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Chairperson
National Road Safety Council (NRSC)
Corner of Harold Pupkewitz Street & Independence Avenue
P. O. Box 113
Windhoek

Dear Mr. Iwos-Oob,

RE: SUBMISSION OF THE ROAD SAFETY MANAGEMENT BILL DISCUSSION PAPER

We refer to the draft discussion paper which was shared with your good office over the past few months for your comments and input. Whilst we note the concerns about delays in finalising this phase of the process, admittedly, the nature and pace of law reform and development is sometimes frustratingly slow but important if we want to produce a product that is reasonably well thought through and accepted as a guiding post for where we are headed. To this end, kindly accept our apologies for any delays that may have been caused by our office and we trust that the next few phases that we envisaged before the bill heads to parliament will be less cumbersome and free from unnecessary delays.

Mr. Chairperson, we understand that road safety concerns in this country have become of critical importance and that the intention of the bill to create a body that will ensure the coordination of key activities of various role players is an important catalyst in this process. It is evident from the comments reflected in the discussion paper that the bill requires some revision.

All official correspondence must be addressed to The Secretary.
Given that the consultant has since been engaged in this regard we suggest that you share a copy with her for immediate action.

It is therefore my pleasure, as Chairperson of the Law Reform and Development Commission (LRDC), to present to you and your esteemed Council this Discussion Paper on the Road Safety Management Bill. In doing so, I would also like to thank the NRSC, all our stakeholders and staff that were involved in the preparation of this document and we look forward to further discussion and input to enrich the follow up reports and the revision process of the bill.

Mr. Chairperson, please be assured that we value the work of your institution and look forward to be of continued support and assistance.

Yours sincerely,

YVONNE DAUSAB (Ms.)
CHAIRPERSON

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Permanent Secretary
Ministry of Justice

Mrs. Gladice D. S. Pickering
Deputy Permanent Secretary
Ministry of Justice

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Executive Secretary
National Road Safety Council (NRSC)

Mr. Willie P. Oosthuizen
Acting Chief
Directorate Law Reform
LAW REFORM AND DEVELOPMENT COMMISSION

The Namibian Law Reform and Development Commission (the LRDC) is a creature of statute established by Section 2 of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991).

The core mandate of the Commission is to undertake research in connection with all branches of law and to make recommendations for the reform and development, where necessary. The current Commission members’ are–

Ms. Y Dausab, Chairperson
Adv. J Walters, Ombudsman
Adv. S Shakumu, Deputy Chairperson
Adv. D. Khama
Adv. U Hengari
Mrs. F Owoses-Goagoses
Ms. L Usebiu
Mrs. A Van der Merwe

Under section 3 of the Law Reform and Development Commission Act, 1991, Commissioners are appointed by the President. Previous Commissioners ceased to hold their office when their term of three (3) years lapsed on November 8, 2013. They were –

Ms. Dianne Hubbard;
Mr. Nixon Marcus;
Ms. Damoline Muroko;
Mr. Raywood Rukoro and
Ms. Yvonne Dausab

The post of Secretary to the Commission, most recently held by Mr. JT Namiseb, Chief of the Directorate of Law Reform in the Ministry of Justice, fell vacant after his resignation. The Directorate of Law Reform serves as Secretariat to the Commission, assisting the Commission in the exercise of its powers and the performance of its duties and functions under the Law Reform
and Development Commission Act, 1991. The Commission and Secretariat are housed on the
1st Floor, Mutual Platz Building, Post Street Mall, Windhoek.

The working committee on this project, consisted of the project officer Ms. R Ntinda; Executive
Secretary to NRSC Mr. E Tendekule supported by the project Commissioners Adv. D. Khama
and Ms. L Usebiu.

All correspondence to the Commission should be addressed to:

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The Law Reform and Development Commission (‘the Commission’) has, since its establishment in 1992, given considerable attention to family and customary law related matters. This was understood given the history of apartheid the country was reeling from. There was need to restore the dignity and status related issues the people were facing. Over the years the profile of issues the LRDC started to consider and address changed. The continued loss of life Namibia experiences on our roads is one such issue of national importance and has led to a project on Road Safety Management.

The Commission is aware of the urgency of road safety concerns and the public outcry that something drastic needs to be done to change the conditions of our roads, compliance with various traffic requirements, and more importantly a behavioral change in the attitudes of the people. It is therefore imperative that the Commission, the National Road Safety Council (NRSC) and the team associated with this project expedite its recommendations, and to finalise its comprehensive report as soon as possible.

The Commission has conducted research and consultations on the draft of the Road Safety Management Bill. The background to the draft Road Safety Management Bill, its effects and the need for it, together with further recommendations shall be addressed in this report.

YVONNE DAUSAB (Ms.)
CHAIRPERSON
INTRODUCTION

The Law Reform and Development Commission (LRDC hereinafter referred to as the Commission) is a statutory body established under section 2 of the Law Reform and Development Commission Act of 1991,1 with the mandate to undertake research in connection with and to examine all branches of the law of Namibia and to make recommendations for the reform and development, where necessary.

Law Reform involves an in-depth consultation process involving legal and social-legal research, which must reflect on the views expressed and shared by the relevant stakeholders and the communities we consult. What processes the Commission follows and how it conducts its research, the consultation and quality of reports it publishes is very important for law reform in this country.

During the course of 2015 the National Road Safety Council (NRSC hereinafter referred to as the Council) approached the Commission to assist with the further development and finalisation of the Road Safety Management Bill. A draft bill was already discussed and considered through various processes of the NRSC. Arguably, the intention was to have the bill fast tracked through the remaining law reform processes given that road safety was an important issue but of critical concern in the country.

The scope of the project is to enable the Commission to assist the Council with the review of the current version of the Road Safety Management Bill. The Bill is intended to enable change by providing for the continued existence of the Central Road Safety Fund, the repeal of the Road Safety Act 9 of 1972; to provide for matters incidental therewith and to set up the Road Safety Agency that will ensure that road safety is efficiently planned, managed and it is envisaged that such an agency will put in place measures to limit the number of persons that perish on Namibian roads every year.

The proposed Bill under this project is not intended to entirely repeal other road-related legislation, nor deal with specific issues such as seat belts, speeding, use of lights and the demerit system, which have all been strongly proposed for inclusion in this draft law. This is so because firstly, this bill is intended to coordinate the relationship between the various agencies to ensure an effective

implementation system and secondly, the issues listed are already provided for in other pieces of legislation that pertain to road safety and management. The aim of the Bill is not to duplicate the mandate of other institutions, but rather to bring about uniformity and effective cooperation among both agencies concerned with road safety and stakeholders in order to ensure effective road safety management.

The Council approached the Commission during the final process of the draft bill. As a result, there is currently no working paper on the project as is customary of all projects initiated by the Commission and as provided for in Law Reform operational manual. Although the paperwork associated with the internal law reform process will be prepared to ensure the institutional memory is complete, the working processes adopted was responding to the stage at which the Council introduced the bill to the Commission. In this regard the methodology adopted was to hold a consultative workshop with the relevant stakeholders on the discussion reports that the Council made available and the draft bill.

This workshop was held on the 11\textsuperscript{th} of April 2016 at the Windhoek Country Club. A number of stakeholders were invited to attend the consultative workshop on the Bill.\textsuperscript{2} However, only the following stakeholders\textsuperscript{3} were in attendance, the others merely forwarded written comments:

AA Namibia
GIZ Namibia
Media: The Confidante
Ministry of Finance
Ministry Of Education Arts and Culture
Ministry of Mines and Energy
Ministry of Public Enterprise
Ministry of Works and Transport
Ministry of Safety Security
Motor Vehicle Accident Fund
Namibia Public Passenger Transport Association
National Roads Safety Council
Otjiwarongo Municipality

\textsuperscript{2} See attached stakeholders list and delivery list.
\textsuperscript{3} See attached consultative workshop attendance list
The Road Safety Management Bill was uploaded on the National Road Safety Council website at the end of April for further written comments from stakeholders that could not attend the workshop. Other comments were forwarded to the Commission directly. The report takes the following form:

- The introduction lays out the mandate and the role of the Law Reform and Development Commission, the project's terms of reference, the scope and limitations of the project and the methodology used to manage the Road Safety Management Bill Project.

- The historical context and the current position of road safety are discussed under the contextual framework of the report. The report then clearly explains the issues that the proposed Road Safety Management Bill must address, the submissions for, recommendations on, and discussions of the Bill made by the relevant stakeholders.

- Finally, the proposed options for law reform, along with the main arguments for and against those options, as well as the Commission's findings as informed by the stakeholder inputs are considered (if at all). Finally, the overall recommendations of the LRDC, and a clear distinction and discussion of laws that may be affected by the proposed law reform are considered and discussed.

**CONTEXTUAL FRAMEWORK**

First, the contextual framework will start off with a synopsis of the historical background on how Namibia has been governed through the Road Safety 1972 (Act No. 9 of 1972) that the proposed Bill seeks to repeal. Secondly, focus will be directed to the current legal and institutional position relevant to the project.
1. Historical Context

Namibian legal jurisprudence emanates from its colonial legacy. In 1884, Namibia became a German protectorate and in 1890, it then became a British Crown Colony to be known as South West Africa. In 1919, it became a South African protectorate under the Peace Treaty of Versailles. Under the Treaty of Peace and the South West African Mandate Act, the mandate and administration of South West Africa was delegated to the Governor General of South Africa, providing it with legislative and executive powers over the territory. The Treaty of Peace, the South West African Mandate Act and the Proclamation of 1921, granted the Governor General and the Administrator General of South West Africa the power to apply South African legislation to South West Africa, and make new laws for the territory and its inhabitants. It was as a result of the exercise of this power that the Roads Safety Act of 1972 found application in Namibia.

Upon Namibia's independence in 1990, most of the existing laws remained in force in terms of article 140(1) of the Constitution. Article 140(1) further goes on to terminate any legislative or executive powers vested in the South African Government, such powers are deemed to be vested in the Republic of Namibia. Article 140(2) emphasizes the sovereignty and independence of Namibia as recognized under section 2(1) of the Recognition of Independence of Namibia Act of 1990, which states that the Republic of South Africa shall cease to exercise any authority under the Treaty of Peace and the South West African Mandate Act over the territory of South West Africa as Namibia was then known.

The Road Safety Act continues to apply as inherited from the South African Regime in the absence of any repeal or amendment by an act of Parliament. The proposed Road Safety

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5 (Act No. 49 of 1919).
9 The Constitution of the Republic of Namibia Article 140(1).
Management Bill seeks to address this outdated reminisce of the South African regime in order to increase the effectiveness of any road safety and management law.

2. Current Position

In November 2009 the United Nations through the World Health Organization (WHO) organized the first global conference of Ministers of Transport on road safety in Moscow. The meeting produced the Moscow Declaration that subsequently culminated in the Declaration, by the United Nations General Assembly (UNGA), of 2011-2020 as the Decade of Action for Road Safety. Generally, the UNGA resolution called on all member states to develop their own plans of action modeled against the global plan developed by WHO. Following the declaration, Namibia developed her own chapter of the Decade of Action which was adopted through Cabinet decision 16/13.09.11/009. One of the recommendations that arose out of the Namibian Chapter of the Decade of Action for Road Safety 2011-2020, is that Namibia should create an institution properly financed and equipped with the capacity required to ensure an effective and efficient road safety management system.

Namibia, in addition, developed the National Action Plan which, Cabinet approved\(^\text{13}\) for the implementation of the National Chapter of the Decade for Action for Road Safety (2011-2020) Strategy in line with the African Union’s Luanda Declaration\(^\text{14}\) and the United Nations “Decade of Action for Road Safety”. The Namibian Chapter of the Decade for Action for Roads Safety (2011-2020) Strategy revolves around six pillars, which include: "road safety management", "road safety education", "law enforcement", "engineering: vehicles", "engineering: roads" and "emergency response". The Council was tasked with the road safety management pillar of the Namibian plan of action. A study was thereafter undertaken to assess both the legislative and institutional frameworks of road safety management in the country as well as Namibia’s existing management capacity.\(^\text{15}\) The study revealed serious shortcomings in the current road safety management

13 Cabinet Decision No. 23rd/15.12.11/020 after taking note of the findings on the causes of accidents presented by the Ad-Hoc Committee on Accidents on Namibian Roads.
system, hence the proposed new approach by the Council to improve road safety performance\textsuperscript{16} through the proposed Road Safety Management Bill.

**WHAT IS THE PROBLEM?**

Road safety (or the lack thereof) is a serious issue in this country. This is so because road crashes have become a worrying phenomenon and an undeniable cause for concern for Namibia. Each year over 600 people are killed and more than 5000 more are injured on our roads. Each crash entails both social and economic costs, not to mention the social cost of pain, grief and suffering of the families of the victims. On average, one person is killed on Namibian roads and about 16 suffer serious injuries daily.\textsuperscript{17}

The nation loses a considerable portion of its youth each year as a result of road-related fatalities. These are young people at the prime of their lives and poised to become leaders and economic drivers of the country.\textsuperscript{18} The number of people killed on Namibian roads has increased since 2009, with 633 people killed in 2013 – a 14\% increase from the 2012 figures.\textsuperscript{19}

The reform of road safety law is premised on the basis that it is necessary to address issues pertaining to road safety. Such issues include cooperation and coordination among road safety role players, limiting the number of deaths or preventing deaths on Namibian roads, the continued existence of the Central Road Safety Fund, repealing the Road Safety Act 9 of 1972, providing for matters incidental therewith and setting up the Road Safety Agency to ensure that road safety is efficiently planned and managed.

**STAKEHOLDERS’ SUBMISSIONS**

The consultative workshop was undertaken in order to solicit inputs on the proposed Road Safety Management Bill. The submission of stakeholders will be laid out with reference to the lay out of


the Proposed Bill. The rationale behind this is that it enables a clearer understanding of the specific chapters of the Bill as viewed together with the comments, questions and answers with reference to the specific chapters of the Bill.

1. Chapter 1: Interpretation

1.1. Preamble

The preamble is used as an aid in the interpretation of certain statutes. Therefore, it should be clear and concise. The preamble\(^\text{20}\) to the proposed Bill is ambiguous and raises a number of concerns, such as clarity on the objective of the Bill. It must clearly set out what the objective of the Bill is. In addition, the portion of the preamble that refers to the repeal of the National Road Safety Act may be reviewed and rephrased after consideration of the content and scope of application of other pieces of legislation that have a bearing on road safety and management.

1.2. Section\(^\text{21}\) 1: Definitions

During the discussions on the draft Bill, a concern was raised as to why the Road Safety Fund is not included in the definition section. If one of the aims of the Bill is the continuation of the Road Safety Fund as set out in its preamble, it should be defined. The definition of the term "crash"\(^\text{22}\) is very wide in that it may include collision with any objects\(^\text{23}\). The definition should perhaps be narrowed. Moreover, it includes collisions only on public roads. One contributor suggested adopting the definition contained in the Motor Vehicle Accident Fund Act\(^\text{24}\).

\(^\text{20}\) The preamble of the Bill reads as follows:

“To provide for the establishment of a Road Safety Agency; for the development and the implementation of a national road safety management plan and an integrated road safety management system; to provide for the establishment of the Road Safety Fund; to repeal the National Road Safety Act, 1972 (Act 9 of 1972); and to provide for matters connected therewith.”

\(^\text{21}\) We are aware that normally in a bill sections are referred to as clauses for the sake of convenience in this report section is used.

\(^\text{22}\) The term is defined by the Bill to mean:

“a collision or other impact on a road causing death, any injury or damage and includes an accident as contemplated in the Road Traffic and Transport Act, 1999 (Act 22 of 1999) and the Motor Vehicle Accident Fund Act, 2007 (Act 10 of 2007) in relation to a crash occurring on a public road as defined in the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999)”.

\(^\text{23}\) It is not clear as to whether or not instances where crashing in an object (an animal, trailer in the road etc.) leading to injury amounts to or falls within the definition of the term “crash”/ (Act No. 10 of 2007) hereon referred to as MVA Act.

\(^\text{24}\) The reference made
to the MVA Fund Act and the Road Traffic and Transport Act\textsuperscript{25} respectively needs to be clarified. The current definition of the term “crash” contradicts the MVA Act definition. The Council expressed concern with regards to the suggestion of using the definition of the term “crash” contained in the MVA. The Council’s concern is that such a definition is too wide. It suggests that a vehicle crash that may take place off-road should not be part of the definition e.g. a quad-bike accident in the dunes or a race car crash on a privately owned race track. Finally, it was also pointed out by the participants that the National Traffic Information Systems (NaTIS)\textsuperscript{26} is not correctly reflected in the Proposed Bill and the term “traffic” is not defined.


2.1. Section 2: Establishment of the Road Safety Agency

2.1.1 The main objective of the proposed Bill is to set up the Road Safety Agency, as set out in this section. During the discussions, concerns were raised as to why only Ministers were part of the list of members making up the coordinating committee. The private sector questioned as to whether or not the list of members making up the coordinating committee was exhaustive or should the private sector; local authorities\textsuperscript{27} and the civil society be included.

2.1.2 In response, the consultant pointed out that the Ministers mentioned under section 2(3)\textsuperscript{28} do not form part of the coordinating committee. Given the fact that various road safety responsibilities lie in different ministerial jurisdictions, it was felt appropriate to legally make

\textsuperscript{25} (Act No. 22 of 1999).
\textsuperscript{26} Herein referred to as NaTIS. Namibian Road Traffic Information System is defined by the Bill to means:

\textit{“the electronic database containing the information referred to in section 95 of the Road Traffic and Transport Act, 1999 and regulation 366(1)(a)(i-ix), (2)(a) and (b), (3) and (4) of the Road Traffic and Transport Regulations, 2001”}.

\textsuperscript{27} Such as the City of Windhoek that has its own traffic authority.
\textsuperscript{28} Section 2(3) of the Bill reads: The Ministers responsible for-

\begin{itemize}
  \item (a) transport;
  \item (b) energy;
  \item (c) health;
  \item (d) finance;
  \item (e) justice;
  \item (f) education; and
  \item (g) safety and security, must, subject to section 13, oversee the execution of the Plan contemplated in section 10 in as far as it relates to the functional area of the Minister concerned.
\end{itemize}
those ministers accountable to oversee execution of those activities of the plan that fall within their ambit. The list does not constitute the members of the coordinating committee.

2.1.3 Concern was raised during the discussions by the Roads Authority as to whether the National Road Safety Plan only refers to the road network in the road safety pillar or if it is inclusive of all the other five pillars contained in the Road Safety Chapter. In response, the consultant and the Council stated that the Bill is aimed at managing safety across all national roads. In the management of road safety, all the other pillars are covered, as all of their plans will be included in the National Plan. National Road Safety Plan is a compendium of smaller plans referred to as chapters in the Bill drawn from all areas listed under section 15 (1) (a-g). It will however not cover road development plans, but it should definitely contain a black spot management program. Every area in the country is covered in this plan, including the areas within the local authorities. The intention is not to link this Bill/Plan to roads, but rather, to the local jurisdictional areas.

2.1.4 The Council further stated however, in so doing, the proposed Agency will not take over all other agencies' functions, such as the MVA, but rather, oversee functions that relate to road safety in terms of the proposed Plan. In ensuring the management of road safety, all the other pillars will be covered in terms of roads in the country. The Council further pointed out that the core function of the MVA is to compensate accident victims and during the drafting of their Act in 2007 and 2010, they should have been aware of the existence of the Road Safety Act of 1972, but went ahead to include provisions that would overlap with other existing laws. Thus the Council is of the view that MVA created the current confusion as a result of mandate encroachment and overlap. The Council’s idea behind the Bill, is

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29 Section 15 of the Bill provides the following:

“(1) Plan sets a national road safety goal and consists of chapters covering at least the following functional areas -
(a) performance assessment as contemplated in section 18(c);
(b) road safety education and promotion;
(c) road safety research and development;
(d) road traffic law enforcement, including but not limited to-
(i) critical offence monitoring with the purpose of measuring changes in road use behaviour; and
(ii) road traffic offence adjudication management;
(e) emergency services insofar as it relates to emergency response to crashes;
(f) roads engineering remedial works, that includes reactive and pro-active interventions; and
(g) road safety engineering (vehicles).”
to have one central power of authority as far as road safety is concerned and the MVA just like all other functional entities or pillars will provide the part of their plan that relates to issues of interest to road safety promotion for inclusion in the National Plan.

2.1.5 The consultant further pointed out that the execution of the different ministries functions under the Bill shall be done in terms of the National Road Safety Plan. All institutions involved in road safety will still have to report to their governing boards or ministers. This is why the ministers listed under section 2(3) will have to oversee the implementation of this plan. The first draft of the Bill contained a provision that provided for the establishment of a committee of ministers. However, the drafter of the Bill was later informed that this could not be done through the Bill as it was the prerogative of Cabinet to create Cabinet committees.

2.1.6 Furthermore, several stakeholders raised the concern that section 2(3) makes reference to section 13 with regard to the Information Communication Technology (ICT) but the correlation is not clear. Reference is also made to section 10, which provides for the

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Section 13 of the Bill provides for Integrated road safety management ICT system and reads as follows:

“(1) The Agency must develop, implement and maintain an Integrated Road Safety Management ICT System in support of the Plan. (2) The Integrated Road Safety Management ICT System must contain road traffic data that is required by each of the functional areas contemplated in section 11(1), and must at least—
(a) be able to interface real-time with the Namibian Road Traffic Information System;
(b) be able to interface real-time with a court management ICT system or be available to the Ministry of Justice for the management of the road traffic offence adjudication process unless that process is decriminalized in which case it must be able to interface with that decriminalized road traffic offence adjudication ICT system;
(c) be able to automate the prosecution process for road traffic offences until that process is decriminalized;
(d) be able to record the road traffic offence adjudication process;
(e) be able to interface real-time with any traffic management ICT system used by an executing agency;
(f) be able to record road traffic crash statistics;
(g) be able to display road traffic safety data, including crashes and offences, on a geographical information system;
(h) be able to interface real-time with the Roads Management ICT System used by the Roads Authority; and
(i) provide access to each functionary in the road safety management environment to the level agreed on with the Road Safety Coordinating Committee.”

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30 Section 13 of the Bill provides for Integrated road safety management ICT system and reads as follows:

31 Herein referred to as ICT.
staffing of the National Road Safety Agency, however, the view is that all the listed ministries would not play a part in the staffing of the Agency. To provide clarity, the Council stated that, the intention of the provision is for example to oblige the Ministries of Safety and Security, Justice and Health not to develop and implement management systems that are not capable of assimilating with the integrated road safety management system. The Council further acknowledged that reference to section 10 is incorrect. The correct reference is section 15.

2.2. **Section 3: The Objective**

2.2.1. A question was raised as to whether or not the establishment of the Road Safety Fund should be included in the objectives set out in section 3 of the proposed Bill. The consultant, in response, pointed out the importance of making a distinction between the objectives and functions of the Agency. The distinction is that the management of the Fund is a function, not an object. The objective of the Agency is to ensure the safety of all road users, and to accomplish that, the Agency has to ensure effective enforcement of the governing laws, introduce training and educational programs, and funding for such programs. The managing of the fund is merely a support function of the Agency.

2.2.2. The private sector suggested that it should be added to section 3(c) such that the section will read as follows:

“To support other government agencies and private sector in aligning the responsibilities of all role players in the road safety environment with the national road safety goals.”

Mr. Tierspoor, the Public Relations Officer of the Council was of the view that such an addition would not work, as this provision deals with those entities or institutions that

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32 Herein referred to as the Agency.
33 Section 3 of the Bill provides the Objectives of agency and reads as follows:

“The objectives of the Agency are to -
(a) ensure the safety of all road users and that all necessary efforts are taken towards preventing traffic deaths and injuries;
(b) coordinate road safety programmes across government with the view to optimising resources and programme results;
(c) support other government agencies in aligning the responsibilities of all role players in the road safety environment with the national road safety goal; and
(d) promote and foster a culture that places priority on road safety.”
already have a governmental and legal mandate to ensure road safety. The private sector does not have a legal mandate to ensure road safety, it is only expected to support road safety initiatives through their corporate social investments. Mr. Tierspoor further stated that perhaps the other institutions that are not included herein may be included in the Road Safety Coordinating Committee. Section 3(c) makes reference to “all role players” and by implication, this includes the private sector.

2.2.3. An additional suggestion made by the workshop participants is that, perhaps one of the objectives outlined under section 3 should be to provide for research and statistics, as these will inform the planning of the Road Safety Agency to achieve the other objectives. The consultant responded that research is not an objective, but maybe a function. The objective is to provide a safe environment for all road users. In order to achieve the objective, appropriate data and research is required. The MVA Fund added that motor vehicle crashes should be included as an indicator. The Council expressed concern with regards to the MVA’s suggestion that crashes should be used as an indicator. It is not clear to the NRSC as to how that could be part of the objectives laid out in section 3, as performance indicators are expected to be part of the Plan as they may change or vary from jurisdiction to jurisdiction.

2.4. **Section 4: Board: Constitution, Membership and Term of Office**

2.4.1. In the previous draft of the Bill, the skills required to be a board member were listed. However, the previous Permanent Secretary of Works and Transport presented his concern that Namibia might not possess such skills. It was advised by several stakeholders that it is important to list these skills even if Namibia has to import the relevant expertise, because whether Namibians themselves can furnish such skills or not, those skills are required to properly implement the Bill.34 An example of relevant expertise and skills required is automotive engineering on the safety feature of vehicles. Another area where such expertise is needed is in emergency response. Therefore, the skills should be listed and the Minister of Works and Transport should apply his discretion to determine who would be suitable for such a position, as it might be considered a policy issue. The NRSC felt it is not necessary to list the required skills, as they do not foresee a situation

34 Ms. Kurtz from the MVA Fund.
where board members would be appointed from outside Namibia. Such skills should rather be imported at technical levels where such expertise can be fully utilised. If the Bill becomes prescriptive as to the needed skills, appointing someone short of such skills would be illegal. There is need to have room for flexibility.

2.5. **Section 5: Appointment of Board Members**

2.5.1. Several stakeholders felt it would be wise and prudent to specify the skills of the Board in section 5(1)\(^{35}\) instead of leaving it open. Doing so would help the governing ministry to simply look into what specific skills are required for the board of the Agency to be functional, effective and efficient. In support hereof, it was argued that the MVA Fund adopted the same approach, and that that approach works well.

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\(^{35}\) Section 5 of the Bill provides for the Appointment of board members and reads as follows:

“(1) The Minister must, subject to section 14 of the State-owned Enterprises Governance Act, and in accordance with the procedure prescribed by section 15 of the State Owned Enterprises Governance Act, appoint Board members, the chair person and vice chairperson.

(2) Any alternate member of the Board must be appointed as prescribed by sections 14 and 15 of the State-owned Enterprises Governance Act.

(3) For the purpose of section 15 of the State-owned Enterprises Governance Act, the Minister must assume the duties imposed on the secretariat to the Council as contemplated in that section.

(4) Notwithstanding the expiry of the term of office of the Board determined in terms of section 14(1)(d) of the State-owned Enterprises Governance Act, the Board continues to exist until a new Board has been appointed in terms of section 14 of that Act.”
2.5.2. The consultant raised her concerns with regards to section 5(3) of the proposed Bill that refers to section 15\textsuperscript{36} of the State Owned Enterprise Act 2006.\textsuperscript{37} Section 5(3) provides that the Minister must assume the post and duties of the secretariat of the council as contemplated in the Bill. This provision is not clear as to how exactly the minister will

\textsuperscript{36} Section 15 of the State Owned Enterprise Act 2006 provides for Procedure for appointment of board members and alternate board members of State-owned enterprises and reads as follows:

“(1) Whenever it is necessary to appoint members of the board of a State-owned enterprise, either upon a first constitution or a new term of the board, or for filling a vacancy, the head of the secretariat must, after consultation with the portfolio Minister, and with due regard to section 14(2), make a report to the Council containing -

(a) recommendations on -
   (i) the number of members, including executive members, if any, to be appointed;
   (ii) the term for which the members, or members in particular positions are to be appointed; and
   (iii) the expertise required in the membership of the board;
(b) the names of persons, equal to at least one and a half times the number of members recommended under paragraph (a)(i), who are qualified to be members of the board and who are recommended as being most suited to serve on the board, including the persons recommended to serve as executive members, if any, together with reasons why they are recommended; and
(c) in relation to the persons recommended under paragraph (b), particulars of -
   (i) their personal details;
   (ii) their knowledge, experience and skills concerning issues relevant to the functions of the State-owned enterprise concerned; and
   (iii) their commitment, if any, in relation to positions held on boards of other State-owned enterprises and interests held in private undertakings; and
   (d) any other information that may be relevant to enable the Council to make the determinations and give the advice contemplated in section 14(1).

(2) The procedure prescribed in subsection (1) applies also in respect of the appointment of alternate members of a board.

(3) For the purposes of subsection (1)(b), a person is qualified to be a member of the board of a State-owned enterprise if the person -
   (a) is not disqualified in terms of the establishing Act or the constituent document or the articles of association and statutes of association of the State-owned enterprise, as the case may be, from being appointed a member of the board of the State-owned enterprise; and
   (b) is not disqualified in terms of the Companies Act, 1973 (Act No. 61 of 1973) from being appointed as a director of a company.

(4) When advising a portfolio Minister on potential candidates whom the Council considers most suited for appointment as members or alternate members of a board, the Council is not bound by the recommendations of the secretariat.

(5) The portfolio Minister appoints -
   (a) the members of the board of a State-owned enterprise;
   (b) the chairperson and vice-chairperson of the board; and
   (c) the alternate members of the board, if any.

(6) A person must not serve as a board member on more than two boards of State-owned enterprises.

(7) The portfolio Minister must cause notice to be given in the Gazette of the appointment of members of the board of a State-owned enterprise and of the date and period of their appointment.”

\textsuperscript{37} (Act No 2 of 2006).
assume such duties of the Secretariat and why. However, the current draft of the proposed Bill has done away with the council and the secretariat now operates under the Ministry of Works and Transport. Mr. Tierspoor explained that when the Ministry of Public Enterprises came into being, the drafting of this Bill was already ongoing and therefore, some provisions of the draft Bill would need to be relooked and changed to align them with the State Owned Enterprise Act.

2.5.3. The Road Fund and MVA raised concerns regarding the reappointment of Board members in section 5(4) as it amounts to a breach of the provisions contained in the State-owned Enterprise Act that provides that the Board should continue to exist notwithstanding the provisions of the State-Owned Enterprise Act. The Road Fund and MVA advise that this should be aligned to section 15 and 1638 of the State-owned Enterprise Act. One should bear in mind that the State Owned Enterprise Act states that if there is other legislation that deals with the same matter, the State Owned Enterprise Act takes supremacy.39 According to Council it should be taken into consideration that there is a board appointed in terms of the current law. The reason behind the provision was to provide for transition as essential policy decisions needs to be taken in the time leading to the establishment of the Agency.

2.5.4. The MVA felt that the proposed Bill should retain the general rule of having members of the board sitting for no longer than two terms. This ensures objectivity, effectiveness,

38 Section 16 of the State Owned Enterprise Act 2006 provides for Appointment of temporary board members and reads as follows:
  “(1) If at any time during the term of office of the board of a State-owned enterprise -
  (a) the offices of all the members of the board become vacant; or
  (b) the number of members of the board is reduced to less than the number of members
  required for a quorum of the board, the portfolio Minister may, despite sections 14 and 15
  or anything to the contrary in any other law contained, and if circumstances of a pressing
  or urgent nature so requires, appoint suitably qualified persons on a temporary basis to
  serve on the board until new members are appointed.
  (2) The appointment of a person as member of a board under subsection (1) ceases to be
  of effect upon expiry of a period of six months from the date of the appointment, but the
  council may approve that such period be extended by an additional period of not more than
  two months.

39 Section 46 of the State Owned Enterprise Act of 2006 provides that:
  “The provisions of this Act prevail if a conflict relating to any matter provided for in this Act
  arises between this Act and the provisions of the establishing Act or constituent document
  or of the memorandum of association and articles of association of a State-owned enterprise.”
performance and reduces their being too comfortable and familiar with management. In view of the MVA’s concern, the consultant wanted to establish how such limitations of terms will impact business continuity. MVA was however, adamant that other agencies are limited to two terms, therefore this Agency should follow the set practice followed by other state agencies. The NRSC expressed their doubts as to the universal application of the general rule of having members of the board have a tenure not longer than two terms. For example board members such as the chairperson of MVA who has served as member of the board a number of times. The Council pointed out that it may be good idea for the MVA to consider reducing the terms of their own board members in order for others to follow suit. This is to avoid being accused of hypocrisy. The Council further stated that perhaps the proposed Bill can be set to read as section 14 of the Motor Vehicle Accident Act of 2007 allowing the Council to continuously re-appoint its board members as has been the case with MVA’s board member Dr. Zandile Agnes Erkana.

2.5.5. In addition, the consultant pointed out that when the term of office of the board members expires, only two-thirds of the board may leave. This ensures a degree of continuity and that there is always someone with the required institutional memory.

2.6. Section 6: Meetings of the Board

2.6.1. The MVA suggests that this section should be revisited, since in its current form, it permits or is likely to be abused (unintended consequence). Section 6(3) is not in conformity with autonomy and good governance principles in that it does not distinguish between decisions of the Board and decisions of the Minister.


41 Motor Vehicle Accident Act, 2007 in Section 14 on the term of office reads: “Subject to section 16, a member holds office for a term of three years, and is eligible for reappointment at the end of that term.”

42 Section 6 of the Bill provides that: “(1) The Board must meet at least four times a year. (2) The majority of Board members form a quorum. (3) If, despite the provision of subsection (2), a quorum cannot be achieved, a decision of the Board is not invalid merely by reason of a lack of a quorum, if the Minister has ratified that decision.”
2.7. **Section 7: Functions of the Board**

2.7.1. The Road Fund requested clarity with respect to why the Bill seeks to institute a road safety fund, as provided for under section 7(2) of the Bill. It was clarified that the road safety fund already exists and it just needs to be expanded. It was therefore recommended that in order to ensure that the Fund is managed responsibly, “managed responsibly” should be included under the function of the Board. Responsible management of the Fund is an implied fiduciary duty of the board. Specifically pointing it out is merely a superfluous issue.

2.7.2. The workshop participants advised that any reference to the State Owned Enterprise Act should include the phrase "as amended". In response hereto it was stated that any reference to an Act includes its amendments. In addition, Mr. Gonteb stated that it is not clear whether the term “accountability” is included with regard to the management of the fund. His concerns were echoed by the members of the private sector. Even if it could be understood that by giving the board the duty to manage the fund responsibly it is a natural consequence that it should be accountable for it, it will help to make it clearer by including “accountability” in section 7. According to the Council this is superfluous, however if so required it can be added.

2.7.3. In terms of section 7(4), it was stated by Roads Authority that it is not appropriate for the management of one entity to deal with the board of another. It is preferable that the Board of the Agency liaise with the board of another executive agency. In addition, Roads Authority is of the view that section 7(4) is highly vague on the division of responsibilities, especially with its reference to section 12(3). Section 12 provides that the board must

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43 Section 7 of the Bill reads as follows:

“(1) The Board must provide strategic leadership to the Agency and oversee the governance of the Agency in accordance with the requirements of the State-owned Enterprises Governance Act.

(2) The Board must ensure that the Fund is managed responsibly.

(3) The Board must ensure that the Agency performs its functions and exercise its powers in terms of this Act responsibly in order to achieve the objectives of the Agency as contemplated in section 3.

(4) The Board must liaise with the management of the executing agencies in order to ensure the smooth operation of the Road Safety Coordinating Committee.”

44 From the Road Fund.

45 Section 12 of the Bill provides for the Road Safety Coordinating Committee and reads as follows:
liaise with the executive agencies in order to ensure smooth operation of the Road Safety Committee. However, the Road Safety Committee is established by the CEO and one would expect that the Committee is expected to be accountable to the CEO. Furthermore, the CEO is then accountable to the Board. No response was provided in this regard. This may require further discussion.

2.8. Section 8: The Committees of the Board

2.8.1. MVA Fund’s suggestion of that the drafter of the Bill include a risk management committee within the Bill to mitigate the risk of loss of life, because the Agency is established to mitigate the risk of Road Accidents. In this regard it is imperative that members of the private sector be included in the committees, as this may be particularly important where there is a need for specific skills that cannot be found among those currently working for existing government agencies. According to the NRSC, the suggestion is already provided for. Section (1)(b) of the Bill states that the Board “may appoint any committee.” This provision provides the needed flexibility. In the consideration of the Plan, elements of cost-benefit analysis shall be taken into account. This will provide the necessary understanding of the risk of not doing anything and the benefit of the programs in the plan. The risk of loss of life resonates with the program of the MVA as they make financial decisions on the basis of actuarial projections of the risks involved. In relation to the Agency, actuarial considerations will be used to determine the costs related to road crashes in their cost-benefit analysis of the remedial interventions.

(1) The Road Safety Coordinating Committee is established and comprises the chairperson of each of the road safety theme committees referred to in section 11.
(2) The Agency must, from its staff complement appoint a person who is qualified in integrated road safety management to serve as the chairperson of the Road Safety Coordinating Committee.
(3) The business of the Road Safety Coordinating Committee is conducted as agreed in writing with the Chief Executive Officer.
(4) The Road Safety Coordinating Committee may meet as often as necessary for the proper execution of the Plan, but must meet at least once every quarter.
(5) The Road Safety Coordinating Committee may co-opt any person necessary to execute its duties.

Concern raised by the MVA.
2.8.2. Several stakeholders raised their concerns that section 8(3)\(^47\) provides that the Road Safety Coordinating Committee must be chaired by the Agency. However, the Agency is not a person, but a collective entity. Therefore, the section should be changed to provide that the committee must be chaired by a natural person that could possibly be nominated or elected from the members of the agency. The NRSC however pointed out that the provision of the Road Safety Coordinating Committee being chaired by the Agency is simply a question of semantics, it is common talk in government circles to state that SADC or the UN General Assembly for example is chaired by Namibia, while Namibia is not a natural person. This refers to the obligation vested in the country to provide a chairperson. Similarly, the text is used in the same manner that the obligation to appoint a chairperson within its own ranks rests with the Agency. It can however be changed, if so required.

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\(^{47}\) Section 8 of the Bill reads as follows:

1. Subject to such terms of reference the Board may determine, the Board –
   (a) must appoint a finance and audit committee;
   (b) may appoint any committee to-
      (i) advise the Board on such matters relating to its powers and functions as directed by the Board;
      (ii) assist the Board in the exercise and performance of such powers and functions of the Board as it may delegate or assign to the committee.
2. The Board may appoint as a member of a committee any person who is or is not a member of the Board, but, excluding the Road Safety Coordination Committee, at least one member of a committee must be a member of the Board.
3. If a committee consists of more than one member, the Board must designate a member of the committee as chairperson of the committee, but the Road Safety Coordinating Committee must be chaired by the Agency as contemplated in section 12(2).
4. The Board is not absolved from responsibility for the performance of any functions entrusted to any committee under this section.
5. The chairperson of a committee presides at meetings of the committee or in his or her absence the members of the committee in attendance at a meeting must elect a member to preside at that meeting.
6. The quorum at a meeting of a committee is the majority of the members of the committee.
7. A decision taken by or an act performed under the authority of the committee is not invalid by reason only of –
   (a) a vacancy on the committee; or
   (b) the fact that a person who is not entitled to sit as a member of the committee sat as such a member at the time the decision was taken or the act was authorised, committee who were present at the time and entitled to vote.
8. The person presiding at a meeting of a committee must cause a record to be kept of the proceedings of the meeting and must cause that record to be submitted to the Board as soon as possible after a meeting of the committee.
9. The Board may at any time dissolve or reconstitute a committee, but the membership of the Road Safety Coordinating Committee must comply with the provisions of sections 11(2) and section 12(1) and (2).
2.8.3. The Road Fund raised concern that section 8(7)(a), defeats the purpose of a quorum. It should be amended to provide that a vacancy on the committee does not invalidate the decision “provided there is a quorum”. It further cautioned that one should not refer to "a person" who might not have voting rights to sit on the board. It is preferable to have an alternate board member who has voting rights. This is to ensure that the decision of a committee is not invalidated by a vacancy. However, the Council defended its position by enquiring whether the suggestion forwarded by the stakeholders implies that in instances where there is no quorum, no meetings can take place. Experience indicates that where there is no remuneration, public servants tend to be less motivated to take up certain responsibilities. In instances where continued absence is experienced to the extent of no quorum, what should happen?

2.8.4. It was further pointed out by a number of stakeholders that, the wording in section 8(7)(b) is disjointed and needs to be reviewed. In response to this concern, the consultant stated that the intention here is that a decision of a committee will not be invalidated by the mere fact that one person is not supposed to be on such a committee.

2.8.5. The private sector raised concerns regarding the lack of key performance indicators for the work of the board. In response thereto, the consultant stated that the State-Owned Enterprise Act makes provision for the accountability of such boards, and should be sufficient to address this concern and it can be referred to by incorporation.

2.8.6. The MVA stressed the importance of record-keeping and suggested that section 8(8) include a provision on the safe keeping of records. It is important to regulate the safekeeping of the documents and records of the Agency. In stressing this point, the MVA Fund pointed out that there is pending litigation in which MVA have difficulties finding their records.

2.9. Section 9: Powers, Functions and Duties of the Agency

2.9.1. The Roads Authority representative asked what the implications of section 9(1)(k)\(^\text{48}\) are? The Roads Authority wanted clarity whether section 9(1)(k) meant that the Agency cannot

\(^{48}\) Section 9 of the Bill provides that: "(1) The Agency-
be assigned other functions or that there are certain functions that the agency must not do itself or that there are certain functions that the Agency must assign to executing agencies. Roads Authority also wanted to know whether education and promotion of road safety is the sole mandate of the Agency.

(a) must, in consultation with the Road Safety Coordinating Committee, compile the Plan as contemplated in section Part 2 of Chapter III;
(b) must implement an integrated road traffic management ICT system supporting the Plan;
(c) must manage the integrated road traffic management ICT system supporting the Plan;
(d) must provide secretarial services to the Road Safety Coordinating Committee;
(e) must implement and manage a road traffic offence adjudication system supported by an ICT system and which forms part of the road traffic management ICT system;
(f) must conduct or facilitate sufficient research to inform the development of the Plan;
(g) must gather information in connection with crashes and statistics and road safety in general, to disseminate such information and to make such information or dissemination thereof available to authorities, any interested person and the public;
(h) may, subject to subsection (3), impose a road safety levy on foreign vehicles entering Namibia;
(i) may appoint any qualified person to investigate crashes in order to obtain the information needed to populate the relevant ICT systems.
(j) may liaise, exchange information and co-ordinate with any other authority, person or body involved in road safety on local, regional and international level;
(k) may act as the executing agency in relation to road safety education and promotion;
(l) may in consultation with the Minister of Finance, impose and manage an ICT system to impose road safety surcharges as contemplated in section 21(3)(k);
(m) may seek funding for any road safety project or programme to be undertaken by the Agency or any other executing agency;
(n) must establish and manage a central crash data base containing the prescribed content;
(o) may make recommendations to the Minister regarding the amendment of this Act or any other Act of Parliament which may contribute to road safety;
(p) may perform any other function assigned to it by the Minister which is consistent with the objectives of the Agency and which cannot readily be performed by another existing institution, but subject to conditions to be agreed upon;
(q) must manage and maintain any property acquired in accordance with internationally accepted asset management principles; and
(r) may perform any other function that is necessary for the better execution of this Act.
(s) may invest any funds on a short or long term basis in a prudent manner; and
(t) may acquire, hire and improve property required for the performance of its core functions and dispose of any such property, but if that property is not related to the core function of the Agency, the Minister must authorise that acquisition, hiring or improving of such property.
(2) The Agency may set up a demonstration project and for this purpose it may request the Minister to issue rules, in accordance with section 37, in relation to that project, which rules apply to the persons involved with that project and for the period of that project only, and may be in conflict with the Road Traffic and Transport Act, 1999.
(3) The Agency must in setting the level of the road safety levy referred to in subsection (1)(h), consult with the Minister of Finance."
2.9.2. Roads Authority further expressed their wish that NaTIS could be relocated to the Agency, as it currently falls under the Roads Authority, which comprises of civil engineers. Some of the functions of NaTIS are vehicle testing, driver testing and licensing. The consultant stated that the Roads Authority raised the same question in the new transport policy (2016). She agreed that NaTIS would fit better with the Agency in order to find a permanent home. Currently NaTIS is treated as an assigned function and not a core function of the Roads Authority. In addition, the functions of NaTIS directly contribute to or impacts on the effectiveness of the Agency as it produces drivers and vehicles that should be fit for the task of driving. Poor drivers and unfit vehicles directly leads to poor road safety performance. Placing NaTIS under the Agency will ensure a better delivery of service that is efficient and more responsive.

2.9.3. The stakeholders were of the view section 9(1)(b) and 9(1)(c) should be combined. Section 9(1)(g) should also include the phrase “up to date information” or “current information” to ensure that correct data is obtained. The word “may” in subsection 9(1)(j) should be changed to “must” and subsection 9(1)(n) must include the phrase “current central crash data”.

2.9.4. With regards to section 9(1)(m), insofar as it relates to finding funds for executing agencies, stakeholders felt it is important for the agency to put in place measures to collect additional funds to ensure the effective implementation of the National Road Safety plan. Mr. Tierspoor explained the essence of this provision. He stated that if an executing agency is tasked to implement road safety and it has not budgeted for it, it is incumbent upon the Agency to seek alternative funds to implement such a program in terms of the National Plan.

2.9.5. MVA, further suggested that the wording of section 9(2) should be reviewed. With regards to section 9(g), on finding funds, MVA suggested that it is also an additional responsibility of the Agency to gather funds for the various programs of the executing agencies in terms of overall plan. The NRSC however stressed that it remains government’s responsibility to ensure safety on the road; therefore state revenue should continue to be appropriated.

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49 National Road Safety Agency.
for use by implementing agencies. Funding from the Road Safety Fund should be for essential projects that are not generally funded from the normal allocations.

2.9.6. With regard to the collection of information, MVA pointed out that it is incumbent upon the Agency to have a clear understanding of the issues at play, hence the collection and processing of data into useful information that should inform remedial interventions and deployment of resources. The Agency will further ensure that other agencies can have access to such information.

2.9.7. The intention of the National Integrated Information System should be to help in sharing information with public entities or private individuals. In terms of gathering and analysing this information, the Agency would only play a coordinating role and would only analyse this information where necessary. In the event that the Agency cannot analyse certain information due to lack of capacity, it would enlist the assistance of those with expertise, be it from the executing agencies or other institutions.

2.9.8. The Roads Authority questioned where driver testing fits in terms of the pillars, such as education. This is a very important issue because if the intention is to stop the carnage on the roads, it should be ensured that drivers are tested properly. Therefore it needs to be clearly outlined under which thematic area driver testing falls. It was suggested by a number of stakeholders that it could fall under law enforcement pillar. If this does not work, perhaps a thematic area that covers an array of other activities and not just driver testing could be looked at. The stakeholder however failed to provide such alternative pillar. According to the consultant, if one dissects driver testing, one will discover that there is an education aspect, law enforcement aspect and a NATIS (information system) aspect to it. There might have to be a theme committee for the Information and Communications Technology (ICT) or support systems. The ICT system has expanded to much more than just a filing system. NATIS deals with the fitness of drivers and the fitness of the vehicle as well. The Ministry of Transport suggested that the possible thematic area can be called "driver training". Driver training is an integral element of education. The education pillar is divided into three areas i.e. formal education (school based), non-formal (campaign based) and skills development. The regulatory aspect of it is meant to ensure adherence to standards.
2.9.9. MVA is of the opinion that section 9(1)(k) is not quite clear whether the intention is to exclude other institutions on education. Will education be the exclusive mandate of the Agency without support since other agencies such as the MVA Fund also carry out education programs? According to the NRSC, the provision was meant to ensure that no function fall between the cracks or remains unaddressed. This is a provision that extends the current undertaking from the Road Safety Act of 1972. The legal provision should be streamlined to avoid the current mandate encroachment. There exists no need to include provisions addressing supportive roles. Therefore, the MVA Fund Act must be amended to reflect their supportive role as road safety promotion is not their core function.

2.9.10. The MVA further raised concern with section 9(1)(g)’s impact on the MVA Fund Call Centre which currently provides management information. The MVA Fund established a call Centre in 2008 and it has been collecting information on crashes. It is important to understand the impact of the bill on this existing call center. In response, the NRSC pointed out that the Ministry of Health and Social Services is in the process of taking over the call center being referred to. It is also important to understand the role of the call center, which is to receive distress calls and dispatch the necessary assistance. Its role is not to publish statistics. Furthermore, the current statistics from the call center is not comprehensive (although useful) as it excludes non-injury accidents.

2.9.11. The MVA Fund envisaged that the provisions of section 9(1)(h) will apply in the same manner for the medical treatment of foreigners. This will create difficulties, especially since the MVA Fund is in the process of amending its Act to enable it to benefit from a levy on foreign vehicles to cover the cost for their medical treatment. In addition, the Roads Authority is a beneficiary of these proceeds as well. It was proposed that going forward; the division of these proceeds needs to be structured to the benefit of all the institutions and agencies involved in road safety. The NRSC failed to see as to why an amendment that is envisaged by the MVA in the future should affect current developments. It pointed out that there are better ways of providing for the treatment of foreigners. In aviation, for example, travelers are required to buy additional insurance before leaving their home country. The same could apply to international road travel. The purpose of collecting road safety related levy from foreigners is to design special programmes for them in the languages they understand.
2.9.12. Finally the MVA representative suggested that, section 9(1)(o) be amended so that advice contemplated in the section is “in consultation with the relevant institution”. This is to ensure that it is not a one-sided decision. The NRSC welcomed the suggestion, provided that such amendment is qualified or include “where necessary” to read “in consultation with the relevant institution where necessary”.

3. Chapter 3: Roads Safety Management

3.1. Section 11: Roads Safety Theme Committees

3.1.1. As to the question raised by the workshop participants whether the engineering thematic area covered both vehicle engineering as well as road engineering, Mr. Tierspoor responded that both road and vehicle engineering are included under that thematic area. He cautioned against expressly putting certain aspects in the Bill, because the moment the Global Decade of Action changes or is upgraded, the Act will have to be amended. The aspects that are currently in the Bill are similarly covered globally.

3.2. Section 12: Roads Safety Coordinating Committee

3.2.1. The MVA Fund suggested that the Road Safety Coordinating Committee should be made a board sub-committee. In response, the consultant cautioned against subjecting any other institution to the board. The Road Transport Policy of 2016 by the Ministry of Works and Transport advised that this Agency be elevated to the Office of the Prime Minister. It was suggested that the Office of the Vice President may be appropriate to govern the National Road Safety Agency, since the Prime Minister’s Office may otherwise become overextended. There has to be a board that gives direction in terms of government policies. The intention is to establish a technical committee that cannot be overruled by people who do not have those technical skills. Therefore, it is even more important to determine the technical skills for the board. The suggestion provided however failed to take into account the fact that, should the Agency become a directorate of the Office of the Vice President, it will not need a board. Hence the proposal that the Agency be an autonomous legal body.

3.2.2. In support of putting the Agency at the Vice President’s Office, the MVA Fund stated that this would create elevated accountability as the governing authority is higher than the
ministerial authority proposed in the bill. It also has structural benefits. Reference was made to Botswana where the secretariat of the Agency reports directly to the Coordinating Committee and the Coordinating Committee reports to the President. This accelerates decision making and the allocation of resources. The Committee has more power in that it can direct a certain institution to provide resources. The NRSC is of the opinion that it is not entirely true, in Botswana there is no Road Safety Agency, what they have is a Road Safety Committee similar to the NRSC here in Namibia, however the Department of Road Transport and Safety provides the budget, secretarial services and executes the decisions of the Committees up to the district level in Botswana. Due to strict law enforcement and law abiding nature of Batswanas, things seem to be working for them. Plus there are a number of structural differences between the two countries, what works in Botswana may not necessarily work in Namibia.

3.2.3. In addition, the consultant stated that there was a suggestion made that the Coordinating Committee should report to a cabinet committee. In the event that the Agency is placed under the Vice President’s Office, it can be made a directorate of that office. The Coordinating committee can put the National Plan before the Vice President to approve.

3.3. **Section 13: Integrated Road Safety System**

3.3.1. In terms of the Integrated Road Safety Management System (IRSMS), stakeholders suggested that the IRSMS should house all systems currently in place and those that may be required in the future. According to the NRSC, the IRSMS will provide the basic core functionality system that can be accessed by all functional agencies depending on the mode of interest. It should be the mother of all systems linking all agencies. Custom designed systems like Namibian Courts Information Systems (NAMCIS), E-Policing, Health Information System and NaTIS will remain with their respective institutions provided the systems interface or integrate.

3.3.2. The Roads Authority enquired as to what would happen in a case where it or any other road related institution has two memorandums of understanding, one with the Agency and the other with their respective Minister with differing instructions. In response, the NRSC advised that the two must be harmonized, as the MOU with the Minister is often long-term while that of the Agency will be on an annual basis and informed by the annual road safety
plan. Perhaps the Integrated Road Safety System portion of the National Plan may be included in the Memorandum of Understanding to bind all the Agencies. It is, however, important that a hierarchy of memoranda-system be established as the mere obligation imposed by the Act is sufficient to bind all the agencies.

3.4. **Section 15: Chapters of Plan**

3.4.1. A question of implementation and practicality was raised by a number of stakeholders with regards to section 15(g). The question was whether or not the proposed Agency is going to regulate the engineering of vehicles or the type of vehicles entering the country and the local public transport. The consultant, in responding to this issue, stated that Namibia has its own standards that will be used with reference to associated international standards and the caretakers of the Road Traffic and Transport Act\(^{50}\) should take a look at these standards. In addition, the NRSC is currently chairing the Technical Committee responsible for the development of NSI standards on vehicles and road safety. It is in the interest of the Agency that approved standards are adhered to. This is one of the reasons why NaTIS should be part of the Agency.

3.5. **Section 18: General Content of Laws**

3.5.1. The MVA Fund opined that the cost of fatalities and injuries are taking a toll on the economy. Especially costs related to the loss of human life, and the incapacitation of persons (disability) as a result of road accidents. This should be added to section18\(^{51}\) or at least taken into account. According to the NRSC, this is already implied in 18(b) as

\(^{50}\) (Act 22 of 1999).

\(^{51}\) Section 18 of the Bill provides that:

> “The Plan must contain-
> (a) a common goal for Namibia as referred to in section 15, expressed in accordance with the road safety management standards in relation to-
> (i) fatalities, injuries and damages to the environment as a result of road crashes;
> (ii) a summary of the area goals referred to in section 19(f); and
> (iii) a summary review of the achievement in terms of the previous Plan;
> (b) an indication of the cost to the economy of fatalities, injuries and damages, whether to motor vehicles or to the environment, as a result of crashes;
> (c) where a previous Plan exists, an assessment of the extent to which the strategies in that Plan in relation to each Chapter of that Plan have been implemented and the area goals set out therein have been achieved, including an assessment of the performance of various role players involved in the plan concerned.”
there is no way the cost of accidents to the economy can be determined without MVA related costs.

3.6. **Section 19: Content of Chapters**

3.6.1. It was suggested by the stakeholders that perhaps the language in section 19(e),\(^5^2\) should not be ‘preliminary’, but rather ‘definitive’, because the former makes it seem like a draft. However, the consultant pointed out that it is preliminary, because it still has to be approved at this stage and as soon as it is approved it becomes a final strategy.

4. **Chapter 4: Financial Provisions**

4.1. **Section 21: Road Safety Fund**

4.1.1. According to Roads Authority, section 21(3)(e)\(^5^3\) is another reason why NATIS should be moved to the proposed Agency. As the fees may include the income that NATIS receives

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\(^5^2\) Section 19 of the Bill provides that:

“Every Chapter of the Plan must contain at least-
(a) on the basis of the identified parameters, as contemplated in section 17, an assessment of the actual levels of road traffic quality indicators in relation to the functional area concerned;
(b) on the basis of the assessment in paragraph (a), the identification of the causes for any problems or deficiencies with regard to achievement of the road traffic quality indicators set out in the Plan concerned;
(c) area goals for the functional area concerned in relation to every geographical area as defined by the Road Safety Coordinating Committee and which is under the jurisdiction of the executing agency performing the function concerned;
(d) road safety emphasis areas in relation to every area goal referred to in paragraph (c);
(e) preliminary strategies to achieve the area goal;
(f) strategy identification and optimisation through comparative subset analyses of the road traffic data relating to the functional area concerned, as well as sensitivity analyses of the outcome of a strategy in accordance with the amount of funding made available for the implementation of the strategy;
(g) detailed action plans and projects to give effect to the strategies described in terms of paragraph (f), including the allocation of resources for each project; and
(h) any other matter regarded as relevant for the purpose of this Act or as requested by the Minister.”

\(^5^3\) Section 21 of the bill provides that:

(1) The Road Safety Fund is hereby established into which all moneys contemplated in this Act must be paid.
(2) Any Minister referred to in section 2(3) or any other executing agency must pay into the fund that part of the funds appropriated to his or her Ministry or the executing agency concerned that is necessary to support the execution of the duties of that Ministry or executing agency in terms of the Plan referred to in section 10.
(3) In addition to the funds referred to in subsection (2), the following moneys may be paid into the Fund:

(a) a percentage of the fuel levy imposed in terms of section 19 of the Petroleum Products and Energy Act, 1990 (Act 13 of 1990) from the National Energy Fund established by section 11(1) of that Act, which percentage must be determined by the Minister responsible for Energy, in consultation with the Minister and the Minister responsible for Finance;

(b) money appropriated to the Agency by Parliament;

(c) money appropriated in terms of section 17 of the Road Fund Administration Act, 1999 (Act 18 of 1999);

(d) money received as remuneration for services rendered in terms of an agreement;

(e) fees contemplated in Schedule 1 of the Road Traffic and Transport Regulations, 2001;

(f) the road safety levy imposed in terms of section 9(1)(h); (g) the road safety surcharges contemplated in section 9(1)(l);

(h) interest or dividends earned on any investment made in terms of this Act;

(i) all moneys derived from the sale of any assets (whether movable or immovable) of the Agency but, in the event of immovable assets, subject to such conditions as the Minister may determine;

(j) with the approval of the Minister and the concurrence of the Minister responsible for Finance, money received by way of raising loans;

(k) any fine paid in terms of the Road Traffic and Transport Act, 1999;

(l) a road safety surcharge on a long or short term insurance policy, to be determined by the Minister on advice from the Agency after consultation with representatives from both the long term and short term insurance environments;

(m) a road safety levy imposed on foreign vehicles; (n) money obtained from the sale of-

(i) publications prepared by the Agency; and

(ii) reference material; and

(o) all other money which may accrue to the Agency from any other source.

(4) In determining the amounts of funding contemplated in subsections (2), (3)(a) to (c), the cost of fatalities, injuries and vehicle damage to the economy of the country must be taken into account as well as the cost of the implementation of the Plan and money that may accrue to the Fund from the other sources referred to in subsection (3).

(5) The Agency must manage the Fund in accordance with sound financial management principles.

(6) The Fund may be utilised-

(a) to defray the administrative expenses of the Agency;

(b) to defray the expenses of the Road Safety Coordinating Committee; (c) to defray the costs of programmes to be undertaken by the Agency;

(d) to defray the programmes and projects to be undertaken by an executing agency in terms of the Plan;

(e) to defray the cost of road traffic law enforcement as per the Plan;

(f) to defray the cost of a road traffic offence adjudication ICT system;

(g) to defray the costs of moveable assets supporting the execution of the Plan;

(h) to make payments in respect of the capital, interest and any incidental costs or charges with regard to loans which the Agency has obtained;

(i) to acquire immovable or other assets which are necessary for the performance of the functions of the Agency; and

(j) subject to the approval of the Minister for any other expenses related to the functions of the Agency not already provided for in this subsection.

(7) Money obtained for the benefit of the Fund, and moneys of the Fund must be paid into the bank account referred to in section 22(4)(a).

(8) The Agency may maintain a surplus in the Fund, which surplus may be applied towards contingencies or programmes and projects undertaken by the Agency or may be invested.

(9) Notwithstanding any other law, the assets of the Agency are not subject to attachment or sale in execution.”
from driver testing. One should understand that it requires a lot of money to issue a license and test vehicles.

4.1.2. The Roads Authority further raised concerns with section 21(3)(f) that makes provision for foreign vehicles as to what would be the equivalent levies on foreign vehicles to be paid. During the discussions on the issues, it was agreed by the stakeholders that the levies paid on foreign vehicles should be the equivalent to what the domestic vehicles pay in order to avoid discrimination.

4.1.3. In addition, Roads Authority is of the opinion that the Road Safety surcharges provided for in section 21(3)(g) be clearly defined and clearly stipulate who will pay these fees. The Road Fund also shared the concern that the surcharge will be placed on the consumer. In response, the consultant stated that the surcharge would be paid by the person who takes out the vehicle insurance. Even if you put it on the insurance company, it will just pass it through to the person taking out the insurance. With regards to the foreigners, the Bill can be amended to be the equivalent of what the domestic vehicles are paying.

4.1.4. The Roads Authority cautioned that the fines provided for under section 21(3)(k) may be seen as an abused process by the public. One would not want to have a situation where if the Agency sees it is short of funds, it instructs the police to issue more fines. There should be safeguards against this. According to the NRSC, this kind of understanding is however very misguided as the police do not issue tickets arbitrary, their actions are based on offences committed, not based on any instruction by any institution. The discussions on the matter provided clarity on the current traffic fines position, in which the money goes into the central revenue fund and then paid to the Ministry of Justice. However, majority of cases do not proceed for various reasons or are withdrawn against the accused/offender. On the other hand, if traffic offences are decriminalised, it would be logical for this money to go to the fund. One can counter the criticism by the public about the police issuing tickets arbitrary if the plan is done properly and it is transparent.

4.1.5. Stakeholders such as the MVA and the Roads Authority cautioned that one should be careful to not duplicate the source of the funding because they also receive money from the fuel levy. In response thereto, it was suggested that the Act can be amended to indicate that the Road Fund does not have to fund road safety activities anymore and that
all these proceeds can just go to the Agency. The idea is that the more diversified your revenue streams are, the less the amount to be levied. Currently there are so many institutions being funded by the RFA. The effectiveness and impact of the funded activities on road safety is unknown. If all funds are pooled together and functional agencies funded on the basis of their performance, efficiency will be achieved. If funding is consolidated, there should not be a problem why the RFA Act should not be amended to the extent that all road safety related funding should be disbursed via the Road Safety Fund to be created by section 21 of the Bill.

4.1.6. The MVA Fund asked whether there was an intention to increase the percentage the Agency is going to get from the fuel levy. The National Roads Safety Council stated that the current amount it receives is not enough to implement this responsibility and the matter is currently being discussed by the Cabinet. However, the NRSC further stated that it would have to investigate other sources for funding to solve this problem and to avoid overburdening the consumer.

4.1.7. The Ministry of Finance\textsuperscript{54} has perused the draft Bill with a focus on Chapter 4 that deals with the financial provisions in order to gain an understanding of the funding requirements and operational issues of the Agency stipulated in the Bill. This includes the understanding of the programs and activities of the agency during the annual budget hearings. Their position is that the provisions are meticulous in that they deal with all the conventional financial reporting requirements which are universal. This entails the accounting and financial reporting processes and procedures in terms of administration and accountability of the fund, cost and business plan and the auditing procedures that have to be adhered to and all the necessary checks and balances are included. All institutions are financed to honor their specific mandates. However, the institutions occasionally raise funds for the peak times' campaigns. The proposed Agency should do the same and ensure that the funds stated in section 21(2) are only used in relation to the execution of the plan and not for a general purpose.

\textsuperscript{54} Mr. Seibeb on behalf of the Ministry of Finance
4.1.8. The legality of Section 21(9) was questioned. In that it seems to be contrary to the rules of natural justice and insolvency laws. It would be not advisable to grant the Agency immunity\(^{55}\) in this manner. This provision is in conflict with the establishing section which states that the Road Safety Management Agency is a juristic person. A juristic person is an entity that can incur liabilities, acquire rights, sue and be sued.\(^{56}\) Therefore immunity plays no role where juristic persons are concerned.

4.2. **Section 23: Budget of the Agency**

4.2.1. During the discussions, it was recommended that section 23\(^{57}\) be aligned to section 19(1) of the State Enterprise Governance Act, and correct the numbers to align the referencing to subsection 2. It should further be inserted in the provision that the budgets be approved 90 days before the new financial year.\(^{58}\)

5. **Chapter 5: Legal Procedures**

5.1. **Section 29 Exemption of Agency from Taxes, Duties and Levies**

5.1.1. It was agreed by the workshop participants that the provision in the proposed Bill that exempts it from paying taxes should be removed.\(^{59}\) There exists no rationale for it, as Namibia has a small population and taxes are one of its main sources of revenue. According to the NRSC however, the suggestion by the stakeholders is not the general

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\(^{55}\) Immunity the ability or means to be exempted from penalties, payments or legal requirements, granted by authorities or statutes see Oxford Dictionary of Law 6\(^{th}\) edition, Oxford University Press 265.

\(^{56}\) Mrs. Kapena Tjombonde in the presentation on behalf of the Motor Vehicle Accident Fund.

\(^{57}\) Section 23 of the Bill provides that:

1. The Agency may not incur expenses except in accordance with a budget approved in terms of this section.
2. The Agency must annually on a date agreed with the Board, submit to the Board for its approval a budget in respect of the ensuing and each of the three financial years following thereafter.
3. The budget referred to in subsection (2) must contain a statement of income and expenditure in relation to the operation of the Agency.

\(^{58}\) Mrs. Kapena Tjombonde in the presentation on behalf of the Motor Vehicle Accident Fund.

\(^{59}\) Section 29 of the Bill provides that:

“No income or any other tax, duty or levy imposed under any law is payable by the Agency.”
trend. Non-income/profit SOEs are exempted from paying tax. Why should the Agency which is also a non-income generating SOE pay tax? Is this a new legal position? If so, then all Non-income SOEs establishing Acts should be amended to follow the “new” legal position (if at all).

5.2. **Other additional submissions made by the stakeholders included the following:**

5.2.1. The MVA requested to have insight into the cabinet memo to understand the mischief sought to be addressed. The Minister of Works and Transport being the portfolio and policy decision-making head of the Ministry directed the memo to cabinet, he would know better in terms of where and how things should go. MVA is thus advised by the NRSC to contact the minister’s office in this regard.

5.2.2. Stakeholders are of the view that, there should be a clear distinction between the mandates of all the road safety related institutions, how such mandates will be transitioned and to ensure that the risks are sufficiently and adequately mitigated.

5.2.3. The MVA Fund is not against the intention of the Bill, but merely wants to understand what is envisaged by it and how it will impact that part that is currently in the MVA Fund Act. Will the MVA Fund now be curbed to only perform road safety programs as per the Road Safety Management Agency’s plan because the funds are held by the Agency? This is a big concern for them. The NRSC however clarified that the plan to be developed is not the Agency’s plan, but rather a National Plan aimed at bringing tangible lasting solution to our bad road safety performance as a collective.

5.2.4. The MVA Fund is very concerned that if they let go of a part of their mandate, it would leave it all to the Agency putting it back in the position it was before the amendment to the MVA Fund Act. If the MVA Fund will have to let go of its mandate there should be a transitional period and provision in the bill and detail how this will take place. In response, the consultant stated that the intention is to have the mandates clearly defined and not to have them overlap. The purpose is not to stop what the MVA Fund is doing. The purpose

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60 MVA Act 2007. Section 6 that reads: “The income or money of the Fund is exempt from any form of taxation or duty under any law governing tax or duty and such exemption extends to all transactions conducted by the Fund.”
is that it has to be focused in terms of the programs that it was established for. In other words to focus more on its core mandate. It is to get all the players together in a structured way and have them give this Agency enough power to withhold budgets if they are not performing. It was suggested that this might be resolved by making the MVA Fund part of the Road Safety Coordinating Committee. In addition, the systems such as that the MVA Fund and other institutions can be integrated with the system of the National Roads Safety Management Agency.

5.2.5. Section 23 of the MVA Fund Act obligates it to be the first respondents at the scene of an accident. It is mandated to provide emergency care in such a case. It sees itself as part of the Road safety committee. There is concern that if there is a bigger group that has to make decisions, there will be time-delays. In addition, this can curb an institution’s initiative and out-of-the-box-thinking. According to the NRSC however, the Agency will not involve itself in operational issues that fall within the ambit of a functional element. Issue of ambulance deployment should not be issues of discussion at the Committee level. The committee should indulge itself in key issues such as ensuring adherence to KPI contained in the plan including improved ambulance response times.

5.2.6. The MVA Fund also wanted to understand how the Bill impacts its programs and key areas. Ms. Botha in response stated that the Agency’s plan consist of the programs of various institutions including the MVA Fund. Therefore, the latter is not bound to another institution’s plan. The aim is to have a unified plan which can be reviewed every year. The information of the various institutions needs to be integrated into one institution. For example, the information of the MVA Fund can be helpful to the police. In support hereof, Ms. Botha stated that 99 percent of accident include an offense.

5.2.7. Mr. Tierspoor from the National Road Safety Council, who is also a member of the board of Directors of the MVA Fund, stated that the supporting functions of the institutions need to be defined clearly. This will inform each institution where it fits in terms of the National Plan. In order for the Agency to have a proper command of road safety, these roles should be outlined so that there is no overlap. A distinction should be made between those that support and those that coordinate. This will give each institution enough space to
implement their respective mandates.\textsuperscript{61} According to the MVA Fund, the Act gives it powers to be involved in Road Safety. The NRSC feels this should be addressed as there cannot have two bulls in one kraal and expect peace.

**PROPOSED LAW REFORM**

The Road Safety Management Bill as the proposed law has as its main object the establishment of the Road Safety Agency. The Agency will spearhead the implementation of a national roads safety management plan and an integrated roads safety management system in line with the UN General Assembly Resolution 64/255 which also calls for regular monitoring of the global progress towards meeting the targets identified in the Plan of Action.

The Bill will also serve to provide for the continued existence of the Central Roads Safety Fund; repealing the National Roads Safety Act 9 of 1972 and to provide for any other matter that may be relevant hereto. It is intended to enable change by putting up institutions to ensure that road safety is efficiently planned and managed. The aim of the Bill is to bring about measures to limit the number of persons that perish on roads every year. Furthermore, the Bill also focuses on ensuring the collection of data and statistics, as data relevant to road safety is still grossly inadequate for planning, implementing, and evaluating road safety interventions. Without data, it will be impossible to effectively improve road safety.\textsuperscript{62}

**RECOMMENDATIONS**

The following recommendations were made after considering all submissions on the proposed law made by the relevant stakeholders.

1) The management approach is critical to the success of plans and implementation of this Bill. It should be multi-sectorial and include strong involvement of the stakeholders, the public at large and the private sector. More importantly it will require sustained political will, and commitment. The strength of the implementing agencies and the resources

\textsuperscript{61} Mrs. Kapena Tjombonde in the presentation on behalf of the Motor Vehicle Accident Fund.

available and a coordinated multi-sectorial approach also play a role in the effective implementation of this Bill.\footnote{Review Of Road Safety In Urban Areas Project Report PR/INT/200/00 by A Downing, G Jacobs, A Aeron-Thomas, J Sharples D Silcock, C van Lottum, R Walker, A Ross Transport Research Laboratory October 2000 At http://siteresources.worldbank.org/INTURBANTRANSPORT/Resources/urban_safety_trlrs_2.pdf accessed 8 June 2016}

2) Proper benchmarking should be done, through a regional and international comparative analysis to investigate the approach taken by selected countries that have a similar legal or institutional framework as proposed by the Road Safety Management Bill. This comparative analysis should reveal the valuable lessons that Namibia can learn from.

3) A safety culture should be developed in order to reduce crashes. Therefore road-user safety should be the responsibility of the road sub sector as a whole, and all units. A strong coordinating body or lead agency is therefore imperative to ensure implementation. It must be capable of planning road safety projects, securing a budget, implementing the projects and monitoring their effectiveness.

4) Most agencies are often short of funds. Mechanisms need to be identified which can collect and channel road user charges back to the areas from which they are derived in order to invest in roads safety improvements.\footnote{As above.}

5) The proposed Bill is not intended to address issues that fall within the scope of other legislation. Issues such as seat belts, speeding, use of lights and the point demerit system\footnote{See the Legal Assistance Center (LAC) written submissions on the proposed Roads Safety Management Bill.} among others. Road safety activities, including road safety engineering, should not be assumed to be the same as traffic engineering. The aim of the Bill is not to duplicate the mandate of other institutions, but rather to bring about uniformity and effective cooperation among road safety concerned agencies and stakeholders in order to ensure effective road safety management. The specific Acts must be revisited and amended in order to cater for issues that fall within their mandate areas.
AFFECTED LAWS

The proposed Bill will affect a number of laws as laid out in its schedule. These laws include the following:

a) The National Roads Safety Act 9 of 1972 will be repealed by the proposed Bill fully, as stipulated in the preamble of the Bill.

b) The Bill will affect and amend section 109(1) of the Road Traffic and Transport Act 22 of 1999 by removing “State Revenue Fund and inserting “Road Safety Fund” as established in terms of section 21 of the proposed Road Safety Management Bill.

c) Section 2(2)(a) of the Motor Vehicle Accident Fund Act 10 of 2007 shall be affected by the proposed Bill inserting “in support of the integrated road safety management plan contemplated in section 15 of the proposed Road Safety Management Bill”.

IN RETROSPECT

The proposed Bill reflects the values contained in the Harambee Prosperity plan. The Bill reflects the essence of Pillar 1 on Effective governance to improve performance and service delivery by setting up an oversight and management agency to ensure effective governance in the road transport sub-sector. Secondly, the proposed Bill reflects the values provided for in Pillar 2 Economic advancement to bring about Economic competitiveness by ensuring that an effectively managed and properly maintained transportation sector and roads system is put in place for effective trade, services and goods throughout Namibia. In addition, safe roads will limit the number of economic productive members lost on the roads due to motor vehicle accidents. And finally, the Bill will contribute to the implementation of Pillar 4 on infrastructural development, by ensuring that transport infrastructures are properly structured and managed as per the nation’s expectations.

The Bill further seeks to place Namibia on a trajectory towards the achievement of Goal 3, 9 and 11\(^66\) of the Sustainable Development Goals as declared by the United Nations in September 2015.

\(^{66}\) Goals 3, 9 and 11: These goals covers: Good health; Build resilient infrastructure, promote sustainable industrialization and foster innovation; sustainable cities and communities.
These goals seek to halve the number of global deaths and injuries from road traffic accidents by 2020, and to provide access to safe, affordable, accessible and sustainable transport system for all, improving road safety. Notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, elder persons and those with disabilities.
ANNEXURES

A. PROPOSED BILL

REPUBLIC OF NAMIBIA

ROAD SAFETY MANAGEMENT BILL

(As introduced in the National Assembly)

(MINISTER OF WORKS AND TRANSPORT)

Road Safety Management Bill August 2015

Bill No. X, 2014 ROAD SAFETY MANAGEMENT BILL, 2014
ACT

(Signed by the President)

To provide for the establishment of a Road Safety Agency; for the development and the implementation of a national road safety management plan and an integrated road safety management system; to provide for the establishment of the Road Safety Fund; to repeal the National Road Safety Act, 1972 (Act 9 of 1972); and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of Namibia, as follows:

CHAPTER I: INTERPRETATION

1. Definitions

In this Act, unless the context otherwise indicates—

"Agency" means the Road Safety Agency established by section 2;

"area goal" means a road safety goal set for an area as determined by the Board;

"Board" means the board referred to in section 4;

"crash" means a collision or other impact on a road causing death, any injury or damage and includes an accident as contemplated in the Road Traffic and Transport Act, 1999 (Act 22 of 1999) and the Motor Vehicle Accident Fund Act, 2007 (Act 10 of 2007) in relation to a crash occurring on a public road as defined in the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999);

"demonstration project" means a project undertaken by any executing agency that is aimed at the improvement of road safety or road safety management;

"emphasis area" means a subject within a functional area which in terms of the Plan is targeted to receive specific attention;

"executing agency" means any institution that is responsible for the execution of the Plan in relation to a functional area referred to in section 11(1);

"Fund" means the Road Safety Fund referred to in section 21;

"ICT system" means a system comprising information and communication technology including all components necessary to establish an electronic support system for the integrated road safety management system or for aspects thereof;

"integrated road safety management system" means a road traffic management system that integrates all the aspects of road safety management, including engineering (roads), engineering (vehicles), education, law enforcement (including offence adjudication) and emergency services and coordinated by the Plan;

"Minister" means the Minister responsible for transport;

"Ministry" means the administration established in terms of section 2 of the Assignment of Powers Act, 1990 (Act 4 of 1990) to administer the transport function;
“Namibian Road Traffic Information System” means the electronic database containing the information referred to in section 95 of the Road Traffic and Transport Act, 1999 and regulation 366(1)(a)(i-ix), (2)(a) and (b), (3) and (4) of the Road Traffic and Transport Regulations, 2001;

"Road Safety Coordinating Committee" means the committee established by section 12(1);

"Plan" means the integrated road safety management plan contemplated in section Part 2 of Chapter III;

"prescribed" means prescribed by regulation;

“repealed Act” means the National Road Safety Act, 1972 (Act 9 of 1972) repealed by section 25 of this Act;

"Roads Authority" means the Roads Authority established by section 2 of the Roads Authority Act, 1999 (Act 17 of 1999);

“road traffic quality indicator”, means the actual level of a road safety indicator as measured against a road traffic management standard;

"safety performance indicator" means any number of appropriate, measurable parameters which can be used to express the status of any element relating to road safety or to road conditions;

"standard" means the minimum standard, process, procedure, method or system in relation to a functional area contemplated in section 11(1) and, issued in terms of section 38;

"State-owned Enterprises Governance Act" means the State-owned Enterprises Governance Act, 2006 (Act 2 of 2006); and

"this Act" includes any regulations made in terms of this Act or any standard issued in terms of this Act.

CHAPTER II: INSTITUTIONAL PROVISIONS

PART I: Establishment of Agency

2. Establishment of road safety agency

(1) The Road Safety Agency is established as a juristic person.

(2) The Agency consists of a Board which gives strategic direction to the Agency, a Road Safety Coordinating Committee and an administration, led by a Chief Executive Officer.

(3) The Ministers responsible for-

(a) transport;

(b) energy;

(c) health;

(d) finance;

(e) justice;

(f) education; and

(g) safety and security, must, subject to section 13, oversee the execution of the Plan contemplated in section 10 in as far as it relates to the functional area of the Minister concerned.
3. **Objectives of agency**

The objectives of the Agency are to -

(a) ensure the safety of all road users and that all necessary efforts are taken towards preventing traffic deaths and injuries;

(b) coordinate road safety programmes across government with the view to optimising resources and programme results;

(c) support other government agencies in aligning the responsibilities of all role players in the road safety environment with the national road safety goal; and

(d) promote and foster a culture that places priority on road safety.

PART 2: Board

4. **Board: Constitution, membership and term of office**

(1) The Board is constituted by the number of members with the qualifications, experience and skills as determined in terms of section 14 of the State Owned Enterprises Governance Act.

(2) The term of office of the Board is as determined in terms of section 14 of the State Owned Enterprises Governance Act.

5. **Appointment of board members**

(1) The Minister must, subject to section 14 of the State-owned Enterprises Governance Act, and in accordance with the procedure prescribed by section 15 of the State Owned Enterprises Governance Act, appoint Board members, the chair person and vice chairperson.

(2) Any alternate member of the Board must be appointed as prescribed by sections 14 and 15 of the State-owned Enterprises Governance Act.

(3) For the purpose of section 15 of the State-owned Enterprises Governance Act, the Minister must assume the duties imposed on the secretariat to the Council as contemplated in that section.

(4) Notwithstanding the expiry of the term of office of the Board determined in terms of section 14(1)(d) of the State-owned Enterprises Governance Act, the Board continues to exist until a new Board has been appointed in terms of section 14 of that Act.

6. **Meetings of board**

(1) The Board must meet at least four times a year.

(2) The majority of Board members form a quorum.

(3) If, despite the provision of subsection (2), a quorum cannot be achieved, a decision of the Board is not invalid merely by reason of a lack of a quorum, if the Minister has ratified that decision.

7. **Functions of board**

(1) The Board must provide strategic leadership to the Agency and oversee the governance of the Agency in accordance with the requirements of the State-owned Enterprises Governance Act.
The Board must ensure that the Fund is managed responsibly.

The Board must ensure that the Agency performs its functions and exercise its powers in terms of this Act responsibly in order to achieve the objectives of the Agency as contemplated in section 3.

The Board must liaise with the management of the executing agencies in order to ensure the smooth operation of the Road Safety Coordinating Committee.

8. **Committees of the Board**

   (1) Subject to such terms of reference the Board may determine, the Board –

   (a) must appoint a finance and audit committee;

   (b) may appoint any committee to -

   (i) advise the Board on such matters relating to its powers and functions as directed by the Board;

   (ii) assist the Board in the exercise and performance of such powers and functions of the Board as it may delegate or assign to the committee.

   (2) The Board may appoint as a member of a committee any person who is or is not a member of the Board, but, excluding the Road Safety Coordinating Committee, at least one member of a committee must be a member of the Board.

   (3) If a committee consists of more than one member, the Board must designate a member of the committee as chairperson of the committee, but the Road Safety Coordinating Committee must be chaired by the Agency as contemplated in section 12(2).

   (4) The Board is not absolved from responsibility for the performance of any functions entrusted to any committee under this section.

   (5) The chairperson of a committee presides at meetings of the committee or in his or her absence the members of the committee in attendance at a meeting must elect a member to preside at that meeting.

   (6) The quorum at a meeting of a committee is the majority of the members of the committee.

   (7) A decision taken by or an act performed under the authority of the committee is not invalid by reason only of –

   (a) a vacancy on the committee; or

   (b) the fact that a person who is not entitled to sit as a member of the committee sat as such a member at the time the decision was taken or the act was authorised, committee who were present at the time and entitled to vote.

   (8) The person presiding at a meeting of a committee must cause a record to be kept of the proceedings of the meeting and must cause that record to be submitted to the Board as soon as possible after a meeting of the committee.

   (9) The Board may at any time dissolve or reconstitute a committee, but the membership of the Road Safety Coordinating Committee must comply with the provisions of sections 11(2) and section 12(1) and (2).

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**PART 3: Agency**

9. **Powers, functions and duties of agency**
(1) The Agency—

(a) must, in consultation with the Road Safety Coordinating Committee, compile the Plan as contemplated in section Part 2 of Chapter III;

(b) must implement an integrated road traffic management ICT system supporting the Plan;

(c) must manage the integrated road traffic management ICT system supporting the Plan;

(d) must provide secretarial services to the Road Safety Coordinating Committee;

(e) must implement and manage a road traffic offence adjudication system supported by an ICT system and which forms part of the road traffic management ICT system;

(f) must conduct or facilitate sufficient research to inform the development of the Plan;

(g) must gather information in connection with crashes and statistics and road safety in general, to disseminate such information and to make such information or dissemination thereof available to authorities, any interested person and the public;

(h) may, subject to subsection (3), impose a road safety levy on foreign vehicles entering Namibia;

(i) may appoint any qualified person to investigate crashes in order to obtain the information needed to populate the relevant ICT systems.

(j) may liaise, exchange information and co-ordinate with any other authority, person or body involved in road safety on local, regional and international level;

(k) must act as the executing agency in relation to road safety education and promotion;

(l) may in consultation with the Minister of Finance, impose and manage an ICT system to impose road safety surcharges as contemplated in section 21(3)(k);

(m) may seek funding for any road safety project or programme to be undertaken by the Agency or any other executing agency;

(n) must establish and manage a central crash data base containing the prescribed content;

(o) may make recommendations to the Minister regarding the amendment of this Act or any other Act of Parliament which may contribute to road safety;

(p) may perform any other function assigned to it by the Minister which is consistent with the objectives of the Agency and which cannot readily be performed by another existing institution, but subject to conditions to be agreed upon;

(q) must manage and maintain any property acquired in accordance with internationally accepted asset management principles; and

(r) may perform any other function that is necessary for the better execution of this Act.

(s) may invest any funds on a short or long term basis in a prudent manner; and

(t) may acquire, hire and improve property required for the performance of its core functions and dispose of any such property, but if that property is not related to the core function of the Agency, the Minister must authorize that acquisition, hiring or improving of such property.

(2) The Agency may set up a demonstration project and for this purpose it may request the Minister to issue rules, in accordance with section 37, in relation to that project, which rules apply to the persons involved with that project and for the period of that project only, and may be in conflict with the Road Traffic and Transport Act, 1999.

(3) The Agency must in setting the level of the road safety levy referred to in subsection (1)(h), consult with the Minister of Finance.
10. **Staff of agency**

(1) The Board must appoint a Chief Executive Officer with tertiary qualification and experience in engineering, information technology, economics, law, or road safety management to be the Chief Executive Officer of the Agency and who is responsible for the day to day management of the Agency.

(2) The Chief Executive Officer of the Agency —

(a) holds office for a term of five years, and is eligible for reappointment at the end of that term; and

(b) is responsible to carry out the functions of the Agency and the decisions of the Board subject to the general control and supervision of the Board.

(3) A person does not qualify for appointment as Chief Executive Officer if such person —

(a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence, and does not reside in Namibia;

(b) is an rehabilitated insolvent; or

(c) has been convicted of an offence involving dishonesty or has been dismissed from a previous post by reason of dishonesty; or

(d) is a member of a local authority council.

(4) The Chief Executive Officer may, before the expiration of his or her term of office —

(a) be removed from office by the Board with the concurrence of the Minister on grounds of misconduct or inability to efficiently discharge the functions of his or her office, subject to the rules of natural justice; or

(b) resign from office by giving a written notice of resignation of not less than three months to the Board.

(5) The Chief Executive Officer is a member of the Board by virtue of his or her office.

(6) The Chief Executive Officer may appoint such staff complement as is reasonably necessary to perform the functions of the Agency in terms of this Act. The conditions of service, remuneration and benefits of the Chief Executive Officer and the management staff of the Agency are as determined in terms of section 22 of the State-owned Enterprises Governance Act.

(7) The Chief Executive Officer and the management staff of the Agency must enter into performance agreements with the Board as contemplated in section 21 of the State-owned Enterprises Governance Act.

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**CHAPTER III: ROAD SAFETY MANAGEMENT**

**PART 1: Institutional Provisions**

11. **Road safety theme committees**

(1) The Chief Executive Officer must establish a road safety theme committee for each of the following functional areas:

(a) education and promotion;

(b) engineering;

(c) law enforcement and offence adjudication;
(d) emergency services; and
(e) any other road safety committee that he or she considers necessary for the better execution of the Plan.

(2) The incumbents of the relevant post in the executing agency responsible for the execution of the functional areas contemplated in subsection (1) must serve on the relevant theme committee.

12. **Road Safety Coordinating Committee**

(1) The Road Safety Coordinating Committee is established and comprises the chairperson of each of the road safety theme committees referred to in section 11.

(2) The Agency must, from its staff complement appoint a person who is qualified in integrated road safety management to serve as the chairperson of the Road Safety Coordinating Committee.

(3) The business of the Road Safety Coordinating Committee is conducted as agreed in writing with the Chief Executive Officer.

(4) The Road Safety Coordinating Committee may meet as often as necessary for the proper execution of the Plan, but must meet at least once every quarter.

(5) The Road Safety Coordinating Committee may co-opt any person necessary to execute its duties.

13. **Integrated road safety management ICT system**

(1) The Agency must develop, implement and maintain an Integrated Road Safety Management ICT System in support of the Plan.

(2) The Integrated Road Safety Management ICT System must contain road traffic data that is required by each of the functional areas contemplated in section 11(1), and must at least-

a) be able to interface real-time with the Namibian Road Traffic Information System;

b) be able to interface real-time with a court management ICT system or be available to the Ministry of Justice for the management of the road traffic offence adjudication process unless that process is decriminalized in which case it must be able to interface with that decriminalized road traffic offence adjudication ICT system;

c) be able to automate the prosecution process for road traffic offences until that process is decriminalized;

d) be able to record the road traffic offence adjudication process;

e) be able to interface real-time with any traffic management ICT system used by an executing agency;

f) be able to record road traffic crash statistics;

g) be able to display road traffic safety data, including crashes and offences, on a geographical information system;

h) be able to interface real-time with the Roads Management ICT System used by the Roads Authority; and

i) provide access to each functionary in the road safety management environment to the level agreed on with the Road Safety Coordinating Committee.
14. **Memoranda of understanding**

(1) The Agency must enter into a memorandum of understanding with every executing agency involved in the execution of the Plan.

(2) The memoranda of understanding referred to in subsection (1), must set out the manner of cooperation between the Agency and the relevant executing agency, and provide for the manner of determining budgetary allocations to the executing in respect of the execution of the Plan.

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**PART 2: Integrated Road Safety Management Plan**

15. **Chapters of plan**

(1) The Plan sets a national road safety goal and consists of chapters covering at least the following functional areas -

(a) performance assessment as contemplated in section 18(c);
(b) road safety education and promotion;
(c) road safety research and development;
(d) road traffic law enforcement, including but not limited to-
   (i) critical offence monitoring with the purpose of measuring changes in road user behaviour; and
   (ii) road traffic offence adjudication management;
(e) emergency services insofar as it relates to emergency response to crashes;
(f) roads engineering remedial works, that includes reactive and pro-active interventions; and
(g) road safety engineering (vehicles).

16. **Requirements for plan**

(1) Every chapter referred to in section 15 must indicate programmes and projects illustrating how the executing agency or agencies responsible for the execution of that chapter of the Plan will achieve the national road safety goal set by the Plan.

(2) Every chapter referred to in section 15 must contain an asset management plan in relation to the assets, if any, that supports the execution of the Plan, excluding office accommodation.

(3) The executing agencies for the respective functional areas relating to those chapters must through the appropriate road safety theme committee established in terms of section 11(1), provide the input in relation to the chapter specific to that executing agency.

(4) The Plan must be compiled for a period of five years, and may annually be reviewed and adapted.

17. **Agency to identify and define parameters and values**

The Agency must, in consultation with the Road Safety Coordinating Committee, identify and define-

(a) safety performance indicators to be used;
(b) the values to be attached to the parameters set by those safety performance indicators in order to define the standards of the different components of the Plan to be attained (to be known as road safety management standards); and
(c) the type of information and statistics to be collected in order to determine current and future levels of the components of the Plan.

18. General contents of the plan
The Plan must contain-
(a) a common goal for Namibia as referred to in section 15, expressed in accordance with the road safety management standards in relation to-
(i) fatalities, injuries and damages to the environment as a result of road crashes;
(ii) a summary of the area goals referred to in section 19(f); and
(iii) a summary review of the achievement in terms of the previous Plan;
(b) an indication of the cost to the economy of fatalities, injuries and damages, whether to motor vehicles or to the environment, as a result of crashes;
(c) where a previous Plan exists, an assessment of the extent to which the strategies in that Plan in relation to each Chapter of that Plan have been implemented and the area goals set out therein have been achieved, including an assessment of the performance of various role players involved in the plan concerned.

19. Contents of chapters
Every Chapter of the Plan must contain at least-
(a) on the basis of the identified parameters, as contemplated in section 17, an assessment of the actual levels of road traffic quality indicators in relation to the functional area concerned;
(b) on the basis of the assessment in paragraph (a), the identification of the causes for any problems or deficiencies with regard to achievement of the road traffic quality indicators set out in the Plan concerned;
(c) area goals for the functional area concerned in relation to every geographical area as defined by the Road Safety Coordinating Committee and which is under the jurisdiction of the executing agency performing the function concerned;
(d) road safety emphasis areas in relation to every area goal referred to in paragraph (c);
(e) preliminary strategies to achieve the area goal;
(f) strategy identification and optimisation through comparative subset analyses of the road traffic data relating to the functional area concerned, as well as sensitivity analyses of the outcome of a strategy in accordance with the amount of funding made available for the implementation of the strategy;
(g) detailed action plans and projects to give effect to the strategies described in terms of paragraph (f), including the allocation of resources for each project; and
(h) any other matter regarded as relevant for the purpose of this Act or as requested by the Minister.

20. Road safety management review
(1) The Agency must at least once every five years facilitate a review of road safety management in Namibia and that review must be undertaken by a panel of independent experts in road safety
management in accordance with ISO 39001: “Road traffic safety (RTS) management systems — Requirements with guidance for use”.

(2) The panel referred to in subsection (1), must submit a report on the review referred to in that subsection, together with recommendations with regard to remedial actions, to the Board and a copy of that report to the Minister.

CHAPTER IV: FINANCIAL PROVISIONS

21. Road safety fund

(1) The Road Safety Fund is hereby established into which all moneys contemplated in this Act must be paid.

(2) Any Minister referred to in section 2(3) or any other executing agency must pay into the fund that part of the funds appropriated to his or her Ministry or the executing agency concerned that is necessary to support the execution of the duties of that Ministry or executing agency in terms of the Plan referred to in section 10.

(3) In addition to the funds referred to in subsection (2), the following moneys may be paid into the Fund:

(a) a percentage of the fuel levy imposed in terms of section 19 of the Petroleum Products and Energy Act, 1990 (Act 13 of 1990) from the National Energy Fund established by section 11(1) of that Act, which percentage must be determined by the Minister responsible for Energy, in consultation with the Minister and the Minister responsible for Finance;

(b) money appropriated to the Agency by Parliament;

(c) money appropriated in terms of section 17 of the Road Fund Administration Act, 1999 (Act 18 of 1999);

(d) money received as remuneration for services rendered in terms of an agreement;

(e) fees contemplated in Schedule 1 of the Road Traffic and Transport Regulations, 2001;

(f) the road safety levy imposed in terms of section 9(1)(h);

(g) the road safety surcharges contemplated in section 9(1)(l);

(h) interest or dividends earned on any investment made in terms of this Act;

(i) all moneys derived from the sale of any assets (whether movable or immovable) of the Agency but, in the event of immovable assets, subject to such conditions as the Minister may determine;

(j) with the approval of the Minister and the concurrence of the Minister responsible for Finance, money received by way of raising loans;

(k) any fine paid in terms of the Road Traffic and Transport Act, 1999;

(l) a road safety surcharge on a long or short term insurance policy, to be determined by the Minister on advice from the Agency after consultation with representatives from both the long term and short term insurance environments;

(m) a road safety levy imposed on foreign vehicles;

(n) money obtained from the sale of-

(i) publications prepared by the Agency; and

(ii) reference material; and
all other money which may accrue to the Agency from any other source.

In determining the amounts of funding contemplated in subsections (2), (3)(a) to (c), the cost of fatalities, injuries and vehicle damage to the economy of the country must be taken into account as well as the cost of the implementation of the Plan and money that may accrue to the Fund from the other sources referred to in subsection (3).

The Agency must manage the Fund in accordance with sound financial management principles.

The Fund may be utilised-

- to defray the administrative expenses of the Agency;
- to defray the expenses of the Road Safety Coordinating Committee;
- to defray the costs of programmes to be undertaken by the Agency;
- to defray the programmes and projects to be undertaken by an executing agency in terms of the Plan;
- to defray the cost of road traffic law enforcement as per the Plan;
- to defray the cost of a road traffic offence adjudication ICT system;
- to defray the costs of moveable assets supporting the execution of the Plan;
- to make payments in respect of the capital, interest and any incidental costs or charges with regard to loans which the Agency has obtained;
- to acquire immoveable or other assets which are necessary for the performance of the functions of the Agency; and
- subject to the approval of the Minister for any other expenses related to the functions of the Agency not already provided for in this subsection.

Money obtained for the benefit of the Fund, and moneys of the Fund must be paid into the bank account referred to in section 22(4)(a).

The Agency may maintain a surplus in the Fund, which surplus may be applied towards contingencies or programmes and projects undertaken by the Agency or may be invested.

Notwithstanding any other law, the assets of the Agency are not subject to attachment or sale in execution.

22. Administration of Fund and accountability

The Chief Executive Officer is, for the purposes of the State Finance Act, 1991 (Act No. 31 of 1991), the accounting officer of the Fund.

The Chief Executive Officer is responsible for the administration of the Fund, subject to the directions of the Minister given after consultation with the Board, and to the rules made under subsection (3).

The Minister may, with the concurrence of the Minister responsible for Finance—

- determine rules relating to the administration of the Fund; and
- approve the investment policy regulating the investment of moneys standing to the credit of the Fund.
(4) The Board must, subject to this section, open and maintain a banking or savings account in the name of the Fund with -
(a) any banking institution or building society registered under the laws governing banking institutions and building societies in Namibia; or

23. Budget of agency

(5) The Agency may not incur expenses except in accordance with a budget approved in terms of this section.
(6) The Agency must annually on a date agreed with the Board, submit to the Board for its approval a budget in respect of the ensuing and each of the three financial years following thereafter.
(7) The budget referred to in subsection (2) must contain a statement of income and expenditure in relation to the operation of the Agency.

24. Budget supporting plan

(1) The Agency must submit a budget in support of the Plan in respect of the ensuing and each of the five financial years following thereafter for approval to the Board, together with the Plan.
(2) The Board must submit the budget referred to in subsection (1) to the Minister.
(3) The budget supporting the Plan must contain the estimated expenditure for the executing of the Plan in relation to every executing agency including that of the Agency.
(4) The budget supporting the Plan must be reviewed annually.

25. Financial year

The financial year of the Agency and the Fund ends on 31 March in each year.

26. Business and financial plan of agency

The Agency must, at least 60 days before the commencement of its next financial year, or a later date determined by the Minister, submit to the Minister a business and financial plan in accordance with section 19 of the State-owned Enterprises Governance Act.

27. Accounting and auditing

The Chief Executive Officer must –
(a) keep full and proper accounts and records of all moneys received or expended by the Agency and the Fund and of all assets, liabilities and financial transactions of the Agency and the Fund during the financial year of the Agency and the Fund.
(b) cause the accounts and records referred to in subsection (1) to be audited annually by a person registered as an accountant and auditor under section 23 of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951), and appointed by the Agency.
28. Annual report

(1) The Board must as soon as possible, but not later than six months after the close of the financial year submit to the Minister in respect to that financial year-

(a) audited financial statements and a report of the auditor on those statements; and

(b) a report on the activities of the Agency and the Fund during that financial year.

(2) The annual report and financial statements referred to in subsection (1) must –

(a) fairly represent the state of affairs of the Agency and the Fund, its business, financial results, performance against predetermined objectives and its financial position at the end of the financial year concerned;

(b) include particulars of –

(i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;

(ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;

(iii) any losses recovered or written off; and

(iv) any other matter that may be prescribed.

(3) The Minister must cause to be tabled in the National Assembly the audited financial statements and reports received by him or her under subsection (1) –

(a) within 30 days from the date of receipt thereof, if the National Assembly is then in ordinary session; or

(b) if the National Assembly is not then in ordinary session, within 30 days after commencement of its next ordinary session.

CHAPTER V: LEGAL PROCEDURE

29. Exemption of Agency from taxes, duties and levies

No income or any other tax, duty or levy imposed under any law is payable by the Agency.

30. Winding up of Agency or Fund

The Agency and the Fund may not be wound up except by or under the authority of an Act of Parliament.

31. Disclosure of interest

If a member of the Board or the Road Safety Coordinating Committee or any other committee of the Board, or his or her spouse, immediate family member, life partner or business associate, has any direct or indirect financial interest in any matter to be dealt with at any meeting of the Board, the Road Safety Coordinating Committee or any other committee of the Board, that member-

(a) must disclose that interest and the extent thereof in writing to the chairperson, who must table that statement at the next meeting of the Board, the Road Safety Coordinating Committee or any other committee of the Board; and

b) may not attend any portion of a meeting of the Board, the Road Safety Coordinating Committee or any other committee of the Board during the consideration of that matter;
may not in any manner take part as a member of the Board, the Road Safety Coordinating Committee or any other committee of the Board in the consideration of that matter; and

may not in any manner endeavour to influence the opinion or vote of any other member of the Board, the Road Safety Coordinating Committee or any other committee of the Board in connection with that matter.

32. **Power to enter into agreement for performance of function**

(1) The Board may enter into an agreement with any person, including any executing agency, local authority council or regional council, whereby arrangements made for the exercise or performance by such person of any power, duty or function conferred or imposed on any functionary by or under this Act, or for the rendering of any service or the provision of any facility as may be considered necessary or expedient for the purpose of the exercise or performance of any such power, duty or function.

(2) The entrustment of any power, duty or function to any person under an agreement under subsection (1) shall be subject to such conditions as the Minister may determine.

(3) Conditions referred to in subsection (2), may include conditions in relation to the apportionment between the State and the contracting party of any fees payable in terms of this Act in respect of the exercise or performance of any power, duty or function entrusted to the contracting party.

33. **Delegation**

(1) The Minister may, in writing, delegate any of the powers or duties entrusted to him or her under this Act, except the power to make regulations, to any official in the employ of the Ministry or in the employ of another organ of state, or a person with whom the Minister has an agreement in terms of section 32.

(2) The Board may, in writing, delegate any of the powers or duties entrusted to it under this Act, except the power to approve a budget or the Plan, to the Chief Executive Officer who may mandate any employee of the Agency or member of a Committee to exercise the power or perform the duty concerned.

(3) The Chief Executive Officer or a member of the Road Safety Coordinating Committee may delegate any of the powers or duties entrusted to him or her under this Act, to any employee of the Agency or of an executing agency.

(4) A delegation referred to in subsection (1), (2) or (3),

(a) is subject to any limitations or conditions that the Minister, Chief Executive Officer or member of the Road Safety Coordinating Committee may impose;

(b) may authorise the subdelegation of that power to another official and that subdelegation must be in writing and may not exceed the power originally delegated; and

(c) does not divest the Minister, the Board, the Chief Executive Officer or the member of the Road Safety Coordinating Committee of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(5) The Minister, Board, Chief Executive Officer or member of the Road Safety Coordinating Committee may confirm, vary or revoke any decision taken by the person to whom the delegation or sub-delegation was made, subject to any rights that may have become vested as a consequence of that decision.
34. **Decisions**

A decision of the Board or the Road Safety Coordinating Committee or any action taken under the authority of the Board or the Road Safety Coordinating Committee is not invalid merely by reason of a vacancy on the Board or the Road Safety Coordinating Committee or of the fact that a person who is not entitled to sit as a member of the Board or the Road Safety Coordinating Committee sat as such at the time that the decision was taken or the act was authorised.

35. **Confidentiality**

A Board member, member of the Road Safety Coordinating Committee or an employee of the Agency or any other person who is involved in the administration of this Act, may not disclose information gained during the execution of his or her duties, that affects the execution of the functions of the Agency or an executing agency in relation to the execution of the Plan detrimentally.

36. **Liability**

(1) A Board member, member of the Road Safety Coordinating Committee or any other committee of the Board, an employee of the Agency or a person employed by any executing agency or a person contemplated in section 32 is not liable for any cost or loss incurred as a result of an action taken in terms of this Act in good faith.

(2) The Agency is not liable for any cost or loss incurred as a result of an action taken by a Board member, member of the Road Safety Coordinating Committee or any other committee of the Board, an employee of the Agency or of an executing agency or a person contemplated in section 32 in terms of this Act in good faith.

(3) The Agency is not liable for the execution of any project or programme by another executing agency in terms of this Act.

37. **Regulations and rules**

(1) The Minister may, after consultation with the Board, by notice in the Gazette, make regulations not inconsistent with this Act and those regulations may provide for offences and penalties that are suitable to the offence.

(2) Before the Minister makes any regulation under this section, he or she must publish a draft of the proposed regulation in the Gazette together with a notice calling on interested persons to comment, in writing, within a period stated in that notice, which period may not be less than 30 days from the date of publication of that notice.

(3) If the Minister amends the draft regulations as a result of any comment, he or she need not publish those amendments before making the regulations.

(4) The Minister may, if circumstances necessitate the immediate publication of a regulation, publish that regulation without consultation as contemplated in subsection (2).

(5) Subject to section 9(3), the Agency may issue rules for the purpose of the implementation of a demonstration project, which rules may be in conflict with the Road Traffic and Transport Act, 1999, provided that those rules apply only to the project concerned and for the duration of that project.

(6) The provisions of subsections (1) to (3) applies with the necessary changes authorizing the Agency to make rules, not inconsistent with this Act, in relation to governance of the Road Safety Coordinating Committee.
38. Standards and guidelines
   (1) The Agency may by notice in the Gazette and after consultation with the Road Safety Coordinating Committee, issue standards in relation to any functional area contemplated in section 11(1), which standards are mandatory.
   (2) The Agency may by notice in the Gazette issue guidelines in relation to any functional area contemplated in section 11(1) to assist an executing agency in the execution of its functions.

39. Offences and penalties
   (1) It is an offence to mismanage the Fund.
   (2) A person found guilty of the mismanagement of the Fund is liable to the repayment of the damages caused to the Agency by that mismanagement or imprisonment not exceeding five years.

40. Repeal and savings
   (1) The National Road Safety Act, 1972, is hereby repealed.
   (2) Any act performed, decision taken, or purported to have been so performed, or taken in terms of the repealed Act, remains valid unless repealed under this Act.
   (3) The Road Traffic and Transport Act, 1999 is amended as shown in the Schedule.

41. Transitional provisions
   (1) The Road Safety Agency in consultation with the Minister may after the approval of this Act by the National Assembly, appoint a caretaker Chief Executive Officer to implement this Act.
   (2) The caretaker Chief Executive Officer-
      (a) must initiate the first meeting of the Road Safety Coordinating Committee;
      (b) may, with the approval of the Road Safety Council referred to in subsection (4), appoint such persons on a temporary basis as is necessary for the execution of his or her duties; and
      (c) may perform any other duty of the Chief Executive Officer contemplated in this Act until the Chief Executive Officer has been appointed.
   (3) The caretaker Chief Executive Officer is relieved of his or her duties on the date on which the Chief Executive Officer appointed by the Board has taken up his or her position as such, but he or she may be requested to remain in office for such a period as the Board considers necessary to assist the newly appointed Chief Executive officer.
   (4) Notwithstanding the repeal of the National Road Safety Act, 1972, the Council appointed in terms of section 2 of the repealed Act, continues to exist until a Board has been appointed in terms of section 4 of this Act.
   (5) Any person who is in the employ of the State and is serving in the administration of the Namibian Road Safety Council may subject to the Public Service Act, 1995, (Act no.13 of 1995) be transferred to the Agency as from the date of its establishment.
   (6) A person not transferred in terms of subsection (5), must be redeployed in the service of the State.
   (7) An employee of the Agency who is a member of the Government Institutions Pension Fund at the time he or she is appointed by the Agency remains a member of that Fund until such time
that the Agency establishes its own pension fund, if the Agency chooses to establish a pension fund.

(8) Any moveable or immovable asset that has been assigned to the National Road Safety Council established in terms of the repealed Act, is transferred to the Road Safety Agency established in terms of section 2 of this Act and no transfer duties or other taxes are payable as a result of that transfer.

(9) The Road Safety Agency substitutes the National Road Safety Council established in terms of section 2 of the repealed Act, as a party to any agreement entered into by the National Road Safety Council and that substitution does not result in the novation of that agreement.

(10) Any money in Central Road Safety Fund at the commencement of this Act must be transferred to the Fund established under section 13.

(11) The first Plan may be based on the traffic data available at the date of commencement of this Act.

42. Short title and commencement

This Act is called the Road Safety Management Act, 2014.

SCHEDULE

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| **2 Establishment, purpose and functions of Fund**
| (1) There is established a fund to be known as the Motor Vehicle Accident Fund, and which for all purposes is a juristic person.
| (2) The purpose and functions of the Fund are to-
| (a) in support of the integrated road safety management plan contemplated in section 10 of the Road Safety Management Act, 2014, (Act … of 2014). design, develop, promote and implement motor vehicle accident and injury prevention measures;
| (b) fairly and reasonably provide assistance and benefits to a person who is injured in a motor vehicle accident;
| (c) fairly and reasonably provide assistance and benefits to a person who suffers loss as a dependent [sic] of a person killed in a motor vehicle accident;
| (d) reasonably indemnify the driver and owner of a vehicle involved in motor vehicle accident from claims for loss or damage arising on account of injury or death caused by the motor vehicle accident; and
| (e) attend to any matter that is incidental to any function mentioned in this section |
### B. CONSULTATIVE WORKSHOP AGENDA

The National Road Safety Council  
in Partnership with  
The Law Reform and Development Commission  
Consultative Workshop Program on the Road Safety Management Bill

Date: 11 April 2016   Venue: Windhoek Country Club

<table>
<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>08:30 - 09:00</td>
<td>Arrival and Registration of Guests</td>
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<tr>
<td>09:00 - 09:10</td>
<td>National and AU Anthems</td>
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<tr>
<td>09:10 - 09:40</td>
<td>Welcoming Remarks by Mr Charles Uugwanga (Chief Legal Officer LRDC)</td>
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<tr>
<td>09:40 - 10:00</td>
<td>Remarks by the Chairperson of the LRDC</td>
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<td>10:00 - 10:30</td>
<td>Keynote Address by the Minister of Works and Transport</td>
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<tr>
<td>10:30 - 11:00</td>
<td>Health Break</td>
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<tr>
<td>11:00 - 12:00</td>
<td>Presentation of the Road Safety Bill by NRSC</td>
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<tr>
<td>12:00 - 13:00</td>
<td>Discussion on the Bill</td>
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<tr>
<td>13:00 - 14:00</td>
<td>Lunch Break</td>
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<tr>
<td>14:00 - 16:00</td>
<td>Discussions on the Bill continues</td>
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<tr>
<td>16:00 - 16:30</td>
<td>Health Break</td>
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<tr>
<td>16:30 - 16:45</td>
<td>Summary and Conclusion by NRSC</td>
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<tr>
<td>16:45 - 16:50</td>
<td>Closing Remarks by Ruusa Ntinda (Chief Legal Officer LRDC)</td>
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<tr>
<td>16:50 - 17:00</td>
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### C. LIST OF INVITED STAKEHOLDERS

<table>
<thead>
<tr>
<th>Institution</th>
<th>Person to be invited/to write to</th>
<th>Contacts</th>
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</thead>
<tbody>
<tr>
<td>Ministry of Works and Transport</td>
<td>Mr Mr Cedric Limbo-Director: Policy and Legislation</td>
<td>061 208 8152 <a href="mailto:climbo@mwtc.gov.na">climbo@mwtc.gov.na</a></td>
</tr>
<tr>
<td></td>
<td>Damien Mabengano-Dep. Dir. Transportation Regulations</td>
<td>208 8154 <a href="mailto:dmbengano@yahoo.co.uk">dmbengano@yahoo.co.uk</a></td>
</tr>
<tr>
<td></td>
<td>Mr Chris Fikunawa-Dep. Dir. Transportation Legislation</td>
<td>061 208 8150 <a href="mailto:cfikunawa@mwtc.gov.na">cfikunawa@mwtc.gov.na</a></td>
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<tr>
<td>Ministry of Finance</td>
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<td></td>
</tr>
<tr>
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<tr>
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<td>Namibian Police Force</td>
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<tr>
<td>Ministry of Urban and Rural Development</td>
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<tr>
<td>Road Fund Administration</td>
<td>Mr Ali Ipinge- CEO</td>
<td>061 378 967/956 <a href="mailto:aipinge@rfanam.com.na">aipinge@rfanam.com.na</a></td>
</tr>
<tr>
<td></td>
<td>Mr Rianus Gonteb-Executive: Program Management, Policy &amp; Advice</td>
<td>0614333000 <a href="mailto:rgonteb@rfanam.com.na">rgonteb@rfanam.com.na</a></td>
</tr>
<tr>
<td>NPPTA (Namibia Public Passenger Transport Association)</td>
<td>Mr Nathan Africa - Secretary General</td>
<td>061271317/0813257144 <a href="mailto:nppta@iway.na">nppta@iway.na</a></td>
</tr>
<tr>
<td>AA Namibia</td>
<td>Ms Hileni David-General Manager</td>
<td>061 224201/2 <a href="mailto:hileni@aa-namibia.com">hileni@aa-namibia.com</a></td>
</tr>
<tr>
<td>Organization</td>
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<tr>
<td>--------------------------------------</td>
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<tr>
<td>Nabta (Namibia Bus and Taxi Association)</td>
<td>Mr Pendapala Nakathingo-Chairman</td>
<td></td>
</tr>
<tr>
<td>Walvis Bay Corridor Group</td>
<td>Immanuel Shipanga-Manager for Projects and Funding</td>
<td>061 251 669 <a href="mailto:projects@wbcg.com.na">projects@wbcg.com.na</a></td>
</tr>
<tr>
<td>Roads Authority</td>
<td>Mr Wilfred Brock - Executive: Regulatory &amp; Inspectorate</td>
<td><a href="mailto:brockw@ra.org.na">brockw@ra.org.na</a></td>
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<tr>
<td></td>
<td>Mr Vincent Sasele - Road Traffic &amp; Transport Divisional Manager</td>
<td>061 284 7008 <a href="mailto:SaseleV@ra.org.na">SaseleV@ra.org.na</a></td>
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<td>Mrs Sophia Belete-Tekie - Divisional Manager: Road Management System</td>
<td>061 284 7002 <a href="mailto:TekieS@ra.org.na">TekieS@ra.org.na</a></td>
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<td>GIZ Namibia</td>
<td>Prof. Henrich Semar - GIZ Advisor to the Hon. Minister (MWT). Programme Manager</td>
<td>061 – 235 174 <a href="mailto:Heinrich.Semar@giz.de">Heinrich.Semar@giz.de</a></td>
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<tr>
<td>MVA Fund</td>
<td>Mrs Rosalia Martins-Hausiku-CEO</td>
<td>061 289 7004 <a href="mailto:rosalia@mvafund.com.na">rosalia@mvafund.com.na</a></td>
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<tr>
<td>Windhoek City Police</td>
<td>Chief Abraham Kanime and/or Adam Eiseb - Traffic Divisional Head</td>
<td>061 290 2700 <a href="mailto:Abraham.Kanime@windhoekcc.org.na">Abraham.Kanime@windhoekcc.org.na</a>, 061 290 2743 <a href="mailto:Adam.Eiseb@windhoekcc.org.na">Adam.Eiseb@windhoekcc.org.na</a></td>
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<td>Otjiwarongo Municipal Traffic</td>
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**D. DELIVERY REGISTER**

Road Safety Management Bill Delivery Register

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Ladies and Gentlemen Good Morning

It is a distinct honor and privilege for me to be here today and to officiate at this memorable occasion marking the final consultative workshop of the long-awaited Road Safety Management Bill.

In May 2011, Namibia being a signatory to the United Nations declarations, has adopted the UN Declarations on the Global Action for Road Safety Goals, which commenced in 2011. During the said year, the UN General Assembly approved Resolution 64/255(5), proclaiming a 'Decade of Action for Road Safety 2011–2020', which calls on Member States to take a joint multi-sectorial action so as to increase the proportion of countries with comprehensive legislation on key risk factors for road traffic injuries.

The Global Action Plan has five distinct Pillars, namely, Road Safety Management, Safer Roads, Safer Vehicles, Safer Road Users and Post-Crash Care. I am informed that out of these five pillars, Pillar 1, which deals with Road Safety Management has necessitated the legislative reform process for road safety, which brings us all together today.
This process of road safety legislative reform is long overdue, in my opinion, and we need to arrest the situation whereby outdated laws from apartheid South Africa are used to manage our Public Enterprises in this country.

I am also further informed that the Global Decade of Action Plan also calls for the review of current national legislation and regulations as well as to identify barriers to the implementation and enforcement of effective road safety measures within member countries. This call further requires that we identify available instruments, such as international agreements, and evidence-based guidance and recommendations on effective measures to improve legislation.

The latter would then pave the way for preparation of action plans to strengthen national legislation and regulations for the five main risk factors and for post-crash care, including advocating for improvement. The road safety enabling legislation is necessary for the proper management of the Sub-sector and the implementation of remedial measures in curbing the carnage on our roads.

Both financial and human resources play significant roles in legislative processes. Although legislation is often the basis for budget allocations, such allocations may not match the mandates, making implementation virtually impossible. This has been the case in Namibia, whereby the current enabling legislation was a bottleneck itself for the Sub-sector. We therefore need to be much vigilant in ensuring that sound input is given into this process and that this process should pave the way for the review and implementation of other policies.

You may recall that I have directed the National Road Safety Council in 2015, following appointment of Council, that this Bill, commonly referred to as the ‘Lead Agency Bill’ be fast-tracked and brought before Parliament as soon as reasonably possible. I am sincerely grateful for the progress made and further request all stakeholders in the sub-sector to assist the National Road Safety Council in its quest to realize this national project.

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As the Custodian Minister of Roads Safety, I am deeply indebted to the German Federal Ministry of Economic Cooperation and Development through their development agency, GIZ, for the financial and technical support given to the Legislative Reform study and the actual drafting of the Bill.

It is necessary to state that Road Safety management poses unique challenges as it necessitates intensive co-operation between various Ministries and public entities. The Bill formalizes that co-operation, based on the proposed management systems of the Decade of Action of Road safety. I am further informed that various Ministries will oversee the implementation of the Bill once it has passed through the relevant processes. These ministries all play an integral role in the compilation and execution of any road safety management plan and it is important that the duty to implement
the plan is shared by all the Ministers. Therefore, I would repeat my call for sound input into the final consultative workshop for the Road Safety Management Bill and urge you all to make input.

With these few words, I now declare the Consultative Workshop open.

I thank you
### F. List of Stakeholders that Attended Consultative Workshop

<table>
<thead>
<tr>
<th>Name</th>
<th>Surname</th>
<th>Email</th>
<th>Contact No</th>
</tr>
</thead>
<tbody>
<tr>
<td>F.</td>
<td>LIST OF STAKEHOLDERS THAT ATTENDED CONSULTATIVE WORKSHOP</td>
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<tr>
<td>Erkenwald</td>
<td><a href="mailto:e.kibaerfanen@gmail.com">e.kibaerfanen@gmail.com</a></td>
<td>61 43 33 00</td>
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