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REPUBLIC OF KENYA



*By the Vice Chair
Hon. Mwalimu
on Tuesday
4.10.2016*

NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION – 2016

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON
THE INQUIRY INTO THE STATUS OF IMPLEMENTATION OF PHASE I & II
OF THE STANDARD GAUGE RAILWAY

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JULY, 2016

4 CHAIRPERSON'S FOREWORD

The Committee, on its own motion, resolved to undertake an inquiry into the Development and Status of Implementation of the Standard Gauge Railway. This is in accordance with the provisions of Standing Order 216 (5)(a).

In inquiring into the matter on the development of the SGR, the Committee held meetings with the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development, and the Managing Director for Kenya Railway Corporation. The meetings were aimed at affording the Cabinet Secretary and the Managing Director the opportunity to assist the Committee conduct its inquiry by apprising the Committee on issues surrounding the development of Standard Gauge Railway.

The Committee appreciates the facilitation provided by the Office of the Speaker and that of the Clerk of the National Assembly, which support enabled it to discharge its functions in undertaking the inquiry.

On behalf of the Committee, and pursuant to the provisions of Standing Order 199(6), it is my duty to lay on the Table of the House the Committee's Report on the Inquiry into the Development and Status of Implementation of Phase I and II of the Standard Gauge Railway.



Hon. Maina Kamanda, EGH, MP

1. EXECUTIVE SUMMARY

1.0 Under Kenya VISION 2030, the Country has a plan to develop approximately 3100 kilometres of Standard Gauge Railway (SGR) within two (2) main corridors traversing the Country into the neighbouring Countries as shown here below:-

(I) Northern Corridor SGR Development which is to cover Mombasa - Nairobi - Mai Mahiu - Suswa - Narok - Bomet - Sondu - Ahero - Kisumu - Yala - Mumias - Malaba.

This Project is divided into Two Phases, namely:-

(a) Phase 1 = Mombasa - Nairobi

(b) Phase 2 which has 3 sub phases thus:-

(b) (i) Sub Phase 2A = Nairobi - Mai Mahiu - Suswa.

(b) (ii) Sub Phase 2B = Suswa - Narok - Bomet - Sondu - Ahero - Kisumu.

(b) (iii) Sub Phase 2C = Kisumu - Yala - Mumias - Malaba

(II) Lamu Port - South Sudan - Ethiopia SGR Development (LAPSSET) proposed for development through Garissa, and Isiolo with branch lines to Moyale (for connection to Ethiopia), Nairobi and Nakadok (for connection to Juba - South Sudan).

1.1 This Report relates to the Committee's inquiry into the development and status of implementation of (I) above) - Phases 1 & 2 of Mombasa - Malaba Standard Gauge Railway (SGR). The SGR is part of the greater Mombasa - Kampala - Kigali - Juba SGR which is one of the projects under the Northern Corridor Integrated Projects initiative for which Kenya, Uganda, Rwanda and Southern Sudan have signed and ratified the SGR Protocol.

1.2 The SGR Development is one of the critical Flagship Projects under Kenya's Vision 2030 and it is envisaged to transform the Country's land transport

infrastructure with a view to positioning Kenya as the regional transport and logistics hub for the East and Central Africa Region.

- 1.3 Owing to the importance of the Project, which falls within the province of matters that the Committee oversees, the Committee, on its motion pursuant to the provisions of Standing Order 216 (5) (e) resolved to undertake an inquiry on the Development and Status of Implementation of Phases 1 and 2 of the SGR.
- 1.4 The key objectives of the inquiry were to:
 - 1.4.1 To find out the status of implementation and quality of work done on Phase 1 of the SGR, being Mombasa – Nairobi Line,
 - 1.4.2 To establish the status of financial negotiations and funding arrangements for development of Phase 2 (Nairobi - Malaba section of the SGR),
 - 1.4.3 To establish the institutional framework for the management, operation and maintenance of the Mombasa - Nairobi SGR upon completion; and
 - 1.4.4 To report to the House the Committee's observations, findings and recommendations.
- 1.5 To achieve these objectives, the Committee undertook a review of relevant materials on SGR at its disposal to acquaint itself with the details of the project. The Committee also invited the Cabinet Secretary for the Ministry of Transport, Infrastructure, Housing & Urban Development; the Managing Director, Kenya Railways, the Director General – Public Procurement Oversight Authority; and the Attorney General to apprise it on key areas of the inquiry. Further, the Committee undertook inspection visits on the Mombasa – Nairobi and Nairobi – Naivasha Section of the SGR to ascertain progress made on the ground.
- 1.6 Regarding Phase 1 (Mombasa - Nairobi section), the Committee established that the Contractor had done commendable job and that 70% of the civil works were complete as at April 2016. In addition, the contractor was progressing at a pace that would see Phase 1 completed by June 2017, which would be about several months ahead of the contractual timeline. The

Committee also noted that the Project had integrated local suppliers and labour, thereby being beneficial to the Country's economy.

1.7 The Committee confirmed that the Financing Agreement for Phase 2A (Nairobi - Naivasha SGR section) was signed on 3rd December, 2015 between the Government of Kenya through The National Treasury (TNT) and the EXIM Bank of China in South Africa, and that GoK and EXIM Bank of China are in the process of fulfilling the Conditions Precedent for the disbursement of funds. Earlier, KR and China Communications and Construction Company (CCCC) had signed a Commercial Contract for the same section on 19th September, 2015 following GoK approval of the draft Commercial Contract.

1.8 Based on its findings, the Committee made a raft of recommendations, requiring the Ministry of Transport, Infrastructure, Housing and Urban Development to:

1.8.1 Undertake due diligence on CCCC/CRBC to confirm the company's competence to undertake the operations of the Mombasa - Nairobi SGR after completion of constructions. If proven competent, CCCC/CRBC may be considered to undertake the operation of the SGR for a minimum period of ten years.

1.8.2 Fast-track the development of Nairobi ICD and Nairobi – Naivasha section to serve the proposed Naivasha Industrial Park earmarked to be located within or close to the Geothermal fields, south of Lake Naivasha; and

1.8.3 Fast-track the development of the Naivasha – Kisumu – Malaba section of the SGR (Phase 2B ad 2C). The SGR link will be able to serve the whole region through Lake Victoria in case of a delay to develop the link between Kisumu and Kampala.

2. MANDATE OF THE COMMITTEE

2.1 The Departmental Committee on Transport, Public Works and Housing derives its mandate from the provisions of Standing Order No. 26(5). Pursuant to this Standing Order, the functions of the Committee are:-

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementations.
- c) To study and review all legislation referred to it;
- d) To study, assess and analyse the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives.
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House, and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

2.2 Further, the Second Schedule to the Standing Orders mandates the Committee consider matters relating to the following subjects:-

- a) Transport;
- b) Roads;
- c) Public Works;
- d) Construction and maintenance of roads, railways and buildings;
- e) Air and seaports; and
- f) Housing

2.3 In executing this mandate, the Committee oversees various State Department, namely:

- a) Transport
- b) Infrastructure

- c) Housing and Urban Development;
- d) Public Works; and
- e) Shipping and Maritime Affairs

3.0 **COMPOSITION OF THE COMMITTEE**

The Committee is composed of 29 members and a Secretariat that facilitates its operations.

3.1 **MEMBERS OF THE COMMITTEE**

The Departmental Committee on Transport, Public Works and Housing in the Eleventh Parliament was constituted on 20th May 2013. The Current Membership of the Committee is as follows:-

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|--|---|------------------|
| 1. The Hon. Maina Kamanda, M.P | - | Chairperson |
| 2. The Hon. (Eng) Mahamud Maalim, MP | - | Vice Chairperson |
| 3. The Hon. Eng. Stephen Ngare, MP | | |
| 4. The Hon Ali Wario, MP | | |
| 5. The Hon, (Arch) David Kiaraho, MP | | |
| 6. The Hon. Cecily Mbarire, MP | | |
| 7. The Hon. Capt. Clement Wambugu, MP | | |
| 8. The. Eng. John Kiragu, MP | | |
| 9. The Hon. Gideon Konchella, MP | | |
| 10.The Hon. Barchilei Kipruto, MP | | |
| 11.The Hon. Mark Lomukonol, MP | | |
| 12. The Hon. Grace Kipchoim, MP | | |
| 13.The Hon. Mathias Robi, MP | | |
| 14.The Hon. Joseph Lomwa, MP | | |
| 15.The Hon. Peter Shehe, MP | | |
| 16.The Hon. Emmanuel Wangwe, MP | | |
| 17.The Hon. Stephen Manoti, MP | | |
| 18.The Hon. K.K. Stephen Kinyanjui Mburu, MP | | |
| 19.The Hon. Suleiman Dori, MP | | |
| 20.The Hon. Rashid Bedzimba, MP | | |
| 21.The Hon. Simon Nyaundi Ogari, MP | | |

- 22.The Hon. Johnson Manya Naicca, MP
- 23.The Hon. Mishi Juma, MP
- 24.The Hon. Aduma Owour, MP
- 25.The Hon. Chachu Ganya, MP
- 26.The Hon. Omar Mwinyi, MP
- 27.The Hon. Ahmed Abbas Ibrahim, MP
- 28.The Hon. Omulele Christopher, MP
- 29.The Hon. Mukwe James Lusweti, MP

3.2 COMMITTEE SECRETARIAT

The Committee is facilitated by a composite six member Secretariat comprising of Clerk Assistants, Legal Counsel, Research Officer and a Fiscal Analyst. The Secretariat consists of the following:-

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|--------------------------|---|-----------------------|
| 1. Mr. Samuel Kalama | - | First Clerk Assistant |
| 2. Mr. Abdifatah Bule | - | Third Clerk Assistant |
| 3. Ms. Christine Ndiritu | - | Third Clerk Assistant |
| 4. Mr. Salem Lorot | - | Legal Counsel II |
| 5. Mr. Humprey Ringera | - | Research Officer III |
| 6. Mr. James Chacha | - | Fiscal Analyst III |

4.0 INTRODUCTION

4.0 The Nairobi – Malaba Standard Gauge Railway, hereinafter abbreviated as SGR is part of the greater Mombasa – Kampala – Kigali – Juba SGR, which is one of the projects under the Northern Corridor Integrated Projects initiate for which Kenya, Uganda, Rwanda and Southern Sudan have signed and ratified the SGR Protocol.

4.1 Under the Protocol, each country is responsible for developing the sections of SGR within its borders. In this regard, the Government of Kenya is developing the Mombasa - Malaba section. This is being undertaken in two phases, namely Phase 1 (Mombasa - Nairobi) and Phase 2 (Nairobi to Malaba).

4.2 Phase 1 entails the actual construction of a SGR from Mombasa to Nairobi and the supply and installation of facilities, locomotives and rolling stock.

- 4.3 The total route length of the mainline is 472.253km with a length of sub-grade covering 442.629 km (93.7% of the total length).
- 4.4 Mombasa - Nairobi SGR is designed according to Chinese Class 1 Standard Gauge (1,435 millimetres) Railway standard. The railway is designed for heavy freight traffic with allowance for passenger traffic as well. The design speeds are 120 kph for passenger trains and 80 kph for freight trains.
- 4.5 there are 77 bridges along the route, including super-major, major and medium bridges, covering 29,687.17 linear meters (6.3% of the entire alignment). In addition, there are 22 frame bridges, covering 630 linear meters (about 7.180m²) and box culverts covering 27,746 linear meters.
- 4.6 There are 33 stations along the corridor, of which 2 will be traffic hubs (Mombasa and Nairobi); 7 intermediate stations (for passengers and freight transfer) and 24 passing stations.
- 4.7 Phase 1 of the SGR line starts at the port of Mombasa on the south Eastern part of Kenya and takes a North Westerly direction, traversing Kwale, Kilifi, Taita Taveta, Makueni, Kajiado and Machakos Counties and terminating at Embakasi in Nairobi County.
- 4.8 The total route length of Phase 1 (Mombasa - Nairobi) is 472.253 kilometres, but the track length (including the track within the stations, marshalling yards and Mombasa Port) is 616 kilometres.
- 4.9 On 3rd June 2014, a formal contract was signed between TSDI-APEC-EDON Consortium (TAEC) and KR for "Design review and Supervision for the Constructions of the SGR from Mombasa to Nairobi, Kenya and Procurement and Installation of facilities, locomotives and Rolling stock".
- 4.10 China Road and Bridge Corporation (CRBC) is the EPC Contractor of the Mombasa - Nairobi SGR project with whom KR signed a Commercial Contract of US\$ 2.66 billion for Civil Works on 11th July, 2012.
- 4.11 On 4th October, 2012, Kenya Railways and CRBC signed another Commercial Contract of US\$ 1.144 billion for the supply and installation of

facilities, locomotives and rolling stock. The total value to the SGR Phase 1 development is therefore US\$ 3.804 billion.

- 4.12 According to the Commercial Contracts, the Contract duration for the project is sixty (60) months. However, the contractor has made an undertaking to complete the works within by 1st June 2017 i.e. within 30 months, being half the period under the Commercial Contracts.
- 4.13 The preparatory works for the project started in June 2014 and actual works commenced on 12th December 2014.
- 4.14 Construction of the Mombasa – Nairobi section is ongoing with 10% of the cost supported by the GoK's budgetary allocation through the Railway Development Levy Fund, while the remainder (90%) of the cost is funded through commercial and concessionary loans from the EXIM Bank of China.
- 4.15 By April 2016, approximately 70% of civil works were complete and it is envisaged that the Railway will be completed by June 2017 whereupon operations will commence.

5. EVIDENCE

- 5.0 The Committee invited the following Government Officials to apprise the Committee on their respective areas within their purview relating to the development of the SGR:
 - a) The Cabinet Secretary for the Ministry of Transport, Infrastructure, Housing and Urban Development on 24th May 2016,
 - b) The Attorney General on Monday 6th June 2016, and
 - c) The Director General for Public Procurement Oversight Authority on Tuesday, 21st June 2016.
- 5.1 The Cabinet Secretary for the Ministry of Transport, Infrastructure, Housing and Urban Development submitted to the Committee that:
 - 5.1.1 The Nairobi – Malaba/Kisumu SGR is part of the Mombasa – Kampala – Kigali – Juba SGR development for which Kenya, Uganda, Rwanda and South Sudan are implementing under the Northern Corridor Integrated

Projects Initiative hence part and parcel of the East African Community SGR master plan.

5.12 Kenya, Uganda, Rwanda and South Sudan have signed and ratified the SGR Protocol for the development of a new high capacity, high speed SGR connecting the port of Mombasa to Kampala, Kigali and Juba. The protocol requires the network to be in place by 2018.

5.13 Each Country is responsible for developing the SGR sections within its borders. The GoK is in the process of developing the Mombasa – Nairobi – Naivasha – Kisumu – Malaba sections in two (2) phases.

5.1.4 Mombasa – Malaba SGR will be development in accordance with the following general specifications:

Item	Specification
Design specifications	China Railway Design and Construction standards
Class of railway	Class 1 (highest class of construction for freight railway – this railway is designed for heavy traffic – 22 million tonnes per annum.
Axle load	25 tonnes
Number of tracks	Single with crossing loops
Length of crossing loops	Minimum 880 metres
Minimum Radius curvature	1,200m (difficult section 880)
Maximum gradient	1.2%
Traction	Diesel (infrastructure designed for ease of electrification in future).
Single train capacity	4000 tonnes (equivalent of 216 TEUs containers double stacked)
Loading capacity	Double stack containers and future electrification (11 metres clearance for overhead structures including tunnels)
Initial design speeds	a) Passengers – 120 Kph b) Freight – 80 kph
Single freight wagon capacity	100 tonnes gross.

- 5.1.5 On 13th July 2015, the Kenya Railways Board approved the feasibility study for the Nairobi – Kisumu – Malaba SGR (Phase 2) and the preliminary design of the Nairobi – Naivasha Section.
- 5.1.6 This approval was communicated to the Ministry of Transport and Infrastructure (MOTI) which thereupon directed KR to execute the task taking into account the following:-
- a) That the feasibility study and preliminary design be based on the proposed Southern Route (Nairobi – Naivasha – Narok – Bomet – Kisumu – Yala - Mumias - Malaba). This was informed by a route reconnaissance undertaken by a team commissioned by the GoK to confirm the feasibility of the route in view of the rugged terrain. The team had also considered two (2) other route options, being: Naivasha – Nakuru – Eldoret – Malaba (Northern route) and the Naivasha – Nakuru – Kericho – Kisumu – Malaba (Central route).
 - b) That the negotiation team to engage the China Communications Construction Company Limited (CCCC) and review all project related documents and come up with recommendations for review and approval by the Ministry.
- 5.1.7 That the construction of Phase 1 (Mombasa - Nairobi Section) is funded by GoK budgetary allocation of 10% of the cost of the project and a loan from the EXIM Bank of China covering 90% of the total cost of the project. The Contract comprises two components, namely: Civil Works and the Supply and Installation of Facilities, Locomotives and Rolling Stock. That the Civil Works were 70% complete by end of April, 2016; and that the manufacture of the locomotives and rolling stock (the key deliverables of the second component) is ongoing. At the completion of the project, 56 locomotives, 1,620 freight wagons and 40 passenger coaches will be available for the operation of the railway. The development is on target and operations are expected to commence in June, 2017.
- 5.1.8 That the SGR operations are expected to increase rail-bound freight volumes; and that projection for rail-bound freight in the long term (by 2035) would be 22 million tonnes per annum including container traffic of 405,000 TEUs. The EXIM Bank of China has made the expansion and modernization of the Inland Container Depot (ICD) at Embakasi-Nairobi a

condition precedent for the continued disbursement of loans supporting the development of Mombasa - Nairobi section as well as commencement of disbursement for Phase 2A (Nairobi - Naivasha section).

5.1.9 The Cabinet has approved the expansion and modernization of the ICD at a cost of US\$ 213, 985,293.68. On 24th March,2016, KR and CRBC signed a commercial contract. The National Treasury and China Exim Bank are negotiating financing.

5.1.10 That the GoK directed fast tracking of Nairobi – Naivasha section to serve the proposed Naivasha Industrial to be located within or close to the Geothermal fields south of Lake Naivasha. The Industrial Park is supposed to attract those industries, such as leather, textile and paper products that require a lot of steam and electricity for production. In July 2015 a committee comprising of MOTI, National Treasury, and KR was appointed to negotiate commercial contract with CCCC for the Nairobi – Naivasha section.

5.1.11 That the following progress had been on development of Phase 2A:

- a) China Communications Construction Company (CCCC) will be the EPC Contractor in line with a Memorandum of Understanding (MoU) signed between KR and CCCC on 14th October 2014.
- b) That the Commercial Contract for the section was signed by the parties on 19th September 2015.
- c) That due to the rugged terrain, delicate environmental considerations, MoTI was re-evaluating the route options within and around Nairobi to arrive at the optimal route that will create least environmental challenges such as demolitions, human settlements and disturbance to wildlife and conservation areas; and
- d) That MoTI was evaluating route options for a branch line to serve the Naivasha Industrial Park from the proposed Mai Mahiu Station of Longonot Station. The branch line is likely to be at least 30 kilometres long due to the difficult terrain in that area as well as poor geological foundation.

5.1.12 That the project will cost US\$1.483 billion, of which 15% will be funded from the GoK budgetary allocation while a loan from the EXIM Bank of China will fund the remaining 85% of the cost. The two parties had already signed the Loan Agreement on 4th December 2015.

5.1.13 That due to the difficult terrain in Phase 2 (Nairobi-Naivasha-Kisumu-Malaba) sections, the Government had decided to split up the development of the said section into three sub-phases as follows:

- a) **Phase 2A** = Nairobi - Naivasha section;
- b) **Phase 2B** = Naivasha - Kisumu section, including developing a new high capacity port at Kisumu. This phase includes the purchase of 35 locomotives, 724 freight wagons and 64 passenger coaches, which will be adequate for the entire Phase 2; and
- c) **Phase 2C** = Kisumu- Malaba

5.1.14 That Phase 2B development includes developing a new high capacity port at Kisumu. The port will have throughput of at least 600,000 tonnes annually initially and may be expanded in future to double that capacity. The new Port will be strategically located to serve the regional ports on Lake Victoria including: Port Bell and Jinja (in Uganda), Bukoba, Kemono Bay, Mwanza and Musoma (in Tanzania). The freight link between Kisumu and Bukoba/Kemono Bay will provide Kigali with the shortest connection to the Indian Ocean through Mombasa (only 1,410 kilometres compared to Dar-es-Salaam at 1,460 Kilometres). The strategy for developing the SGR via Kisumu is to be able to serve the region (through the Lake) on SGR in case of delay to develop the link between Kisumu and Kampala.

5.1.15 That the Cabinet had approved the development of the Naivasha - Malaba section on a Government-to-Government platform on 23rd March 2016 paving the way for requesting for the AG's comments on the draft Commercial Contracts were prepared as follows:

- a) Phase 2B (Naivasha-Kisumu including the 9 km branch line from proposed Kisumu SGR Hub to the proposed new Kisumu Port).

b) New Kisumu Port development

c) Phase 2C (Kisumu-Malaba)

5.1.16 That the total cost of the project ie Phase 2 (Nairobi-Navasha—Kisumu—Malaba) was USD 6,513,275,827.90. This section which tranverse the Rift Valley has complex geological and topographic conditions compared to Phase 1. The parties had compared the pricing of Phase 2 with similar projects in the region and other contries and found the same to be competitive before finalization of the commercial contracts.

5.1.17 That the following progress has been realized:

a) The Attorney General had approved the draft Commercial Contracts on 24th March, 2016;

b) KR and CCCC has signed the three commercial Contracts on 24th March 2016. The Cabinet Secretary for the MoTI, Board Members and the Management of KR witnessed the signing of the Contracts between KR and CCCC;

c) The KR Management submitted copies of the signed Commercial Contracts to MoTI and the National Treasury on 6th April 2016 to initiate the process of financing identification;

d) The signed commercial Contracts are already with the National Treasury;

e) CCCC to be EPC Contractor where financing support is obtained from the Government of the Peoples' Republic of Kenya (PRC); and

f) The Supervision Consultant for Phase 2A,2B and 2C will be procured once financing has been identified.

5.2 The Committee invited the Attorney General to provide a legal opinion on the commercial contracts prepared by the Kenya Railways Corporation and the China Communications Construction Company for Phase 2B (Naivasha-Kisumu), 2C (Kisumu-Malaba) and on the advice provided by China Exim Bank to the Government of Kenya to consider appointing China Communications Construction Company as the EPC contractor and CRBC

operate and maintain the SGR upon completion. On Monday 6th June 2016, Mr. Kenneth Gathuma, Senior Principal State Counsel appearing before the Committee on behalf of the AG, informed the Committee that:

- 5.2.1 The AG's office received requests from Kenya Railways on 7th March 2016 seeking legal advice on draft Commercial Contracts for: Phase 2B (Naivasha- Kisumu), Phase 2C (Kisumu - Malaba), Kisumu Port development and modernization and expansion of the Inland Container Depot in Nairobi.
- 5.2.2 On 21st March, 2016, the AG responded through a letter addressed to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development. In the letter, several legal issues and concerns were raised in the draft Commercial Contract Documents, which Kenya Railways was required to address prior to issuance of the AG legal opinion.
- 5.2.3 The Managing Director, Kenya Railways responded to the AG's letter on 24th March, 2016. In the said letter, all the issues and concerns that had been raised by the AG were addressed through clarifications on some issues and amendments to the draft Commercial Contracts, taking into account the recommendations the AG had suggested.
- 5.2.4 On the 24th day of March 2016, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development wrote a letter to the AG, confirming that the AG's recommendations had been taken on Board.
- 5.2.5 On 24th March, 2016, the AG responded to the letter by the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development, in which letter, the AG gave the Commercial Contracts clean bill of findings and thereupon issued legal clearance for the execution of the four Commercial Contracts.
- 5.3 On Tuesday, 21st June 2016, Mr. Maurice Juma, the Director General for the Public Procurement Authority (PPOA) appeared before the Committee and informed the Committee that:

5.3.1 The PPOA reviewed the Memorandum of Understanding (MOU) dated 14th November 2014 and signed by the Managing Director of KR and the President of the CCCC. Among the key issues covered by the MOU were:

- a) That the GoK, through KR had agreed to CCCC's initial proposal to undertake feasibility study including preliminary design at no cost to KR;
- b) That KR was not bound by the result and conclusion of the study. KR reserved the right to evaluate, study, accept, reject, adopt and or utilize the study for its own purposes and uses without any liability provided that it was not to disclose information contained in the study to any other than the parties unless there is written consent of the CCCC;
- c) The KR and CCCC were to sign a commercial contract or other financing documents and the latter was to use their endeavour to assist KR and GoK to identify sources of funding the project, which included:
 - i) China Exim Bank and/or
 - ii) Loan from Chinese Bank and/or
 - iii) Investment from CCCC or group company and/or
 - iv) Other financing sources
- d) That KR/GoK was at liberty to seek funding from other sources. Where this was to apply, KR was at liberty to identify another contractor to undertake the project. However, where funding would be sourced with assistance of CCCC, the contractor for the subject would be CCCC; and
- e) That the MOU entered into force upon signature by the parties and was valid for twenty four month from the date of execution by the parties.

5.3.2 The commercial contract was entered into on 19th September 2015 and was signed by the Managing Director on behalf of KR and Assistant President on behalf of CCCC. Among the key issues noted from the contract were that:

- a) The contractor was to execute the construction of Nairobi-Naivasha Standard Gauge Railway.

- b) The contractor was to design, execute and complete the works and remedy effect therein.
- c) The KR were to pay the contractor in consideration of the design, supervision, execution and completion of the works.
- d) The agreement was to come into force and effect on the date when the following conditions were met:
 - i) That the GoK and financial institutions of China have entered into the necessary credit agreement relating to the provision of the financing for the construction of Nairobi-Naivasha SGR
 - ii) That the duly signed credit agreement entered into by the GoK and the financial institutions of China has been endorsed and certified by the office of the Attorney General and the Department of Justice.
- e) The National Treasury and China Exim Bank have already executed the Financing Agreement for Phase 2A. CCCC will commence construction upon fulfilment of the Condition Precedent by GOK.
- f) That since KR did not submit the advice provided by China Exim Bank to the Government of Kenya to consider appointing CCCC as the contractor to operate and maintain the SGR upon completion, PPOA was not in a position to form an opinion on the matter.

5.4 **SITE VISITS BY MEMBERS OF THE COMMITTEE**

- 5.4.0 On Friday, 12th February 2016, the Committee undertook an inspection tour of Phase 1 of the SGR Phase I, starting at the Nairobi SGR Terminal site where a project brief was given.
- 5.4.1 The Committee heard that there will be two major stations: Nairobi South and Mombasa West; 7 intermediate stations including: Mariakani, Miasenyi, Voi, Mtito Andei, Kibwezi, Emali and Athi River; and 24 passing (signal stations) at various locations, including Mombasa Port which will be the departure station.

5.4.2 The Committee was also informed that the following would be the salient features of the SGR:

- a) The railway will have a uniform design specification, which will permit seamless operation across the borders.
- b) Each freight train will have a haulage (moving) capacity of 4,000 tonnes with a designed speed of 80 kilometres per hour.
- c) Each passenger train will have a capacity of 1,096 passengers and with a designed speed of 120 kilometres per hour. The passenger speeds could however be increased in future to 'high speed'
- d) The railway has been designed for environmental compatibility particularly within the National Parks where fencing will be provided along with underpasses for wild animals, thereby ensuring minimal animal displacement.

5.4.3 The Committee observed that quality tremendous work had been done on the SGR project and that as at January 2016, 63.22% of civil works had been completed.

5.4.4 The Committee also witnessed that the project had created numerous job opportunities to the locals, as evidenced by the many locals who had been employed, trained and stationed in various construction sections.

5.4.5 On Friday, 17th June 2016 the Committee also inspected the proposed route for the Phase 2A of the SGR (Nairobi-Naivasha) as well as the proposed site for the Naivasha Industrial Park.

5.4.6 During the inspection visit, the Committee was informed that a branch line to serve the Naivasha Industrial Park from the proposed Mai Mahiu Station of Longonot Station would be done.

5.4.7 The Committee also observed that major works would have to be done due to the difficult terrain as well as poor geological foundation in that area, factors that have informed the cost of that Section as negotiated and agreed between the Parties.

5.4.8 The Committee also noted that extension of the SGR from Nairobi to Naivasha will endeavour to open up Naivasha and its environs as well as catalyzing economic growth in the area. The SGR will facilitate faster movement of people and goods.

6. COMMITTEE'S FINDINGS

6.0 The Committee made the following observations based on evidence adduced during its meetings and observations from inspection visits:

6.1 That the financial agreement for Phase 2A of the SGR project had already been concluded and the National Treasury with Exim Bank of China were negotiating the conditions precedent to disbursement. The financial agreement would provide for the conditions of development by the EPC contractor.

6.2 That the Phase 2A of the SGR will cost US\$ 1.483 billion, 15% of which will be financed by GoK's budgetary allocation while the remaining 85% of the cost would be funded through a loan from the EXIM Bank of China.

6.3 That the SGR project offers national and regional importance and the Kenya Railways would be actively engaged to ensure that it is completed on time and as per the contractual specifications.

6.4 That large quantities of local inputs such as steel, cement, sand and aggregates, supply of labour, among others have been utilized on the project. This way, the Committee established that the project has presented locals with a new window of opportunities to do business through increased trade volumes.

6.5 That many local civil engineering and construction companies and other suppliers had been sub-contracted by the China Road and Bridge Corporation (CRBC).


6.6 That the contractor had demonstrated high engineering expertise and competency and that Kenyan professionals working on the project were gaining in terms of technology transfer and employment generally.

- 6.7 That the development of the Mombasa-Nairobi SGR project was at an advanced stage and that as at the end of April 2016, 70% of civil works had been completed. The project was due for completion in June 2017. The Committee observed that the contractor had not only done commendable work but was also ahead of the schedule.
- 6.8 That it was imperative to have the EPC contractor (CRBC) who is constructing the Standard Gauge Railway to operate and maintain it upon completion for a minimum period of ten years. This arrangement will enable the operator to gradually transfer skills to the locals, as part of building their capacity to take over the management and operations of the SGR upon the expiration of the ten years, or whichever comes earlier.
- 6.9 This arrangement also provides a good opportunity for the contractor to demonstrate that the project had been undertaken in line with global standards in terms of quality as they would bear the costs of repairing any substandard works should such a case arise.

7. **COMMITTEE'S RECOMMENDATIONS**

- 7.0 Arising from its observations and findings, the Committee recommends that the Government of Kenya, through the Ministry of Transport, Infrastructure, Housing and Urban Development should:
- 7.1. Undertake due diligence on China Communications and Construction Company Ltd (the proposed EPC Contractor for the Nairobi - Naivasha SGR) to confirm the Company's competence to undertake the construction of Nairobi - Naivasha SGR. In addition, in line with the Government directive on the operation of the Mombasa - Nairobi SGR, due diligence be undertaken on China Communications and Construction Company Ltd/China Road & Bridge Corporation to confirm their competence to operate the SGR on completion.
- 7.2 Fast-track the development of Nairobi ICD and Nairobi-Naivasha section to serve the proposed Naivasha Industrial Park earmarked to be located within or close to the Geothermal fields, south of Lake Naivasha.

- 7.3 Fast-track the development of the Naivasha-Kisumu-Malaba section of the SGR (Phase 2B & 2C). This SGR link will be able to serve the region through Lake Victoria in case of delay to develop the link between Kisumu and Kampala.

Signed:..........Date: 3/10/2016

Hon. Maina Kamanda, EGH, MP

Chairperson

**Departmental Committee on Transport, Public Works and
Housing**


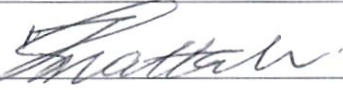
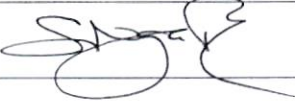

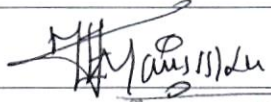
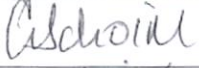


THE NATIONAL ASSEMBLY






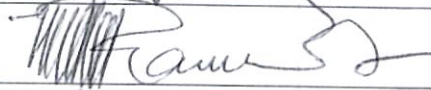

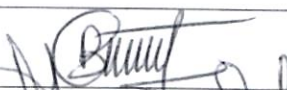
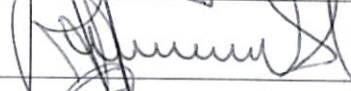

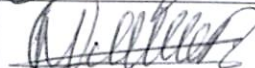
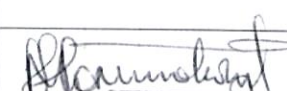


ELEVENTH PARLIAMENT – 4TH SESSION

DEPARTMENTAL COMMITTEE – TPWH: TRANSPORT, PUBLIC WORKS AND HOUSING

Adoptions register for the report on the Inquiry into the status of implantation of phase I & II of the Standard Gauge Rail way -Friday, 24th June 2016

NO.	MEMBER	SIGNATURE
1.	Hon. Maina Kamanda (Chairperson), MP	
2.	Hon. (Eng.) Mohamed Maalim (Vice Chairperson), MP	
3.	Hon. KK Stephen Kinyanjui Mburu, MP	
4.	Hon. Christopher Omulele, MP	
5.	Hon. (Eng.) Stephen Ngare, MP	
6.	Hon. Johnson M. Naicca, MP	
7.	Hon. (Eng.) John Kiragu, MP	
8.	Hon. Stephen K. Manoti, MP	
9.	Hon. Joseph Lomwa, MP	
10.	Hon. (Capt.) Clement M. Wambugu, MP	
11.	Hon. Emmanuel Wangwe, MP	
12.	Hon. Grace J. Kipchoim, MP	
13.	Hon. Cecily M. Mbarire, MP	
14.	Hon. Mishi Juma Khamis, MP	

15.	Hon. Peter Shehe, MP	
16.	Hon. Omar Mwinyi, MP	
17.	Hon. Suleiman Dori, MP	
18.	Hon. Rashid Juma Bedzimba, M.P	
19.	Hon. Aduma Owuor, MP	
20.	Hon. Gideon Konchella, MP	
21.	Hon. Abass Ahmed Ibrahim, MP	
22.	Hon. Ali Wario, MP	
23.	Hon. David Kiaraho, MP	
24.	Hon. Barchilei Kipruto, MP	
25.	Hon. Simon Nyaundi Ogari, MP	
26.	Hon. Chachu Ganya , MP	
27.	Hon. Mathias N. Robi , MP	
28.	Hon. Mukwe James Lusweti, MP	
29.	Hon. Mark Lomunokol, MP	

MINUTES OF THE 31ST SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON FRIDAY 24TH JUNE, 2016 IN THE NEW ROOM THREE ,WINDSOR HOTEL NAIROBI AT 2:00 PM

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Mahamud Maalim, M.P. –**Vice Chairman**
3. Hon. Simon Nyaundi Ogari, M.P.
4. Hon. K.K. Stephen Kinyanjui Mburu, M.P
5. Hon. Grace Kipchoim, M.P
6. Hon. Aduma Owuor, M.P.
7. Hon. Ahmed Abbas Ibrahim, M.P
8. Hon. Mark Lomunokol, M.P.
9. Hon. Mishi Juma, M.P.
10. Hon. Cecily Mbarire, M.P.
11. Hon. Ali Wario, M.P.
12. Hon. Chachu Ganya, M.P.
13. Hon. Rashid Juma, MP
14. Hon. (Arch.) David Kiaraho, M.P.
15. Hon. Barchilei Kipruto, M.P
16. Hon. Stephen Manoti, M.P.
17. Hon. Emmanuel Wangwe, M.P.
18. Hon. Omar Mwinyi, M.P
19. Hon. (Eng.) Stephen Ngare, M.P.
20. Hon. Mathias Robi, M.P.

ABSENT WITH APOLOGY

1. Hon. Gideon Konchella, M.P.
2. Hon. Johnson Manya Naicca, M.P
3. Hon. Peter Shehe, M.P.
4. Hon. Omulele Christopher, M.P
5. Hon. Joseph Lomwa, M.P.
6. Hon. Suleiman Dori, M.P.
7. Hon. Mukwe James Lusweti, M.P.
8. Hon. (Eng.) John Kiragu, M.P
9. Hon. (Capt.) Clement Wambugu, M.P.

IN ATTENDANCE

- NATIONAL ASSEMBLY

- | | |
|--------------------------|-----------------------|
| 1. Mr. Samuel Kalama | First Clerk Assistant |
| 2. Mr. Abdifatah M. Bule | Third Clerk Assistant |
| 3. Ms. Christine Ndiritu | Third Clerk Assistant |
| 4. Mr. Salem Lorot | Legal Counsel |

MIN/DC-TPWH/2016/125 Preliminaries

The Chairperson called the meeting to order at 2:00 pm with a word of prayer. He then presented the agenda as follows:-

1. Prayer
2. **Consideration and adoption of the report on the inquiry into the status of implementation of phase I& II of the Standard Gauge Railway.**
3. Any Other Business

MIN/DC-TPWH/2016/126 Consideration and adoption of the report on the inquiry into the status of implementation of phase I & II of the Standard Gauge Railway

The Committee considered and adopted the report on the Consideration and adoption of the report on the inquiry into the status of implementation of phase I & II of the Standard Gauge Railway as proposed and seconded by the Hon. (Arch.) David Kiaraho, M.P and the K.K. Stephen Kinyanjui Mburu, M.P respectively with the following observations and recommendations:-

Observations

The Committee made the following observations, that:-

1. Financial agreement for phase 2A is under discussion between the National Treasury and Exim Bank of China. The financial agreement will provide for the procurement procedure and regulations that will be applicable to the procurement of the EPC contractor.
2. The SGR Phase 2A will cost US\$ 1.483 billion which will be financed by GoK budgetary allocations (15%) and a loan from the EXIM Bank of China (85%).
3. The SGR project offers national and regional importance and the Kenya Railway Corporation is actively engaged to ensure that it is completed on time and as per the contractual specifications.

4. Large quantities of local inputs such as steel, cement, sand and aggregates, supply of labour, among others have been utilized on the project. This way, the project has presented locals with a new window of opportunities to do business through increased trade volumes.
5. Several local companies and suppliers have been sub-contracted by the China Road and Bridge Construction Company (CRBC)
6. The contractor has demonstrated high engineering expertise and competency and that Kenyan professionals working on the project would gain in terms of technology transfer.
7. The development of the Mombasa-Nairobi SGR project is at an advanced stage and that as at the end of May, 2016, 70% of civil works had been completed. The project is due for completion in June, 2017. The Committee observed that the contractor had not only done commendable work but was also ahead of the schedule.
8. That it is imperative to have the EPC contractor (CRBC) who is constructing the Standard Gauge Railway to operate and maintain it upon completion for a maximum period of five years. This arrangement will enable the operator to gradually transfer skills to the locals, as part of building their capacity to take over the management and operation of the SGR upon the expiration of the five years.

Recommendations



The Committee recommends that:-

- I. The Government of Kenya through the Ministry of Transport, Infrastructure, Housing and Urban Development should undertake due diligence on China Communication and Construction Company (CCCC) - the parent entity of CRBC, in order to confirm the Company's competence to undertake the operation of the SGR. If proven to be competent the Company may be considered to undertake the operation of the SGR once it is completed for a period of at least five years.
- II. The Government of Kenya through the Ministry of Transport, Infrastructure, Housing and Urban Development should fast tracking the development of Nairobi-Naivasha section to serve the proposed Naivasha Industrial Park to be located within or close to the Geothermal fields south of Lake Naivasha.
- III. The Government of Kenya through the Ministry of Transport, Infrastructure, Housing and Urban Development should also fast track the development of the Naivasha-Kisumu- Malaba section of the SGR (Phase 2B & 2C) to be able to serve

the region through Lake Victoria in case of delay to develop the link between Kisumu and Kampala.

MIN/DC-TPWH/2016/127 Adjournment

The Chairperson adjourned the meeting at 4.00 pm to be convened on 25th June, 2016 at 9.00 am.

SIGNED.......... DATE

Hon. Maina Kamanda, EGH, M.P. (Chairperson)

MINUTES OF THE 27TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON MONDAY 6TH JUNE, 2016 IN THE COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE AT 2:30 PM

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Mahamud Maalim, M.P. – **Vice Chairman**
3. Hon. Simon Nyaundi Ogari, M.P.
4. Hon. Omulele Christopher, M.P
5. Hon. K.K. Stephen Kinyanjui Mburu, M.P
6. Hon. Johnson Many Naicca, M.P
7. Hon. Grace Kipchoim, M.P
8. Hon. Peter Shehe, M.P.
9. Hon. Aduma Owuor, M.P.
10. Hon. Gideon Konchella, M.P.
11. Hon. Ahmed Abbas Ibrahim, M.P
12. Hon. Mark Lomunokol, M.P.

ABSENT WITH APOLOGY

1. Hon. Joseph Lomwa, M.P.
2. Hon. Mishi Juma, M.P.
3. Hon. Suleiman Dori, M.P.
4. Hon. Cecily Mbarire, M.P.
5. Hon. Ali Wario, M.P.
6. Hon. Chachu Ganya, M.P.
7. Hon. Rashid Juma, MP
8. Hon. (Arch.) David Kiaraho, M.P.
9. Hon. Mathias Robi, M.P.
10. Hon. (Eng.) Stephen Ngare, M.P.
11. Hon. Emmanuel Wangwe, M.P.
12. Hon. Omar Mwinyi, M.P
13. Hon. Mukwe James Lusweti, M.P.
14. Hon. (Eng.) John Kiragu, M.P
15. Hon. Stephen Manoti, M.P.
16. Hon. (Capt.) Clement Wambugu, M.P.
17. Hon. Barchilei Kipruto, M.P

IN ATTENDANCE

- NATIONAL ASSEMBLY

- | | |
|--------------------------|-----------------------|
| 1. Mr. Samuel Kalama | First Clerk Assistant |
| 2. Mr. Abdifatah M. Bule | Third Clerk Assistant |
| 3. Ms. Christine Ndiritu | Third Clerk Assistant |

IN ATTENDANCE - ATTONEY GENERAL

- | | |
|------------------------|----------------------------------|
| 1. Ms. Lucy Kagwanja | - Chief State Counsel |
| 2. Mr. Kenneth Gathuma | - Senior Principal State Counsel |

MIN/DC-TPWH/2016/107 Preliminaries

The Chairperson called the meeting to order at 11:40 am with a word of prayer. He then presented the agenda as follows:-

1. Prayer
2. **Meeting with the Attorney General on the Standard Gauge Railway of phase II**
3. Any Other Business

MIN/DC-TPWH/2016/108 Meeting with the Attorney General on the Standard Gauge Railway of phase II

The Chairman invited the representative from the Office of the Attorney General (AG) to make his presentation on the implementation status of the Standard Gauge Railway of phase II. The representative, Mr. Kenneth Gathuma, Senior Principal State Counsel made his presentation as follows:-

That:-

- I. The AGs' office received requests from the Kenya Railways seeking legal advice on the Commercial Contract for the Expansion and modernisation of the Inland Container Depot (ICD) Nairobi, on 7th March, 2016.
- II. On 21st March, 2016, the AG responded through a letter addresses to the Cabinet Secretary for the Ministry of Transport, Infrastructure, Housing and Urban Development. In this letter numerous legal issues and concerns were raised that Kenya Railways were required to address prior to issuance of their legal clearance.
- III. The Managing Director, Kenya Railways, responded to the AGs letter on 24th March 2016. In the letter, issues and concerns raised by the AG were addressed through

clarifications on some issues and making of amendments to the contract documents along the lines the AG had recommended.

- IV. On the day, 24th March 2016, the Cabinet Secretary (CS) for the Ministry of Transport, Infrastructure, Housing and Urban Development wrote a letter to the AG confirming that the recommendations made by the AG had been taken on board.
- V. On 24th March 2016, the AG wrote a letter to the CS issuing legal clearance to execute the contracts.

The meeting was further informed that a delegation from AGs' office and government agencies went to Ethiopia for a benchmarking visit. The delegation observed that the Ethiopia Government negotiated with their contractor and the government is getting better package including local content.

MIN/DC-TPWH/2016/0109 Adjournment

The Chairperson adjourned the meeting at 3.30 pm to be convened on 16th June, 2016 at 10.00 a.m.

SIGNED..... DATE

Hon. Maina Kamanda, EGH, M.P. (Chairperson)

MINUTES OF THE 29TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON TUESDAY 21ST JUNE, 2016 IN THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 10:20 AM

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Mahamud Maalim, M.P. – **Vice Chairman**
3. Hon. (Eng.) Stephen Ngare, M.P.
4. Hon. Joseph Lomwa, M.P.
5. Hon. Ali Wario, M.P.
6. Hon. Chachu Ganya, M.P.
7. Hon. Mukwe James Lusweti, M.P.
8. Hon. Aduma Owuor, M.P.
9. Hon. Emmanuel Wangwe, M.P.
10. Hon. Grace Kipchoim, M.P.

ABSENT WITH APOLOGY

1. Hon. Johnson Many Naicca, M.P.
2. Hon. Peter Shehe, M.P.
3. Hon. Gideon Konchella, M.P.
4. Hon. Mishi Juma, M.P.
5. Hon. Suleiman Dori, M.P.
6. Hon. Cecily Mbarire, M.P.
7. Hon. Rashid Juma, MP
8. Hon. (Arch.) David Kiaraho, M.P.
9. Hon. Mathias Robi, M.P.
10. Hon. Omar Mwinyi, M.P.
11. Hon. (Eng.) John Kiragu, M.P.
12. Hon. Stephen Manoti, M.P.
13. Hon. (Capt.) Clement Wambugu, M.P.
14. Hon. Barchilei Kipruto, M.P.
15. Hon. Simon Nyaundi Ogari, M.P.
16. Hon. Omulele Christopher, M.P.
17. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
18. Hon. Ahmed Abbas Ibrahim, M.P.
19. Hon. Mark Lomunokol, M.P.

IN ATTENDANCE

- NATIONAL ASSEMBLY

- | | |
|--------------------------|-----------------------|
| 1. Mr. Samuel Kalama | First Clerk Assistant |
| 2. Mr. Abdifatah M. Bule | Third Clerk Assistant |
| 3. Ms. Christine Ndiritu | Third Clerk Assistant |

IN ATTENDANCE - PUBLIC PROCUREMENT OVERSIGHT AUTHORITY (PPOA)

1. Mr. Maurice Juma - Director General
2. Mr. Kimani Gathoni - Compliance Officer
3. Mr. Peter Wanga - Compliance Officer

MIN/DC-TPWH/2016/125 Preliminaries

The Chairperson called the meeting to order at 10:20 am with a word of prayer. He then presented the agenda as follows:-

1. Prayer
2. Meeting with the Director General for the Public Procurement Oversight Authority (PPOA) on the Standard Gauge Railway of phase II
3. Any Other Business

MIN/DC-TPWH/2016/126 Meeting with the Director General for the Public Procurement Oversight Authority (PPOA) on the Standard Gauge Railway of phase II

The Chairman invited the Director General (DG) for the Public Procurement Oversight Authority (PPOA) to make his presentation on the issues pertaining to the procurement of the EPC contractor as provided in the Memorandum of Understanding (MoU) signed between Kenya Railways Corporation (KRC) and China Communication and Construction Company (CCCC) among things. The DG, Mr. Maurice Juma, made his presentation as follows:-

That:-

PPOA reviewed the Memorandum of Understanding (MOU) dated 14th November 2014 and signed by the managing Director of KRC and the President of the CCCC. Among the key issues covered by the MOU are:-

1. The GOK through KRC had agreed to CCCC's initial proposal to undertake feasibility study including preliminary design at no cost to KRC.
2. KRC was not bound by the result and conclusion of the study. KRC reserved the right to evaluate, study, accept, reject, adopt and or utilize the study for its own

purposes and uses without any liability provided that it was not to disclose information contained in the study to any other than the parties unless there is written consent of the CCCC.

3. KRC and CCC were to sign a commercial contract or other financing documents and the later was to use their endeavor to assist KRC and GOK to identify sources of funding the project which include:
 - China Exim Bank and/or
 - Loan from Chinese Bank and /or
 - Investment from CCCC or group company and /or
 - Other financing sources
4. KRC/GOK was at liberty to seek funding from other sources; where this was to apply, KRC was at liberty to identify another contractor to undertake the project. However, where funding is sourced with assistance of CCCC, the contractor for the subject would be CCCC.
5. The MOU entered into force upon signature by the parties and is valid for twenty four month from the date of execution by the parties.

The commercial contract was entered into on 19th September, 2015 and was signed by the Managing Director on behalf of KRC and Assistant President on behalf of CCCC. Among the key issues noted from the contract were:-

- I. Contractor was to execute the construction of Nairobi-Naivasha Standard Gauge Railway.
- II. The contractor to design, execute and complete the works and remedy effect therein.
- III. KRC were to pay the contractor in consideration of the design, supervision, execution and completion of the works.
- IV. The agreement was to come into force and effect on the date when the following conditions were met:-
 - The GOK and financial institutions of China have entered into the necessary credit agreement relating to the provision of the financing for the construction of Nairobi-Naivasha SGR.
 - The duly signed credit agreement entered into by the GOK and the financial institutions of China has been endorsed and certified by the office of the Attorney General and the Department of Justice.
- V. KRC has applied to the Government of the Peoples of Republic of China for such support but the parties have not yet reached financial close. CCCC therefore has not yet been procured as the EPC contractor. Financial agreement for phase 2A is under discussion between the National Treasury and Exim Bank of China. The financial agreement will provide for the procurement procedure and regulations that will be applicable to the subject matter. The

financing agreement is still under discussions subject to the provision of the contents of Section 6(1) and (2).

- VI. Since KRC did not submit the advice provided by China Exim Bank to the Government of Kenya to consider appointing CCCC as the contractor to operate and maintain the SGR upon completion, PPOA was not in a position to form an opinion on the matter.

MIN/DC-TPWH/2016/127 Adjournment

The Chairperson adjourned the meeting at 12.00 pm to be convened on 24th June, 2016 at 9.00 a.m.

SIGNED..... DATE

Hon. Maina Kamanda, EGH, M.P. (Chairperson)