

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

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INFRASTRUCTURE BILL, 2016
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**THE ELGEYO/MARAKWET COUNTY ROADS AND
INFRASTRUCTURE BILL, 2016**

A Bill for

AN ACT of the County Assembly of Elgeyo/Marakwet to establish the County Roads Committee and to make provisions for the construction, maintenance and county roads; and for other connected purposes

ENACTED by the County Assembly of Elgeyo/Marakwet, as follows —

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Elgeyo/Marakwet County Roads and Infrastructure Act, 2016 and shall come into operation upon publication.

Interpretation

2. In this Act, unless the context otherwise requires:-

“authorized officer”, in relation to this Act or any provision of this Act, means—

an employee in the Committee who is authorized by the Committee to exercise the functions of an authorized officer under this Act or that provision;

“Bridge” includes any gate, pier, fender, dolphin or platform or any other thing incidental to the use or protection of the bridge

“Committee” means the County Roads and Infrastructure Services Committee established under section 4 of this Act.

“Controlled access road” means a road that is declared to be a controlled access road by an order of the Member of the Executive Committee

“county road” means—

(a) any road that is opened or dedicated as a county road, whether under this or any other Act or law, and

(b) any road that is declared to be a county road for the purposes of this Act.

“footway” means that part of a road as is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).

“footway restaurant” means a restaurant the subject of an approval in force under the Act—

“function” includes power, duty and Committee, “confer a function” includes impose a duty and “exercise a function” includes perform a duty.

“interest in land” means an estate, interest, right or power, at law or in equity, in or over or in connection with the land,

“land” includes any estate or interest in land,

“land affected by a road widening order” means land that lies between:

- (a) the boundary of a county road as it is before the order is made, and
- (b) the boundary of the road as it is after the order is made.

“Member of the Executive Committee” means the Member of the Executive Committee responsible for Roads and Public Works;

“owner of land” means any person who has an interest in the land.

“person in charge of a vehicle” includes the driver of the vehicle.

“private road” means any road that is not a county road.

“public gate” means a gate the subject of a public gate permit.

“regulate traffic” means restrict or prohibit the passage along a road of persons, vehicles or animals.

“restaurant” means premises in which food is regularly supplied on sale to the public for consumption on the premises.

“road” includes:

- (a) the airspace above the surface of the road, and
- (b) the soil beneath the surface of the road, and
- (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of the road.

“road event” means a speed contest or such other activity as may be prescribed by the regulations for the purposes of this definition.

“road work” includes any kind of work, building or structure (such as a roadway, footway, bridge, tunnel, road-ferry, rest area, transit way station or service centre or rail infrastructure) that is constructed, installed or relocated on or in the vicinity of a road for the purpose of facilitating the use of the road as a road, the regulation of traffic on the road or the carriage of utility services across the road, but does not include a traffic control facility, and “carry out road work” includes carry out any activity in connection with the construction, erection, installation, maintenance, repair, removal or replacement of a road work.

“traffic” includes vehicular, pedestrian and all other kinds of traffic.

“traffic hazard” means a structure or thing that is likely:

- (a) to obscure or limit the view of the driver of a motor vehicle on a county road, or
- (b) to be mistaken for a traffic control device, or
- (c) to cause inconvenience or danger in the use of a county road, or
- (d) to be otherwise hazardous to traffic.

“unclassified road” means a county road that is not a classified road.

“utility service” includes any water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like service.

Objects and purpose of Act

3. The objects of this Act are:

- (a) to set out the rights of members of the public to pass along county roads,
- (b) to set out the rights of persons who own land adjoining a county road to have access to the county road;
- (c) to establish the procedures for the opening and closing of a county road;
- (d) to provide for the classification of roads;
- (e) to confer certain functions (in particular, the function of carrying out county roads work) on the County Roads Development Committee; and
- (f) to regulate the carrying out of various activities on county roads.

PART II—INSTITUTIONAL FRAMEWORK

Establishment of the County Roads and Infrastructural Services Committee

4. There is established the County Roads and Infrastructural Services Committee which shall be a body corporate with capacity to sue and to be sued, to own and dispose property.

Board of the Committee

5. There is established the Board of the Committee which shall consist of—

- (a) a Chairperson appointed by the Member of the Executive Committee and approved of by the County Assembly;

- (b) the Chief Officer in the County Department for the time being responsible for roads and Public Works or his representative who shall also be the Secretary of the Board;
- (c) the Chief officer in the County Department for the time being responsible for finance or his representative; and
- (d) Six other members appointed by the Member of the Executive Committee and approved by the County Assembly.

Functions of the Committee

6. (1) Subject to this Act, the functions of the Committee shall be to—

- (a) construct, maintain and rehabilitate county roads;
- (b) organize, facilitate or undertake such activities or projects as may be necessary and or incidental to the foregoing;
- (c) perform such additional functions as the Member of the Executive Committee may from time to time assign.

(2) In the execution of its functions under this Act the Committee shall ensure—

- (a) development, rehabilitation and maintenance of the road network consistent with the economy and set standards;
- (b) that its operations are conducted efficiently, economically and with due regard to safety; and that financial administration is conducted in accordance with the provisions of this Act and regulations made thereunder.

Powers of the Committee

7. (1) In the discharge of its functions, the Committee shall have all powers necessary or incidental to achievement of the overriding objective of this Act.

- (a) Without limiting the generality of subsection (1), the Committee shall have powers to—
 - (i) ensure or enforce compliance with policies, rules, regulations or orders prescribed under this Act;
 - (ii) employ on such terms and conditions as it considers fit such persons as may from time to time be necessary for discharging its functions and, with the approval of the Member of the Executive Committee, to pay such remuneration, allowances and other benefits to such employees as may be reasonable in the circumstances; and

- (iii) establish such committees, departments or agencies for the better carrying out of its functions under this Act as it may deem fit.

- (b) The Committee shall establish offices in all sub-counties in Elgeyo/Marakwet County.

Appointment to the Board

8. (1) The Board shall be responsible for the management of the affairs of the Committee.

(2) A person other than an *ex-officio* member shall be appointed as a Member or Secretary of the Board, if the person—

- (a) is of irreproachable integrity and moral standing;
- (b) has not been recommended for prosecution by any state organ for any crime punishable by imprisonment for more than 6 months.
- (c) holds a degree from a recognized university in civil engineering, law, environmental science, agriculture, agricultural economics, economics, law, finance, management, administration or other relevant field; and
- (d) has at least seven years working experience with demonstrable achievements in the relevant field.

Term of office

9. (1) Members of the Board other than *ex officio* members shall hold office for a term of five years and shall be eligible for re-appointment for only one further term of five years.

(2). Members of the Board shall be appointed in a manner that ensures the expiry dates of their respective terms of office fall at different times.

Remuneration of Board members

10. Members of the Board shall be paid such remuneration, fees, or allowances as the County Public Service Board may from time to time prescribe.

Termination of appointment

11. (1) A member of the Board shall vacate office and the office shall become vacant—

- (a) Three days after the date on which the member gives notice to the Member of the Executive Committee of the member's intention to resign;

- (b) if the member takes up/becomes a member of Parliament, County Assembly or statutory commission established by any other written law;
- (c) if the member ceases to be a citizen of Kenya or ordinarily resident in Kenya;
- (d) on the date the member begins to serve a sentence of imprisonment imposed in Kenya or in any other country;
- (e) if the member has been adjudged or otherwise declared insolvent or bankrupt and has not been or discharged;
- (f) upon being charged or once convicted of an offence relating to corruption, economic crime, fraud or dishonesty; or
- (g) if, being an ex-officio member, the member ceases to hold their primary office

Conduct of business and affairs of the Board institution

12. Subject to this Act, the provisions contained in the Schedule shall apply to the affairs of the Board.

Chairperson of the Committee

13. The Chairperson of the Committee—

- (1) Shall be an *ex-officio* member of the Board with no right to vote at any meeting of the Board; and
- (2) Shall be the secretary to the Board.
- (a) Subject to this Act, the Board shall appoint the Chairperson through competitive recruitment, on such terms and conditions as the Board may fix.
- (b) The Chairperson shall, subject to the direction of the Board, supervise and manage the Committee's staff, activities, funds and property, and shall be responsible for the day to day management of the programmes and activities of the Committee.

Protection from personal liability

14. A member of the Board or an employee of the Committee or any person acting on behalf of the Committee in discharging duties or functions provided by the Act shall not be liable to any civil action or other proceedings for damages on account of or in respect of any act or omission committed or omitted in good faith.

Funds of the Committee

15. The funds of the Committee shall consist of—

- (1) monies appropriated by the County Executive / Assembly for that purpose;
- (2) monies that the Committee may lawfully obtain by way of donations, gifts or grants.

Statement of accounts

16. (1) The Committee shall keep proper in respect of all its activities, funds and property, including such particular accounts and records as the Member of the Executive Committee may direct.

(2) As soon as possible after the end of each financial year, the Committee shall prepare and submit to the Member of the Executive Committee a statement of accounts in respect of that financial year or in respect of such other period as the Member of the Executive Committee may direct

Financial year

17. The financial year of the Committee shall be the period of twelve months ending on the thirtieth June in each year or such other period as may be prescribed.

Annual estimates

18. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Committee for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Committee for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Committee;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Committee;
- (c) the proper maintenance of the buildings and grounds of the Committee;
- (d) the maintenance, repair and replacement of the equipment and other property of the Committee ; and
- (e) The creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or

replacement of buildings or equipment, or in respect of such other matter as the Board may consider appropriate.

(3) The annual estimates of the Committee shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Member of the Executive Committee for approval.

(4) The Board shall not increase the annual estimates without the consent of the Member of the Executive Committee.

Books of accounts and audit

19. (1) The Board shall cause to be kept all proper books, and records of accounts of the income, expenditure and assets of the Committee.

(a) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Committee together with—

(i) statement of the income and expenditure of the Committee during that year; and

(ii) A balance sheet of the Committee on the last day of that year.

(b) The accounts of the Committee shall be audited and reported by the Auditor-General.

PART III—PROVISIONS FOR CONSTRUCTION AND MAINTENANCE OF ROADS

Right of passage along county road by members of the public

20. (1) A member of the public is entitled, as of right, to pass along a county road (whether on foot, in a vehicle or otherwise) and to drive stock or other animals along the county road.

(2) The right conferred by this section extends to the right of passage of members of the public in a light rail or other railway vehicle.

(3) The right conferred by this section does not derogate from any right of passage that is conferred by any other written law, but those rights are subject to such restrictions as are imposed by or under this or any other Act or law.

Right of access to county road by owners of adjoining land

21. (1) The owner of land adjoining a county road is entitled, as of right, to access (whether on foot, in a vehicle or otherwise) across the boundary between the land and the county road.

(2) The right conferred by this section does not derogate from any right of access that is conferred by any other written law, but those rights

are subject to such restrictions as are imposed by or under this or any other Act or law.

Opening of county roads

22. A county road may not be opened otherwise than in accordance with the provisions of this Act.

County road created by registration of plan

23. (1) A person may open a county road by causing a plan of subdivision or other plan that bears a statement of intention to dedicate specified land as a county road (including a temporary county road) to be registered in by the National Land Commission.

(2) On registration of the plan, the land is dedicated as a county road.

Land held by the county government

24. (1) The County government may, by notice published in the County Gazette, dedicate any land held by it as a county road.

(2) On the publication of the notice, the land is dedicated as a county road.

Surveys may be carried out to identify boundaries of county road

25. (1) The Committee may cause surveys to be carried out to identify the boundaries of a county road if those boundaries have not previously been properly identified or if the survey marks used to identify those boundaries cannot be located or ascertained.

(2) If the surveys are conducted on the application of a person other than the Committee, the applicant is liable to pay to the Committee the costs incurred in carrying out the surveys.

Public notice to be given of proposed boundaries

26. (1) On completing the surveys, the Committee shall cause notice of the proposed boundaries:

(a) to be published in county newspaper of county wide circulation, and

(b) to be served on the owner of each parcel of land affected by the proposed boundaries.

(2) The notice—

(a) shall identify the survey plan that indicates the proposed boundaries of the road concerned;

(b) shall indicate the place at which, and the times during which, the survey plan is available for inspection by members of the public;

(c) shall state that any person is entitled to make submissions to the Committee with respect to the proposed boundaries indicated by the survey plan;

(d) shall indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

(3) The Committee shall ensure that copies of the survey plan are available for inspection by members of the public at the place, and during the times, specified in the notice.

Public submissions

27. Any person may make submissions to the Committee with respect to the proposed boundaries indicated by the survey plan.

Decision on proposed boundaries

28. (1) After considering any submissions that have been duly made with respect to the proposed boundaries, the Committee may approve the survey plan, either with or without alteration.

(2) The Committee shall lodge the survey plan with the National Land Commission for registration and, on registration; the boundaries identified by the survey plan become the boundaries of the county road.

(3) As soon as practicable after the survey plan is registered, the Committee:

(a) shall cause a notice of the effect of the survey plan with respect to the boundaries of any land to be served on the owner of the land, and

(b) shall lodge a copy of the survey plan with the County Director of Survey

(4) No compensation is payable to any person with respect to any loss or damage arising from the operation of this section.

Preparation of road widening plan

29. (1) The Committee shall submit to the Member of the Executive Committee a proposed plan for the widening of a county road.

(2) Before doing so, the Committee shall cause notice of the proposed plan:

(a) to be published in a newspaper of national circulation;

(b) to be served on the owner of any land to which the proposed plan applies.

(3) The notice—

(a) shall identify the plan, and

(b) shall indicate the place at which, and the times during which, the plan is available for inspection by members of the public, and

(c) shall state that any person is entitled to make submissions to the Member of the Executive Committee or to the Committee with respect to the proposed plan, and

(d) shall indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

(4) The Committee shall ensure that copies of the proposed plan are available for inspection by members of the public at the place, and during the times, specified in the notice.

Public submissions

30. (1) Any person may make submissions to the Committee with respect to the proposed plan.

(2) The Committee shall ensure that any submissions received by it with respect to the proposed plan are forwarded to the Member of the Executive Committee.

Decision on proposal

31. After considering any submissions that have been duly made, the Member of the Executive Committee may approve the proposed plan, either with or without alteration, or may refuse approval.

Making of road widening order

32. (1) On receiving the Member of the Executive Committee's approval to a proposed plan, the Committee may give effect to the plan by means of an order published in the County Gazette (in this Act referred to as a "road widening order").

(2) The order shall describe the land to which it applies by reference to a survey plan.

(3) The order takes effect on the date on which it is published in the Gazette.

(4) The Committee—

(a) shall cause a notice of the effect of the order on any land to be served on the owner of the land;

(b) shall lodge the survey plan referred to in the order with the National Land Commission for registration; and

- (c) shall lodge a copy of the survey plan with the County Director of Survey.

No constructions on land affected by road widening order

33. (1) A person shall not construct, replace or repair a building or work on land to which a road widening order applies.

(2) This section does not prevent a person from carrying out minor repairs or improvements to a building so long as—

- (a) they are designed merely to enable the reasonable preservation of the building for temporary use, and
- (b) they are carried out with the consent of the appropriate Committee.

(3) If, in contravention of this section, a person constructs, replaces or repairs a building or work on land affected by a road widening order, the Committee may direct the owner of the land to carry out such work as is necessary to restore the land to the state it was in before the contravention occurred.

Variation and revocation of road widening orders

34. (1) The Committee may, by order published in the Gazette—

- (a) vary a road widening order, but only by excluding land from the operation of the order, or
- (b) revoke a road widening order.

Fixing the levels of county road

35. (1) A Committee may prepare a proposal—

- (a) to fix the levels of a county road, or
- (b) to vary the existing levels of a county road.

(2) Before making an order to give effect to the plan, the Committee shall cause notice of the proposal—

- (a) to be published in newspaper of national circulation, and
- (b) to be conspicuously displayed at regular intervals along the road concerned.

(3) The notice—

- (a) shall indicate the place at which, and the times during which, a plan of the proposed levels is available for inspection by members of the public;

- (b) shall state that adjoining landowners are entitled to make submissions to the Committee with respect to the proposal;
- (c) shall indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.
- (4) The Committee shall ensure that copies of the plan of proposed levels are available for inspection by members of the public at the place, and during the times, specified in the notice.

Public submissions

36. Any owner of land adjoining such part of a county road as is affected by the proposed order may make submissions to the Committee with respect to the proposed levels of the road.

Decision on proposal

37. (1) After considering any submissions that have been duly made concerning the proposal, the Committee may decide to proceed with the proposal, either with or without alteration, or to abandon the proposal.

(2) On deciding to proceed with the proposal, the Committee may give effect to it by means of an order published in the County Gazette.

(3) The order shall fix or vary the levels of a county road by reference to a plan of levels held by the Committee.

(4) The order takes effect on the date on which it is published in the County Gazette.

(5) The Committee shall cause a notice of the effect of the order to be published in a newspaper of national circulation.

Rights of adjoining landowners in relation to the fixing of levels

38. (1) If the fixing of the levels of a county road results in loss of access across the boundary between the road and land adjoining the road, the Committee shall restore access between the road and that land.

(2) If the varying of levels so fixed results in loss of access across the boundary between a county road and land adjoining the road, the Committee shall pay compensation to the owner of the land for any loss or damage arising from the loss of access.

Traffic control facilities

39. The County department responsible for transport and safety may carry out traffic control work on all county roads, on all parts of transit ways that are not county roads and on all roads or road related areas.

Tree felling

40. The Committee may, despite any other Act or law to the contrary, remove or lop any tree or other vegetation that is on or overhanging a county road if, in its opinion, it is necessary to do so for the purpose of carrying out road work or removing a traffic hazard.

Roads authorities not liable for damage by tar

41. (1) The Committee is not liable for any damage caused by moist or liquid tar that it applies to any portion of a road in the course of carrying out road work if—

- (a) that portion of the road is closed to traffic while the tar is applied and for a reasonable time after it is applied, and
- (b) the tarred portion of the road is covered with sand or road metal before it is re-opened to traffic.

(2) In this section, “tar” includes bitumen and bituminous compounds.

Committee may alter landform of land adjoining county road without acquiring land

42. (1) The Committee may alter the landform of land adjoining a county road so as to ensure the stability of the road.

(2) The Committee shall pay compensation to the owner of the land for any loss or damage arising from the alteration.

Committee may direct landowner to fill in excavation

43. (1) The Committee may direct the owner of any land adjoining a county road to fill in any excavation that, in the opinion of the Committee, threatens the stability of the county road.

(2) The direction may specify the period within which the direction shall be complied with.

Committee may carry out drainage work across land adjoining county road etc

44. (1) The Committee may, for the purpose of draining or protecting a county road, carry out drainage work in or on any land in the vicinity of the road.

(2) The powers conferred by this section may not be exercised in or on land on which rail infrastructure facilities owned by Kenya Railways Corporation are situated.

(3) The Committee shall pay compensation to the owner of the land for any loss or damage arising from the exercise of any power under this section.

Removal of windblown sand etc

45. (1) The Committee may direct the occupier of land from which sand, soil or other such matter has been washed or blown onto a county road to take such action as is necessary to remove the obstruction and prevent its recurrence.

(2) The direction may specify the period within which the direction shall be complied with.

Fences and floodgates

46. (1) For the purpose of preventing obstruction to the free flow of surface drainage from a county road, or to the free flow of a watercourse that crosses a county road, the Committee may direct the occupier of any land in the vicinity of the county road—

- (a) to alter a fence (including a rabbit proof fence) on the land,
- (b) to provide floodgates in any such fence, or
- (c) to repair any such fence or floodgates.

(2) The direction may specify—

- (a) the manner in which or the standard to which, and
- (b) the period (being at least 28 days) within which, the direction shall be complied with.

Utility services to be located in conduits

47. (1) The Committee for a county road in which there are conduits for the carriage of utility services across the road may direct any person who is entitled to place utility services in, on or over the road:

- (a) to locate any new or replacement services in any such conduit, and
- (b) to pay to the Committee such proportion as may be prescribed by the regulations of the costs incurred by the Committee in connection with the construction of the conduit.
- (c) All roads crossing for services shall be done using appropriate technology on all bitumen roads.

(2) The direction may specify the manner in which or the standard to which the direction shall be complied with.

(3) A provision of an Act that authorizes the provision of services in, on or over a county road does not authorize the provision of the services in contravention of this section.

Committee may require alteration of work located in, on or over county roads

48. (1) The Committee may direct the person having control of any work or structure that is situated in, on or over a county road to alter the work or structure or the location of the work or structure.

(2) The direction may specify—

- (a) the manner in which or the standard to which, and
- (b) the period (being at least 28 days) within which, the direction shall be complied with.

(3) If a person fails to comply with a direction under this section, the appropriate Committee—

- (a) may make the alteration directed, and
- (b) shall, if it makes the alteration, make any necessary consequential alteration to any connecting branch work.

(4) In making any such alteration, the Committee shall ensure that it does not do anything that might cause permanent damage to the work or structure concerned or that might prejudicially affect its use.

(5) The cost of an alteration made by, or at the direction of, the appropriate Committee shall be borne by that Committee.

(6) Subsection (5) is subject to the provisions of—

- (a) any agreement between the Committee and the person having control of the work or structure, and
- (b) any Act or law.

Restoration of county road following excavation etc

49. (1) The Committee may direct any person by whom a county road is dug up to restore the road to its previous condition.

(2) If a county road is damaged as a result of a leakage from, or breaking or bursting of, any object or work placed in, on or over the road, the appropriate Committee may direct the person—

- (a) who was responsible for placing the object or work in, on or over the road;
- (b) who has the care or control of the object or work; or

(c) whose act or omission caused the leakage, breaking or bursting, to restore the road to its previous condition.

(3) A direction under this section may specify—

(a) the manner in which or the standard to which, and

(b) the period (being at least 14 days) within which, the direction shall be complied with.

(4) Instead of giving a direction under this section, a Committee may take such action as is necessary to restore the road to its previous condition.

(5) The costs incurred by a Committee in taking action under this section are recoverable from the person referred to in subsection (1) or (2), as a debt, in a court of competent jurisdiction.

(6) Nothing in this section authorizes the Committee to recover an amount greater than that necessary to restore the road to its previous condition.

Liability for damage to county road

50. (1) A person who causes damage to a county road, or to any road work on a county road or any traffic control facility on a road or road related area is liable to pay to the appropriate Committee the cost incurred by that Committee in making good the damage.

(2) If damage referred to in this section is caused by a motor vehicle or vessel, the owner and the driver of the motor vehicle or, as the case may be, the owner and the master of the vessel are jointly and severally liable for the damage.

(3) This section does not apply to ordinary wear and tear caused by reasonable use of a county road.

(4) This section applies to toll ways and to private roads that are classified roads in the same way as it applies to county roads.

Installation etc of fences, lights etc around dangerous premises

51. (1) The Committee may direct the owner or occupier of land to erect or install fences, lights or other equipment on or around any premises on the land that are, in the opinion of the Committee, in a sufficiently dangerous condition to threaten the safety of persons or property on a county road in the vicinity of the premises.

(2) A direction under this section may specify—

(a) the manner in which or the standard to which; and

(b) the period within which, the direction shall be complied with.

Appeal against direction to Land and Environment Court

52. (1) A person on whom a direction under this Act has been served (not being a public Committee) may appeal against the direction to the Land and Environment Court.

(2) An appeal shall be made, in accordance with rules of court, within 14 days after the direction was served on the person.

(3) The making of an appeal operates to suspend the direction to which it relates until the appeal is finally determined or is withdrawn.

(4) The Land and Environment Court may do any one or more of the following—

- (a) it may confirm or quash the direction;
- (b) it may vary the period within which the direction shall be complied with; or
- (c) it may vary any of the requirements of the direction.

(5) The decision of the Land and Environment Court on an appeal is final.

Land and Environment Court may vary etc certain contracts

53. (1) A person affected by a direction under this Act may make an application to the Land and Environment Court for an order under this section.

(2) The Land and Environment Court may, on hearing the application, make an order under this section if satisfied—

- (a) that the applicant is a party to a contract relating to the premises, work or structure the subject of the direction, and
- (b) that, because of the operation of the direction, the performance of the contract has or is likely to become impossible or, so far as the applicant is concerned, has become inequitable or unduly onerous.

(3) An order under this section may do any one or more of the following—

- (a) it may cancel or suspend the operation of the contract,
- (b) it may vary the terms of the contract,
- (c) it may direct the repayment of all or part of any money paid under the contract.

(4) The decision of the Land and Environment Court on any application under this section is final.

Obstructions and encroachments

54. (1) The Committee may direct:

- (a) any person who causes an obstruction or encroachment on a county road, or
- (b) the owner of any land that is used, or is able to be used, in connection with an obstruction or encroachment on a county road, to remove the obstruction or encroachment.

(2) A direction under this section may specify the period within which the direction shall be complied with.

(3) In the case of an obstruction or encroachment that was created before the alignment of the road, or that is situated on a road that has not been aligned, the period specified in the direction shall be at least 60 days.

(4) This section does not apply to an obstruction or encroachment on a county road if its presence on the road is authorized by or under this or any other Act.

(5) However, this section does apply to an obstruction or encroachment on a county road if its presence ceases to be authorized by or under this or any other Act.

Committee may regulate traffic in connection with road work etc

55. (1) The Committee may regulate traffic on a county road by means of barriers or by means of notices conspicuously displayed on or adjacent to the county road.

(2) The Committee may not restrict the passage of heavy vehicles or animals along the roadway of an earth road unless clear side tracks have been provided for their passage.

(3) A person—

- (a) shall not, in willful contravention of any such notice or in willful disregard of any such barrier, pass along, or cause any vehicle or animal to pass along, a length of county road, and
- (b) shall not damage, remove or otherwise interfere with a notice or barrier erected for the purposes of this section.

(4) It is the duty of a Committee by which a notice or barrier has been erected under this section to remove the notice or barrier if there is no longer any need to regulate traffic for the purpose for which the notice or barrier was erected.

The Committee may regulate traffic in certain circumstances

56. (1) The Member of the Executive Committee may order the Committee to take such action, or to forbear from taking such action, with respect to the regulation of traffic on a county road as may be specified in the order.

(2) For example, the Member of the Executive Committee may order a Committee to erect or to remove any notice or barrier.

(3) Such an order may be given whether or not the Committee is otherwise empowered to regulate traffic in the manner specified in the order.

PART IV—REGULATION OF WORKS, STRUCTURES AND ACTIVITIES**Approval to use footway for restaurant purposes**

57. (1) The Committee may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a county road to use part of the footway for the purposes of the restaurant.

(2) An approval may be granted on such conditions (including conditions as to payments in the nature of rent) as the Committee determines.

Committee to erect structures

58. (1) The Committee—

- (a) may authorize the holder of an approval to erect and maintain structures in, on or over any part of the footway the subject of the approval, or
- (b) may, at the request and cost of the holder of the approval, erect and maintain any such structure.

(2) may authorize to erect and maintain structures in, on or over any part of the footway as a subject of an approval for the protection of public health and safety.

Effect of approval

59. While an approval is in force—

- (a) the use of the footway for the purposes of a restaurant, and
- (b) the erection and maintenance of structures on the footway in accordance with an authorization given in respect of the approval, are taken not to constitute a public nuisance and do not give rise to an offence against this or any other Act.

Committee may grant permit

60. (1) The Committee may permit the occupier of any land through which an unfenced county road passes to erect a gate across the road at any place at which the road intersects a boundary fence.

(2) The Committee shall cause notice of the granting of the permit to be published in a newspaper of national circulation.

(3) The occupier for the time being of the land to which a permit relates is taken to be the holder of the permit.

Erection and maintenance of public gates

61. (1) The holder of a public gate permit may, at any time after one month from the publication of the notice of the granting of the permit, erect a gate in accordance with the permit.

(2) The holder of a public gate permit shall ensure that—

(a) a notice is attached to both sides of the gate bearing the words “PUBLIC GATE” in letters at least 75 millimeters high; and

(b) both the gate and the notice are maintained in good condition.

Revocation of permit

62. (1) The Committee may at any time revoke a public gate permit.

(2) The occupier of the land the subject of a public gate permit that has been revoked shall remove the gate within one month after notice of the revocation is served.

Effect of permit

63. While a public gate permit is in force, the public gate to which it relates is taken not to constitute a public nuisance and does not give rise to an offence against this or any other Act.

Offences with respect to public gates

64. (1) A person shall not cause any damage to a public gate or to any notice attached to the gate in accordance with this Act.

(2) A person who opens a public gate shall cause it to be closed again immediately after it has been used.

(3) A person who fails to cause a public gate to be closed is liable for any loss or damage suffered by the occupier of the land adjoining the county road on which the gate is situated as a result of the gate having been left open.

Construction of by-pass around road gate

65. (1) An occupier of land adjoining an unfenced county road across which a public gate is situated at the point where the road intersects a boundary fence—

- (a) shall not, unless the appropriate Committee so permits, and
- (b) shall, if the appropriate Committee so requires, construct a by-pass for vehicles at the intersection of the road with the boundary fence.

(2). The Committee shall not permit or require the construction of a by-pass if the public gate is part of a rabbit proof, dog proof or marsupial proof fence, except with the concurrence of the County department responsible for livestock health and pest control.

(3) A by-pass is to consist of—

- (a) a ramp to allow vehicles to be driven over the top of the boundary fence, or
- (b) a cattle grid or sheep grid located beside the gate, and shall be constructed in accordance with such specifications as may be approved by the Committee.

(4) If the appropriate Committee so requires, the person permitted or required to construct a by-pass:

- (a) shall construct the by-pass along the line of the road, and
- (b) shall re-locate the gate beside the by-pass.

(5) The occupier for the time being of land to which a permit relates is taken to be the holder of the land.

Notice board to be erected at by-pass

66. (1) The occupier of land on which a by-pass is constructed shall ensure that—

- (a) a notice, in the form required by the appropriate Committee, is exhibited on a conspicuous notice board near each end of the by-pass, and
- (b) both the by-pass and the notice are maintained in good condition.

(2) A notice may prohibit vehicles exceeding a specified laden weight from being driven over the by-pass.

(3) If the appropriate Committee requires a person to construct a by-pass, that Committee may contribute to the cost of construction and erection of the notices.

Closing of by-pass

67. (1) A by-pass may be closed and the notices relating to the by-pass may be removed—

- (a) if the public gate in connection with which the by-pass was constructed is removed, or
- (b) if the fence of which the by-pass forms part is made rabbit proof, dog proof or marsupial proof.

(2) A person who closes a by-pass—

- (a) shall give notice of the closure to the appropriate Committee before or immediately after the closure, and
- (b) shall take such steps as the appropriate Committee directs to ensure the safety of persons using the road.

Revocation of by-pass permit

68. (1) The Committee may revoke a permit given with respect to a by-pass by means of a notice served on the holder of the permit.

(2) The occupier of the land the subject of the permit shall, within the time specified in the notice—

- (a) remove the by-pass and its notices, and
- (b) take such steps as are specified in the notice to ensure the safety of persons using the road.

Offences

69. (1) A person shall not:

- (a) drive a vehicle over a by-pass in contravention of a notice displayed in connection with the by-pass;
- (b) willfully damage or remove a notice displayed in connection with a by-pass; or
- (c) willfully obstruct or damage a by-pass.

(2) A person who causes damage to a by-pass as a result of driving a vehicle over the by-pass in contravention of such a notice is liable for—

- (a) the cost of any repairs to the by-pass necessary as a result of the contravention; and
- (b) any loss or damage suffered by any other person as a result of the damage to the by-pass.

Works and structures

70. A person shall not—

- (a) erect a structure or carry out a work in, on or over a county road;
- (b) dig up or disturb the surface of a county road;
- (c) remove or interfere with a structure, work or tree on a county road;
- (d) pump/block water into a county road from any land adjoining the road; or
- (e) connect a road (whether public or private) to a classified county road,

otherwise than with the consent of the appropriate Committee.

Nature of consent

71. (1) A consent under this Act—

- (a) may be granted on the Committee's initiative or on the application of any person, and
- (b) may be granted generally or for a particular case,
- (c) may relate to a specific structure, works or trees of a specified class, and
- (d) may be granted on such conditions as the appropriate Committee thinks fit.

(2) In particular, consent under this Act with respect to the construction of a utility service in, on or over a county road may require the service to be located—

- (a) in such position as may be indicated in that regard in a plan of sub Act or other plan registered in the office of the National Land Commission with respect to the road, or
- (b) in such other position as the Committee may direct.

(3) In particular, consent under this Act with respect to the erection of a structure may be granted subject to a condition that permits or prohibits the use of the structure for a specified purpose or purposes.

Maintenance of works and structures

72. (1) A person who has a right to the control, use or benefit of a structure or work in, on or over a county road—

- (a) shall maintain the structure or work in a satisfactory state of repair; and

- (b) in the case of a structure (such as a grating or inspection cover) located on the surface of the road, shall ensure that the structure is kept flush with the surrounding road surface and that the structure and surrounding road surface are so maintained as to facilitate the smooth passage of traffic along the road,

(2) Subsection (1) applies to all structures and works in, on or over a county road, including structures and works for which there is no consent in force under this Act.

(3) Subsection (1) does not apply to a person whose right to the control, use or benefit of a structure or work consists merely of a right of passage that the person has as a member of the public or a right of access that the person has as the owner of adjoining land.

(4) If—

- (a) the Committee has granted a consent under this Act to the doing of anything, and
- (b) that thing has been or is being done otherwise than in accordance with the consent,
- (b) the Committee may direct the holder of the consent to take specified action to remedy any damage arising from the doing of that thing otherwise than in accordance with the consent.

Committee may use county road in exercise of functions

73. Nothing in this Act prevents the Committee from using a county road in the exercise of a function conferred by this Act so long as the function is exercised in a way that will not unduly interfere with the rights of passage and access that exist with respect to the county road.

Permits for road events

74. The Committee may grant a permit to any person to conduct a road event on a county road.

Nature of ownership of county roads

75. (1) Except as otherwise provided by this Act, the dedication of land as a county road—

- (a) does not impose any liability on the owner of the road that the owner would not have if the owner were merely a person having the care, control and management of the road;
- (b) does not affect the rights or liabilities of any person under any easement or under any Act or law;
- (c) does not affect any rights of any person with respect to minerals below the surface of the road;

(d) does not constitute the owner of the road as an occupier of the land; and

(e) does not authorize the owner of the road to dispose of any interest (other than an easement or covenant) in the land.

(2) This section does not restrict the power of the Committee to regulate the digging up of county roads pursuant to the provisions of any other Act.

Short-term leases of unused county roads

76. (1) The Committee may lease land comprising a county road to the owner or lessee of land adjoining the county road if, in its opinion, the road is not being used by the public.

(2) A lease granted under this Act may be terminated by the Committee at any time and for any reason.

Public notice to be given of proposed lease

77. (1) Before granting a lease under this Act, the Committee shall cause notice of the proposed lease—

(a) to be published in a newspaper of County/National circulation; and

(b) to be served on the owner of each parcel of land adjoining the length of county road concerned.

(2) The notice—

(a) shall identify the county road concerned;

(b) shall state that any person is entitled to make submissions to the Committee with respect to the proposed lease; and

(c) shall indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

Public submissions

78. Any person may make submissions to the Committee with respect to the proposed lease.

Decision on proposed lease

79. (1) After considering any submissions that have been duly made with respect to the proposed lease, the Committee may grant the lease, either with or without alteration, or may refuse to grant the lease.

(2) If the Committee grants a lease, the Committee shall cause notice of that fact to be published in a newspaper of national circulation.

Special provisions with respect to short-term leases

80. (1) The term of a lease, together with any option to renew, shall not exceed—

- (a) except as provided by paragraph (b), 5 years; or
- (b) in the case of a lease of land that has been acquired by the Committee, 10 years.

(2) A person shall not erect any structure on land the subject of a lease under this Act otherwise than in accordance with the consent of the Committee.

(3) Such a consent may not be given unless the Committee is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can easily be demolished or removed.

Naming of county roads

81. The Committee may name and number all county roads as may be prescribed.

Roads committees to keep records

82. (1) The Committee shall keep a record of the county roads.

(2) The record shall indicate with respect to each county road:-

- (a) its location;
- (b) the name and number (if any) given to it by the Committee;
- (c) the reference of any plan in accordance with which its boundaries or levels have been fixed or varied by the Committee; and
- (d) such other particulars as may be prescribed by the regulations.

(3) The record shall be available for inspection by members of the public, free of charge, during the normal business hours of the Committee.

(4) The record shall indicate with respect to each classified county road—

- (a) its location;
- (b) its classification;
- (c) the reference of any plan in accordance with which its boundaries or levels have been fixed; and
- (d) such other particulars as may be prescribed by the regulations.

(5) The record shall be available for inspection by members of the public, free of charge, during the normal business hours.

PART V—ENTRY TO LAND AND OTHER POWERS

Power of entry

83. (1) For the purposes of this Act, an authorized officer may enter any land.

(2) Except in emergencies, the power of entry may be exercised only during daylight hours.

Inspections and investigations

84. For the purposes of this Act, an authorized officer who enters land under any power of entry conferred by this Act—

- (a) may inspect the land;
- (b) may, for the purposes of an inspection, dig up any ground and take such measures as are necessary to ascertain the character and condition of the land and of any building, structure or work that is situated in, on or over the land;
- (c) may make surveys and take levels and, for those purposes, may dig trenches, break up the soil and set up any posts, stakes or marks; and
- (d) may take samples or photographs in connection with any inspection.

Notice of entry

85. (1) Before an authorized officer exercises a power of entry under this Act, the Committee shall give the owner or occupier of the land written notice of the intention to enter the land.

(2) The notice shall specify the day on which the authorized officer intends to enter the land and shall be given before that day.

(3) This section does not require notice to be given—

- (a) if entry to the land is made with the consent of the owner or occupier of the land; or
- (b) if entry is required in an emergency.

Use of force

86. (1) Reasonable force may be used for the purpose of gaining entry to any land (other than such part of a building as is being used for residential purposes) under a power conferred by this Act, but only if authorized by the Committee in accordance with this section.

(2) The Committee—

- (a) shall be in writing;
- (b) shall be given in respect of the particular entry concerned; and
- (c) shall specify the circumstances which are required to exist before force may be used.

Notification of use of force or urgent entry

87. (1) An authorized officer—

- (a) who uses force for the purpose of gaining entry to the land; or
- (b) who enters land in an emergency without giving written notice to the owner or occupier,

shall promptly advise the Committee of that fact.

(2) The Committee shall give notice of the entry to such persons or authorities as appear to the Committee to be appropriate in the circumstances.

Care to be taken

88. (1) In the exercise of a function under this Act, an authorized officer shall do as little damage as possible.

(2) The Committee shall provide, if necessary, other means of access in place of any taken away or interrupted by an authorized officer.

(3) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence or, if entry by that means is not practicable, through a new opening in the enclosing fence.

(4) Any new opening is to be properly closed when the need for entry ceases.

(5) If, in the exercise of a function under this Act, any pit, trench, hole or bore is made, the Committee shall, if the owner or occupier of the premises so requires—

- (a) fence it and keep it securely fenced so long as it remains open or not sufficiently sloped down; and
- (b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

Recovery of cost of entry and inspection

89. If an authorized officer enters any land for the purpose of making an inspection and, as a result of that inspection, the Committee requires any work to be carried out on the land; the Committee may recover the

reasonable costs of the entry and inspection from the owner or occupier of the land.

Compensation

90. The Committee shall pay compensation to the owner of the land for any loss or damage arising from the exercise of any power under this Act by an authorized officer, but is not so liable to the extent to which the loss or damage arises from work done for the purpose of an inspection which reveals that there has been a contravention by the owner of this or any other Act.

Committee to enter land

91. (1) A power of entry may not be exercised unless the authorized officer—

- (a) is in possession of a certificate of Committee issued by the appropriate Committee; and
- (b) produces the certificate when required to do so by the owner or occupier of the land.

(2) The certificate of Committee—

- (a) shall state that it is issued under this Act;
- (b) shall give the name of the person to whom it is issued;
- (c) shall describe the nature of the powers conferred and the source of the powers;
- (d) shall state the date (if any) on which it expires;
- (e) shall describe the kind of land to which the power extends; and
- (f) shall be under the seal of the Committee or shall bear the signature of the general manager or other principal officer of the Committee or the signature of another officer of the Committee of a class prescribed by the regulations.

Entry to residential premises

92. A power of entry conferred by this Act is not exercisable in relation to such part of a building as is being used for residential purposes except—

- (a) with the permission of the occupier of that part of the premises; or
- (b) under the Committee conferred by a warrant of entry.

Committee may take possession of land when constructing etc county road

93. (1) For the purpose of—

- (a) carrying out road work on a road or a proposed road; or
- (b) providing a temporary road to replace a county road that has become impassable, the appropriate Committee may use and occupy, for as long as may reasonably be necessary in the circumstances, any land along or near the line of the road.

(2) However, the power may not be exercised unless the appropriate Committee has given the occupier of the land at least 7 days' written notice of its intention to exercise the power.

(3) A person given a notice under this section may, within 7 days after receipt of the notice, appeal to the Member of the Executive Committee against the proposed use and occupation to which the notice relates by lodging with the Member of the Executive Committee a written notice of appeal specifying the grounds of appeal.

(4) The decision of the Member of the Executive Committee on such an appeal is binding on the appropriate Committee and the appellant and is final.

(5) A notice under this section is not required—

- (a) if, in the opinion of the appropriate Committee, it is necessary, as a matter of urgency, to use and occupy land that is more than 15 metres from a dwelling-house for the purpose of reconstructing or repairing a particular road; and
- (b) if that Committee gives the occupier of the land such notice (if any) as is practicable in the circumstances and, immediately after giving the notice, reports to the Member of the Executive Committee the circumstances requiring such a notice to be dispensed with.

(6) The appropriate Committee shall not, under this section, use or occupy land within 15 metres of a dwelling-house unless—

- (a) the occupier of the land has consented in writing to the use or occupation; or
- (b) if that consent is not given the Member of the Executive Committee has given written Committee for the use or occupation.

(7) The Committee shall pay compensation to the owner of the land for any loss or damage arising from the exercise of any power under this section.

(8) While being used or occupied under this section for the purpose of providing a temporary road, the land so used or occupied is taken to be a county road for the purposes of this Act.

PART VI—MISCELLANEOUS PROVISIONS

General penalty

94. Where person is convicted of an offence under this Act for which no penalty is expressly provided, the person shall be liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

Measures to encourage investment in the roads sector

95. The Committee shall in consultation with the Member of the Executive Committee formulate and implement immediate, medium-term and long-term administrative or policy measures to encourage the participation development partners and the private sector in the development, maintenance and rehabilitation of roads and infrastructural facilities in the County.

Regulations

96.(1) The Member of the Executive Committee may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the naming of county roads;
- (b) the care, control and management of roads;
- (c) the regulation of traffic on, and the restriction or suspension of the use by the public of, any tollway, transitway, bridge, tunnel or road-ferry;
- (d) the regulation of traffic for the purpose of protecting roads from damage;
- (e) the payment, collection and enforcement of any toll or charge (including a private toll or charge) levied or imposed in relation to a tollway, bridge, tunnel or road-ferry;
- (f) the provision and use of service centres and rest centres; and
- (g) the making of applications for the purposes of this Act.

SCHEDULE

Provisions on the Conduct of the Business and Affairs of the Board of the Committee

1. Meetings.

- (a) The Board of a the Committee shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (b) Notwithstanding subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board of the Committee at any time for the transaction of the business of the Board.
- (c) The Board shall elect a Vice-Chairperson from among its members during its first sitting.
- (d) Unless three quarters of the total members of the Board of the Committee otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (e) The quorum for the conduct of the business of the Board of the Committee shall be one half of the members including the chairperson or the person presiding.
- (f) The chairperson shall preside at every meeting of the Board of a the Committee at which her or she is present but in his or her absence, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- (g) Unless a unanimous decision is reached, a decision on any matter before the Board of a the Committee shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
- (h) Subject to such subparagraph (4), no proceedings of the Board of the Committee shall be invalid by reason only of a vacancy among the members thereof.

2. Committees

- (a) The Board of the Committee may establish such committees as it may consider appropriate to perform such functions and responsibilities as it may determine.

- (b) The Board of the Committee shall appoint the chairperson of a committee established under subparagraph (1) from amongst its own members.
- (c) The Board of the Committee may where it considers appropriate, co-opt any person to attend the deliberations of any of its committees.

3. Disclosure of interest

- (a) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board of a the Committee and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
- (b) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (c) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine of one hundred thousand shillings, or to imprisonment for a term of six months, or to both.

4. The common seal

- (a) The affixing of the common seal of a the Committee shall be authenticated by the signature of the chairperson and the Secretary and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairperson and the Secretary:
- (b) Provided that the Board shall, in the absence of either the chairperson or the Secretary in any particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the Secretary

5. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

In its memorandum of objects and reasons, this Bill sets out the rights of members of the public to pass along county roads, and rights of persons who own land adjoining a county road in having access to the county road.

It also provides for requirements for construction and maintenance of roads and public footways.

Further, the Bill establishes procedures for the opening and closing of a county road and provides for classification of roads.

Consequently, this Bill seeks to regulate the carrying out of various activities of county roads and confers certain functions such as road works on county roads development Committee.

Dated the 24th September, 2016.

WILLIAM CHESINGANY,
Chairperson,
Committee on Public works, Roads and Transport.

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