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25/11/24



THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT (THIRD SESSION - 2024)  
PUBLIC PETITIONS COMMITTEE


Rt. Hon. Speaker  
You may approve for  
tabling. The report is  
in order.

*[Signature]*  
22/11/24

PARLIAMENT  
OF KENYA  
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REPORT ON -  
CONSIDERATION OF THE PUBLIC PETITION NUMBER 03 OF 2023 REGARDING  
THE MANAGEMENT OF STANDARD GAUGE RAILWAYS (SGR) SERVICES

NOVEMBER, 2024

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	
DAY: Wednesday	
TABLED BY:	Hon. Nimsod Njau (Chairperson)
CLERK-AT THE-TABLE:	Lomale

Directorate of Legislative and Procedural Services  
Clerk's Chambers  
Main Parliament Buildings  
NAIROBI

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## LIST OF ACRONYMS

- CRBC - China Road and Bridge Corporation
- TEU - Twenty-Foot Equivalent Unit
- SGR - Standard Gauge Railway
- KRC - Kenya Railways Corporation
- O&M - Operations and Maintenance

## CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition regarding the Management of Standard Gauge Railway (SGR) services. The petition was presented to the House pursuant to the provisions of Standing Order No. 225(2)(b) by the Honourable Speaker on Tuesday, 21<sup>st</sup> February, 2023.

The petitioner prayed that the National Assembly, through the Public Petitions Committee interrogates the Kenya Railways Corporation (KRC) and other relevant State Departments on the general operations and the revenues collected by the Kenya Railways Corporation and makes appropriate recommendations.

The Committee considered the petition and observed that the government's projection of 2019 as the breakeven year was not realized as the costs of running the SGR line far outweighed the revenues generated and the project's financial position continued to deteriorate, resulting in the accumulation of pending bills that were frequently paid through midyear budget reviews. Further, the project's economic viability was taking a positive trend whereby cargo volumes had increased by 4,159 tonnes in 2019 attributed to a joint directive by the Kenya Revenue Authority (KRA) and Kenya Ports Authority (KPA) requiring all imported cargo leaving the port of Mombasa to use the SGR and clearance done at the Inland Container Depot (ICD) in Nairobi.

The Committee further recommended that the Kenya Railways Corporation put appropriate measures in place to ensure takeover of the remaining functions of operations and maintenance of the SGR by December 2025; invest in the development of professional capacity of the technical employees; publishes the quarterly financial reports of the Standard Gauge Railway (SGR) on its official website detailing a breakdown of revenue collection operational costs to enhance transparency and accountability; and finally, diversifies its services by offering loyalty programmes and special packages for various groups such as students, senior citizens, and frequent travellers.

The Committee appreciates the offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty in considering the petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.

  
**HON. NIMROD MBITHUKA MBAI, M.P.**  
**CHAIRPERSON, PUBLIC PETITIONS COMMITTEE**

Date.....20/11/2024.....



## PART ONE

### 1. PREFACE

#### 1.1. Establishment and Mandate of the Committee

The Public Petitions Committee is established pursuant to the provisions of Standing Order 208A and is mandated to:

- a) consider all public petitions tabled in the House;
- b) make such recommendations as may be appropriate concerning the prayers sought in the petitions;
- c) recommend whether the findings arising from consideration of a petition should be debated; and
- d) Advise the House and report on all public petitions committed to it.

## 1.2. Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises of the following Members:

### Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.  
Kitui East Constituency  
**United Democratic Alliance (UDA)**

### Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.  
Turbo Constituency  
**United Democratic Alliance (UDA)**

Hon. Patrick Makau King'ola, M.P.  
Mavoko Constituency  
**Wiper Democratic Movement-Kenya (WDM-K)**

Hon. Edith Vethi Nyenze, M.P.  
Kitui West Constituency  
**Wiper Democratic Movement-Kenya (WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.  
Vihiga Constituency  
**Amani National Congress (ANC)**

Hon. Maisori Marwa Kitayama, M.P.  
Kuria East Constituency  
**United Democratic Alliance (UDA)**

Hon. Joshua Chepyegon Kandie, M.P.  
Baringo Central Constituency  
**United Democratic Alliance (UDA)**

Hon. John Walter Owino, M.P.  
Awendo Constituency  
**Orange Democratic Movement (ODM)**

Hon. Bernard Muriuki Nebart, M.P.  
Mbeere South Constituency  
**Independent**

Hon. Bidu Mohamed Tubi, M.P.  
Isiolo South  
**Jubilee Party (JP)**

Hon. Caleb Mutiso Mule, M.P.  
Machakos Town Constituency  
**Maendeleo Chap Chap Party (MCCP)**

Hon. John Bwire Okano, M.P.  
Taveta Constituency  
**Wiper Democratic Movement-Kenya (WDM-K)**

Hon. Peter Mbogho Shake, M.P.  
Mwatate Constituency  
**Jubilee Party (JP)**

Hon. Sloya Clement Logova, M.P.  
Sabatia Constituency  
**United Democratic Alliance (UDA)**

Hon. Suzanne Ndunge Kiamba, M.P.  
Makueni Constituency  
**Wiper Democratic Movement-Kenya (WDM-K)**

### **1.3. Committee Secretariat**

The Public Petitions Committee is facilitated by the following secretariat:

**Lead Clerk**  
**Mr. Ahmed Kadhi**  
**Principal Clerk Assistant II**

**Ms. Anne Shibuko**  
**First Clerk Assistant**

**Ms. Miriam Modo**  
**First Clerk Assistant**

**Mr. Willis Obiero**  
**Clerk Assistant III**

**Mr. Isaac Nabiswa**  
**Legal Counsel II**

**Ms. Patricia Gichane**  
**Legal Counsel II**

**Mr. Martin Sigei**  
**Research Officer III**

**Ms. Roselyne Njuki**  
**Senior Serjeant-at-Arms**

**Mr. Paul Shana**  
**Serjeant-at-Arms**

**Mr. Calvin Karungo**  
**Media Relations Officer III**

**Mr. Peter Mutethia**  
**Audio Officer**

## PART TWO

### 2. BACKGROUND INFORMATION ON THE PETITION

#### 2.1. Introduction

1. Public Petition No. 03 of 2023 on the Management of the Standard Gauge Railways (SGR) Services was conveyed to the House by the Honourable Speaker on behalf of Mr. Amos Nyasani on 21<sup>st</sup> February, 2023.
2. The Petitioner averred that in 2019, the Kenya Revenue Authority (KRA) and the Kenya Ports Authority (KPA) jointly issued a directive for the clearance of transit cargo from the Port of Mombasa to Naivasha Inland Container Depot (NICD). However, in 2022, a new directive was issued to revert the services to the port of Mombasa.
3. The petitioner further averred that since inception, there has been no transparency on the revenues collected from passenger and freight services by SGR.
4. The Petitioner called on the House to interrogate the Kenya Railways Corporation (KRC) and other relevant state departments on the general operations and the revenues collected by the Kenya Railways Corporation.

#### 2.2. Prayers

5. The Petitioner prayed that the National Assembly through the Public Petitions Committee—
  - (i) Interrogates the Kenya Railways Corporation (KRC) and other relevant state departments on the general operations and the revenues collected by the Kenya Railways Corporation; and
  - (ii) Makes any other recommendation it deems fit in the circumstance of this Petition.



## PART THREE

### 3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

#### 3.1. Petitioner

On Thursday, 10<sup>th</sup> August 2023, the Petitioner, Mr. Amos Nyasani, appeared before the Committee and submitted as follows -

6. A report by the Parliamentary Budget Office on the budget options for FY2021/2022 revealed that, for the fourth year in a row, SGR operational costs remained high despite dwindling revenue streams, raising concerns about the project's feasibility and viability. However, the Parliamentary Budget Office stated that rail transport remained the greatest option for cargo haulage and long-distance passenger travel.
7. Despite the government's projection of 2019 as the breakeven year, the Mombasa-Nairobi Standard Gauge Railway (SGR) had not achieved financial parity since its establishment in June 2017. He asserted that the SGR, which currently reaches Naivasha, was funded in part by more than Kshs. 477 billion in taxpayer-funded loans from the Export and Import (Exim) Bank of China.
8. On the issue of failure to break even - the costs of running the SGR line far outweighed the revenues generated. For example, the cost of running the SGR was the highest in 2019, at Kshs.18 billion, compared to Kshs.13.5 billion in revenues generated that year. As a result, the project could not sustain itself without the government's support, as the revenues collected since its inception were insufficient to cover operational expenditures.
9. In 2017 and 2018, the cost of operating the SGR far outweighed the revenue collected for instance between June and December 2017, Kshs. 7.5 billion was incurred in operational costs against Kshs.1 billion collected as revenue. Additionally, in 2018, Kshs. 14 billion was incurred to run the project against Kshs. 5.5 billion that was generated as revenue.
10. the project's economic viability is questionable even though the cargo volumes had increased by 4,159 tonnes in 2019 which, according to him, was attributed to a joint directive by the Kenya Revenue Authority (KRA) and Kenya Ports Authority (KPA) requiring all imported cargo leaving the port of Mombasa to use the SGR and be cleared at the Inland Container Depot (ICD) in Nairobi.
11. Over the years, the project's financial position has deteriorated, resulting in an accumulation of pending bills that were frequently paid through midyear budget reviews, and the project's operating costs always outpaced its earnings. He cited that the Miscellaneous Fees and Levies Act, 2016 and Customs and Exercise (Railway Development Levy Fund) Regulations were amended in May, 2020 to permit the usage of funds in the Railway Development Fund to cater for the operational expenses of the SGR.

12. Petitioner prayed that the National Assembly through the Public Petitions Committee interrogates the Kenya Railways Corporation (KRC) and other relevant state departments on the general operations and the revenues collected by the Kenya Railways Corporation and makes appropriate recommendations.

### 3.2. Ministry of Roads and Transport and the Kenya Railways Corporation

Vide letters Ref: MOT&C/ADM/034/7/2 VOL.I(36) and Ref: KR/CS/MD/3/242 Vol.II dated 13<sup>th</sup> July, 2023 and 10<sup>th</sup> July, 2023 respectively, the then Cabinet Secretary for Roads and Transport, Hon. Kipchumba Murkomen, EGH and the Managing Director of the Kenya Railways Corporation, Mr. Joseph Mainga, EBS, forwarded written submissions and stated as follows -

13. The Mombasa-Nairobi Standard Gauge Railways (SGR) operations were commissioned on 31<sup>st</sup> May, 2017.
14. The number of containers hauled to Nairobi from the port of Mombasa daily using SGR services and the amount charged for each container hauled was an average of 800TEUs of containers from the port of Mombasa to Nairobi ICD as tabulated below -

Rail Route	Rate USD/Container			
	20FT		40FT	
	0-30 Tons	Above 30 Tons	0-30 Tons	Above 30 Tons
Kilindini - Nairobi	500	600	630	780

**Table 1: No. of containers hauled daily and their charges**

15. The number of empty containers that leave Nairobi to Mombasa daily using SGR services and the amount charged for every empty container hauled was an average of 455 TEUs. The transport charges are US\$ 50 for a 20-ft empty container and USD 75 for a 40-ft empty container between Nairobi and Mombasa Port.
16. The number of passenger trains that leave Nairobi to Mombasa and Mombasa to Nairobi daily by SGR was a total of six trips per day and the average number of people each train carries is one thousand two hundred (1,200) and the amount paid by each passenger Kshs.1,000 for Economy Class and Kshs.3,000 for First Class. The service has moved a total of 9,923 trains and 10,392,271 passengers as of 30th June, 2023.
17. The operations and maintenance services were contracted in the interim to the contractor, China Road and Bridge Corporation (CRBC) as the country built its capacity to operate and maintain the SGR. The term of the original operations and maintenance services contract between Kenya Railways and CRBC was for 10 years effective 31st May, 2017.
18. The Nairobi-Naivasha SGR transit service was inaugurated on 16th October, 2019 and the original Operations and Maintenance Services were varied to include this service.



19. Through a Novation Agreement dated 31st December, 2019, the rights, obligations and liabilities of the Operator towards KR were assumed by Africa Star Railway Operating Company (Afristar).
20. To achieve the financial sustainability of the Mombasa-Nairobi-Naivasha SGR operations, KR/GOK concluded renegotiations of the terms of the SGR O&M contract in June 2020 which culminated in the execution of the Amended and Restated Operation and Maintenance Services Agreement between KR and Afristar for 23 months effective 1st July, 2020.
21. In 2020, the Agreement was amended to allow phased takeover/hand back of SGR functions. Parties then signed an O&M Technical Services Support Agreement with Afristar for the functions where KR required technical support.
22. Effective 1<sup>st</sup> June, 2022, KR Management took over forty out of the fifty-two SGR Operation and Maintenance functions in the broad areas of transport locomotive and rolling stock, track and Signalling, Communication, Electricity and Information (SCIEI).
23. Currently, most SGR services and functions are managed by KR only a few functions which KR or local market/entity lack equipment, professional personnel or enough know-how need to be sub-contracted to foreign companies e.g. track large machinery tamping service is subcontracted from Chinese Company named Ruver as no such equipment can be found in Kenyan markets.
24. There are fifty-two (52) SGR and O&M functions in total, forty-six (46) of the total area under KR now and only six functions are under Africa Star Railway Operation Company (Afristar) and one of the functions (Railway Signal System O&M) will be taken over by 31st December, 2024 and the other five (Passenger Train Operation, Freight Train Operation, Dispatch Centre Service, Train Marshalling and Organization Service in Nairobi Terminus and Port Reitz Station) will be taken over by the end of 2025 as the Localization is going on.
25. But within the 46, there are still a few functions which need to be maintained by the Original Equipment Manufacturer (OEM) i.e. locomotive and rolling stock maintenance and information and communication systems maintenance and are outsourced through Afristar. These can be taken over any time when more Kenyan engineers are fully trained to manage such functions.
26. A total amount of USD 5,320,646 monthly and USD 63,847,752 annually is owing to Afristar. This amount will be reduced considerably when KR takes over the remaining functions.
27. Currently, Mr. Li Qiang and Mr. Li Jiuping are the Managers and all are Chinese nationals.



28. Direct procurement of Afristar Company was done in accordance with the Public Procurement and Asset Disposal Act, 2015, sections 103 clauses 1 and 2 (b) and (d) provide that direct procurement may apply in the following instances -

*“A procuring entity may use direct procurement as allowed under subsection (2) as long as the purpose is not to avoid competition” and ...a procuring entity may use direct procurement if any of the following are satisfied;*

*103(2)(b) ...there is an urgent need for the goods, works or services and engaging in tendering proceedings or any other method of procurement would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part” or*

*103(2)(d)....the procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies shall be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question.*

29. Based on the above requirements, KR engaged the Operator due to the following reasons -

- (i) The operator, Afristar, has been operating and maintaining the SGR since its inception in May, 2017 to ensure safe and seamless continuity of operations and completion of the skills transfer in the safety-critical areas for the identified functions in SGR;
- (ii) The localization program for the SGR was heavily affected by the Covid pandemic and the operator was unable to carry out skills transfer and localization for 2 years as per the plan given the specific nature of the technical skills required in the safety-critical functions of the SGR and the required duration for the skills transfer beyond a period of 5 years as per the standard operating procedures and the expected date of termination of the contract being 31<sup>st</sup> August, 2022, there was an urgent need for the engagement of the operator to continue with the localization program and provide services even as they completed the pending renewal works and engaging in other procurement methods would be impractical; and
- (iii) The circumstances giving rise to the urgency for the engagement were neither foreseeable by KR nor the result of dilatory conduct on KR's part.
- (iv) KR has continued to build capacity to operate and maintain the SGR since 2017 through training and skills transfer. Almost all other services are procured



locally such as cleaning services, fuel, ballast, elevator maintenance, AC maintenance, grass control fire extinguisher and FAS System maintenance among others. KR has tried its best to take care of the local entities and the interests of Kenya.

30. SGR passenger fares have never been reviewed since operations commenced in 2017, this is despite having positioned them as introductory rates upon the launch of the services. However, changes in fuel prices and other factors that led to significant increases in the cost of running the service, the Corporation has proposed a review of passenger fares to reflect the change in a business environment. The proposal was to increase the economy ticket to Kshs.1,500 and the First-Class ticket to Kshs.3,500. The proposal was still waiting for approval. KR was also working on a proposal to review the haulage charges upwards to cover the increased cost of operations.

### Revenue and Costs Analysis for the period 2017 to 2023

FY	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Revenue	X					
Passenger	1,332,458,057	1,758,129,324	1,245,524,892	1,369,714,150	2,613,005,754	2,779,808,415
Freight	1,581,019,730	8,379,601,042	11,984,160,318	13,070,810,592	13,366,692,938	13,155,796,420
Rental Income	136,000	17,879,958	55,577,426	32,943,548	33,434,197	44,160,809
Parking	12,453,800	58,881,550	39,334,345	34,357,553	57,194,574	55,633,796
others	-	-	100,000	-	640,357	422,797
<b>Total Revenue</b>	<b>2,926,067,587</b>	<b>10,214,491,874</b>	<b>13,324,696,981</b>	<b>14,507,825,953</b>	<b>16,071,017,819</b>	<b>16,035,842,238</b>
<b>Cost</b>						
Operations & Maintenance	13,264,813,579	16,727,513,783	18,137,599,080	14,219,326,564	13,466,308,201	9,906,153,008
Security	-	157,642,035	271,932,023	284,284,207	255,178,984	290,783,903
Advertising & Promotions	157,279,882	39,185,095	10,938,126	7,427,666	7,887,399	10,567,920
Office & Admin. Expenses	847,399	1,488,202	2,001,349	7,748,107	9,915,349	12,091,837
Insurance Expense	-	482,875,835	(1,768,316)	224,840,609	186,641,938	298,580,563
Channel Occupancy	-	9,692,170	28,373,560	12,339,700	12,362,557	12,362,557
Fuel Cost	-	-	-	2,822,915,663	3,978,230,389	4,974,313,978
SGR Electricity	-	-	-	-	23,103,955	371,130,095
<b>Total Cost</b>	<b>13,422,940,861</b>	<b>17,418,397,120</b>	<b>18,449,075,822</b>	<b>17,578,882,516</b>	<b>17,939,628,774</b>	<b>15,875,983,860</b>

Table 3: SGR Revenue and Costs Analysis from 2017-2023

### Performance of SGR in terms of volumes since inception in 2018

FINANCIAL YEARS	CONTAINER TEUS	CONTAINER TONNAGES	CONVENTIONAL CARGO TONNAGES	EXPORT TONNAGES	TOTAL CARGO TONNAGES
Jan 18-June, 2018	73,318	950,396	-	121,582	950,396
<b>TOTAL 18 - 2019</b>	<b>376,830</b>	<b>3,954,832</b>	<b>54,871</b>	<b>441,911</b>	<b>4,009,703</b>
<b>TOTAL 19 - 2020</b>	<b>409,932</b>	<b>3,970,434</b>	<b>152,424</b>	<b>523,689</b>	<b>4,122,858</b>
<b>TOTAL 20 - 2021</b>	<b>451,512</b>	<b>3,988,304</b>	<b>1,157,373</b>	<b>639,503</b>	<b>5,145,677</b>

<b>TOTAL 21 - 2022</b>	438,598	4,097,370	1,569,005	659,362	5,666,375
<b>TOTAL 22 - 2023</b>	412,732	3,942,974	2,352,280	685,548	6,295,254
<b>TOTAL TONNES</b>	<b>2,165,922</b>	<b>20,904,310</b>	<b>5,285,953</b>	<b>3,071,595</b>	<b>26,190,263</b>

**Table 2: Performance of SGR in terms of volumes**



## PART FOUR

### 4. COMMITTEE OBSERVATIONS

31. Upon hearing from the Petitioner, KRC and the Ministry of Roads and Transports, the Committee observed that—
- (i) The SGR project was conceptualized by the Governments of Kenya, Uganda, Rwanda and Southern Sudan through the ratification of a protocol in 2014 to construct a Standard Gauge Railway (SGR) that connected the Port of Mombasa to Kampala, Kigali and Juba. Therefore, each country was to develop a railway within its borders to ensure seamless operation across the borders of the four countries and reduce transportation and production costs.
32. The Kenyan section was to be implemented in phases, namely Phase 1 covering the Mombasa-Nairobi stretches which was completed and commissioned in May, 2017 both for Passenger and freight services and Phase 2, which was divided into 3 sub-phases as follows:
- **Phase 2A** - Nairobi-Naivasha;
  - **Phase 2B** - Naivasha-Kisumu including the development of a new high-capacity port at Kisumu; and
  - **Phase 2C** - Kisumu-Malaba.
33. The Mombasa - Nairobi SGR (Phase 1) covering 472 Km was completed and commissioned on 31<sup>st</sup> May 2017. The Contract value of the project amounted to USD 3,804 million of which 10% was financed by the Government of Kenya and 90% by the Exim Bank of China.
34. Phase 2A (Naivasha–Nairobi), covering 120 Kilometres, had a contract value of USD 1,482 million, of which 15% was to be financed by the Government of Kenya and 85%, amounting to USD 1,260 million, was to be financed through the China Exim bank. In addition, an insurance cost of USD 137 million was added to this loan, bringing the total loan SGR phase 2A to USD 1,397 million.
35. The number of containers hauled to Nairobi ICD from the Port of Mombasa daily using SGR services was 800 TEUs of containers and the transport charges were USD 550 for 20FT containers and USD 705 for 40FT containers.
36. The number of empty containers that leave Nairobi to Mombasa daily using SGR services was 455 TEUs and the transport charge for every empty container was USD 50 for 20 FT and USD 75 for 40 FT.
37. The number of passenger trains that leave Nairobi to Mombasa and Mombasa to Nairobi daily by SGR was a total of six trips per day, with the average number of people carried by each train being one thousand two hundred (1,200), and the amount paid by each passenger was Kshs.1,000 for Economy Class and Kshs.3,000 for First Class, resulting in a total of 9,923 trains and a total of 10,392,271 passengers as of 20<sup>th</sup> June, 2023.

38. Over time, the project's financial position deteriorated, resulting in an accumulation of pending bills that were frequently paid through midyear budget reviews, and the project's operating costs always outpaced its revenues. For instance, currently, the total amount owed to Afristar, is USD 63,847,752 annually, USD 5,320,646 monthly and the same could go higher if the total handover of the company's functions to KRC is not completed by 31<sup>st</sup> December in 2025 as contained in their Agreement.
39. Regarding the project's feasibility and viability based on its performance since commencement, the operating deficit has steadily reduced from **Kshs. 10.496 billion** in FY2017/18 to **Kshs.1.869 billion** in FY2021/2022 before making a surplus of **Kshs.159 million** in FY2022/2023. This indicates an increase in revenue collection, which could be linked to the revision of passenger tariffs and the increase in container hauling. Therefore, the surplus is an indication of a positive trend and improvement as shown in the table below—

**Analysis of Revenues and Expenditures in Kenya Shillings**

Head	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Total Revenue	2,926,067,587	10,214,491,874	13,324,696,981	14,507,825,953	16,071,017,820	16,035,842,237
Total Cost	13,422,940,860	17,418,397,120	18,449,075,822	17,578,882,516	17,939,628,772	15,875,983,861
Surplus/Deficit	(10,496,873,273)	(7,203,905,246)	(5,124,378,841)	(3,071,056,563)	(1,868,610,952)	159,858,376

Source: KRC

40. The petitioner's claim that the project failed to break even at the time of filing the petition is true. The total revenues generated from FY2017/2018 to FY2022/2023 were **Kshs.73,079,942,452**, with total operational expenses of **Kshs.100,684,908,951**. The operational costs from FY2017/18 to FY2022/23 surpassed the revenues collected by **Kshs.27,604,966,499**.
41. In a bid to reduce the Operation and Maintenance functions cost, effective 1<sup>st</sup> June, 2022, KRC Management took over forty (40) out of the fifty-two (52) SGR functions. KRC also sub-contracted the remaining twelve services to foreign companies because it lacks equipment and professional personnel.
42. Operations and Maintenance (O&M) Services were temporarily contracted to China Road and Bridge Corporation (CRBC) for ten (10) years beginning May 31, 2017, as the KRC continued to improve its capacity to run and maintain the SGR. KRC is in the process of training engineers to take over locomotive and rolling stock maintenance and information and communication systems maintenance, which are currently outsourced through Afristar.




PART FIVE

5.0 COMMITTEE RECOMMENDATIONS

43. Pursuant to the provisions of Standing Order 227 and in response to the prayer that the Committee interrogates the Kenya Railways Corporation (KRC) and other relevant state departments on the general operations and the revenues collected by the Kenya Railways Corporation, the Committee recommends that the Kenya Railways Corporation—

- (i) Puts appropriate measures in place to ensure it takes over the remaining functions of operations and maintenance of the SGR by December 2025 to reduce operational costs.
- (ii) Invests in the development of professional capacity of the technical employees to ensure that the subsequent phases of the project are finalized in line with the Medium-Term Plan IV of Vision 2030.
- (iii) Publishes the quarterly financial reports of the Standard Gauge Railway (SGR) on its official website detailing a breakdown of revenue collections operational costs and sources and the amount of any financial support, to enhance transparency and accountability; and
- (iv) Diversifies its services by offering loyalty programmes and special packages for various groups such as students, senior citizens, and frequent travellers.

 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b>			
<b>DATE: 27 NOV 2024</b>			
<table border="1"><tr><td style="text-align: center;">DAY.</td></tr><tr><td style="text-align: center;">Wednesday</td></tr></table>		DAY.	Wednesday
DAY.			
Wednesday			
<b>TABLED BY:</b>	Hon. Nimrod Mbai (Chairperson)		
<b>CLERK-AT THE TABLE:</b>	Lornale		

Signed:  Date: 26/11/2024

**THE HON. NIMROD MITHUKA MBAI, M.P.**  
**CHAIRPERSON, PUBLIC PETITIONS COMMITTEE**

## ANNEXURES

- Annex 1: The Adoption List
- Annex 2: Public Petition No. 03 of 2023 regarding Management of SGR Services.
- Annex 3: Minutes of the 48<sup>th</sup> Sitting held on Thursday, 10<sup>th</sup> August, 2023
- Annex 4: Letter Ref: KR/CS/MD/3/242 Vol. II dated 10<sup>th</sup> July, 2023 by the Kenya Railways Corporation
- Annex 5: Letter Ref: MOT&1/C/ADM/034/7/2 VOL.1 (36) dated 13<sup>th</sup> July, 2023 by the Ministry of Roads and Transport
- Annex 6: Minutes of the 59<sup>th</sup> Sitting held on Friday, 8<sup>th</sup> November, 2024



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024  
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE  
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 03 OF 2023  
REGARDING THE MANAGEMENT OF STANDARD GAUGE RAILWAYS SERVICES

DATE.....8<sup>TH</sup> NOVEMBER 2024

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of **Public Petition No. 03 of 2023 Regarding the Management of Standard Gauge Railways Services** to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	





**REPUBLIC OF KENYA**

**THE NATIONAL ASSEMBLY (SECOND SESSION)**

**CONVEYANCE OF PUBLIC PETITION**

*(No. 3 of 2023)*

**REGARDING THE MANAGEMENT OF THE SGR SERVICES**

1. **Honourable Members**, Article 119 of the Constitution gives right to any person to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition, other than those presented by a member.
2. In that regard, **Honourable Members**, I wish to report to the House that my office has received a petition from one *Mr. Amos Nyasani* regarding the matter of the management of the Standard Gauge Railway (SGR) services.
3. The Petitioner states that in 2019, the Kenya Revenue Authority (KRA) and the Kenya Ports Authority (KPA) jointly issued a directive for clearance of transit cargo from the Port of Mombasa to Naivasha Inland Container Depot (NICD). However, later in 2022 a new directive was issued to revert the services back to the Port of Mombasa Mombasa.
4. **Honourable Members**, the Petitioner is concerned about the lack of transparency particularly pertaining to the revenues collected by the Kenya Railways Corporation (KRC) for both passenger and freight services since its inception.
5. The Petitioner states that efforts to get answers on the matter through the **Ministry** of National Treasury and Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the Kenya Railways Corporation have not been forthcoming.



6. **Honourable Members**, the Petitioner therefore prays that the National Assembly interrogates the Kenya Railways Corporation (KRC) and other relevant state departments on the general operations and the revenues collected by the Kenya Railways Corporation (KRC).
7. **Honourable Members**, having established that the matter raised in the Petition is well within the authority of this House; and further, that the matters raised in this Petition are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.
8. The Committee is required to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

**I thank you.**



**THE RT. HON. MOSES WETANG'ULA, EGH, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

**Date.....** 21. 02. 2023 .....



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 48<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, AUGUST 10, 2023, IN COMMITTEE ROOM 12, MAIN PARLIAMENT BUILDINGS AT 12.00 NOON**

**PRESENT**

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. John Bwire Okano, M.P.
4. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
5. Hon. Peter Mbogho Shake, M.P.
6. Hon. Suzanne Ndunge Kiamba, M.P.

**APOLOGIES**

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. Edith Vethi Nyenze, M.P.
5. Hon. John Walter Owino, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Maisori Marwa Kitayama, M.P.
8. Hon. Bidu Mohamed Tubi, M.P.
9. Hon. Sloya Clement Logova, M.P.

**IN ATTENDANCE**

1. Ms. Esther Koimett - Former Principal Secretary, State Department of Broadcasting and Telecommunication
2. Mr. Amos Nyasani - Petitioner on the Standard Gauge Railway

**SECRETARIAT**

1. Mr. Samuel Kalama - Principal Clerk Assistant
2. Ms. Anne Shibuko - Clerk Assistant I
3. Ms. Miriam Modo - Clerk Assistant I
4. Mr. Shadrack Omondi - Legal Counsel II
5. Ms. Patricia Gichane - Legal Counsel II
6. Mr. Martin Sigei - Research Officer III
7. Ms. Lilian Mburugu - Media Relations Officer III
8. Ms. Joyce Kakya - Hansard Reporter III
9. Mr. Nirvana Kimutai - Audio Officer

**MIN./PPETC/2023/308: PRELIMINARIES**

The Chairperson called the meeting to order at 10.15 a.m. and Hon. Peter Mbogho Shake, M.P. the prayers.



**MIN./PPETC/2023/309: ADOPTION OF AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Consideration of Public Petition No. 4 of 2022 regarding Funds Spent by National Government Contrary to Provisions of Article 223 of the Constitution**  
*-Meeting with the former Principal Secretary, State Department of Broadcasting and Telecommunication*
6. **Consideration of Public Petition No. 3 of 2023 regarding Management of SGR Services**  
*-Meeting with the Petitioner*
7. Any other Business
8. Adjournment & Date of Next Meeting

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Suzanne Kiamba, M.P. and seconded by Hon. Peter Mbogho Shake, M.P.

**MIN./PPETC/2023/310: CONFIRMATION OF MINUTES OF PREVIOUS SITTING**

The Agenda was deferred.

**MIN./PPETC/2023/311: MATTERS ARISING**

There were no matters arising.

**MIN./PPETC/2023/312: CONSIDERATION OF PUBLIC PETITION NO. 4 OF 2022 REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION**

Ms. Esther Koimett, the immediate former Principal Secretary, State Department of Broadcasting and Telecommunications in the Ministry of ICT, Innovation and Youth Affairs appeared before the Committee and submitted as follows: -

- i. Under the Executive Order on the Organisation of Government in operation at the time of the transaction, Telkom Kenya Ltd. (TKL) was placed under the State Department for Broadcasting and Telecommunication as the State Department in charge of telecommunications policy under the Ministry of ICT.
- ii. She did not deal with the transaction which is the subject of the inquiry and was not aware of it until it came to the public domain through media reports.
- iii. To the best of her knowledge, the State Department was not involved in the transaction related to the purchase of shares of a co-investor in TKL. This was a shareholder matter that fell under the purview of the National Treasury as the Ministry with the legal powers for such a transaction, under the Cabinet Secretary to the National Treasury Incorporation Act (Cap 101) of the Laws of Kenya.

**Committee concerns**

*a) Ministry in charge of the transaction*

The Committee inquired as to why she did not have information on the matter yet the subject matter fell under her docket.



The former Principal Secretary responded that the Government holds 40 percent shareholding in Telkom. The transaction was a shareholder transaction, meaning that the funds for transaction of this nature are provided directly by the National Treasury.

The Committee further inquired on who was the right person to provide the relevant information; she explained that the then Principal Secretary, National Treasury would be the right person to provide information on the matter.

*b) Investment decisions of Telkom*

The Committee inquired which Ministry would be responsible for a decision in which Telkom Kenya was to float shares. Ms. Koimett responded that the exercise would be managed by the National Treasury as the Ministry with the legal powers to deal with shareholder matters. This procedure is provided for under the Cabinet Secretary to the Treasury Incorporation Act. In addition, the provisions of the Company Law would apply. However, the National Treasury may request for professional opinion from the Ministry in handling the matter as and when necessary.

*c) Legality of the transaction*

The Committee was concerned whether it was proper for a transaction of such magnitude to take place without her as the accounting officer not being involved. The former PS stated that if it was a policy matter, the responsible Ministry would be involved but since the matter relates to ownership, acquisition and sale, it was in order for the National Treasury to carry out the transaction without involving the line Ministry.

*d) Categorization of Telkom*

The Committee inquired whether Telkom is a state corporation. Ms. Koimett explained that an entity is considered to be a State Corporation where Government shareholding was 50 plus 1 percent. In the case of Telkom, Government shareholding was 40 percent so it cannot be considered as a State Corporation as per the provisions of the State Corporations Act. Telkom is categorized as a private company and considered as a government linked corporation by the Public Finance Management Act.

*e) Expenditure of Kshs 6 Billion*

The Committee asked Ms. Koimett if she was able to account for the Kshs. 6 Billion that was incurred on the transaction. Ms. Koimett explained that she was an accounting officer for money allocated to the vote of the State Department by Parliament. In this case, the Kshs. 6 Billion was not part of the money that was allocated to her state Department, but to the National Treasury. Therefore, the then PS for National Treasury would be able to account for expenditure of the funds as the transaction related to the purchase of shares of a co-investor in TKL.

*f) Whether the privatization process was a policy decision*

The Committee sought clarification on whether the privatization of Telkom that took place in 2007 was a policy decision.

Ms. Koimett explained that the privatization programme goes back to a policy paper of 1992 which proposed privatization of state enterprises. Out of the proposed 240 enterprises, 33 of them were considered strategic corporations hence not privatized and 207 were privatized.

In the year 1998 reforms, the then Kenya Posts and Telecommunications was split into Telkom and Postal Corporation. The regulatory function was thereby removed from the State Corporations and Communications Authority formed at the time.



The National Treasury was in charge of the privatization process but the line Ministry was in the taskforce from policy perspective, not shareholder perspective.

*g) Shareholder representing the Government at the time*

The Committee inquired on who was the shareholder representing the Government in the transaction.

The former PS explained that, it was the Cabinet Secretary, National Treasury under the provisions of Cap 101 Laws of Kenya, Cabinet Secretary to the Treasury (Incorporation) Act.

*h) Handover process to the Ministry*

The Committee asked whether there was a handover of Telkom to the Ministry.

Ms. Koimett explained that there was none because the company continues to exist as before, except for the change in shareholding which changes government's role to approval of budgets and borrowing and other provisions under the State Corporations Act

### **Committee Recommendations**

The Committee resolved to: -

- i. Invite Telkom Kenya to make its submissions on the matter before the Committee and provide copies of share transfers, sale agreements, financial and the legal opinion; and
- ii. Invite the National Treasury to make its oral submissions on the matter, despite having presented written submissions to the Committee.

### **MIN./PPETC/2023/313:      CONSIDERATION OF PUBLIC PETITION NO. 3 OF 2023 REGARDING MANAGEMENT OF SGR SERVICES**

The Petitioner, Mr. Amos Nyasani appeared before the Committee and submitted as follows: -

- i. The Mombasa-Nairobi Standard Gauge Railway (SGR) has failed to break even since its inception in June 2017 despite the government projecting 2019 as the breakeven year. Over KShs. 477 billion in loans from the Export and Import (Exim) Bank of China to be paid by the taxpayer, has since been spent on the SGR that now extends to Naivasha.
- ii. The Parliamentary Budget Office (PBO) in a report on the budget options for Financial Year 2021/2022 indicated that for the fourth year running, SGR operational costs remained high amid dwindling revenue streams raising questions over the feasibility of the project that cost the taxpayers billions of shillings. The Office notes that rail transport remains the best alternative for cargo haulage and long-distance passenger travel.
- iii. Failure to break even is an indication that the cost of running the SGR line far outweighs the revenues generated. This is despite the PBO report indicating that SGR contributed greatly by hauling cargo and passengers between Mombasa and Nairobi. This means that the project cannot sustain itself without the government chipping in, as the revenues generated since inception cannot meet the operational costs.

- iv. The Parliamentary Budget Office (PBO) document indicates that between January and May 2022, the cost of operating the SGR was Kshs. 7.5 billion compared to the Kshs. 5 billion that was realized in revenue.
- v. The cost of running the SGR was the highest in 2019, hitting Kshs. 18 billion against the Kshs. 13.5 billion in revenues generated for the year.
- vi. In 2017 and 2018, the cost of operating the SGR far outweighed the revenue streams. In 2018, Kshs. 14 billion was the amount incurred to run the project against the KSh5.5 billion that was generated. Between June and December 2017, Kshs. 7.5 billion was incurred in operational costs against Kshs. 1 billion in revenue.
- vii. The emergence of the PBO data raises questions on whether the project is economically viable for the country or whether it was a bad investment. This is notwithstanding that in 2019 there was an increase in cargo volumes- ferrying 4,159 tonnes in 2019.
- viii. The increase in cargo volumes was precipitated by the Kenya Revenue Authority (KRA) and Kenya Ports Authority (KPA) joint controversial directive that all imported cargo leaving the port of Mombasa to use the SGR and be cleared at the Inland Container Depot (ICD) in Nairobi.
- ix. His intention is to try and find out what is really preventing SGR from breaking even.

#### **Committee Concerns**

##### *a) Statistics used to support his petition*

The Committee inquired on any additional data that the petitioner had used to argue his case.

The Petitioner responded that he had relied on the report generated by the Parliamentary Budget Office that shows that the costs of running the SGR outweigh the income generated.

##### *b) Aspects of management that he is concerned about*

The Committee asked the petitioner to summarise three key aspects of the petition.

The Petitioner stated that the feasibility study showed SGR was to make profits but it was inaccurate. In addition, the manner of procurement of the company managing the Standard Gauge Railway was not competitively done.

The Petitioner was of the opinion that incompetence of management was a major factor in management of the revenue generated. Further, there was no public record of the performance of the SGR in terms of passengers and cargo and the maintenance costs incurred in running the railway.

##### *c) Possible action to be taken by the Committee*

The Committee asked the petitioner what his expectation after the Committee considers the petition. The petitioner responded that the Committee would make the determination based on its findings.

#### **Committee Recommendations**

The Committee should seek to interrogate -



(a) the Ministry of Transport and Kenya Railways Corporation to provide information in terms of the prayers seeking specific information on -

- i.) the number of containers hauled to Nairobi from Mombasa on a daily basis using the SGR services and amount charged for each contained hauled.
- ii.) the number of empty containers that leave Nairobi for Mombasa on a daily basis using SGR and the amount charged for every empty container hauled.
- iii.) the number of passenger trains that leave Nairobi to Mombasa on a daily basis, the average number of passengers each train carries and the amount each passenger pays in terms of the cost of tickets.
- iv.) what they know about the opinion of the Solicitor-General on the management of the SGR services in the country, more so, the cost of the passenger tickets from Nairobi to Mombasa as well as the freight charges from Mombasa to Nairobi.
- v.) the implementation status of the Solicitor- General opinion on the SGR services, the challenges encountered along the way in implementing the opinion and the way forward.

(b) The National Treasury to explain to the Committee how much is paid to the company that manages the SGR services on a monthly basis, the name of the company and its directors, the duration of the contract, how it was procured and what motivated KRC to outsource a foreign company at the expense of the local entities.

**MIN./PPETC/2023/314:      ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the Chairperson adjourned the meeting at 02.00 p.m. The next meeting would be held on Thursday, 11<sup>th</sup> August 2023 at 03.00 pm.

Sign: .....

(CHAIRPERSON)

Date..... 07/11/2023 .....



*D P/LRP*  
*Please deal*  
*How*  
*13/7/23*

*@ Head PBI*  
*Ngũgĩ*  
*13/7/23*

Ref: KR/CS/MD/3/242 Vol.II

Date: 10<sup>th</sup> July, 2023

**The Clerk of the National Assembly**  
 The National Assembly  
 Office of the Clerk  
 Main Parliament Building  
**NAIROBI**

NATIONAL ASSEMBLY  
 RECEIVED  
 13 JUL 2023  
 CLERK'S OFFICE  
 P. O. Box 41842, NAIROBI

Dear *SI* ✓

**RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE REGARDING MANAGEMENT OF STANDARD GAUGE RAILWAY SERVICES**

We refer to your letter Ref: KNA/DLPS/PPETC/CORR/2023/130 dated 26<sup>th</sup> June 2023, requesting for information on the management of the Standard Gauge Railway Services:

Mr. Chairman, we wish to respond as follows;

1. Introduction

Mr. Chairman, the Mombasa- Nairobi Standard Gauge Railway (SGR) operations were commissioned on 31<sup>st</sup> May, 2017.

The revenue collected since inception of the service to end of June, 2023 is Kshs. 73,079,942,452.00 as highlighted in **Annexure 1**.

2. Number of containers hauled to Nairobi from the Port of Mombasa on a daily basis using the SGR services and the amount charged for each container hauled.

Mr. Chairman, below is the performance of SGR in terms of volumes since inception in 2018

FINANCIAL YEARS	CONTAINER TEUS	CONTAINER TONNAGES	CONVENTIONAL CARGO TONNAGES	EXPORT TONNAGES	TOTAL CARGO TONNAGES
Jan 18_ June 2018	76,318	950,396	-	121,582	950,396
TOTAL 18_ 2019	376,830	3,954,832	54,871	441,911	4,009,703
TOTAL 19_ 2020	409,932	3,970,434	152,424	523,689	4,122,858
TOTAL 20_ 2021	451,512	3,988,304	1,157,373	639,503	5,145,677
TOTAL 21_ 2022	438,598	4,097,370	1,569,005	659,362	5,666,375
TOTAL 22_ 2023	412,732	3,942,974	2,352,280	685,548	6,295,254
TOTAL (TONS)	2,165,922	20,904,310	5,285,953	3,071,595	26,190,263

SGR hauls an average of 800 TEUs of containers daily from the Port of Mombasa to Nairobi ICD. The transport charges is as per below tariff.

Rail Route	Rate US\$/ container			
	20 FT		40 FT	
	0-30 TONS	ABOVE 30 TONS	0-30 TONS	ABOVE 30 TONS
Kilindini - Nairobi	500	600	630	780

3. Number of empty containers that leave Nairobi to Mombasa on a daily basis using SGR and the amount charged for every empty container hauled

The number of Empty containers moved from Nairobi to Mombasa on a daily basis by SGR service is an average of 455 TEUs. The transport charges is Usd50 for 20FT empty container and Usd 75 for 40FT empty container between Nairobi and Mombasa Port.

4. Number of passenger trains that leave Nairobi to Mombasa (and Mombasa to Nairobi) on a daily basis, the average number of passengers each train carries and the amount each passenger pays in terms of the cost of tickets

Mr. Chairman, the Madaraka Express Passenger Service commenced in 2018 with the initial four (4) trips operated between Mombasa and Nairobi. An additional night trip was introduced in January 2021 bringing to a total of six (6) trips per day. The average number of passengers per trip is 1,200. The fares which have remained the same since 2018 are; Kshs. 1000 for economy class and Kshs. 3000 for the first class.

The service has since moved 9923 trains and 10,392,271 passengers as at 30<sup>th</sup> June, 2023.

The number of passengers moved is in the attached **Annexure 2**.

5. Number of passenger trains that leave Mombasa to Nairobi on a daily basis, the average number of passengers each train carries and the amount each passenger pays in terms of the cost of tickets

*Response same as in Q.4 above.*



6. How much is paid to the company that manages the SGR services on a monthly basis, the name of the company and its directors, the duration of the contract, how it was procured and what motivated KRC to outsource a foreign company at the expense of the local entities.

Mr. Chairman, the Operations & Maintenance services were contracted in the interim to the contractor, China Road & Bridge Corporation (CRBC) as the country built its capacity to operate and maintain the SGR. The term of the original operations & maintenance services contract between Kenya Railways and CRBC was for a period of 10 years effective 31<sup>st</sup> May, 2017.

The Nairobi-Naivasha SGR transit service was inaugurated on October 16, 2019, and the original O&M service was varied to include this service.

Through a Novation Agreement dated December 31, 2019, the rights, obligations and liabilities of the Operator towards KR were assumed by Africa Star Railway Operating Company (Afristar).

To achieve the Financial Sustainability of the Mombasa-Nairobi-Naivasha SGR operations, KR/GOK concluded renegotiation of the terms of the SGR O & M contract in June 2020. The renegotiation culminated in the execution of the Amended and Restated Operation and Maintenance Services Agreement between KR and Afristar for 23 months effective 1st July 2020.

In 2020, the Agreement was amended to allow phased takeover/handback of SGR functions. Parties then signed O&M Technical Services Support Agreement with Afristar for the functions where KR required technical support.

Effective June 1, 2022, KR Management took over forty (40) out of the fifty-two (52) SGR Operation and Maintenance functions in the broad areas of transport, locomotive and rolling stock, track, and signalling, communication, Electricity, and Information (SCEI).

Currently, the most SGR Services and functions are managed by KR, only few functions which KR or local market/entity lack of equipment, professional personnel or enough know-how need to be subcontracted to foreign companies. E.g. Track Large Machinery Tamping Service is subcontracted from a Chinese Company Named Ruver as no such equipment can be found in Kenyan market.



There are 52 SGR O&M functions in total, 46 of the total are under KR now, only 6 functions are under Africa Star Railway Operation Company (Afristar), and 1 of the function (railway signal system O&M) will be taken over by 31st December 2024 and other 5 (Passenger Train Operation, Freight Train Operation, Dispatch Center Service, Train marshalling & organization Service in Nairobi Terminus and Port Reitz station) will be taken over by the end of 2025 as the Localization is going on.

But within the 46, there are still few functions which need to be maintained by the OEM (Original Equipment Manufacturer), i.e. Locomotive & Rolling Stock maintenance and Information & Communication systems maintenance, and are outsourced through Afristar. These can be taken over any time when more Kenyan engineers are fully trained to manage such functions.

### **Amount owing to Afristar**

Currently, total amount owing to Afristar is USD 63,847,752 annually, USD 5,320,646 monthly, and the amount will be reduced as KR takes over the remaining functions.

### **Directors of Afristar**

The directors of Afristar are Mr. Li Gang, Mr. Li Qiang and Mr. Li Jiuping, all are Chinese from CRBC.

### **Justification of Direct Procurement of Afristar**

In accordance with the Public Procurement and Asset Disposal (PPAD) Act, 2015 Section 103 Clause 1 and 2: (b) and (d) provides for when Direct Procurement may be used as follows.

Clause 103. (1) *"A procuring entity may use direct procurement as allowed under sub-section (2) as long as the purpose is not to avoid competition."*

Clause 103 (2) *"A procuring entity may use direct procurement if any of the following are satisfied;*

(b) .... *"there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part."*

(d) *"the procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies*

*shall be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question."*

Based on the above requirements, KR engaged the Operator, due to the following reasons:

- a) The Operator, Afristar has been operating and maintaining the SGR since its inception in May 2017. To ensure safe and seamless continuity of operations and completion of the skills transfer in the safety critical areas, it was therefore preferred to have Afristar as the Railway Operator for the identified functions in SGR;
- b) The localization program for the SGR was heavily affected by the Covid 19 pandemic where the operator was unable to carry out skills transfer and localization for 2 years as per the plan. In view of the specific nature of the technical skills required in the safety critical functions of the SGR and the required duration for skills transfer beyond a period of 5 years as per the standard operating procedures, and the expected date of termination of the contract being 31<sup>st</sup> May 2022, there was urgent need for the engagement of the operator to continue with the localization program and provide services even as they completed the pending renewal works, and engaging in other procurement methods would be impractical; and
- c) The circumstances giving rise to the urgency for the engagement were neither foreseeable by KR nor the result of dilatory conduct on KR's part.

Mr. Chairman, KR has continued to build its capacity to operate and maintain the SGR since 2017 through training and skills transfer. Almost all other services are procured locally such as the Cleaning Services, Fuel, Ballast, Elevator Maintenance, AC Maintenance, Grass Control and Fire Extinguisher and FAS System maintenance. KR has tried its best to take care of the local entities and the interest of Kenya.



7. Whether KR plans to reduce or increase the cost of passenger tickets and haulage charges per container in the coming days

The passenger fares on SGR have not been reviewed since operations commenced in 2017, this is despite having positioned them as introductory rates upon the launch of the services.

Owing to changes of fuel prices and other factors that have led into significant increase in the cost of running the services, the Corporation has proposed a review of passenger fares to reflect the changes in the business environment. The proposal is to increase the economy ticket to Kshs. 1,500 and Kshs. 3,500 for the first class ticket. The proposal is awaiting approval.

KR is also working on a proposal to review the haulage charges upwards in order to cover increased cost of operations.

8. The opinion of Solicitor-General on the management of the SGR services in the country, more so, the cost of the passenger tickets from Nairobi to Mombasa as well as the freight charges from Mombasa to Nairobi

Mr. Chairman, we are not aware of an opinion by the Solicitor General on the cost of passenger tickets but we are willing to oblige to any advisory on the same.

Mr. Chairman, I submit

Yours *Sincerely*

Phillip J. Mainga, EBS  
**MANAGING DIRECTOR**

Encls.

Copy to: **Mr. Mohamed Daghar**  
Principal Secretary  
State Department of Transport  
Transcom House  
Ngong Road  
**NAIROBI**





REPUBLIC OF KENYA



**MINISTRY OF ROADS AND TRANSPORT**  
**STATE DEPARTMENT FOR TRANSPORT**  
*Office of the Principal Secretary*

Telegram: "TRANSCOMS". Nairobi  
Telephone: (020) 2729200  
Email: [ps@transport.go.ke](mailto:ps@transport.go.ke)  
Website: [www.transport.go.ke](http://www.transport.go.ke)  
When replying please quote

TRANSCOM BUILDING  
NGONG ROAD  
P.O. Box 52692 - 00100  
NAIROBI

**MOT&I/C/ADM/034/7/2 VOL.I (36)**

**13<sup>th</sup> July, 2023**

**Mr. Samuel Njoroge**  
The Clerk of the National Assembly  
Parliament Buildings  
**NAIROBI**

Dear *Sir*

**RESPONSE TO A STATEMENT REQUESTING FOR INFORMATION REGARDING  
PUBLIC PETITION ON MANAGEMENT OF STANDARD GAUGE RAILWAY SERVICES**

Reference is made to letter of *Ref. No: KNA/DLPS/PPETC/CORR/2023/129* dated 26<sup>th</sup> June 2023 on the above subject matter.

Enclosed herewith, please find signed response by the Cabinet Secretary, Ministry of Roads and Transport on the captured subject matter as requested by the Public Petitions Committee for the Petition's consideration.

Yours

*Sincerely*  
A handwritten signature in black ink, appearing to read 'Mohamed Daghar', written over a horizontal line.

Mohamed Daghar  
**PRINCIPAL SECRETARY**

Encls.



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 59<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON FRIDAY, NOVEMBER 08, 2024, IN MEDUSA 2 ROOM, ENGLISH POINT MARINA AT 02.00. P.M**

**PRESENT**

- |   |   |                  |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P.          | - | Chairperson      |
| 2. Hon. Janet Jepkemboi Sitienei, M.P.      | - | Vice Chairperson |
| 3. Hon. Maisori Marwa Kitayama, MP          |   |                  |
| 4. Hon. Edith Vethi Nyenze, M.P             |   |                  |
| 5. Hon. (Eng.) Bernard Muriuki Nebart, M.P. |   |                  |
| 6. Hon. Suzanne Ndunge Kiamba, M.P.         |   |                  |
| 7. Hon. Ernest Ogesi Kivai, M.P.            |   |                  |
| 8. Hon. Joshua Chepyegon Kandie, M.P        |   |                  |
| 9. Hon. Bidu Mohamed Tubi, M.P.             |   |                  |
| 10. Hon. Peter Mbogho Shake, M.P.           |   |                  |

**APOLOGIES**

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Caleb Mutiso Mule, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. John Bwire Okano, M.P.
5. Hon. Sloya Clement Logova, M.P.

**SECRETARIAT**

- |                         |                              |
|-------------------------|------------------------------|
| 1. Mr. Samuel Kalama    | Principal Clerk Assistant II |
| 2. Mr. Ahmad Kadhi      | Principal Clerk Assistant II |
| 3. Ms. Roselyn Njuki    | Senior Sergeant at Arms I    |
| 4. Ms. Anne Shibuko     | Clerk Assistant I            |
| 5. Ms. Patricia Gichane | Legal Counsel II             |
| 6. Mr. Issaac Nabiswa   | Legal Counsel II             |
| 7. Mr. Willis Obiero    | Clerk Assistant III          |
| 8. Ms. Nancy Akinyi     | Research Officer III         |
| 9. Mr. Benson Muchiri   | Audio Officer                |
| 10. Mr. Calvin Karungo  | Media Relations Officer III  |

**MIN./PPETC/2024/371: PRELIMINARIES**

The Chairperson called the meeting to order at 11:00 a.m. and proceedings began with prayers by Hon. Peter Shake, M.P.



MIN./PPETC/2024/372: ADOPTION OF AGENDA

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 11 of 2023 regarding Illegal Acquisition of Private Land by the Defunct Awendo Town Council
6. Consideration Of Public Petition No. 3 of 2023 regarding the management of Standard Gauge Railways (SGR) Services
7. Consideration of Public Petition No. 15 of 2023 regarding Declaration of Mukutani Forest as a Public Forest
8. Consideration of Public Petition No. 33 of 2023 regarding Compensation of persons affected by Mombasa-Mariakani Road Dualling Project
9. Any Other Business
10. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Joshua Kandie, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/373: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda was deferred.

MIN./PPETC/2024/374: CONSIDERATION OF PUBLIC PETITION NO. 11 OF 2023 REGARDING ILLEGAL ACQUISITION OF PRIVATE LAND BY THE DEFUNCT AWENDO TOWN COUNCIL

The Committee considered the draft Report and noted that vide a letter dated 15<sup>th</sup> February 2024, the Clerk of the National Assembly had written to the Principal Secretary, Ministry of Lands, Public Works, Housing, and Urban Development requesting for a list of the owners who were compensated after compulsory acquisition of the land in question. The Ministry of Lands, Public Works, Housing, and Urban Development has not provided the information.

Committee Decision

The Committee resolved that the secretariat would do a follow up letter with the Ministry of Lands on the list of persons that were compensated. This would form part of the findings before conclusion of the Petition.

MIN./PPETC/2024/375: CONSIDERATION OF PUBLIC PETITION NO. 3 OF 2023 REGARDING THE MANAGEMENT OF STANDARD GAUGE RAILWAYS (SGR) SERVICES



As per the instruction of the Committee, the Clerk of the National Assembly, vide a Letter Ref. No. KNA/DLPS/PPETC/CORR/2024/087 dated 29<sup>th</sup> May 2024, wrote to the Managing Director, Kenya Railways Corporation inviting him to a meeting scheduled for 5<sup>th</sup> June 2024, and requesting for the following information:

- a. Copies of the Contract agreement of the terms of engagement of Kenya Railways Corporation and Afristar Railway Company Limited
- b. A brief on the sustainability of the project
- c. Financial statements of the GoK and Exim Bank of China joint account
- d. Status of the uptake of the functions by Kenya Railways Corporation from Afristar
- e. Operational Costs and revenue projections for FY2023/24
- f. Monitoring and Evaluation Framework in place
- g. Challenges faced by Kenya Railways Corporation in the operations of SGR
- h. Amount of money paid to Afristar as management fees
- i. Compliance with occupational health and safety, green energy and environment

Vide a letter dated 9<sup>th</sup> September 2024 Ref. No. AFRISTAR/CL/068/2024, the General Manager, Afristar Railway Operation Company Limited, had written to the Clerk of the National Assembly. In his letter, he stated that the company had jointly with Kenya Railways, prepared the information required for the petition and was of the view that Kenya Railways should take the lead in the meeting as it was the responsible agency for the operation and Management of SGR.

**MIN./PPETC/2024/376: CONSIDERATION OF PUBLIC PETITION NO. 15 OF 2023 REGARDING DECLARATION OF MUKUTANI FOREST AS A PUBLIC FOREST**

The Committee considered the Report and observed that based on the submissions by the petitioners, there were two distinct groups i.e those who state proper public participation for gazettment of Mukutani Forest and those who claim that the public participation conducted was not sufficient.

**Committee Decision**

The Committee deliberated on the matter and resolved that in order to get further insights into the matter, there was need to—

- (i) invite elected Members of the National Assembly from Baringo County to appear before the Committee.
- (ii) conduct a site visit to engage stakeholders drawn from the different communities living around Mukutani Forest.

**MIN./PPETC/2024/377: CONSIDERATION OF PUBLIC PETITION NO. 33 OF 2023 REGARDING COMPENSATION OF PERSON AFFECTED BY MOMBASA-MARIAKANI ROAD DUALLING PROJECT**

**Observations**

The Committee considered the draft report and observed that:



- (i) Article 40(3) prohibits the State from depriving a person of property of any description unless the deprivation is for a public purpose or in the public interest and is carried out in accordance with the Constitution and the Land Act (Cap. 280) which allows prompt payment in full of just compensation and allows a person who has interest in that property access to a court of law. Based on these provisions of the Constitution and the Land Act, KENHA, through NLC, compulsorily acquired land for the expansion of Mombasa-Mariakani (A109) road.
- (ii) Pursuant to section 111 (1) of the Land Act, where land is compulsorily acquired, compensation shall be paid promptly in full to all persons whose interest in the land have been determined. However, the compensation process has been slow which has led to frustrations among the affected parties.
- (iii) Section 115 (1) of the Land Act provides for circumstances where NLC may withhold the payment of compensation to a person having an interest in the land. These circumstances include where there is no person competent to receive payment; where the person entitled does not consent to receive the amount awarded; or where there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid. In this regard, NLC has acknowledged that some of the PAPs are yet to be paid their share of compensation due to existing disputes.
- (iv) Some PAPs complained that their compensation was either inadequate to compensate for their losses or delayed. The displaced families now face even more financial difficulties as a result of some receiving sums that were insufficient to restore their businesses or rebuild their homes.
- (v) The NLC organized public forums to get feedback on the compensation process. During these forums, PAPs were informed of the criteria for valuation and were given opportunities to give feedback on issues arising.

#### Recommendations

Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- (i) The Committee rejects the prayer that the National Assembly urgently intervenes to compel the NLC to compensate the PAPs fairly in accordance with the actual value of their assets, and to disclose the valuation report feedback. This was on the grounds that, pursuant to section 113(2) of the Land Act, an award of compensation is final and conclusive evidence of the value of the land. However, the Committee recommends that any dispute arising out of compensation may be referred to the Environment and Land Court for a determination pursuant to section 128 of the Land Act.
- (ii) The Kenya National Highway Authority should implement the corrective action plan agreed upon with the affected persons and embrace the use of



geographic information system in asset inventory within sixty (60) days of tabling of the report.

(iii) The Kenya National Highway Authority should fast track the completion of the project especially at the Kwa Jomvu area, where the project has stalled and secondly take measures to deal with the dust and complete the walkways, clear the hips of soil, concrete and other construction materials on the site within sixty (60) days of tabling of the report.

MIN./PPETC/2024/378:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 05:00 p.m. The next meeting will be held on Saturday, 9<sup>th</sup> November 2024 at 10:00 a.m.

Sign:  .....

*for* (CHAIRPERSON)

Date.....19-11-2024.....