*



VALIDATION WORKSHOP REPORT MARCH, 2021



**Validation Workshop for the Development of Regulations to Kenya Roads Board
Act 1999
Report**

About this publication:

This Report summarises the discussions and conclusions from the Validation Workshop for the Development of Regulations to Kenya Roads Board Act 1999 on the 5th March, 2021. The workshop was jointly organised by the National Assembly-Committee on Delegated Legislation, the Ministry of Transport, Infrastructure, Housing & Urban development and Kenya Roads Board (KRB). It took place at the Sarova Whitesands Beach Resort & Spa, 5th march, 2021, Kenya.



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ABBREVIATIONS

ACRONYM	DESCRIPTION
APRP	Annual Public Roads Programme
ARICS	Annual Road Inventory and Condition Survey
ARWP	Annual Roads Work Programme
CARA	County Allocation of Revenue Act
CEC	County Executive Committee
CG	County Government
COK	Constitution of Kenya
CS	Cabinet Secretary
GOK	Government of Kenya
KRB	Kenya Roads Board
KRBF	Kenya Roads Board Fund
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Service
MTEF	Medium Term Expenditure Framework
M&E	Monitoring and Evaluation
RA	Road Agency
RIS	Regulatory Impact Statement
RMLF	Road Maintenance Levy Fund
RMS	Road Maintenance Management System
TOR	Terms of Reference

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1. INTRODUCTION

1.1 Background

THE FOURTH SCHEDULE

The Schedule of the Constitution that distributes functions between the national government and county governments. The development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

The Road Maintenance Levy Fund (RMLF) was established in 1993 through an Act of Parliament (Revised 1994.). The RMLF was primarily established for both routine and periodic maintenance of public roads. The Kenya Roads Board Act No. 7 of 1999 on its part establishes the Kenya Roads Board (KRB) as a statutory body to oversee the road network and coordinate the maintenance, rehabilitation and development funded by the Kenya Roads Board Fund (KRBF) and to advise the Cabinet Secretary (CS) on Transport & Infrastructure and on all matters related thereto. The Act empowers KRB to manage the KRBF financed primarily from the proceeds of the RMLF comprising the Fuel Levy and Transit Toll collections. The Act further designates the implementing agencies namely Kenya Rural Roads Authority (KeRRA), Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA) and Kenya Wildlife Service (KWS) to support the management and utilization of road funds.

Since the enactment of the KRB Act 1999 and the establishment of the RMLF, Kenya has undergone a number of key legislative changes that have implications for the road sector.

The promulgation of the Constitution of Kenya 2010 (COK 2010) has created two levels of government namely the national government and county governments. The Fourth Schedule of the COK 2010 distributes functions between the national government and county governments in recognition of the fact that the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments. In particular, the Fourth Schedule provides that the national government is tasked with the construction and operation of national trunk roads and the formulation of standards for the construction and maintenance of other roads by counties. On their part, the functions and powers of the county include county roads. The mandates and functions of county governments are prescribed for under the County Government Act 2012 (CGA).

Through the County Allocation of Revenue Act 2015 (CARA), Parliament has prescribed that fifteen per cent (15%) of the RMLF be allocated to County governments for the maintenance of county roads. In addition, Article 219 of the COK 2010 provides that 'a county's share of revenue raised by the national government shall be transferred to the county without undue and without deduction, except when the transfer has been stopped under the Article 225'. Other key legislative reforms also include the enactment of the Public Procurement and Disposal Act (Cap 412C) in 2005, the Finance Act 2009, the Public Finance and Management Act 2015 among other key legislative amendments.

It is within this legislative landscape that the KRB must exercise its mandates and functions as provided for by Section 6 of the KRB Act No. 7 of 1999.

1.2 Objectives

For the effective operationalization of the KRB mandate, Section 37 of the KRB Act 1999 empowers KRB to make regulations with respect to any matter which is necessary for the better carrying out or giving effect to the functions of the Board as prescribed by the provisions of the Act. KRB thus seeks to introduce legislative reforms to facilitate among others, a further interpretation and full implementation of the KRB Act 1999. Consequently, KRB has engaged the Ms. Gathika in this assignment which involves the development of subsidiary legislation namely the Kenya Roads Board Regulations 2019.

The main aims of this subsidiary legislation will be to -

- (1) Provide further details and clarity on provisions which have been left open in the Kenya Roads Board Act No. 7, 1999; and
- (2) Fill existing gaps (if any) in the Draft regulations and the Technical, Financial and Performance Audit Manuals developed by management

In line with these overarching aims, the key deliverables for this consultancy include -
report.

1.3 Validation Workshop for the Development of Regulations to KRB Act, 1999

In keeping with the constitutional requirement regarding public participation, a Validation Workshop with representatives from KRB, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the National

Assembly was held on the 5th March, 2021 at Sarova Whitesands Beach Resort & Spa, Mombasa.

The primary goal of this stakeholder engagement was to inform and present to this targeted section of road sector stakeholders the aims of the proposed subsidiary legislation. The Validation Workshop further sought to provoke reflection and critical evaluation of key challenges within the road sector. Moreover, the Workshop sought to inspire and motivate the attendees to share knowledge, collaborate and to help in the development of the subsidiary legislation.

The workshop began at 10.00 am with an opening prayer and remarks by the Chairperson, National Assembly Committee on Delegated Legislation, Hon. William Kassait, MP assisted by Hon. Charles Njagagua, MP.

The attendees introduced themselves and thereafter opening remarks were proffered by Hon. Chris Obure, the CAS Transport.

Hon. Obure officially opened the session by welcoming those in attendance. She thanked the representatives of the KRB, the Ministry and the NA for their presence at the venue and highlighted the importance of the Validation Workshop. He further conveyed that the views of the issues from the perspective of the implementers was critical to the development of effective regulations.

The Chairperson of the Board of Directors, Kenya Roads Board, Ms. Rita Kavashe highlighted a number of salient issues -

- The funding capabilities of the KRB: collections into the RMLF totalled 70 Billion Kenya Shillings.
- The development of rules to enhance the management of the fuel levy.
- How the interface between the roles of national and county governments can be addressed.
- The expectations of Kenyans for the efficient management of the fund.
- The need to give value to the public and improving Kenyan's livelihoods through a credible, efficient and reliable fund.
- The willingness of Kenyans to pay more for public services that are efficient and not wasteful.
- The need to have rules and regulations that will guide the KRB and the road sector stakeholders.

Following the opening remarks, the Director General introduced the Ms. Lucy Gathika, the General Manager, Legal & Corporate Affairs to (1) commence her

presentation, (2) to further facilitate the presentations. The DG, guided the participants in the ensuing plenary discussions.

This report provides a detailed summary of the Validation Workshop with KRB, the Ministry, and the National Assembly. It provides an overview of the Consultation objectives, highlights the major discussion points as well as detailing the feedback and recommendations following from the discussion.

2. VALIDATION WORKSHOP OBJECTIVES

Public Participation is a crucial and imperative component of the legislative process. The primary purpose of the *Validation Workshop for the Development of Regulations to KRB Act, 1999* is to facilitate the drafting of the Kenya Roads Board Regulations 2019 from the recommendations, endorsements and general views of the relevant stakeholders within the road sector. Figure 1 below highlights the key objectives of the *Validation Workshop for the Development of Regulations to KRB Act, 1999*: -

The Objectives of this workshop was as follows;

1. To engage the stakeholders on the Draft Rule to KRB Act, 1999; and
2. Receive input from stakeholders on key thematic areas, namely;
 - (a) Works programming;
 - (b) Fund management; and
 - (c) Technical compliance, performance and financial audits

3. STRUCTURE OF THE PRESENTATION

The figure below illustrating the Ms. Gathika's stakeholder engagement strategy to inform the drafting of the Subsidiary legislation was designed to attain meaningful participation and involvement that would enable the road sector stakeholders to actively contribute to the discussion and the development of ideas and expose relevant issues that need to be addressed in the subsidiary legislation.

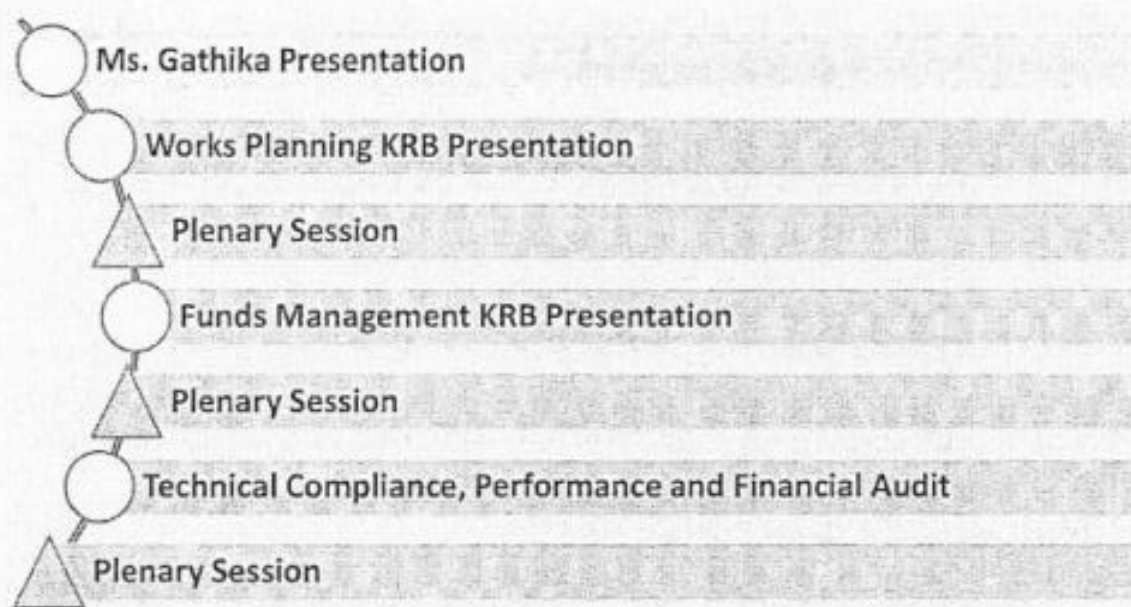


Figure 2: Structure of the Presentation

Presentation the Director, Legal & Corporate Affairs: The purpose of the presentation was to guide the road sector stakeholders in attendance through the legislative process and the requirements for the assignment. This exercise enabled the stakeholder to familiarize themselves with the objectives of the assignment, including the approach and methodology, work plan, deliverables and the key staff undertaking the assignment.

Works Planning: The purpose of the KRB presentation related to Works Planning was to inform the road sector attendees of the APRP Planning & Reporting Cycle, the Assessment of Road Maintenance Needs, the Prioritization of Road Maintenance Works, the Guidelines for ARWP Preparation & Submission, the Implementation Reporting & Monitoring of APRP, the Web-based Road Management System and Future Directions.

Funds Management: The purpose of the KRB presentation related to Funds Management was to guide the road sector stakeholders through the procedures governing the management of the KRB. These included but were not limited to the deposits and payments from bank accounts, annual estimates and budget ceilings, the disbursement program, conditions for the release of funds to road agencies, among other issues.

Technical Compliance, Performance and Financial Audits: The purpose of the KRB presentation was to inform the attendees on the guidelines followed by KRB auditors engaged in technical, financial and performance audits of road works activities. The attendees were informed of the audit methodology in general, namely the audit

considerations and the procedure followed. Moreover, the attendees were exposed to proposed regulations to govern technical, financial and performance audits.

Plenary Sessions: The floor was opened to plenary discussions facilitated by the Director General. These plenary sessions provided the road sector stakeholders in attendance an opportunity to focus attention and deliberate on the prevailing issues within the sector. The participants were able to question and seek clarification on issues that were unclear and to submit detailed views and proposals on areas that the subsidiary legislation should address. The plenary session enabled the road sector stakeholders to make additional inputs, comments and ask the KRB Team further questions for better clarity. The KRB Team then responded to questions, comments and suggestions raised by the attendees.

The Programme for the Validation Workshop for the Development of Regulations to KRB Act, 1999, showing how the Workshop was structured is attached as *Annex I*.

The Board proceeded to identify the key legislation and road sector guidelines, manuals and subsidiary legislation to be reviewed to inform the drafting of the regulations. A non-exhaustive list of the key instruments for review is shown in Figure 3 below.

Inventory of Key Legislation, Policies and other materials	
1	The Constitution of Kenya. 2010
2	Kenya Roads Act 2007
3	Kenya Roads Board Act No. 7 1999
4	Kenya Roads Bill 2017
5	County Government Act 2012
6	County Allocation of Revenue Act 2015
7	Public Finance Management Act 2015
Road Sector Guidelines, Manuals and Draft Subsidiary Legislation	
8	Technical Financial and Performance Audit Manual
9	Annual Public Roads Programme Planning and Reporting Manual
10	Draft Kenya Roads Board Rules, Regulations Procedures and Guidelines February 2018

Figure 3: Inventory of Key legislation, Policies and Other Materials

Inventory of Key Legislation, Policies and other materials cont'd

Key Policies & Documents	
11	Kenya Vision 2030
12	Road Sector Policy 2016
13	Ministry of Transport Infrastructure Housing Urban Development and Public Works Draft Strategic Plan 2018 - 2022
14	Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020
15	Sessional Paper of 2006 on The Development and Management of the Roads Sub-Sector for Sustainable Economic Growth
16	Sessional Paper No. 9 of 2012 on The National Industrialization Policy Framework For Kenya 2012 - 2030.
17	Integrated National Transport Policy: Moving a Working Nation 2009
Other Materials	
18	Transportation and Communications Bulletin for Asia and the Pacific No. 75 "Roads Board Nepal: A Sustainable Approach to Road Maintenance Management"
19	Transport and Communications Bulletin for Asia and the Pacific, No. 86 "Sustainable Rural Access"
20	Transport and Communications Bulletin for Asia and the Pacific, No. 88 "Intelligent Transport Systems"
21	The Law Library of Congress, Global Legal Research Centre "National Funding of Road Infrastructure" (March 2014)
22	World Bank Technical Report - Management and Financing of Roads An Agenda for Reform
23	INF Paper on Policy Analysis and Assessment: "Dedicated Road Funds: A Preliminary View on a World Bank Initiative"
24	Involvement of Road Users in the Management of Roads, Public Private Partnerships - The Zambia Roads Board Experience

4.1.1 WORKS PLANNING

The Director General noted that Kenya Vision 2030 recognizes that roads are an enabler. Moreover, roads contribute to sustained economic development and enhance productivity and competitiveness by lowering transport costs.

The Director General remarked on the following areas;

ITEM	PRESENTATION
Road Management Systems (RMS)	➤ Requirement for standards and procedures for processes
Mandates of various agencies	➤ State Dept. of Infrastructure in MoTIHUD & PW - Policy formulation, oversight & coordination; Setting standards ➤ KRB - Managing Road Maintenance funds (RMLF, transit tolls), Coordination of maintenance programs, Technical & Financial audits ➤ RAs - Management, development, rehabilitation and maintenance of National Trunk Roads (39,996km) ➤ CGs - Management, development, rehabilitation and maintenance of County Roads (121,456km) ➤ Departments in Ministry - Provision of equipment (Mechanical & Transport Dept.), materials testing and research (Materials Testing & Research Dept.), provide technical training (Kenya Institute of Highways & Building Technology)

Importance of Road Maintenance	➤ Roads deteriorate over time; require regular maintenance. Reinstatement is 3 or more times the cost of regular maintenance. The benefits of road maintenance include: ➤ Providing road users with an acceptable level of service by addressing defects promptly; ➤ Preserving the huge investment made over the years in the road network; ➤ Minimizing the life cycle road development and maintenance costs; ➤ Minimizing road user costs - vehicle operating costs, associated travel time costs, road accident costs, harmful emissions); ➤ Enhancing road user safety.
APRP Reporting Cycle	➤ Ceiling given to RAs ➤ RAs required to prepare surveys of maintenance requirements ➤ Not enough consultations with the counties ➤ Revision of work plans - lack of formalized cycle and need for more synchronicity ➤ Revisions should be justified - Some reasons include: ➤ Change in the scope of works ➤ Some roads in the annual work plan having been planned by other road agencies ➤ Significant variation between planned costs and procured costs of works resulting in budget deficits or savings. Etc.
ARICS	➤ Standardization of procedures is required ➤ KeNHA is implementing best practices ➤ Assessment of Road Maintenance Needs Rating Procedure is outlined in the APRP Manual
Prioritization	➤ Mandates of the RAs are preservation, restoration, improvement and development ➤ Restoration is a prevailing issue and there is conflict between prioritizing preservation ➤ Maintenance is a high priority
ARWP	➤ Need for clarity as to which section of road is being addressed (geo-data referencing) ➤ The road register helps to avoid duplication and overlaps ➤ Activity code is also important for standardization

Prevailing and emerging issues	➤ Overlapping mandates between RAs and counties ➤ Technical capacity issues at the county level ➤ Carry over works and carry over monies ➤ Road Register ➤ Regulations should address - ➤ M&E framework ➤ Employment and gender related issues ➤ Road safety ➤ Training and Capacity building ➤ HIV/AIDS Awareness
--------------------------------	---

Table 1: Summary of Presentation on Work Planning

This was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 2 below illustrates the general comments and proposals made by the participants:-

Question/Comment by Participants
➤ Life cycle costs of related infrastructure (access roads criteria required) ➤ Assignment of roads to RAs needs clarity ➤ 10% allocation to KWS is not sufficient particularly in regards to trunk roads ➤ There is an overlap in mandates between KWS and other RAs (access roads)
➤ Deterioration and Rehabilitation period should be addressed ➤ Area abutting the road corridor has been neglected. ➤ Road side development needs to be controlled (too many bumps)
➤ M&E is important and should be continuous throughout the development process
➤ Upscale monitoring to more periodic intervals ➤ Interventions during implementation should be done when results are not being met
➤ More accuracy is required with regards to conditions of paved and unpaved roads (better system for determining deteriorating conditions)
➤ There is need for stricter interrogation of RAs work plans
➤ Detailed information on criteria is available

➤ Purposing to move forward on M&E and strengthening the procedure ➤ The views on classification of roads is taken on board. A number of RAs took part in a Validation process on classification and reclassification ➤ There are no limitations on Work Plans. KRB will give guidance on corridor management and road side management ➤ The percentage on allocation of funds is a policy issue ➤ There is need for the development of roads but the focus should be on maintenance of road infrastructure. ➤ Long road maintenance regime is necessary

Table 2: Plenary on Work Planning

4.1.2 FUND MANAGEMENT

The Draft Rules covered the proposed KRB (Road Fund Management) Rules and Regulations financial provisions and administration. CPA Margaret Muinde remarked on the following areas -

ITEM	PRESENTATION
Opening Bank Accounts	➤ Requirement for RAs to open bank accounts ➤ Penalty for RAs failure to open a bank account ➤ Bank accounts to be opened, operated and closed with KRB and National Treasury authorization
Deposits and Payments from Bank Accounts	➤ Receipts from Fund to be deposited in RAs RMLF bank account ➤ Mode of Payment: instructions, cheque, electronic or fund transfer
Annual estimates and budget ceilings	➤ KRB to prepare annual revenue projections (3 year forward basis) and submit to National treasury ➤ KRB to give RAs budgetary ceilings for the following year and request preparation for ARP ➤ RAs within 3 months before beginning of financial year to submit annual expenditure projections on a month to month basis to KRB
Disbursement Program	➤ KRB to indicate to RAs at the beginning of each financial year monthly cash flows

	➤ KRB to monitor receipt of funds from RMLF and allocate each tranche to respective RA in accordance with the disbursement program provided that RA is in compliance with KRB requirements
Release of Funds by KRB and RAs	➤ KRB to release to compliant RAs in accordance with disbursement schedule and within 30 days from the date following the end of the month ➤ KRB may withhold disbursements if RA is not in compliance with KRB rules, regulations, procedures and guidelines ➤ KRB may partially release funds (not more than 30%) if the ARWP for RA is yet to be approved at the beginning of the financial year.
Conditions for Release of funds	➤ Submission of quarterly and annual progress/expenditure reports as required by KRB in accordance with Clause 65 of these Regulations. ➤ An ARWP duly approved by KRB. ➤ Responses to all audit queries in accordance with Clause 63 of these Regulations. ➤ An RA has failed to comply with Section 19 (2) of the Act
Expenditure	➤ Reallocation of funds for works: RAs shall not apply the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of KRB ➤ Authority to incur expenditure: Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that RA.
Savings and Earnings	➤ Where an RA has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. ➤ RAs to submit a work plan for the savings and or interest earnings to KRB before spending.
Carry Over Funds	➤ Carry-over' funds - bank balances for financial year can be retained for use in the following year

	➤ The carry over funds and associated road works to be included in the ARWP for the following year
Maintenance of Cash Books	➤ RAs to maintain cash book of KRBF ➤ RAs to maintain registers and records of bank accounts, cash books and imprest
Annual Reports and Financial Statements	➤ Accounting officer to prepare annual reports and financial statements ➤ RAs within six months of the end of financial year to submit to KRB audited accounts
Sanctions and Penalties	➤ Failure to abide by KRB Act and rules amounts to non-compliance ➤ KRB may - i. Suspend funding to RA ii. Appoint another RA and release funds allocated to it for the works that were to be carried out by non-compliant RA to newly appointed RA iii. Institute measures to recover amounts misappropriated by public officer ➤ Take legal action against the officer
Challenges	➤ Overreliance on the RMLF ➤ Inadequate funds ➤ Identification of tangible outputs ➤ Prioritization criteria is necessary

Table 3: Summary of Presentation on Funds Management

This was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 4 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	Response
➤ Salaries and Wages: current practice on cap depends on the agency ➤ Percentage should be increased to accommodate technical capacity	• What is ideal for the sector? PFM Act stipulates the cap. Sector should come up with guidelines.

	Percentages are based on overall fund
➤ Clarification – the percentage refers to the fund	
➤ Distribution to counties where the authorities have changed - how will this particular issue be addressed? ➤ Will this be through amendment or through the regulations?	➤ County Allocation – amended by County Revenue Allocation Act (KeRRA and KURA are the principal agencies affected)
➤ Administration and operational expenses do not only include salaries and wages	➤ Administrative expenses: 5% of the allocation to be made RAs ➤ Clarification from the Office of the Attorney General that it is 5% from total fund
➤ Regulations should be made regarding excess allocations	➤ Excess collection: interest earned forms part of the fund. Amounts over the budget are transferable to the following financial year
➤ PBC projects are a grey area as to what can be termed as a 'saving'	➤ PBC - can be dealt with on the rules on savings
➤ Regulations should address KWS ➤ There is need for realignment with other key legislation such as the Wildlife Management and Conservation Act	

Table 4:: Plenary on Funds Management

4.1.3 TECHNICAL COMPLIANCE, PERFORMANCE AND FINANCIAL AUDITS

This Part gave an overview of the mandate for audits, the purpose of KRB Audits, Types of Audits and proposed regulations to govern technical compliance, performance and financial audits. The DG remarked on the following areas -

Item	Presentation
Mandate for Audit	➤ Clause 6(2)(g) KRB Act mandates KRB to monitor and evaluate by means of technical, financial and performance audits the delivery of goods, works and services funded by the fund

	➤ Clause 26(1) provides that KRB will direct an inspector to regularly perform audits of any RA
Purpose of Audits	➤ To independently verify that proceeds from the KRBF have been applied to the purpose for which they were intended and that the use of such resources is economical, efficient and effective to achieve value for money. ➤ The application of these funds should also be efficient, transparent and in accordance with the principles, procedures and requirements of KRB and sound professional practice. ➤ ARICS are required of all RAs
Types of Audits	➤ Technical Audit: Evaluates the programming, planning and delivery of works undertaken by RAs /CGs. It is a step by step assessment of road mtnce and development efforts / activities to determine the level of economy, efficiency and effectiveness. ➤ Financial Audit: This is the review of accounting records, internal control systems and applicable laws and regulations with the sole purpose of providing an assurance on the application of funds and that proper books of accounts have been maintained. Financial audits should be effectively addressed in the financial provisions of the regulations. ➤ Performance Audit: Systematic process to obtain and evaluate evidence objectively, to be able to give performance appraisal of economy and operation effectiveness. Performance audits should be undertaken in terms of the 3 'E's'. ➤ Procurement Audit: An independent review and systematic examination of the procurement and disposal process to determine whether management practices, systems and controls result in goods, works and services being acquired in accordance with the Constitution and the PP&AD Act, regulations and other guidelines.

	➤ Environmental and Social Audits: The ESMP is a process guided by regulations for assessing the potential environmental and social impacts of proposed projects, evaluating alternatives and designing appropriate mitigation and monitoring measures. These should encompass issues such as HIV/AIDS awareness, gender issues etc. ➤ Road Safety Audit: A road safety is defined as a formal road safety performance examination of an existing or future road by an independent multidisciplinary team. It qualitatively estimates and reports on potential road safety issues and identifies opportunities for improvements in safety for all road users' in particular vulnerable road users. This is an important role for the RAs.
Areas to be considered in the Proposed Regulations	➤ Implementation of Works: efficient and effective delivery of road works ➤ Supervision of works ➤ Monitoring and Evaluation ➤ Procurement guidelines ➤ Provisions of specifications ➤ Record keeping ➤ Criteria for road works contractors ➤ Sanctions and penalties for providing fraudulent or misleading information etc.

Table 5: Summary of Presentation on Technical Compliance, Financial and Performance Audits

This was followed by a plenary session in which comments, suggestions and recommendations were invited from the participants. Table 6 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	
➤ Legal Compliance audit has not been addressed	• This is currently not part of the process
➤ Lack of consistency in the auditing function due to outsourcing - there is need for standardization	• Auditing process depends on the information that is available • TORs detail approach to the audit

➤ Need for expansion of scope to include procurement audits	•
Further Comments by Participants	
➤ Regulations should be informed by the current reports ➤ Section 37 on penalties is ineffective ➤ KRB needs to be empowered	

Table 5: Plenary on Technical Compliance, Financial and Performance Audit

4.2 General Commentary on the Validation Workshop

The Presentation to the road exhaustively presented to this particular group of stakeholders the key elements to be addressed in the proposed subsidiary legislation to support KRB further implement the KRB Act 1999.

Way Forward: KRB and the KRB team welcomes the comments received and will continue to engage road sector stakeholders. The participants were informed that their participation is a part of the ongoing process for the development of the proposed Kenya Roads Board Regulations.

It has been acknowledged that some of the issues raised and which may not be provided for in the subsidiary legislation will form important recommendations for legislative amendments.

5. Annexes

Annex I: Validation Workshop for the Development of Regulations to KRB Act, 1999 Programme (Provided by National Assembly)

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION)

COMMITTEE ON DELEGATED LEGISLATION

CONSULTATIVE MEETING WITH REGULATION MAKING AUTHORITIES
TO CONSIDER PENDING BUSINESS

4 – 8th March, 2021

VENUE:

Whitesands Beach Resort

Mombasa County

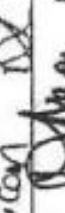
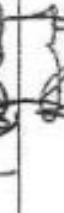
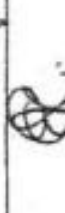
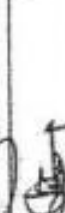
TIME	ACTIVITY	RESPONSIBILITY
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Day 1: Thursday, 4 March, 2021		
All day	Arrival at the retreat venue	Committee secretariat
Day 2 Friday, 5 March, 2021		
9:00 - 9:30am	- Prayers and preliminary remarks by Chairperson, Committee on Delegated Legislation - Adoption of the Programme	Hon. Kassait Kamket, MP (Chairperson, CDL)
9:30 - 1.00pm	Consideration of the draft Kenya Roads Board Regulations, 2020	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (State Department for Infrastructure) (Kenya Roads Board)
1:00 - 2:00pm	LUNCH BREAK	

2:00 – 4:30pm	Consideration of the draft Kenya Roads Board Regulations, 2020	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (State Department for Infrastructure) (Kenya Roads Board)
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Annex II: The Draft Regulations

Annex III: List of Participants

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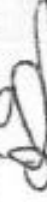
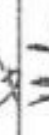
CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA ROADS BOARD ACT,
1999

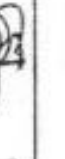
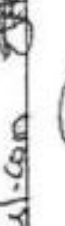
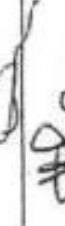
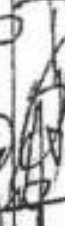
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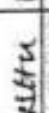
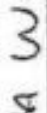
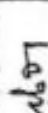
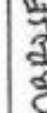
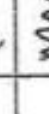
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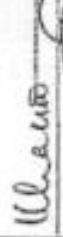
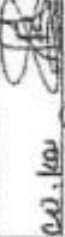
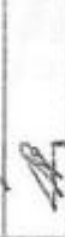
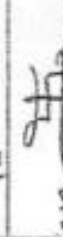
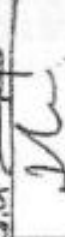
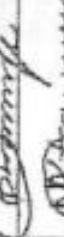
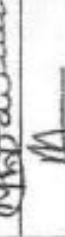
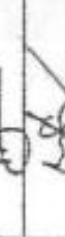
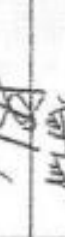
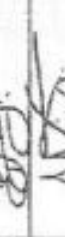
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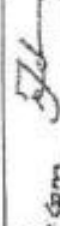
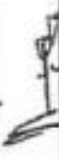
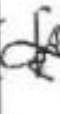
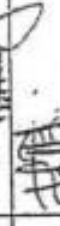
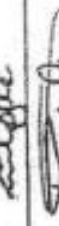
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CONSULTATIVE WORKSHOP ON DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

HELD ON 25TH NOVEMBER AT ENASHIPAE RESORT, NAIVASHA

EASTERN REGION-ATTENDANCE REGISTER

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4	DOMINIC MUMBATI	KERRA	
5	RACHID MURITHI	KERRA	
6	WAGAR KGE	KERRA	

7	Wycliffe Omondi	KERRA	Wycliffe
8	Robert Wambui	KERRA	Robert
9	Joseph N. Njiru	KERRA	Joseph
10	Simon Kimani	KERRA	Simon
11	Thomas Mueh	KERRA	Thomas
12	Paul Kirui	KNS	Paul
13	Kevin O. Nguni	KENHA	Kevin
14	Elby Kadari Ojore	KENHA	Elby
15	Julius Waweru	Kambui	Julius
16	Isaac Kige	KENHA	Isaac
16	Eng A. Ndundu	KERRA	Eng A.
17	John Omwega	KERRA	John
18	Joseph Mutoru	KERRA	Joseph
19	Grace N. Nyenga	KERRA	Grace
20	Chas Patience Delany	KERRA	Chas

[illegible]



**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999**

(CENTRAL REGION COUNTIES)

HELD ON 29TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

ATTENDANCE REGISTER

S/NO.	NAME	COUNTY/DESIGNATION	EMAIL ADDRESS/PHONE	SIGN
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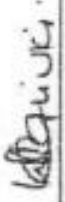


**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(NAIROBI REGION-ROAD AGENCIES)*

HELD ON 28TH NOVEMBER, 2019 AT ENASHIPAE RESORT, NAIVASHA

ATTENDANCE REGISTER

S/NO.	NAME	ORGANIZATION & CONTACTS	SIGNATURE
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2.	L.D Opondo	KeNHA	
3.	Samuel Kinyanjui	KeRRA - NAIROBI REGION	
4.	Catherine W. Kinyanjui	KeRRA - NAIROBI REGION	
5.	Bonface H. Amimo	KeRRA - NAIROBI REGION	

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* KENHA NAIROBI, KERRA NAIROBI AND KURA NAIROBI



CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

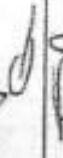
(NAIROBI REGION-ROAD AGENCIES)*

HELD ON 28TH NOVEMBER, 2019 AT ENASHIPAE RESORT, NAIVASHA

ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999
(FOR THE ROAD AGENCIES HEADQUARTERS & KENHA CORRIDORS)**

HELD ON 27TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999
(FOR THE ROAD AGENCIES HEADQUARTERS & KENHA CORRIDORS)**

HELD ON 27TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999
(FOR THE ROAD AGENCIES HEADQUARTERS & KENHA CORRIDORS)**

HELD ON 27TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999**

(CENTRAL REGION COUNTIES)

HELD ON 29TH NOVEMBER 2019, AT ENASHIPAE RESORT, NAIVASHA

ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP ON DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

HELD ON 25TH NOVEMBER AT ENASHIPAE RESORT, NAIVASHA

EASTERN REGION-ATTENDANCE REGISTER

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5.	JARED OMORI	KERRA / MARSABIT	<i>Jared Omori</i>
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18	FREDRICK MONTU	VENETA (LE)	Harun
19	Risper Waga	KURA - LE	Harun



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999

(COAST COUNTIES)

HELD ON 13TH DECEMBER 2019, AT WHITESANDS HOTEL, MOMBASA
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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(COAST ROAD AGENCIES)*

HELD ON 11TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(COAST ROAD AGENCIES)*

HELD ON 11TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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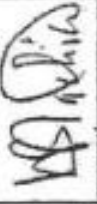
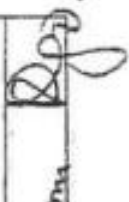
**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(COAST ROAD AGENCIES)*

HELD ON 11TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999
(COAST ROAD AGENCIES)**

**HELD ON 11TH DECEMBER 2019, AT WHITESANDS HOTEL, MOMBASA
ATTENDANCE REGISTER**

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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA COUNTIES)*

HELD ON 10TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA
ROADS BOARD ACT, 1999

(COAST ROAD AGENCIES)

HELD ON 11TH DECEMBER 2019, AT WHITESANDS HOTEL, MOMBASA
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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(COAST ROAD AGENCIES)*

HELD ON 11TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA ROAD AGENCIES)*

HELD ON 9TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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11	Jackson Muthembwa	Aper Systems		0726542306	
12	Philip Oganda	KURA - H Q		0722626819	
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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA ROAD AGENCIES)*

HELD ON 9TH DECEMBER, 2019 AT WHITESANDS HOTEL, MOMBASA

ATTENDANCE REGISTER

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Samuel Aronga	KERRA - CRO	0760773635	1606
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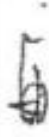
CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA ROAD AGENCIES)*

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ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999

(NYANZA COUNTIES)*

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ATTENDANCE REGISTER

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**CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
BOARD ACT, 1999**

(NYANZA COUNTIES)*

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ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP FOR DEVELOPMENT OF REGULATIONS TO KENYA ROADS
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*Kenya Gazette Supplement No. xxx**(Legislative Supplement No. xxx)*

LEGAL NOTICE NO.

THE KENYA ROADS BOARD ACT (No. 4 of 1999)	
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THE KENYA ROADS BOARD ACT
(No. 4 of 1999)

IN EXERCISE of the powers conferred by Section 37 of the Kenya Roads Board Act 1999, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Regulations—

THE KENYA ROADS BOARD REGULATIONS, 2020

PART I: PRELIMINARY	
Citation.	1. These Regulations shall be cited as Kenya Roads Board Regulations, 2020.
Interpretation.	2. In these Regulations, unless the context otherwise requires— “Act” means the Kenya Roads Board Act No. 7 of 1999; “Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act 2012 “Board” means the Kenya Roads Board as established under Section 4 of the Kenya Roads Board Act, 1999; “Board of Directors” means the Board established under section 7 of the Act; “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for roads; “Contract” means the contract for the works under discussion; “Fund” means the Kenya Roads Board Fund established by Section 31 of the Act; “Monitoring” means examining and verifying that the road works are being executed in accordance with the performance agreement; “Periodic Maintenance” means all the maintenance works carried out in a periodic cycle of five (5) to ten (10) years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming. For purposes of these Regulations, pavement layer reconstruction or the addition of a pavement layer do not constitute periodic maintenance; “Road Agency” means any organisation or body specified in the Fourth Schedule and includes all bodies receiving monies from

	the Board for the purposes for which the Board is established and includes County Governments established pursuant to provisions of Articles 6.1 and 176.1 and as outlined in the First Schedule of the Constitution of Kenya 2010; "Roadside development" means a physical structure or facility on land within or adjoining a road reserve; "Road Maintenance Levy Fund" means the Fund established by Section 7 of the Road Maintenance Levy Fund Act, 1993 (No. 9 of 1993); "Road Maintenance" means the preservation of roadways, roadsides and structures as nearly possible to their original condition or as subsequently improved and the operation of road facilities and services to provide satisfactory and safe transportation; "Road Network" means the entire road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described; "Routine Maintenance" means all maintenance works required continuously or at interval on every road whatever its engineering characteristics or traffic volume, and comprises activities such as grass cutting, drain cleaning, culvert and bridge cleaning and maintenance, road furniture and bridge guard rails maintenance, paved road patching, edge repair, crack sealing, and line marking, and also unpaved road grading, shaping and pothole repair.
Application of the Rules.	3. These regulations shall apply to – (a) all Road Agencies responsible for national trunk roads that receive financing from the Board and shall cover all goods, works and services funded by the Fund; and (b) Roads departments responsible for county roads networks; and (c) Roads Department of Kenya Wildlife Services responsible for roads within national parks and game reserves (d) Classified and Unclassified roads receiving funds from the Fund
PART II- ANNUAL PUBLIC ROADS PROGRAMME	
Submission of Annual Roads Programme and	4. (1) Road Agencies and roads departments of County Governments shall submit six (6) months before the commencement of every

Prioritization of Works.	financial year, the Annual Roads Work Programme (ARWP) to the Board which shall contain – (a) Financial year to which the ARWP relates; (b) The Road Agency's identity or the county name as the case may be; (c) Locality; (d) Road identity including name and number, and section name; (chainages) (e) Section Length; (f) Type of intervention/ description of the works; (g) Estimated budget costs for the current and the next three (3) years; (h) Current condition; and (i) Surface type (2) Roads included in the ARWP shall be contained in the road register. (3) Road Agencies shall provide adequate budget for multi-year projects spread over the contract period. (4) In coming up with ARWP and implementation of works, Road Agencies and county governments shall apply the cost estimation manual published by the Board from time to time. (5) Road Agencies shall set aside funds for designs process, road safety, axle load control, ARICS and environmental conservation. (6) In developing the ARWP, Road Agencies shall - (a) comply with the budget ceilings issued pursuant to provisions of Regulation 15 of these Regulations. (b) carry out Annual Roads Inventory Condition Survey, (ARICS) pursuant to provisions of these Regulations using the format provided in Schedule/Form 1, to determine the maintainable portion of the road network. (c) hold stakeholder meetings for prioritization of road works and submit minutes of these meetings to the Board.
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	(d) be based on approved 5-year RSIP and the order of prioritization of road works will be routine maintenance, spot improvement, periodic maintenance and rehabilitation. (e) allow at least 20% of the road works procurement budget for labour based methods of delivery (Roads 2000 Strategy) (7) All the Annual Roads Work Programmes received shall be consolidated into the Annual Public Roads Programme and submitted by February of each calendar year to the Board of Directors for approval. (8) The approved Annual Public Roads Programme shall be submitted to the Cabinet Secretary and the National Treasury for signing by April each year as required under Section 19(5) of the Act; (9) The Board shall publish and disseminate to Road Agencies the Annual Public Roads Programme Planning and Reporting as the Board of Directors shall specify from time to time. (10) In prioritization of road works, road agencies shall adhere to the requirements of the "APRP Planning and Reporting Manual" published by the Board from time to time. (11) Preparation of the ARWP shall start at the lowest implementing unit of the road agency.
Road Inventory and Condition Survey.	5. (1) The Board shall conduct a Roads Inventory and Condition Survey (RICS) every five (5) years. (2) Road Agencies shall carry out an Annual Roads Work Programme (ARWP) Condition Survey and produce a road maintenance needs assessment report and submit to the Board annually. (3) Every road agency, the KWS and county roads departments shall submit to the Board its updated Road Inventory and Condition Survey (RICS) for the road network under its jurisdiction by September of each year in order for the Board to update the entire road network register. (4) Road Agencies may seek approval for the inclusion of roads not in current road register in their Annual Roads Work Programme using Form 2 provided in the First Schedule of these Regulations.
Format and Details of Annual	6 An Annual Roads Work Programme prepared by a Road Agency, pursuant to Rule 4 above, shall be in the format

Roads Work Programme.	provided in Form 3 set out in the First Schedule of these Regulations.
Approval of Annual Roads Work Programme.	7 (1) The Board shall upon receipt of the Annual Roads Work Programme from a Road Agency review it to ensure compliance with requirements provided in Regulation 4 of these Regulations. (2) The Board shall communicate approval of submitted Annual Roads Work Programmes or specify any corrections, additions or clarifications that are required to facilitate approval, within four weeks from the date of receipt. (3) Road agencies shall, upon request by the Board, respond to queries raised in the process of approval within four weeks. Once the Board is satisfied with the response from a Road Agency, its Annual Road Works Programme will be approved for inclusion into the Annual Public Roads Programme. (4) In the event that the Board raises queries on an Annual Roads Work Programme, it shall communicate its approval or otherwise following submission of responses to concerned Road Agencies after receiving responses on or before 31st December. (5) The Board shall impose penalties as stipulated in the Fifth Schedule to these Regulations on Road Agencies for failure to submit compliant Annual Road Works Programmes within stipulated timelines above.
Revision of Annual Public Roads Programme.	8 (1) Road Agencies may apply for revision of their portion of the Annual Public Roads Programme before 31st January of each year. No revisions shall be permitted thereafter. (2) The Board shall communicate its approval or otherwise to the respective Road Agencies of the revisions to the APRP within one month of the request (3) Road Agencies shall not implement any works outside the APRP without seeking prior approval from the Board. (4) The Board shall impose penalties as stipulated in the Fifth Schedule to Road Agencies for implementation of works outside approved APRP.
PART III – FINANCIAL PROVISIONS AND ADMINISTRATION	
Duties of Road Agencies	9 Notwithstanding any obligation imposed on a Road Agency under these Regulations, a Road Agency shall, for the purposes of utilising funds received from the Fund –

	(a) maintain, rehabilitate and develop the categories of roads within its mandate; (b) prepare the Annual Road Works Programme using the prescribed format issued by the Board from time to time; (c) utilise disbursed funds to implement the approved Annual Roads Work Programme; (d) put in place and implement quality control and quality assurance system; (e) manage road reserve; (f) supervise and monitor road works within their area of jurisdiction; and (g) perform any other duties as the Ministry may direct from time to time
Duties of County Governments	10. County CECs' shall be responsible for: a. Approving County roads work plans b. Provide public notices for purposes of traffic management during the works implementation c. Ensure the final inspection and issuance of defect liability certificates upon completion of designated works under the works programme d. Ensure that illegal structures are cleared out of the road reserve and encroachment has stopped e. Ensure assessment of property within the right of way and compensation to owners where necessary is paid or duly discharged before commencement of any designated works under the works programme provided that such compensation shall not be paid out of the funds allocated for works programme f. Not in any way alter the agreed works programme without prior consent of the Board g. Furnish the Board with such reports as may be required for the review of the works programme. Following each such review, the county shall each promptly and diligently in order to take, or assist the Board in taking any corrective action deemed necessary to remedy any shortcoming noted in the

	implementation of the works programme or to implement or assist the Board in implementing such other measures as may be necessary for the furtherance of the objectives of the works programme h. At the request of the Board exchange views with regard to the progress of the works, programme, the performance of its obligations and other matters relating to the objectives of the works programme i. Promptly inform the Board of any condition which interferes or threatens to interfere with the progress of the works programme or the performance of its obligations j. Maintain or cause to be maintained, separate records and accounts in accordance with sound accounting practices k. Retain all records (contract, orders, invoices, bills, receipts and other documents) as evidencing expenditures and enable and assist the Board to examine such records. l. Cause to be opened and operated as separate bank account for the Funds disbursed by such account to be known as the Road Maintenance Levy Agency Account (RMLFAA) m. Not to use or permit to be used, the RMLFAA aforementioned as security or otherwise for borrowing of any funds and engaging any activity not directly associated with the works programme n. Carry out the works programme with due diligence, safety, efficiency, be cost conscious in order to get value for money and in an environmentally friendly manner, and in conformity with appropriate administrative and financial practices
Opening of Bank Accounts.	11 (1) Each Road Agency shall cause to be opened a separate bank account for the funds disbursed from the Fund to be known as '<i>Name of Agency -Road Maintenance Levy Fund</i>'. (2) A Road Agency that fails to open a Bank account shall not receive funds. (3) All bank accounts shall be opened, operated and closed with authority from the Board and the National Treasury, in accordance

	with Section 28 (1) Public Finance Management Act, 2012 and its applicable Regulations.
Deposits into the Bank Account.	12 (1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account. (2) A Road Maintenance Levy Bank Account shall not be a fixed deposit account and neither shall funds held in a Road Maintenance Levy bank account in any circumstances be held in a fixed deposit account.
Payments from the Bank Account.	13 (1) All Road Agencies shall make payments related to the Roads Works Programmes approved by the Board from their respective Road Maintenance Levy Fund bank account. (2) Payments may be done either by instructions, cheque, electronic or fund transfer in accordance with the Public Finance Management Act 2012 and its Regulations.
Signatories to the Bank Account.	14 (1) The accounting officer of a Road Agency shall be a mandatory signatory to all cheques, electronic payments and fund transfers. (2) The accounting officer in charge of the road agency shall designate other signatories and any changes in signatories in accordance with the Public Finance Management Act 2012 and its Regulations. (3) For county road works, the chief officer in charge of roads shall be a signatory to the bank account.
Annual Estimates.	15 The Board shall prepare annual revenue projections of the Fund on a three (3) years forward basis and submit it to the National Treasury.
Budget Ceilings.	16 (1) The Board shall give the Road Agencies and constituencies (counties) budgetary ceilings for the following financial year and request them to commence the preparation of their respective Annual Road Works Programmes by 1 st July of the financial year preceding the year to which the budgetary ceilings relate. (2) The budget estimates for each Road Agency and constituency, shall be in accordance with the allocation criteria set out in Section 6(2) (d), (e) and (f) of the Act. (3) The ceilings for county governments shall be determined each year after the passing of the Annual Division and Allocation of Revenue Bill in accordance with provisions of Article 218 of the Constitution.
Expenditure Projections.	17 Road agencies shall within three (3) months before the beginning of the financial year submit to the Board an annual expenditure projection for each month in the financial year.
Disbursement Program.	18 (1) The Board shall indicate to Road Agencies at the beginning of each financial year, cash flows for each month.

	(2) The Board shall monitor receipt of funds from RMLF and allocate each tranche to the respective Road Agency in accordance with the disbursement program
Release of Funds and Withholding of Funds.	19 (1) The Board shall release funds to compliant Road Agencies within one month after approval by the Board and in compliance with the disbursement schedule. (2) The Board shall withhold release of funds to Road Agencies who have not complied with the prescribed rules, regulations, procedures and guidelines, the Act, or other applicable laws.
Conditions for Release of Funds.	20 (1) Without prejudice to the generality of the foregoing, the specific criteria in subsection (2) will be applied as a basis for release of funds. (2) The specific criteria for the release of funds include - (a) Submission of quarterly and annual progress/expenditure reports as required by the Board in accordance with these Regulations. (b) Submission of an Annual Road Works Programme duly approved by the Board in accordance with Section 19(2) of the Act. (c) In the event of audit queries, provide responses to all audit queries raised in accordance with these Regulations. (d) Timely implementation of the approved Annual Road Work Programme and absorption of up to 70% of the annual budgetary allocation (e) Complied with requests made under section 27 of the Act by an inspector ; (f) Confirmation that the funds are being used wholly and exclusively for the intended purposes and that no funds whatsoever are being diverted for use in other unrelated activities.
Release of Funds by Road Agencies to regional offices/sub-agencies.	21 A Road Agency shall forward funds to its regional offices/sub-agencies where applicable within two (2) weeks after receipt from the Board.
Partial Release of Funds.	22 In the event that the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a financial year, the Board may approve release on account of not more than 30% of the funds based on the submitted draft ARWP, to enable the

	operations of the agency to continue, pending approval of the Annual Public Roads Programme (APRP).
Utilization of the Fund.	23 Funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme (APRP).
Administrative Expenses.	24 (1) Road Agencies shall not exceed the overheads and administrative expenses thresholds specified in Section 6 (2) (1) of the Act. (2) Road Agencies shall ensure regional offices are allocated funds for administration from the overall administration expenses of the Road Agency.
Expenditure Limit.	25 The expenditure on budgeted line items is limited to the amount approved in the budget.
Board approval to exceed budget.	26 (1) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may approve such excess after being satisfied that there are compelling reasons for the same. (2) Any excess approved under the subsection (1) must be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded.
Reallocation of funds for works.	27 Road Agencies shall not use the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of the Board.
Authority to incur expenditures.	28 Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that Road Agency.
Fixed Assets Register.	29 (1) Every Road Agency shall maintain a Fixed Assets Register relating to the Fund wherein various details of fixed assets will be recorded. (2) The Fixed Assets Register shall contain the following details: (a) Type of asset; (b) Cost of asset, supplier and date of acquisition; (c) Serial numbers, title documents of the asset and provision for licenses where applicable; (d) Rates of depreciation; (e) Accumulated depreciation up to close of financial year; (f) Written down value as at the end of the financial year;

	(g) Value of the asset (as per the last valuation); (h) Date of disposal and the net realizable values; (i) Profit or loss on disposal; (j) The exact location of the asset; and, (k) Identification numbers of the assets (to be coded on the basis of category, location etc. of the assets).
Savings and Earnings.	30 (1) Where a Road Agency has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. (2) Road agencies shall submit a work plan for the savings and or interest earnings to the Board before spending.
Carry over funds.	31 (1) At the end of each financial year all road agencies shall submit to the Board bank balances and corresponding road works for which the funds were to be utilized. (2) The carry over funds and associated road works shall be included in the Annual Road Works Programme for the following financial year.
Funds not to be applied as security for borrowing.	32 Road Agencies shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.
Funds disbursed through Constituency Road Fund.	33 For funds disbursed through Constituency Road Fund accounts, the Kenya Rural Roads Authority (KeRRA) accounting officer who manages the funds at the constituency shall be responsible and accountable for the funds.
Maintenance of Cash Books.	34 (1) Road Agencies shall maintain a cash book for The Kenya Road Board Fund Account to be written and balanced daily and the cash in hand verified by the officer in charge of the cash book. All monies received shall be recorded serially in the cash book with adequate details of the transaction. (2) The Road Agencies shall maintain registers and records of bank accounts, cash books and imprest in accordance with the Public Finance Management Act 2012 and its pursuant Regulations.
Cash Book.	35 (1) The Cash Book shall be checked on a daily basis by a senior officer of the Road Agency and at these checks he should sign the cash book at the last entry examined to signify that he has satisfied himself as to the correctness of all entries made since the last signature. (2) The cash book balance must be reconciled with the bank balance at the end of every month.

Account not to be overdrawn.	36 The Road Agencies' RMLF Bank Account shall not be overdrawn as stipulated in the Public Finance Management Act 2012 and its Regulations.
Cashing of Personal Cheques.	37 (1) Personal cheques shall not be deposited into an official bank account. (2) Cashing of personal cheques from funds received from or through the Board, whether drawn by civil servants, directors, staff members, or members of the public is not permitted.
Payment vouchers, adjustment journals, banking and issuance of receipts.	38 (1) All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-numbered receipt, which should be signed, stamped and dated. (2) All payment vouchers, adjustment journals and receipts shall comply with the provisions of the PFM Act and regulations. (3) All cash and cheques received must be receipted and banked intact into the road agency's RMLF Bank Account within five days from the day of receipt.
Amounts to tally.	39 The amounts in words and figures must tally and shall not be altered or amended.
Banking of Receipts.	40 All cash and cheques received must be receipted and banked intact into the Road Agency's RMLF Bank Account within five days from the day receipt is acknowledged.
Financial Records and automation of financial operations.	41 Financial records may be maintained in manual or electronic form and shall be kept in accordance with the Public Finance Management Act 2012 and its Regulations.
Annual Reports and Financial Statements.	42 (1) The accounting officer shall prepare annual reports and financial statements with respect to the RMLF account in compliance with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time. (2) Every road agency shall, within six months of the end of each financial year submit to the Board its audited accounts for that financial year.
Books of Account	43 Accountable documents whether manual or electronic shall be under strict control at all times and they shall include— (a) local purchase order; (b) local service order (c) authority to incur expenditure; (d) cheques; (e) cash receipt and payment books;

	(f) and (g) imprest warrants etc.
Accounts and records to be kept and preserved.	44 (1) Road agencies and sub-agencies shall maintain the following accounts and records in the format prescribed hereunder – (a) Cashbook, bank statements and bank reconciliations; (b) Payment vouchers (c) Ledgers; (d) Fixed assets register; (e) Quarterly and annual reports and financial statements and non – financial reports; (f) Quarterly ARWP Progress reports; (g) Approved ARWP (h) Procurement documents, LSOs/LPOs/contract; (i) Inspection and verification reports; (j) Measurements sheets, etc. (2) Accountable documents, books and records shall be preserved in accordance with the provisions of the Public Finance and Management Act 2012 and its Regulations. (3) The books of account kept and maintained under this regulation shall be made available to the Board for monitoring. (4) The Board shall suspend disbursement of funds to a Road Agency which contravenes the provisions of this regulation.
Sanctions and Penalties.	45 (1) Failure to adhere to the Act and these regulations shall amount to non-compliance. (2) Where a road agency is non-compliant, the Board may - (a) Suspend funding to the road agency; (b) Appoint another Road Agency, and release funds allocated for works by the non-compliant Road Agency, to the newly appointed agency'

	(c) Institute measures to recover any amounts misappropriated by a public officer. (d) Take legal action against a officer. (3) Any member of the public may lodge a complaint of allegation of misuse of funds with the Board against any Road Agency (4) Without prejudice to subsection (2) the Board may, where it is satisfied of the complaint against misuse of funds allocated for any road work, conduct a special investigation for the purposes of determining the truth of the complaint or allegation. (5) Notwithstanding subsection (2) the Board may on its own motion conduct a special investigation where it has reason to believe that there is a misuse of funds by a Road Agency.
PART IV –ROAD MAINTENANCE AND DEVELOPMENT	
Efficient and Effective delivery of road works.	46 (1) Road Agencies shall ensure compliance with design and supervision standards for road works as issued by the Ministry from time to time. (2) Road Agencies shall establish and implement quality management systems for delivery of road works including materials testing and adequate supervision. (3) Road Agencies shall ensure that any planned work is executed within the time, cost, set standards and specifications. (4) Road Agencies shall ensure compliance with contract conditions in accordance with Part V of these Regulations. (5) Goods, works, and services shall be procured in a manner that promotes economy, efficiency, effectiveness and equity in accordance with relevant rules and regulations as may be prescribed from time to time. (6) The RAs shall ensure that the above documents are available to the inspectors appointed under Section 26 (1) of the Act for inspection whenever required.
Supervision of Works.	47 (1) Road works shall be supervised by suitably qualified and adequate staff. (2) Road Agencies shall maintain records available to the inspectors appointed under Section 26 (1) of the Act for inspection whenever required. (3) Road Agencies shall ensure that site supervision staff have adequate resources to carry out supervision.

	(4) Road Agencies shall maintain staff records as provided in Form 4 set out in the First Schedule to these Regulations. (5) The Board shall conduct field visits every quarter and will give at least two weeks' notice in advance to Road Agencies. (6) Road Agencies shall avail appropriate officers to accompany the Board monitoring team for field visits and provide information as may be required.
Safety.	48 (1) Road Agencies shall ensure compliance with Occupational Safety and Health Act No. 15 of 2007. (2) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works. (3) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.
Environment.	49 (1) Road Agencies are to have an Environmental and Social Management Plan for maintenance projects which shall be clustered at regional levels. (2) Road Agencies shall ensure compliance with Environmental Management and Coordination Act of 1999. (3) Road Agencies shall prepare and implement safety and environmental management plans for road works before commencement of works.
Carry over works.	50 (1) Road Agencies may with approval of the Board, carry over works from one financial year to another provided that the same does not exceed 20% of the Annual Public Roads Programme. (2) In order to avoid duplication of road works and to differentiate works for prior and current Financial Year, Road Agencies shall submit a revised Annual Roads Work Programme for all carry over works and savings to the Board for approval by end of July of every financial year.
Emergency repair works	51 (1) Road agencies shall carry out emergency works or repairs in accordance with design and supervision standards for road works as issued by the Ministry. (2) In carrying out emergency repair works, the Roads Agency shall request for emergency funds from the Board. (3) The Board shall establish and cause to be followed transparent and objective procedures to access and account for emergency funds.

Spot improvements	52 Road Agencies shall carry out spot improvements on short road sections that are in poor conditions for the purposes of maintaining accessibility for such roads.
Road related administrative costs	53 (1) A Road Agency shall use the percentage funds to be allocated by the Board to cover road related administrative costs. (2) The roads related administrative costs in subsection (1) shall include – (a) supervision costs; (b) administration costs; and (c) any other related costs to be determined by the Board.
PART V- CONTRACT MANAGEMENT	
Contracts Format.	54 (1) Road Agencies shall enter into contractual; arrangements for road works, goods and services which should specify the following, inter alia – (a) Parties to the contract; (b) Contract price and period; (c) Scope of works, bills of quantities, drawings and specifications (d) Conditions of contract as prescribed by Public Procurement Regulatory Authority. (2) Any payments by Road Agencies for contracts which do not comply with the above shall be considered ineligible expenditure and shall be recoverable from the Road Agency.
Contract project file and force account	55 (1) A Road Agency shall keep and maintain the following project files – (a) Contract file; and (b) Force account (2) The contract project file in subsection (1) shall contain the following – (d) copies of procurement documents; (e) site photographs; (f) site instructions; (g) minutes of meetings;

	(h) a copy of the contract agreement; (i) payment certificates; (j) record of force account; (k) any other relevant correspondences for inspection and audit. (3) The project file for the force account shall contain the following – (a) approval of the tender; (b) site photographs; (c) drawings; (d) bill of quantities; (e) record of inputs namely – i. materials purchased ii. labour iii. equipment hired; iv. fuel v. supervision costs; and vi. any other costs which the Board may determine; and (f) completion reports
Contracts portfolio.	56 (1) The Board shall establish and maintain a contract portfolio for all works in the approved Annual Public Roads Programme. (2) Projects not included in the portfolio shall not be eligible for financing. (3) All contracts for works, good and services shall be in writing and executed in the form as shall be prescribed by the Board from time to time. (4) Road Agencies shall submit to the Board copies of all signed contract documents for road works above Kenya Shillings 100 million and bridges above Kenya Shillings 10 million not later than two weeks after contract signing including all VOs when they occur. Road Agencies shall submit quarterly summary contract reports for all other works. (5) Road Agencies shall submit to the Board quarterly progress reports for all projects over Kenya Shillings 100 million. Road agencies shall submit to the Board quarterly summary reports for

	all projects procured under the Fund in the format prescribed in the first schedule. (6) Road Agencies shall invite the Board for project kick off and substantial completion inspection meetings for all projects over Kenya Shillings 100 million. (7) Road Agencies shall submit to the Board minutes of substantial completion inspection meeting and handing over certificates for all projects over Kenya Shillings 100 million. (8) Road Agencies shall prepare final completion report upon completion of all RMLF funded projects
PART VI – MONITORING AND EVALUATION	
Technical, Financial and Performance Audits.	57 (1) The Board shall conduct technical, financial and performance audits of the Board funded programs undertaken by the Road Agencies after every six months. (2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time. (3) The audits shall be conducted by such persons as may be authorized by the Executive Director in writing. (4) The Board shall inform Road Agencies of the intended audits two weeks in advance unless a special or ad hoc audit is ordered. The notice shall spell out the audit scope, objectives, basis, information required, audit checklist and audit program. (5) There shall be entry and exit meetings between the auditor and Road Agencies and the minutes of these meetings shall be signed by both parties. (6) The Road Agencies shall provide necessary facilitation for the audits including venue for entry and exit meetings, conducive working space for the auditors. (7) Road Agencies shall avail appropriate officers to accompany the auditors for the field visits. (8) An auditor may call off or postpone an audit in the following circumstances; (a) Uncooperative Road Agencies; (b) Failure to receive documents and information; (c) Risks / physical threats;

	(d) Insecurity; (e) Absent auditee. (9) The Auditor shall inform the Executive Director who shall escalate the same to the Cabinet Secretary with recommendation.
Duty to avail documents and information to the auditor..	58 (1) The Road Agencies shall make available to the auditor all of the following information - (a) books; (b) accounts; (c) records and other documents; (d) correspondence; (e) statements and information relating to goods; (f) works and services financed by the Fund; and (g) any other information as determined by the Board and as may be required by the auditor Provided that - (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced; (ii) the auditor may make copies of any books, accounts, records and other documents required for the purposes of its report; and (iii) all information obtained in the course of the M&E shall be treated as confidential and used solely for the purposes of the Act and these Regulations. (2) Where M&E is under a special audit, the Road Agency shall avail information in subsection (1) upon immediate request of the auditor. (3) Any clarifications sought shall be availed to the auditor within thirty days.
Penalties for Failure to Comply.	59 (1) The Board shall notify Road Agencies which fail to comply with the auditor's request or hinders an auditor from carrying out audits or gives false information after expiry of allowed period and specify the penalties to be applied for non-compliance. (2) If Road Agencies do not respond satisfactorily to the issues raised above within 30 days, the Board shall institute the penalties as prescribed in the Fifth Schedule of these Regulations. (3) Road Agencies which fail to comply with the auditor's request or hinders an auditor from carrying out audits or gives false

	information, shall be liable and the penalties as prescribed in Schedule set out in the schedules to these rules. (4) Develop rules for uncooperative auditee/ limitation of scope.
Responses to audit report.	60 (1) Road Agencies shall submit to the Board written responses to audit reports and queries within thirty (30) days as per the prescribed format in the schedules to these rules. (2) Upon expiry of the 30 days, the Board shall conclude the audit report and submit to Cabinet Secretary for roads. The approval of the CS shall be final and binding
Implementation of Audit report.	61 (1) Road Agencies shall submit an action plan for addressing the deficiencies identified in the audit reports. (2) The Board shall impose penalties as stipulated in the Fifth Schedule to these Regulations to Road Agencies which fail to implement audit recommendations satisfactorily. (3) The Board shall monitor the implementation of the action plans (4) Road Agencies shall submit to the Board a status report on implementation of audit recommendations by 31st January of each year.

PART VII – REPORTING

Submission of Reports.	62 (1) Road Agencies shall prepare and submit quarterly APRP implementation reports together with supporting documents by the 20th day after end of each quarter. (2) The Reports must be approved by the Director General of the Road Agency before submission. (3) The Board shall review the report to check compliance with approved APRP. (4) The Board will acknowledge receipt of the quarterly reports and seek clarifications, if any, from Road Agencies. (5) The Road Agencies shall, upon request by the Board, respond to the queries raised within two weeks. (6) Based on the reports, the Board shall prepare and publish half year and annual APRP implementation reports. (7) Road Agencies shall submit to the Board road network management data as in the format and detail prescribed in Form 6 in the First Schedule to these Regulations.
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	(8) Road Agencies shall submit to the Board ad hoc and special reports as may be requested from time to time. (9) The Board shall publish an annual APRP implementation report of projects above Kshs. 100m. (10) The Board shall impose penalties as stipulated in these Regulations to Road Agencies for non-compliance with reporting requirements.
PART VIII – FRAMEWORK FOR ENGAGING COUNTY GOVERNMENTS	
Procurement by County Governments	63 (1) Roads departments in county governments shall act in accordance with provisions of the Act and shall adhere to provisions of the Public Procurement Act 2015 and the Public Finance and Management Act 2012 and as may be amended from time to time. (2) County governments shall use only the standard documents and procedures of tender and/or contract approved and provided by the Kenya Roads Board (hereinafter referred to as "the Board") and where not provided those given by the Director of Public Procurement.
PART VIII – MISCELLANEOUS	
Register of Complaints.	64 (1) A person, public agency and or stakeholder ('the Complainant') aggrieved by any decision of the Board shall lodge a complaint in the prescribed form and the same shall be recorded in the Complaints Handling Register. (2) The Board shall establish a Complaint Management Committee chaired by an officer who shall be the custodian of the Register. (3) The complainant shall attach or provide any documents necessary to support the complaint. (4) Notwithstanding the foregoing, a complaint may be made anonymously or treated in such a manner as to protect the identity of, or particulars of the complainant where necessary, as may be directed by the Executive Director.
Procedure for handling a complaint.	65 In the determination of complaints under these Regulations, the Board shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.
Investigations.	66 (1) Where the complaint has been admitted, or where the Committee has taken up a matter on its own initiative, the Executive Director may commission an investigation by an officer of the Board or any public office or investigation agency.

	(2) The Committee may, subject to the direction and control of the Board, issue the requisition of information in a form to be determined by the Board. (3) Upon completion of the investigation, the Committee shall prepare a report with recommendations and submit it to the Executive Director. (4) The Board shall keep a record of each investigation and may publish the findings and recommendations pursuant to an investigation and may include these in its Statutory Report. (5) Appeals from the decisions of the Executive Director which are covered under the Act and these Regulations, shall lie before the Board of Directors.
Offences	67(1) A person who hinders the powers of the inspector pursuant to section 27 of the Act shall be guilty of an offence on conviction and be liable to a fine of one hundred thousand shillings or to imprisonment for three months or to both. (2) If the offence in subsection (1) is a continuing offence, in addition to the penalty prescribed, the person shall be liable to a fine of one thousand shillings for each day during which the offence continues.
Transitional Arrangements.	68 The Board may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Regulations.
Dated the 2020 JAMES WAINAINA MACHARIA, E.G.H Cabinet Secretary Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works	

FIRST SCHEDULE

Rules 5(3), 5(4), 6(1), 46(5), 55(5), 61(7)

FORM 1 – FORMAT FOR ROAD INVENTORY CONDITION SURVEY (RICS)**FORM 2 – FORMAT FOR APPROVAL FOR INCLUSION OF ROADS NOT IN
CURRENT ROAD REGISTER****FORM 3 – FORMAT FOR DRAFT ARWP****FORM 4 – STAFF RECORDS****FORM 5 – SUMMARY OF CONTRACT INFORMATION****FORM 6 – ROAD MANAGEMENT DATA****SECOND SCHEDULE**

Rule 15(2)

**BUDGET ESTIMATES FOR ROAD AGENCIES, COUNTIES AND ROAD SECTOR
INVESTMENT PROGRAMME (RSIP)**

S/NO	AGENCY	ALLOCATION (%)	PURPOSE
1.	Kenya National Highways Authority (KeNHA)	xx	To carry out works on National Trunk Roads Class A and B.
2.	Kenya Rural Roads Authority (KeRRA)	xx	To be equally allocated to all Constituencies to carry out road works in all constituencies.
		xx	To be equally allocated to all Constituencies for maintenance or development of link roads
3.	Kenya Urban Roads Authority (KURA)	xx	To be allocated for works on urban roads in cities and municipalities
4.	Kenya Wildlife Service (KWS)	xx	To be used in maintenance of roads in the national parks and game reserves.
5.	47 Counties	xx	Conditional grant to County Governments to carry out works on County Roads.
6.	RSIP/Cabinet Secretary	xx	To be allocated by the Board with approval of the Cabinet Secretary in charge of roads

THIRD SCHEDULE**Rule 46(3)****CLASSIFICATION OF WORKS****FOURTH SCHEDULE****DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads (referred to as Primary National Trunk Roads)
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes C
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes H, J.
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.
4.	County Governments	Management, development, rehabilitation and maintenance of County Roads Classes D, E, F, G, K, L, M, N, P.

FIFTH SCHEDULE**PENALTIES FOR SPECIFIED OFFENCES**

Relevant Rules	Offence	Minimum Penalty	Maximum Penalty
	Failure to submit ARWP within specified timeline		Pay a maximum of Ksh xxx and or xxx months imprisonment
	Implementation of Works outside approved APRP		Pay a maximum of Ksh xxx and or x months imprisonment

	Failure to comply with the auditor's request		Pay a maximum of Ksh xxx and or xx months imprisonment
	Hindering auditor from carrying out audits		Pay a maximum of Ksh xxx and or xxx months imprisonment
	Giving false information to auditor		Pay a maximum of Ksh xxx and or xxx months
	Failure to implement audit recommendations		Pay a maximum of Ksh xxx and or xxx months
	Non-compliance with reporting requirements		Pay a maximum of Ksh xxx and or xxx months

THE KENYA ROADS BOARD



KENYA ROADS BOARD
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REGULATORY IMPACT ASSESSMENT REPORT PROPOSED KENYA ROADS BOARD REGULATIONS, 2020 DC FY2019/2020 JULY 2019 – JUNE 2020

1

Regulatory Impact Statement

April 2020

Republic of Kenya



MINISTRY OF TRANSPORT,
INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS

PROPOSED KENYA ROADS BOARD REGULATIONS,
2020

PROPOSED KENYA ROADS BOARD REGULATIONS 2020

Regulatory Impact Statement

April 2020

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PROPOSED
KENYA ROADS BOARD REGULATIONS 2020

Regulatory Impact Statement

**Prepared by the Ministry of Transport, Infrastructure, Housing, Urban
Development & Public Works**

2020

This Regulatory Impact Statement (RIS) on the proposed Kenya Roads Board Regulations, 2020 has been prepared in compliance with Part III of the Statutory Instruments Act (No. 23 of 2013).

The purpose of the RIS is to inform the Cabinet Secretary, Members of Parliament, and the Kenyan society of the potential impacts of adopting the proposed Kenya Roads Board Regulations 2020. It provides an assessment and analysis of possible positive and negative effects of the regulatory proposals made on Kenyan society. The analysis is underpinned on information, suggestions and feedback received from public consultation processes that have been undertaken in the process of drafting these regulations.

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EXECUTIVE SUMMARY

The Constitution of Kenya 2010 creates a devolved system of government, which comprises of a national government and county governments. The Fourth Schedule of the Constitution distributes functions between the national and county governments and assigns the construction and operation of national trunk roads; and setting standards for the construction and maintenance of other roads by counties to the national government, while county governments are assigned the responsibility of overseeing county roads. The Kenya Roads Act (1999) established the Kenya Roads Board as a statutory corporation with, among others, the mandate of:

- overseeing the road network in Kenya;
- coordinating the maintenance, rehabilitation and development of roads funded by the Roads Maintenance Levy Fund (RMLF) and the optimal utilization of the Fund in the implementation of programmes; and
- monitoring and evaluating the delivery of goods, works and services funded by the Fund through technical, financial and performance audits.

The Kenya Roads Board (KRB) uses funds from the Roads Maintenance Levy Fund (RMLF) to fund the management, development, rehabilitation and maintenance of roads by Road Agencies (Authorities) namely the Kenya National Highways Authority (KeNHA) which is responsible for Classes S, A and B roads also known as Primary National Trunk Roads; the Kenya Rural Roads Authority (KeRRA) which is responsible for Class C roads which are Secondary National Trunk Roads; the Kenya Urban Roads Authority (KURA) which is responsible for classes H and J roads which are Secondary National Trunk Roads; the Kenya Wildlife Service (KWS) which is responsible for roads in national parks and game reserves; and County Governments which are responsible for classes D, E, F, G, K, L, M, N, P roads.

The Kenya Roads Board (KRB) seeks to enact the Kenya Roads Board Regulations 2020, whose objectives are to provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act 1999, to fill in gaps inherent in the Technical, Financial and Performance Audit Manuals and Guidelines, and to provide a collaborative framework between national government and county governments in executing their respective mandates in relation to road development, maintenance and rehabilitation.

This Regulatory Impact Statement (RIS) examines the costs and benefits of implementing the proposed Regulations and concludes that if properly implemented, they will serve to significantly improve and rationalize KRB's decision-making processes and allocation of resources resulting in the optimal use of

public funds in preserving road networks in Kenya and maintaining them at an acceptable level of serviceability.

The Regulations have been developed following multiple rounds of stakeholder consultations and support. They are organized in 8 Parts (Parts I - VIII). Part I covers sections on citation, interpretation and application of the Regulations. Parts II to VIII cover the Annual Public Roads Programme (APRP), Financial Provisions and Administration, Road Maintenance and Development, Contract Management, Monitoring and Evaluation, Reporting, and Miscellaneous provisions respectively.

1. INTRODUCTION

The proposed Kenya Roads Board Regulations 2020 aim to strengthen KRB's capacity for the discharge of its mandate. The Regulations seek to provide further details and clarity on provisions, which have been left open by the Kenya Roads Board Act 1999. They also seek to align the Kenya Roads Board Act 1999 with the provisions of the Constitution of Kenya (CoK) 2010 by making provision for a collaborative framework between the national government and county governments in executing their respective mandates and functions as prescribed by the Fourth Schedule of the CoK, 2010; and to address gaps and challenges inherent in the Technical, Financial and Performance Audit Manuals and Guidelines that have been in use hitherto.

The main source of funding road maintenance is the Road Maintenance Levy Fund (RMLF), which comprises the Fuel Levy and Transit Toll collections. The RMLF is used for both routine and periodic maintenance of public roads. Section 31 of the Kenya Roads Board Act 1999 establishes the Kenya Roads Board Fund (KRF) into which funds from the RMLF are to be deposited. The funds deposited into the KRF are to be utilized towards the maintenance of the road network in Kenya. As a statutory corporation, the KRB under the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, administers the RMLF and thereby finances road maintenance, rehabilitation and development through various road agencies, and carries out monitoring and evaluation (M&E) of funded works and services. These road agencies include Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA), the Kenya Wildlife Service (KWS) and departments responsible for roads in County Governments.

Currently, KRB is governed by the Kenya Roads Board Act 1999 with its subsidiary legislation LN93/2003 which makes provision for the Urban Development Department of the Ministry of Local Government and covers road maintenance, rehabilitation and development projects in the Nairobi City Council, and the Mombasa, Kisumu, Nakuru, Eldoret municipal councils as they were previously known under the pre-2010 constitutional dispensation in Kenya. Presently, KRB performs its oversight function over road agencies through the use of Technical, Financial and Performance Audit manuals and guideline as published regularly.

Section 37 of the Kenya Roads Board Act 1999 empowers KRB to make rules for the better carrying out of its functions. Consequently, having the experience of using manuals and guidelines for a period of over 20 years and taking into account the institutional learning that has taken place within KRB itself and

In road agencies, KRB considers the use of subsidiary legislation as the best option/instrument that can better align the sector with requirements of the Constitution of Kenya 2010 and address issues and challenges arising out of the use of manuals and guidelines to govern the sector.

The legislation is not finalized and changes based on stakeholder comments and public consultations will help to ensure that the final Kenya Roads Board Regulations 2020 presented to Parliament deliver the best outcomes.

This RIS sets out the substantive proposals made by these Regulations and identifies their likely socio-economic impacts and the costs and/or benefits for stakeholders and Kenyans in general.

2. OBJECTIVES OF THE PROPOSED KENYA ROADS BOARD REGULATIONS 2020

2.1 Compliance with the Constitution of Kenya 2010 and the County Government Act 2012

The promulgation of the Constitution of Kenya 2010 created two levels of government, namely the national government and the county government. The Fourth Schedule of the Constitution distributes functions between the national government and county government. Whereas the national government is responsible for the construction and operation of trunk roads and setting standards for the construction and maintenance of other roads by counties, the county governments are tasked with the construction, maintenance and rehabilitation of county roads. Therefore, pursuant to the Fourth Schedule, the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

Under the former constitutional dispensation, road development, maintenance and rehabilitation fell under the responsibility of the then local governments namely municipal councils, under the oversight of the District Road Committees. This function has now been moved to county governments under the County Government Act 2012.

The development of the Kenya Roads Board Regulations 2020 is an imperative element in creating a collaborative framework between the national government and county governments for executing their respective mandates and functions relating to road development, maintenance and rehabilitation. These regulations are in compliance with the overall objectives of devolved functions of both levels of government under the constitution.

2.2 Objectives of the proposed Regulations

Kenya Roads Board seeks to significantly improve and rationalize decision-making and allocation of resources for the roads sector, and to make the best use of public funds in preserving road networks in Kenya at an acceptable level of serviceability. In order to achieve this, KRB requires to strengthen its capacity for the discharge of its mandate by putting in place Regulations pursuant to provisions of s.37 of the Kenya Roads Board Act 1999.

The objectives of these Regulations is to provide further details and clarity on provisions which have been left open by the Kenya Road Boards Act, to fill in gaps inherent in the Technical, Financial and Performance Audit Manuals and Guidelines, and to align the sector to provisions of CoK, 2010.

In the process of developing the proposed Regulations KRB conducted a review and benchmarking exercise of similar local and international fund managers with the aim of developing best practices. Table 1 below highlights the detailed issues addressed by the proposed regulations.

Table 1: Issues addressed by the proposed Kenya Roads Board Regulations 2020

No.	Topic/Key Principle	The Parent Act	Proposed Legislation: Kenya Roads Board Regulations 2020	Comments/Explanation
1	Applicable Legislation	Kenya Roads Act 1999	Kenya Roads Board Regulations 2020	Legislation is based on s.37 of the Kenya Roads Board Act 1999 and is aimed for the better functioning of KRB.
2	Application of the Kenya Roads Board Regulations 2020		The regulations apply to: a. Road Agencies namely the: i) Kenya National Highways Authority (KehHA) ii) Kenya Rural Roads Authority (KerRA) iii) Kenya Urban Roads Authority (KURA) b. Kenya Wildlife Service (KWS) c. Departments of County Governments responsible for roads	The regulations align the management of the road sector with provisions of the Constitution of Kenya 2010 on devolved government and reflect lessons learnt by KRB for the past 20 years of applying manuals and guidelines.
3.	Annual Public Roads Programme (APRP)	Part II of the Regulations make provisions for the process of preparing and submitting Annual Public Roads Programmes (APRP).	Road Agencies will be required to submit to KRB, 6 months before the commencement of every financial year, a works programme for the development, rehabilitation and maintenance of roads in its jurisdiction, which shall include only those roads contained in the gazetted Road Register. In formulating an APRP, Road Agencies shall be required to: i) undertake an Annual Roads Inventory Condition Survey (ARIC)	

			ii) Hold stakeholder meetings for prioritization of road works, iii) Take into account the approved 5 year road sector investment plan iv) Take into account the Road Management System User Manual Road Agencies may not implement any road works outside of the APPP without seeking approval from KRB. A Road Agency may revise it's APPP in instances where the road works in question have been or are to be implemented by another Road Agency, savings have been made necessitating an inclusion of additional roads to the Road Agency's APPP, or due to the occurrence of an unforeseen emergency.	
4.	Financial Provisions and Administration	Part III focuses on financial and administrative provisions.	Road Agencies are required to use funds received from KRB for: i) maintaining, rehabilitating and developing roads included in the Annual Roads Work Programme (ARWP), ii) putting in place and implement a quality control and quality assurance system iii) managing road reserves iv) road designing processes, safety, and axle load control v) undertaking environmental conservation activities vi) supervising and monitoring road works Road Agencies shall maintain separate bank	

		accounts for funds disbursed from KRB for the implementation of the ARWP. These bank accounts shall be opened, operated and closed with authority from KRB, National Treasury and the Board of the Road Agency. KRB shall give Road Agencies budgetary ceilings for each financial year on the basis of which Road Agencies shall prepare ARWPs. The budget estimates for each Road Agency shall be in accordance with the allocation criteria set out in S.6 of the KRB Act, while those for county governments shall be determined annually after the passing of the Annual Division and Allocation of Revenue Bill in accordance with Art 218 of the Constitution. KRB may withhold the release of funds to a Road Agency which has not complied with prescribed law, rules and regulations. The condition for release of funds to a Road Agency includes: - submission of quarterly and annual progress/expenditure reports - submission of ARWP in accordance with s19(2) of the KRB Act - satisfactory responses to audit queries whenever they are raised - timely implementation of the ARWP and proof of absorption of up to 70% of the
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		v) previous year's budgetary allocation confirmation that funds are used exclusively for the intended purposes In the event that a Road Agency's ARWP has not been approved at the beginning of a financial year, KRB may approve release not more than 30% of the submitted draft ARWP to facilitate the Road Agency's operations pending approval. A Road Agency shall not utilize funds received from KRB for purposes of paying salaries and other employment remuneration and allowances for personnel or for offsetting the cost of offsetting overhead expenses of its regional, sub-regional or sub-county offices. A Road Agency may however utilize funds received from KRB for purposes of offsetting the costs of supervision of road works and other incidentals and allied costs arising from implementing approved road projects. Road Agencies shall procure goods, services and works in accordance with provisions of the Public Finance and Management Act, 2012 and the Public Procurement and Asset Disposal Act 2015. A Road Agency shall not, without prior approval of the Board, reallocate funds earmarked for a particular road project to another road project. Where a Road Agency is not compliant with the financial and administrative provisions, the Board	
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			may: i) suspend funding to the Road Agency ii) appoint another road agency to implement the offending Road Agency's works programme iii) Institute measures to recover any amounts misappropriated by a public officer, or iv) Take legal action against an officer Any member of the public may lodge a complaint of allegation of misuse of funds with KRB against any Road Agency, which shall be in written and provide details of the nature of complaint	
5.	Road Maintenance and Development	Part IV covers road maintenance and development	Road Agencies will be required to ensure compliance with design and supervision standards for road works as issued by the Ministry. They shall be required to: i) establish and implement quality management systems for delivery of road works including materials testing and adequate supervision ii) ensure that all planned works is executed within the time, cost and set standards and specifications iii) ensure compliance with contract conditions iv) ensure that goods, works and services are procured in a manner that promotes economy, efficiency, effectiveness and equity Road Agencies shall ensure that road works are	

		supervised by suitably qualified and adequate staff	
		All Road Agencies shall ensure compliance with the provisions of the Occupational Health and Safety Act 2007	
		Road Agencies shall be required to conduct Environmental Social Impact Assessments (ESIA) for road projects in accordance with guidelines set out by the National Environment Management Authority (NEMA)	
		A Road Agency may with the approval of KRB carry over works from one financial year to the next provided that it does not exceed 20 % of the APRP.	
		Road Agencies shall carry out emergency works or repairs in accordance with design and supervision standards for road works as issued by the Ministry.	
6.	Contract Management	Part V of the Regulations makes provision for Contract Management	Road Agencies are required to enter into contract arrangements for road works, goods and services which shall specify the parties, the contract price and period, the scope of works, bills of quantities, drawings and specifications, and conditions prescribed by the Public Procurement Regulatory Authority. Prior to entering into a road works contract, a Road Agency shall seek a 'non-objection' from KRB Road Agencies shall not issue any variations

			exceeding 10% of the original contract sum without prior approval from KRB Road Agencies shall keep and maintain for inspection and audit the following: i) contract file which shall contain copies of procurement documents, site photographs, site instructions, minutes of meetings, copy of contract agreement, payment certificates, record of force account and any other relevant documents Road Agencies shall submit to KRB copies of all signed contract documents for road works exceeding KES100million and bridges for amounts exceeding KES10million, or such other amounts as KRB may from time to time notify. Road Agencies shall submit to KRB quarterly progress reports for all projects for amounts exceeding KES100 million or such other amount as the Board may notify from time to time. Road Agencies shall also submit to KRB minutes of substantial completion inspection meeting and copies of handing over certificates for all projects for amounts exceeding KES 100 million.	
7.	Monitoring and Evaluation	Part VI of the regulations covers Monitoring and Evaluation	Every 6 months, the Board shall conduct technical, financial and performance audits of programmes it funds and implemented by Road Agencies.	

			for addressing issues raised in an audit report. The Board shall impose penalties on a Road Agency, which fails to implement audit recommendations satisfactorily.	
8.	Reporting	Part VII makes provision for reporting	Road Agencies and counties are required to prepare and submit quarterly APPRP implementation reports together with supporting documents by the 20 th day after the end of each quarter. These reports must be approved by the Road Agency's Accounting Officer	
9.	Miscellaneous	Finally the Regulations make provision in its Part VIII for miscellaneous provisions	A person, public agency and or any other stakeholder aggrieved by any decision of the Board shall lodge a complaint, which shall be recorded in the Complaints Handling Register The Board shall establish a Complaint Management Committee who shall be the custodian of the Register Where a complaint has been admitted, or where the Committee has taken up a matter on its own initiative, the Executive Director may commission an investigation by an officer of KRB or any public office or investigation agency. Upon completion of the investigation the Committee shall prepare a report with recommendations and submit it to the Executive Director.	

3 IMPACT OF THE PROPOSED REGULATIONS

The main impact of the proposed Kenya Roads Board Regulations 2020 is their contribution to the attainment of Kenya's Vision 2030, which is anchored on three pillars namely, economic, social and political development. The economic pillar identifies key sectors for overall economic growth such as tourism, agriculture, wholesale and retail trade, business process offshoring, manufacturing and financial services. Infrastructural development is the principal factor in the exploitation of growth potential all the above-mentioned sectors. Kenya's road networks are a key element of infrastructural development, given that land freight and passenger traffic accounts for over 80% of road transport. Construction of roads is capital-intensive thus proper maintenance, management and rehabilitation is both logical and economically sensible.

Following comments on the proposed Kenya Roads Board Regulations 2020 from stakeholders, KRB will review the changes in terms of their advantages and disadvantages to Kenya. The cost-benefit analysis is a key step in evaluating the potential impacts on stakeholders and the economy.

3.1 COST-BENEFIT ANALYSIS

This section presents an analysis of the costs and benefits associated with the proposed Kenya Roads Board Regulations 2020. This includes a characterization of the potential benefits and a qualitative assessment of benefits (monetized where possible). The section will also identify the costs associated with the implementation of the proposed Regulations.

3.1.1 Benefits

The general benefits resulting from the proposed Kenya Roads Board Regulations 2020 are highlighted in Table 3.1 below.

Table 31: Characterization of Potential Benefits

Consistency and clarity in the law	
Aligning the road sector to provisions of the Constitution on devolved functions	• Clarification of roles, mandates and functions of national government and county governments in the development, maintenance and rehabilitation of roads.
Streamlining procurement processes in Road Agencies to comply with existing law	• Road Agencies will henceforth be required to comply with provisions of the Public Procurement Act 2015, and particularly s.3 (h) which emphasizes that the guiding principle in procuring works should be maximization of value for money

Clarity on conditions for approval and revision of Annual Roads Work Programme (ARWP)	Road Agencies will operate with clarity on the necessary steps to be undertaken in developing an ARWP, the types of information that should be included, how to conduct an Roads Inventory and Conditions Survey (RICs)
Increased Efficiency and Accountability in the Road Sector	
Timely absorption of Funds by Road Agencies	Introduction of sanctions for failure by Road Agencies to absorb funds and implement projects in a timely fashion and limiting carry over works allowable for each financial year to 20%
Supervision of works by qualified professionals and contractors	Regulations require that works be supervised by suitably qualified and adequate professionals which would enhance accountability in the quality of road works implemented including emergency works
Transparency and accountability in the use of Funds	The Regulations put in place requirements for Road Agencies to use funds from KRB in an accountable way and only for the

The following sections provide information on possible costs associated with the proposed legislation.

3.1.2 Compliance Costs

The proposed regulations may result in an increase in compliance costs for Road Agencies. These changes may occur in 'set-up' costs or in 'ongoing' costs associated with the changes.

Set-up or establishment costs will relate to the implementation of the legislation, such as new processes and updating systems that will be required when the legislation is implemented. These costs will fall to Road Agencies in the transition and implementation of the legislation.

The implementation of the proposed regulations will require stakeholders to familiarize themselves with the provisions of the regulation. Associated costs will also further include designing of implementation systems and developing and implementing staff-training and adapting to new internal process.

3.2 SOCIAL AND ECONOMIC IMPACTS

3.2.1 Social Impacts

Availability of serviceable roads has a direct impact on access to healthcare, markets and places of economic activity and social connectivity. Positive impacts may include urbanization of rural areas and opening them up for investment. There is potential for negative social impacts that may arise through the implementation of the road works, which may include disruption of livelihoods.

3.2.2 Economic Impacts

The construction, maintenance and rehabilitation of roads is likely to increase travel and tourism in the country. A good road network is likely to increase economic activity between regions in the country particularly through movement of goods and people.

The proposed regulations will have a further economic impact through indirect expenditures made by road construction businesses. The regulations make provision for regular repair and maintenance of roads. In order to undertake such activities the purchase of necessary equipment and machinery from manufacturers will be required. This will also further create demand for primary materials from other suppliers thus spurring sector-wide economic activity. Investment in road works will increase spending by inter-related industry and add to Kenya's national economic activity.

In the short, road infrastructure is crucial to achieving economic growth. The proposed Regulations seek to support the development, maintenance and rehabilitation of road infrastructure in Kenya, but to keep it in a state of good repair. Investments will generate jobs, increase the competitiveness of Kenyan businesses and lead to a significant injection of economic activity throughout the country.

In the long-term numerous sectors will benefit from improvements in the reliability and efficiency of water storage and harvesting systems.

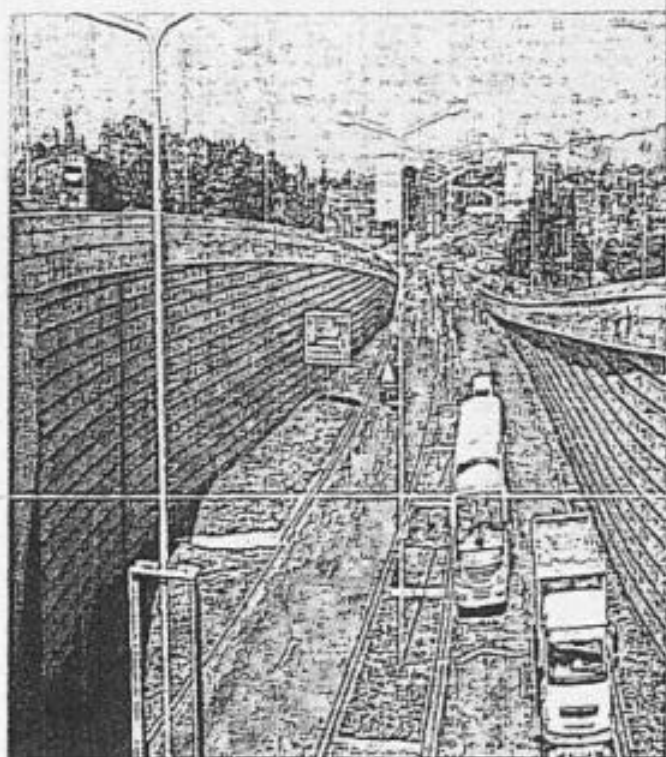
4. CONCLUSION

This Regulatory Impact Assessment supports the enactment of the proposed Kenya Roads Board Regulations 2020 as the most optimal policy vehicle for the Ministry of Transport, Infrastructure, Housing and Urban development and Public works, through KRB to achieve the aim of improving and rationalizing decision-making and resource allocation for the roads sector in the country.



2019

CONSULTATIVE WORKSHOP REPORT



DEVELOPMENT
OF REGULATIONS
TO THE KENYA
ROADS BOARD

ACT, 1999

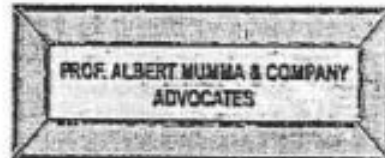
Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999 Report

About this publication:

This Report summarises the discussions and conclusions from the Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999 on the 30th August 2019. The workshop was jointly organised by the law firm of Prof. Albert Mumma and Company Advocates and the Kenya Roads Board (KRB). It took place at the Radisson Blu Hotel, in Upper Hill, Nairobi, Kenya.



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Disclaimer:

This Report summarises discussions held in a forum setting. The views expressed are those of the individual participants who took part.

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ABBREVIATIONS

ACRONYM	DESCRIPTION
APRP	Annual Public Roads Programme
ARICS	Annual Road Inventory and Condition Survey
ARWP	Annual Roads Work Programme
CARA	County Allocation of Revenue Act
CEC	County Executive Committee
CG	County Government
COK	Constitution of Kenya
CS	Cabinet Secretary
GOK	Government of Kenya
KRB	Kenya Roads Board
KRBF	Kenya Roads Board Fund
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Service
MTEF	Medium Term Expenditure Framework
M&E	Monitoring and Evaluation
RA	Road Agency
RIS	Regulatory Impact Statement
RMLF	Road Maintenance Levy Fund
RMS	Road Maintenance Management System
TOR	Terms of Reference

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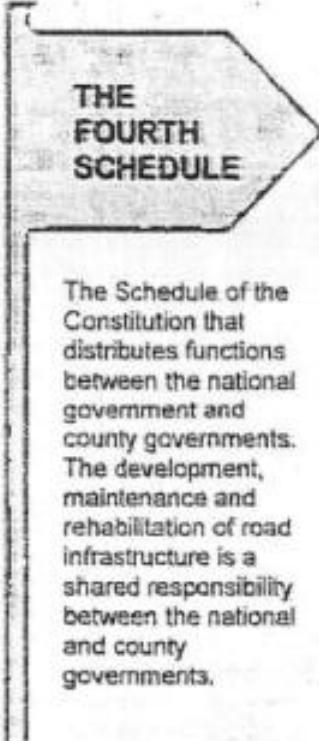
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1. INTRODUCTION

1.1 Background



THE FOURTH SCHEDULE

The Schedule of the Constitution that distributes functions between the national government and county governments. The development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

The Road Maintenance Levy Fund (RMLF) was established in 1993 through an Act of Parliament (Revised 1994.). The RMLF was primarily established for both routine and periodic maintenance of public roads. The Kenya Roads Board Act No. 7 of 1999 on its part establishes the Kenya Roads Board (KRB) as a statutory body to oversee the road network and coordinate the maintenance, rehabilitation and development funded by the Kenya Roads Board Fund (KRBF) and to advise the Cabinet Secretary (CS) on Transport & Infrastructure and on all matters related thereto. The Act empowers KRB to manage the KRBF financed primarily from the proceeds of the RMLF comprising the Fuel Levy and Transit Toll collections. The Act further designates the implementing agencies namely Kenya Rural Roads Authority (KeRRA), Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA) and Kenya Wildlife Service (KWS) to support the management and utilization of road funds.

Since the enactment of the KRB Act 1999 and the establishment of the RMLF, Kenya has undergone a number of key legislative changes that have implications for the road sector.

The promulgation of the Constitution of Kenya 2010 (COK 2010) has created two levels of government namely the national government and county governments. The Fourth Schedule of the COK 2010 distributes functions between the national government and county governments in recognition of the fact that the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments. In particular, the Fourth Schedule provides that the national government is tasked with the construction and operation of national trunk roads and the formulation of standards for the construction and maintenance of other roads by counties. On their part, the functions and powers of the county include county roads. The mandates and functions of county governments are prescribed for under the County Government Act 2012 (CGA).

Through the County Allocation of Revenue Act 2015 (CARA), Parliament has prescribed that fifteen per cent (15%) of the RMLF be allocated to County governments for the maintenance of county roads. In addition, Article 219 of the COK 2010 provides that 'a county's share of revenue raised by the national government shall be transferred to the county without undue and without deduction, except when the transfer has been stopped under the Article 225'. Other key legislative reforms also include the enactment of the Public Procurement and Disposal Act (Cap 412C) in 2005, the Finance Act 2009, the Public Finance and Management Act 2015 among other key legislative amendments.

It is within this legislative landscape that the KRB must exercise its mandates and functions as provided for by Section 6 of the KRB Act No. 7 of 1999.

1.2 Consultancy Objectives

For the effective operationalization of the KRB mandate, Section 37 of the KRB Act 1999 empowers KRB to make regulations with respect to any matter which is necessary for the better carrying out or giving effect to the functions of the Board as prescribed by the provisions of the Act. KRB thus seeks to introduce legislative reforms to facilitate among others, a further interpretation and full implementation of the KRB Act 1999. Consequently, KRB has engaged the Consultant in this assignment which involves the development of subsidiary legislation namely the Kenya Roads Board Regulations 2019.

The main aims of this subsidiary legislation will be to –

- (1) Provide further details and clarity on provisions which have been left open in the Kenya Roads Board Act No. 7, 1999; and
- (2) Fill existing gaps (if any) in the Draft regulations and the Technical, Financial and Performance Audit Manuals developed by management

In line with these overarching aims, the key deliverables for this consultancy include –

Key Deliverable 1 (KD-1) Review of the draft Regulations, Technical, Financial and Performance Audit Manuals among others developed by management against the mandate of KRB to ensure they are complete and if there are gaps to be identified and filled.

Key Deliverable 2 (KD-2): Conduct a research and benchmark with other local and international fund managers (Desk exercise) based on the literature available.

Key Deliverable 3 (KD-3): Facilitate engagement of Stakeholders in coming up with the Rules.

Key Deliverable 4 (KD-4): Draft the Rules as by law requires from (KT-1) above.

Key Deliverable 5 (KD-5): Conduct Stakeholder's Validation Workshops.

Key Deliverable 6 (KD-6): Conduct an impact assessment of the Rules on mandates of KRB and functions of Road Agencies or any other stakeholders and prepare a report.

To perform these tasks, the Consultant will conduct a desk review and diagnosis of the KRB Act 1999, the Draft Regulations prepared by KRB, the Technical, Performance and Financial Audit manuals among other key legislative frameworks and policy documents affecting the road sector, including benchmarking materials from local and international fund managers. In summary the analysis will involve an assessment of –

- Relevant literature and pertinent cases studies in the management and operation of road funds both locally and internationally;
- The legislative gaps in the Kenya Roads Board Act No. 7 1999 and a further identification of issues that require legislative clarity.

- Issues relating to the efficiency of the Kenya Roads Board Act No. 7 1999 including streamlining with the Constitution of Kenya 2010, the County Government Act 2012 among other key pieces of legislation affecting the road sector;
- Gaps in road sector guidelines in particular the technical, financial and audit manuals;
- Key policy documents in the road sector and infrastructure development; and
- Road sector and multi-sectoral implications of the proposed KRB Regulation 2019.

1.3 The Inception Meeting

Prior to the Consultative Workshop for the Development of Regulations to KRB Act, 1999, an inception meeting was held with the KRB team and the Consultant in which the terms of reference (TOR), the approach & methodology, key staff, key deliverables, contract price and payment schedule with regard to the assignment were discussed. Specific details regarding the assignment are provided for in the *Inception Report*.

1.4 Consultative Workshop for the Development of Regulations to KRB Act, 1999

In keeping with the constitutional requirement regarding public participation, a Consultative Workshop with representatives from KRB, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the designated Road Agencies (RAs), was held on the 30th August 2019 at Radisson Blu Hotel, in Upper Hill, Nairobi.

The primary goal of this stakeholder engagement was to inform and present to this targeted section of road sector stakeholders the aims of the proposed subsidiary legislation. The Consultative Workshop further sought to provoke reflection and critical evaluation of key challenges within the road sector. Moreover, the Workshop sought to inspire and motivate the attendees to share knowledge, collaborate and to help in the development of the subsidiary legislation.

The workshop began at 9.41am with an opening prayer. The attendees introduced themselves and thereafter opening remarks were proffered by Ms Lucy Gathika, the General Manager Legal & Corporate Affairs.

Ms Lucy Gathika officially opened the session by welcoming those in attendance. She thanked the representatives of the KRB, the Ministry and the RAs for their presence at the venue and highlighted the importance of the Consultative Workshop. The General Manager of Legal & Corporate Affairs further conveyed that the views of the issues from the perspective of the implementers was critical to the development of effective regulations.

Ms Lucy Gathika also highlighted a number of salient issues –

- The funding capabilities of the KRB: collections into the RMLF totalled 70 Billion Kenya Shillings.
- The development of rules to enhance the management of the fuel levy.

- How the interface between the roles of national and county governments can be addressed.
- The expectations of Kenyans for the efficient management of the fund.
- The need to give value to the public and improving Kenyan's livelihoods through a credible, efficient and reliable fund.
- The willingness of Kenyans to pay more for public services that are efficient and not wasteful.
- The need to have rules and regulations that will guide the KRB and the road sector stakeholders.

Following the opening remarks, Ms Lucy Gathika introduced the Lead Consultant and Legal Specialist for the assignment, Prof. Albert Mumma to (1) commence his presentation, (2) to further facilitate the presentations to be made by members of the KRB Team and (3) to guide the ensuing plenary discussions.

This report provides a detailed summary of the Consultative Workshop with KRB, the Ministry, and the designated RAs. It provides an overview of the Consultation objectives, highlights the major discussion points as well as detailing the feedback and recommendations following from the discussion.

2. CONSULTATIVE WORKSHOP OBJECTIVES

Public Participation is a crucial and imperative component of the legislative process. The primary purpose of the *Consultative Workshop for the Development of Regulations to KRB Act, 1999* is to facilitate the drafting of the Kenya Roads Board Regulations 2019 from the recommendations, endorsements and general views of the relevant stakeholders within the road sector. Figure 1 below highlights the key objectives of the *Consultative Workshop for the Development of Regulations to KRB Act, 1999*:

WORKSHOP OBJECTIVES

- ┆ Outline the objectives of the consultancy
- ┆ Explain the key deliverables for the consultancy
- ┆ Provide an outline of the approach and methodology
- ┆ Provide a realistic Work Plan
- ┆ Engage Stakeholders
- ┆ Receive input from KRB Staff on thematic areas namely -
 - Works Programming
 - Funds Management
 - Technical Compliance Performance and Financial Audits

Kenya Roads Board Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



Figure 1: Objectives of the Workshop

3. STRUCTURE OF THE PRESENTATION

The figure below illustrating the Consultant's stakeholder engagement strategy to inform the drafting of the Subsidiary legislation was designed to attain meaningful participation and involvement that would enable the road sector stakeholders to actively contribute to the discussion and the development of ideas and expose relevant issues that need to be addressed in the subsidiary legislation.

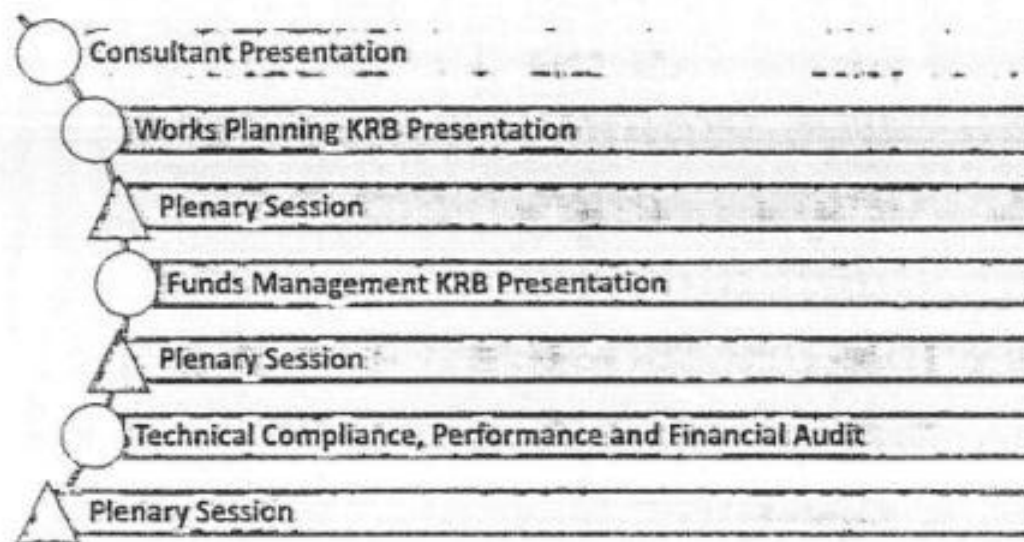


Figure 2: Structure of the Presentation

Consultant's Presentation: The purpose of the Consultant's presentation was to guide the road sector stakeholders in attendance through the legislative process and the requirements for the assignment. This exercise enabled the stakeholder to familiarize themselves with the objectives of the assignment, including the approach and methodology, work plan, deliverables and the key staff undertaking the assignment.

Works Planning Presentation: The purpose of the KRB presentation related to Works Planning was to inform the road sector attendees of the APRP Planning & Reporting Cycle, the Assessment of Road Maintenance Needs, the Prioritization of Road Maintenance Works, the Guidelines for ARWP Preparation & Submission, the Implementation Reporting & Monitoring of APRP, the Web-based Road Management System and Future Directions.

Funds Management Presentation: The purpose of the KRB presentation related to Funds Management was to guide the road sector stakeholders through the procedures governing the management of the KRBF. These included but were not limited to the deposits and payments from bank accounts, annual estimates and budget ceilings, the disbursement program, conditions for the release of funds to road agencies, among other issues.

Technical Compliance, Performance and Financial Audits Presentation: The purpose of the KRB presentation was to inform the attendees on the guidelines followed by KRB auditors engaged in technical, financial and performance audits of road works activities. The attendees were informed of the

audit methodology in general, namely the audit considerations and the procedure followed. Moreover, the attendees were exposed to proposed regulations to govern technical, financial and performance audits.

Plenary Sessions: The floor was opened to plenary discussions facilitated by the Consultant after each of the KRB team presentations. These plenary sessions provided the road sector stakeholders in attendance an opportunity to focus attention and deliberate on the prevailing issues within the sector. The participants were able to question and seek clarification on issues that were unclear and to submit detailed views and proposals on areas that the subsidiary legislation should address. The plenary session enabled the road sector stakeholders to make additional inputs, comments and ask the KRB Team further questions for better clarity. The KRB Team then responded to questions, comments and suggestions raised by the attendees.

The Programme for the Consultative Workshop for the Development of Regulations to KRB Act, 1999, showing how the Workshop was structured is attached as **Annex I**.

4. CONSULTATIVE WORKSHOP PRESENTATIONS

The presentations made by the Consultant and the KRB Team covered the following

- (1) *Objectives of the Consultancy and the Consultative Workshop* - Consultant
- (2) *Works Planning* – KRB Team
- (3) *Funds Management* – KRB Team
- (4) *Technical Compliance, Performance and Financial Audits* – KRB Team

Each of the presentations by the KRB Team was followed by a Plenary Session. The mode of presentation was to further aid the road sector stakeholders to deal with the crucial and substantive details to be addressed in the proposed Regulations. The views of these participants was to be exposed in the open and interactive plenary for deliberation.

4.1 OBJECTIVES OF THE CONSULTANCY AND THE CONSULTATIVE WORKSHOP

The introductory presentation made by Prof. Albert Mumma provided a brief background of the consultancy, which is clustered into six (6) Key deliverables. The Consultant highlighted the aims and objectives of the consultancy and discussed the process of the development of subsidiary legislation.

The Consultant addressed the legal requirements imposed by the Statutory Instruments Act 2013 which is a Parliamentary Act providing for the making, scrutiny, publication and operation of statutory instruments and other connected matters.

The Consultant reiterated that as a requirement imposed by the Statutory Instruments Act 2013, the process of making rules must be a consultative process involving stakeholder engagement and public participation. The importance of this requirement was highlighted in light of the fact that the proposed KRB Regulations are likely to have a direct or substantially indirect effect on business. Moreover, it was stressed that the consultation process would be imperative to draw knowledge from the road sector

experts and later ensure that persons likely to be affected by the proposed KRB Regulations will have an adequate opportunity to comment on the proposed content. Given that the new constitutional dispensation has led to devolved functions thus placing the mandate on County roads on to the respective 47 Counties, the Consultant aptly submitted that the inclusion of the County Governments (CGs) in the process is integral to satisfying the requirement on public participation imposed by the Statutory Instruments Act 2013. The Consultant also pointed out the legal requirement to prepare Regulatory Impact Statements (RIS) due to the fact that the proposed KRB regulations are likely to impose significant costs on the community or part of the community. These costs may be monetary but may also include environmental, social and cultural impacts.

The Consultant proceeded to identify the key legislation and road sector guidelines, manuals and subsidiary legislation to be reviewed to inform the drafting of the regulations. A non-exhaustive list of the key instruments for review is shown in Figure 3 below.

Inventory of Key Legislation, Policies and other materials	
Legislation	
1.	The Constitution of Kenya, 2010
2.	Kenya Roads Act 2007
3.	Kenya Roads Board Act No. 7 1999
4.	Kenya Roads Bill 2017
5.	County Government Act 2012
6.	County Allocation of Revenue Act 2015
7.	Public Finance Management Act 2015
Road Sector Guidelines, Manuals and Draft Subsidiary Legislation	
8.	Technical Financial and Performance Audit Manual
9.	Annual Public Roads Programme Planning and Reporting Manual
10.	Draft Kenya Roads Board Rules, Regulations Procedures and Guidelines February 2018



Figure 3: Inventory of Key legislation, Policies and Other Materials

Moreover in order to fulfil Key Task 1 (KT-1) of the assignment, the Consultant submitted that a review of key policy documents affecting the road sector is necessary to inform the development of the regulations. In addition, in order to meet the deliverable in Key Task 2 (KT-2), a review of the literature addressing experiences of both local and international fund managers would be important in order to bench mark best practices. A sample of the key policy documents and the literature identified by the Consultant is shown in Figure 4 below. *N.B. The list is not exhaustive.*

Inventory of Key Legislation, Policies and other materials cont'd

Key Policy Documents	
11.	Kenya Vision 2030
12.	Road Sector Policy 2016
13.	Ministry of Transport Infrastructure Housing Urban Development and Public Works Draft Strategic Plan 2018 - 2022
14.	Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020
15.	Sessional Paper of 2006 on The Development and Management of the Roads Sub-Sector for Sustainable Economic Growth
16.	Sessional Paper No. 9 of 2012 on The National Industrialization Policy Framework For Kenya 2012 - 2030.
17.	Integrated National Transport Policy: Moving a Working Nation 2009
Other Materials	
18.	Transportation and Communications Bulletin for Asia and the Pacific No. 73 "Roads Board Heral: A Sustainable Approach to Road Maintenance Management"
19.	Transport and Communications Bulletin for Asia and the Pacific, No. 86 "Sustainable Rural Access"
20.	Transport and Communications Bulletin for Asia and the Pacific, No. 88 "Intelligent Transport System"
21.	The Law Library of Congress, Global Legal Research Centre 'National Funding of Road Infrastructure' (March 2014)
22.	World Bank Technical Report - Management and Financing of Roads An Agenda for Reform
23.	Uf Paper on Policy Analysis and Assessment: 'Dedicated Road Funds: A Preliminary View on a World Bank Initiative'
24.	Involvement of Road Users in the Management of Roads, Public Private Partnerships - The Zambia Roads Board Experience

Figure 4: Key Policies and Other Literature

The Consultant further addressed the approach and methodology to be followed in the development of the regulations. Figure 5 below summarizes the phases to be undertaken by the consultant.

APPROACH AND METHODOLOGY

The specific methodology is split in four phases namely:

PHASE 1: Project Planning, initiation and mobilization;

PHASE 2: Development of an assessment toolkit & Comparative analysis and status review of the draft regulations, Technical Compliance Manual, Planning manual, & Finance manual, research & Bench mark with local & international fund managers, and engagement of Stake Holders.

PHASE 3: Drafting of Rules & Regulations regulatory impact assessment and thereafter validation by Stakeholders

PHASE 4: Revision and submission of Final Report

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



Figure 5: Approach and Methodology

The Consultant concluded by summarizing the Work Plan and the roles of the members of the consulting team. The Consultant's full Presentation is attached in Annex II.

4.2 KRB PRESENTATIONS and PLENARY SESSIONS

Following the Consultant's Presentation, Prof. Albert Mumma invited members of the KRB Team to conduct their presentations. These presentations addressed certain key areas namely –

- i. Works Planning
- ii. Funds Management
- iii. Technical Compliance, Performance and Financial Audits

At the end of each of the presentations, a plenary session moderated by Prof. Albert Mumma was held. The following sections of this report address these presentations and discussions.

4.2.1 WORKS PLANNING

Eng. Margaret Ogai began the presentation on Works Planning by stating that the Kenyan roads network is an important asset and is one of the biggest in the region. She cited that Kenya Vision 2030 recognizes that roads are an enabler. Moreover, roads contribute to sustained economic development and enhance productivity and competitiveness by lowering transport costs.

Eng. Margaret Ogai remarked on the following areas;

ITEM	PRESENTATION
Road Management Systems (RMS)	➤ Requirement for standards and procedures for processes
Mandates of various agencies	➤ State Dept. of Infrastructure in MoTIHOD & PW - Policy formulation, oversight & coordination; Setting standards ➤ KRB - Managing Road Maintenance funds (RMLF, transit tolls), Coordination of maintenance programs, Technical & Financial audits ➤ RAs - Management, development, rehabilitation and maintenance of National Trunk Roads (39,996km) ➤ CGs - Management, development, rehabilitation and maintenance of County Roads (121,456km) ➤ Departments in Ministry - Provision of equipment (Mechanical & Transport Dept.), materials testing and research (Materials Testing & Research Dept.), provide technical training (Kenya Institute of Highways & Building Technology)
Importance of Road Maintenance	➤ Roads deteriorate over time; require regular maintenance. Reinstatement is 3 or more times the cost of regular maintenance. The benefits of road maintenance include: ➤ Providing road users with an acceptable level of service by addressing defects promptly; ➤ Preserving the huge investment made over the years in the road network; ➤ Minimizing the life cycle road development and maintenance costs; ➤ Minimizing road user costs - vehicle operating costs, associated travel time costs, road accident costs, harmful emissions; ➤ Enhancing road user safety.
APRP Reporting Cycle	➤ Ceiling given to RAs ➤ RAs required to prepare surveys of maintenance requirements ➤ Not enough consultations with the counties

	> Revision of work plans – lack of formalized cycle and need for more synchronicity > Revisions should be justified - Some reasons include: > Change in the scope of works > Some roads in the annual work plan having been planned by other road agencies > Significant variation between planned costs and procured costs of works resulting in budget deficits or savings. Etc.
ARICS	> Standardization of procedures is required > KeNHA is implementing best practices > Assessment of Road Maintenance Needs Rating Procedure is outlined in the APRP Manual
Prioritization	> Mandates of the RAs are preservation, restoration, improvement and development > Restoration is a prevailing issue and there is conflict between prioritizing preservation > Maintenance is a high priority
ARWP	> Need for clarity as to which section of road is being addressed (geo-data referencing) > The road register helps to avoid duplication and overlaps > Activity code is also important for standardization
Prevailing and emerging issues	> Overlapping mandates between RAs and counties > Technical capacity issues at the county level > Carry over works and carry over monies > Road Register > Regulations should address – > M&E framework > Employment and gender related issues > Road safety > Training and Capacity building > HIV/AIDS Awareness

Table 1: Summary of Presentation on Work Planning

The full KRB presentation by Eng. Margaret Ogai on *Work Planning* is herewith attached in *Annex III*.

Eng. Margaret Ogai presentation on *Work Planning* was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 2 below illustrates the general comments and proposals made by the participants:-

Question/Comment by Participants
> Life cycle costs of related infrastructure (access roads criteria required) > Assignment of roads to RAs needs clarity > 10% allocation to KWS is not sufficient particularly in regards to trunk roads > There is an overlap in mandates between KWS and other RAs (access roads) > Deterioration and Rehabilitation period should be addressed

➤ Area abutting the road corridor has been neglected. ➤ Road side development needs to be controlled (too many bumps)
➤ M&E is important and should be continuous throughout the development process
➤ Upscale monitoring to more periodic intervals ➤ Interventions during implementation should be done when results are not being met
➤ More accuracy is required with regards to conditions of paved and unpaved roads (better system for determining deteriorating conditions).
➤ There is need for stricter interrogation of RAs work plans
Response by Eng. Margaret Ogai
➤ Detailed information on criteria is available ➤ Purposing to move forward on M&E and strengthening the procedure ➤ The views on classification of roads is taken on board. A number of RAs took part in a consultative process on classification and reclassification ➤ There are no limitations on Work Plans. KRB will give guidance on corridor management and road side management ➤ The percentage on allocation of funds is a policy issue ➤ There is need for the development of roads but the focus should be on maintenance of road infrastructure. ➤ Long road maintenance regime is necessary

Table 2: Plenary on Work Planning

4.2.2 FUNDS MANAGEMENT

CPA Margaret Muinde presided over the presentation on Funds Management. The presentation covered the proposed KRB (Road Fund Management) Rules and Regulations financial provisions and administration. CPA Margaret Muinde remarked on the following areas -

ITEM	PRESENTATION
Opening Bank Accounts	➤ Requirement for RAs to open bank accounts ➤ Penalty for RAs failure to open a bank account ➤ Bank accounts to be opened, operated and closed with KRB and National Treasury authorization
Deposits and Payments from Bank Accounts	➤ Receipts from Fund to be deposited in RAs RMLF bank account ➤ Mode of Payment: instructions, cheque, electronic or fund transfer
Annual estimates and budget ceilings	➤ KRB to prepare annual revenue projections (3 year forward basis) and submit to National treasury

	➤ KRB to give RAs budgetary ceilings for the following year and request preparation for ARP ➤ RAs within 3 months before beginning of financial year to submit annual expenditure projections on a month to month basis to KRB
Disbursement Program	➤ KRB to indicate to RAs at the beginning of each financial year monthly cash flows ➤ KRB to monitor receipt of funds from RMLF and allocate each tranche to respective RA in accordance with the disbursement program provided that RA is in compliance with KRB requirements
Release of Funds by KRB and RAs	➤ KRB to release to compliant RAs in accordance with disbursement schedule and within 30 days from the date following the end of the month ➤ KRB may withhold disbursements if RA is not in compliance with KRB rules, regulations, procedures and guidelines ➤ KRB may partially release funds (not more than 30%) if the ARWP for RA is yet to be approved at the beginning of the financial year.
Conditions for Release of funds	➤ Submission of quarterly and annual progress/expenditure reports as required by KRB in accordance with Clause 65 of these Regulations. ➤ An ARWP duly approved by KRB. ➤ Responses to all audit queries in accordance with Clause 63 of these Regulations. ➤ An RA has failed to comply with Section 19 (2) of the Act
Expenditure	➤ Reallocation of funds for works: RAs shall not apply the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of KRB ➤ Authority to incur expenditure: Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that RA.
Savings and Earnings	➤ Where an RA has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. ➤ RAs to submit a work plan for the savings and or interest earnings to KRB before spending.
Carry Over Funds	➤ Carry-over' funds – bank balances for financial year can be retained for use in the following year ➤ The carry over funds and associated road works to be included in the ARWP for the following year
Maintenance of Cash Books	➤ RAs to maintain cash book of KRB ➤ RAs to maintain registers and records of bank accounts, cash books and imprest

Annual Reports and Financial Statements	➤ Accounting officer to prepare annual reports and financial statements ➤ RAs within six months of the end of financial year to submit to KRB audited accounts
Sanctions and Penalties	➤ Failure to abide by KRB Act and rules amounts to non-compliance ➤ KRB may – i. Suspend funding to RA ii. Appoint another RA and release funds allocated to it for the works that were to be carried out by non-compliant RA to newly appointed RA iii. Institute measures to recover amounts misappropriated by public officer ➤ Take legal action against the officer
Challenges	➤ Overreliance on the RMLF ➤ Inadequate funds ➤ Identification of tangible outputs ➤ Prioritization criteria is necessary

Table 3: Summary of Presentation on Funds Management

The full KRB presentation by CPA Margaret Muinde on *Funds Management* is herewith attached in Annex IV.

CPA Margaret Muinde on *Funds Management* was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 4 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	Response
➤ Salaries and Wages: current practice on cap depends on the agency ➤ Percentage should be increased to accommodate technical capacity	• What is ideal for the sector? PFM Act stipulates the cap. Sector should come up with guidelines. • Percentages are based on overall fund
➤ Clarification – the percentage refers to the fund	
➤ Distribution to counties where the authorities have changed - how will this particular issue be addressed? ➤ Will this be through amendment or through the regulations?	➤ County Allocation – amended by County Revenue Allocation Act (KeRA and KURA are the principal agencies affected)
➤ Administration and operational expenses do not only include salaries and wages	➤ Administrative expenses: 5% of the allocation to be made RAs ➤ Clarification from the Office of the Attorney General that it is 5% from total fund

> Regulations should be made regarding excess allocations	> Excess collection: interest earned forms part of the fund. Amounts over the budget are transferable to the following financial year
> PBC projects are a grey area as to what can be termed as a 'saving'	> PBC – can be dealt with on the rules on savings
> Regulations should address KWS	
> There is need for realignment with other key legislation such as the Wildlife Management and Conservation Act	

Table 4:: Plenary on Funds Management

4.2.3 TECHNICAL COMPLIANCE, PERFORMANCE AND FINANCIAL AUDITS

The presentation on Technical Compliance, Performance and Financial Audits by Eng. David Orwenyo included an overview of the mandate for audits, the purpose of KRB Audits, Types of Audits and proposed regulations to govern technical compliance, performance and financial audits. Eng. David Orwenyo remarked on the following areas -

Item	Presentation
Mandate for Audit	> Clause 6(2)(g) KRB Act mandates KRB to monitor and evaluate by means of technical, financial and performance audits the delivery of goods, works and services funded by the fund > Clause 26(1) provides that KRB will direct an inspector to regularly perform audits of any RA
Purpose of Audits	> To independently verify that proceeds from the KRRF have been applied to the purpose for which they were intended and that the use of such resources is economical, efficient and effective to achieve value for money. > The application of these funds should also be efficient, transparent and in accordance with the principles, procedures and requirements of KRB and sound professional practice. > ARICS are required of all RAs
Types of Audits	> Technical Audit: Evaluates the programming, planning and delivery of works undertaken by RAs /CGs. It is a step by step assessment of road mice and development efforts / activities to determine the level of economy, efficiency and effectiveness. > Financial Audit: This is the review of accounting records, internal control systems and applicable laws and regulations with the sole purpose of providing an assurance on the application of funds and that proper books of accounts have been maintained. Financial audits should be effectively addressed in the financial provisions of the regulations.

	> Performance Audit: Systematic process to obtain and evaluate evidence objectively, to be able to give performance appraisal of economy and operation effectiveness. Performance audits should be undertaken in terms of the 3 'E's'. > Procurement Audit: An independent review and systematic examination of the procurement and disposal process to determine whether management practices, systems and controls result in goods, works and services being acquired in accordance with the Constitution and the PP&AD Act, regulations and other guidelines. > Environmental and Social Audits: The ESMP is a process guided by regulations for assessing the potential environmental and social impacts of proposed projects, evaluating alternatives and designing appropriate mitigation and monitoring measures. These should encompass issues such as HIV/AIDS awareness, gender issues etc. > Road Safety Audit: A road safety is defined as a formal road safety performance examination of an existing or future road by an independent multidisciplinary team. It qualitatively estimates and reports on potential road safety issues and identifies opportunities for improvements in safety for all road users in particular vulnerable road users. This is an important role for the RAs.
Areas to be considered in the Proposed Regulations	> Implementation of Works: efficient and effective delivery of road works > Supervision of works > Monitoring and Evaluation > Procurement guidelines > Provisions of specifications > Record keeping > Criteria for road works contractors > Sanctions and penalties for providing fraudulent or misleading information etc.

Table 5: Summary of Presentation on Technical Compliance, Financial and Performance Audits

The full presentation of the Technical Compliance, Financial and Performance Audit is herewith attached in Annex V.

The presentation of the Technical Compliance, Financial and Performance Audit by Eng. David Orwenyo was followed by a plenary session in which comments, suggestions and recommendations were invited from the participants. Table 6 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	
> Legal Compliance audit has not been addressed	• This is currently not part of the process

➤ Lack of consistency in the auditing function due to outsourcing – there is need for standardization	• Auditing process depends on the information that is available • TORs detail approach to the audit
➤ Need for expansion of scope to include procurement audits	•
Further Comments by Participants	
➤ Regulations should be informed by the current reports ➤ Section 37 on penalties is ineffective ➤ KRB needs to be empowered	

Table 5: Plenary on Technical Compliance, Financial and Performance Audit

4.3 General Commentary on the Consultative Workshop

The Presentation to the road exhaustively presented to this particular group of stakeholders the key elements to be addressed in the proposed subsidiary legislation to support KRB further implement the KRB Act 1999.

Way Forward: KRB and the Consultant team welcomes the comments received and will continue to engage road sector stakeholders. The participants were informed that their participation is a part of the ongoing process for the development of the proposed Kenya Roads Board Regulations.

It has been acknowledged that some of the issues raised and which may not be provided for in the subsidiary legislation will form important recommendations for legislative amendments.

5. Annexes

Annex I: Consultative Workshop for the Development of Regulations to KRB Act, 1999 Programme



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF REGULATIONS TO KENYA ROADS BOARD ACT, 1999
30th AUGUST 2019, RADISSON BLU HOTEL UPPER HILL, NAIROBI
PROGRAMME

TIME	ACTIVITY	FACILITATOR
8.00 – 8.15 A.M.	Arrival & Registration	KRB Team
8.15 – 8.30 A.M.	Opening Prayers & Introduction	KRB Team
8.30 – 8.45 A.M.	Opening Remarks	Ms. Lucy Gathika General Manager Legal & Corporate Affairs
8.45 – 9.00 A.M.	Objectives of the Workshop	Prof. Albert Mumma
9.00– 10.00 A.M.	Works Planning	Eng. Margaret Ogai General Manager Planning & Programming
10.00-10.15 A.M.	Plenary	Prof. Albert Mumma
10.20 – 11.00 A.M.	HEALTH BREAK	KRB Team
11.00-12:00 P.M.	Funds Management	CPA Margaret Muinde Financial Controller
12.00-12.15 P.M.	Plenary	Prof. Albert Mumma
12.15-1.00 P.M.	Technical Compliance Performance and Financial Audits	Eng. David Orwenyo General Manager, Technical Compliance
1.00-1.15 P.M.	Plenary	Prof. Albert Mumma
1.15P.M.	Closing Remarks	Ms. Lucy Gathika General Manager Legal & Corporate Affairs
1.30 P.M.	LUNCH	

INTRODUCTION

- Infrastructural development is the principal factor in the exploitation of the growth potential in numerous sectors. Kenya's road networks are a key element of infrastructural development.
- The Kenya Roads Board Act No. 7 of 1999 establishes the Kenya Roads Board (KRB) as a statutory body to oversee the road network and coordinate the maintenance, rehabilitation and development funded by the fund and to advise the Cabinet Secretary on Transport & Infrastructure on all matters related thereto. The Act designates road agencies to support the management and utilization of road funds.
- Successful road fund initiatives are dependent on effective road agencies. Therefore they must be supported by rules and procedures that govern proper financial management systems, timely funding, financial discipline, sound procurement systems and procedures among others.

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



WORKSHOP OBJECTIVES

- ❑ Outline the objectives of the consultancy
- ❑ Explain the key deliverables for the consultancy
- ❑ Provide an outline of the approach and methodology
- ❑ Provide a realistic Work Plan
- ❑ Engage Stakeholders
- ❑ Receive input from KRB Staff on thematic areas namely -
 - i. **Works Programming**
 - ii. **Funds Management**
 - iii. **Technical Compliance Performance and Financial Audits**

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



Annex II: Consultant's PowerPoint Presentation

Development of Regulations to strengthen the capacity of the Kenya Roads Board to Discharge its Mandate Under the Kenya Roads Board Act, 1999

CONSULTATION WORKSHOP

RADISSON BLU, UPPER HILL NAIROBI
30th AUGUST 2019

KENYA ROADS BOARD

Presented by
PROF. ALBERT MUMMA & COMPANY ADVOCATES



Presentation

1. INTRODUCTION
2. OBJECTIVES OF THE WORKSHOP
3. SCOPE OF THE ASSIGNMENT
 - Aims and Objectives
 - The Key Deliverables
4. APPROACH & METHODOLOGY
5. WORK PLAN
6. PROJECT TEAM AND ASSIGNED TASKS
7. KRB STAFF PRESENTATION

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



SCOPE OF THE ASSIGNMENT

Kenya Roads Board Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



1. AIMS AND OBJECTIVES

- ▶ Section 6 of the Kenya Roads Board Act No. 7 of 1999 outlines the mandate and functions of KRB. Section 37 of the Act empowers KRB to make rules for the better carrying out of its functions.
- ▶ To fully operationalize the Act, KRB is required to develop rules.
- ▶ KRB has procured the services of the Consultant in order to facilitate the development of rules as envisioned in the Act and in line with the Constitution.

Kenya Roads Board Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



The Kenya Roads Board Regulations

► The main aims of this subsidiary legislation will be to:

1. Provide further details and clarity on provisions which have been left open or omitted entirely in the Kenya Roads Board Act No. 7, 1999; and
2. Fill in existing gaps in the draft regulations and as well as identify any gaps relating to the Technical, Financial and Performance Audit Manuals that need to be filled.

Kenya Roads Board Consultative Services for Development of Regulations to Kenya Roads Board Act, 1999



2. KEY DELIVERABLES

Key Task	Deliverable
KT-1	Review the draft Regulations, Technical Compliance Manual, Planning Manual, Financial Manual among others developed by management against the mandate of KRB to ensure they are complete and if there are gaps to be identified and filled.
KT-2	Conduct a research and benchmark with other local and international fund managers (Desk exercise) based on the literature available.
KT-3	Facilitate engagement of Stakeholders in coming up with the Rules.
KT-4	Draft the Rules as by law requires from (KT-1) above.
KT-5	Conduct Stakeholder's Validation Workshops.
KT-6	Conduct an impact assessment of the Rules on mandates of KRB and functions of Road Agencies or any other stakeholders and prepare a report.
KT-7	Present Draft final rules to the Board of Directors and submit final rules to the Executive Director.

Kenya Roads Board Consultative Services for Development of Regulations to Kenya Roads Board Act, 1999



Inventory of Key Legislation, Policies and other materials

Legislation	
1.	The Constitution of Kenya, 2010
2.	Kenya Roads Act 2007
3.	Kenya Roads Board Act No. 7 1999
4.	Kenya Roads Bill 2017
5.	County Government Act 2012
6.	County Allocation of Revenue Act 2015
7.	Public Finance Management Act 2015
Road Sector Guidelines, Manuals and Draft Regulatory Legislation	
8.	Technical Financial and Performance Audit Manual
9.	Annual Public Roads Programme Planning and Reporting Manual
10.	Draft Kenya Roads Board Rules, Regulations Procedures and Guidelines February 2018



Inventory of Key Legislation, Policies and other materials cont'd

Key Policy Documents	
11.	Kenya Vision 2030
12.	Road Sector Policy 2016
13.	Ministry of Transport Infrastructure Housing Urban Development and Public Works Draft Strategic Plan 2018 - 2022
14.	Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020
15.	Sessional Paper of 2006 on The Development and Management of the Roads Sub-Sector for Sustainable Economic Growth
16.	Sessional Paper No. 9 of 2012 on The National Industrialization Policy Framework For Kenya 2012 - 2030.
17.	Integrated National Transport Policy: Moving a Working Nation 2009
Other Materials	
18.	Transportation and Communications Bulletin for Asia and the Pacific No. 75 "Roads Board Nepal: A Sustainable Approach to Road Maintenance Management"
19.	Transport and Communications Bulletin for Asia and the Pacific, No. 86 "Sustainable Rural Access"
20.	Transport and Communications Bulletin for Asia and the Pacific, No. 88 "Intelligent Transport Systems"
21.	The Law Library of Congress, Global Legal Research Centre "National Funding of Road Infrastructure" (March 2014)
22.	World Bank Technical Report - Management and Financing of Roads An Agenda for Reform
23.	UNF Paper on Policy Analysis and Assessment: "Dedicated Road Funds: A Preliminary View on a World Bank Initiative"
24.	Involvement of Road Users in the Management of Roads, Public Private Partnerships - The Zambia Roads Board Experience

Inventory of Key Legislation, Policies and other materials cont'd

- 1. Financing of Road Maintenance in Sub-Saharan Africa - Reforms and progress towards second generation road funds (Discussion Paper No. 6 Road Management and Financing Series - RMF Series)
- 2. Conference of European Directors of Roads - Funding formulas for roads: inventory and assessment (March 2017)
- 3. The World Bank and Economic Commission for Africa - A Review of Road Sector Reforms in Tanzania (Sub-Saharan Africa Transport Policy Program - SSATP Discussion Paper No. 2)
- 4. Management of New Zealand National Road Fund (Paper Presented to Philippines Country Level Workshop on Institutional Development for the Maintenance of National Road Networks)
- 5. Private Sector Involvement in Road Financing (SSATP Working Paper No. 102)
- 6. World Bank Report - Maintaining Road Assets: A fresh look at the World Bank's 1988 Policy Paper "Road Deterioration in Developing Countries"
- 7. Economic Growth through Effective Road Asset Management (Paper by Robert Geddes and Kingsome Gonga Presented at the International Conference on Transport and Road Research March 2016, Mombasa)

N.B. the above list is not exhaustive

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



APPROACH AND METHODOLOGY

- 1. The specific methodology is split in four phases namely:

PHASE 1: Project Planning, initiation and mobilization;

PHASE 2: Development of an assessment toolkit & Comparative analysis and status review of the draft regulations, Technical Compliance Manual, Planning manual, & Finance manual, research & Bench mark with local & international fund managers, and engagement of Stake Holders.

PHASE 3: Drafting of Rules & Regulations regulatory impact assessment and thereafter validation by Stakeholders

PHASE 4: Revision and submission of Final Report

Kenya Roads Board: Consultancy Services for Development of Regulations to Kenya Roads Board Act, 1999



WORK PLAN

Name of activities												
Twelve (12) months												
	1 st month	2 nd month	3 rd month	4 th month	5 th month	6 th month	7 th month	8 th month	9 th month	10 th month	11 th month	12 th month
Project Planning, Initiation and Mobilisation Delivery of inception report												
Client Feedback and agreement on inception Report												
1. Development of toolkit & Comparative analysis and status review of the draft regulations and existing. 2. Research & Bench mark locally & internationally 3. Engagement of Stake Holders.												
Development of the Draft Rules & Regulations												
Preparation of regulatory impact assessment report												
Stakeholder workshops												
Revision and Submission of Final Report												

PROJECT TEAM AND ASSIGNED TASKS

 PROF. ALBERT MWANGI	Lead	- Lead consultant for the consultancy. - Conceptualizing, drafting and designing Subsidy; Legislation for the consultancy - Drafting Regulatory Impact Statements (RIS) for subsidizing legislation for the Water Act 2016. - Drafting of the inception report, progress report, stakeholder's working report and final report. - Providing directional leadership in the collection and completion of data from research. - Compiling final legal research material. - Lead counsel engaging stake holders. - Lead drafter of the draft rules and regulations. - Coordination with senior stakeholders throughout the drafting process. - Audit and review of legal documents. - Submission of the final rules and regulations. - Revision of final rules and regulations to the Board and the Executive director.
	Advocate/ Team Leader	
 SHARON MUTURI	Assistant Team Leader/ Advocate	- Providing strategic legal advice to the client. - Compiling final reports for the team leader's consideration. - Ownership data and research collected by the legal assistant. - Providing general legal and administrative support to the team leader. - Supervision of the legal assistants' input.
 VICTORIA BINDI	Legal Assistant/ Advocate	- Legal research and drafting. - Drafting of weekly reports. - Requency status updates on the ongoing work. - Providing general legal and administrative support to the Team Leader and assistant Team Leader.

KRB STAFF PRESENTATION

Facilitators

- ☐ Lucy Gathika General Manager Legal and Corporate Affairs
- ☐ Eng. Margaret Ogai - General Manager Planning and Programming
- ☐ Eng. David Orwenyo - General Manager Technical Compliance
- ☐ Margaret Muinde - Manager Finance

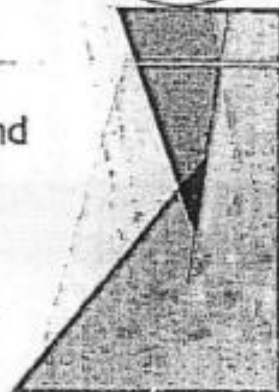
Kenya Roads Board Consultative Committee for Development of Regulations to Kenya Roads Board Act, 1999



KRB PRESENTATION

- ☐ Works Programming - 30 minutes
- ☐ Funds Management - 30 minutes
- ☐ Technical Compliance Performance and Financial Audits - 30 minutes

Kenya Roads Board Consultative Committee for Development of Regulations to Kenya Roads Board Act, 1999



Prof. Albert Niuma & Company Advocates

Inception Report

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P.O. BOX 10481-00100,
NAIROBI - KENYA

TEL: (254-20) 2730132 / 2711579
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Kenya Roads Board Consultative Services for Development of Regulations to Kenya Roads Board Act, 1999

Annex III: KRB Team PowerPoint Presentation – Works Planning



**APRP PLANNING
&
REPORTING MANUAL**

Presented By;

**Eng. Margaret Ogai – General
Manager, Planning & Programming**



Outline



1. Introduction
2. APRP Planning & Reporting Cycle
3. Assessment of Road Maintenance Needs
4. Prioritization of Road Maintenance Works
5. Guidelines for ARWP Preparation & Submission
6. Implementation Reporting & Monitoring of APRP
7. Web-based Road Management System
8. Future Directions

1. Introduction



- Roads are the primary mode of transport for majority of our citizens; over 90% passenger and cargo traffic. Kenya has road network of 161,452km.
- Roads facilitate cheaper and convenient movement of passengers, goods, services and technology from, and to, areas of economic and social importance.
- Roads provide last-mile connection for the other modes of transport such as railways, airports, ports and inland waterway transport
- Contribute to sustained economic development and enhance productivity and competitiveness by lowering transport costs.
- Various actors in the roads sector are given in Table 1 below.

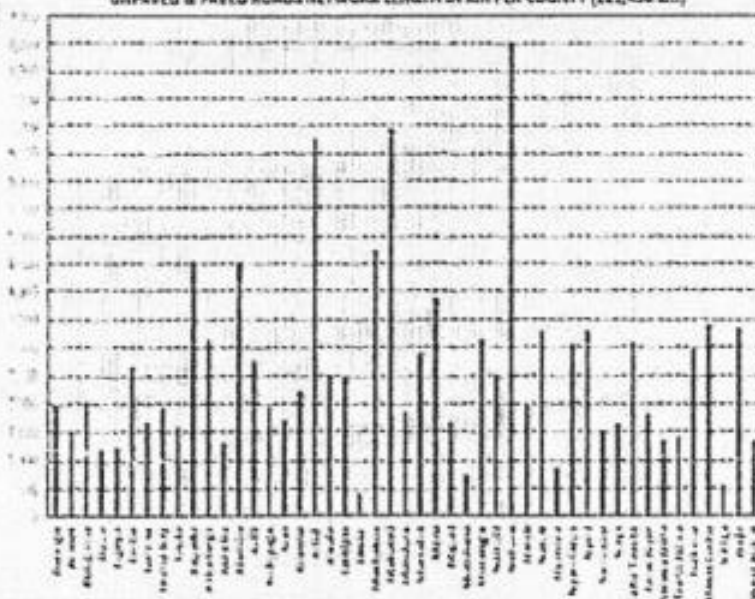


Mandated Responsibilities

AGENCY	RESPONSIBILITY
State Dept. of Infrastructure in MoTHL/D&PW	Policy formulation, oversight & coordination Setting standards
Kenya Roads Board	Managing Road Maintenance funds (RMLF, motor tolls), Coordination of maintenance programs, Technical & Financial audits
Road Authorities/ Agencies: -Kenya National Highways Authority -Kenya Urban Roads Authority -Kenya Rural Roads Authority -Kenya Wildlife Services	Management, development, rehabilitation and maintenance of National Trunk Roads (9,996km)
County Governments	Management, development, rehabilitation and maintenance of County Roads (121,156km)
Departments in Ministry:	Provision of equipment (Mechanical & Transport Dept.), materials testing and research (Materials Testing & Research Dept.), provide technical training (Kenya Institute of Highways & Building Technology)



UNPAVED & PAVED ROADS NETWORK LENGTH IN KM PER COUNTY (121,456 Km)





1. Introduction

Importance of Road Maintenance:

Roads deteriorate over time; require regular maintenance. Reinstatement is 3 or more times the cost of regular maintenance. The benefits of road maintenance include:

- Providing road users with an acceptable level of service by addressing defects promptly;
- Preserving the huge investment made over the years in the road network;
- Minimizing the life cycle road development and maintenance costs;
- Minimizing road user costs - vehicle operating costs, associated travel time costs, road accident costs, harmful emissions);
- Enhancing road user safety.



1. Introduction

RMLF allocation

SN	AGENCY	ALLOCATION (%)	Purpose
1	KeNHA	40	To carry out works on National Trunk roads class A and B.
2	KeRRA	15	To be equally allocated to all Constituencies to carry out road works in all constituencies
		6.8	To be equally allocated to all Constituencies for maintenance / development of link roads
3	KURA	10.2	To be allocated for works on urban roads in cities and municipalities
4	KWS	1	To be used in maintenance of roads in the national parks and game reserves
5	47 CCs	15	Conditional Grant to County Governments to carry out works on County roads
6	KRB	2	To be allocated to KRB for its operations & recurrent expenditure
7	RSIP/CS	10	To be allocated by the Board with approval of the CS in charge of Roads.



**CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATION TO KENYA ROADS BOARD ACT, 1999
HELD ON 30TH AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI**

ATTENDANCE REGISTER

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CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATION TO KENYA ROADS BOARD ACT, 1999
HELD ON 30th AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI

ATTENDANCE REGISTER

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Annex VI: Consultative Workshop for the Development of Regulations to KRB Act, 1999 List of Participants



CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT
REGULATIONS TO KENYA ROADS BOARD ACT, 1999
HELD ON 30th AUGUST, 2019 AT RADISSON BLU HOTEL, NAIROBI

ATTENDANCE REGISTER

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8						
9						
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Proposed Regulations to govern T,F&P Audits (cont.)

2. Monitoring and Evaluation (cont.)

iv. Responses to audit report (cont.)

- b) Upon expiry of the 30 days, KRB shall conclude the audit report and submit the audit report to the PS, Depart. of Infrastructure.
- c) The submitted audit report to the PS shall be final & binding.

v. Implementation of audit recommendations

- a) RAs shall submit an action plan for addressing the deficiencies identified in the audit reports.
- b) KRB shall monitor the implementation of the action plans
- c) RAs shall submit to KRB a status report on implementation of audit recommendations by 31st January of each year.



THE END

(3)

Regulatory Impact Statement

March 2021

Republic of Kenya



MINISTRY OF TRANSPORT,
INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS

PROPOSED KENYA ROADS BOARD REGULATIONS,
2021

PROPOSED KENYA ROADS BOARD REGULATIONS 2021

Regulatory Impact Statement

March 2021

Prepared by:

Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works

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PROPOSED
KENYA ROADS BOARD REGULATIONS 2021

Regulatory Impact Statement

Prepared by the Ministry of Transport, Infrastructure, Housing, Urban
Development & Public Works

2021

This Regulatory Impact Statement (RIS) on the proposed Kenya Roads Board Regulations, 2021 has been prepared in compliance with Part III of the Statutory Instruments Act (No. 23 of 2013).

The purpose of the RIS is to inform the Cabinet Secretary, Members of Parliament, and the Kenyan society of the potential impacts of adopting the proposed Kenya Roads Board Regulations 2021. It provides an assessment and analysis of possible positive and negative effects of the regulatory proposals made on Kenyan society. The analysis is underpinned on information, suggestions and feedback received from public consultation processes that have been undertaken in the process of drafting these regulations.

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EXECUTIVE SUMMARY

The Constitution of Kenya 2010 creates a devolved system of government, which comprises of a national government and county governments. The Fourth Schedule of the Constitution distributes functions between the national and county governments and assigns the construction and operation of national trunk roads; and setting standards for the construction and maintenance of other roads by counties to the national government, while county governments are assigned the responsibility of overseeing county roads. The Kenya Roads Act (1999) established the Kenya Roads Board as a statutory corporation with, among others, the mandate of:

- overseeing the road network in Kenya;
- coordinating the maintenance, rehabilitation and development of roads funded by the Roads Maintenance Levy Fund (RMLF) and the optimal utilization of the Fund in the implementation of programmes; and
- monitoring and evaluating the delivery of goods, works and services funded by the Fund through technical, financial and performance audits.

The Kenya Roads Board (KRB) uses funds from the Roads Maintenance Levy Fund (RMLF) to fund the management, development, rehabilitation and maintenance of roads by Road Agencies (Authorities) namely the Kenya National Highways Authority (KeNHA) which is responsible for Classes S, A and B roads also known as Primary National Trunk Roads; the Kenya Rural Roads Authority (KeRRA) which is responsible for Class C roads which are Secondary National Trunk Roads; the Kenya Urban Roads Authority (KURA) which is responsible for classes H and J roads which are Secondary National Trunk Roads; the Kenya Wildlife Service (KWS) which is responsible for roads in national parks and game reserves; and County Governments which are responsible for classes D, E, F, G, K, L, M, N, P roads.

The Kenya Roads Board (KRB) seeks to enact the Kenya Roads Board Regulations 2021, whose objectives are to provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act 1999, to fill in gaps inherent in the Technical, Financial and Performance Audit Manuals and Guidelines, and to provide a collaborative framework between national government and county governments in executing their respective mandates in relation to road development, maintenance and rehabilitation.

This Regulatory Impact Statement (RIS) examines the costs and benefits of implementing the proposed Regulations and concludes that if properly implemented, they will serve to significantly improve and rationalize KRB's decision-making processes and allocation of resources resulting in the optimal use of

public funds in preserving road networks in Kenya and maintaining them at an acceptable level of serviceability.

The Regulations have been developed following multiple rounds of stakeholder consultations and support. They are organized in Six (6) Parts (Parts I - VI). Part 1 covers sections on citation, interpretation and application of the Regulations. Parts II to VI cover the Annual Public Roads Programme (APRP), Financial Provisions and Administration, Project Management and Reporting, Monitoring and Evaluation, and Miscellaneous provisions respectively.

1. INTRODUCTION

The proposed Kenya Roads Board Regulations 2021 aim to strengthen KRB's capacity for the discharge of its mandate. The Regulations seek to provide further details and clarity on provisions, which have been left open by the Kenya Roads Board Act 1999. They also seek to align the Kenya Roads Board Act 1999 with the provisions of the Constitution of Kenya (CoK) 2010 by making provision for a collaborative framework between the national government and county governments in executing their respective mandates and functions as prescribed by the Fourth Schedule of the CoK, 2010; and to address gaps and challenges inherent in the Technical compliance, Financial and Performance Audit Manuals and Guidelines that have been in use hitherto.

The main source of funding road maintenance is the Road Maintenance Levy Fund (RMLF), which comprises the Fuel Levy and Transit Toll collections. The RMLF is used for both routine and periodic maintenance of public roads. Section 31 of the Kenya Roads Board Act 1999 establishes the Kenya Roads Board Fund (KRBF) into which funds from the RMLF are to be deposited. The funds deposited into the KRBF are to be utilized towards the maintenance of the road network in Kenya. As a statutory corporation, the KRB under the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, administers the RMLF and thereby finances road maintenance, rehabilitation and development through various road agencies, and carries out monitoring and evaluation (M&E) of funded works and services. These road agencies include Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA), the Kenya Wildlife Service (KWS) and departments responsible for roads in County Governments.

Currently, KRB is governed by the Kenya Roads Board Act 1999 with its subsidiary legislation L.N93/2003 which makes provision for the Urban Development Department of the Ministry of Local Government and covers road maintenance, rehabilitation and development projects in the Nairobi City Council, and the Mombasa, Kisumu, Nakuru, Eldoret municipal councils as they were previously known under the pre-2010 constitutional dispensation in Kenya. Presently, KRB performs its oversight function over road agencies through the use of Technical, Financial and Performance Audit manuals and guideline as published regularly.

Section 37 of the Kenya Roads Board Act 1999 empowers KRB to make rules for the better carrying out of its functions. Consequently, having the experience of using manuals and guidelines for a period of over 20 years and taking into account the institutional learning that has taken place within KRB itself and in

road agencies, KRB considers the use of subsidiary legislation as the best option/instrument that can better align the sector with requirements of the Constitution of Kenya 2010 and address issues and challenges arising out of the use of manuals and guidelines to govern the sector.

The legislation is not finalized and changes based on stakeholder comments and public consultations will help to ensure that the final Kenya Roads Board Regulations 2021 presented to Parliament deliver the best outcomes.

This RIS sets out the substantive proposals made by these Regulations and identifies their likely socio-economic impacts and the costs and/or benefits for stakeholders and Kenyans in general.

2. OBJECTIVES OF THE PROPOSED KENYA ROADS BOARD REGULATIONS 2021

2.1 Compliance with the Constitution of Kenya 2010 and the County Government Act 2012

The promulgation of the Constitution of Kenya 2010 created two levels of government, namely the national government and the county government. The Fourth Schedule of the Constitution distributes functions between the national government and county government. Whereas the national government is responsible for the construction and operation of trunk roads and setting standards for the construction and maintenance of other roads by counties, the county governments are tasked with the construction, maintenance and rehabilitation of county roads. Therefore, pursuant to the Fourth Schedule, the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

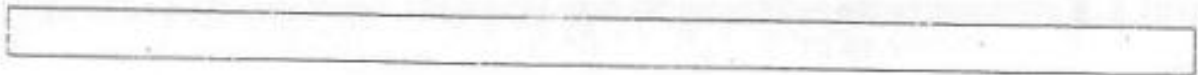
Under the former constitutional dispensation, road development, maintenance and rehabilitation fell under the responsibility of the then local governments namely municipal councils, under the oversight of the District Road Committees. This function has now been moved to county governments under the County Government Act 2012.

The development of the Kenya Roads Board Regulations 2021 is an imperative element in creating a collaborative framework between the national government and county governments for executing their respective mandates and functions relating to road development, maintenance and rehabilitation. These regulations are in compliance with the overall objectives of devolved functions of both levels of government under the constitution.

2.2 Objectives of the proposed Regulations

Kenya Roads Board seeks to significantly improve and rationalize decision-making and allocation of resources for the roads sector, and to make the best use of public funds in preserving road networks in Kenya at an acceptable level of serviceability. In order to achieve this, KRB requires to strengthen its capacity for the discharge of its mandate by putting in place Regulations pursuant to provisions of s.37 of the Kenya Roads Board Act 1999.

The objectives of these Regulations is to provide further details and clarity on provisions which have been left open by the Kenya Road Boards Act, to fill in gaps inherent in the Technical, Financial and Performance Audit Manuals and Guidelines, and to align the sector to provisions of CoK, 2010.



In the process of developing the proposed Regulations KRB conducted a review and benchmarking exercise of similar local and international fund managers with the aim of developing best practices. Table 1 below highlights the detailed issues addressed by the proposed regulations.

Table 1: Issues addressed by the proposed Kenya Roads Board Regulations 2021

No.	Topic/Key Principle	The Parent Act	Proposed Legislation: Kenya Roads Board Regulations 2021	Comments/Explanation
1	Applicable Legislation	Kenya Roads Act 1999	Kenya Roads Board Regulations 2021	Legislation is based on s.37 of the Kenya Roads Board Act 1999 and is aimed for the better functioning of KRB.
2	Application of the Kenya Roads Board Regulations 2021	Part I covers terminologies, object and purpose of the Regulations as well as responsibilities of the Board	The regulations apply to: a. Road Agencies namely the: i) Kenya National Highways Authority (KeNHA) ii) Kenya Rural Roads Authority (KeRRA) iii) Kenya Urban Roads Authority (KURA) b. Kenya Wildlife Service (KWS) c. Departments of County Governments responsible for roads d. Classified and unclassified roads receiving funds from the Fund	The regulations align the management of the road sector with provisions of the Constitution of Kenya 2010 on devolved government and reflect lessons learnt by KRB for the past 20 years of applying manuals and guidelines.
3	Object and purpose of these Regulations		(1) The object and purpose of these regulations is to operationalize the Kenya Roads Board Act, 1999 on the oversight of the road network and coordination of road maintenance, rehabilitation and development. (2) Without prejudice to the generality of the foregoing, these regulations shall:	

			(a) Provide means of administering the powers vested on the Director General, Kenya Roads Board under the Road Maintenance Levy Fund Act, Kenya Roads Board Act, the Public Finance Management Act and any other related legislation; (b) Ensure accountability, efficiency, transparency and effective application and utilization of the Road Maintenance Levy Fund; (c) Harmonise and standardize formats and contents of works plans and reports on the Fund; (d) Provide guidelines for the compiling works programmes to the Road agencies; (e) Provide a list of required records, books and reports needed to enable effective monitoring and evaluation; (f) Provide means of realization of the word and spirit of the Constitution	
4.	Responsibilities of Kenya Roads Board		Kenya Roads Board shall; a) One year to the beginning of the Financial year, inform the Road Agencies the Funds likely to be available for road maintenance, rehabilitation and development;	

			b) Inform all Road Agencies the priorities in the funds allocation and criteria to be applied in making the allocations; c) At the beginning of each financial year, develop a disbursement programme, which is a cash flow projection for one year and allocations to every Road Agency and County Government; d) After every three (3) months, release monies as provided for under Regulation 5 (3) above, and provided such release is not prohibited by the Act or these Regulations. (1) Reject any works programme that does not comply with the provisions of the Act and these Regulations.	
5.	Annual Public Roads Programme (APRP)	Part II of the Regulations make provisions for the process of preparing and submitting Annual Public Roads Programmes (APRP).	Road Agencies will be required to submit to KRB, 6 months before the commencement of every financial year, a works programme for the development, rehabilitation and maintenance of roads in its jurisdiction, which shall include only those roads contained in the gazetted Road Register. In formulating an APRP, Road Agencies shall be required to: i) undertake an Annual Roads Inventory Condition Survey (ARIC) ii) Hold stakeholder meetings for prioritization of road works, iii) Take into account the approved 5 year road sector investment plan	

			iv) Take into account the Road Management System User Manual	
			Road Agencies may not implement any road works outside of the APRP without seeking approval from KRB. A Road Agency may revise it's APRP in instances where the road works in question have been or are to be implemented by another Road Agency, savings have been made necessitating an inclusion of additional roads to the Road Agency's APRP, or due to the occurrence of an unforeseen emergency.	
6	Financial Provisions and Administration	Part III focuses on financial and administrative provisions.	Road Agencies are required to use funds received from KRB for: i) maintaining, rehabilitating and developing roads included in the Annual Roads Work Programme (ARWP), ii) putting in place and implement a quality control and quality assurance system iii) managing road reserves iv) road designing processes, safety, and axle load control v) undertaking environmental conservation activities vi) supervising and monitoring road works Road Agencies shall maintain separate bank accounts for funds disbursed from KRB for the implementation of the ARWP.	

			These bank accounts shall be opened, operated and closed with authority from KRB, National Treasury and the Board of the Road Agency. KRB shall give Road Agencies budgetary ceilings for each financial year on the basis of which Road Agencies shall prepare ARWPs. The budget estimates for each Road Agency shall be in accordance with the allocation criteria set out in S.6 of the KRB Act, while those for county governments shall be determined annually after the passing of the Annual Division and Allocation of Revenue Bill in accordance with Art 218 of the Constitution. KRB may withhold the release of funds to a Road Agency which has not complied with prescribed law, rules and regulations. The condition for release of funds to a Road Agency include: i) submission of quarterly and annual progress/expenditure reports ii) submission of ARWP in accordance with s19(2) of the KRB Act iii) satisfactory responses to audit queries whenever they are raised iv) timely implementation of the ARWP and proof of absorption of up to 70% of the previous year's budgetary allocation v) confirmation that funds are used exclusively for the intended purposes
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			In the event that a Road Agency's ARWP has not been approved at the beginning of a financial year, KRB may approve release not more than 30% of the submitted draft ARWP to facilitate the Road Agency's operations pending approval. A Road Agency shall not utilize funds received from KRB for purposes of paying salaries and other employment remuneration and allowances for personnel or for offsetting the cost of offsetting overhead expenses of its regional, sub-regional or sub-county offices. A Road Agency may however utilize funds received from KRB for purposes of offsetting the costs of supervision of road works and other incidentals and allied costs arising from implementing approved road projects. Road Agencies shall procure goods, services and works in accordance with provisions of the Public Finance and Management Act, 2012 and the Public Procurement and Asset Disposal Act 2015. A Road Agency shall not, without prior approval of the Board, reallocate funds earmarked for a particular road project to another road project. Where a Road Agency is not compliant with the financial and administrative provisions, the Board may: i) suspend funding to the Road Agency
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			ii) appoint another road agency to implement the offending Road Agency's works programme iii) Institute measures to recover any amounts misappropriated by a public officer, or iv) Take legal action against an officer Any member of the public may lodge a complaint of allegation of misuse of funds with KRB against any Road Agency, which shall be in written and provide details of the nature of complaint	
7.	Project Management and Reporting	Part IV covers Project Management and Reporting	Road Agencies will be required to ensure compliance with design and supervision standards for road works as issued by the Ministry. They shall be required to: i) establish and implement quality management systems for delivery of road works including materials testing and adequate supervision ii) ensure that all planned works is executed within the time, cost and set standards and specifications iii) ensure compliance with contract conditions iv) ensure that goods, works and services are procured in a manner that promotes economy, efficiency, effectiveness and equity Road Agencies shall ensure that road works are supervised by suitably qualified and adequate staff	

			All Road Agencies shall ensure compliance with the provisions of the Occupational Health and Safety Act 2007 Road Agencies shall be required to conduct Environmental Social Impact Assessments (ESIA) for road projects in accordance with guidelines set out by the National Environment Management Authority (NEMA) A Road Agency may with the approval of KRB carry over works from one financial year to the next provided that it does not exceed 20 % of the APRP. Road Agencies shall carry out emergency works or repairs in accordance with design and supervision standards for road works as issued by the Ministry.	
			Road Agencies are required to enter into contract arrangements for road works, goods and services which shall specify the parties, the contract price and period, the scope of works, bills of quantities, drawings and specifications, and conditions prescribed by the Public Procurement Regulatory Authority. Prior to entering into a road works contract, a Road Agency shall seek a 'non-objection' from KRB Road Agencies shall not issue any variations exceeding 10% of the original contract sum without prior approval from KRB	

			Road Agencies shall keep and maintain for inspection and audit the following: i) contract file which shall contain copies of procurement documents, site photographs, site instructions, minutes of meetings, copy of contract agreement, payment certificates, record of force account and any other relevant documents Road Agencies shall submit to KRB copies of all signed contract documents for road works exceeding KES100million and bridges for amounts exceeding KES10million, or such other amounts as KRB may from time to time notify. Road Agencies shall submit to KRB quarterly progress reports for all projects for amounts exceeding KES100 million or such other amount as the Board may notify from time to time. Road Agencies shall also submit to KRB minutes of substantial completion inspection meeting and copies of handing over certificates for all projects for amounts exceeding KES 100 million.	
8.	Monitoring and Evaluation	Part V of the regulations covers Monitoring and Evaluation	Every 6 months, the Board shall conduct technical, financial and performance audits of programmes it funds and implemented by Road Agencies. The Board may also perform <i>ad hoc</i> technical, financial and performance audits from time to time.	

			The Board shall notify a Road Agency of the intended audit two weeks in advance of the audit except in instances of a special or ad hoc audit, in which case the Board need not give notice. A notice of an intended audit shall be issued by the Board and shall specify the scope, objectives, basis, information required, audit checklist and audit programme. An Inspector may call off or postpone an audit in case of: i) lack of cooperation from the implementing agency ii) failure of the implementing agency to provide documents and information iii) risks physical threats to the Inspector iv) insecurity threatening the safety of the Inspector v) absence of the relevant officer of the Road Agency to be audited. Failure by a Road Agency to comply with the Inspector's request, hindering an Inspector from carrying out audits or gives false information to the Inspector shall be deemed to be non-compliance with the terms and conditions upon which funds are disbursed A Road Agency is required to submit an action plan for addressing issues raised in an audit report.
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			The Board shall impose penalties on a Road Agency, which fails to implement audit recommendations satisfactorily. Road Agencies and counties are required to prepare and submit quarterly APRP implementation reports together with supporting documents by the 20th day after the end of each quarter. These reports must be approved by the Road Agency's Accounting Officer	
9.	Miscellaneous	Finally the Regulations make provision in its Part VI for miscellaneous provisions	A person, public agency and or any other stakeholder aggrieved by any decision of the Board shall lodge a complaint, which shall be recorded in the Complaints Handling Register The Board shall establish a Complaint Management Committee who shall be the custodian of the Register Where a complaint has been admitted, or where the Committee has taken up a matter on its own initiative, the Executive Director may commission an investigation by an officer of KRB or any public office or investigation agency. Upon completion of the investigation the Committee shall prepare a report with recommendations and submit it to the Executive Director.	

3 IMPACT OF THE PROPOSED REGULATIONS

The main impact of the proposed Kenya Roads Board Regulations 2021 is their contribution to the attainment of Kenya's Vision 2030, which is anchored on three pillars namely, economic, social and political development. The economic pillar identifies key sectors for overall economic growth such as tourism, agriculture, wholesale and retail trade, business process offshoring, manufacturing and financial services. Infrastructural development is the principal factor in the exploitation of growth potential all the above-mentioned sectors. Kenya's road networks are a key element of infrastructural development, given that land freight and passenger traffic accounts for over 80% of road transport. Construction of roads is capital-intensive thus proper maintenance, management and rehabilitation is both logical and economically sensible.

Following comments on the proposed Kenya Roads Board Regulations 2021 from stakeholders, KRB will review the changes in terms of their advantages and disadvantages to Kenya. The cost-benefit analysis is a key step in evaluating the potential impacts on stakeholders and the economy.

3.1 COST-BENEFIT ANALYSIS

This section presents an analysis of the costs and benefits associated with the proposed Kenya Roads Board Regulations 2021. This includes a characterization of the potential benefits and a qualitative assessment of benefits (monetized where possible). The section will also identify the costs associated with the implementation of the proposed Regulations.

3.1.1 Benefits

The general benefits resulting from the proposed Kenya Roads Board Regulations 2021 are highlighted in Table 3.1 below.

Table 31: Characterization of Potential Benefits

Consistency and clarity in the law	
Aligning the road sector to provisions of the Constitution on devolved functions	Clarification of roles, mandates and functions of national government and county governments in the development, maintenance and rehabilitation of roads.
Streamlining procurement processes in Road Agencies to comply with existing law	Road Agencies will henceforth be required to comply with provisions of the Public Procurement Act 2015, and particularly s.3 (h) which emphasizes that the guiding principle in procuring works should be maximization of value for money

Clarity on conditions for approval and revision of Annual Roads Work Programme (ARWP)	Road Agencies will operate with clarity on the necessary steps to be undertaken in developing an ARWP, the types of information that should be included, how to conduct an Roads Inventory and Conditions Survey (RICs)
Increased Efficiency and Accountability in the Road Sector	
Timely absorption of Funds by Road Agencies	Introduction of sanctions for failure by Road Agencies to absorb funds and implement projects in a timely fashion and limiting carry over works allowable for each financial year to 20%
Supervision of works by qualified professionals and contractors	Regulations require that works be supervised by suitably qualified and adequate professionals which would enhance accountability in the quality of road works implemented including emergency works
Transparency and accountability in the use of Funds	The Regulations put in place requirements for Road Agencies to use funds from KRB in an accountable way and only for the

The following sections provide information on possible costs associated with the proposed legislation.

3.1.2 Compliance Costs

The proposed regulations may result in an increase in compliance costs for Road Agencies. These changes may occur in 'set-up' costs or in 'ongoing' costs associated with the changes.

Set-up or establishment costs will relate to the implementation of the legislation, such as new processes and updating systems that will be required when the legislation is implemented. These costs will fall to Road Agencies in the transition and implementation of the legislation.

The implementation of the proposed regulations will require stakeholders to familiarize themselves with the provisions of the regulation. Associated costs will also further include designing of implementation systems and developing and implementing staff-training and adapting to new internal process.

3.2 SOCIAL AND ECONOMIC IMPACTS

3.2.1 Social Impacts

Availability of serviceable roads has a direct impact on access to healthcare, markets and places of economic activity and social connectivity. Positive impacts may include urbanization of rural areas and opening them up for investment. There is potential for negative social impacts that may arise through the implementation of the road works, which may include disruption of livelihoods.

3.2.2 Economic Impacts

The construction, maintenance and rehabilitation of roads is likely to increase travel and tourism in the country. A good road network is likely to increase economic activity between regions in the country particularly through movement of goods and people.

The proposed regulations will have a further economic impact through indirect expenditures made by road construction businesses. The regulations make provision for regular repair and maintenance of roads. In order to undertake such activities the purchase of necessary equipment and machinery from manufacturers will be required. This will also further create demand for primary materials from other suppliers thus spurring sector-wide economic activity. Investment in road works will increase spending by inter-related industry and add to Kenya's national economic activity.

In the short, road infrastructure is crucial to achieving economic growth. The proposed Regulations seek to support the development, maintenance and rehabilitation of road infrastructure in Kenya, but to keep it in a state of good repair. Investments will generate jobs, increase the competitiveness of Kenyan businesses and lead to a significant injection of economic activity throughout the country.

4. CONCLUSION

This Regulatory Impact Assessment supports the enactment of the proposed Kenya Roads Board Regulations 2021 as the most optional policy vehicle for the Ministry of Transport, Infrastructure, Housing and Urban development and Public works, through KRB to achieve the aim of improving and rationalizing decision-making and resource allocation for the roads sector in the country.



Financing Road Maintenance

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27th October, 2020

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Housing, Urban Development & Public Works
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NAIROBI

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Prof. Arch. Paul Maringa (PhD), CBS, Corp. Arch (Maak), MKIP
Principal Secretary, State Department of Infrastructure,
Ministry of Transport, Infrastructure, Housing, Urban
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P O Box 30260-00100,
NAIROBI

Dear

RE: REQUEST FOR APPROVAL OF THE KENYA ROADS BOARD ACT
(REGULATIONS) 2020

As you are aware, Kenya Roads Board (KRB) is a statutory body established under the Kenya Roads Board Act, 1999. Section 37 of the Act, allows the Board to make regulations prescribing anything required by the Act or generally for better carrying into effect the provisions of the Act. The main objectives of the Regulations is to provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act No. 7 of 1999; and to fill in existing gaps in Manuals in use.

KRB has developed proposed regulations as attached hereto. The Regulation incorporate views of key stakeholders who were engaged in a series of consultative workshops throughout the country. A Regulatory Impact Assessment has also been conducted and

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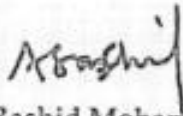
LEGAL NOTICE NO.

THE KENYA ROADS BOARD ACT	
<i>(No. 4 of 1999)</i>	
THE KENYA ROADS BOARD REGULATIONS, 2020	
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<i>Regulation</i>	
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PART II- ANNUAL PUBLIC ROADS PROGRAMME	
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5.	Road Inventory and Condition Survey.
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16.	Budget ceilings.
17.	Expenditure projections.
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20.	Conditions for release of funds.
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24.	Administrative expenses.
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28.	Authority to incur expenditure.
29.	Fixed Assets register.
30.	Savings and earnings.

concluded that the regulations when implemented will enhance value for money in the Road Sector. A Regulatory Impact Statement is enclosed herewith.

This is to request for your approval for the implementation of the KRB Regulations, 2020

Yours



Rashid Mohamed, MBS
Ag. EXECUTIVE DIRECTOR

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31.	Carry over funds.
32.	Funds not to be applied as security for borrowing.
33.	Funds disbursed through Constituency Road Fund Accounts.
34.	Maintenance of cash books.
35.	Cash books .
36.	Account not to be overdrawn.
37.	Cashing of personal cheques.
38.	Payment vouchers, adjustment journals, banking and issuance of receipts.
39.	Amounts to tally.
40.	Banking of receipts.
41.	Financial records and automation of financial operations.
42.	Annual reports and financial statements.
43.	Books of accounts.
44.	Accounts and records to be kept and preserved.
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PART IV- ROAD MAINTENANCE AND DEVELOPMENT	
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55.	Contract project file and force account
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First Schedule:	Forms
Second Schedule:	Budget Estimates for Road Agencies, Counties and Road Sector Investment Programme (RSIP)
Third Schedule:	Classification of Works
Fourth Schedule:	Designated Road Agencies
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THE KENYA ROADS BOARD ACT

(No. 4 of 1999)

IN EXERCISE of the powers conferred by Section 37 of the Kenya Roads Board Act 1999, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Regulations—

THE KENYA ROADS BOARD REGULATIONS, 2020

PART I: PRELIMINARY	
Citation.	1. These Regulations shall be cited as Kenya Roads Board Regulations, 2020.
Interpretation.	2. In these Regulations, unless the context otherwise requires— “Act” means the Kenya Roads Board Act No. 7 of 1999; “Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act 2012 “Board” means the Kenya Roads Board as established under Section 4 of the Kenya Roads Board Act, 1999; “Board of Directors” means the Board established under section 7 of the Act; “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for roads; “Contract” means the contract for the works under discussion; “Fund” means the Kenya Roads Board Fund established by Section 31 of the Act; “Monitoring” means examining and verifying that the road works are being executed in accordance with the performance agreement; “Periodic Maintenance” means all the maintenance works carried out in a periodic cycle of five (5) to ten (10) years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming. For purposes of these Regulations, pavement layer reconstruction or the addition of a pavement layer do not constitute periodic maintenance; “Road Agency” means any organisation or body specified in the Fourth Schedule and includes all bodies receiving monies from

	the Board for the purposes for which the Board is established and includes County Governments established pursuant to provisions of Articles 6.1 and 176.1 and as outlined in the First Schedule of the Constitution of Kenya 2010; "Roadside development" means a physical structure or facility on land within or adjoining a road reserve; "Road Maintenance Levy Fund" means the Fund established by Section 7 of the Road Maintenance Levy Fund Act, 1993 (No. 9 of 1993); "Road Maintenance" means the preservation of roadways, roadsides and structures as nearly possible to their original condition or as subsequently improved and the operation of road facilities and services to provide satisfactory and safe transportation; "Road Network" means the entire road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described; "Routine Maintenance" means all maintenance works required continuously or at interval on every road whatever its engineering characteristics or traffic volume, and comprises activities such as grass cutting, drain cleaning, culvert and bridge cleaning and maintenance, road furniture and bridge guard rails maintenance, paved road patching, edge repair, crack sealing, and line marking, and also unpaved road grading, shaping and pothole repair.
Application of the Rules.	3. These regulations shall apply to – (a) all Road Agencies responsible for national trunk roads that receive financing from the Board and shall cover all goods, works and services funded by the Fund; and (b) Roads departments responsible for county roads networks; and (c) Roads Department of Kenya Wildlife Services responsible for roads within national parks and game reserves. (d) Classified and Unclassified roads receiving funds from the Fund
PART II- ANNUAL PUBLIC ROADS PROGRAMME	
Submission of Annual Roads Programme and	4. (1) Road Agencies and roads departments of County Governments shall submit six (6) months before the commencement of every

Prioritization of Works.	financial year, the Annual Roads Work Programme (ARWP) to the Board which shall contain – (a) Financial year to which the ARWP relates; (b) The Road Agency's identity or the county name as the case may be; (c) Locality; (d) Road identity including name and number, and section name; (chainages) (e) Section Length; (f) Type of intervention/ description of the works; (g) Estimated budget costs for the current and the next three (3) years; (h) Current condition; and (i) Surface type (2) Roads included in the ARWP shall be contained in the road register. (3) Road Agencies shall provide adequate budget for multi-year projects spread over the contract period. (4) In coming up with ARWP and implementation of works, Road Agencies and county governments shall apply the cost estimation manual published by the Board from time to time. (5) Road Agencies shall set aside funds for designs process, road safety, axle load control, ARICS and environmental conservation. (6) In developing the ARWP, Road Agencies shall - (a) comply with the budget ceilings issued pursuant to provisions of Regulation 15 of these Regulations. (b) carry out Annual Roads Inventory Condition Survey, (ARICS) pursuant to provisions of these Regulations using the format provided in Schedule/Form 1, to determine the maintainable portion of the road network. (c) hold stakeholder meetings for prioritization of road works and submit minutes of these meetings to the Board.
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	(d) be based on approved 5-year RSIP and the order of prioritization of road works will be routine maintenance, spot improvement, periodic maintenance and rehabilitation. (e) allow at least 20% of the road works procurement budget for labour based methods of delivery (Roads 2000 Strategy) (7) All the Annual Roads Work Programmes received shall be consolidated into the Annual Public Roads Programme and submitted by February of each calendar year to the Board of Directors for approval. (8) The approved Annual Public Roads Programme shall be submitted to the Cabinet Secretary and the National Treasury for signing by April each year as required under Section 19(5) of the Act; (9) The Board shall publish and disseminate to Road Agencies the Annual Public Roads Programme Planning and Reporting as the Board of Directors shall specify from time to time. (10) In prioritization of road works, road agencies shall adhere to the requirements of the "APRP Planning and Reporting Manual" published by the Board from time to time. (11) Preparation of the ARWP shall start at the lowest implementing unit of the road agency.
Road Inventory and Condition Survey.	5. (1) The Board shall conduct a Roads Inventory and Condition Survey (RICS) every five (5) years. (2) Road Agencies shall carry out an Annual Roads Work Programme (ARWP) Condition Survey and produce a road maintenance needs assessment report and submit to the Board annually. (3) Every road agency, the KWS and county roads departments shall submit to the Board its updated Road Inventory and Condition Survey (RICS) for the road network under its jurisdiction by September of each year in order for the Board to update the entire road network register. (4) Road Agencies may seek approval for the inclusion of roads not in current road register in their Annual Roads Work Programme using Form 2 provided in the First Schedule of these Regulations.
Format and Details of Annual	6 An Annual Roads Work Programme prepared by a Road Agency, pursuant to Rule 4 above, shall be in the format

Roads Work Programme.	provided in Form 3 set out in the First Schedule of these Regulations.
Approval of Annual Roads Work Programme.	7 (1) The Board shall upon receipt of the Annual Roads Work Programme from a Road Agency review it to ensure compliance with requirements provided in Regulation 4 of these Regulations. (2) The Board shall communicate approval of submitted Annual Roads Work Programmes or specify any corrections, additions or clarifications that are required to facilitate approval, within four weeks from the date of receipt. (3) Road agencies shall, upon request by the Board, respond to queries raised in the process of approval within four weeks. Once the Board is satisfied with the response from a Road Agency, its Annual Road Works Programme will be approved for inclusion into the Annual Public Roads Programme. (4) In the event that the Board raises queries on an Annual Roads Work Programme, it shall communicate its approval or otherwise following submission of responses to concerned Road Agencies after receiving responses on or before 31st December. (5) The Board shall impose penalties as stipulated in the Fifth Schedule to these Regulations on Road Agencies for failure to submit compliant Annual Road Works Programmes within stipulated timelines above.
Revision of Annual Public Roads Programme.	8 (1) Road Agencies may apply for revision of their portion of the Annual Public Roads Programme before 31st January of each year. No revisions shall be permitted thereafter. (2) The Board shall communicate its approval or otherwise to the respective Road Agencies of the revisions to the APRP within one month of the request (3) Road Agencies shall not implement any works outside the APRP without seeking prior approval from the Board. (4) The Board shall impose penalties as stipulated in the Fifth Schedule to Road Agencies for implementation of works outside approved APRP.
PART III – FINANCIAL PROVISIONS AND ADMINISTRATION	
Duties of Road Agencies	9 Notwithstanding any obligation imposed on a Road Agency under these Regulations, a Road Agency shall, for the purposes of utilising funds received from the Fund –

	(a) maintain, rehabilitate and develop the categories of roads within its mandate; (b) prepare the Annual Road Works Programme using the prescribed format issued by the Board from time to time; (c) utilise disbursed funds to implement the approved Annual Roads Work Programme; (d) put in place and implement quality control and quality assurance system; (e) manage road reserve; (f) supervise and monitor road works within their area of jurisdiction; and (g) perform any other duties as the Ministry may direct from time to time
Duties of County Governments	10 County CECs' shall be responsible for: a. Approving County roads work plans b. Provide public notices for purposes of traffic management during the works implementation c. Ensure the final inspection and issuance of defect liability certificates upon completion of designated works under the works programme d. Ensure that illegal structures are cleared out of the road reserve and encroachment has stopped e. Ensure assessment of property within the right of way and compensation to owners, where necessary, is paid or duly discharged before commencement of any designated works under the works programme provided that such compensation shall not be paid out of the funds allocated for works programme f. Not in any way alter the agreed works programme without prior consent of the Board g. Furnish the Board with such reports as may be required for the review of the works programme. Following each such review, the county shall act promptly and diligently in order to take, or assist the Board in taking any corrective action deemed necessary to remedy any shortcoming noted in the

	implementation of the works programme or to implement or assist the Board in implementing such other measures as may be necessary for the furtherance of the objectives of the works programme h. At the request of the Board exchange views with regard to the progress of the works, programme, the performance of its obligations and other matters relating to the objectives of the works programme i. Promptly inform the Board of any condition which interferes or threatens to interfere with the progress of the works programme or the performance of its obligations j. Maintain or cause to be maintained, separate records and accounts in accordance with sound accounting practices k. Retain all records (contract, orders, invoices, bills, receipts and other documents) as evidencing expenditures and enable and assist the Board to examine such records. l. Cause to be opened and operated as separate bank account for the Funds disbursed by such account to be known as the Road Maintenance Levy Agency Account (RMLFAA) m. Not to use or permit to be used, the RMLFAA aforementioned as security or otherwise for borrowing of any funds and engaging any activity not directly associated with the works programme n. Carry out the works programme with due diligence, safety, efficiency, be cost conscious in order to get value for money and in an environmentally friendly manner, and in conformity with appropriate administrative and financial practices
Opening of Bank Accounts.	11 (1) Each Road Agency shall cause to be opened a separate bank account for the funds disbursed from the Fund to be known as '<i>Name of Agency - Road Maintenance Levy Fund</i>'. (2) A Road Agency that fails to open a Bank account shall not receive funds. (3) All bank accounts shall be opened, operated and closed with authority from the Board and the National Treasury, in accordance

	with Section 28 (1) of Public Finance Management Act, 2012 and its applicable Regulations.
Deposits into the Bank Account.	12 (1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account. (2) A Road Maintenance Levy Bank Account shall not be a fixed deposit account and neither shall funds held in a Road Maintenance Levy bank account in any circumstances be held in a fixed deposit account.
Payments from the Bank Account.	13 (1) All Road Agencies shall make payments related to the Roads Works Programmes approved by the Board from their respective Road Maintenance Levy Fund bank account. (2) Payments may be done either by instructions, cheque, electronic or fund transfer in accordance with the Public Finance Management Act 2012 and its Regulations.
Signatories to the Bank Account.	14 (1) The accounting officer of a Road Agency shall be a mandatory signatory to all cheques, electronic payments and fund transfers. (2) The accounting officer in charge of the road agency shall designate other signatories and any changes in signatories in accordance with the Public Finance Management Act 2012 and its Regulations. (3) For county road works, the chief officer in charge of roads shall be a signatory to the bank account.
Annual Estimates.	15 The Board shall prepare annual revenue projections of the Fund on a three (3) years forward basis and submit it to the National Treasury.
Budget Ceilings.	16 (1) The Board shall give the Road Agencies and constituencies (counties) budgetary ceilings for the following financial year and request them to commence the preparation of their respective Annual Road Works Programmes by 1 st July of the financial year preceding the year to which the budgetary ceilings relate. (2) The budget estimates for each Road Agency and constituency, shall be in accordance with the allocation criteria set out in Section 6(2) (d), (e) and (f) of the Act. (3) The ceilings for county governments shall be determined each year after the passing of the Annual Division and Allocation of Revenue Bill in accordance with provisions of Article 218 of the Constitution.
Expenditure Projections.	17 Road agencies shall within three (3) months before the beginning of the financial year submit to the Board an annual expenditure projection for each month in the financial year.
Disbursement Program.	18 (1) The Board shall indicate to Road Agencies at the beginning of each financial year, cash flows for each month.

	(2) The Board shall monitor receipt of funds from RMLF and allocate each tranche to the respective Road Agency in accordance with the disbursement program
Release of Funds and Withholding of Funds.	19 (1) The Board shall release funds to compliant Road Agencies within one month after approval by the Board and in compliance with the disbursement schedule. (2) The Board shall withhold release of funds to Road Agencies which have not complied with the prescribed rules, regulations, procedures and guidelines, the Act, or other applicable laws.
Conditions for Release of Funds.	20 (1) Without prejudice to the generality of the foregoing, the specific criteria in subsection (2) will be applied as a basis for release of funds. (2) The specific criteria for the release of funds include - (a) Submission of quarterly and annual progress/expenditure reports as required by the Board in accordance with these Regulations. (b) Submission of an Annual Road Works Programme duly approved by the Board in accordance with Section 19(2) of the Act. (c) In the event of audit queries, provide responses to all audit queries raised in accordance with these Regulations. (d) Timely implementation of the approved Annual Road Work Programme and absorption of up to 70% of the annual budgetary allocation (e) Complied with requests made under section 27 of the Act by an inspector ; (f) Confirmation that the funds are being used wholly and exclusively for the intended purposes and that no funds whatsoever are being diverted for use in other unrelated activities.
Release of Funds by Road Agencies to regional offices/sub-agencies.	21 A Road Agency shall forward funds to its regional offices/sub-agencies where applicable within two (2) weeks after receipt from the Board.
Partial Release of Funds.	22 In the event that the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a financial year, the Board may approve release on account of not more than 30% of the funds based on the submitted draft ARWP, to enable the

	operations of the agency to continue, pending approval of the Annual Public Roads Programme (APRP).
Utilization of the Fund.	23 Funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme (APRP).
Administrative Expenses.	24 (1) Road Agencies shall not exceed the overheads and administrative expenses thresholds specified in Section 6 (2) (1) of the Act. (2) Road Agencies shall ensure regional offices are allocated funds for administration from the overall administration expenses of the Road Agency.
Expenditure Limit.	25 The expenditure on budgeted line items is limited to the amount approved in the budget.
Board approval to exceed budget.	26 (1) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may approve such excess after being satisfied that there are compelling reasons for the same. (2) Any excess approved under the subsection (1) must be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded.
Reallocation of funds for works.	27 Road Agencies shall not use the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of the Board.
Authority to incur expenditures.	28 Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that Road Agency.
Fixed Assets Register.	29 (1) Every Road Agency shall maintain a Fixed Assets Register relating to the Fund wherein various details of fixed assets will be recorded. (2) The Fixed Assets Register shall contain the following details: (a) Type of asset; (b) Cost of asset, supplier and date of acquisition; (c) Serial numbers, title documents of the asset and provision for licenses where applicable; (d) Rates of depreciation; (e) Accumulated depreciation up to close of financial year; (f) Written down value as at the end of the financial year;

	(g) Value of the asset (as per the last valuation); (h) Date of disposal and the net realizable values; (i) Profit or loss on disposal; (j) The exact location of the asset; and, (k) Identification numbers of the assets (to be coded on the basis of category, location etc. of the assets).
Savings and Earnings.	30 (1) Where a Road Agency has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. (2) Road agencies shall submit a work plan for the savings and or interest earnings to the Board before spending.
Carry over funds.	31 (1) At the end of each financial year all road agencies shall submit to the Board bank balances and corresponding road works for which the funds were to be utilized. (2) The carry over funds and associated road works shall be included in the Annual Road Works Programme for the following financial year.
Funds not to be applied as security for borrowing.	32 Road Agencies shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.
Funds disbursed through Constituency Road Fund.	33 For funds disbursed through Constituency Road Fund accounts, the Kenya Rural Roads Authority (KeRRA) accounting officer who manages the funds at the constituency shall be responsible and accountable for the funds.
Maintenance of Cash Books.	34 (1) Road Agencies shall maintain a cash book for The Kenya Road Board Fund Account to be written and balanced daily and the cash in hand verified by the officer in charge of the cash book. All monies received shall be recorded serially in the cash book with adequate details of the transaction. (2) The Road Agencies shall maintain registers and records of bank accounts, cash books and imprest in accordance with the Public Finance Management Act 2012 and its pursuant Regulations.
Cash Book.	35 (1) The Cash Book shall be checked on a daily basis by a senior officer of the Road Agency and at these checks he should sign the cash book at the last entry examined to signify that he has satisfied himself as to the correctness of all entries made since the last signature. (2) The cash book balance must be reconciled with the bank balance at the end of every month.

Account not to be overdrawn.	36 The Road Agencies' RMLF Bank Account shall not be overdrawn as stipulated in the Public Finance Management Act 2012 and its Regulations.
Cashing of Personal Cheques.	37 (1) Personal cheques shall not be deposited into an official bank account. (2) Cashing of personal cheques from funds received from or through the Board, whether drawn by civil servants, directors, staff members, or members of the public is not permitted.
Payment vouchers, adjustment journals, banking and issuance of receipts.	38 (1) All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-numbered receipt, which should be signed, stamped and dated. (2) All payment vouchers, adjustment journals and receipts shall comply with the provisions of the PFM Act and regulations. (3) All cash and cheques received must be receipted and banked intact into the road agency's RMLF Bank Account within five days from the day of receipt.
Amounts to tally.	39 The amounts in words and figures must tally and shall not be altered or amended.
Banking of Receipts.	40 All cash and cheques received must be receipted and banked intact into the Road Agency's RMLF Bank Account within five days from the day receipt is acknowledged.
Financial Records and automation of financial operations.	41 Financial records may be maintained in manual or electronic form and shall be kept in accordance with the Public Finance Management Act 2012 and its Regulations.
Annual Reports and Financial Statements.	42 (1) The accounting officer shall prepare annual reports and financial statements with respect to the RMLF account in compliance with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time. (2) Every road agency shall, within six months of the end of each financial year submit to the Board its audited accounts for that financial year.
Books of Account	43 Accountable documents whether manual or electronic shall be under strict control at all times and they shall include— (a) local purchase order; (b) local service order (c) authority to incur expenditure; (d) cheques; (e) cash receipt and payment books; and

	(f) imprest warrants etc.
Accounts and records to be kept and preserved.	44 (1) Road agencies and sub-agencies shall maintain the following accounts and records in the format prescribed hereunder – (a) Cashbook, bank statements and bank reconciliations; (b) Payment vouchers (c) Ledgers; (d) Fixed assets register; (e) Quarterly and annual reports and financial statements and non – financial reports; (f) Quarterly ARWP Progress reports; (g) Approved ARWP (h) Procurement documents, LSOs/LPOs/contract; (i) Inspection and verification reports; (j) Measurements sheets, etc. (2) Accountable documents, books and records shall be preserved in accordance with the provisions of the Public Finance and Management Act 2012 and its Regulations. (3) The books of account kept and maintained under this regulation shall be made available to the Board for monitoring. (4) The Board shall suspend disbursement of funds to a Road Agency which contravenes the provisions of this regulation.
Sanctions and Penalties.	45 (1) Failure to adhere to the Act and these regulations shall amount to non-compliance. (2) Where a road agency is non-compliant, the Board may - (a) Suspend funding to the road agency; (b) Appoint another Road Agency, and release funds allocated for works by the non-compliant Road Agency, to the newly appointed agency (c) Institute measures to recover any amounts misappropriated by a public officer.

	(d) Take legal action against an officer. (3) Any member of the public may lodge a complaint of allegation of misuse of funds with the Board against any Road Agency (4) Without prejudice to subsection (2) the Board may, where it is satisfied of the complaint against misuse of funds allocated for any road work, conduct a special investigation for the purposes of determining the truth of the complaint or allegation. (5) Notwithstanding subsection (2) the Board may on its own motion conduct a special investigation where it has reason to believe that there is a misuse of funds by a Road Agency.
PART IV –ROAD MAINTENANCE AND DEVELOPMENT	
Efficient and Effective delivery of road works.	46 (1) Road Agencies shall ensure compliance with design and supervision standards for road works as issued by the Ministry from time to time. (2) Road Agencies shall establish and implement quality management systems for delivery of road works including materials testing and adequate supervision. (3) Road Agencies shall ensure that any planned work is executed within the time, cost, set standards and specifications. (4) Road Agencies shall ensure compliance with contract conditions in accordance with Part V of these Regulations. (5) Goods, works, and services shall be procured in a manner that promotes the economy, efficiency, effectiveness and equity in accordance with relevant rules and regulations as may be prescribed from time to time. (6) The RAs shall ensure that the above documents are available to the inspectors appointed under Section 26 (1) of the Act for inspection whenever required.
Supervision of Works.	47 (1) Road works shall be supervised by suitably qualified and adequate staff. (2) Road Agencies shall maintain records available to the inspectors appointed under Section 26 (1) of the Act for inspection whenever required. (3) Road Agencies shall ensure that site supervision staff have adequate resources to carry out supervision. (4) Road Agencies shall maintain staff records as provided in Form 4 set out in the First Schedule to these Regulations.

	(5) The Board shall conduct field visits every quarter and will give at least two weeks' notice in advance to Road Agencies. (6) Road Agencies shall avail appropriate officers to accompany the Board monitoring team for field visits and provide information as may be required.
Safety.	48 (1) Road Agencies shall ensure compliance with Occupational Safety and Health Act No. 15 of 2007. (2) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works. (3) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.
Environment.	49 (1) Road Agencies are to have an Environmental and Social Management Plan for maintenance projects which shall be clustered at regional levels. (2) Road Agencies shall ensure compliance with Environmental Management and Coordination Act of 1999. (3) Road Agencies shall prepare and implement safety and environmental management plans for road works before commencement of works.
Carry over works.	50 (1) Road Agencies may with approval of the Board, carry over works from one financial year to another provided that the same does not exceed 20% of the Annual Public Roads Programme. (2) In order to avoid duplication of road works and to differentiate works for prior and current Financial Year, Road Agencies shall submit a revised Annual Roads Work Programme for all carry over works and savings to the Board for approval by end of July of every financial year.
Emergency repair works	51 (1) Road agencies shall carry out emergency works or repairs in accordance with design and supervision standards for road works as issued by the Ministry. (2) In carrying out emergency repair works, the Roads Agency shall request for emergency funds from the Board. (3) The Board shall establish and cause to be followed transparent and objective procedures to access and account for emergency funds.
Spot improvements	52 Road Agencies shall carry out spot improvements on short road sections that are in poor conditions for the purposes of maintaining accessibility for such roads.

Road related administrative costs	53 (1) A Road Agency shall use the percentage funds to be allocated by the Board to cover road related administrative costs. (2) The roads related administrative costs in subsection (1) shall include – (a) supervision costs; (b) administration costs; and (c) any other related costs to be determined by the Board.
PART V- CONTRACT MANAGEMENT	
Contracts Format.	54 (1) Road Agencies shall enter into contractual arrangements for road works, goods and services which should specify the following, inter alia – (a) Parties to the contract; (b) Contract price and period; (c) Scope of works, bills of quantities, drawings and specifications (d) Conditions of contract as prescribed by Public Procurement Regulatory Authority. (2) Any payments by Road Agencies for contracts which do not comply with the above shall be considered ineligible expenditure and shall be recoverable from the Road Agency.
Contract project file and force account	55 (1) A Road Agency shall keep and maintain the following project files – (a) Contract file; and (b) Force account (2) The contract project file in subsection (1) shall contain the following – (d) copies of procurement documents; (e) site photographs; (f) site instructions; (g) minutes of meetings; (h) a copy of the contract agreement; (i) payment certificates;

	(j) record of force account; (k) any other relevant correspondences for inspection and audit. (3) The project file for the force account shall contain the following – (a) approval of the tender; (b) site photographs; (c) drawings; (d) bill of quantities; (e) record of inputs namely – i. materials purchased ii. labour iii. equipment hired; iv. fuel v. supervision costs; and vi. any other costs which the Board may determine; and (f) completion reports
Contracts portfolio.	56 (1) The Board shall establish and maintain a contract portfolio for all works in the approved Annual Public Roads Programme. (2) Projects not included in the portfolio shall not be eligible for financing. (3) All contracts for works, good and services shall be in writing and executed in the form as shall be prescribed by the Board from time to time. (4) Road Agencies shall submit to the Board copies of all signed contract documents for road works above Kenya Shillings 100 million and bridges above Kenya Shillings 10 million not later than two weeks after contract signing including all VOs when they occur. Road Agencies shall submit quarterly summary contract reports for all other works. (5) Road Agencies shall submit to the Board quarterly progress reports for all projects over Kenya Shillings 100 million. Road agencies shall submit to the Board quarterly summary reports for all projects procured under the Fund in the format prescribed in the first schedule.

	(6) Road Agencies shall invite the Board for project kick off and substantial completion inspection meetings for all projects over Kenya Shillings 100 million. (7) Road Agencies shall submit to the Board minutes of substantial completion inspection meeting and handing over certificates for all projects over Kenya Shillings 100 million. (8) Road Agencies shall prepare final completion report upon completion of all RMLF funded projects
PART VI – MONITORING AND EVALUATION	
Technical, Financial and Performance Audits.	57 (1) The Board shall conduct technical, financial and performance audits of the Board funded programs undertaken by the Road Agencies after every six months. (2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time. (3) The audits shall be conducted by such persons as may be authorized by the Executive Director in writing. (4) The Board shall inform Road Agencies of the intended audits two weeks in advance unless a special or ad hoc audit is ordered. The notice shall spell out the audit scope, objectives, basis, information required, audit checklist and audit program. (5) There shall be entry and exit meetings between the auditor and Road Agencies and the minutes of these meetings shall be signed by both parties. (6) The Road Agencies shall provide necessary facilitation for the audits including venue for entry and exit meetings, conducive working space for the auditors. (7) Road Agencies shall avail appropriate officers to accompany the auditors for the field visits. (8) An auditor may call off or postpone an audit in the following circumstances; (a) Uncooperative Road Agencies; (b) Failure to receive documents and information; (c) Risks / physical threats; (d) Insecurity; (e) Absent auditee.

	(9) The Auditor shall inform the Executive Director who shall escalate the same to the Cabinet Secretary with recommendation.
Duty to avail documents and information to the auditor.	58 (1) The Road Agencies shall make available to the auditor all of the following information - (a) books; (b) accounts; (c) records and other documents; (d) correspondence; (e) statements and information relating to goods; (f) works and services financed by the Fund; and (g) any other information as determined by the Board and as may be required by the auditor Provided that - (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced; (ii) the auditor may make copies of any books, accounts, records and other documents required for the purposes of its report; and (iii) all information obtained in the course of the M&E shall be treated as confidential and used solely for the purposes of the Act and these Regulations. (2) Where M&E is under a special audit, the Road Agency shall avail information in subsection (1) upon immediate request of the auditor. (3) Any clarifications sought shall be availed to the auditor within thirty days.
Penalties for Failure to Comply.	59 (1) The Board shall notify Road Agencies which fail to comply with the auditor's request or hinders an auditor from carrying out audits or gives false information after expiry of allowed period and specify the penalties to be applied for non-compliance. (2) If Road Agencies do not respond satisfactorily to the issues raised above within 30 days, the Board shall institute the penalties as prescribed in the Fifth Schedule of these Regulations. (3) Road Agencies which fail to comply with the auditor's request or hinders an auditor from carrying out audits or gives false information, shall be held liable to pay penalties as prescribed in Schedule set out in the schedules to these rules. (4) Develop rules for uncooperative auditee/ limitation of scope.

Responses to audit report.	60 (1) Road Agencies shall submit to the Board written responses to audit reports and queries within thirty (30) days as per the prescribed format in the schedules to these rules. (2) Upon expiry of the 30 days, the Board shall conclude the audit report and submit to Cabinet Secretary for roads. The approval of the CS shall be final and binding
Implementation of Audit report.	61 (1) Road Agencies shall submit an action plan for addressing the deficiencies identified in the audit reports. (2) The Board shall impose penalties as stipulated in the Fifth Schedule to these Regulations to Road Agencies which fail to implement audit recommendations satisfactorily. (3) The Board shall monitor the implementation of the action plans (4) Road Agencies shall submit to the Board a status report on implementation of audit recommendations by 31st January of each year.

PART VII – REPORTING

Submission of Reports.	62 (1) Road Agencies shall prepare and submit quarterly APRP implementation reports together with supporting documents by the 20th day after end of each quarter. (2) The Reports must be approved by the Director General of the Road Agency before submission. (3) The Board shall review the report to check compliance with approved APRP. (4) The Board will acknowledge receipt of the quarterly reports and seek clarifications, if any, from Road Agencies. (5) The Road Agencies shall, upon request by the Board, respond to the queries raised within two weeks. (6) Based on the reports, the Board shall prepare and publish half year and annual APRP implementation reports. (7) Road Agencies shall submit to the Board road network management data as in the format and detail prescribed in Form 6 in the First Schedule to these Regulations. (8) Road Agencies shall submit to the Board ad hoc and special reports as may be requested from time to time.
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	(9) The Board shall publish an annual APRP implementation report of projects above Kshs. 100m. (10) The Board shall impose penalties as stipulated in these Regulations to Road Agencies for non-compliance with reporting requirements.
PART VIII – FRAMEWORK FOR ENGAGING COUNTY GOVERNMENTS	
Procurement by County Governments	63 (1) Roads departments in county governments shall act in accordance with provisions of the Act and shall adhere to provisions of the Public Procurement Act 2015 and the Public Finance and Management Act 2012 and as may be amended from time to time. (2) County governments shall use only the standard documents and procedures of tender and/or contract approved and provided by the Kenya Roads Board (hereinafter referred to as “the Board”) and where not provided those given by the Director of Public Procurement;
PART VIII – MISCELLANEOUS	
Register of Complaints.	64 (1) A person, public agency and or stakeholder (‘the Complainant’) aggrieved by any decision of the Board shall lodge a complaint in the prescribed form and the same shall be recorded in the Complaints Handling Register. (2) The Board shall establish a Complaint Management Committee chaired by an officer who shall be the custodian of the Register. (3) The complainant shall attach or provide any documents necessary to support the complaint. (4) Notwithstanding the foregoing, a complaint may be made anonymously or treated in such a manner as to protect the identity of, or particulars of the complainant where necessary, as may be directed by the Executive Director.
Procedure for handling a complaint.	65 In the determination of complaints under these Regulations, the Board shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.
Investigations.	66 (1) Where the complaint has been admitted, or where the Committee has taken up a matter on its own initiative, the Executive Director may commission an investigation by an officer of the Board or any public office or investigation agency. (2) The Committee may, subject to the direction and control of the Board, issue the requisition of information in a form to be determined by the Board.

	(3) Upon completion of the investigation, the Committee shall prepare a report with recommendations and submit it to the Executive Director. (4) The Board shall keep a record of each investigation and may publish the findings and recommendations pursuant to an investigation and may include these in its Statutory Report. (5) Appeals from the decisions of the Executive Director which are covered under the Act and these Regulations, shall lie before the Board of Directors.
Offences	67 (1) A person who hinders the powers of the inspector pursuant to section 27 of the Act shall be guilty of an offence on conviction and be liable to a fine of one hundred thousand shillings or to imprisonment for three months or to both. (2) If the offence in subsection (1) is a continuing offence, in addition to the penalty prescribed, the person shall be liable to a fine of one thousand shillings for each day during which the offence continues.
Transitional Arrangements.	68 The Board may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Regulations.

Dated the 2020

JAMES WAINAINA MACHARIA, E.G.H
Cabinet Secretary

Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

FIRST SCHEDULE

Rules 5(3), 5(4), 6(1), 46(5), 55(5), 61(7), 62 (7)

FORM 1 – FORMAT FOR ROAD INVENTORY CONDITION SURVEY (RICS)

FORM 2 – FORMAT FOR APPROVAL FOR INCLUSION OF ROADS NOT IN CURRENT ROAD REGISTER

FORM 3 – FORMAT FOR DRAFT ARWP

FORM 4 – STAFF RECORDS

FORM 5 – SUMMARY OF CONTRACT INFORMATION

FORM 6 – ROAD MANAGEMENT DATA

SECOND SCHEDULE

Rule 15(2)

BUDGET ESTIMATES FOR ROAD AGENCIES, COUNTIES AND ROAD SECTOR INVESTMENT PROGRAMME (RSIP)

S/NO	AGENCY	ALLOCATION (%)	PURPOSE
1.	Kenya National Highways Authority (KeNHA)	xx	To carry out works on National Trunk Roads Class A and B.
2.	Kenya Rural Roads Authority (KeRRA)	xx	To be equally allocated to all Constituencies to carry out road works in all constituencies.
		xx	To be equally allocated to all Constituencies for maintenance or development of link roads
3.	Kenya Urban Roads Authority (KURA)	xx	To be allocated for works on urban roads in cities and municipalities
4.	Kenya Wildlife Service (KWS)	xx	To be used in maintenance of roads in the national parks and game reserves.
5.	47 Counties	xx	Conditional grant to County Governments to carry out works on County Roads.
6.	RSIP/Cabinet Secretary	xx	To be allocated by the Board with approval of the Cabinet Secretary in charge of roads

THIRD SCHEDULE**Rule 46(3)****CLASSIFICATION OF WORKS****FOURTH SCHEDULE****DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads (referred to as Primary National Trunk Roads)
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes C
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes H, J.
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.
4.	County Governments	Management, development, rehabilitation and maintenance of County Roads Classes D, E, F, G, K, L, M, N, P.

FIFTH SCHEDULE**PENALTIES FOR SPECIFIED OFFENCES**

Relevant Rules	Offence	Minimum Penalty	Maximum Penalty
	Failure to submit ARWP within specified timeline		Pay a maximum of Ksh xxx and or xxx months imprisonment
	Implementation of Works outside approved APRP		Pay a maximum of Ksh xxx and or x months imprisonment

	Failure to comply with the auditor's request		Pay a maximum of Ksh xxx and or xx months imprisonment
	Hindering auditor from carrying out audits		Pay a maximum of Ksh xxx and or xxx months imprisonment
	Giving false information to auditor		Pay a maximum of Ksh xxx and or xxx months
	Failure to implement audit recommendations	Rule 61	Pay a maximum of Ksh xxx and or xxx months
	Non-compliance with reporting requirements		Pay a maximum of Ksh xxx and or xxx months

5



**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,
URBAN DEVELOPMENT AND PUBLIC WORKS
STATE DEPARTMENT OF INFRASTRUCTURE**

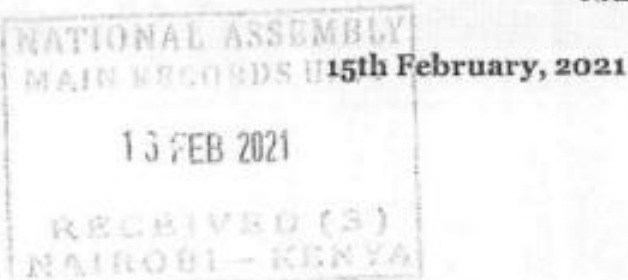
Office of the Principal Secretary

Telephone: (020) 2723232
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NAIROBI

Ref: MOTIHUD/I/A35.38 VOL.V

Michael Sialai, CBS
Clerk of National Assembly
P.O Box 41842-00100
Parliament Buildings
NAIROBI



Dear Sir

**RE: CONSULTATIVE WORKSHOP FOR THE DEVELOPMENT OF
REGULATIONS TO KENYA ROADS BOARD ACT, 1999**

Kenya Roads Board (the Board) is a statutory body established by the Kenya Roads Board Act, 1999 and manages the Road Maintenance Fuel Levy Fund. Section 37 of the Act allows the Board to make rules prescribing anything required by the Act or generally for the better carrying out of its functions under the Act. The Board commissioned the firm of Prof Albert Mumma and Company Advocates to facilitate the development of regulations.

The Board submitted the draft Regulations to the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works for gazettelement (*draft regulations attached*). The regulations require review and concurrence by the Parliamentary Committee on Delegated Legislation to ensure compliance with all existing laws and other regulations. The Board therefore proposes to hold a retreat outside Nairobi at a convenient date for the Committee.

The overall objective of the retreat is to define the priority intervention areas for the management of Road Maintenance Levy Fund and define working relationships between the Board and the road maintenance implementing agencies (Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA), Kenya Wildlife Services (KWS) and County Governments.

Specifically, the consultative workshop seeks to;

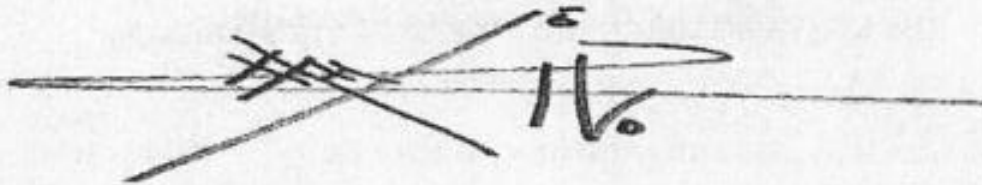
- (a) Review the draft Regulations, clarify outstanding issues and further strengthen the same for implementation;
- (b) Explore options for harmonization of the draft Regulations and identify overlaps, gaps and complementarities; and

(c) Agree on a roadmap for the finalization of the draft Regulations and their implementation.

The purpose of this letter is to request your office to assist the Board organize the consultative retreat. The Board is willing to meet the costs associated with the retreat.

Any queries and clarifications may be directed to **R. Mohamed, MBS (Director General, Kenya Roads Board)** on Tel No. 0725 318 716 or Email: dg@krb.go.ke.

Yours *Sincerely*

A handwritten signature in black ink, appearing to be 'P. Maringa', is written over a horizontal line. The signature is stylized with a large 'P' and a long horizontal stroke.

Prof. Arch. Paul Maringa (PhD), CBS, Corp. Arch (Maak), MKIP
PRINCIPAL SECRETARY

Kenya Roads Board (National Trunk Roads) Rules, 2021

Legal Notice No.

THE KENYA ROADS BOARD ACT
(No. 4 of 1999)
THE KENYA ROADS BOARD (NATIONAL TRUNK ROADS)
RULES, 2021

ARRANGEMENT OF RULES

Rule

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1. Citation.
2. Interpretation.
3. Application
4. Object and Purpose of these Regulations
5. Responsibilities of Kenya Roads Board

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6. Submission of Annual Roads Programme and Prioritization of works.
7. Road Inventory and Condition Survey.
8. Revisions of Annual Public Roads Programme.

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9. Duties of Road Agencies
10. Opening of bank accounts.
11. Deposits into the bank account.
12. Payments from the bank account.
13. Signatories to the bank account.
14. Budget ceilings.
15. Disbursement programme.
16. Release of funds and withholding of funds.

17. Partial release of funds
18. Utilization of the fund.
19. Administrative expenses.
20. Expenditure limit.

21. Reallocation of funds for works.
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23. Fixed Assets register.
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28. Cash book
29. Account not to be overdrawn.

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32. Annual reports and financial statements.
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34. Accounts and records to be kept and preserved.
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36. Efficient and Effective delivery of road works.
37. Supervision of works.
38. Safety.
39. Environment.
40. Immediate interventions

41. Contract document format
42. Contract project file and force account
43. Reporting

PART V – MONITORING AND EVALUATION

- 44. Technical, Financial and Performance Audits.
- 45. Duty to avail documents and information to the Inspector.
- 46. Penalties for failure to comply.
- 47. Responses to audit report.
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PART VI- MISCELLANEOUS

- 49. Register of complaints.
- 50. Procedure for handling complaints
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SCHEDULES

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Second Schedule

Second Schedule

Designated Road Agencies

Penalties for specified offences

Forms

THE KENYA ROADS BOARD ACT
(No. 7 of 1999)

IN EXERCISE of the powers conferred under section 37 of the Kenya Roads Board Act, 1999 the Board, with the approval of the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Rules —

THE KENYA ROADS BOARD (NATIONAL TRUNK ROADS) RULES, 2021

PART 1— PRELIMINARY

Citation

1. These Rules may be cited as the Kenya Roads Board (National Trunk Roads) Rules,

Interpretation .

2. In these Rules, unless the context otherwise requires—

In these Regulations, unless the context otherwise requires—

No. 7 of 1999;

“Act” means the Kenya Roads Board Act, 1999

No. 18 of 2012;

“Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act, 2012

“Board” means the Kenya Roads Board as established under Section 4 of the Act;

“Board of Directors” means the Board established

under section 7 of the Act;

"Cabinet Secretary" means the Cabinet Secretary for the time responsible for matters related to roads;

"Contract" means the contract for supply of goods or works or services under discussion;

"Fund" means the Kenya Roads Board Fund established by Section 31 of the Act;

"Inspector" means such person duly appointed by the Director General by gazette notice whether public officer or otherwise, whether by name or title of office to be Inspector in accordance with provisions of Section 26 of the Act, and to perform such functions as specified in sections 27 and 28 of the Act.

"Monitoring" means examining and verifying that the road works are being executed in accordance with the standards set by the Cabinet Secretary under relevant Act of Parliament and these Regulations;

"Periodic Maintenance" means all the maintenance works carried out in a periodic cycle of five to ten years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming but do not include pavement layer reconstruction or the addition of a pavement layer do not constitute periodic maintenance;

"Road Agency" means any organisation or body specified in the first Schedule to the Act and includes all bodies receiving monies from the Board for the purposes for which the Board is established;

"Roadside development" means a physical structure or facility on land within or adjoining a road reserve;

rejection.

PART II- ANNUAL PUBLIC ROADS PROGRAMME

Submission of Annual
Roads Programme and
Prioritization of Works.

6. (1) Every Road Agency shall, not later than six months before the commencement of every Financial Year, submit the Annual Road Works Programme in the manner set out in the Second Schedule.
- (2) An Annual Road Works Programme under this Rule shall contain —
 - (a) The Financial Year to which the Annual Road Works Programme relates;
 - (b) The locality of the road to which the programme relates;
 - (c) Road identity including name and number, and section name;
 - (d) The section length;
 - (e) The type of intervention or description of the works;
 - (f) An estimated budget costs for the current and the next three years;
 - (g) The current condition; and
 - (h) surface type of the road.
- (3) The Board shall upon receiving all the Annual Road Works Programme by the end of the stipulated time period, keep a register which shall contain the Works programmes received.
- (4) Every Road Agency shall provide adequate budget for multi-year projects spread over the contract period.
- (5) Every Road Agency shall, in coming up with Annual Road Works Programme and implementation of works, apply the cost estimation manual published by the Board from time to time.
- (6) A Road Agency shall, in developing the Annual Road Works Programme —
 - (a) Comply with the budget ceilings issued in accordance with Rule 5;
 - (b) Conduct Annual Roads Inventory Condition Survey, to determine the maintainable portion of the road network and submit the data to the Board in the form set out in the Second Schedule.
 - (c) Hold stakeholder meetings for prioritization of road works and submit minutes of the meetings to the Board;

- (d) Ensure it is within the approved five -year Road Sector Investment Programme;
 - (e) Ensure the order of prioritization of road works follows the sequence of routine maintenance, spot improvement, periodic maintenance and rehabilitation; and
 - (f) Ensure at least twenty percent of the road works are carried out through use of local labour-based methods.
- (7) The Board shall upon receipt of the Annual Roadworks Programme from a Road Agency, review the programme to ensure compliance with requirements provided under these Rules.
 - (8) Any Annual Roads Works Programme that does not comply with these Rules shall be rejected by the Board and communicated to the Road Agency within 3 days of the decision to reject such Annual Road Works Programme.
 - (9) A Road Agency may ,where an Annual Road Works Programme has been rejected pursuant to these Rules, within thirty days of receiving the decision of the Board in writing, and in any event not later than the 31st day of December of the Calendar year, whichever is earlier ,review and resubmit the Annual Road Works Programme to the Board.
 - (10) The Board shall upon receiving all the Annual Roads Work Programmes, consolidate the programmes into the Annual Public Roads Programme by February of each calendar year.
 - (11) The Board shall not later than the thirtieth day of April each year, submitted to the Cabinet Secretary and the National Treasury the Annual Road Works Programme for approval.
 - (12) The Board shall publish, publicize and disseminate Annual Road Works Programme.
 - (13) Every Road Agency shall, in prioritization of road works, adhere to the requirements of the "Annual Roads Work Programme Planning and Reporting Manual" published by the Board from time to time.

Road Inventory and
Condition Survey.

7. (1) Every Road Agency shall submit to the Board an updated Road Inventory and Condition Survey for the road network under its jurisdiction not later than 30th day of September of each year which shall be in a form set out in the second schedule.

(2) A Road inventory and Condition Survey submitted under this Rule shall form the basis for a roads

maintenance needs assessment for prioritization under Rule 6.

Revision of Annual
Public Roads Programme.

8. (1) A Road Agency shall, having submitted their programme, not vary the Annual Road Works Programme without written approval of the Board.

(2) Where a Road Agency requires to revise its Annual Road Works Programme, the agency shall do so in accordance with Rule 6 of these Rules and in any event not later than 31st day of January.

(3) Any person, being an officer of an agency, who without approval of the Board attempts to vary or varies any Implementation of works which is not included in the Annual Road Works Programme, commits an offence and shall be liable on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No 18 of 2012
No. 33 of 2015.

PART III – FINANCIAL PROVISIONS AND ADMINISTRATION

Duties of Road Agencies.

9. Notwithstanding any obligation imposed on a Road Agency under these Rules, a Road Agency shall, for the purposes of utilising funds received from the Fund –

- (a) maintain, rehabilitate and develop the categories of roads within its mandate;
- (b) utilise disbursed funds to implement the approved Annual Road Works Programme;
- (c) put in place and implement quality control and quality assurance systems;
- (d) supervise and monitor road works within their area of jurisdiction

Opening of Bank
Accounts.

10. (1) Each Road Agency shall cause to be opened a bank account for the funds disbursed from the Fund to be known as 'Name of Agency -Road Maintenance Levy Fund'.

(2) The Board shall suspend funding to a Road Agency that fails to open a Bank account as stipulated in Rules 10 (1) and

11 (1), until the said Road Agency complies.

(3) All bank accounts shall be opened, operated and closed in accordance with Section 28(1) of the Public Finance Management Act, 2012 and its applicable Rules.

Deposits into the Bank Account.

11. (1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account.

(2) A Road Maintenance Levy Bank Account shall not be a fixed deposit account and neither shall funds held in a Road Maintenance Levy bank account be held in a fixed deposit account.

Payments from the Bank Account.

12. (1) All Road Agencies shall make payments related to the Road Works Programmes approved in accordance with Rule 6 from their respective Road Maintenance Levy Fund bank account.

(2) Payments may be done either by instructions or electronic fund transfer in accordance with the Public Finance Management Act, 2012 and its Regulations.

No. 18 of 2012

Signatories to the Bank Account.

13. (1) The accounting officer of a Road Agency for matters related to roads shall be a mandatory signatory to all electronic payments and fund transfers.

(2) The accounting officer in charge of the Road Agency shall designate other signatories and any changes in signatories in accordance with the Public Finance Management Act 2012 and its Regulations.

No. 18 of 2012

Budget Ceilings.

14. (1) The Board shall on or before the 1st day of July of the Financial Year preceding the year to which the budgetary ceilings relate, issue to the Road Agencies budgetary ceilings for the following Financial Year.

Disbursement programme.

15. (1) Every Road Agency shall within three months before the beginning of the Financial Year submit to the Board an annual expenditure projection for every three months in the Financial Year.

(2) The Board shall indicate to Road Agencies at the beginning of each Financial Year, cash flows for every three months.

(3) The Board shall monitor receipt of funds from Road Maintenance Levy Fund and allocate each tranche to the respective Road Agency in accordance with the Rule 15 (2).

Release of Funds and
Withholding of Funds.

16. (1) The Board shall release funds to Road Agencies who have complied with the provisions of these Rules provided that the Road Agency has utilised at least seventy percent of the funds allocated in the previous Financial Year.

(2) The Board shall withhold the release of funds to Road Agencies who have not complied with these Rules until such a time compliance is achieved.

(3) The Board shall issue ninety days notice to any Road Agency that consistently fails to comply with these Regulations of its intention to appoint another Road Agency to implement its annual Roads Work programme.

(4) Upon the expiry of the notice issued under Rule 16 (3), the Board shall appoint a Road Agency to implement annual Roads Work programme and release all the funds withheld.

(5) Any Road Agency which is aggrieved by any decision under this Rule may appeal to the Cabinet Secretary for a review of the decision.

Partial Release of Funds.

17. Where the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a Financial Year, the Board may release on account, of not more than thirty percent of the funds allocated to the Road Agency for the year to which it relates.

Utilization of the Fund.

18. Any funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme.

Administrative Expenses.

19. (1) A Road Agencies shall not exceed the overheads and administrative expenses thresholds specified in section 6 (2) (I) of the Act.

(2) A person who utilizes any Administrative expenses in any manner in contravention to the provisions of Rule 19 (1) commits an offence and shall be liable, on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No. 18 of 2012
No. 33. of 2015

Expenditure Limit.

20. (1) Any expenditure incurred by a Road Agency budgeted line items shall be limited to the amount approved in the budget.

(2) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may upon request or application by a Road Agency, approve such excess after being satisfied that there are compelling reasons for the same.

- (2) Any excess approved under Rule 20 (1) shall be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded.

Reallocation of funds for works

21. A Road Agency shall not use the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or any other project.

Authority to incur expenditures.

22. (1) No person other than the accounting officer to whom the "Authority to Incur Expenditure" has been issued, in whatever form, shall commit or incur expenditure against that Road Agency.
- (2) A person authorised to incur expenditure may with the approval of the authority delegate the responsibility to an officer of the Authority to commit or incur expenses.

Fixed Assets Register.

23. (1) Every Road Agency shall maintain a Fixed Assets Register relating to the Fund wherein various details of fixed assets will be recorded.

(2) The Fixed Assets Register shall contain the following details:

(a) the description and type of asset.

(b) the cost of the asset, supplier and date of acquisition.

(c) the serial numbers, title documents of the asset and provision for licenses where applicable.

(d) rates of depreciation;

(e) accumulated depreciation up to close of Financial Year;

(f) written down value as at the end of the Financial Year;

(g) Value of the asset, as per the last valuation;

(h) date of disposal and the net realizable values;

(i) profit or loss on disposal;

(j) the exact location of the asset; and,

(k) identification numbers of the assets, to be coded on the basis of category, and location of the assets.

Savings and Earnings.

24. (1) Where a Road Agency realises savings and or interest earnings from the work program and operations, the funds shall be declared and utilized for the purposes for which the Fund was intended.

(2) Every Road Agency shall submit a work plan for the savings and interest earnings to the Board before spending.

(3) Any member or officer of a Road Agency that fails to declare or seek approval for the expenditure of savings and earnings in accordance with the Act and these Rules commits an offence and shall be liable, on conviction, to the penalties prescribed under Part VII of the Public Finance Management Act, 2012 and Part XVI of the Public Procurement and Asset Disposal Act, 2015.

No. 18 of 2012
No. 33 of 2015.

Carry over funds.

25. (1) At the end of each Financial Year and not later than sixty calendar days from the end of the Financial Year, every Road Agencies shall submit to the Board bank balances and corresponding road works for which the funds were to be utilized.

(2) The carry over funds and associated road works shall be included in the Annual Road Works Programme for the following Financial Year.

Funds not to be applied as security for borrowing.

26. A Road Agency shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.

Maintenance of Cash 27,
Books.

- (1) All Road Agencies shall maintain a cash book for the Kenya Road Board Fund Account to be written and balanced daily and the cash in hand verified by the officer in charge of the cash book.
- (2) All monies received shall be recorded serially in the cash book with adequate details of the transaction.
- (3) The Road Agencies shall maintain registers and records of bank accounts, cash books and impress in accordance with the Public Finance Management Act 2012 and its pursuant Regulations.

Cash Book.

28. (1) The Cash Book shall be checked on a daily basis by a senior accounts officer of the Road Agency who shall sign the cash book at the last entry examined to signify that he has satisfied himself as to the correctness of all entries made since the last signature.

(2) The cash book balance shall be reconciled with the bank balance at the end of every month.

Account not to be
overdrawn.

29. The Road Agencies Road Maintenance Levy Fund Bank Account shall not be overdrawn.

Payment vouchers,
adjustment journals,
banking and issuance of
receipts.

30. (1) All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-numbered receipt, which shall be signed, stamped and dated.

(2) All payment vouchers, adjustment journals and receipts shall comply with the provisions of the Public Finance Management Act 2012 and its regulations.

No. 18 of 2012

Financial Records and
automation of financial
operations.

31. The Board and every agency shall keep Financial records may be maintain the records in manual or electronic form and shall be kept in accordance with the Public Finance Management Act 2012 and its Regulations

No. 18 of 2012

Annual Reports and
Financial Statements.

32. (1) The accounting officer shall prepare annual reports and financial statements with respect to the Road Maintenance Levy Fund account in compliance with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

(2) A financial statement prepared by road agencies in subrule (1) shall report on transactions in respect of the Road Maintenance Levy Fund with specific reference to funds received from the Board.

Books of Account

33. All accounting documents whether manual or electronic shall be under strict control at all times and they shall include —

- (a) local purchase order;
- (b) local service order
- (c) authority to incur expenditure;
- (d) cheques;
- (e) cash receipt and payment books; and
- (f) the impress warrants.

Accounts and records to be kept and preserved.

34. (1) Every Road Agency shall maintain detailed accounts and records which shall include —

- (a) cashbook, bank statements and bank reconciliations;
- (b) payment vouchers
- (c) ledgers;
- (d) fixed assets register;
- (e) quarterly and annual reports and financial statements and non – financial reports;
- (f) quarterly Annual Road Works Programme Progress reports;
- (g) Approved Annual Road Works Programme
- (h) Procurement documents, Local Service Orders, Local Purchase Orders, and contract;
- (i) Inspection and verification reports; and
- (j) Measurements sheets.

(2) Accountable documents, books and records shall be preserved in accordance with the provisions of the Public Finance and Management Act 2012 and Regulations made thereunder.

No. 18 of 2012

(3) The books of accounts kept and maintained under this regulation shall be made available to the Board for review.

(4) The Board shall suspend disbursement of funds to a Road Agency which contravenes the provisions of these Rules.

35. (1) The Board may where it receives a complaint from any person or where it has reason to believe that an agency has failed to adhere to any provisions of the Act or these Rules, declare the agency to be non-compliant.

(2) Where a Road Agency is non-compliant, the Board may -

(a) suspend funding to the Road Agency;

(b) appoint another Road Agency, and release funds allocated for works by the non-compliant Road Agency, to the newly appointed Agency

(c) institute measures to recover any amounts misappropriated by a public officer.

(3) Any member of the public may lodge a complaint of allegation of misappropriation of funds with the Board against any Road Agency.

(4) Without prejudice to subrule (3) the Board may, where it is satisfied of the complaint against misuse of funds allocated for any road work, conduct a special investigation for the purposes of determining the veracity of the complaint or allegation.

(5) Notwithstanding subrule (3) the Board may on its own motion conduct a special investigation where it has reason to believe that there is misappropriation of funds by a Road Agency.

PART IV -PROJECT MANAGEMENT AND REPORTING

36. (1) Every Road Agency shall ensure compliance with design and supervision standards for road works issued by the Cabinet Secretary from time to time.

(2) Each Road Agency shall establish and implement quality management systems for delivery of road works including materials testing and supervision.

(3) Each Road Agency shall ensure that any planned work is executed within time, cost, set standards and specifications.

(4) Goods, works, and services shall be procured in a manner that promotes economy, efficiency, effectiveness and equity and in accordance with the Public Procurement and Asset Disposal Act, 2015.

Supervision of Works.

37. (1) Road works shall be supervised in accordance with supervision standards for road works issued by the Cabinet Secretary from time to time.

(2) Road Agencies shall maintain project supervision records which shall be made available to the Board as and when required.

Site Safety.

38. (1) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works.

(2) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.

Environment.

39. (1) Each Road Agencies shall develop and implement Environmental and Social Management Plan for maintenance projects.

(2) The Board may cause Environmental and Social Management Plans developed under Sub rule 1, to be clustered at regional levels for efficiency and economy.

(3) Each Road Agencies shall prepare and implement safety and environmental management plans for road works before commencement of works.

Immediate Interventions

40. (1) Where a Road Agency considers that a section of the road under its jurisdiction requires an immediate intervention works, the Road Agency may request approval from the Board to undertake such works.

(2) The Board shall establish and cause to be followed transparent and objective procedures to access and account for immediate interventions.

Contracts Format.

41. (1) All contracts for goods, works and services funded by the Fund shall be in writing

(2) Contracts entered into by Road Agencies for road works, goods and services shall specify *inter alia*, the following

(a) Parties to the contract;

(b) Contract price and period;

(c) Scope of works, bills of quantities, drawings and specifications

(d) Conditions of contract as prescribed by Public Procurement Regulatory Authority.

(3) Any payments by Road Agencies for contracts which do not comply with the above shall be

considered ineligible expenditure and shall be recoverable from the authorizing officer.

(4) Public Officers to authorize ineligible expenditure shall be subject to sanctions under Part VII of the Public Finance Management Act, 2012 and Part XVI of the Public Procurement and Asset Disposal Act, 2015.

No. 18 of 2012
No. 33. of 2015

Contract project file

42. (1) Each Road Agency shall keep and maintain a contract file.

(2) The contract file in subrule (1) shall contain the following –

- (a) copies of procurement plan;
- (b) site photographs;
- (c) site instructions;
- (d) minutes of meetings;
- (e) a copy of the contract agreement;
- (f) payment certificates;
- (g) record of force account;
- (h) any other relevant correspondences for inspection and audit.

Reporting

43. (1) Road Agencies shall submit to the Board copies of all signed contract documents for road works including all Variation Orders when they occur not later than two (2) weeks after project completion.

(2) Road Agencies shall 30 days from the end of every quarter submit reports of all works and projects implemented in the preceding quarter.

(3) The Reports must be approved by the Director General of the Road Agency before submission

(4) Subject to the provisions of the Act and these Regulations, Road Agencies shall report in a format provided for under the Second Schedule.

(5) The Board shall not release any funds to a Road Agency that fails to submit reports stipulated under Regulation

PART V – MONITORING AND EVALUATION

Technical Compliance,
Financial and
Performance Audits

44. (1) The Board shall conduct technical, financial and performance audits of all works, goods and services funded by the Fund.

(2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time.

(3) The audits shall be conducted by an Inspector.

(4) The Board shall issue two weeks notice prior to the intended audit to inform Road Agencies of the intended audits except where a special or ad hoc audit is ordered under Regulation 44 (2).

(5) The notice shall spell out the audit scope, objectives, basis, information required, audit checklist and audit program.

(6) There shall be entry and exit meetings between the Inspector and Road Agencies and the minutes of these meetings shall be signed off by both parties.

(7) The Road Agencies shall provide conducive work area with easy access to all records, books and reports as may be required by the Inspectors.

(8) Road Agencies shall avail such officers as may be required to accompany the Inspectors for field visits.

(9) An Inspector may call off or postpone an audit in the following circumstances;

- (a) Failure to provide a conducive work area;
- (b) Failure to avail documents and information;
- (c) Failure to provide such officers as may be required for field visits;
- (d) Physical threats;
- (e) Insecurity;
- (f) Absent auditee.

(10) In the event of suspension or calling off an audit in subrule (9) the Inspector shall prepare and submit report within 7 days to inform the Director General.

45. (1) Each Road Agency shall make available to the Inspector the following information -

- (a) books;
- (b) accounts;
- (c) records and other documents;
- (d) correspondence;
- (e) statements and records relating to goods; works and services financed by the Fund; and
- (f) any other information as determined by the Board and as may be required by the Inspector

Duty to avail documents
and information to the
Inspector.

Provided that –

- (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced;
- (ii) the Inspector may make copies of any books, accounts, records and other documents required for purposes of reporting; and
- (iii) all information obtained in the course of the audits shall be confidential and used solely for the purposes of the Act and these Regulations.

(2) Where a special audit is ordered, the Road Agency shall avail information in subrule (1) within seventy two hours of request of the Inspector.

(3) The Inspector shall within thirty days of commencing an audit issue an audit report.

(4) Any clarifications sought shall be availed to the Inspector within fourteen days.

Penalties for Failure to
Comply

46. (1) Where an inspection report under Rule 45 is filed with the Board, the Board shall notify Road Agencies which fail to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information after expiry of allowed period.

(2) A person being an authorised member of a Road Agency who fails to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information commits an offence and shall be liable on conviction to the penalties specified under the Public Finance Management Act, 2012.

No. 18 of 2012

(3) The Board may, in addition to the remedies provided for under Subrule (2), suspend funding to the Road Agency.

Responses to audit
Reports

47. (1) Each Road Agency shall submit to the Director General written responses to audit reports and queries within thirty days from the date of receipt of the reports.

(2) Upon expiry of the thirty days, the Director General shall conclude the audit report and submit it

Implementation of Audit
report and
Recommendations

to the Board.

48. (1) Each Road Agency shall submit an action plan within thirty days, stipulating the time frame for addressing the recommendations in the audit reports issued under Regulation 47, which shall be reviewed by the Director General.

(2) Failure to implement an action plan shall amount to non-compliance under regulation 47.

PART VI – MISCELLANEOUS

Register of Complaints.

49. (1) A person, public agency and or stakeholder aggrieved by any decision of a Road Agency may lodge a complaint to the Director General which shall be entered in a register of complaints established and maintained by the Director General.

(2) The complainant shall attach or provide any documents necessary to support the complaint.

(3) Notwithstanding the foregoing, a complaint may be made anonymously or treated in such a manner as to protect the identity of, or particulars of the complainant where necessary, as may be directed by the Director General.

Procedure for handling a
complaint.

50. The Board shall within fourteen days of receipt of a complaint in Rule 49 notify the relevant Road Agency and request to respond within thirty days from the date of such notice with a report of action taken to address complaints filed under Rule 49.

Investigations

51. (1) Notwithstanding, the provisions of Rule 50 and 51, the Board may where it deems necessary institute investigations into a complaint received under Rule 51 (1).

(2) Where an investigation is instituted under sub rule 1, the Road Agency shall provide all books and records, required by the Board.

(3) The Director General shall send a report of the investigation to the Road Agency.

(4) The Road Agency shall implement the recommendations of the report as directed.

(5) Any Road Agency that fails to implement recommendations of the investigation report, shall be liable to penalties as prescribed in Rule 39.

(6) A Road Agency aggrieved by the decision of the Director General shall appeal to the Cabinet Secretary.

Forms

52. The Board may from time to time determine any other forms for the better carrying out of the

No. 23 of 2013.

provisions of the Act and these Regulations in accordance with Section 26 of the Statutory Instruments Act, 2013.

**FIRST SCHEDULE
DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads (referred to as Primary National Trunk Roads)
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes C
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes H, J.
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.

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ARWP FORM									
ANNUAL ROAD WORKS PROGRAMME		FY-							
NAME OF ROAD AGENCY									
ROAD AGENCY CODE									
BUDGET (KRM)									

[illegible]

Signed
by:

Designation _____

Effectors

1194

4



ARCS CARRIED
OUT:

[illegible][illegible]

Overall Condition:

FORM C
(r 7.1)

CRUISE REPORT FORM		
QUARTERLY ROAD WORKS CRUISE REPORT		
NAME OF ROAD AGENCY		
ROAD AGENCY CODE		
BUDGET (KSHS)		

[illegible]

Signed by:

Designation

Diabetes

Figure

Dated the 2021

MR. RASHID KAMIS MOHAMMED,
Director General
KENYA ROADS BOARD



PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION)

COMMITTEE ON DELEGATED LEGISLATION

CONSULTATIVE MEETING WITH REGULATION
MAKING AUTHORITIES TO CONSIDER PENDING
BUSINESS

4 – 8th March, 2021

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NAIROBI

Whitesands Beach Resort, Mombasa County



TIME	ACTIVITY	RESPONSIBILITY
Day 1: Thursday, 4 March, 2021		
All day	Participants arrival at the retreat venue	
Day 2 Friday, 5 March, 2021		
9:00 - 9:30am	- Prayers and preliminary remarks by Chairperson, Committee on Delegated Legislation - Adoption of the Programme (<i>10-days meeting</i>)	Hon. Kassait Kamket, MP. (Chairperson, CDI.)
9:30 - 1:00pm	Consideration of the draft Kenya Roads Board Regulations, 2020	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (State Department for Infrastructure) (Kenya Roads Board)
1:00 - 2:00pm	LUNCH BREAK	
2:00 - 4:30pm	Consideration of the draft Kenya Roads Board Regulations, 2020	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (State Department for Infrastructure) (Kenya Roads Board)
Day 2 Saturday, 6 March, 2021		
9:00 - 9:30am	Prayers and Preliminaries	Hon. Kassait Kamket, MP. (Chairperson, CDI.)
9:30 - 11:15am	Consideration of the Civil Aviation (Regulatory Fees & Charges for Unmanned Aircraft Systems) Regulations, 2020 (Legal Notice No. 4 of 2021)	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (State Department for Transport) (Kenya Civil Aviation Authority)

TIME	ACTIVITY	RESPONSIBILITY
11:15 - 11:45am	<i>Health Break</i>	
11:45 - 1:00pm	Consideration of the Architects and Quantity Surveyors (Continuing Professional Development) By-Laws, 2020 (Legal Notice No. 202 of 2020)	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (State Department for Public Works) (Board of Registration of Architects and Quantity Surveyors of Kenya)
1:00 - 2:30 pm	LUNCH BREAK	
2:30 - 4:30pm	Consideration of the Standards (Verification of Standards to Conformity to Standards and Other Applicable Regulations of Imports) (Amendment) Order, 2020 (Legal Notice No. 212 of 2020)	Ministry of Industrialization, Trade and Enterprise Development (State Department for Industrialization) (Kenya Bureau of Standards)
Day 4: Sunday, 7 March, 2021		
10:00 - 10:15am	Prayers and preliminaries	Hon. Kassait Kamket, MP. (Chairperson, CDI.)
10:15 - 12:30pm	Recap, Way Forward and Closing Remarks	Hon. Kassait Kamket, MP. (Chairperson, CDI.)
12:30 - 2:00pm	LUNCH	

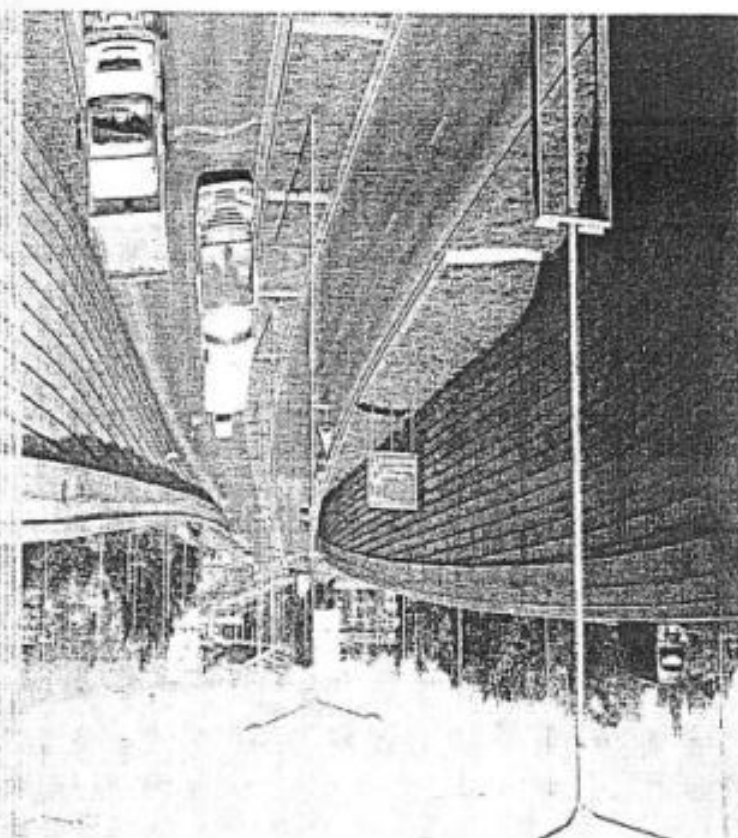
Monday, 8 March, 2021 - Departures

Programme Coordinators:

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Rapporteurs:

1. Ms. Susan Maritim, Senior Clerk Assistant
2. Mr. Dima Dima, Principal Legal Counsel
3. Mr. Josphat Mounu, Fiscal Analyst I
4. Mr. Jimale Mohammed, Senior Clerk Assistant



VALIDATION WORKSHOP REPORT MARCH, 2021



Validation Workshop for the Development of Regulations to Kenya Roads Board Act 1999

Report

About this publication:

This Report summarises the discussions and conclusions from the Validation Workshop for the Development of Regulations to Kenya Roads Board Act 1999 on the 5th March, 2021. The workshop was jointly organised by the National Assembly-Committee on Delegated Legislation, the Ministry of Transport, Infrastructure, Housing & Urban development and Kenya Roads Board (KRB). It took place at the Sarova Whitesands Beach Resort & Spa, 5th march, 2021, Kenya.



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ABBREVIATIONS

ACRONYM	DESCRIPTION
APRP	Annual Public Roads Programme
ARICS	Annual Road Inventory and Condition Survey
ARWP	Annual Roads Work Programme
CARA	County Allocation of Revenue Act
CEC	County Executive Committee
CG	County Government
COK	Constitution of Kenya
CS	Cabinet Secretary
GOK	Government of Kenya
KRB	Kenya Roads Board
KRBF	Kenya Roads Board Fund
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Service
MTEF	Medium Term Expenditure Framework
M&E	Monitoring and Evaluation
RA	Road Agency
RIS	Regulatory Impact Statement
RMLF	Road Maintenance Levy Fund
RMS	Road Maintenance Management System
TOR	Terms of Reference

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1. INTRODUCTION

1.1 Background

THE FOURTH SCHEDULE

The Schedule of the Constitution that distributes functions between the national government and county governments. The development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments.

The Road Maintenance Levy Fund (RMLF) was established in 1993 through an Act of Parliament (Revised 1994.). The RMLF was primarily established for both routine and periodic maintenance of public roads. The Kenya Roads Board Act No. 7 of 1999 on its part establishes the Kenya Roads Board (KRB) as a statutory body to oversee the road network and coordinate the maintenance, rehabilitation and development funded by the Kenya Roads Board Fund (KRBF) and to advise the Cabinet Secretary (CS) on Transport & Infrastructure and on all matters related thereto. The Act empowers KRB to manage the KRBF financed primarily from the proceeds of the RMLF comprising the Fuel Levy and Transit Toll collections. The Act further designates the implementing agencies namely Kenya Rural Roads Authority (KeRRA), Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA) and Kenya Wildlife Service (KWS) to support the management and utilization of road funds.

Since the enactment of the KRB Act 1999 and the establishment of the RMLF, Kenya has undergone a number of key legislative changes that have implications for the road sector.

The promulgation of the Constitution of Kenya 2010 (COK 2010) has created two levels of government namely the national government and county governments. The Fourth Schedule of the COK 2010 distributes functions between the national government and county governments in recognition of the fact that the development, maintenance and rehabilitation of road infrastructure is a shared responsibility between the national and county governments. In particular, the Fourth Schedule provides that the national government is tasked with the construction and operation of national trunk roads and the formulation of standards for the construction and maintenance of other roads by counties. On their part, the functions and powers of the county include county roads. The mandates and functions of county governments are prescribed for under the County Government Act 2012 (CGA).

Through the County Allocation of Revenue Act 2015 (CARA), Parliament has prescribed that fifteen per cent (15%) of the RMLF be allocated to County governments for the maintenance of county roads. In addition, Article 219 of the COK 2010 provides that 'a county's share of revenue raised by the national government shall be transferred to the county without undue and without deduction, except when the transfer has been stopped under the Article 225'. Other key legislative reforms also include the enactment of the Public Procurement and Disposal Act (Cap 412C) in 2005, the Finance Act 2009, the Public Finance and Management Act 2015 among other key legislative amendments.

It is within this legislative landscape that the KRB must exercise its mandates and functions as provided for by Section 6 of the KRB Act No. 7 of 1999.

1.2 Objectives

For the effective operationalization of the KRB mandate, Section 37 of the KRB Act 1999 empowers KRB to make regulations with respect to any matter which is necessary for the better carrying out or giving effect to the functions of the Board as prescribed by the provisions of the Act. KRB thus seeks to introduce legislative reforms to facilitate among others, a further interpretation and full implementation of the KRB Act 1999. Consequently, KRB has engaged the Ms. Gathika in this assignment which involves the development of subsidiary legislation namely the Kenya Roads Board Regulations 2019.

The main aims of this subsidiary legislation will be to -

- (1) Provide further details and clarity on provisions which have been left open in the Kenya Roads Board Act No. 7, 1999; and
- (2) Fill existing gaps (if any) in the Draft regulations and the Technical, Financial and Performance Audit Manuals developed by management

In line with these overarching aims, the key deliverables for this consultancy include -
report.

1.3 Validation Workshop for the Development of Regulations to KRB Act, 1999

In keeping with the constitutional requirement regarding public participation, a Validation Workshop with representatives from KRB, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the National

Assembly was held on the 5th March, 2021 at Sarova Whitesands Beach Resort & Spa, Mombasa.

The primary goal of this stakeholder engagement was to inform and present to this targeted section of road sector stakeholders the aims of the proposed subsidiary legislation. The Validation Workshop further sought to provoke reflection and critical evaluation of key challenges within the road sector. Moreover, the Workshop sought to inspire and motivate the attendees to share knowledge, collaborate and to help in the development of the subsidiary legislation.

The workshop began at 10.00 am with an opening prayer and remarks by the Chairperson, National Assembly Committee on Delegated Legislation, Hon. William Kassait, MP assisted by Hon. Charles Njagagua, MP.

The attendees introduced themselves and thereafter opening remarks were proffered by Hon. Chris Obure, the CAS Transport.

Hon. Obure officially opened the session by welcoming those in attendance. She thanked the representatives of the KRB, the Ministry and the NA for their presence at the venue and highlighted the importance of the Validation Workshop. He further conveyed that the views of the issues from the perspective of the implementers was critical to the development of effective regulations.

The Chairperson of the Board of Directors, Kenya Roads Board, Ms. Rita Kavashe highlighted a number of salient issues -

- The funding capabilities of the KRB: collections into the RMLF totalled 70 Billion Kenya Shillings.
- The development of rules to enhance the management of the fuel levy.
- How the interface between the roles of national and county governments can be addressed.
- The expectations of Kenyans for the efficient management of the fund.
- The need to give value to the public and improving Kenyan's livelihoods through a credible, efficient and reliable fund.
- The willingness of Kenyans to pay more for public services that are efficient and not wasteful.
- The need to have rules and regulations that will guide the KRB and the road sector stakeholders.

Following the opening remarks, the Director General introduced the Ms. Lucy Gathika, the General Manager, Legal & Corporate Affairs to (1) commence her

presentation, (2) to further facilitate the presentations. The DG, guided the participants in the ensuing plenary discussions.

This report provides a detailed summary of the Validation Workshop with KRB, the Ministry, and the National Assembly. It provides an overview of the Consultation objectives, highlights the major discussion points as well as detailing the feedback and recommendations following from the discussion.

2. VALIDATION WORKSHOP OBJECTIVES

Public Participation is a crucial and imperative component of the legislative process. The primary purpose of the *Validation Workshop for the Development of Regulations to KRB Act, 1999* is to facilitate the drafting of the Kenya Roads Board Regulations 2019 from the recommendations, endorsements and general views of the relevant stakeholders within the road sector. Figure 1 below highlights the key objectives of the *Validation Workshop for the Development of Regulations to KRB Act, 1999*: -

The Objectives of this workshop was as follows;

1. To engage the stakeholders on the Draft Rule to KRB Act, 1999; and
2. Receive input from stakeholders on key thematic areas, namely;
 - (a) Works programming;
 - (b) Fund management; and
 - (c) Technical compliance, performance and financial audits

3. STRUCTURE OF THE PRESENTATION

The figure below illustrating the Ms. Gathika's stakeholder engagement strategy to inform the drafting of the Subsidiary legislation was designed to attain meaningful participation and involvement that would enable the road sector stakeholders to actively contribute to the discussion and the development of ideas and expose relevant issues that need to be addressed in the subsidiary legislation.

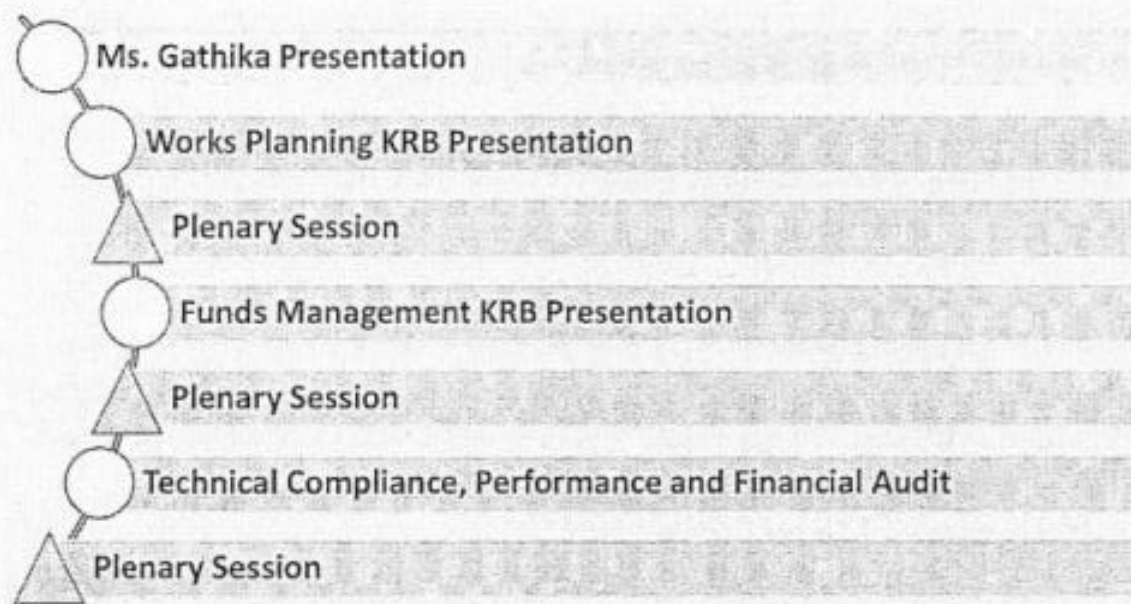


Figure 2: Structure of the Presentation

Presentation the Director, Legal & Corporate Affairs: The purpose of the presentation was to guide the road sector stakeholders in attendance through the legislative process and the requirements for the assignment. This exercise enabled the stakeholder to familiarize themselves with the objectives of the assignment, including the approach and methodology, work plan, deliverables and the key staff undertaking the assignment.

Works Planning: The purpose of the KRB presentation related to Works Planning was to inform the road sector attendees of the APRP Planning & Reporting Cycle, the Assessment of Road Maintenance Needs, the Prioritization of Road Maintenance Works, the Guidelines for ARWP Preparation & Submission, the Implementation Reporting & Monitoring of APRP, the Web-based Road Management System and Future Directions.

Funds Management: The purpose of the KRB presentation related to Funds Management was to guide the road sector stakeholders through the procedures governing the management of the KRBF. These included but were not limited to the deposits and payments from bank accounts, annual estimates and budget ceilings, the disbursement program, conditions for the release of funds to road agencies, among other issues.

Technical Compliance, Performance and Financial Audits: The purpose of the KRB presentation was to inform the attendees on the guidelines followed by KRB auditors engaged in technical, financial and performance audits of road works activities. The attendees were informed of the audit methodology in general, namely the audit

considerations and the procedure followed. Moreover, the attendees were exposed to proposed regulations to govern technical, financial and performance audits.

Plenary Sessions: The floor was opened to plenary discussions facilitated by the Director General. These plenary sessions provided the road sector stakeholders in attendance an opportunity to focus attention and deliberate on the prevailing issues within the sector. The participants were able to question and seek clarification on issues that were unclear and to submit detailed views and proposals on areas that the subsidiary legislation should address. The plenary session enabled the road sector stakeholders to make additional inputs, comments and ask the KRB Team further questions for better clarity. The KRB Team then responded to questions, comments and suggestions raised by the attendees.

The Programme for the Validation Workshop for the Development of Regulations to KRB Act, 1999, showing how the Workshop was structured is attached as *Annex I*.

The Board proceeded to identify the key legislation and road sector guidelines, manuals and subsidiary legislation to be reviewed to inform the drafting of the regulations. A non-exhaustive list of the key instruments for review is shown in Figure 3 below.

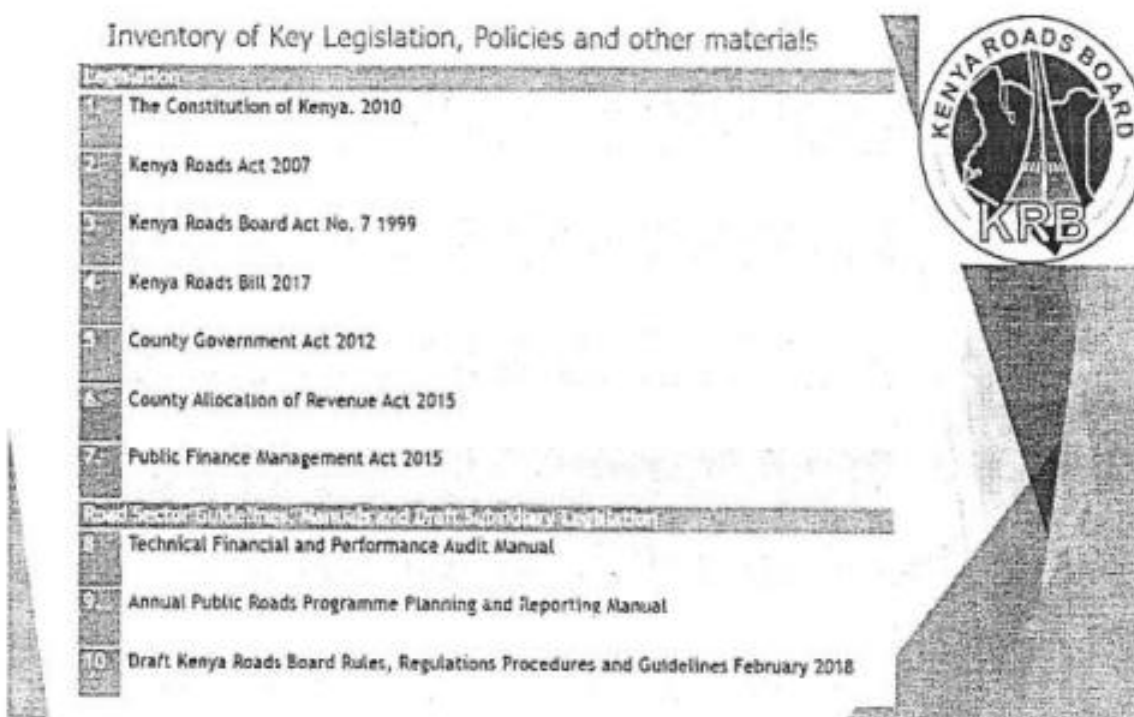


Figure 3: Inventory of Key legislation, Policies and Other Materials

Inventory of Key Legislation, Policies and other materials cont'd

1.1	Kenya Vision 2030
1.2	Road Sector Policy 2016
1.3	Ministry of Transport Infrastructure Housing Urban Development and Public Works Draft Strategic Plan 2018 - 2022
1.4	Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020
1.5	Sessional Paper of 2006 on The Development and Management of the Roads Sub-Sector for Sustainable Economic Growth
1.6	Sessional Paper No. 9 of 2012 on The National Industrialization Policy Framework For Kenya 2012 - 2030.
1.7	Integrated National Transport Policy: Moving a Working Nation :2009
1.8	Transportation and Communications Bulletin for Asia and the Pacific No. 75 "Roads Board Nepal: A Sustainable Approach to Road Maintenance Management"
1.9	Transport and Communications Bulletin for Asia and the Pacific, No. 86 "Sustainable Rural Access"
1.10	Transport and Communications Bulletin for Asia and the Pacific, No. 88 "Intelligent Transport Systems"
1.11	The Law Library of Congress, Global Legal Research Centre 'National Funding of Road Infrastructure' (March 2014)
1.12	World Bank Technical Report - Management and Financing of Roads An Agenda for Reform
1.13	IMF Paper on Policy Analysis and Assessment: "Dedicated Road Funds: A Preliminary View on a World Bank Initiative"
1.14	Involvement of Road Users in the Management of Roads, Public Private Partnerships - The Zambia Roads Board Experience

4.1.1 WORKS PLANNING

The Director General noted that Kenya Vision 2030 recognizes that roads are an enabler. Moreover, roads contribute to sustained economic development and enhance productivity and competitiveness by lowering transport costs.

The Director General remarked on the following areas;

ITEM	PRESENTATION
Road Management Systems (RMS)	➤ Requirement for standards and procedures for processes
Mandates of various agencies	➤ State Dept. of Infrastructure in MoTIHUD & PW - Policy formulation, oversight & coordination; Setting standards ➤ KRB - Managing Road Maintenance funds (RMLF, transit tolls), Coordination of maintenance programs, Technical & Financial audits ➤ RAs - Management, development, rehabilitation and maintenance of National Trunk Roads (39,996km) ➤ CGs - Management, development, rehabilitation and maintenance of County Roads (121,456km) ➤ Departments in Ministry - Provision of equipment (Mechanical & Transport Dept.), materials testing and research (Materials Testing & Research Dept.), provide technical training (Kenya Institute of Highways & Building Technology)

Importance of Road Maintenance	➤ Roads deteriorate over time; require regular maintenance. Reinstatement is 3 or more times the cost of regular maintenance. The benefits of road maintenance include: ➤ Providing road users with an acceptable level of service by addressing defects promptly; ➤ Preserving the huge investment made over the years in the road network; ➤ Minimizing the life cycle road development and maintenance costs; ➤ Minimizing road user costs - vehicle operating costs, associated travel time costs, road accident costs, harmful emissions); ➤ Enhancing road user safety.
APRP Reporting Cycle	➤ Ceiling given to RAs ➤ RAs required to prepare surveys of maintenance requirements ➤ Not enough consultations with the counties ➤ Revision of work plans - lack of formalized cycle and need for more synchronicity ➤ Revisions should be justified - Some reasons include: ➤ Change in the scope of works ➤ Some roads in the annual work plan having been planned by other road agencies ➤ Significant variation between planned costs and procured costs of works resulting in budget deficits or savings. Etc.
ARICS	➤ Standardization of procedures is required ➤ KeNHA is implementing best practices ➤ Assessment of Road Maintenance Needs Rating Procedure is outlined in the APRP Manual
Prioritization	➤ Mandates of the RAs are preservation, restoration, improvement and development ➤ Restoration is a prevailing issue and there is conflict between prioritizing preservation ➤ Maintenance is a high priority
ARWP	➤ Need for clarity as to which section of road is being addressed (geo-data referencing) ➤ The road register helps to avoid duplication and overlaps ➤ Activity code is also important for standardization

Prevailing and emerging issues	➤ Overlapping mandates between RAs and counties ➤ Technical capacity issues at the county level ➤ Carry over works and carry over monies ➤ Road Register ➤ Regulations should address - ➤ M&E framework ➤ Employment and gender related issues ➤ Road safety ➤ Training and Capacity building ➤ HIV/AIDS Awareness
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Table 1: Summary of Presentation on Work Planning

This was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 2 below illustrates the general comments and proposals made by the participants:-

Question/Comment by Participants
➤ Life cycle costs of related infrastructure (access roads criteria required) ➤ Assignment of roads to RAs needs clarity ➤ 10% allocation to KWS is not sufficient particularly in regards to trunk roads ➤ There is an overlap in mandates between KWS and other RAs (access roads)
➤ Deterioration and Rehabilitation period should be addressed ➤ Area abutting the road corridor has been neglected. ➤ Road side development needs to be controlled (too many bumps)
➤ M&E is important and should be continuous throughout the development process
➤ Upscale monitoring to more periodic intervals ➤ Interventions during implementation should be done when results are not being met
➤ More accuracy is required with regards to conditions of paved and unpaved roads (better system for determining deteriorating conditions)
➤ There is need for stricter interrogation of RAs work plans
➤ Detailed information on criteria is available

➤ Purposing to move forward on M&E and strengthening the procedure
➤ The views on classification of roads is taken on board. A number of RAs took part in a Validation process on classification and reclassification
➤ There are no limitations on Work Plans. KRB will give guidance on corridor management and road side management
➤ The percentage on allocation of funds is a policy issue
➤ There is need for the development of roads but the focus should be on maintenance of road infrastructure.
➤ Long road maintenance regime is necessary

Table 2: Plenary on Work Planning

4.1.2 FUND MANAGEMENT

The Draft Rules covered the proposed KRB (Road Fund Management) Rules and Regulations financial provisions and administration. CPA Margaret Muinde remarked on the following areas -

ITEM	PRESENTATION
Opening Bank Accounts	➤ Requirement for RAs to open bank accounts ➤ Penalty for RAs failure to open a bank account ➤ Bank accounts to be opened, operated and closed with KRB and National Treasury authorization
Deposits and Payments from Bank Accounts	➤ Receipts from Fund to be deposited in RAs RMLF bank account ➤ Mode of Payment: instructions, cheque, electronic or fund transfer
Annual estimates and budget ceilings	➤ KRB to prepare annual revenue projections (3 year forward basis) and submit to National treasury ➤ KRB to give RAs budgetary ceilings for the following year and request preparation for ARP ➤ RAs within 3 months before beginning of financial year to submit annual expenditure projections on a month to month basis to KRB
Disbursement Program	➤ KRB to indicate to RAs at the beginning of each financial year monthly cash flows

	➤ KRB to monitor receipt of funds from RMLF and allocate each tranche to respective RA in accordance with the disbursement program provided that RA is in compliance with KRB requirements
Release of Funds by KRB and RAs	➤ KRB to release to compliant RAs in accordance with disbursement schedule and within 30 days from the date following the end of the month ➤ KRB may withhold disbursements if RA is not in compliance with KRB rules, regulations, procedures and guidelines ➤ KRB may partially release funds (not more than 30%) if the ARWP for RA is yet to be approved at the beginning of the financial year.
Conditions for Release of funds	➤ Submission of quarterly and annual progress/expenditure reports as required by KRB in accordance with Clause 65 of these Regulations. ➤ An ARWP duly approved by KRB. ➤ Responses to all audit queries in accordance with Clause 63 of these Regulations. ➤ An RA has failed to comply with Section 19 (2) of the Act
Expenditure	➤ Reallocation of funds for works: RAs shall not apply the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or another project, without prior approval of KRB ➤ Authority to incur expenditure: Only the accounting officer to whom the "Authority to Incur Expenditure" has been issued (in whatever form) is permitted to commit or incur expenditure against that RA.
Savings and Earnings	➤ Where an RA has savings and or interest earnings from the work program and operations, the funds shall be utilized for the purposes for which the Fund was intended. ➤ RAs to submit a work plan for the savings and or interest earnings to KRB before spending.
Carry Over Funds	➤ Carry-over' funds – bank balances for financial year can be retained for use in the following year

	➤ The carry over funds and associated road works to be included in the ARWP for the following year
Maintenance of Cash Books	➤ RAs to maintain cash book of KRBF ➤ RAs to maintain registers and records of bank accounts, cash books and imprest
Annual Reports and Financial Statements	➤ Accounting officer to prepare annual reports and financial statements ➤ RAs within six months of the end of financial year to submit to KRB audited accounts
Sanctions and Penalties	➤ Failure to abide by KRB Act and rules amounts to non-compliance ➤ KRB may - - Suspend funding to RA - Appoint another RA and release funds allocated to it for the works that were to be carried out by non-compliant RA to newly appointed RA - Institute measures to recover amounts misappropriated by public officer ➤ Take legal action against the officer
Challenges	➤ Overreliance on the RMLF ➤ Inadequate funds ➤ Identification of tangible outputs ➤ Prioritization criteria is necessary

Table 3: Summary of Presentation on Funds Management

This was followed by a Plenary Discussion in which comments, suggestions and recommendations were invited. Table 4 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	Response
➤ Salaries and Wages: current practice on cap depends on the agency ➤ Percentage should be increased to accommodate technical capacity	• What is ideal for the sector? PFM Act stipulates the cap. Sector should come up with guidelines.

	Percentages are based on overall fund
➤ Clarification – the percentage refers to the fund	
➤ Distribution to counties where the authorities have changed - how will this particular issue be addressed? ➤ Will this be through amendment or through the regulations?	➤ County Allocation – amended by County Revenue Allocation Act (KeRRA and KURA are the principal agencies affected)
➤ Administration and operational expenses do not only include salaries and wages	➤ Administrative expenses: 5% of the allocation to be made RAs ➤ Clarification from the Office of the Attorney General that it is 5% from total fund
➤ Regulations should be made regarding excess allocations	➤ Excess collection: interest earned forms part of the fund. Amounts over the budget are transferable to the following financial year
➤ PBC projects are a grey area as to what can be termed as a 'saving'	➤ PBC - can be dealt with on the rules on savings
➤ Regulations should address KWS ➤ There is need for realignment with other key legislation such as the Wildlife Management and Conservation Act	

Table 4:: Plenary on Funds Management

4.1.3 TECHNICAL COMPLIANCE, PERFORMANCE AND FINANCIAL AUDITS

This Part gave an overview of the mandate for audits, the purpose of KRB Audits, Types of Audits and proposed regulations to govern technical compliance, performance and financial audits. The DG remarked on the following areas -

Item	Presentation
Mandate for Audit	➤ Clause 6(2)(g) KRB Act mandates KRB to monitor and evaluate by means of technical, financial and performance audits the delivery of goods, works and services funded by the fund

	➤ Clause 26(1) provides that KRB will direct an inspector to regularly perform audits of any RA
Purpose of Audits	➤ To independently verify that proceeds from the KRBF have been applied to the purpose for which they were intended and that the use of such resources is economical, efficient and effective to achieve value for money. ➤ The application of these funds should also be efficient, transparent and in accordance with the principles, procedures and requirements of KRB and sound professional practice. ➤ ARICS are required of all RAs
Types of Audits	➤ Technical Audit: Evaluates the programming, planning and delivery of works undertaken by RAs /CGs. It is a step by step assessment of road mtcce and development efforts / activities to determine the level of economy, efficiency and effectiveness. ➤ Financial Audit: This is the review of accounting records, internal control systems and applicable laws and regulations with the sole purpose of providing an assurance on the application of funds and that proper books of accounts have been maintained. Financial audits should be effectively addressed in the financial provisions of the regulations. ➤ Performance Audit: Systematic process to obtain and evaluate evidence objectively, to be able to give performance appraisal of economy and operation effectiveness. Performance audits should be undertaken in terms of the 3 'E's'. ➤ Procurement Audit: An independent review and systematic examination of the procurement and disposal process to determine whether management practices, systems and controls result in goods, works and services being acquired is in accordance with the Constitution and the PP&AD Act, regulations and other guidelines.

	➤ Environmental and Social Audits: The ESMP is a process guided by regulations for assessing the potential environmental and social impacts of proposed projects, evaluating alternatives and designing appropriate mitigation and monitoring measures. These should encompass issues such as HIV/AIDS awareness, gender issues etc. ➤ Road Safety Audit: A road safety is defined as a formal road safety performance examination of an existing or future road by an independent multidisciplinary team. It qualitatively estimates and reports on potential road safety issues and identifies opportunities for improvements in safety for all road users' in particular vulnerable road users. This is an important role for the RAs.
Areas to be considered in the Proposed Regulations	➤ Implementation of Works: efficient and effective delivery of road works ➤ Supervision of works ➤ Monitoring and Evaluation ➤ Procurement guidelines ➤ Provisions of specifications ➤ Record keeping ➤ Criteria for road works contractors ➤ Sanctions and penalties for providing fraudulent or misleading information etc.

Table 5: Summary of Presentation on Technical Compliance, Financial and Performance Audits

This was followed by a plenary session in which comments, suggestions and recommendations were invited from the participants. Table 6 below illustrates the general comments and proposals made by the participants:-

Questions/Comments by Participants	
➤ Legal Compliance audit has not been addressed	• This is currently not part of the process
➤ Lack of consistency in the auditing function due to outsourcing – there is need for standardization	• Auditing process depends on the information that is available • TORs detail approach to the audit

➤ Need for expansion of scope to include procurement audits	•
Further Comments by Participants	
➤ Regulations should be informed by the current reports ➤ Section 37 on penalties is ineffective ➤ KRB needs to be empowered	

Table 5: Plenary on Technical Compliance, Financial and Performance Audit

4.2 General Commentary on the Validation Workshop

The Presentation to the road exhaustively presented to this particular group of stakeholders the key elements to be addressed in the proposed subsidiary legislation to support KRB further implement the KRB Act 1999.

Way Forward: KRB and the KRB team welcomes the comments received and will continue to engage road sector stakeholders. The participants were informed that their participation is a part of the ongoing process for the development of the proposed Kenya Roads Board Regulations.

It has been acknowledged that some of the issues raised and which may not be provided for in the subsidiary legislation will form important recommendations for legislative amendments.

5. Annexes

Annex I: Validation Workshop for the Development of Regulations to KRB Act, 1999 Programme (Provided by National Assembly)

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION)

COMMITTEE ON DELEGATED LEGISLATION

CONSULTATIVE MEETING WITH REGULATION MAKING AUTHORITIES
TO CONSIDER PENDING BUSINESS

4 – 8th March, 2021

VENUE:

Whitesands Beach Resort

Mombasa County

TIME	ACTIVITY	RESPONSIBILITY
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Day 1: Thursday, 4 March, 2021		
All day	Arrival at the retreat venue	Committee secretariat
Day 2 Friday, 5 March, 2021		
9:00 - 9:30am	- Prayers and preliminary remarks by Chairperson, Committee on Delegated Legislation - Adoption of the Programme	Hon. Kassait Kamket, MP (Chairperson, CDL)
9:30 - 1.00pm	Consideration of the draft Kenya Roads Board Regulations, 2020	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works <i>(State Department for Infrastructure) (Kenya Roads Board)</i>
1:00 - 2:00pm	LUNCH BREAK	

2:00 – 4:30pm	Consideration of the draft Kenya Roads Board Regulations, 2020	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (State Department for Infrastructure) (Kenya Roads Board)
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Annex II: The Draft Regulations

Annex III: List of Participants



**STAKEHOLDER & PUBLIC PARTICIPATION
ON THE DRAFT KENYA ROADS BOARD
REGULATIONS, 2020**

**REPORT
MAY, 2021**

OUTLINE OF THE BRIEF

1. Background

2. Objectives of the Regulations

3. Provisions of the Draft Regulations

1. Background

Kenya Roads Board is a statutory body established under the Kenya Roads Board Act, 1999. The Board aims to significantly improve and rationalize decision-making and allocation of resources in the roads sector and make best use of public funds in preserving road networks at an acceptable level of serviceability.

We therefore require Regulations and regulations to strengthen its capacity in the discharge of its mandate under the KRB Act 1999.

2. Objectives – Why We Need Regulations

Kenya Roads Board Act, 1999 under Section 37 provides for the making of Regulations prescribing anything required by the Act or generally for better carrying into effect the provisions of the Act. Lack of the said Regulations is obviously an inhibition to the implementation of the Act, which resultantly impedes the management of Road Maintenance Levy Fund (RMLF).

The main objective of the Regulations is to;

- a) Provide further details and clarity on provisions which have been left open by the Kenya Roads Board Act No. 7 1999; and
- b) Fill in existing gaps in the KRB Act as well as address issues relating to Technical, Financial and Performance Audit Manuals developed by the Board.

(a) Submission to CS-MOTIHUD

On 27th October, 2020 the Board submitted the draft Regulations to the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works for gazettelement.

(b) Submission to Clerk National Assembly

To realize the above, the CS, MOTIHUD submitted the draft Rules to the Clerk, National Assembly as evidenced by the letter Ref No. MOTIHUD/I/A35.38 VOL dated 15th February, 2021.

(c) Consultative meeting with National Assembly

The Draft Rules were forwarded to the Committee on Delegated Legislation which invited the Board to consultative meeting from 5th to 8th March, 2021. During the meeting, the Committee noted that the Rules touched on County Roads which is against the spirit of the Statutory Instruments Act, 2013. As such, the Board reviewed the Rules to only address National Trunk Roads.

On 24th March, 2021, the Board placed a public notice in the local dailies inviting members of the public to submit comments on the Draft Rules to KRB Act.

3. Review to incorporate views of the Members of the Public

The Board has developed draft Regulations as attached hereto. The Regulations incorporate view of stakeholder who were engaged in a series of consultative workshops throughout the country.

The Draft Regulations are divided into Seven (7) parts as follows;

(a) Part I Preliminaries

This part covers the citation, application of Regulations as well as interpretation of terms used. It covers Regulation 1 to 3.

(b) Part II – Annual Public Roads Programme (APRP)

This part runs from Regulation 4 to 6 of the Regulations.

It seeks to address the preparation of Annual Roads Work Programme (ARWP) specifying: Relevant financial year, Road agency's identity, Locality, Road ID and section Name, Section Length, Type of intervention; description of the works, us, allocated Budget (Current and next 3 years), Current condition and surface type.

It also provides for the carrying out of Road Inventory and Condition Survey (RICS) by agencies as well as Submission and Approval of ARWP and requests for revisions of the APRP.

(c) Part III- Financial Provisions & Administration

This runs from Regulation 7 to 37 covering duties of Road Agencies, Disbursement program by KRB and the conditions for release of funds. It also addresses circumstances under which funds may be withheld.

It addresses the utilization of the Funds, expenditure limits and approval for exceeding budget. It also addresses instances where a Road agency fails to comply with the provisions of the Act, the Regulations have prescribed sanctions and penalties.

(d) Part IV: Road Maintenance and Development

This part runs from Regulations 38 to 47.

It makes provisions for ensuring efficient and effective delivery of road works by Road agencies and County Governments requiring them to comply with design and standards for works issued by ministry from time to time and supervise works.

It also addresses the issue of carryover works and spot improvements as well as emergency funding. The Board is required to establish procedures for emergency funding

(e) Part V: Project Management and Reporting

This part runs from Regulation 45 to 53 of the Regulations.

This part calls Road Agencies to ensure compliance with design and supervision standards for road works as issued by the Ministry from time to time. Regulation 45 provides for Efficient and effective delivery of road works, Supervision of works, Carry over works, Emergency repair works and Spot improvement. It also addresses the issue of administrative costs.

It requires the Road Agencies to enter into contractual arrangements for road works, goods and services which should specify the Parties to the contract; Contract price and period; Scope of works, bills of quantities, drawings and specifications as well as Conditions of contract as prescribed by Public Procurement Regulatory Authority.

Any payments by Road Agencies for contracts which do not comply with the above shall be considered ineligible expenditure and shall be recoverable from the Road Agency.

It also addresses the issue of record keeping for all contracts entered into. A Road Agency shall keep and maintain the following project files -

- (a) Contract file; and
- (b) Force account

Road Agencies shall under the Regulations, prepare and submit quarterly APRP implementation reports together with supporting documents by the 20th day after end of each quarter in the prescribed form.

Road Agencies shall also submit to the Board ad hoc and special reports as may be requested from time to time.

(f) Part VI- Monitoring & Evaluation

This Part runs from Regulation 53 to 56 of the Regulations. KRB is mandated to conduct Technical, Financial & Performance Audits. It prescribes penalties for failure to comply with requests from the auditors. It also prescribes how Audit recommendations shall be implemented in that Road Agencies shall submit an action plan for addressing the deficiencies identified in the audit reports.

(g) Part VII-Miscellaneous

This Part runs from Regulation 53 to 56. It provides for complaint handling mechanism for complaints raised against Road Agencies and County Governments on matters touching on implementation of road programmes funded by the Fund.

KRB is empowered under Regulation 55 to investigate complaints from stakeholders and require a Road Agency or County Government to provide books, records and any other information or evidence and make recommendations. Road Agencies or County Government may appeal to the Cabinet Secretary if not satisfied with findings of the investigations.

Schedules to the Act

There are two (2) schedules to these Regulations;

(i) First Schedule

Provides for the designated Road Agencies under the Act. Which include; Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA), Kenya Wildlife Service (KWS) and County Governments. This Schedule also specifies the classes of roads under each entity.

(ii) Second Schedule

The Second Schedule provides for penalties for specified offences in various Regulations under these Regulation.

4. Further Stakeholder Engagement

The Board shall subject the draft to Public participation as required under Section 5 of the Statutory Instruments Act, 2013. A notice will be placed in the local dailies inviting the citizenry to a public forum where they will be allowed to submit their views and concerns.

Their views will be incorporated to the final document that will be submitted for gazettelement.

sage is simple: 'Back your own and dump Ruto'. This has shaken the DP's new-found political alliance, the United Democratic Alliance (UDA) to the core.

On Monday, Naito J. Karuri that the DP held high-level discussions with some of his allies to stem a possible fallout in its camp.

Yesterday, a photo of Mr. Muriya and his deputy governor at Fataura Achari visiting President Ken-

ies, abated expectations and UDA's string of poor performance in both the Matungu and Kabonai by-elections.

Kakamega Senator Cleophas Malala, from Mr. Mudavadi's ANC, yesterday said talks are ongoing to ensure the region is rallied behind the leadership of Mr. Mudavadi. Ford Kenya's interim Secretary-General, Kiminini MP Chris Wamalwa, yesterday confirmed

from the region.

"We're telling our brothers outside ANC and Ford-Kenya that they risk going into political oblivion if they don't come back home and rally behind Mudavadi and Wetang'ula," he said.

Ruto lieutenants in Western are former Sports Cabinet Secretary Rashid Echesia, MPs Benjamin Washali (Mumias East), Fred Kapondi (Mt Elgon), Dan Wan-

Combined efforts

In Eastern, the combined efforts of Mr. Muriya, Machakos Governor Alfred Mutua, Kitui's Charity Nguhi and Makueni's Kivutha Kibwana have been unleashed on the DP. They cited the DP's poor performance in the Machakos senatorial by-election, a county

the DP has been trying to make inroads in the Gusii region. His younger brother David Ruto's attempts to win over the region after his recent tours in Kisumu and Bondo have not borne any fruit.

Reported by Justus Ochieng, Ibrahim Oruko, Oiyango K'onyango, and Brian Ojiambo

National Bank
A subsidiary of KCB Group PLC

Motor Vehicles for Sale

No.	Vehicle Make	Vehicle Registration	Y O F	Storage Yard	Reserve Price
1.	Cape 851 Mack Hoe Loader	KMPA 505C	2012	Legacy Connection Ltd, Nairobi	5,000,000
4.	Caterpillar 952B Wheel Loader	ETT 025	1987	Legacy Connection Ltd, Nairobi	3,400,000
5.	Mercedes Benz Atego Prime Mover	KAY 1018	2004	Legacy Connection Ltd, Nairobi	600,000
6.	Nissan L200 H7H	KCD 2105	2004	Somero Garage, Langata Rd, Industrial Area	4,00,000
5.	Isuzu/Terraco	KCC 5967	2015	Mutua Motors, 1000 2nd Avenue Rd, Nairobi	1,000,000
6.	Man Prime Mover TGA	6AW 527H	2007	Shady Drags Enterprises, Nakuru	800,000

Motor Vehicles are sold on "AS IS WHERE IS" basis. Bids with full contact details, should be submitted through email to auction@nationalbank.co.ke or placed in a sealed envelope marked "Tender for Motor Vehicle" addressed to: The Auctioneer, National Bank, P.O. Box 12866-0020, Nairobi, to reach the Commission not later than 23rd March, 2012.

For further details, contact Mr. Muriya on Tel No. 0705 888 319 or Mr. Muriya on Tel No. 0703 988 858. For more vehicles on sale from our website <http://nationalbank.co.ke/tenders>.

Required by the Central Bank of Kenya

Flowing Roads. Enhancing Connectivity.

NOTICE OF PUBLIC PARTICIPATION

CALLS TO INTERNATIONAL KENYA ROADS BOARD ACT

Kenya Roads Board, in exercise of the powers conferred by section 37 of the Kenya Roads Board Act 1999, has developed Rules for better carrying out of its functions under the Act.

The draft Rules are available for download on its website on the following link: <http://www.krb.go.ke/rules-regulation/>

Members of public are requested to review and provide feedback on the draft Rules by making within 21 days from 24th March, 2012 through the following address:

Director General
Kenya Roads Board
3rd Floor, Kenya Airways Towers, Upper Hill
P.O. Box 73718-0020
Nairobi, Kenya.

info@krb.go.ke @www.krb.go.ke ☎020 4980 000

NOTICE OF JOBS POSITIONS

A top Sector in Kenya is looking for qualified and experienced candidates to fill the following positions:

Position to be filled	No. of Positions	Reference No.	Qualification Requirements
1. ICT Officer	1	ESB	- Bachelor's degree in Information Technology and Post graduate qualification in computer science/IT - Master's in IT will be an added advantage - CISCO, Microsoft, Oracle, database Admin (MCDBA) or equivalent. - A minimum of six (6) years relevant experience in any other ICT infrastructure development and maintenance, installation and maintenance of hardware, installation and maintenance of network, mail servers as well as managing data backup system. - Must have the following certificates: Certificate of Good conduct, Ethics & Anti-Corruption Certificate Clearance Certificate from HELB, CBS clearance Certificate and Tax Compliance certificate. - Must be 25 years and above. - At least three (3) references, one to be the immediate employer.
2. ICT Assistant	1	ESB	- Bachelor's degree in Information Technology and Post graduate qualification in computer science/IT - Master's in IT will be an added advantage - CISCO, Microsoft, Oracle, database Admin (MCDBA) or equivalent. - A minimum of six (6) years relevant experience in any other ICT infrastructure development and maintenance, installation and maintenance of hardware, installation and maintenance of network, mail servers as well as managing data backup system. - Must have the following certificates: Certificate of Good conduct, Ethics & Anti-Corruption Certificate Clearance Certificate from HELB, CBS clearance Certificate and Tax Compliance certificate. - Must be 25 years and above. - At least three (3) references, one to be the immediate employer.

DATA UNIT
P.O. BOX 45000-00100
NAIROBI.

KENYA ROADS BOARD
RECEIVED

14 APR 2021

OFFICE OF DIRECTOR GENERAL
NAIROBI

Your ref

Our ref SH/0837/KSG/PM/AJA/2021/016

Contact

Director General,
Kenya Roads Board,
3rd Floor, Kenya Re Towers, Upperhill,
P.O. Box 73718-00200,
Nairobi.

Dear Mr. Rashid Mohamed, MBS,

RE: SUBMISSION OF MEMORANDUM – THE KENYA ROADS BOARD (GENERAL) RULES, 2021

Reference is made to your request for members of the public to submit any representations they may have on The Kenya Roads Board (General) Rules, 2021.

Following review of the draft Rules, this Memorandum has been prepared and expresses the views of local contractors.

RACECA being signatory to this Memorandum humbly requests your consideration of the proposals given herein.

SECTION	RACECA PROPOSAL	JUSTIFICATION
Part II – Annual Public Roads Programme Rule 7.	Addition of Rule 7 to read as follows. 7(2)(j) Estimated budget to give priority to outstanding certificates and current works.	RACECA seeks to amend Rule 7 of the act by inserting 7(2)(j) that will ensure that contractors are compensated for their works and not made to wait for long periods of time to receive their just dues.
Part II – Annual Public Roads Programme Rule 7(5)(f).	RACECA recommends that the Roads Agencies ensure that at least 40% of road works and <u>NOT</u> 20% are carried out through use of local labour based methods.	Construction guidelines direct that all foreign contractors participating in local construction to source at least forty percent (40%) of their supplies (works) from local contractors prior to tender submission. Reference: Public Procurement and Asset Disposal Act 2015 – Clause 157- (9)

SCANNED

15 APR 2021

KRB RECORDS
OFFICE

DG *N. Mohamed* 14-04-2021

RACECA
ROADS AND CIVIL ENGINEERING CONTRACTORS ASSOCIATION

Sikh Union Club, Ground Floor,
P.O. Box 2898-00605,
Nairobi, Kenya
Phones: 0733-153 761
E-mail: raceca@kenya.com

10th April, 2021

HSCM

REG

Part III – Financial Provisions and Administration. Rule 10.	Addition of Rule 10 to read as follows. 10(e) Prioritize payments of works done to local contractors	RACECA seeks to amend Rule 10 of the act by inserting 10(e) that will ensure sustainable promotion of the local industry, through prioritization of payments to local contractors. Most foreign contractors are State Owned Enterprises (SOE) that receive financial support from their governments and have higher propensity to withstand the effects delayed payments.
Part IV – Project Management and Reporting.	Addition of Rule 39 to read as follows. 39(3) Road Agencies shall include in their supervision reports the implementation of technological transfer from foreign contractors to local contractors.	RACECA proposes that the rules ensure opportunities for local contractors to be trained on new skills and technology. This approach will ensure development of the Kenyan workforce and reduce unemployment. Reference: Public Procurement and Asset Disposal Act 2015 –Clause 155- (5)(b)

We humbly request that you positively consider our proposals and grant us the opportunity to meet with you in the event that you require clarifications on proposals raised. We are most grateful for your support of the local industry and look forward to your positive feedback.

Yours Sincerely,
 For and on behalf of, RACECA,



JOSEPH ALOT
CHIEF EXECUTIVE OFFICER - RACECA

NAKURU COUNTY PUBLIC OPINION CONSULTATIVE INITIATIVE

P.O BOX 10076 NAKURU Cell 0720988086

Promoting public discourse in governance issues

MEMORANDUM ON RULES TO OPERATIONALIZE KENYA ROADS BOARD ACT

Nakuru County Public Opinion Consultative Initiative is a respected and trusted public watchdog organization with keen interest in all governance issues including public policy formulation and implementation at the National Government and county Government of Nakuru

We wish to present these comments as per the media advert by Kenya Roads Board calling stakeholders and members of the public to offer **recommendations /views/comments/ suggestions and comments** on the above subject matter.

In this memorandum, we via Public Participation wish to support this drive to inform a sustainable and result driven approach to the running of the road sector in Kenya with a major focus to the following road agencies;

- Kenya National Highways Authority, KeNHA
- Kenya Urban Road Authority, KURA
- Kenya Rural Roads Authority, KeRRA
- County Governments

We here wish to confirm that we have individually and collectively gone through these rules and regulations section by section and thus join the other invited road stakeholders and members of the public to recommend as follows;

PRELIMINARY

On the issue of application of funds we prefer that County Governments apply for the same in a structured manner and **NOT** just any time. The other agencies can access the same without any conditions due to the fact they fully operate without political interference.

Similarly, the scope of work – road maintenance, rehabilitation, repairs etc. of County Governments is not capital intensive as is the case with especially KeNHA and KURA

ANNUAL PUBLIC ROAD PROGRAMMES

We propose that Annual Road Works Programmes be undertaken by qualified road engineers, surveyors and planners assisted by certified public accountants and supply chain officers in all the above mentioned road agencies.

Further, we recommend that dissemination of all information relating to implementation of these be publicized in a manner to include vernacular radio stations which now have a wider reach compared to newspapers.

Also, the five years duration for Road Sector Investment Programme should not be cast in stone and that to say should provide room for periodic reviews for among others costing of projects and completion timelines due to unforeseeable circumstances.

In respect to stakeholder meetings, we propose a structured and standard format of convening of the same

Generally, it is important for road agencies and the board to factor and consider the effects of **Climate Change** in Kenya and thus plan accordingly.

As a matter of concern we abhor duplication of roads project which is the norm in regards to **KeRRA** and County Governments

FINANCIAL PROVISION & ADMINISTRATION

We propose that accounts in respect to funds disbursed to County Governments be frozen on the fifth day of the month of January of every Election Year starting 2022.

Similarly, Roads Maintenance Levy Funds be disbursed only when a specific County Government has attained 95% of absorption of the previous allocation.

To ensure prudent use of these funds in counties we here recommend external auditing of the same in counties every three months.

PROJECT MANAGEMENT & REPORTING

The provision on road safety is very touching to us as stakeholder in the Public Transport sector

We recommend a multi-agency approach to this that will bring on board all road agencies and other National Government, County Governments and Non-Governmental Organizations dealing with Disasters and Emergencies.

We reckon that both **KeNHA** and **KURA** have in the recent past adopted modern road construction technologies to address road carnage as a good measure to save lives on our roads.

On encroachment on road reserve, we recommend that the National Government second officers of Kenya Police Service to **KURA** as it has done to **KeNHA**.

In particular to Nakuru County, we appreciate the good work of the police officers seconded to **KeNHA**, South Rift Region, especially when dealing with traders and building owners who have encroached on the roads under the authority.

On reporting, we feel that this can be done via any of the following where format where applicable;

- **Town Hall Meetings**
- **Stakeholder Consultations**
- **Media Notices**
- **Broadcast via Radio Stations**

MONITORING & EVALUATION

To successfully implement we recommend that all road agencies be legally obligated to immediately constitute Monitoring and Evaluation Units.

These units or committees be established with equal representation of concerned road stakeholders and members of the public who are revenue contributors and tax contributors in Kenya.

The agencies should also cooperate and work with Civil Societies Organizations and Wananchi who under the law are duty bound to conduct **Projects Social Audit** and **Civilian Oversight** towards prudent the use of public funds in all sectors.

We want to be categorical that most County Governments are yet to constitute Monitoring and Evaluation Units as they were tasked by the Transition Authority in 2014.

Going by this the board must take a drastic action to enforce this in all counties.

MISCELLANEOUS

We want the provisions of these rules and regulations to be strengthened in regard to this as to provide for the direct involvement of National Government agencies charged with criminal investigations.

Also, we recommend that finding and outcomes of all investigations in the road sector be regularly communicated to the public.

CONCLUSION

We take this opportunity to commend the Kenya Roads Board for supporting our road agencies through direct funding from the Road Maintenance Fuel Levy.

We also here appreciate the good work being undertaken by these agencies to promote connectivity and faster movement of people, goods and services and immense support and contribution to our economy.

In Nakuru County KeNHA, KURA and KeRRA have been very supportive in all Public Participation engagements due to professionalism of road engineers running these institutions.

Signed in Nakuru Town - Today 13/04/2021

Daniel Murugu

Secretary

NAKURU COUNTY PUBLIC OPINION CONSULTATIVE INITIATIVE

Catherine Kassim

From: Livingstone K. Mbai
Sent: Friday, 30 April 2021 11:08
To: Catherine Kassim
Subject: Resubmission
Attachments: Legal Notice 31 & 32 of 2019 on EIA.pdf

Hi Catherine,

Below is the previous email as discussed.

Submitted for consideration.

Regards

From: Livingstone K. Mbai
Sent: Wednesday, 14 April 2021 11:43 am
To: Catherine Kassim <ckassim@krb.go.ke>
Cc: David Orwenyo <dorwenyo@krb.go.ke>
Subject: Submission of Individual Comments on RRPGS

Hi Catherine,

below are my comments on the RRPGs for consideration:-

1) Section 45 (4) sets out the format of submission of reports to KRB and even goes ahead to stipulate the format under 3rd schedule form (c). I have reviewed form (c) and noted that this is a format for the minor contracted roadworks (mostly works implemented in less than a year) and may not be of much use in reviewing the Multi-year Major contracted roadworks funded by KRB as well as the RMLF Development vote support projects.

Ordinarily the Road Agencies are required to submit a copy of the Project Monthly progress report (this is a detailed report giving activities being undertaken within the month as well as payment information, contract notifications, contract variations, site instructions issued, and even incidences of accidents) for the major contracted roadworks to KRB. This is a standard practice across the industry requiring that the implementing road agency submits this type of report to the key stakeholders and in this case the financiers such as KRB, World Bank, AfDB, KfW among others.

Primarily what am saying is that the regulations should not lockout KRB from receiving these reports and it is therefore necessary to add a line or something requiring that "for projects deemed to be of Major contracted roadworks or multiyear projects by KRB; a standalone monthly project progress report should be submitted to the Board for monitoring of the works." currently we have over 95 projects under KenHA alone that are deemed major contracted roadworks (i.e. contract sum above Kshs 100million).



Financing Road Maintenance

KENYA ROADS BOARD

3rd Floor, Kenya Re Towers, Off Ragati Road, Upper Hill

P.O. Box 73718 - 00200, Nairobi, Kenya.

Tel: +254 (020) 2722865/6/8, Fax: +254 (020) 2723161

ISDN: +254 (020) 4980000, Cell: 0722 203418, 0733 334422

Email: info@krb.go.ke Website: www.krb.go.ke

KRB/LCA/ 35/ A (96)

6th May, 2021

Chief Executive Officer
Road and Civil Engineering Contractors Association (RACECA)
Sikh Union Club, Ground Floor
P.O Box 28898-00606
NAIROBI

Dear Sir,

**RE: PUBLIC PARTICIPATION ON DRAFT RULES TO KENYA ROADS BOARD
ACT, 1999.**

Receipt is acknowledged of the Memorandum Reference No. SH/0837/KSG/PM/AJA/2021/016 dated 12th April, 2021 addressed to the Board concerning Draft Rules to the Kenya Roads Board Act, 1999 and contents thereof are duly noted.

The Board appreciates your participation in this exercise as a key stakeholder and for the valuable comments. This will allow improvement on the draft Rules for better management of the Kenya Roads Board Fund.

Yours Sincerely,

R. Mohamed, MB6
DIRECTOR GENERAL



Financing Road Maintenance

KENYA ROADS BOARD

3rd Floor, Kenya Re Towers, Off Ragati Road, Upper Hill

P.O. Box 73718 - 00200, Nairobi, Kenya.

Tel: +254 (020) 2722865/6/8, Fax: +254 (020) 2723161

ISDN: +254 (020) 4980000, Cell: 0722 203418, 0733 334422

Email: info@krb.go.ke Website: www.krb.go.ke

KRB/LCA/ 35/ A (95)

6th May, 2021

Secretary

Nakuru County Public Opinion Consultative Initiative

P.O Box 10076

NAKURU

Dear Sir,

**RE: PUBLIC PARTICIPATION ON DRAFT RULES TO KENYA ROADS BOARD
ACT, 1999.**

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The Board appreciates your participation in this exercise as a key stakeholder and for the valuable comments. This will allow improvement on the draft Rules for better management of the Kenya Roads Board Fund.

Yours Sincerely,


R. Mohamed, MBS
DIRECTOR GENERAL

2) Section 41 for Environment may not be so clear as to KRBs role and it may be necessary to consider requesting the RAs to adhere to the provisions of the Environmental Management and Coordination act (EMCA) instead. My observation is guided by the provision of the legal notice no 31 & 32 of 2019 on EIA that require that an Environmental Impact Assessment(EIA) report be done for all construction projects (be they small or large) which makes it a mandatory requirement for all road projects. The legal notice is attached herewith for your review.

Best regards



Financing Road Maintenance

KENYA ROADS BOARD

3rd Floor, Kenya Re Towers, Off Ragati Road, Upper Hill

P.O. Box 73718 - 00200, Nairobi, Kenya.

Tel: +254 (020) 2722865/6/8, Fax: +254 (020) 2723161

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Email: info@krb.go.ke Website: www.krb.go.ke

KRB/LCA/29/A VOL. I (47)

10th June, 2021

Mr. James Macharia, EGH
Cabinet Secretary
Ministry of Transport, Infrastructure, Housing, Urban
Development & Public Works(MOTIHU DPW)
P O Box 52692
NAIROBI

Through'

Prof. Arch. Paul M. Maringa (PhD), CBS, Corp. Arch (Maak), MKIP
Principal Secretary,
State Department of Infrastructure,
Ministry of Transport, Infrastructure, Housing, Urban
Development & Public Works(MOTIHU DPW)
P O Box 30260-00100
NAIROBI

Dear Sir,

RE: KENYA ROADS BOARD (KRB) RULES 2021

The Board has in exercise conferred by Section 37 of the Kenya Roads Board Act formulated regulations for the proper management of the KRB Fund. KRB has published the rules in the KRB website and invited public participation through an advertisement in the local dailies.

The Board further engaged key stakeholders amongst them the parliamentary committee on delegated legislation on 15th to 19th March, 2021

Following the public participation and meeting with the parliamentary committee, the Rules have been amended key amongst the proposals to review the provisions related to County Governments.

In view of the proposals, the Rules have been amended to apply to National Trunk Roads.
The Rules are hereby submitted for your approval before publishing.

Yours *sincerely,*


R. Mohamed, MBS
DIRECTOR GENERAL

/attach

Kenya Roads Board (National Trunk Roads) Rules, 2021

Legal Notice No.

THE KENYA ROADS BOARD ACT
(No. 4 of 1999)
THE KENYA ROADS BOARD (NATIONAL TRUNK ROADS)
RULES, 2021

ARRANGEMENT OF RULES

Rule

PART I – PRELIMINARY

1. Citation.
2. Interpretation.
3. Application
4. Object and Purpose of these Regulations
5. Responsibilities of Kenya Roads Board

PART II- ANNUAL PUBLIC ROADS PROGRAMME

6. Submission of Annual Roads Programme and Prioritization of works .
7. Road Inventory and Condition Survey.
8. Revisions of Annual Public Roads Programme.

PART III- FINANCIAL PROVISIONS AND ADMINISTRATION

9. Duties of Road Agencies
10. Opening of bank accounts.
11. Deposits into the bank account.
12. Payments from the bank account.
13. Signatories to the bank account.
14. Budget ceilings.
15. Disbursement programme.
16. Release of funds and withholding of funds.
17. Partial release of funds

18. Utilization of the fund.
19. Administrative expenses.
20. Expenditure limit.
21. Reallocation of funds for works.
22. Authority to incur expenditure.
23. Fixed Assets register.
24. Savings and earnings.
25. Carry over funds.
26. Funds not to be applied as security for borrowing.
27. Maintenance of cash books.
28. Cash book
29. Account not to be overdrawn.
30. Payment vouchers, adjustment journals, banking and issuance of receipts.
31. Financial records and automation of financial operations.
32. Annual reports and financial statements.
33. Books of accounts.
34. Accounts and records to be kept and preserved.
35. Sanctions and penalties.

PART IV- PROJECT MANAGEMENT AND REPORTING

36. Efficient and Effective delivery of road works.
37. Supervision of works.
38. Safety.
39. Environment.
40. Immediate interventions
41. Contract document format
42. Contract project file and force account
43. Reporting

PART V – MONITORING AND EVALUATION

- 44. Technical, Financial and Performance Audits.
- 45. Duty to avail documents and information to the Inspector.
- 46. Penalties for failure to comply.
- 47. Responses to audit report.
- 48. Implementation of audit recommendations.

PART VI- MISCELLANEOUS

- 49. Register of complaints.
- 50. Procedure for handling complaints
- 51. Investigations.
- 52. Forms

SCHEDULES

First Schedule:	Designated Road Agencies
Second Schedule	Penalties for specified offences
Third Schedule	Forms

THE KENYA ROADS BOARD ACT
(No. 7 of 1999)

IN EXERCISE of the powers conferred under section 37 of the Kenya Roads Board Act, 1999 the Board, with the approval of the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Rules —

THE KENYA ROADS BOARD (GENERAL) RULES, 2021

PART 1— PRELIMINARY

- Citation 1. These Rules may be cited as the Kenya Roads Board (General) Rules,
- Interpretation . 2. In these Rules, unless the context otherwise requires—
 In these Regulations, unless the context otherwise requires—
- No. 7 of 1999; “Act” means the Kenya Roads Board Act, 1999
- No. 18 of 2012; “Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act, 2012
- “Board” means the Kenya Roads Board as established under Section 4 of the Act;
- “Board of Directors” means the Board established under section 7 of the Act;

"Cabinet Secretary" means the Cabinet Secretary for the time responsible for matters related to roads;

"Contract" means the contract for supply of goods or works or services under discussion;

"Fund" means the Kenya Roads Board Fund established by Section 31 of the Act;

"Inspector" means such person duly appointed by the Director General by gazette notice whether public officer or otherwise, whether by name or title of office to be Inspector in accordance with provisions of Section 26 of the Act, and to perform such functions as specified in sections 27 and 28 of the Act.

"Monitoring" means examining and verifying that the road works are being executed in accordance with the standards set by the Cabinet Secretary under relevant Act of Parliament and these Regulations;

"Periodic Maintenance" means all the maintenance works carried out in a periodic cycle of five to ten years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming but do not include pavement layer reconstruction or the addition of a pavement layer do not constitute periodic maintenance;

"Road Agency" means any organisation or body specified in the first Schedule to the Act and includes all bodies receiving monies from the Board for the purposes for which the Board is established;

"Roadside development" means a physical structure or facility on land within or adjoining a road reserve;

"Road Maintenance Levy Fund" means the Fund

"Road Maintenance Levy Fund" means the Fund established by Section 7 of the Road Maintenance Levy Fund Act, 1993;

"Road Maintenance" means the preservation of roadways, roadsides and structures as nearly as possible to their original condition or as subsequently improved and the operation of road facilities and services to provide satisfactory and safe transportation.

"Road Network" means the road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described;

"Routine Maintenance" means all maintenance works required continuously or at interval on every road whatever its engineering characteristics or traffic volume, and comprises activities such as grass cutting, drain cleaning, culvert and bridge cleaning and maintenance, road furniture and bridge guard rails maintenance, paved road patching, edge repair, crack sealing, and line marking, and also unpaved road grading, shaping and pothole repair.

Application

3. These Rules shall apply to —

- (a) All road agencies responsible for national trunk roads that receive financing from the Board and shall cover all goods, works and services funded by the Fund;
- (b) The roads department of Kenya Wildlife Services responsible for roads within national parks and game reserves; and
- (c) The Classified and Unclassified roads receiving funds from the Fund and managed by a National Government Agency.

Object and Purpose of these Regulations.

4. The object and purpose of these Rules is to —

- (a) facilitate oversight of the road network and coordination of road maintenance, rehabilitation and development.

- (b) provide means of administering the powers vested on the Director General, Kenya Roads Board under the Road Maintenance Levy Fund Act, Kenya Roads Board Act, the Public Finance Management Act and any other related legislation;
- (c) ensure accountability, efficiency, transparency and effective application and utilization of the Road Maintenance Levy Fund; and
- (d) provide for procedures for compiling of road works programmes to the Road agencies;
- (e) provide a list of documents required for records management and reporting for effective monitoring and evaluation of road agencies;

Duty of Board to provide information to Road Agencies on disbursements.

5. (1) The Board shall —

- (a) one year before the beginning of the Financial Year, inform the Road Agencies of the funds likely to be available for road maintenance, rehabilitation and development;
- (b) inform all Road Agencies the priorities in the funds allocation and criteria to be applied in making the allocations;
- (c) at the beginning of each Financial Year, develop a disbursement programme, by way of a cash flow projection for one year and allocations to every Road Agency;
- (d) after every three months, release monies as provided for under Rule 5(1) (a), or in such manner as may be provided under the Act or these Rules.

(2) A Road Agency may at any time apply to the Board to consider any works or programme to be funded under the Fund.

(3) Where the Board having considered the application has reason to believe that any works programme that does not comply with the requirements of the Act or these Rules, the Board —

- (a) may reject the application; and
- (b) shall communicate its decision to the applicant in writing, citing the grounds for

established by Section 7 of the Road Maintenance Levy Fund Act, 1993;

No. 9 of 1993

"Road Maintenance" means the preservation of roadways, roadsides and structures as nearly as possible to their original condition or as subsequently improved and the operation of road facilities and services to provide satisfactory and safe transportation.

"Road Network" means the road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described;

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No. 9 of 1993.

- (c) ensure accountability, efficiency, transparency and effective application and utilization of the Road Maintenance Levy Fund; and
- (d) provide for procedures for compiling of road works programmes to the Road agencies;
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- (b) inform all Road Agencies the priorities in the funds allocation and criteria to be applied in making the allocations;
- (c) at the beginning of each financial year, develop a disbursement programme, by way of a cash flow projection for one year and allocations to every Road Agency;
- (d) after every three months, release monies as provided for under Rule 5(1) (a), or in such manner as may be provided under the Act or these Rules.

(2) A Road agency may at any time apply to the Board to consider any works or programme to be funded under the Fund.

(3) Where the Board having considered the application has reason to believe that any works programme that does not comply with the requirements of the Act or these Rules, the Board —

- (a) may reject the application; and
- (b) shall communicate its decision to the applicant in writing, citing the grounds for rejection.

PART II- ANNUAL PUBLIC ROADS PROGRAMME

Submission of Annual Roads Programme and Prioritization of Works.

6. (1) Every Road Agency shall, not later than six months before the commencement of every financial year, submit the Annual Road Works Programme in the manner set

out in the Second Schedule.

(2) An Annual Road Works Programme under this Rule shall contain —

- (a) The Financial year to which the Annual Road Works Programme relates;
- (b) The locality of the road to which the programme relates;
- (c) Road identity including name and number, and section name;
- (d) The section length;
- (e) The type of intervention or description of the works;
- (f) An estimated budget costs for the current and the next three years;
- (g) The current condition; and
- (h) surface type of the road.

(3) The Board shall upon receiving all the Annual Road Works Programme by the end of the stipulated time period, keep a register which shall contain the Works programmes received.

(4) Every Road Agency shall provide adequate budget for multi-year projects spread over the contract period.

(5) Every Road Agency shall, in coming up with Annual Road Works Programme and implementation of works, apply the cost estimation manual published by the Board from time to time.

(6) A road Agency shall, in developing the Annual Road Works Programme —

- (a) Comply with the budget ceilings issued in accordance with Rule 5;
- (b) Conduct Annual Roads Inventory Condition Survey, to determine the maintainable portion of the road network and submit the data to the Board in the form set out in the third Schedule.
- (c) Hold stakeholder meetings for prioritization of road works and submit minutes of the meetings to the Board;
- (d) Ensure it is within the approved five -year Road Sector Investment Programme;
- (e) Ensure the order of prioritization of road works follows the sequence of routine maintenance, spot improvement, periodic maintenance and

rehabilitation; and

- (1) Ensure at least twenty percent of the road works are carried out through use of local labour-based methods.
- (7) The Board shall upon receipt of the Annual Roadworks Programme from a Road Agency, review the programme to ensure compliance with requirements provided under these Rules.
- (8) Any Annual Roads Works Programme that does not comply with these Rules shall be rejected by the Board and communicated to the Road Agency within 3 days of the decision to reject such Annual Road Works Programme.
- (9) A Road Agency may, where an Annual Road Works Programme has been rejected pursuant to these Rules, within thirty days of receiving the decision of the Board in writing, and in any event not later than the 31st day of December of the Calendar year, whichever is earlier, review and resubmit the Annual Road Works Programme to the Board.
- (10) The Board shall upon receiving all the Annual Roads Work Programmes, consolidate the programmes into the Annual Public Roads Programme by February of each calendar year.
- (11) The Board shall not later than the thirtieth day of April each year, submitted to the Cabinet Secretary and the National Treasury the Annual Road Works Programme for approval.
- (12) The Board shall publish, publicize and disseminate Annual Road Works Programme.
- (13) Every Road Agency shall, in prioritization of road works, adhere to the requirements of the "Annual Roads Work Programme Planning and Reporting Manual" published by the Board from time to time.

Road Inventory and
Condition Survey.

7. (1) Every Road Agency shall submit to the Board an updated Road Inventory and Condition Survey for the road network under its jurisdiction not later 30th day of September of each year which shall be in a form set out in the second schedule.
- (2) A Road inventory and Condition Survey submitted under this Rule shall form the basis for a roads maintenance needs assessment for prioritization under Rule 7.

Revision of Annual
Public Roads Programme.

8. (1) A Road Agency shall, having submitted their programme, not vary the Annual Road Works Programme without written approval of the Board.

(2) Where a Road Agency requires to revise its Annual Road Works Programme, the agency shall do so in accordance with Rule 6 of these Rules and in any event not later than 31st day of January.

(3) Any person, being an officer of an agency, who without approval of the Board attempts to vary or varies any Implementation of works which is not included in the Annual Road Works Programme, commits an offence and shall be liable on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No 18 of 2012
No. 33 of 2015.

PART III – FINANCIAL PROVISIONS AND ADMINISTRATION

Duties of Road Agencies.

9. Notwithstanding any obligation imposed on a Road Agency under these Rules, a Road Agency shall, for the purposes of utilising funds received from the Fund –

- (a) maintain, rehabilitate and develop the categories of roads within its mandate;
- (b) utilise disbursed funds to implement the approved Annual Road Works Programme;
- (c) put in place and implement quality control and quality assurance systems;
- (d) supervise and monitor road works within their area of jurisdiction

Opening of Bank
Accounts.

10. (1) Each Road Agency shall cause to be opened a bank account for the funds disbursed from the Fund to be known as 'Name of Agency -Road Maintenance Levy Fund'.

(2) The Board shall suspend funding to a Road Agency that fails to open a Bank account as stipulated in Rules 10 (1) and 11 (1), until the said Road Agency complies.

(3) All bank accounts shall be opened, operated and closed in accordance with Section 28(1) of the Public Finance

Management Act, 2012 and its applicable Rules.

Deposits into the Bank Account.

11. (1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account.

(2) A Road Maintenance Levy Bank Account shall not be a fixed deposit account and neither shall funds held in a Road Maintenance Levy bank account be held in a fixed deposit account.

Payments from the Bank Account.

12. (1) All Road Agencies shall make payments related to the Road Works Programmes approved in accordance with Rule 6 from their respective Road Maintenance Levy Fund bank account.

(2) Payments may be done either by instructions or electronic fund transfer in accordance with the Public Finance Management Act, 2012 and its Regulations.

No. 18 of 2012

Signatories to the Bank Account.

13. (1) The accounting officer of a Road Agency for matters related to roads shall be a mandatory signatory to all electronic payments and fund transfers.

(2) The accounting officer in charge of the Road Agency shall designate other signatories and any changes in signatories in accordance with the Public Finance Management Act 2012 and its Regulations.

No. 18 of 2012

Budget Ceilings.

14. (1) The Board shall on or before the 1st day of July of the financial year preceding the year to which the budgetary ceilings relate, issue to the Road Agencies budgetary ceilings for the following financial year.

Disbursement programme.

15. (1) Every Road Agency shall within three months before the beginning of the financial year submit to the Board an annual expenditure projection for every three months in the financial year.

(2) The Board shall indicate to Road Agencies at the beginning of each financial year, cash flows for every three months.

(3) The Board shall monitor receipt of funds from Road Maintenance Levy Fund and allocate each tranche to the respective Road Agency in accordance with the Rule 16 (2).

Release of Funds and
Withholding of Funds.

16. (1) The Board shall release funds to Road Agencies who have complied with the provisions of these Rules provided that the Road Agency has utilised at least seventy percent of the funds allocated in the previous financial year.

(2) The Board shall withhold the release of funds to Road Agencies who have not complied with these Rules until such a time compliance is achieved.

(3) The Board shall issue ninety days notice to any Road Agency that consistently fails to comply with these Regulations of its intention to appoint another Road Agency to implement its annual Roads Work programme.

(4) Upon the expiry of the notice issued under Rule (3), the Board shall appoint a Road Agency to implement annual Roads Work programme and release all the funds withheld.

(5) Any Road Agency which is aggrieved by any decision under this Rule may appeal to the Cabinet Secretary for a review of the decision.

Partial Release of Funds.

17. Where the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a financial year, the Board may release on account, of not more than thirty percent of the funds allocated to the Road Agency for the year to which it relates.

Utilization of the Fund.

18. Any funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme.

Administrative Expenses.

19. (1) A Road Agencies shall not exceed the overheads and administrative expenses thresholds specified in section 6 (2) (l) of the Act.

(2) A person who utilizes any Administrative expenses in any manner in contravention to the provisions of Rule 20 (1) commits an offence and shall be liable, on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No. 18 of 2012
No. 33. of 2015

Expenditure Limit.

20. (1) Any expenditure incurred by a Road Agency budgeted line items shall be limited to the amount approved in the budget.

(2) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may upon request or application by a Road Agency, approve such excess after being satisfied that there are compelling reasons for the same.

(2) Any excess approved under Rule 22 (1) shall be covered by a corresponding saving within the

same expenditure category such that the overall ceiling for that category is not exceeded.

Reallocation of funds for works

21. A Road Agency shall not use the amount earmarked for road works in a particular project towards payment of overheads whether relating to that or any other project.

Authority to incur expenditures.

22. (1) No person other than the accounting officer to whom the "Authority to Incur Expenditure" has been issued, in whatever form, shall commit or incur expenditure against that Road Agency.

(2) A person authorised to incur expenditure may with the approval of the authority delegate the responsibility to an officer of the Authority to commit or incur expenses.

Fixed Assets Register.

23. (1) Every Road Agency shall maintain a Fixed Assets Register relating to the Fund wherein various details of fixed assets will be recorded.

(2) The Fixed Assets Register shall contain the following details:

(a) the description and type of asset.

(b) the cost of the asset, supplier and date of acquisition.

(c) the serial numbers, title documents of the asset and provision for licenses where applicable.

(d) rates of depreciation;

(e) accumulated depreciation up to close of financial year;

(f) written down value as at the end of the financial year;

(g) Value of the asset, as per the last valuation;

(h) date of disposal and the net realizable values;

(i) profit or loss on disposal;

(j) the exact location of the asset; and,

(k) identification numbers of the assets, to be coded on the basis of category, and location of the assets.

Savings and Earnings.

24. (1) Where a Road Agency realises savings and or interest earnings from the work program and operations, the funds shall be declared and utilized for the purposes for which the Fund was intended.

(2) Every Road Agency shall submit a work plan for the savings and interest earnings to the Board before spending.

(3) Any member or officer of a Road Agency that fails to declare or seek approval for the expenditure of savings and earnings in accordance with the Act and these Rules commits an offence and shall be liable, on conviction, to the penalties prescribed under Part VII of the Public Finance Management Act, 2012 and Part XVI of the Public Procurement and Asset Disposal Act, 2015.

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No. 33 of 2015.

Carry over funds.

25. (1) At the end of each financial year and not later than sixty calendar days from the end of the financial year, every Road Agencies shall submit to the Board bank balances and corresponding road works for which the funds were to be utilized.

(2) The carry over funds and associated road works shall be included in the Annual Road Works Programme for the following financial year.

Funds not to be applied as security for borrowing.

26. A Road Agency shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.

Maintenance of Cash Books. 27.

(1) All Road Agencies shall maintain a cash book for the

Kenya Road Board Fund Account to be written and balanced daily and the cash in hand verified by the officer in charge of the cash book.

- (2) All monies received shall be recorded serially in the cash book with adequate details of the transaction.
- (3) The Road Agencies shall maintain registers and records of bank accounts, cash books and impress in accordance with the Public Finance Management Act 2012 and its pursuant Regulations.

Cash Book.

28. (1) The Cash Book shall be checked on a daily basis by a senior accounts officer of the Road Agency who shall sign the cash book at the last entry examined to signify that he has satisfied himself as to the correctness of all entries made since the last signature.

(2) The cash book balance shall be reconciled with the bank balance at the end of every month.

Account not to be
overdrawn.

29. The Road Agencies Road Maintenance Levy Fund Bank Account shall not be overdrawn.

Payment vouchers,
adjustment journals,
banking and issuance of
receipts.

30. (1) All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-numbered receipt, which shall be signed, stamped and dated.

(2) All payment vouchers, adjustment journals and receipts shall comply with the provisions of the Public Finance Management Act 2012 and its regulations.

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Financial Records and
automation of financial
operations.

No. 18 of 2012

31. The Board and every agency shall keep Financial records may be maintain the records in manual or electronic form and shall be kept in accordance with the Public Finance Management Act 2012 and its Regulations

Annual Reports and
Financial Statements.

32. (1) The accounting officer shall prepare annual reports and financial statements with respect to the Road Maintenance Levy Fund account in compliance with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

(2) A financial statement prepared by road agencies in subrule (1) shall report on transactions in respect of the Road Maintenance Levy Fund with specific reference to

funds received from the Board.

Books of Account

33. All accounting documents whether manual or electronic shall be under strict control at all times and they shall include —

- (a) local purchase order;
- (b) local service order
- (c) authority to incur expenditure;
- (d) cheques;
- (e) cash receipt and payment books; and
- (f) the impress warrants.

Accounts and records to be kept and preserved.

34. (1) Every Road agency shall maintain detailed accounts and records which shall include —

- (a) cashbook, bank statements and bank reconciliations;
- (b) payment vouchers
- (c) ledgers;
- (d) fixed assets register;
- (e) quarterly and annual reports and financial statements and non – financial reports;
- (f) quarterly Annual Road Works Programme Progress reports;
- (g) Approved Annual Road Works Programme
- (h) Procurement documents, Local Service Orders, Local Purchase Orders, and contract;
- (i) Inspection and verification reports; and
- (j) Measurements sheets.

(2) Accountable documents, books and records shall be preserved in accordance with the provisions of the Public Finance and Management Act 2012 and Regulations made thereunder.

No. 18 of 2012

- (3) The books of accounts kept and maintained under this regulation shall be made available to the Board for review.
- (4) The Board shall suspend disbursement of funds to a Road Agency which contravenes the provisions of these Rules.

Sanctions and Penalties

35. (1) The Board may where it receives a complaint from any person or where it has reason to believe that an agency has failed to adhere to any provisions of

the Act or these Rules, declare the agency to be non-compliant.

(2) Where a Road Agency is non-compliant, the Board may -

(a) suspend funding to the Road Agency;

(b) appoint another Road Agency, and release funds allocated for works by the non-compliant Road Agency, to the newly appointed Agency

(c) institute measures to recover any amounts misappropriated by a public officer.

(3) Any member of the public may lodge a complaint of allegation of misappropriation of funds with the Board against any Road Agency.

(4) Without prejudice to subrule (3) the Board may, where it is satisfied of the complaint against misuse of funds allocated for any road work, conduct a special investigation for the purposes of determining the veracity of the complaint or allegation.

(5) Notwithstanding subrule (3) the Board may on its own motion conduct a special investigation where it has reason to believe that there is misappropriation of funds by a Road Agency.

PART IV -PROJECT MANAGEMENT AND REPORTING

Efficient and Effective
delivery of road works.

36. (1) Every Road Agency shall ensure compliance with design and supervision standards for road works issued by the Cabinet Secretary from time to time.

(2) Each Road Agency shall establish and implement quality management systems for delivery of road works including materials testing and supervision.

(3) Each Road Agency shall ensure that any planned work is executed within time, cost, set standards and specifications.

(4) Goods, works, and services shall be procured in a manner that promotes economy, efficiency, effectiveness and equity and in accordance with the Public Procurement and Asset Disposal Act, 2015.

No 33 of 2015

Supervision of Works.

37. (1) Road works shall be supervised in accordance with supervision standards for road works issued by

the Cabinet Secretary from time to time.

(2) Road Agencies shall maintain project supervision records which shall be made available to the Board as and when required.

Site Safety.

38. (1) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works.

(2) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.

Environment.

39. (1) Each Road Agencies shall develop and implement Environmental and Social Management Plan for maintenance projects.

(2) The Board may cause Environmental and Social Management Plans developed under Regulation 41(1) to be clustered at regional levels for efficiency and economy.

(3) Each Road Agencies shall prepare and implement safety and environmental management plans for road works before commencement of works.

Immediate Interventions

40. (1) Where a Road agency considers that a section of the road under its jurisdiction requires an immediate intervention works, the road agency may request approval from the Board to undertake such works.

(2) The Board shall establish and cause to be followed transparent and objective procedures to access and account for immediate interventions.

Contracts Format.

41. (1) All contracts for goods, works and services funded by the Fund shall be in writing

(2) Contracts entered into by Road Agencies for road works, goods and services shall specify *inter alia*, the following

(a) Parties to the contract;

(b) Contract price and period;

(c) Scope of works, bills of quantities, drawings and specifications

(d) Conditions of contract as prescribed by Public Procurement Regulatory Authority.

(3) Any payments by Road Agencies for contracts which do not comply with the above shall be considered ineligible expenditure and shall be recoverable from the authorizing officer.

No. 18 of 2012
No. 33. of 2015

Contract project file

(4) Public Officers to authorize ineligible expenditure shall be subject to sanctions under Part VII of the Public Finance Management Act, 2012 and Part XVI of the Public Procurement and Asset Disposal Act, 2015.

42. (1) Each Road Agency shall keep and maintain a contract file.

(2) The contract file in subrule (1) shall contain the following –

- (a) copies of procurement plan;
- (b) site photographs;
- (c) site instructions;
- (d) minutes of meetings;
- (e) a copy of the contract agreement;
- (f) payment certificates;
- (g) record of force account;
- (h) any other relevant correspondences for inspection and audit.

Reporting

43. (1) Road Agencies shall submit to the Board copies of all signed contract documents for road works including all Variation Orders when they occur not later than two (2) weeks after project completion.

(2) Road Agencies shall 30 days from the end of every quarter submit reports of all works and projects implemented in the preceding quarter.

(3) The Reports must be approved by the Director General of the Road Agency before submission

(4) Subject to the provisions of the Act and these Regulations, Road Agencies shall report in a format provided for under the Third Schedule.

(5) The Board shall not release any funds to a Road Agency that fails to submit reports stipulated under Regulation

PART V – MONITORING AND EVALUATION

Technical Compliance,
Financial and
Performance Audits

44. (1) The Board shall conduct technical, financial and performance audits of all works, goods and services funded by the Fund.

(2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time.

(3) The audits shall be conducted by an Inspector.

(4) The Board shall issue two weeks notice prior to the intended audit to inform Road Agencies of the intended audits except where a special or ad hoc audit is ordered under Regulation 46 (2).

(5) The notice shall spell out the audit scope, objectives, basis, information required, audit checklist and audit program.

(6) There shall be entry and exit meetings between the Inspector and Road Agencies and the minutes of these meetings shall be signed off by both parties.

(7) The Road Agencies shall provide conducive work area with easy access to all records, books and reports as may be required by the Inspectors.

(8) Road Agencies shall avail such officers as may be required to accompany the Inspectors for field visits.

(9) An Inspector may call off or postpone an audit in the following circumstances;

- (a) Failure to provide a conducive work area;
- (b) Failure to avail documents and information;
- (c) Failure to provide such officers as may be required for field visits;
- (d) Physical threats;
- (e) Insecurity;
- (f) Absent auditee.

(10) In the event of suspension or calling off an audit in subrule (9) the Inspector shall prepare and submit report within 7 days to inform the Director General.

Duty to avail documents and information to the Inspector.

45. (1) Each Road Agency shall make available to the Inspector the following information -

- (a) books;
- (b) accounts;
- (c) records and other documents;
- (d) correspondence;
- (e) statements and records relating to goods, works and services financed by the Fund; and
- (f) any other information as determined by the Board and as may be required by the Inspector

Provided that -

- (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced;
- (ii) the Inspector may make copies of any books, accounts, records and other documents required for purposes of its report; and
- (iii) all information obtained in the course of the audits shall be confidential and used solely for the purposes of the Act and these Regulations.

(2) Where a special audit is ordered, the Road Agency shall avail information in subrule (1) within seventy two hours of request of the Inspector.

(3) The Inspector shall within thirty days of commencing an audit issue an audit report.

(4) Any clarifications sought shall be availed to the Inspector within fourteen days.

46. (1) Where an inspection report under Rule 47 is filed with the Board, the Board shall notify Road Agencies which fail to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information after expiry of allowed period.

(2) A person being an authorised member of a road agency who fails to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information commits an offence and shall be liable on conviction to the penalties specified under the Public Finance Management Act, 2012.

(3) The Board may, in addition to the remedies provided for under Subrule (2), suspend funding to the Road Agency.

47. (1) Each Road Agency shall submit to the Director General written responses to audit reports and queries within thirty thirty days from the date of receipt of the reports.

(2) Upon expiry of the thirty days, the Director General shall conclude the audit report and submit it to the Board.

Penalties for Failure to
Comply

No. 18 of 2012

Responses to audit
Reports

Implementation of Audit
report and
Recommendations

48. (1) Each Road Agency shall submit an action plan within thirty days, stipulating the time frame for addressing the recommendations in the audit reports issued under Regulation 47, which shall be reviewed by the Director General.
(2) Failure to implement an action plan shall amount to non-compliance under regulation 39.

PART VI – MISCELLANEOUS

Register of Complaints.

49. (1) A person, public agency and or stakeholder aggrieved by any decision of a Road Agency may lodge a complaint to the Director General which shall be entered in a register of complaints established and maintained by the Director General.

(2) The complainant shall attach or provide any documents necessary to support the complaint.

(3) Notwithstanding the foregoing, a complaint may be made anonymously or treated in such a manner as to protect the identity of, or particulars of the complainant where necessary, as may be directed by the Director General.

Procedure for handling a
complaint.

50. The Board shall within fourteen days of receipt of a complaint in Rule 51 notify the relevant Road Agency and request to respond within thirty days from the date of such notice with a report of action taken to address complaints filed under Rule 51

Investigations

51. (1) Notwithstanding, the provisions of Rule 51 and 52, the Board may where it deems necessary institute investigations into a complaint received under Rule 51 (1).

(2) Where an investigation is instituted under subrule 1, the Road Agency shall provide all books and records, required by the Board.

(3) The Director General shall send a report of the investigation to the Road Agency.

(4) The Road Agency shall implement the recommendations of the report as directed.

(5) Any Road Agency that fails to implement recommendations of the investigation report, shall be liable to penalties as prescribed in Rule 39.

- (6) A road agency aggrieved by the decision of the Director General shall appeal to the Cabinet Secretary.

Forms

52. The Board may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Regulations in accordance with Section 26 of the Statutory

Instruments Act, 2013.

**FIRST SCHEDULE
DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads (referred to as Primary National Trunk Roads)
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes C
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Secondary National Trunk Roads Classes H, J.
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.

SECOND SCHEDULE
FORMS
FORM A
(r 6.14)

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by

Designation	Category
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ANNUAL ROAD CONDITION AND INVENTORY SURVEY FORM - SUMMARY



IMPLEMENTATION
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Overall Condition:

FORM C
(r 7.1)

PROGRESS REPORT FORM		
QUARTERLY ROAD WORKS PROGRESS REPORT		
NAME OF ROAD AGENCY		
ROAD AGENCY CODE		
BUDGET (K\$10)		

ROAD AGENCY PROGRESS REPORT SHEET														
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								QTR 1		QTR 2		QTR 3		
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Sign:

Dated the 2021

MR. RASHID KAMIS MOHAMMED,
Director General
KENYA ROADS BOARD

8

THE KENYA ROADS BOARD



KENYA ROADS BOARD
3RD FLOOR, KENYA RE-TOWERS
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Website: www.krb.go.ke



Kenya Roads Board

SUBMISSION OF THE KRB DRAFT RULES TO THE CS, MOTIHUD

17TH MAY, 2022

1.0 INTRODUCTION

The Board has, pursuant to Section 37 of the Kenya Roads Board Act, developed Rules for efficiency and effective execution of its mandate. The Draft Rules have been developed in consultation with the key stakeholders and with input from the general citizenry.

2.0 STAKEHOLDER ENGAGEMENT

The Draft Regulations have been developed following multiple rounds of stakeholder consultations and support across the Road Sub-sector. The following institutions were involved;

- a) Ministry of Transport, Infrastructure, Housing and Urban Development (MoTIHUD);
- b) Kenya National Highways Authority (KeNHA);
- c) Kenya Urban Roads Authority (KURA);
- d) Kenya Rural Roads Authority (KeRRA); and
- e) The forty seven (47) County Governments.

The Board further subjected the draft to stakeholder review in 2019. This was conducted in a series of eight (8No.) regional workshops where all stakeholders were invited to review and comment on the draft.

Consultative meetings were held with stakeholders as follows:

- a) Internal Stakeholder Consultative Forum on Draft KRB Regulations- 30th August 2019, Radisson Blu, Nairobi
- b) Roads Agencies Consultative Meeting on Draft KRB Regulations:
 - 25 – 29 November, 2019 in Naivasha
 - 2 – 6 December, 2019 in Kisumu
 - 9 – 13 December, 2019 in Mombasa; and
 - 16 – 17 December, 2019 in Nakuru

Reports submitted with the Draft Rules

The draft Regulations was also been published in the KRB website for comments by members of the public.

See Newspaper cutting

In March, 2021, a Consultative Workshop for the Development of Regulations to Kenya Roads Board Act 1999 was held. The workshop was jointly organised by the National Assembly- Committee on Delegated Legislation, the Ministry of Transport, Infrastructure, Housing & Urban development and Kenya Roads Board (KRB). The

Workshop was held at the Sarova Whitesands Beach Resort & Spa, 5th march, 2021, Kenya.

In June, 2021, first draft was submitted to the Cabinet Secretary for his concurrence. The Board was then advised that it engages the Road Agencies with a view of obtaining comments on the same.

The Draft Rules were presented before the Director General's Forum on 20th September, 2021 for their comments. The presentation covered the following areas;

2.0 PROVISIONS OF UNDER THE DRAFT RULES

PART I	PRELIMINARY
Rules 1-5	This Part covers the citation, application of rules as well as interpretation of terms used. It also provides for; 1. The object and purpose of these Rules which is <i>inter alia</i> to facilitate oversight of the road network and coordination of road maintenance, rehabilitation, and development. 2. Duties of the Board to Road Agencies on disbursements of funds.
PART II	ANNUAL ROADS PROGRAMMES
Rules 6-8	This Part provides for; 1. Procedure for submission of Annual Roads Programme as well as prioritization of works; 2. The conducting of Road Inventory and Condition Survey as well procedure for reviewing the same.
PART III	FINANCIAL PROVISIONS
Rules 9-34	This Part provides for; 1. Duties of Road Agencies in the maintenance, rehabilitation and develop of roads within their mandate, utilize disbursed funds to implement APRP, supervise and monitor road works within their area of jurisdiction among others. 2. Opening of Bank Accounts, deposits and payments; All Agencies shall cause to be opened bank accounts know as 'Name of Agency-Road Maintenance Levy Fund'. Accounting Officer shall be the mandatory signatory to all payments from the account. The account shall not be overdrawn. 3. Budget Ceilings and disbursement programme: the Board shall before 31st day of July of the financial year proceeding the year to which budgetary ceilings relate, issue budgetary ceilings for the following financial year as well as inform

	agencies an annual expenditure projection for every three (3) in the financial year. 4. Release of funds to agencies that has utilized at least 70% of funds allocated in the previous financial year. Also, the rules provides for partial release of funds to an agency pending approval of ARWP. 5. Road Agencies are required to keep and maintain financial records, including, records of bank accounts, cashbooks, imprests in accordance with the PFM Act. Annual financial reports and statements shall be maintained in accordance with the format prescribed by the PSASB. It also calls for strict control of records. 6. Non-compliance with the Rules attracts sanctions spelt out under Section 30 of the Act.
PART IV	ROADS PROGRAMMES MANAGEMENT & REPORTING
Rules 35-42	This Part provides for the following; 1. For efficiency and effective delivery of road works; the rules provide for compliance with design and construction standards, material testing, supervision; procurement in accordance with the Public Finance Management Act & Public Procurement & Asset Disposal Act, site safety, environmental management. 2. Immediate interventions may be carried out upon approval by the Board. The Board shall establish procedure on how to access and account for funds disbursed for emergency/immediate interventions. 3. Keeping and maintenance of Contract project files and submission of quarterly reports in a format provided for under the 2nd Schedule
PART V	MONITORING AND EVALUATION
Rule 43-46	This Part provides for the following; 1. Technical compliance, financial and performance audits by the Board on all works, goods and services funded by the Fund; 2. Road agencies have a duty to avail documents and information to the Inspector; 3. RAs shall submit responses and action plan to the DG-KRB on all queries in the inspection. Failure to do so shall attract penalties and sanctions set out under Section 30 of the Act.
PART VI	MISCELLANEOUS
Rules 47-50	1. Provides for complaint handling mechanism by the Board. This covers complaints arising from the implementation of

	projects funded by the Fund. The same will be handled in accordance with the provisions of the Commission on Administrative Justice Act, 2012 and the Fair Administrative Action Act, 2015. 2. Appeals to any decision made by the Board lies with the Cabinet Secretary 3. First Schedule; Road Agencies and their designated road network, 4. Second Schedule; FORMS
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Annexed hereto is the presentation by Ms. Lucy Gathika-DLCA

3.0 SECOND REVIEW BY DGs OF ROAD AGENCIES

On the 28th March, 2022, the revised Draft KRB Rules were presented before the DG's of Road Agencies for their concurrence. During the Discussions, the following areas were considered for review;

Annexed hereto is the presentation by R. Mohamed, MBS -DG

4.0 AREAS CONSIDERED FOR REVIEW

The following areas were considered for incorporation to the draft Rules.

2. Reporting templates to be included
3. Review the Rules and Regulations to make them short and concise
4. Review the Rules to be in line with the current Organization structure
5. Incorporate the feedback from stakeholders - Road Agencies and others
6. Reporting template/ format from PSASB, Auditor General comments

4.0 SUBMISSION TO THE CS

It was agreed that the Rules be reviewed to incorporate the comments by the RAs. The Rules were consequently reviewed and submitted to the CS, MOTIHUD through the PS, Infrastructure as evidenced by the letter Reference No. KRB/LCA/35/VOL I/A(99) 13th May, 2022.

It was further agreed that the DG will follow up with the Ministry to have the Rules gazetted.

Catherine Kassim
DDLA

Kenya Roads Board (National Trunk Roads) Rules, 2022

Legal Notice No.

THE KENYA ROADS BOARD ACT
(No. 7 of 1999)
THE KENYA ROADS BOARD (NATIONAL TRUNK ROADS)
RULES, 2022

ARRANGEMENT OF RULES

PART I – PRELIMINARY

1. Citation.
2. Interpretation.
3. Application
4. Object and Purpose of these Rules
5. Duties of the Board to Road Agencies on disbursements

PART II- ANNUAL ROADS PROGRAMMES

6. Submission of Annual Roads Programme and Prioritization of works.
7. Road Inventory and Condition Survey.
8. Revisions of Annual Public Roads Programme.

PART III- FINANCIAL PROVISIONS

9. Duties of Road Agencies
10. Opening of bank accounts.
11. Deposits into the bank account.
12. Payments from the bank account.
13. Signatories to the bank account.
14. Budget ceilings.
15. Borrowings
16. Additional Allocations, Savings and Interest Earning
17. Disbursement Programme.
18. Release of funds and withholding of funds.

19. Partial release of funds
20. Utilization of funds.
21. Administrative expenses.
22. Expenditure limits.
23. Reallocation of funds to overheads.
24. Authority to incur expenditure.
25. Bank balances and ongoing commitments at the end financial year.
26. Funds not to be applied as security for borrowing.
27. Account not to be overdrawn.
28. Payment vouchers, adjustment journals, banking and issuance of receipts.
29. Annual reports and financial statements.
30. Sanctions and penalties.

PART IV- ROADS PROGRAMMES MANAGEMENT AND REPORTING

31. Efficient and Effective delivery of road works.
32. Supervision of works.
33. Site Safety.
34. Environment.
35. Immediate interventions
36. Contracts format
37. Contract project file
38. Reporting

PART V – MONITORING AND EVALUATION

39. Technical, Financial and Performance Audits.
40. Duty to avail documents and information to the Inspector.
41. Penalties for failure to comply.
42. Responses and Implementation of Inspection Report Recommendations.

PART VI- MISCELLANEOUS

Kenya Roads Board (National Trunk Roads) Rules, 2022

- 43. Lodging of complaints.
- 44. Procedure for handling complaints
- 45. Investigations.
- 46. Forms

SCHEDULES

First Schedule:

Designated Road Agencies

Second Schedule

Forms

THE KENYA ROADS BOARD ACT

(No. 7 of 1999)

IN EXERCISE of the powers conferred under section 37 of the Kenya Roads Board Act, 1999 the Board, with the approval of the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Rules —

THE KENYA ROADS BOARD (NATIONAL TRUNK ROADS) RULES, 2022

PART 1— PRELIMINARY

- | | |
|------------------|---|
| Citation | 1. These Rules may be cited as the Kenya Roads Board (National Trunk Roads) Rules, 2022 |
| Interpretation . | 2. In these Rules, unless the context otherwise requires— |
| No. 7 of 1999; | “Act” means the Kenya Roads Board Act |
| No. 18 of 2012; | “Accounting Officer” has the meaning assigned to it by Section 2 of the Public Finance Management Act, 2012 |
| | “Board” means the Kenya Roads Board as established under Section 4 of the Act; |
| | “Board of Directors” means the Board established under section 7 of the Act; |
| | “Cabinet Secretary” means the Cabinet Secretary for the time responsible for matters related to roads; |

"Contract" means the contract for supply of goods, works or services under discussion;

"Fund" means the Kenya Roads Board Fund established by Section 31 of the Act;

"Inspector" means such person duly appointed by the Director General in writing whether public officer or otherwise, whether by name or title of office to be Inspector in accordance with provisions of Section 26 of the Act, and to perform such functions as specified in sections 26, 27 and 28 of the Act.

"Monitoring and evaluation" means examining and verifying by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund.

"Periodic Maintenance" means all the maintenance works carried out in a periodic cycle of five (5) to ten (10) years. Typical activities include resealing or re-carpeting of paved roads, overlays of less than 100mm, fog sprays and shoulder reforming but does not include pavement layer reconstruction or the addition of a pavement layer;

"Road Agency" means any organisation or body specified in the Third Schedule to the Act with responsibilities for defined categories of roads;

"Roadside development" means a physical structure or facility on land within or adjoining a road reserve;

"Road Maintenance Levy Fund" means the Fund established by Section 7 of the Road Maintenance Levy Fund Act, 1993;

"Road Maintenance" means the preservation of roads, structures and related facilities within the road reserve as nearly as possible to their original condition or as subsequently improved.

"Road Network" means the road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described;

"Routine Maintenance" means all maintenance works required continuously or at interval on every road whatever its engineering characteristics or traffic volume.

Application

3. These Rules shall apply to —

- (a) all Road Agencies responsible for national trunk roads that receive financing from the Board and shall cover all goods, works and services funded by the Fund; and
- (b) the Roads Department of Kenya Wildlife Services responsible for roads within national parks and game reserves.

Object and Purpose of these Rules.

4. The object and purpose of these Rules is to —

- (a) facilitate oversight of the road network and coordination of road maintenance, rehabilitation and development.
- (b) provide means of administering the powers vested on the Director General, Kenya Roads Board under the Road Maintenance Levy Fund Act, Kenya Roads Board Act, the Public Finance Management Act and any other related legislation;
- (c) ensure accountability, efficiency, transparency and effective application and utilization of the Fund by;
 - (i) providing procedures for preparation and submission of road works programmes by Road Agencies;
 - (ii) providing such formats and detail of proper books, records, accounts and information - as may be specified by the Board from time to time; and
 - (iii) prescribing the manner and conduct of monitoring and evaluation through technical, financial and performance audits

No. 9 of 1993.
No. 7 of 1999
No. 18 of 2012

Duties of the Board to Road
Agencies on disbursements

5. (1) The Board shall —

- (a) one year before the beginning of the financial year, inform the Road Agencies of the funds likely to be available for road maintenance, rehabilitation and development;
- (b) inform all Road Agencies the priorities in the funds allocation and criteria to be applied in making the allocations;
- (c) at the beginning of each financial year, develop an annual disbursement programme guided by the annual projected cash flows and annual public roads programme and the Fund budget;
- (d) release monies in such manner as may be provided for under the Act or these Rules.

(2) A Road Agency may at any time apply to the Board to consider any works or programme to be funded under the Fund.

(3) Where the Board having considered the application has reason to believe that any works programme does not comply with the requirements of the Act or these Rules, the Board —

- (a) may reject the application; and
- (b) shall communicate its decision to the applicant in writing, citing the grounds for rejection.

PART II- ANNUAL ROADS PROGRAMMES

Submission of Annual
Roads Programme and
Prioritization of Works.

6. (1) Every Road Agency shall, not later than six months before the commencement of every financial year, submit the Annual Road Works Programme in the manner set out in the Second Schedule.

(2) Every Road Agency shall provide adequate budget for multi-year projects spread over the contract period.

(3) Every Road Agency shall, in coming up with Annual Road Works Programme and implementation of works, be guided by the cost

estimation manual published by the Board from time to time.

(4) A Road Agency shall, in developing the Annual Road Works Programme —

- (a) Comply with the budget ceilings issued in accordance with Rule 5;
- (b) Conduct Annual Roads Inventory Condition Survey, to determine the maintainable portion of the road network and submit the data to the Board in the form set out in the Second Schedule.
- (c) Hold stakeholder meetings for prioritization of road works and submit minutes of the meetings to the Board;
- (d) Ensure it is informed by the approved five -year Road Sector Investment Programme;
- (e) Ensure the order of prioritization of road works follows the sequence of routine maintenance, spot improvement, periodic maintenance and rehabilitation; and
- (f) Ensure at least twenty percent of the road works are carried out through use of local labour-based methods.

(5) The Board shall upon receipt of the Annual Roadworks Programme from a Road Agency, review the programme to ensure compliance with requirements provided under these Rules.

(6) Any Annual Roads Works Programme that does not comply with these Rules shall be rejected by the Board and communicated to the Road Agency within seven (7) days of the decision to reject such Annual Road Works Programme.

(7) A Road Agency may, where an Annual Road Works Programme has been rejected pursuant to these Rules, within thirty days of receiving the decision of the Board in writing, and in any event not later than the 31st day of December of the Calendar year, whichever is earlier, review and resubmit the Annual Road Works Programme to the Board.

(8) The Board shall upon receiving all the Annual Roads Work Programmes, consolidate the programmes into the Annual Public Roads Programme by February of

each calendar year.

(9) The Board shall not later than the thirtieth day of April each year submit to the Cabinet Secretaries responsible for Roads and the National Treasury the Annual Public Roads Programme for approval.

(10) The Board shall publish, publicize and disseminate Annual Public Roads Programme.

(11) Every Road Agency shall, in prioritization of road works, adhere to the requirements as may be directed by the Board from time to time.

Road Inventory and
Condition Survey.

7. (1) Every Road Agency shall submit to the Board an updated Road Inventory and Condition Survey for the road network under its jurisdiction not later than 30th day of September of each year which shall be in a form set out in the Second Schedule.

(2) A Road Inventory and Condition Survey submitted under this Rule shall form the basis for a roads maintenance needs assessment for prioritization under Rule 7.

Revision of Annual Public
Roads Programme.

8. (1) A Road Agency shall, having submitted their programme, not vary the Annual Road Works Programme without written approval of the Board.

(2) Where a Road Agency requires to revise its Annual Road Works Programme, the agency shall do so in accordance with Rule 6 of these Rules and in any event not later than 31st day of January each year.

(3) Any person, being an officer of an agency, who without approval of the Board attempts to vary or varies any Implementation of works which is not included in the Annual Road Works Programme, commits an offence and shall be liable on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No. 18 of 2012
No. 33 of 2015.

PART III – FINANCIAL PROVISIONS

Duties of Road Agencies.

9. Notwithstanding any obligation imposed on a Road Agency under these Rules, a Road Agency shall, for the purposes of utilising funds received from the Fund –
- (a) maintain, rehabilitate and develop the categories of roads within its mandate;
 - (b) utilise disbursed funds to implement the approved Annual Public Road Programme;
 - (c) put in place and implement quality control and quality assurance systems;
 - (d) supervise and monitor road works within their area of jurisdiction;
 - (e) maintain and submit such records and reports as may be directed by the Board in such format and detail as may be specified by the Board from time to time

Opening of Bank Accounts.

10. (1) Each Road Agency shall cause to be opened a bank account for the funds disbursed from the Fund to be known as 'Name of Agency -Road Maintenance Levy Fund'.
- (2) The Board shall suspend funding to a Road Agency that fails to open a Bank account as stipulated in Rules 10 (1) and 11 (1), until the said Road Agency complies.
- (3) All bank accounts shall be opened, operated and closed in accordance with Section 28(1) of the Public Finance Management Act, 2012 and its applicable Regulations.

Deposits into the Bank Account.

11. (1) All receipts from the Fund shall be deposited into the Road Agency's Road Maintenance Levy Fund Bank Account.
- (2) A Road Agency may prudently invest money in a fixed deposit provided that no delays in implementation of road works will be occasioned as a result of the investment. Such investments shall be made in compliance with government regulations and circulars.

Payments from the Bank Account.	12. (1) All Road Agencies shall make payments related to the Annual Public Roads Programme approved in accordance with Rule 6 from their respective Road Maintenance Levy Fund bank account.
No. 18 of 2012	(2) Payments may be done either by instructions or electronic fund transfer in accordance with the Public Finance Management Act, 2012 and its Regulations.
Signatories to the Bank Account.	13. (1) The accounting officer of a Road Agency for matters related to roads shall be a mandatory signatory to all electronic payments and fund transfers from the Road Maintenance Levy Fund Bank account.
No. 18 of 2012	(2) The accounting officer in charge of the Road Agency may designate other signatories and any changes in signatories shall be effected in accordance with the Public Finance Management Act 2012 and its Regulations.
Budget Ceilings.	14. The Board shall on or before the 31 st day of July of the financial year preceding the year to which the budgetary ceilings relate, issue to the Road Agencies budgetary ceilings for the following financial year as prescribed under Section 6 (2) (d) of the Act
Borrowings	15. (1) No borrowing shall be made from the Road Agency Road Maintenance Levy Fund allocations. (2) Where a Road Agency has borrowed money from the funds allocated to it in any financial year to support other government projects, the Road Agency shall treat such borrowing as a receivable in its financial statements. (3) The Road Agency shall seek approval from Kenya Roads Board for such borrowings. (4) Such borrowings shall be refundable to the Road Agency's Road Maintenance Levy Fund in the following financial year.
Additional Allocations, Savings and Interest Earning	16. (1) The Board may allocate additional funds to Road Agencies upon approval by the Parent Ministry and the National Treasury. (2) Where a Road Agency realises savings and or interest earnings from its annual work program and operations budget, the funds shall be declared and

utilized for the purposes for which the Fund was intended.

- (3) All Interest Earnings received by a Road Agency shall be apportioned to road works and its operations on the basis as was apportioned in that financial year's Annual Work Programme.
- (4) Every Road Agency shall submit a work plan for the any additional allocation by the Board, savings and interest earnings for approval by the Board before spending.
- (5) Any member or officer of a Road Agency that fails to declare or seek approval for the expenditure of savings and earnings in accordance with the Act and these Rules commits an offence and shall be liable, on conviction, to the penalties prescribed under Part VII of the Public Finance Management Act, 2012 and Part XVI of the Public Procurement and Asset Disposal Act, 2015.

No. 18 of 2012
No. 33 of 2015

Disbursement programme.

- 17. (1) Every Road Agency shall within three months before the beginning of the financial year submit to the Board an annual expenditure projection for every three months in the financial year.
- (2) The Board shall indicate to Road Agencies at the beginning of each financial year, cash flows projections with respect to Rule 17 (1).
- (3) The Board shall monitor receipt of funds from Road Maintenance Levy Fund and allocate each tranche to the respective Road Agency in accordance with Rule 5.

Release of Funds and
Withholding of Funds.

- 18. (1) The Board shall release funds to Road Agencies who have complied with the provisions of these Rules provided that the Road Agency has procured at least seventy percent of the works in the APRP for previous financial year.
- (2) The Board shall withhold the release of funds to Road Agencies who have not complied with these Rules until such a time compliance is achieved.
- (3) The Board may take remedial, supplementary or alternative measures to ensure implementation of the Annual Public Roads Programme by a Road Agency that has persistently failed to discharge its functions

with regard to the Annual Public Roads Programme.

- (4) Any Road Agency which is aggrieved by any decision under this Rule may appeal to the Cabinet Secretary for a review of the decision.

Partial Release of Funds.

19. Where the Annual Road Works Programme for a Road Agency has not been approved at the beginning of a financial year, the Board may release on account, of not more than thirty (30) percent of the funds allocated to the Road Agency for the year to which it relates.

Utilization of funds

20. Any funds received by a Road Agency from the Board shall only be used for road development, rehabilitation and maintenance as approved in the Annual Public Roads Programme.

Administrative Expenses.

21. (1) A Road Agency shall not exceed the overheads and administrative expenses thresholds specified in section 6 (2) (1) of the Act.
- (2) A person who utilizes any Administrative expenses in any manner in contravention to the provisions under Rule 22 (1) commits an offence and shall be liable, on conviction to the penalties specified under Part VII of the Public Finance Management Act 2012 or Part XVI of the Public Procurement and Asset Disposal Act 2015.

No. 18 of 2012
No. 33. of 2015

Expenditure Limits.

22. (1) Any expenditure incurred by a Road Agency budgeted line items shall be limited to the amount approved in the budget.
- (2) Where there are compelling reasons to exceed the budgeted amount in a specific budget line, the Board may upon request or application by a Road Agency, approve such excess after being satisfied that there are compelling reasons for the same.
- (3) Any excess approved under Rule 22 (2) shall be covered by a corresponding saving within the same expenditure category such that the overall ceiling for that category is not exceeded.

Reallocation of funds to overheads

23. A Road Agency shall not use the amount allocated for road works in a particular project towards payment of overheads whether relating to that or any other project.

Authority to incur expenditures.

24. (1) No person other than the accounting officer to whom the "Authority to Incur Expenditure" has been issued, in whatever form, shall commit or incur expenditure against that Road Agency.

- (2) A person authorised to incur expenditure may with the approval of the Authority delegate the responsibility to an officer of the Authority to commit or incur expenses.

Bank balances and ongoing commitments at the end financial year.

25. At the end of each financial year and not later than sixty calendar days from the end of the financial year, every Road Agency shall submit to the Board its assets and liabilities and income and expenditure in the format prescribed by the Public Sector Accounting Standards Board.

Funds not to be applied as security for borrowing.

26. A Road Agency shall not apply, or permit to be applied, the funds in the Agency's Road Maintenance Levy Fund Account as security or otherwise for borrowing of any funds and engaging in any activity not associated with the approved works programme.

Account not to be overdrawn.

27. The Road Agencies Road Maintenance Levy Fund Bank Account shall not be overdrawn.

Payment vouchers, adjustment journals, banking and issuance of receipts.

28. All receipts of monies from the Board shall be acknowledged promptly on an authorized pre-numbered receipt, which shall be signed, stamped and dated.

Annual Reports and Financial Statements.

29. (1) The accounting officer of a Road Agency shall prepare annual reports and financial statements with respect to the Road Maintenance Levy Fund Account in compliance with the relevant reporting format as shall be prescribed by the Public Sector Accounting Standards Board established pursuant to Sections 192 and 193 of Public Finance Management Act 2012 and its Regulations.

- (2) A financial statement prepared by Road Agencies under Rule 29 (1) shall report on transactions in respect of the Fund with specific reference to funds received from the Board.

Sanctions and Penalties

30. (1) The Board may where it has reason to believe that an agency has failed to adhere to any provisions of the Act or these Rules, declare the agency to be non-compliant.

- (2) Where a Road Agency is non-compliant, the Board may impose such penalties and sanctions as prescribed under section 30 of the KRB ACT

PART IV – ROADS PROGRAMMES MANAGEMENT AND REPORTING

Efficient and Effective
delivery of road works.

31. (1) Every Road Agency shall ensure compliance with design and construction standards for road works issued by the Cabinet Secretary from time to time.

- (2) Each Road Agency shall establish and implement quality management systems for delivery of road works including materials testing and supervision.

- (3) Each Road Agency shall ensure that any planned work is executed within time, cost, set standards and specifications.

- (4) Goods, works, and services shall be procured in a manner that promotes economy, efficiency, effectiveness and equity and in accordance with the Public Procurement and Asset Disposal Act, 2015 and its Regulations.

No 33 of 2015

Supervision of Works.

32. (1) Road Agencies shall ensure that road works are supervised in accordance with design and construction standards for road works issued by the Cabinet Secretary from time to time and the relevant contractual documents.

- (2) Road Agencies shall maintain project supervision records which shall be made available to the Board as and when required.

Site Safety.

33. (1) Road Agencies shall plan for road safety activities and establish and implement safety management plans for road works.

(2) Road Agencies shall maintain road works safety records and the same shall be made available to the Board upon request.

Environment.

34. Each Road Agency shall develop and implement Environmental and Social Management Plan for maintenance projects before commencement of works.

Immediate Interventions

35. (1) Each Road Agency shall set aside in their workplan reasonable amounts to immediate intervention works

(2) Where a Road Agency considers that a section of the road under its jurisdiction requires immediate intervention works, the Road Agency may request approval from the Board to undertake such works.

Contracts Format.

36. All contracts for goods, works and services funded by the Fund shall be in accordance with the Public Finance Management ACT 2012 and the Public Procurement and Assets Disposal ACT 2015

No. 18 of 2012
No. 33 of 2015

Contract project file

37. (1) Each Road Agency shall keep and maintain a contract file.

(2) The contract file under Rule 37 (1) shall contain the following –

- (a) copies of procurement plan;
- (b) site photographs;
- (c) site instructions;
- (d) minutes of meetings;
- (e) a copy of the contract agreement;
- (f) payment certificates;
- (g) Monthly progress reports and quality control records
- (h) any other relevant correspondences for inspection and audit.

Reporting

38. (1) Road Agencies shall within 30 days from the end of every quarter submit reports of all works and projects implemented in the preceding quarter in a format provide for under the Second Schedule.
- (2) The Board shall not release any funds to a Road Agency that fails to submit reports stipulated under this Rule.

PART V – MONITORING AND EVALUATION

Technical Compliance,
Financial and Performance
Audits

39. (1) The Board shall conduct technical, financial and performance audits of all works, goods and services funded by the Fund in accordance with section 26 of KRB Act.
- (2) The Board may conduct a special or ad hoc technical, financial and performance audits from time to time.
- (3) There shall be entry and exit meetings between the Inspector and Road Agencies and the minutes of these meetings shall be signed off by both parties.
- (4) An Inspector may call off or postpone an audit in the following circumstances;
- (a) Failure to provide a conducive work area;
 - (b) Failure to avail documents and information;
 - (c) Failure to provide such officers as may be required for field visits;
 - (d) Physical threats;
 - (e) Insecurity;
 - (f) Absent auditee.
- (5) In the event of suspension or calling off an audit under Rule 39 (4) the Inspector shall within seven (7) days prepare and submit report to the Director General.
40. (1) Each Road Agency shall produce and make available all records and information to the Inspector as provided for under section 26 of the Act

Duty to avail documents and
information to the Inspector.

Provided that –

- (i) the books, accounts, records and other documents shall not, in the course of the audit, be removed from the premises at which they are produced;
 - (ii) the Inspector may make copies of any books, accounts, records and other documents required for purposes of its report;
- (2) Where a special audit is ordered, the Road Agency shall avail information as provided for under Section 26 of the KRB Act.
- (3) The Inspector shall within ninety (90) days of commencing an audit issue an audit report.
- (4) Any clarifications sought shall be availed to the Inspector within fourteen (14) days.

Penalties for Failure to
Comply

41. (1) Where a Road Agency fails to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information, the Director General shall direct the Road Agency to comply within fourteen (14) days.
- (2) A Road Agency that fails to comply with the directions issued under Rule 41 (1) shall be held non-compliant and liable for such penalties and sanctions as have been specified under section 30 of the Act.
- (3) A person being an authorised officer of a Road Agency who fails to comply with the Inspector's request or hinders an Inspector from carrying out audits or gives false information commits an offence and shall be liable on conviction to the penalties specified under the Public Finance Management Act, 2012 and such fines as prescribed under section 27 (3) and (4) of the Act.

No. 18 of 2012
No. 7 of 1999

Responses and
Implementation of
Inspection report
Recommendations

42. (1) Each Road Agency shall submit to the Director General written responses and an action plan stipulating the time frame for addressing the recommendations and queries in the inspection

reports within thirty (30) days from the date of receipt of the reports.

(2) Upon expiry of the thirty (30) days, the Director General shall conclude the inspection report and submit it to the Board.

(3) Failure to implement the action plan stipulated under Rule 42 (1) shall amount to a non-compliance and shall attract such penalties and sanctions as prescribed under Section 30 of the Act.

PART VI – MISCELLANEOUS

Lodging of Complaints.

43. Any member of the public may lodge a complaint or allegation of misappropriation of funds from the Fund or on the quality of road works or on irregular procurement with the Board against any Road Agency.

Procedure for handling complaints.

44. The Board shall within fourteen days of receipt of a complaint, request the Road Agency to respond within twenty one (21) days from the date of such notice with a report of action taken to address complaints

Investigations

45. (1) Notwithstanding the provisions of Rule 43, the Board may, where it deems necessary, institute investigations into a complaint received.

(2) A Road Agency aggrieved by the decision of the Director General shall appeal to the Cabinet Secretary.

(3) All complaints and investigations conducted by the Board shall be in accordance with the Commission on Administrative Justice Act, 2011 and Fair Administrative Action Act, 2015.

No. 23 of 2011
No. 4 of 2015

Forms

46. The Board may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Rules in accordance with Section 26 of the Statutory Instruments Act, 2013.

No. 23 of 2013.

**FIRST SCHEDULE
DESIGNATED ROAD AGENCIES**

S/No.	AGENCY	Designation
1.	Kenya National Highways Authority (KeNHA)	Management, development, rehabilitation and maintenance of Classes S, A and B roads.
2.	Kenya Rural Roads Authority (KeRRA)	Management, development, rehabilitation and maintenance of Class C roads.
3.	Kenya Urban Roads Authority (KURA)	Management, development, rehabilitation and maintenance of Classes H, J and K roads (equivalent Urban Classes A, B and C roads)
4.	Kenya Wildlife Service (KWS)	Management, development, rehabilitation and maintenance of roads in National parks and game reserves.

SECOND SCHEDULE
FORMS
FORM A – ANNUAL ROAD WORKS PROGRAMME FORM
(Rule 6 (1))

[illegible]

Signed
by:

Designation

Date: _____

Significance

(Rule 7 (1))

ANNUAL ROAD INVENTORY AND CONDITION SURVEY FORM
SUMMARY

IMPLEMENTING
AGENCY:

DATE OF SURVEY:

[illegible][illegible]

Overall Condition:

FORM C – ANNUAL PUBLIC ROADS PROGRAMME IMPLEMENTATION REPORT FORM
(Rule 43 (1))

ANNUAL PUBLIC ROADS PROGRAMME IMPLEMENTATION REPORT FY.....																			
Sl No	Contra ct No.	Road ID.	Road Name	Location	Road surface type	Road Condition	Type of Works	Road Length (km)	APRP Budget Allocation FY 20/21	Source of funds	Date of Procure ment Notice	Award Date	Commence ment date	Contract period	Completion date	Name of Contract tor	Contract Sum (Kshs)	Savings (APRP Budget less Contract Sum)	Variation Order (Yes/No)
1																			
2																			

Note:

Type of Works: Routine Maintenance/ Periodic Maintenance/New Construction/Structures/Admin
Source of funds: Agency allocation/ 10% CS allocation/ Savings/Bond proceeds

Kenya Roads Board (National Trunk Roads) Rules, 2022

Dated thisday of 2022

Cabinet Secretary
Ministry of Transport, Infrastructure, Housing, Urban Development
and Public Works