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THE STANDING COMMITTEE

ON

ROADS AND TRANSPORTATION

REPORT OF THE INSPECTION VISIT OF KIBWEZI-ATHI-MUTOMO-KITUI  
(A9/B64) ROAD IN KITUI COUNTY

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## ABBREVIATIONS

EPC:	Engineering, Procurement and Construction is a particular form of contracting arrangement used in some industries where the contractor is made responsible for all the activities from design, procurement, construction, to commissioning and handover of the project to the End-User or Owner.
CSR:	Corporate Social Responsibility
KeNHA:	Kenya National Highways Authority
NEMA:	National Environmental Management Authority
NGO:	Non- Governmental Organization
NLC :	National Lands Commission
PAPs:	Persons Affected by the Project

## PREFACE

**Mr. Speaker Sir,**

The Standing Committee on Roads and Transportation is established under standing order 212(3) of the Standing Orders of the Senate and is mandated to *consider all matters relating to transport, roads, public works, construction and maintenance of roads, rails and buildings, air and seaports.*

In executing its mandate, the Committee oversees the Ministry of Transport, infrastructure, Housing and Urban Development.

### **Composition of the Committee**

The Committee is comprised of the following Members:

- |                                     |                          |
|-------------------------------------|--------------------------|
| 1) Sen. Wamatangi Kimani, MP,       | <b>Chairperson</b>       |
| 2) Sen. Hargura Godana, MP,         | <b>Vice- Chairperson</b> |
| 3) Sen. Enoch Wambua, MP,           | Member                   |
| 4) Sen. Christine Zawadi, MP,       | Member                   |
| 5) Sen. (Dr.) Lelegwe Ltumbesi, MP, | Member                   |
| 6) Sen. Philip Mpaayei, MP,         | Member                   |
| 7) Sen. Sylvia Kasanga, MP,         | Member                   |
| 8) Sen. (Prof.) Ekal Imana, MP,     | Member                   |
| 9) Sen. Cleophas Malalah, MP,       | Member                   |

### **Members Present during the Visit**

On 16<sup>th</sup> – 19<sup>th</sup> August, 2018, the Committee undertook project status assessment in Kitui County on a fact finding mission on the Kibwezi-Mutomo-Kitui road. The following Members comprised the delegation during the inspection visit;

- |                                 |                    |
|---------------------------------|--------------------|
| 1) Sen. Wamatangi Kimani, MP,   | <b>Chairperson</b> |
| 2) Sen. Enoch Wambua, MP,       | Member             |
| 3) Sen. (Prof.) Ekal Imana, MP, | Member             |

The Government of Kenya received financing from the China Exim Bank towards rehabilitation and capacity enhancement of Kibwezi-Mutomo-Kitui road. It is implementing the project through Kenya National Highways Authority (KeNHA). The Kibwezi-Mutomo-Kitui road construction contract was awarded to Sinohydro Corporation Ltd by KeNHA on 20<sup>th</sup> September, 2016 for a period of 42 months at a

contract price of Ksh. 18,404,888,139. As an EPC/Turnkey (a contract comprising Engineering, Procurement and Construction) Commercial Contract, the Contractor is tasked with undertaking design as they construct.

During the visit, the Committee was accompanied by representatives from Kenya National Highways Authority (KeNHA), the Supervision Consultant, Contractor, Kitui County and several media houses.

The objectives of the inspection visit were as follows;

- i. To assess the upgrading of Kibwezi-Mutomo-Kitui-Kabati-Migwani (A9/B64) Road, (contract no KeNHA/1469/2016);
- ii. Interact with the residents and engage the contractor on the concerns raised on the slow pace of road construction and completion timelines;
- iii. Engage the Contractor on the Corporate Social Responsibility (CSR) for the ongoing road works;
- iv. Assess the progress on compensation of the residents by the National Land Commission arising from compulsory acquisition;
- v. Assess the public safety concerns along the Mwingi- Garissa road;
- vi. Assess the impact of road construction on traders;
- vii. Assess the status of Mutomo and Tseikuru airstrips.

During the visit, the Committee made the following observations:-

1. There was delay in compensation to the Project Affected Persons (PAPs) by Kenya National Highways Authority (KeNHA) and National Land Commission (NLC) undertaking land acquisition for the road project;
2. Lack of fair compensation for cracked structures by the blasting activities. 98 persons were undercompensated as a result of the explosions done at the quarry. Whereas the contractor has referred about 44 house quarry claims to the insurance, the loss adjuster to the site and the evaluation report has not been released to the affected persons;
3. Dust and pollution activities from the quarry operated by the contractor have negatively affected the community. A young girl by the name Joyce Kiema was reported to have developed hearing problems arising from the blasting.

Arising from the observations made during the inspection tour of the Kibwezi-Mutumo-Kitui road project the Committee recommends that:-

1. The National Lands Commission and the Kenya National Highways Authority promptly compensate land owners affected by the project (PAPs) along the Kibwezi-Mutomo-Kitu-Kibati-Migwani road;
2. The project as conceptualized does not have a provision for corporate social responsibility (CSR). Going forward, EPC/Turnkey Projects should have corporate social responsibility (CSR) component to be aligned with the community needs;
3. There should be no revision of land valuation downwards for those persons who have been given awards;
4. The road contractor engages and hires local residents for labour on the road project for both skilled and unskilled jobs;
5. The road contractor adheres to the terms of the NEMA license whilst constructing the road;
6. The Kenya National Highways Authority (KeNHA) should give a full disclosure of the total cost of the project and the full distance covered. This arose from information made available to the Committee by both KeNHA and the contractor that an additional 50 kilometers was included to the initial project from Kitui town to Migwani apparently at no extra cost.

## ACKNOWLEDGEMENT

I wish to express my gratitude to the Offices of the Speaker and the Clerk of the Senate for facilitating an inspection visit of the Kibwezi-Athi-Mutomo-Kitui (A9/B64) Road in Kitui County that was undertaken by the Committee and which gave valuable insights that led to the production of this report.

The Committee acknowledges the valuable time and considerable effort made by Members of the Committee, technical officers from the Ministry of Transport, Infrastructure, Housing and Urban development, the Kenya National Highways Authority, the leadership of the project affected persons and members of the public who made both oral and written submissions that has informed the preparation of this report.

Finally, I recognize the unqualified effort of all stakeholders who appeared before the Committee including the contractor to respond to issues that emerged and which also informed the production of this report.

**Mr. Speaker Sir,**

It is now my pleasant duty to table the report of the Standing Committee on Roads and Transportation, in relation to the project assessment visit to Kitui County that was undertaken on 16<sup>th</sup> -19<sup>th</sup> August, 2018.

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

**SEN. WAMATANGI KIMANI PAUL, M.P,**  
**CHAIRPERSON,**  
**STANDING COMMITTEE ON ROADS AND TRANSPORTATION**

**ADOPTION OF REPORT**

Pursuant to standing order 213 (2) the Standing Committee on Roads and Transportation carried out its the project assessment visit to project status assessment in Kitui County and adopted its report as follows—

Sen. Wamatangi Kimani, MP,

Chairperson -----

Sen. Hargura Godana, MP,

Vice- Chairperson -----

Sen. Enoch Wambua, MP,

Member -----

Sen. Christine Zawadi, MP,

Member -----

Sen. (Dr.) Lelegwe Ltumbesi, MP,

Member -----

Sen. Philip Mpaayei, MP,

Member-----

Sen. Sylvia Kasanga, MP,

Member-----

Sen. (Prof.) Ekal Imana, MP,

Member -----

Sen. Cleophas Malala, MP,

Member-----



## CHAPTER ONE:

# BACKGROUND INFORMATION ON THE KIBWEZI-ATHI-MUTOMO-KITUI ROAD PROJECT

## 1.0 Introduction

### 1.1 Background to the Project

The Government of Kenya received financing from the China Exim Bank towards rehabilitation and capacity enhancement of Kibwezi-Mutomo-Kitui road. It is implementing the project through Kenya National Highways Authority (KeNHA). The objective of the project is capacity enhancement and rehabilitation of the road in order to maximize comfort of the road users and ensure their safety.

On 9<sup>th</sup> February, 2011, Kenya National Highways Authority(KeNHA) and Messrs Sinohydro Corporation Ltd signed an EPC Turnkey Contract to undertake Contract Engineering, Procurement and Construction of Kibwezi -Mutomo –Kitui . This Agreement came into force following approval of the loan facility relating to upgrading of the road between Government of Kenya (15%) and Export –Import Bank of China (85%) and a further legal opinion by the Attorney General of Kenya.

Subsequent to the above, on 20<sup>th</sup> September 2016, Addendum No. 1 to the Contract was signed between the two parties for construction of the project road. The commencement date was 16<sup>th</sup> August, 2017 for a period of 42 months and a completion period of 15<sup>th</sup> February, 2021.

The project was being constructed mainly on existing road reserve though additional land was required to accommodate road realignment and the proposed Ikutha by-passes. KeNHA with support of the National Land Commission (NLC) embarked on valuation, verification, and validation of affected persons' property for the project period. This exercise entailed the establishment of a Sub-County level Grievances Redress Committee to facilitate compensation of all persons affected by the project.

The Sub-County level Grievances Redress Committee comprised of the following;

- 1) Deputy County Commissioner (Chairperson);
- 2) Sub-County Administrator (County Government);
- 3) Two (2) from the Project Affected Persons (PAPs);
- 4) Representative of the contractor;
- 5) Representative of the consultant (Secretary);
- 6) Representative NEMA;
- 7) Representative of Department of Occupational Safety and Health;
- 8) Representative of the Labour office;
- 9) Representative of the Children Office;
- 10) Representative of Chamber of Commerce;

## **1.2 Scope of the Project**

The scope of works for the Project Road was as summarised below:

**a) Engineering, Procurement and Construction (EPC) of the following road sections:**

- 1) Kibwezi – Kitui Road (145 km)
- 2) Kabati – Migwani direction (16.71 km)
- 3) Kibwezi Township Roads (3 km)
- 4) Ikutha Township Roads (3 km)
- 5) Mutomo Township Roads (4 km)
- 6) Kitui Township Roads (8 km)
- 7) Construction of interchanges at Kibwezi and Kitui
- 8) Rehabilitation of the Kitui - Kabati Road (12 km), and
- 9) Construction of Social amenities in Kibwezi and Kitui.

**b) The road cross section was 7m wide carriageway with 2m wide shoulders. The pavement consists of;**

- 1) Single seal surface dressing
- 2) 50mm AC on the carriageway and 35mm AC for the shoulder
- 3) 150mm base course of cement improved Grade Crushed Stone(GCS)
- 4) 175mm subbase of Cement Improved Gravel

### 1.3 Project Details

S. No.	Item	Details
1.	Project Name	Upgrading of Kibwezi - Mutomo – Kitui – Kabati - Migwani Road
2.	Location	Makueni and Kitui Counties
3.	Contractor	Sinohydro Corporation Ltd.
4.	Supervision (Employer’s Representative Assistant)	APEC Consortium Ltd (in association with ITEC Engineering and SPAN Engineers as sub-consultants)
5.	Contract Sum (KES)	KES 18,404,888,139
6.	EPC Contract Signing	9 <sup>th</sup> February,2011
7.	Addendum No. 1	20 <sup>th</sup> September, 2016
8.	Funding	15% Government of Kenya and 85% Export - Import Bank of China
9.	Commencement date	16 <sup>th</sup> August 2017
10.	Time for Completion	42 months
11.	Defects Notification Period	12 months
12.	Expected Completion Date	15 <sup>th</sup> February 2021
13.	Period elapsed to date	12 months
14.	Percentage of Time Elapsed	28.6%
15.	Percentage of permanent works completed	26.4%
16.	Amount certified to date	KES 7,766,862,794.66
17.	Percentage certified to date	42.2% of the Contract Sum
18.	Amount paid to date as at August, 2018	KES 7,595,254,770.65

### 1.4 Project Design

As an EPC/ Turnkey commercial contract, the contractor designs the road as he constructs. However, the contractor had designed the road in detail from 0 to 145k m and construction works were well underway between 0-135 km. The design review for the sections between 135 km to 145 km included provisions for township roads for Kibwezi, Ikutha and Mutomo and interchanges at Kibwezi and Kitui.

### 1.5 Financial Status

Pursuant to the Schedule of payments agreed upon in the contract agreement, payments are to be made in nine (9) milestones at different levels of completion of the project. As at the time of the committee visit two milestones commensurate to 7,766,862,794.66 (42.2%) of the contract sum had been certified. The total amount paid was KES. 5,686,870.70 with a certified balance of 2,080,194,194.80

## **1.6.1 SITE VISITS CONDUCTED BY THE COMMITTEE ALONG THE ROAD PROJECT**

Further to inspection the road works along the section of interest, the Committee stopped at Athi, Ikutha and Mutomo and sought views from the local residents on the impacts of the road project.

### **1.6.1 Meeting at the Athi River Bridge**

The Committee also assessed the Athi river bridge at the border between Kitui and Makueni Counties on the mitigation measures during flooding. The objective of the Committee's assessment was to review the measures taken by the contractor in expansion of the bridge and the commitment on completion timelines.

The Committee was informed that the bridge was 100 m and there were design plans in place to expand the bridge to control the flooding of the Athi River. The local resident engineer undertook to prepare a comprehensive report and on the issues.

#### ***Emerging issues from the meeting at Athi River Bridge***

- i. The market required rehabilitation and construction of parking for lorries and vehicles supplying deliveries and other customers;
- ii. Residents requested for the construction of market stalls;
- iii. The local youth leader explained that residents could not access their homes from the tarmac and requested for extension of the tarmac into residential areas. The Committee recommended that all access routes that had been disrupted should be restored by the contractor.

### **1.6.2 Meeting at the Ikutha Market**

The Committee visited Ikutha market and interacted with traders and community leaders. They were informed as follows;

- i. The by-pass construction had witnessed a lot of disruptions;
- ii. The National Land Commission and KeNHA had been invited by residents to explain the actual compensation values with respect to houses, graves, schools, water and health concerns;

- iii. Residents demanded to be paid before the construction work began.

***Emerging issues raised by the Residents of Ikutha Market***

The Committee met with Residents of Ikutha market and received the following submissions:

- i. The blasting at the quarry by the Chinese contractor had resulted in the following;
  - a) cracked buildings;
  - b) air pollution in the area caused by the quarry dust;
  - c) health problems among the residents such as breathing complications from the heavy quarry dust.
- ii. The project on quarrying did not engage the community in a public participation exercise;
- iii. The blasting at the quarry should be stopped and the residents compensated;
- iv. The County Government of Kitui should be consulted and engaged when such projects are being undertaken.
- v. The residents argued that the quarrying activities were adversely affecting them and the Trading Centre due to the physical, health and environmental impacts resulting from the activities;
- vi. A total of 198 residents whose buildings had cracked due to the blasting had been profiled by civil society organizations;
- vii. Quarrying activity has resulted in the following;
  - a) Death of a school pupil who drowned in an open pit left after quarrying;

- b) Damage to surrounding building evidenced by cracked walls and damaged roof tops;
- viii. Interruption of learning at the nearby schools as a result of blasts

### **1.6.3 Reactions by the Committee on the Blasting**

The Committee considered the information available on the blasts and made the following observations and recommendations;

- i. Compensation process for damage of property arising from the blasting activity had not been agreed upon between the contractor and the residents;
- ii. The blasting activity should be carried out in a controlled manner that does not adversely affect the community and other social amenities;
- iii. The entity that was undertaking the blasting activity should besides compensation, rehabilitate and/ or restore the degraded environment immediately it finalizes its operations in a given area.
- iv. Residents to involve the local leadership in all compensation negotiations;

## CHAPTER TWO:

### 2.0 COMMITTEE OBSERVATIONS

The Committee made the following observations of issues that emerged;

#### 1) Employment:

Residents reported that most people employed as skilled and unskilled labourers were not residents of Kitui County. It was however noted that the project road traverses both Kitui and Makueni Counties and the Contractor undertook to make considerable efforts to employ workers from both counties.

#### 2) Corporate Social Responsibility (CSR):

The Committee observed that there were no significant Corporate Social Responsibility (CSR) projects by the contractor. The Committee was informed that CSR was a self-regulating business model that helps a company to be socially accountable to itself, its stakeholders, and the public. Further, in Engineering, Procurement and Construction (EPC) type of Contract such as the one the Contractor was engaged in, the contract amount was lump sum for which the Contractor was paid upon fulfilment of the employer's requirements.

During the deliberation, the following issues emerged—

- i. KeNHA undertook to involve the local leadership in identifying ways to improve provision of water, which would be beneficial to both the contractor and the Community. The Contractor had engaged a local NGO, *MetaMeta* to advise on viability and location for excavation of water pans or earth dams.
- ii. KeNHA committed to reinstate schools, churches and other public bodies that had been affected during project implementation.
- iii. The Contractor had undertaken some projects the most significant being construction of classrooms and administration block for Njoro Secondary School. Before the CSR, the primary and Secondary schools were sharing facilities in a congested environment. He committed to do much more during contract implementation.

### 3) Compensation of Project affected Persons:

It was reported that residents were unhappy with the compensation offered by the National Lands Commission (NLC) for their land acquisition and developments. It was noted that inquiries for compulsory acquisition of land at Mutomo, Ikutha, and Athi had been concluded on 3<sup>rd</sup> August 2018. However, the NLC was yet to issue the Schedule of Award of Compensation to KeNHA for the aforementioned sections detailing the size of land to be acquired, its value and the amount of compensation payable.

Further, KeNHA had also initiated and established sub-county- level Grievance Redress Committee with a view to address such issues as they may arise during project implementation phase.

### 4) Compensation for houses cracked during Contractor's activities:

The residents complained of failure by the Contractor to pay them for the cracks that developed on the buildings and houses adjacent to the roads works due to the blasting and explosion activities by the Contractor.

The Committee was informed that the contractor had established a quarry and crusher site in Mutomo and had engaged a licensed blaster by the Mines & Geology Department. Although blasting had been done in accordance to Explosives Act CAP 115 of 2016, claims from 326 houses had been received. Several liaison meetings had subsequently been conducted with the last one held conducted on 13<sup>th</sup> August, 2018. The Contractor visited the affected homes and verified 171 households, some of whom had been compensated. However, some claims had been referred to the insurer especially those that could not be dealt with locally.

The Committee was informed that at a previous community liaison meeting held between the Sinohydro Corporation Limited and the Community leaders at Mutomo Chief's Office on 13<sup>th</sup> August, 2018, the following issues were deliberated upon;

- a) **Distance:** According to blasting experts, it was established that it was safe to dwell beyond 500 metres for schools, shopping centres, houses and other facilities.



However, the company had considered enlarging the coverage radius to up to 2km segment for compensation and CSR activities;

- b) **Minimum Compensation value:** the company welcomed the proposal to increase the valuation from 1,000 to 5,000 as the lowest compensation value and that those who had consented to the minimum value would be given the top up. The chief undertook to facilitate verification for compensation claims;
- c) **Impaired Hearing of a minor:** There was an incident in which the hearing of a minor by the name Joyce Kiema had been impaired following the blasting activities by the Contractor. **The Committee heard that the contractor had referred the matter to their insurance since the family already engaged an advocate to deal with the matter;**
- d) **Allegations of 24 hour crushing operations which generate a lot of noise and dust:** The Committee heard that operations within the crusher and the quarry were regulated by the NEMA license which the contractor acquired before commencing operations. The conditions of the license stipulate the working periods, permitted level of noise and control of dust emissions for which the contractor was bound to strictly adhere to;
- e) **Compensation of the rock outcrop within the quarry at Mutomo which was privately owned:** There were claims that compensation for the rock outcrop had been made to a different person from the owner. However, the issue had been sorted out and a revised contract signed with the kin of the deceased landlord as the family beneficiary;
- f) **Construction of Bus Park at Ikutha and market stalls at Athi:** The Committee heard that the CSR projects had not been done due to the constraints of the lump sum contract under implementation. Further it was informed that the requested items were devolved functions and which were under the purview of the County Government. KeNHA requested that construction of the bus park at Ikutha and market stalls at Athi be taken up by Kitui County government;
- g) **Handling of the local community with respect:** In view of complaints relating to the handling of residents respectively by the contractor, KeNHA initiated and

established sub-county level Grievance Redress Committee to address such issues as may arise during project implementation;

h) **Slow progress of the Road Works:** Concerns were raised over the slow pace of the road works was slow and this could compromise the commencement and completion timelines to which KeNHA enlisted the following as factors that had affected the progress. They were enlisted as follows;

- i. **Relocation of Power lines along the construction corridor-** although KPLC had dispatched personnel to the site to reroute the power lines, progress had been very slow;
- ii. **Interests on delayed payments;**-The loan agreement required that the Government of Kenya (GoK) pays in full its portion of the Interim Payment Certificate (IPC) before the China EXIM Bank pays its portion. This had led to accrual of interest;
- iii. **Shortage of water for construction;**-Although the Contractor had been utilizing existing Athi Rivers for construction, there was need to sink boreholes to supplement the water sources;
- iv. **Land acquisition;** The National Land Commission had concluded a land inquiries exercise for affected parcels of land between Kibwezi and Mutomo on 3<sup>rd</sup> August, 2018;
- v. **Payment of Cess to the County Government of Kitui;**-Demands for payment of Cess by the County Government of Kitui had affected construction activities as the contract agreement had not envisioned the payment of county taxes in the form of cess. Therefore, attempts to amend the contract midstream were likely to affect the progress and speed of the works.

Further the Committee made the following observations-

1. There was delay in compensation to the Project Affected Persons (PAPs) by Kenya National Highways Authority (KeNHA) and National Land Commission (NLC) undertaking land acquisition for the road project;

2. There was lack of fair compensation for structures that cracked as a result of blasting activities by the project contractor. 98 affected persons were undercompensated as a result of the explosions done at the quarry. Whereas the contractor has referred about 44 house quarry claims to the insurance, the loss adjuster to the site and the evaluation report has not been released to the affected persons;
3. Dust and pollution activities from the quarry operated by the contractor have negatively affected the community. A young girl by the name Joyce Kiema was reported to have developed hearing problems arising from the blasting.

## CHAPTER THREE:

### 3.0 COMMITTEE RECOMMENDATIONS

Following the observations made during the visit and subsequent engagement of all stakeholders and relevant parties, the Committee recommends:-

- 1) **THAT**, the Kenya National Highways Authority (KeNHA) and National Lands Commission (NLC) should adhere to the provisions of the law by ensuring prompt payment of awards issued to PAPs along Kibwezi-Mutomo-Kitu-Kibati-Migwani road project;
- 2) **THAT**, the project as conceptualized does not have a provision for corporate social responsibility (CSR). Going forward, EPC/Turnkey Projects should have corporate social responsibility (CSR) component to be aligned with the community needs;
- 3) **THAT**, there should be no revision of land valuation downwards for those project affected persons who have been awarded;
- 4) **THAT**, the road contractor engages and hires local residents for labour on the road project construction for both skilled and unskilled jobs;
- 5) **THAT**, the road contractor should adhere to the terms of the NEMA license whilst constructing the road;
- 6) **THAT**, the Kenya National Highways Authority (KeNHA) should give a full disclosure of the total cost of the project and the full distance covered. This arose from information made available to the Committee by both KeNHA and the contractor that an additional 50 kilometres was included to the initial project from Kitui town to Migwani apparently at no extra cost.