



THE VEHICLE MASS BILL: MOTIVATION STATEMENT BY JOHN MUTORWA, MP AND MINISTER OF WORKS AND TRANSPORT (MWT) NATIONAL ASSEMBLY, NAMIBIA: THURSDAY, 2 NOVEMBER 2023.

1. INTRODUCTION AND DEVELOPMENT CONTEXT:

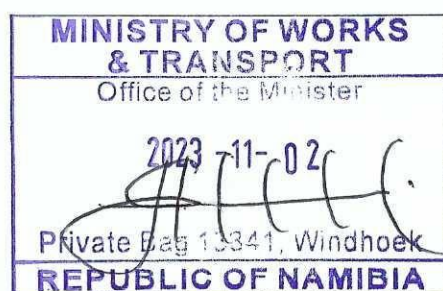
- 1.1 The Cabinet of the Republic of Namibia's DECISION NUMBER: 16th /02.09.08/006, resolved, as follows: "the Ministry of Works and Transport, amends the Road Traffic and Transport Act, 1999 (Act Number 22 of 1999) to decriminalize the overloading offences and ensure that: culprits pay fees, proportional to the damage they caused on the road network."
- 1.2 The Bill aims at legalizing the overloading offences, as administrative offences.
- 1.3 The current main Legislative framework, for road traffic and transport offences is: (a) the Road Traffic and Transport Act, 1999 and (b) the Criminal Procedure Act, 1977 (Act Number 51 of 1977).



- 1.4 At present, the factual truth is: only part of the transport logistics chain, is hold accountable for overload, a practise which renders the legislative regulatory framework and system practically ineffective.
- 1.5 It is therefore proposed that: through this Vehicles Mass Bill, the whole transport logistics chain (consignor, consignee, operator and driver) should be legally responsible for overload offences.
- 1.6 Calculation of overload fees and penalties should be based on the overloaded weight and the distance travelled with the overload weight.
- 1.7 Fees and penalties should compensate for damages caused to the road pavement, as a result of overloading.
- 1.8 The success rate of the prosecution of road traffic offences, including the overload offences, in the Country's Courts, is very low. The expectation is: if the process could be removed from the Court system; and dealt with administratively, then: the success rate would be increased, dramatically.
- 1.9 It also, needs to be pointed out here, that: at present, the Courts are overstretched and overstrained, but the overload offences, do not carry the same blame worthiness and element of "moral indignation" like the criminal offences, for example: theft, rape, murder etc.



- 1.10 The deviation from the requirement of a Public hearing, in ARTICLE 12 of the Namibian Constitution, in the case of OVERLOADING offences, is constitutionally possible, if the overload offences are decriminalised and thus, be handled as administrative offences.
- 1.11 Overload offences are, by their very nature, administrative offences and should be so indicated in an Act of Parliament and be adjudicated, in accordance with the principles of Administrative Law; and not Criminal Law.
- 1.12 It needs to be stressed here, that: FOUR (4) role players, are essentially and practically involved, in the overloading of a Motor Vehicle; which are: (a) the consignor (the person(s) who provide the goods; (b) the operator; (c) the Driver and (d) the consignee (the person who receives the goods). Currently, of these role players, only the DRIVER is marked as the "DOER", taking criminal action: while in fact; the other role players, in the real sense, carry more guilt, in respect of overloading.
- 1.13 The model for converting overload offences to administrative offences that has been developed are subject to strict prerequisites that will have to be met in order to prevent the Roads authority and the Ministry of Works and Transport from being implicated into unnecessary litigation. These prerequisites are:



- The mass measuring equipment must be reliable;
- The system must be automated, limiting human intervention;
- The system that is implemented must be cost effective (the system cannot cost more than the savings it effects);
- The system must be easy for operators to understand;
- The system to be implemented should be simpler than the current system; and
- Compliance with the system by foreigners must be ensured.
- The system has the appeal provision in terms of Article 18 of the Namibian Constitution.

1.14 The aforementioned requirements and prerequisites are meant to ensure that: the system is fair, equitable, just and transparent; as required by the Namibian Constitution.

2. **SUMMARY OF THE MASS VEHICLE BILL'S MAIN OBJECTIVES**

2.1 It is against that background that: in 1994 already, Cabinet issued a directive for the decriminalising of some road traffic and transport offences such as the overload offences to make them "administrative offences."



- 2.2 Subsequently, a study commissioned on the “Administrative Adjudication of Road Traffic Offences” found that current information systems, being used in Namibia, in respect of road traffic fines is inadequate, as it is not linked to the Namibian Court system, thus making it ineffective to collect fees for rehabilitation of damages caused through overload offences.
- 2.3 Therefore, the main objective of the Bill is to provide comprehensive Vehicle Load Management System. Under this system, the offence and related offences, such as evading a weigh station or absconding a weigh station, become violations and will be adjudicated in terms of a streamlined administrative process.
- 2.4 The Bill makes provision for immediate payment of fees at the weigh station, by electronic means.
- 2.5 The operator is however afforded the opportunity to make a submission explaining why he or she should not be held liable for the violation, and if successful, is entitled to a refund. This process will also address the issue of foreign operators not paying their fines.
- 2.6 This Bill further intends to cure the disparities between holding the correct overload offender (who may be the owner of the vehicle, the vehicle operator – who may not be the vehicle owner, and the driver) responsible for the relative damage which was caused to the road network through overloading.



3. CONCLUDING REMARKS

- 3.1 Honourable Speaker, Honourable Members of the National Assembly, I now finally move that: this Honourable House proceed to the Second Reading Stage of the Debate: discuss the Bill and at appropriate stages, that is: the Committee Stage and the Third Reading Stage pass the Bill, accordingly.
- 3.2 Thank you so much Honourable Speaker and Honourable Members of the National Assembly.

