

Approved for tabling.
REPUBLIC OF KENYA



*SNA
22/9/2020*


PARLIAMENT
OF KENYA
LIBRARY

NATIONAL ASSEMBLY

12TH PARLIAMENT (FOURTH SESSION)

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON THE INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 22 SEP 2020	DAY: TUESDAY
TABLED BY:	Hon. Tom Mbatia alage MP Member DC Transport
CLERK-AT THE TABLE:	A. Shitobles

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

SEPTEMBER, 2020

TABLE OF CONTENT

LIST OF ANNEXES.....	iii
LIST OF ABBEVIATIONS AND ACRONYMS	iv
CHAIRPERSON'S FOREWORD	vi
EXECUTIVE SUMMARY	viii
1.0 PREFACE.....	xi
1.1 Committee Mandate	xi
1.2 Committee Membership.....	xiii
1.3 Committee Secretariat.....	xiv
2.0 BACKGROUND OF THE INQUIRY	1
3.0 INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY: SUBMISSIONS BY STAKEHOLDERS	3
3.1 Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works.....	3
3.2 Ministry of East African Community and Regional Development	9
3.3 Kenya Revenue Authority (KRA)	12
3.4 Kenya Ports Authority (KPA)	16
3.5 The Coast Region Leadership.....	21
3.6 Kenya Private Sector Alliance (KEPSA)	22
3.7 Kenya Trade Network Agency (KENTRADE)	24
3.8 Container Freight Stations Association of Kenya (CFSA).....	27
3.9 Shippers Council of Eastern Africa (SCEA)	31
3.10 Kenya Transporters Association Ltd (KTA).....	36
4.0 COMMITTEE OBSERVATIONS	38
5.0 COMMITTEE RECOMMENDATIONS.....	41

LIST OF ANNEXES

I— Adoption List

II— Correspondence by the Committee

III— Statement by the Hon. Member

IV— Minutes of the meetings of the Committee

V—Written Submissions received by the Committee

- i. Memoranda from the Office of the Cabinet Secretary
- ii. Memoranda from the Office of the Principal Secretary, State Department of Transport
- iii. Memoranda from the Office of the Principal Secretary, State Department for Regional and Northern Corridor Development
- iv. Memoranda from the Kenya Revenue Authority
- v. Memoranda from the Kenya Ports Authority
- vi. Memoranda from KEPSA
- vii. Memoranda from KENTRADE
- viii. Memoranda from the Shippers Council of Eastern Africa
- ix. Memoranda from the Container Freight Stations Association of Kenya
- x. Memoranda from the Kenya Transporters Association

LIST OF ABBEVIATIONS AND ACROYNYS

AEO:	Authorized Economic Operator
CS:	Cabinet Secretary
CFS:	Container Freight Stations
CPG:	Coastal Parliamentary Group
CFSA:	Container Freight Stations Associations of Kenya
DRC:	Democratic Republic of Congo
EACCMA:	East Africa Community Customs Management Act
H.E:	His Excellency
HIV/AIDS:	Human Immunodeficiency Virus, Acquired Immunodeficiency Syndrome
IMO:	International Maritime Organization
ICD:	Inland Container Depot
KEPSA:	Kenya Private Sector Alliance
KPA:	Kenya Ports Authority
KR:	Kenya Railways
KRA:	Kenya Revenue Authority
KRC:	Kenya Railways Corporation
KTA:	Kenya Transporters Association
LSCI:	Liner Shipping Connectivity Index
MGR:	Miter Gauge Railway
NCTTCA:	Northern Corridor Transit Transport Coordination Authority

TPWHC: *Report on the Inquiry into the use of the Standard Gauge Railway*

- RDL:** Railway Development Levy
- SCEA:** Shippers Council of Eastern Africa
- SEIA:** Social and Economic Impact Assessment
- SGR:** Standard Gauge Railway
- UNCTAD:** United Nations Trade and Development Agency

CHAIRPERSON'S FOREWORD

The Hon. Abdullswamad Sheriff Nassir, MP, member for Mvita Constituency pursuant to Standing Order 43, on 6th August 2019, raised a matter concerning a Government directive to the general public including businesses to have all containerized cargo and local import destined for Nairobi and the hinterland to be transported via the Standard Gauge Railway, during the Zero Hour Statement allocated time, on the floor of the House. The Honorable Member, then sought the House's intervention in getting a statement from the government on the latest statistics on the cost of usage of the SGR, and clarify who should use the SGR exclusively, as it is important to have a liberal market where private businesspersons can choose the mode of transporting their goods.

Further, On Thursday, 25th June, 2020, The Hon. Abdullswamad Sheriff Nassir, MP once more rose on the floor of the House and requested a statement from the Chairperson of the Departmental Committee on Transport, Public Works Public Works and Housing regarding government directive to have all containerized cargo for local market and transit cargo to the hinterland be transported through the Standard Gauge Railway to the newly established Naivasha Inland Container Depot (NICD). This was after his previous statement sought on 2nd June 2020, was not satisfactorily responded to, as he claimed the response was not reflective of the actual happenings on the ground.

The Hon. Abdullswamad Nassir, MP, thus requested the Honorable Speaker to direct the Departmental Committee on Transport, Public Works and Housing to undertake a comprehensive inquiry into the matter in order to: establish reasons why the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works made a pronouncement of the order in the absence of a Legal/Gazette Notice; and direct the halting and reversal of the cargo transportation order pending further consultation involving all stakeholders as well as the conclusion of an economic impact analysis of the arrangement.

The Speaker ruled that given the enormity of the matter, the Chairman of the Departmental Committee responsible for roads and transportation should not just get a Statement from the Cabinet Secretary. Rather, the Committee should invite the Cabinet Secretary to a meeting as soon as possible and invite Hon. Abdullswamad, the Member for Mvita, and any other person who might be interested to come and discuss the matter.

The Committee appreciates the support offered by the Offices of the Speaker and the Clerk of the National Assembly for both logistical and technical support accorded to the Committee in the execution of its mandate, especially during this COVID-19 pandemic period.

Pursuant to Standing Order No. 199, it is my pleasant duty to present the report of the Departmental Committee on Transport, Public Works and Housing on the inquiry into the order to rail cargo via the SGR to the hinterland ICD of Nairobi and Naivasha, to the National Assembly.

THE HON. DAVID PKOSING, MP, CBS
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND
HOUSING

EXECUTIVE SUMMARY

On Thursday, 25th June, 2020, Hon. Abdullswamad Sheriff Nassir member for Mvita Constituency rose on the floor of the House and requested a statement from the Chairperson of the Departmental Committee on Transport, Public Works Public Works and Housing regarding government directive to have all containerized cargo for local market and transit cargo to the hinterland be railed through the Standard Gauge Railway to the newly established Naivasha Inland Container Depot (NICD).

Hon Abdullswamad Sherrif Nassir further sought the direction of the speaker for the Committee to undertake a full inquiry to address to impact of the proposed notice on Transit Cargo.

Consequently, the Speaker ruled that given the enormity of the matter, the Chairman of the Departmental Committee responsible for roads and transportation should not just get a Statement from the Cabinet Secretary. Rather, the Committee should invite the Cabinet Secretary to a meeting as soon as possible and invite Hon. Abdullswamad, the Member for Mvita Constituency, and any other person who might be interested to come and discuss the matter. The report to be tabled before the House will not just be by way of a Statement, but seeking a resolution of the House on the way forward.

Following a comprehensive inquiry into the matter, the Committee made the following observations:

1. The Standard Gauge Railway (SGR) project is one of Kenya's Vision 2030 flagship projects. The use of SGR was meant to increase cargo throughput for the Port of Mombasa through enhanced efficiency in evacuation of cargo and container handling.
2. The Ministry of Transport, Public Works, Urban Development and Housing in its submission stated that the main reason for issuing the directive on transit cargo was to contain the spread of covid-19. However, the ministry indicated that it had consulted and satisfied itself that the directive does not contravene Competition law.
3. That for the SGR service to remain the choice for Shippers, it's important to ensure that efficiency, predictability and costs remain the focus of service delivery. Government should allow the multimodal transport concept to thrive while providing enabling environment for competitive yet efficient services. The Government must develop Measures that create a symbiotic multimodal transport system for sustainable economic growth. A competitive rail road complimentary system with supporting inland handling capabilities should be encouraged.
4. Marketing and Promotion to clients on the use of the SGR and the Inland Container Depots should be enhanced. The ICDs are fully dependent on rail services for transportation of cargo to

and from the Port of Mombasa thus Kenya Railways (KR) and Kenya Ports Authority (KPA) must involve shippers to get their buy in to use the Rail freight and the ICDN services competitively.

5. Transporters must be enticed to provide reliable and competitive last mile connectivity. Forcing railage goes against competition act and spirit of the liberalized Market economy. Kenya practices an open free market driven economy and hence the Government must not be seen to break the law.
6. The Kenya Railways Corporation and the SGR Freight Service operator must view themselves as organizations providing transport services like any other transport company. Therefore, they must be ready and able to offer competitive services just like any other transporters in the market.
7. Forced railage is against the International Maritime Laws and World Trade Organization Treaties that allow cargo owners to choose the mode of transport that is competitive in their view. The forced railage has not only increased the cost of doing business because of the high cost of transporting cargo but has also threatened Kenya's position as the regional logistics hub.
8. Freight is payable by Kenya Ports Authority (KPA) customers (shippers) and KPA has no legal power to compel its customers to use the railway services that will be provided by Kenya Railway Corporation (KRC). Customers may wish to use other means of transport.
9. Stakeholders lauded SGR for some positive impacts on Socio-economic welfare that include: Increased throughput; Service closer to customers; Decongesting Mombasa city; increased safety and security of transit cargo; tourism promotion; and environmental protection. On the other hand, negative impacts include: Road truckers collective redundancies; Closure of trucking businesses; impact on warehousing business; Contraction of roadside businesses that have seen many towns mushrooming along the northern transport corridor; relocation or closure of Container Freight Stations; Job Losses (Loaders, Drivers, Mechanics, Shop/Hotel attendants); Increase in crime rate and social ills; and drop in Mombasa County revenue among others.

Having conducted the inquiry and after considering the submissions of all stakeholders, the Departmental Committee on Transport, Public Works and Housing makes the following recommendations to the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works:

1. **That;** Importers should have freedom of choice on the mode of transport to haul their goods from the port to the final destination without restrictions from any government agency;
2. **That;** measures should be put in place for the full utilization of Kenya Railway assets where income accrued from all idle KRC land and assets should be channeled to the Railway Development Fund to assist in raising revenue for payment of the SGR loan;
3. **That;** as a revenue raising measure, the Government should consider adjustments to the Railway Development Levy (RDL) to incentivize use of the SGR. Importers who choose to haul their goods using the SGR can pay a preferential RDL of 1.5% of the value of goods. Conversely, importers who choose to use road transport will attract an additional surcharge of 0.3% of the value of goods imported (up to a maximum of \$ 138). The rate of surcharge can be subject to review by the relevant stakeholders including (but not limited to) the CS Transport, Importers, CFS, Transporters, Kenya National Chamber of Commerce;
4. **That;** to encourage use of the SGR, increase competitiveness in the sector and promote stopover economy along the railway line, the Government should set up an open, non-discriminatory policy that allows private investors to provide rail transport services through private trains and locomotives. This will be in line with international practice as is the case in the UK and more recently, India where private companies have license to provide rail services;
5. **That;** for purposes of last-mile connectivity, the Government should allow private investors to extend the railway line to their respective yards at their own cost;
6. **That;** On Clearance of Cargo importers should have the freedom to nominate a licensed Container Freight Service (CFS) company of their choice to clear their goods;
7. **That;** the Government should initiate the process of renegotiating the loan terms of the SGR with the lender due to the prevailing economic distress occasioned by the global pandemic that has affected the World's economic growth ; and
8. **That;** Renegotiation on the current Operation Agreement by reducing the operation costs by at least 50% be initiated by the Government.

1.0 PREFACE

1.1 Committee Mandate

1. The departmental Committee on Transport, Public Works and Housing is established under Standing Order 216 whose mandate pursuant to the Standing Order 216 (5) is as follows:-
 - a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - b) Study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - c) Study and review all the legislation referred to it;
 - d) Study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (*Committee on appointments*);
 - g) Examine treaties, agreements and conventions;
 - h) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - i) Consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - j) Examine any questions raised by Members on a matter within its mandate.
2. The second schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-
 - a) Transport;
 - b) Roads;
 - c) Public works;
 - d) Construction and maintenance of roads, rails and buildings;
 - e) Air and seaports; and
 - f) Housing.

3. In executing this mandate, the Committee oversees various State Departments, namely:
 - i. The State Department of Transport
 - ii. The state Department of Infrastructure;
 - iii. The State Department of Housing and Urban Development;
 - iv. The State Department of Public Works; and
 - v. The State Department of Shipping and Maritime Affairs

1.2 Committee Membership

The Departmental Committee on Transport, Public Works & Housing was re constituted by the House on 15th July 2020 comprising of the following Members:-

Chairperson

Hon. David Pkosing, M.P.

Member for Pokot South Constituency

Jubilee Party

Vice-Chairperson

Hon. Gathoni Wamuchomba, M.P.

Member for Kiambu County

Jubilee Party

Members

Hon. Dominic Kipkoech Koskei, M.P.

Member for Soitik Constituency

Jubilee Party

Hon. Peris Tobiko, M.P.

Member for Kajiado East Constituency

Jubilee Party

Hon. Kulow Maalim Hassan, M.P.

Member for Banisa Constituency

Economic Freedom Party (EFP)

Hon. Abdul Rahim Dawood, M.P.

Member for North Imenti Constituency

Jubilee Party

Hon. Samuel Arama, M.P.

Member for Nakuru Town West

Jubilee Party

Hon. Shadrack John Mose M.P.

Member for Kitutu Masaba Constituency

Jubilee Party

Hon. Ali Wario Guyo M.P.

Member for Garsen Constituency

Orange Democratic Movement Party

Hon. Rehema Dida Jaldesa M.P.

Member for Isiolo County

Jubilee Party

Hon. Ahmed Bashane Gaal M.P.

Member for Tarbaj Constituency

Peoples Democratic Party

Hon. David Njuguna Kiaraho M.P.

Member for Ol Kalou Constituency

Jubilee Party

Hon. Johnson Many Naicca M.P.

Member for Mumias West Constituency

Orange Democratic Movement Party

Hon. Omar Mwinyi Shimbwa M.P.
Member for Changanwe Constituency
Orange Democratic Movement Party

Hon. Tom Mboya Odege M.P.
Member for Nyatike Constituency
Orange Democratic Movement Party

Hon. Ahmed Abdisalan Ibrahim M.P.
Member for Wajir North Constituency
Orange Democratic Movement Party

Hon. Gideon Mutemi Mulyungi M.P.
Member for Mwingi Central Constituency
Wiper Democratic Party

Hon. George Aladwa Omwere M.P.
Member for Makadara Constituency
Orange Democratic Movement Party

Hon. Mercy Wanjiku Gakuya M.P.
Member for Kasarani Constituency
Jubilee Party

1.3 Committee Secretariat

Ms. Chelagat Tungo Aaron
First Clerk Assistant
Head of Secretariat

Mr. Ahmed Salim Abdalla
Second Clerk Assistant

Mr. Abdinasir Moge Yusuf
Fiscal Analyst

Mr. Brian Ngetich
Audio Recording Officer

Ms. Zainabu Wario
Sergeant at Arms

Ms. Mercy Wanyonyi
Legal Counsel I

Ms. Winnie Kulei
Research Officer III

2.0 BACKGROUND OF THE INQUIRY

The Hon. Abdullswamad Sheriff Nassir, MP, member for Mvita Constituency pursuant to Standing Order 43, on 6th August 2019, raised a matter concerning a Government directive to the general public including businesses to have all containerized cargo and local import destined for Nairobi and the hinterland to be transported via the Standard Gauge Railway, during the Zero Hour Statement allocated time, on the floor of the House. The Honourable Member, then sought the House's intervention in getting a statement from the government on the latest statistics on the cost of usage of the SGR, and clarifies who should use the SGR exclusively, as it is important to have a liberal market where private businesspersons can choose the mode of transporting their goods.

Further, On Thursday, 25th June, 2020, The Hon. Abdullswamad Sheriff Nassir, MP once more rose on the floor of the House and requested a statement from the Chairperson of the Departmental Committee on Transport, Public Works Public Works and Housing regarding government directive to have all containerized cargo for local market and transit cargo to the hinterland be transported through the Standard Gauge Railway to the newly established Naivasha Inland Container Depot (NICD). This was after his previous statement sought on 2nd June 2020, was not satisfactorily responded to, as he claimed the response was not reflective of the actual happenings on the ground.

Following the request of Statement on 2nd of June, 2020, the Departmental Committee on Transport, Public Works and Housing wrote to the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, to give a comprehensive response addressing the following issues:-

- i. What informed the Notice on Transit Cargo by the Minister of Transport Urban Development Housing and Infrastructure with regard to the current economic problems bedeviling the sector?
- ii. What is causing congestion at the Port of Mombasa and what plans are there to reduce the congestion as well as address the port efficiency?;

- iii. How is addressing the Covid-19 pandemic a measure of decongesting the Port of Mombasa?
- iv. Whether the notice on Transit cargo issued is contrary to the Competition Act; and
- v. Why couldn't the Ministry have allowed cargo operators and clearing agents the option of choosing to use Naivasha Inland Container Depot or use other facilities on means?

The Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works forwarded his response to the Committee on 10th June 2020, which was submitted to the floor of the House on 16th August 2020.

In his statement sought before the House on 25th August 2020, The Hon. Abdullswamad Nassir, MP, thus requested the Honorable Speaker to direct the Departmental Committee on Transport, Public Works and Housing to undertake a comprehensive inquiry into the matter in order to: establish reasons why the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works made a pronouncement of the order in the absence of a Legal/Gazette Notice; and direct the halting and reversal of the cargo transportation order pending further consultation involving all stakeholders as well as the conclusion of an economic impact analysis of the arrangement.

The Speaker ruled that given the enormity of the matter, the Chairman of the Departmental Committee responsible for roads and transportation should not just get a Statement from the Cabinet Secretary. Rather, the Committee should invite the Cabinet Secretary to a meeting as soon as possible and invite Hon. Abdullswamad, the Member for Mvita, and any other person who might be interested to come and discuss the matter. The report to be tabled before the House will not just be by way of responding to the Statement, but seeking a resolution of the House.

The Committee therefore, invited various stakeholders to present their views and recommendations on the matter at hand. In doing so the Committee received written memoranda and held five (5) sittings to conduct the inquiry.

3.0 INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY: SUBMISSIONS BY STAKEHOLDERS

3.1 Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

A. In their letter referenced MOT & I/C/ADM/034/7/1VOL.XIII and dated 15th July, 2020, the Ministry submitted as follows:

a) On the Legality of the past Directive on Cargo Transportation by SGR:

The Ministry submitted that the primary reason for issuing the directive on transit cargo was to contain the spread of covid-19. This directive was the result of consultations held by head of states, H.E Paul Kagame, the President of the Republic of Rwanda; H.E. Uhuru Kenyatta, the President of the Republic of Kenya; H.E. Yoweri Kaguta Museveni, the President of the Republic of Uganda and H.E. Salvar Maryardit Kiir, The President of the Republic of South Sudan during their consultative meeting of East African Community Heads of State held by video conference on 12th May, 2020 and the subsequent consultations among the partner state Ministers in charge of Transport. The purpose of these consultations was to agree on strategies of stemming the spread of the COVID-19 pandemic in the East Africa region, whilst at the same time facilitating the smooth flow of people and commerce.

The Ministry stated that the directive was issued by the Cabinet Secretary as the Cabinet Secretary responsible for Transport to implement the agreed initiative to compact spreading of COVID-19. However, issue has been raised whether this contravenes the competition law. The ministry submitted that it has consulted and satisfied itself it does not contravene competition law.

b) On Social Economic Impact of Cargo Transport by SGR:

The Ministry submitted that the Government undertook an environmental and social impact assessment study for both the Mombasa – Nairobi and Nairobi – Naivasha Standard Gauge Railway (SGR) Projects. Disruption and change of local livelihood/ outward migration was considered a major negative impact for people directly or indirectly depending on long distance

trucks (drivers, mechanic, turn boys, truck owners, other related/ supportive business, business owners etc). Negative impact such as reduced revenue for truck owners and mechanics changing of routes or migrating to other areas, selling trucks to finance shift to other business, etc were highlighted.

These were considered against positive social impact such as:- Emergence of new towns and urban development; Growth of business and market centers; Reduced road accidents; Reduction in freight haulage and transportation time; Reduced pollution along the highway; Fire risk reduction along the highway; Reduction of littering along the highway; Improved tourism opportunities; Increase in property value; Economic growth; Reduction of road maintenance costs; Reduction in HIV/AIDS infection incidence; Revitalization of the Agricultural production in rural areas; and Rapid industrialization and related job creation.

Taking into account these positive environmental and social benefits, the report's conclusion and recommendation were as follows:

- i. The project was one of Kenya's Vision 2030 flagship projects which was to contribute significantly to the different sectors in all pillars either directly or indirectly;
- ii. The SGR construction and operation would contribute positively in enhancing the transport system in the country and the East African Region at large and thus help propel Kenya to a middle-income country as envisioned in vision 2030;
- iii. The project would influence all the vision 2030 pillars directly and indirectly and induce economic benefits. SGR was expected to add up to 1.5 per cent to GDP by influencing the Vision 2030 pillars directly or indirectly;
- iv. The project was compliant with Kenya Transport Policy-moving a working nation (2009) whose vision for railway sector is to provide efficient, reliable, safe, and secure railway transport services that are integrated with national and regional railway, road, water, pipeline and air transport services for the transportation of goods and passengers on a sustainable and competitive basis and in line with the East African Railways Master Plan (2009) whose goal is to rejuvenate existing railways serving Tanzania, Kenya, Uganda and extending them initially to Rwanda and Burundi and eventually to South Sudan, Ethiopia and beyond;

- v. The SGR project would significantly reduce congestion and enhance the volumes that will be handled at the port of Mombasa thus spurring intra-country and regional trade. Upon completion cargo handling capacity at Mombasa port which was about 25 million tonnes per year would almost double to 44 million tonnes per year in 2025; 55.6 million tonnes per year in 2030 and 67.46 million tonnes per year in 2040. This would help in securing the port as preferred facility in the region. It would also reduce road congestion, number of accidents and maintenance cost in the Northern Transport Corridor.
- vi. The SGR would generate employment opportunities for both skilled and semi-skilled workers resulting directly from the construction and maintenance of the SGR-line and from transport of passengers and freight. The operation phase of the SGR will enhance the transport system in the country which will also ease freight haulage on Kenyan roads. This will make transportation of people, goods and services cheaper, more efficient and safer. Projections indicated that transport costs would be reduced by up to 40%. This would in turn spur industrial growth through establishment of new industries to serve the railway;
- vii. The project implementation would promote regional economic and trade development, support the national economic development in Kenya and facilitate the regional economy to better and faster development along the line;
- viii. The project was feasible as regards social economic evaluation, financial evaluation and environmental assessment and had stable economic benefits and stronger anti-risk capacity. The study of alternative planning showed the project was indispensable and that it needed to be implemented as soon as possible;
- ix. That given the magnitude and complexity of the project, a comprehensive environmental management plan had been developed which also outlined mitigation measures;
- x. The project as recommended was approved by NEMA because of its enormous contributions to achievement of Kenya vision 2030 goals.

c) On whether Government could explore ways and means of ensuring that the transporters/ stakeholders use the SGR willingly

The ministry submitted that the transporters are currently distorting the cost of transporting cargo from Naivasha to Kampala by charging more for that distance compared to what is charged for goods collected from Mombasa or Nairobi for the same distance. Other stakeholders will use Naivasha ICD willingly once this distortion is addressed. If transporters do not address the distortion, it will be addressed easily once the link to the MGR is constructed in the next eight months.

B. SUPPLEMENTARY INFORMATION

Following a meeting of the Departmental Committee on Transport, Public Works and Housing and the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works that was held on 11th August 2020, the ministry was requested to provide further supplementary information on the use of the Standard Gauge Railway.

Below is the Ministry's supplementary information submission dated 4th September, 2020.

On how the Government can make the SGR tariffs competitive

The ministry submitted that the SGR offers competitive roundtrip rates (Mombasa - Nairobi - Mombasa) of US\$ 556 per container. However, last mile rates charged by road transporters from Nairobi ICD to destinations within the Nairobi Metropolitan Area are about US\$ 231, and charges for last mile delivery of empty containers to depots in Mombasa upon return are about US\$ 48. These charges add up to a total of US\$ 833 per container, which compares favorably to road transport charges of US\$ 926 per container (roundtrip). To further improve the competitiveness of its offering, Kenya Railways is implementing the following initiatives;

- Kenya Railways has effected volume based rebates of between 5% and 20%. These have reduced the container rates to the range of USD 475 (5% discount) to USD 400 (20% discount) per TEU
- To provide a last mile solution, Kenya Railways shall utilize the available MGR lines that connect Nairobi ICD to Industrial Area through the Makongeni Goods shed.

- To augment the last mile service provided through the MGR, Kenya Railways shall also utilize local transporters to provide this service at competitive rates. The process of identification of local road transporters that will provide this service is ongoing. The transporters shall be allocated parking slots at the truck marshalling yard at Nairobi ICD and will be given priority in loading and unloading cargo. This will improve turn-around time and enhance efficiency, thus enabling these last mile providers to charge not more than US\$ 167 per container. This will reduce the total roundtrip cost to US\$ 768 per container.

The ministry avers that the above measures will enable the Government through Kenya Railways to offer competitive round-trip rates.

On need to incentivize the use of SGR by cutting the RDL by 0.5% to 1.5 %

The ministry submitted that a reduction of the Railway Development Levy (RDL) by 0.5% for transporters using the SGR is recommended to act as an incentive for importers to use this service. However, this will have the negative impact of reducing the funds available for the development of rail infrastructure in the country. On the other hand, increased collections due to higher volumes would result in higher returns to the SGR. One option that should be considered is committing a percentage of the higher SGR returns, probably equivalent to the reduced RDL funds, directly to the RDLF, to support the development of rail infrastructure projects.

On possibility of selling capacity or balloting of capacity to transporters or shippers

The ministry submitted that Kenya Railways has signed volume-based transportation contracts with shipping lines. These contracts include volume discounts. KR also plans to commence negotiations with shippers, importers and shipping lines to implement take or pay arrangements whereby KRC will dedicate specific train slots (lines & wagons) to them based on volumes. Slots will be provided to customers under the "take or pay concept" where they will be obliged to pay for the capacity provided whether or not it is used.

On the Role of Container Freight Stations (CFS)

The ministry avers that the use of rail-served transit sheds should be encouraged. Kenya Railways is currently developing one in Nairobi for small traders in a bid to improve its services.

On Cargo that must move by SGR

The ministry submitted that they have two categories of cargo that must be transported by the SGR as follows:

(a) Bulk Cargo: A Grains bulk facility with a storage capacity of 134,000 tons, translating to 3 million tons of cargo per year, has been completed in Embakasi, Nairobi, through a partnership between Kenya Railways and the private sector. It is fully served by the SGR which facilitates the delivery of bulk cargo directly from the Port of Mombasa to the facility.

(b) Dangerous and Dirty Cargo: Currently the SGR transports 5 out of 9 classes of dangerous cargo, and is developing safety programs to include the remaining 4 classes. Kenya Railways acquired an estimated 900 acres of land in Athi River for the purpose of developing a logistics hub for dirty and bulk cargo under a Public Private Partnership. This will enable manufacturers, importers and customers to set up facilities to receive the cargo. Athi River is home to more than seven (7) cement factories which are responsible for a significant portion of the dirty cargo (clinker) imports.

The SGR has the capacity to transport cargo which weighs in excess of 32 tons, with each wagon having a capacity of 70 tons.

On SGR to Uganda

The ministry submitted the following measures being undertaken to ensure connectivity to Uganda

- To facilitate seamless connectivity to Malaba, Kenya Railways has commenced construction of 23.5 km of Metre Gauge Railway (MGR) line to connect Naivasha ICD to the Longonot Station - Malaba MGR line. This will facilitate the seamless transfer of

TPWHC: *Report on the Inquiry into the use of the Standard Gauge Railway*

cargo from SGR wagons to MGR wagons at Naivasha ICD, and the transportation of the same directly to Uganda by rail

- Kenya Railways is also undertaking the rehabilitation of the MGR line from Longonot to Malaba to ensure reliable services are offered to customers transporting transit cargo. This project will be completed within the next 12 months. These two initiatives will reduce the additional costs loaded by transporters on containers ex Naivasha ICD. The MGR line connects to the Uganda Railways network.
- In the long-term SGR Phase 2B (Naivasha to Kisumu) and 2C (Kisumu to Malaba) will be completed in order to link the service directly to Malaba border station and to the Uganda rail network.

3.2 Ministry of East African Community and Regional Development

In its response referenced SDRNC/ADM/1/VOL.I and dated 10th August 2020, the ministry submitted that the Northern Corridor is a multi-modal trade and transport corridor (NCTTCA), encompassing road, rail, pipeline, and inland waterways. One of NCTTCA's mandate is to track and monitor performance along the Northern Corridor to identify salient issues that impact on trade along the Corridor and provide policy recommendations to guide towards achieving an efficient transport corridor. The efficiency of the corridor offering multimodal transport ensures proper leveraging of the advantages each mode of transport offers. These modal shifts include road, railway, pipeline, and inland waterways.

a) On Cargo Throughput

The Ministry presented that the volume of cargo throughput at the port of Mombasa for January 2019 to May 2020 was between 2.3 Million Metric Tonnes and 3.3 Million Metric Tonnes. This includes break-bulk, dry bulk, containerized cargo, transit cargo and transshipment.

The share of throughput between January and May 2020 per destination was as follows: Kenya 63.8%, Uganda 224.0%, South Sudan 3.0%, DRC 2.0%, Rwanda 1.9%, Tanzania 0.7% Burundi 0.003% and others 0.01%.

The ministry further stated that with increase in throughput, it is appropriate to invest and expand the capacity of these intermodal channels to remove the bottlenecks that cause the high cost of business and inefficiencies. The port of Mombasa relies on road, rail, pipeline and inland waterways as the modes of transport that run along the northern corridor which is the main link to landlocked countries.

b) On Rail Haulage Along the Northern Corridor

The ministry submitted that Rail transport is considered ‘green’ due to relatively low emissions compared to other modes of transport as trains burn less fuel per ton-Km than road vehicles. However, there are additional costs incurred in rail haulage among them; last-mile connectivity, additional handling costs of containers at the port, and a lift cost to transfer the container between the train and the road vehicle. In our case, the SGR line terminating in Naivasha or Nairobi ICD would require double handling to reach the final destination either locally or to transit countries.

The ministry stated that the cost of moving empty containers by truckers up to Mombasa by transit to pick imports and deliver empty containers is higher than the last-mile logistics costs associated with the ICDs at Naivasha and Nairobi. On average, longer journeys tend to be less expensive by rail, and shorter journeys are less costly by road. The full benefits of the SGR will be unlocked when the SGR reaches the neighboring countries or when their seamless transfer to the Meter Gauge for onward haulage is achieved as a short-term measure.

Further, the ministry quipped that in order to enhance the economic viability of the SGR, it is important to pursue the implementation of the railway Master Plan proposed for rejuvenating existing railways serving Tanzania, Kenya, Uganda, and extending them initially to Rwanda and Burundi and eventually, to South Sudan, Ethiopia and beyond. The linking of these systems will ultimately enhance performance and ensure optimum and viable utilization of the railway system. Also, there is a need to develop feeder roads and railways to ensure last-mile connectivity that would make use of railway more attractive.

c) On SGR performance analysis

The ministry submitted that the Standard Gauge Railway (SGR) freight service (Mombasa-Nairobi return route) was launched in January 2018. The development of the Standard Gauge Railway has revolutionized cargo transport from the port of Mombasa. Haulage by SGR from Mombasa accounts for about 12% of the total throughput while the meter gauge accounts for 2 percent. Statistics show that the total SGR throughput was approximately 412,584 TEUS or 4,159,094 MT from January to December 2019.

The ministry further stated that the Inland Container Depots in Kenya are directly linked to the port of Mombasa by both the SGR and MGR railways. The Naivasha Inland Container in December 2019 has been heralded as a key strategy towards enhancing the throughput at the port of Mombasa, decongestion of the port, fast clearance of cargo, and improved container handling. The facility is located 572 Km to the west of Mombasa and 120 km from Nairobi on the Mombasa - Nairobi - Naivasha Standard Gauge Railway (SGR) route.

The ministry indicated that the Services offered at Naivasha ICD include; handling of both containerized and loose cargo, stripping and stuffing of containers, consolidation or storage of full/loose export cargo, storage and handling of empty containers, hire of labour and equipment, weighing of containers, cargo documentation finalized at Naivasha ICD, and leasing of yard slots to shipping lines and other interested parties for storage of empty containers

Further, the increased distance of the SGR to Naivasha ICDs is a positive move since rail transport is economical over longer distances, However, there are possible additional transport logistical costs, especially terminal costs for use of ICDs especially for storage of cargo and terminal operations. Some of these may lead to the loading of costs in addition to the freight charges. These include handling fees charged by the ICD for offloading the main haul truck and reloading the goods on the delivery truck; the cost of the final leg of the transport to destination and storage costs. The table below gives the traffic to Naivasha ICD for May and June. To spur the usage of the Naivasha ICD, in addition to the stimulus tariff for SGR Freight Service, there is a need for improvement of the facilities and linking with the Metre Gauge for efficient intermodal movement of goods.

The ministry stated that in summary, the SGR offers shorter and reliable transit times and schedules. Railroads are the most efficient form of land transportation. One train can haul the equivalent of about 100 trucks thus helping in alleviating road congestion, thus lowering emissions. The rail offers fast and cost-effective deliveries over long distances, typically over 800 KM. The integration of the Metre gauge and the SGR can offer longer distances to make the service more attractive.

The ministry concluded by stating that historically, rail transport has a strong safety record compared to road transport. Given the imbalance between exports and imports, the Naivasha ICD will save the transit countries' cost of running empty trucks from Naivasha to Mombasa to collect cargo, thus resulting in reduced transit times. Transit time on SGR is shorter therefore the time cost-benefit should not be overlooked. For an efficient trucking system, all modes of transport need to be utilized, thus the need to develop facilities at the terminals to support smooth intermodal transport exchange from one transport mode to another.

3.3 Kenya Revenue Authority (KRA)

In their response dated 4th August, 2020 the Kenya Revenue Authority submitted as follows:

a) On the Legality of Past Directives on Cargo Transportation by SGR

The Kenya Revenue Authority (KRA) submitted that its role with respect to clearance of imported cargo include;

- i. Facilitation of gazettement of facilities and routes used for clearance of cargo such as the gazettement of Naivasha ICD, and the Naivasha –Mai Mahiu transit routes in accordance with the law (EACCMA, 2004 Section 12).
- ii. Monitoring the movement of cargo under Customs control from the point of offloading (from the vessels) to the respective clearance areas in liaison with Kenya Ports Authority and Kenya Railway. KRA's role is to ensure that such goods are not interfered with while being transferred.
- iii. Collection of taxes and timely clearance of cargo once the goods arrive at the customs clearance facilities such as the ICD's at Nairobi or Naivasha.

KRA pointed out that Section 12 of the East African Community Customs Management Act, 2004 (EACCMA), 2004, provides that the Commissioner may, by notice in the Gazette, appoint Customs areas. Customs area is defined under EACCMA as “any place appointed by the Commissioner under Section 12 for carrying out Customs operations, including a place designated for the deposit of goods subject to customs control”.

Further, goods arriving from outside Kenya’s jurisdiction are under Customs control until they go through Customs clearance process. This implies that they must be offloaded at designated customs areas which include licensed Inland Container Depots as covered by Section 14 of the EACCMA, 2004.

KRA further heralded that Section 34 (1) of the EACCMA 2004 requires that all cargo unloaded in the country shall be entered within 21 days after commencement of discharge from the vessel. Where such cargo remains un-entered after the 21 days, the goods shall be moved to a Customs warehouse in line with Sec 34(4) of the EACCMA 2004. Section 42(1) of the EACCMA provides for the sale by public auction all goods deposited into a Customs warehouse, that have not been removed within 30 days of deposit, and after 30 days of the issuance of a Gazette Notice by the Commissioner.

KRA submitted that in view of the above legal provisions, hinterland operations are legal in line with the EACCMA, 2004. The laws provide for un-customed goods to be offloaded in gazetted/approved Customs facilities such Kilindini Port, ICD Nairobi, ICD Naivasha or Transit Sheds for purposes of Customs clearance. The same legal provisions have been used to allow deposit of cargo at Container Freight Stations (CFS’s) most of them located in Mombasa because they are designated customs areas.

Further, having additional facilities for cargo clearance ensures smaller amounts of cargo are distributed in different Customs facilities as opposed to having clearance done from one place. This helps to decongest the Port of Mombasa thus ensuring faster clearance of cargo in line with the World Bank Ease of Doing Business indicators.

In this regard, KRA transfers cargo that has overstayed (remained un-entered beyond the legal requirement of 21 days) which is destined for the neighbouring countries to ICD Naivasha.

Finally, KRA pointed out that the use of the SGR to transfer the cargo to ICD-Naivasha has reduced interference with cargo movement through theft and diversion since it is easy and efficient to monitor cargo movement via SGR as opposed to single trucks. This has eliminated cargo diversion hotspots such as Mariakani, Machakos Junction and Nairobi. Monitoring by Customs is only done from ICD Naivasha to the border points.

b) On Socio-Economic Impact of Cargo Transportation by SGR

KRA submitted that the Kenya Standard Gauge Railway (SGR) is one of the largest transport infrastructure projects in the country since independence. The facility is designed to enhance transport operations in the country and beyond in a bid to boost development and economic growth in line with the Kenya Vision 2030.

KRA indicated that it has not undertaken any Social and Economic Impact Assessment (SEIA) that may demonstrate the Impact of SGR on both economic and social fronts, however, it was their considered view that the SGR has positive impact on KRA's operations in the following ways;

- i. Reduction in the cost of monitoring transit cargo as cargo conveyed to Nairobi or Naivasha ICDs through the SGR has less distance covered in terms of monitoring of tracks.
- ii. The reduced monitoring distance also reduces opportunities for diversion of transit cargo along the transit route. Diversion of transit cargo has negative implications including loss of Government Revenue, introduction of goods whose quality has not been checked by the Kenyan Standards Assurance Agencies, distortions in the market as goods on which taxes have not been paid introduce unfair competition in the market.
- iii. It is envisaged that the use of Naivasha ICD will have positive impact in containment of Covid-19 pandemic by reducing the distance to the border points therefore reducing opportunities for interaction of truck drivers with people along the transit routes.

c) On ways the government could explore to ensure that the Transporters and Stakeholders use the SGR willingly

The Kenya revenue Authority submitted that trade facilitation was at the core of its mandate. To this end, KRA is committed to enhancing efficiency in the cargo clearance process which is necessary in promoting the uptake of SGR in the transportation of cargo. Such measures include the following;

- i. Use of scanners to ensure expedited clearance of cargo.
- ii. Enhanced use of Regional Cargo Tracking Systems for real time monitoring of cargo along the transit route.
- iii. Implementation of the Authorized Economic Operator (AEO) program, which is designed to facilitate and enhance the experience of the compliant trader when undergoing Customs clearance processes.
- iv. Facilitation of creation of enough storage facilities for cargo through gazettelement of the Naivasha ICD and the transit routes. This has helped to decongest the Kilindini Port. Currently, the ICD Naivasha is operating at a capacity of 30%, hence more room for more uptake of cargo.

KRA pointed out that with respect to the uptake of SGR, KRA is working with other Government Agencies and Ministries in Continued stakeholder (importers, exporters, transporters, warehouse operators, etc.) engagements geared towards promoting voluntary use of SGR in transporting transit cargo to Naivasha ICD.

d) On recommendation on the use of SGR that will promote mutual benefit for the government and stakeholders/citizenry

KRA is of the view that the ongoing engagements with stakeholders in the clearance and transportation of cargo which is aimed at resolving concerns of stakeholders will promote better uptake of the SGR in transportation of cargo.

3.4 Kenya Ports Authority (KPA)

The Kenya Ports Authority (KPA) submitted to the Committee that the Standard Gauge Railway (SGR) project is one of Kenya's Vision 2030 flagship projects. It is the most important railway channel in Kenya, which links the coastal city of Mombasa and Naivasha through the capital city of Nairobi. SGR it is expected to play an important role in strengthening cooperation among EAC member states, while integrating and sustaining regional economic development. The completion of the Standard Gauge Railway first phase and phase 2A is the hallmark of the country's expansion and interconnectedness strategy. However, it has posed challenges during and after its operationalization especially on economic activities.

a) On legality of directives on cargo transportation by SGR

KPA submitted that it signed a long term service purchase agreement and a "take or pay" agreement with KRC to guarantee a minimum freight throughput that will generate sufficient revenue equal to or more than the aggregate of cost of operation and the annual repayment of principal and interest loan payment. In a nutshell KPA is required to avail adequate freight throughput as stipulated in the agreements to guarantee a minimum revenue collection equal to the cost of operation and aggregate loan repayment. If KPA does not avail the required freight throughput thus realizing a revenue below the agreed target, then KPA shall be required to meet the shortfall.

KPA explained that Freight throughput in these circumstances, is what is referred to as "through bill of lading". A bill of lading is a document of title issued to a customer by a shipping company (shipping line/owner of a ship) that allows the transportation of goods both within domestic borders and through International shipment. A through bill of lading allows transportation of goods through a domestic border to international borders and to the hinterland of that International border(s). This therefore means in a bill of lading transportation ends at the Port of entry in that international borders while a through bill of lading the transportation ends in some other location in the hinterland of that International border.

KPA further explained that in legal terms therefore the responsibilities to ensure the cargo is delivered safely in that location in the hinterland of the International border shifts from the ship owner/shipping line once landed at the port of the International borders, and the Port/the transporter (in this case KRC) takes the responsibility of the cargo up to the location in the hinterland. Cargo documented under the through bill of lading is cargo destined to the hinterland location/areas which include Voi, Nairobi, Naivasha, Malaba and other East African destinations of Uganda, Rwanda, Burundi, South Sudan and Ethiopia.

KPA stated that the KPA Act at Sec 12 (i) (q) provides that *“(q) to enter into any agreement with KRC which in the opinion of the Board will promote or secure the provisions or improved provision of any service or facilities which they may separately provide and without prejudice to the generality there of any such arrangement or agreement may include provisions relating to: (iii) The charges made in respect of the use of any service or facility to which the arrangement or agreement relates”*.

Further, the KPA Act at Sec 12 (3) provides that *“(3) for the avoidance of doubt it is hereby declared that subsections (1) and (2) relate only to the capacity of the Authority as a statutory authority and nothing in those provisions shall be construed as authorizing the disregard by the Authority of any law*. From the above sections, in the KPA Act it is clear that KPA can either;

- i. Provide and operate train services within the Port of Mombasa or from the Port of Mombasa to any place outside the Port or,
- ii. Enter into a contract with any person to provide and operate train services within the Port of Mombasa or commencing from the Port of Mombasa to any place outside the Port or
- iii. Enter into an agreement with KRC to provide and operate train services within the Port of Mombasa or from the Port of Mombasa to any place outside the Port.

Therefore, although KPA has the power to enter into arrangements with KRC for KRC to provide train services from Mombasa to Embakasi ICD the arrangements must be within the confines of the law such that KPA should not be in breach of any laws.

b) On legal position on the through bill of lading with regards to transportation to the hinterland location

KPA submitted that the freight is payable by the KPA customers and KPA has no legal power to compel its customers to use the railway services that will be provided by KRC. Customers may wish to use other means of transport. KPA would be adjudged to have issued an unlawful directive if the authority directs that cargo be transported via the railway. Second by KPA cannot possibly forecast the volumes of cargo that will pass through the port of Mombasa in future because that the global market forces and trends are unpredictable.

c) On Social-Economic Impact of Transportation by SGR

The Kenya Ports Authority submitted that positive Impacts include:

- i. **Increased throughput:** The use of SGR is meant to increase cargo throughput for the Port of Mombasa through enhanced efficiency in evacuation of cargo and container handling. This is in line with the Port of Mombasa's strategic objective of retaining its hub port of choice status for the Region.
- ii. **Service Closer to Customers:** The use of SGR and the Inland Container Depots will bring Port services closer to hinterland customers including the Transit Markets of Uganda, Rwanda, Democratic Republic of Congo (DRC) and South Sudan. Customers based in the hinterland can have access to the same services offered at the port of Mombasa without having to travel all the way for the same thus saving time and money.
- iii. **Decongesting Mombasa City:** The use of SGR will decongest the container terminal at the port of Mombasa by reducing container dwell time through enhanced take-off of import cargo for clearance at the ICD. There is notable decrease in the number of trucks carrying containers to and from the port of Mombasa. Due to the reduced number of trucks in the County of Mombasa roads accessing the port through Changanwe, Port-Reitz, Docks and Shimanzi. This has resulted into a gradual reduction in traffic congestion and snarl-ups in the town and result in improved flow of traffic.

- iv. **Safety and Security:** Enhanced safety and security to transit cargo. Cargo transported by rail is safer and more secure therefore ensuring the safe transportation of cargo to and from the Port of Mombasa. There is also an increase in safety on the roads due to reduced traffic and road accidents. In addition, the ICDs offer high security standards in line with the International Ship and Port Facility Security Code (ISPS Code) guidelines on Port Security.
- v. **Tourism Promotion:** It was envisaged that that operationalization of SGR in Mombasa County will have a positive impact on tourism due to reduced cost of commuting and high passenger capacity to and from Mombasa. As a result it evident that there was some positive impetus on this sector on both local and international tourism activities.
- vi. **Environmental Protection:** climate change management initiatives. With 60 – 80 trucks off the road per hour, the green gas emission reduction will be significantly reduced.

The Kenya Ports Authority submitted that Negative Impact include: Road Truckers Collective Redundancies; Closure of Trucking Businesses; Impact on Warehousing Business; Roadside Businesses – Activity Contraction; Container Freight Stations Relocation/Closure; Job Losses (Loaders, Drivers, Mechanics, Shop/Hotel Attendants); Increase in Crime Rate and Social ills; and Drop in Mombasa County Revenue

d) On measures that can be developed to create a symbiotic multimodal transport system for sustainable economic growth

The Kenya Ports Authority proposed the following measures that can be developed to create a symbiotic multimodal transport system for sustainable economic growth:

- i. **Competitive tariff for SGR:** The cost of transportation is the biggest factor that potential users of the facility would consider. The general perception from the market is that the cost of use of SGR is higher compared to use of road transport. A

competitive tariff to attract cargo traffic to the Nairobi and Naivasha ICDs can be explored for stakeholders to willingly take up SGR.

- ii. **Marketing and Multiagency SGR forum:** Marketing and Promotion to clients on the use of the SGR and the Inland Container Depots. The ICDs are fully dependent on rail services for transportation of cargo to and from the Port of Mombasa thus Kenya Railways (KR) and Kenya Ports Authority (KPA) are key stakeholders to business sustainability. Taking cognizance of that, Joint Marketing strategies leveraging on the synergies between KPA and KR are being undertaken to encourage customer buy in. This has involved carrying out advertisement campaigns targeting potential customers through various channels; Radio, TV, brochures and outdoor publicity.
- iii. **Infrastructure at ICDs:** Kenya Ports Authority continues to avail adequate infrastructure at the ICDs to support seamless clearance of cargo. KPA has introduced smart gates and automated ICD cargo evacuation processes which has borne visible results in terms of efficiency. This among other infrastructural projects at the Inland Container Depot will ensure the facilities remain attractive.
- iv. **Efficient services:** Generally, stakeholders will shy away from teething problems in the early stages of any initiative. Eventually SGR is expected to provide faster, realizable, safer and more efficient service than the competition. It is important that advantages of using SGR vis-a-vis is highlighted for customer to willingly take up SGR. The Government would need to engage the customers and to also provide for a forum to address any emerging issues.
- v. **Smart logistics solutions:** As e-commerce takes root in the country, the government could work to provide enhanced value-add services e.g. automated containerized door to door delivery services. These services will not improve on reliability of SGR, but will enhance the willingness of stakeholders to use SGR. Kenya Ports Authority is working maximize on the use of technology to enhance efficiency and promote good customer service, this has enabled customers to closely monitor the arrival of their containers or evacuation of container at comfort of their offices. This will lead to cost savings for KPA and KRC clients using ICDs for both local and transit cargo.

3.5 The Coast Region Leadership

The Members of Parliament from the Coast region appeared before the Committee on 10th August 2020 at County Hall Parliament Buildings and Submitted as follows:-

The Coastal Parliamentary Group (CPG) had held a consultative meeting earlier on, to discuss ways of mitigating the negative effects of the Standard Gauge Railway (SGR) on the Coastal economy. The meeting looked into ways of ensuring stakeholders in the clearing and forwarding as well as transport sector sustain their businesses while encouraging the use of SGR. Following the meeting, the CPG came up with the following suggestions on how to maximize business for the Kenya Railways Corporation (KRC) and above referenced stakeholders:

- i. **Freedom to choose means of transport** – Importers should have freedom of choice on the mode of transport to haul their goods from the port to the final destination without restrictions from any government agency;
- ii. **Full utilization of Railway Assets** – income accrued from all idle KRC land and assets should be channeled to the Railway Development Fund to assist in raising revenue for payment of the SGR loan.
- iii. **Increasing Railway Development Levy Revenue** – as a revenue raising measure, the Government should consider adjustments to the Railway Development Levy (RDL) to incentivize use of the SGR. Importers who choose to haul their goods using the SGR can pay a preferential RDL of 1.5% of the value of goods.
Conversely, importers who choose to use road transport will attract an additional surcharge of 0.3% of the value of goods imported (up to a maximum of US\$ 189). The rate of surcharge can be subject to review by the relevant stakeholders including (but not limited to) the CS Transport, Importers, CFS, Transporters, Kenya National Chamber of Commerce.
- iv. **Private use of SGR** – to encourage use of the SGR, increase competitiveness in the sector and promote stopover economy along the railway line, the Government should set up an open, non-discriminatory policy that allows private investors to provide rail transport services through private trains and locomotives. This will be in line with

international; practice as is the case in the UK and more recently, India where private companies have license to provide rail services.

- v. **Last mile connectivity** – for purposes of last-mile connectivity, the Government should allow private investors to extend the railway line to their respective yards at their own cost.
- vi. **Clearing of Cargo** - importers should have the freedom to nominate a Container Freight Service (CFS) company of their choice to clear their goods regardless of the final destination of the goods. Such choice of CFS does not need to be communicated to Kenya Ports Authority as has been the case.
- vii. **Freedom to choose Transporters** – importers should be able to choose freely from a pool of transporters to haul their goods. The Kenya Railway Service can maintain a pool of transporters from which importers will choose to transport cargo across the country.
- viii. **Renegotiation of SGR Loan** – considering the immense financial obligation of Kenya Railway Corporation to pay off the SGR loan and the prevailing economic distress occasioned by the global pandemic, the Government should initiate the process of renegotiating the loan terms of the SGR with the lender.

Finally the CPG stated that they hope that these measures, among others will ensure the SGR is effectively utilized without negative effects to the economy of the coastal region and its people.

3.6 Kenya Private Sector Alliance (KEPSA)

The Kenya Private Sector Alliance (KEPSA) appeared before the Committee on 10th August, 2020 and submitted as follows:

They stated that KEPSA is the apex body of the private sector in Kenya to drive economic development through year improvements in the business environment by addressing cross cutting business issues, driving investments and addressing socio-economic issues with partners. It brings together business associations, corporate bodies, SMEs and start-ups to speak in one

voice, working closely with Government and other stakeholders through structured public-private dialogue platforms and other engagement mechanisms.

In line with KEPSA's core mandate to conduct high-level advocacy on cross-cutting policy related issues that help Kenya be globally competitive in doing business, KEPSA submitted that they advocated for the construction of SGR which was envisioned to do the following:

- i. Reduce freight transport tariff charges from US\$0.20 per ton/kilometer on average to US\$0.083 per ton/kilometer;
- ii. Reduce transit time of freight trains for instance from 30 hours on the average to less than 8 hours in the Mombasa-Nairobi section;
- iii. Contribute an annual GDP growth of at least 1.5% during construction and subsequently during operation;
- iv. Increase rail transport share in the northern corridor hence reducing damage to the roads; and
- v. Reduce road accidents and damage to the road network. Support Kenya's strategic agenda of becoming a regional logistics hub.

KEPSA however, indicated that this had not been achieved because the government directive of forced railage of cargo through the SGR. This has led to heavy cost implication of Kenyan importers and business costing and addition cost of between 175 and 233 percent for moving containers by rail to Nairobi.

KEPSA further submitted that the forced railage is against the International Maritime Laws and World Trade Organization Treaties that allow cargo owners to choose the mode of transport that is competitive in their view. The forced railage has not only increased the cost of doing business because of the high cost of transporting cargo but has also threatened Kenya's position as the regional logistics hub.

In their presentation, KEPSA stated that recently, there is a trend where cargo owners from other countries are now preferring other transport corridors because of the cost implication of the Northern Transport Corridor. This has been demonstrated by the declining cargo that has been

imported through the port of Mombasa recently. The current cost of cargo transportation is untenable and if not addressed will affect the cost of doing business and the country's competitiveness especially as a logistics hub affecting the economy.

The Kenya Private Sector Alliance thus submitted the following Proposals in bid to resolve the issue amicably:

- i. Allow the Cargo Owner to choose the mode of transportation of cargo (either rail or road). There is enough cargo for both rail and road. This will ensure competitiveness in the industry hence enhancing the services offered.
- ii. Cargo owner has the right to choose point of clearance be it Mombasa Port or ICD Nairobi or ICD Naivasha or CFS Mombasa or CFS Nairobi.
- iii. More involvement of all players in the industry before making changes in processes or rates/charges
- iv. KPA to write to the shipping line revoking the initial agreement that every cargo to be transported through TBL and allow for merchant haulage.
- v. KPA to revoke the contract for verification at ICD Nairobi.
- vi. KPA to revert to 11 days free as stipulated in their tariff guidelines for clearance at ICD Nairobi.
- vii. KPA should stop charging release penalty which is NOT in the official tariff book.
- viii. KPA should stop charging for re-marshalling as containers are never moved as stipulated in their Tariff guidelines.
- ix. KRC to introduce in their tariff for rail a \$350 fee for a 2ft container' and a \$450 fee for a 40 ft container for either Nairobi or Naivasha.

3.7 Kenya Trade Network Agency (KENTRADE)

The Kenya Trade Network Agency vide letter a letter reference KTNA/ADM/13/ (2) Dated 13th July, 2020 submitted that as an Agency involved in Trade facilitation through the implementation of the Single Window System believes that over time, the SGR will be able to

revolutionize trade and transport logistics in the region. However they are aware that this may have some level of negative social impact in the short run stemming from the elimination of the inefficiencies of road cargo transport that has over time created some economic activities especially along the main road route. This in the long run should however cease to be a challenge as the region reaps more benefits from the more efficient rail transport.

The Agency further submitted as follows:

a) On the socio-economic impact of cargo transportation by SGR

The agency noted that the Standard Gauge Railway (SGR) is a good investment for the country since it decongests our roads and provides alternatives for faster movement of goods across the northern corridor. The social-economic impact of cargo transportation by the SGR includes the following;

- i. In the long run, it is expected that faster cargo evacuation from the port of Mombasa will save on demurrage costs subsequently reducing the cost of consumer goods in Kenya and beyond the borders. It has however been observed that users have complained that the current cost of transporting cargo via the SGR is higher than use of trucks, which increases the costs of the end product in the market. However, the Agency expects that this is the scenario in the short-run which should be reversed in the long-run due to the benefits associated with economies of scale and as the SGR breaks even and is hence able to reduce on cost.
- ii. With faster evacuation of cargo at the port, there will be increased competitiveness of Mombasa port as a port of choice due to provision of alternatives to cargo evacuation as opposed to having only one option for cargo evacuation. This will see more opportunities being created at the port and all its inland ports.
- iii. The SGR has the capacity to carry more cargo compared to trucks on road transport that require to make multiple trips for the same cargo thereby depreciating Kenya's road networks faster.

- iv. The SGR has the potential of growing economies at towns where substations have been established especially for local cargo transportation. This will lead to increased employment.
- v. The SGR will reduce road carnage since it will reduce the number of trucks on highways.
- vi. The SGR can facilitate for easy movement of agricultural produce to market an areas where it passes. This will bring down the cost of foodstuff in markets.

b) On exploring ways and means of ensuring that the Transporter/Stakeholders use SGR willingly

The Agency stated that there are various ways in which the Government may explore to ensure SGR transportation is attractive to stakeholders. These may include:

- i. Competitive charges for the SGR compared to road transport to attract cargo owners to use it.
- ii. Streamlining the last mile procedures to fast track the clearance processes at Inland Container Depot (ICDs).
- iii. Completion of the SGR to connect to Uganda will make use of SGR competitive.
- iv. Provision of supporting facilities such as warehouses at ICD's where the SGR stations are located.
- v. Improvement of the road network access to ICDs where SGR terminates.
- vi. Full implementation of a logistics coordination and information system that will make it easier for cargo owners to monitor the location of their cargo on a real time basis.
- vii. Stakeholders' engagement with clearing and forwarding agents, exporters and importers, transporters and other players in the international trade will help better communicate the government's concerns. This should involve an elaborate and comprehensive Change Management exercise.

3.8 Container Freight Stations Association of Kenya (CFSA)

In a letter referenced 20071401 dated 14th July 2020, the container Freight Stations Association of Kenya submitted that the Association is registered under the Societies Act (Cap 108) and recognized by the new constitution. One of the key objects of the CFSA is to encourage and promote; Just, Fair, Legal and Honorable practices between its members. All the members of the CFSA are licensed by Kenya Revenue Authority, and recognized by Kenya Maritime Authority and Kenya Ports Authority, due to its composition as a member of the Civil Society.

The Association further stated that CFS's wish to boost the SGR services by routing containers cleared from the CFS for onward rail transportation to ICD Nairobi for collection with the following results:

- i. Early collection of import taxes and other taxes as the goods are already cleared in Mombasa and moving to Nairobi for collection.
- ii. Advance collection of SGR freight rates by KPA at Mombasa while processing the CFS Pick Up Orders unlike the current practice of taking cargo to ICD Nairobi and waiting for importers to turn up for clearance.
- iii. In addition, KPA will also collect from Mombasa in advance Shore Handling and Wharf age from CFS instead of waiting for importers to turn up for collection at ICD Nairobi then invoice them.
- iv. Decongestion of ICD Nairobi due to faster evacuation at ICD Nairobi to two hours because the cargo is already customs cleared in Mombasa with no need for further interventions.
- v. Increase the volumes of containers to be transferred by SGR to ICD through running of block trains by CFS's
- vi. Help KPA meet the envisaged target set on cargo volumes moving on Rail to ICD
- vii. Create efficiency on cargo transfer and delivery.
- viii. Impact positively on trade

In their submission, the Association proposed a responsibility matrix as follows:

- i) **CFS:** CFS's will approach all Nairobi based clients and actively market SGR services. The CFS's therefore requests KPA support on this initiative by not subjecting their nominated containers to HOLD since this will be counterproductive to its quest in supporting SGR through client nominations.
- ii) **Kenya Ports Authority (KPA):** Dedicate an area at Mombasa port and ICD Nairobi. Through delivery of containers directly to SGR loading area by CFS operators, the efficiency of loading operations for the freight service will be expected to improve significantly. This will ease pressure on KPA who are currently running multiple activities of normal port operations including tracing and transferring containers to the SGR designated loading areas.
- iii) **Kenya Railways Corporation (KRC) / Standard Gauge Railway (SGR):** CFS operators will undertake the marketing of SGR freight service to their customers. This will come along with specific targets per CFS operators that have to be met daily. KRC will gain from the CFS's by having an assured controlled source of cargo for the SGR freight service.
- Loading and railage of the containers within 24hrs of handover at SGR loading area.
 - Clearance and release to customers within a maximum of 6hrs after they present their cargo pick up orders load at ICD Embakasi.
 - Receipt and loading of empty containers from ICD Embakasi to Mombasa within 24hrs of being handed over in Nairobi.
 - Issuance of container interchange at point of container handing over i.e. SGR loading area, I.C.D.E full and I.C.D.E Empty.
 - KRC to provide container tracking update for both full and empty units on a daily basis for ease of follow up by the customers. Additionally KRC will give an undertaking regarding the container demurrage penalties that may arise due to failure on their part to rail the containers within the agreed timelines.
 - KRC to provide the relevant assurance on the security of the goods whilst in transit to and from Nairobi

- iv) Kenya Revenue Authority (KRA) (Customs Services Department):** Customs services already present in CFS's will carry on with the normal duties of verification and release of cargo. This will ease the pressure on customs clearance at ICD Embakasi.
- KRA to give dedicated space / area for cleared cargo
 - CFS Operators will deliver customs cleared cargo to SGR freight for transport to ICD Embakasi for collection only.

The CFSAK further appeared before the Committee on 10th August, 2020 and submitted as follows:

a) On the legality of past directives on cargo transportation by SGR.

The CFSAK stated that the rule to have containerized cargo cleared at the ICD Nairobi is against the Competition Act No 12 of 2010 and the UN international Convention on the Carriage of Goods. CFSs have played an important part in ensuring the smooth flow of cargo from the port. Since their inception the threat of application of vessel delay surcharge by shipping lines has disappeared.

Until operationalization of the directives on cargo transportation on SGR, CFS operators had directly employed over 2000 employees in Mombasa whilst being supported by auxiliary services providers estimated at over 20,000 people. Due to the disruptions business, retrenchments have been done reducing the combined staff complement to less than 500. The impact on auxiliary services is more devastating.

CFSA also noted that they welcomed the development of the SGR since it provided Mombasa port the opportunity to grow into a logistics hub in East and Central Africa through availability of efficient and competing modes of cargo delivery. However, the government move to force a modal shift from road to rail was unwarranted and has resulted in the persistent complaints by importers who have lost the ability to negotiate favorable terms for the business logistics needs.

Further, the result of the government action has been to slow down employment levels and infrastructural development in the logistics sector due to importers reducing their imports as existing facilities are fully utilized.

b) On what CFSs are

Container Freight Stations (CFS) intermediary storage handling facilities for cargo especially of large volume regular imports. These facilities are usually located outside of the port and provide relief to the port operations. It is not a concept only found in Kenya but is prevalent in many port cities around the world. Even the ICDs are technically CFS because they are cargo handling facilities located outside the actual port facilities:

- i. CFSs are licensed and controlled by KRA. There are existing regulations that govern the licensing and operations of CFSs.
- ii. There have been various mechanism employed to secure cargo whilst within the facilities.
- iii. They have over the years been points of high revenue collection by KRA who have officers stationed within these facilities.

c) On what CFSs do.

The Association stated that they provide intermediary storage facilities for importers especially of bulk regular imports. Due to the competitive nature of the industry the importers have enjoyed the following services at the facilities:

- i. Efficient services during the transfer, handling verification and delivery of cargo. The services are guided by clearly defined KPIs with the customers.
- ii. Extended free storage period to hedge against any unforeseeable delays during the clearance process which range from 7 to 30 days.
- iii. Flexible delivery schedules which reduced pressure on costs for the customers.
- iv. Instant waivers and or discounts on storage incurred beyond the agreed free period.
- v. Personalized service between the CFS management and importers including unsecured credit facilities for KPA charges. Due to such arrangements the importers are able to

determine with accuracy their landed costs of goods and this trickles down to the customers.

- vi. The CFS customers and their forwarders have a high visibility on their cargo position through daily updates.
- vii. There are high safety and security standards employed by operators hence providing conducive environment for the cargo clearance process.

d) On ways and means of ensuring the free choice on the use of the SGR freight service

The association stated that the CFS operators are not averse to competition. They have marketing departments that go out and competitively solicit for cargo bookings. They negotiate tariffs along with key performance indicators directly with cargo owners and/or their agents. Because of this approach towards service delivery CFS's have remained relevant in the supply chain equation.

They noted that the SGR Freight service needs to improve on its marketing appeal. This can be attained through:

- i) The provision of an enabling environment and trade facilitation by the government agencies geared towards allowing competition to thrive.
- ii) Allowing cargo owners the freedom of choice regarding the point of clearance of their cargo.
- iii) Encourage private parties to work with SGR in aggressively marketing the freight service. This will not be limited to shipping lines, forwarders, cargo handling facilities etc. based in Mombasa, Nairobi and Naivasha.

3.9 Shippers Council of Eastern Africa (SCEA)

The Shippers Council of Eastern Africa (SCEA) vide their response referenced SCEA/NA/001/SGR dated 15th July, 2020 submitted that the Shippers Council of Eastern Africa (SCEA) is the umbrella body representing cargo owners in Eastern Africa. SCEA advocates for a reliable logistics environment that will translate to reduced cost of doing business to improve the

competitiveness of business entities in Eastern Africa. SCEA provides a platform for shippers to articulate their concerns and demands to logistics service providers and government regulatory institutions. SCEA, as a private sector body, focuses exclusively on the development of freight transport policies that will not only be beneficial to the Kenyan economy but also to the entire EAC economy for growth and development.

Further, the importance of the rail transport system in Kenya and the East African region cannot be underestimated. The SGR Freight service was built with a target to haul a minimum of 40% of the port throughput to Nairobi and beyond hence giving the desired relief to the road network. This target has however not been achieved. Despite government efforts to improve services at the ICD Nairobi which is the main receiving point of the SGR freight service both importers and their agents have continued to resist the use of rail transport over road. The source of this resistance can largely be attributed to the manner in which the government introduced and enforced the use of the SGR service. The impact of this was the disruption of supply chains that had taken years to build.

The council noted that an analysis of the cargo throughput through the Port of Mombasa shows the port performance surpassed the projected 33.58 million tons in total throughput, recording 34.44 million tons in 2019 against 30.92 million tons handled in 2018. This represents a growth of 11.4%.

The council further noted that, container traffic grew by 112,702 TEUs in 2019 representing 8.7% growth, from 1,303,862 TEUs in 2018 to 1,416,654 TEUs in 2019. The improved throughput was largely attributed to increased handling of transshipment traffic. The port realized total transshipment traffic of 211,204 TEUs in 2019 compared to 121,577 TEUs handled in 2018. This represents a 74% growth. Transit cargo recorded a growth of 3.6% to record 9.95million tons in 2019 against 9.60 million tons in 2018. Uganda maintained its dominance controlling 23.6 percent of total port throughput which represents 81.8% of the total port throughput.

According to the council, of the traffic for the 2019 throughput, SGR carried 3, 619,184 Tons representing a 39.33% market share for containerized cargo. A further 24,557 Tons representing

TPWHC: Report on the Inquiry into the use of the Standard Gauge Railway

1.23% of the conventional cargo was carried by SGR. The total market share combined for all the Port throughput for SGR accounted for 13.22%. The total import and export Market share of SGR in 2019 as a percentage of the Port Throughput for only 13.07% of the Port Traffic.

The council also noted that even with the implementation of SGR there is sufficient cargo available to sustain SGR and the Road Transport while allowing the existing infrastructure to take up the liquid and dry bulk, conventional cargo and the balance of the over 60% of the containerized cargo. Of the 1,416, 654 TEUs, 30% of the cargo is transit cargo accounting for approximately 425,000 TEU. Of the remaining 850,000 TEUs, 270,915 TEUs accounting for 30% of the local Containerized traffic. With 10% of the local traffic remaining for use in Mombasa and its surrounding, the balance of over 50% of the local TEUs is available for road transport. Preference was made for clearance of cargo in Mombasa pre-SGR because of the facilities and capacity that was offered by Container Freight Stations (CFS).

They stated that when analyzed the main reasons why importers and their agents preferred Mombasa as a clearance point for their consignments can be summarized below;

- i. They are able to negotiate extended free storage period from facilities in Mombasa. This free period can range from 7 days up to 30days and is used to cushion them against any penalties that may arise due to delays in the customs clearance process.
- ii. Because of the extended free period they also enjoy flexible delivery schedules for their cargo meaning they are not under pressure to move all their cargo at the same time when their customs clearance is complete.
- iii. They get efficient services during verification, delivery and cargo location in the yard.
- iv. There are no hidden and/or un-receipted charges. This is important as it gives the cargo owners the ability to fix their importation cost per container for the duration of their contract term.
- v. They get daily updates and personalized services from the facility operators in Mombasa
- vi. In many instances the get unsecured credit facilities for port charges allowing for better financial planning on their part.

- vii. When their consignments incur storage charges they are able to negotiate instant waivers and/or discounts on storage incurred beyond the agreed free period. Because of the extended free period they also enjoy flexible delivery schedules for their cargo meaning they are not under pressure to move all their cargo at the same time when their customs clearance is complete.

Further the council stated that unfortunately in recent discussions the key benefits of the use of SGR rail have largely been down played and these need to be emphasized;

- i. SGR offers cheap transport from Mombasa to Nairobi and vice versa. At USD450/20' and USD750/40'.
- ii. It provides a mode of transport with high safety standards for cargo minimizing damages and pilferage for the goods in transit.
- iii. 70% of the local imports are destined for the Nairobi and up-country market. The SGR freight service has ensured that the cargo is brought to a clearance point that is closer to the end user.
- iv. Shipping lines are ready to embrace the service and offer through bill of lading deliveries to Nairobi which minimizes the cargo receivers' exposure to demurrage charges.
- v. The empty container return process has been streamlined and can be improved further to address any additional concerns that importers may have.

The Council therefore noted that for the SGR service to remain the choice for Shippers, it's important to ensure that efficiency, predictability and costs remain the priority. Government should allow the multimodal transport concept to thrive while providing enabling environment for competitive yet efficient services. The Government must develop Measures that create a symbiotic multimodal transport system for sustainable economic growth. A competitive rail road complimentary system with supporting inland handling capabilities should be encouraged.

The Council aver that the cost of transportation is the biggest factor that potential users of facilities would consider. The general perception from the market is that the cost of use of SGR is higher compared to use of road transport. A competitive tariff to attract cargo traffic to the Nairobi and Naivasha ICDs can be explored for stakeholders to willingly take up SGR.

TPWHC: *Report on the Inquiry into the use of the Standard Gauge Railway*

Marketing and Promotion to clients on the use of the SGR and the Inland Container Depots should be enhanced. The ICDs are fully dependent on rail services for transportation of cargo to and from the Port of Mombasa thus Kenya Railways (KR) and Kenya Ports Authority (KPA) must involve shippers to get their buy in to use the Rail freight and the ICDN services competitively.

Further the Transporters must be enticed to provide reliable and competitive last mile connectivity. Forcing railage goes against competition act and spirit of the liberalized Market economy. Kenya practices an open free market driven economy and hence the Government must not be seen to break the law.

For competitive services, SGR should consider introducing open access and train slots to satisfy the flexible needs of freight traffic and customer unique demands. Volume discounts should be introduced to encourage volumes while government should consider policy and taxation incentives for those who use rail services including rebates on Road maintenance levy on Rail petroleum and Railway Development levy.

Shippers rely heavily on predictable logistics for a continuous and sustainable production and supply chain. The use of Private facilities that provided additional services, timelines and logistics coordination in Mombasa was the major driving force for the growth of CFS business Model and the improved dwell time performance of the Port of Mombasa. An effective framework that encourages collaboration, Partnership and usage of such capacities in Nairobi would see the increased uptake of SGR services and complimentary growth of Road Transport first/last mile usage, these facilities can also play a major role in increased usage export consolidation.

The facilities should focus on the handling of full and empty Container Loads, Consolidated containers, Dangerous Cargo classified goods and reefers containers among others, this will have the impact of giving the end receivers the choice that they have been asking for. The ICD Nairobi in the current performance levels cannot offer competitive services to the cargo owners and will therefore continue to be a bottleneck to the full realization of the SGR targets.

The facility operators will be expected to work in partnership with shipping lines to market themselves as a complementary facility to ICD Nairobi for cargo clearance and therefore help to improve the throughput on the SGR freight service. This will have a direct impact on the improvement of Dwell time and utility of the ICDN facility thus increasing the overall throughput of the port of Mombasa. By addressing the concerns here above cited by importers there will be no other reason why an importer would prefer Mombasa clearance if they can get similar or better services in Nairobi considering the fact that the safety of their cargo on Rail is almost guaranteed and its faster.

The Kenya Railways Corporation and the SGR Freight Service operator must view themselves as organizations providing transport services like any other company. Therefore, they must be ready and able to offer competitive services just like any other transporters.

There is need for close collaboration between KPA/SCEA/KSAA and partnership for win-win relations with the Transporters Association to ensure that Multimodal systems are implemented effectively. Use of technology to track and monitor cargo is encouraged to increase efficiency.

The ultimate goal is to see an efficient, value based, cost effective multimodal transport system responsive to the needs of the shippers while creating a strong enabler to attainment of the Big 4 agenda and economic growth potential.

3.10 Kenya Transporters Association Ltd (KTA)

The Kenya Transporters Association vide letter dated 15th July, 2020 submitted some recommendations to the ministry in regard to the use of SGR for mutual benefit for the government and the stakeholders/citizenry.

The association stated that while everyone is quite aware of the many illegal notices that had been previously issued by the government requiring forceful cargo evacuation from port of Mombasa to the hinterland ICD's, the general public feeling was that they were not consulted and that itself was seen as lack of respect to the law. It is however worth noting that Rail transportation in the whole world has always been an alternative to road transport, its existence therefore means that it is a supplementary mode of transport with the road taking the lead.

The association submitted as follows:

- i. Rail transport can only survive in a seaport handling more bulk cargo, Mombasa Port is seen to be handling more general cargo thus making road as a mode of transport to be more preferable. The government should invest in improving port of Mombasa to be a hub for large loads.
- ii. Kenya lacks well developed railway network across the forty seven counties, this therefore makes road transport more viable since it is characterized by a greater flexibility and the ability for door to door deliveries.
- iii. Lack of liberalization and introduction of full competition in the internal market results in monopoly which always work against the public interest at large. The control by the government contributes to lack of competition which may breed inefficiency and high costs.

The association urged the Ministry of Transport to further engage the stakeholders more preferably in oral submissions should the COVID-19 subside. Meanwhile they requested the Ministry of Transport to uphold the provisions of the Competition Act No. 12 of 2010. They further noted that in normal circumstances, it is very difficult to suggest survival means for competitors, they hence proposed forces of market to prevail. They requested the ministry to come up with quick win strategies and strategic marketing plans that would make SGR efficient and cost effective.

4.0 COMMITTEE OBSERVATIONS

Following deliberations with stakeholders in the shipping and transportation sector, on the use of SGR to transport cargo to the hinterland ICD stations in Nairobi and Naivasha, the Departmental Committee on Transport, Public Works and Housing makes the following observations:

1. The Standard Gauge Railway (SGR) project is one of Kenya's Vision 2030 flagship projects. The use of SGR was meant to increase cargo throughput for the Port of Mombasa through enhanced efficiency in evacuation of cargo and container handling.
2. The Ministry of Transport, Public Works, Urban Development and Housing in its submission stated that the main reason for issuing the directive on transit cargo was to contain the spread of covid-19. However, the ministry indicated that it had consulted and satisfied itself that the directive does not contravene Competition law.
3. That for the SGR service to remain the choice for Shippers, it's important to ensure that efficiency, predictability and costs remain the focus of service delivery. Government should allow the multimodal transport concept to thrive while providing enabling environment for competitive yet efficient services. The Government must develop Measures that create a symbiotic multimodal transport system for sustainable economic growth. A competitive rail road complimentary system with supporting inland handling capabilities should be encouraged.
4. Marketing and Promotion to clients on the use of the SGR and the Inland Container Depots should be enhanced. The ICDs are fully dependent on rail services for transportation of cargo to and from the Port of Mombasa thus Kenya Railways (KR) and Kenya Ports Authority (KPA) must involve shippers to get their buy in to use the Rail freight and the ICDN services competitively.
5. Transporters must be enticed to provide reliable and competitive last mile connectivity. Forcing railage goes against competition act and spirit of the liberalized Market economy. Kenya practices an open free market driven economy and hence the Government must not be seen to break the law.
6. The Kenya Railways Corporation and the SGR Freight Service operator must view themselves as organizations providing transport services like any other transport

company. Therefore, they must be ready and able to offer competitive services just like any other transporters in the market.

7. Forced railage is against the International Maritime Laws and World Trade Organization Treaties that allow cargo owners to choose the mode of transport that is competitive in their view. The forced railage has not only increased the cost of doing business because of the high cost of transporting cargo but has also threatened Kenya's position as the regional logistics hub.
8. Freight is payable by Kenya Ports Authority (KPA) customers (shippers) and KPA has no legal power to compel its customers to use the railway services that will be provided by Kenya Railway Corporation (KRC). Customers may wish to use other means of transport.
9. Stakeholders lauded SGR for some positive impacts on Socio-economic welfare that include: Increased throughput; Service closer to customers; Decongesting Mombasa city; increased safety and security of transit cargo; tourism promotion; and environmental protection. On the other hand, negative impacts include: Road truckers collective redundancies; Closure of trucking businesses; impact on warehousing business; Contraction of roadside businesses that have seen many towns mushrooming along the northern transport corridor; relocation or closure of Container Freight Stations; Job Losses (Loaders, Drivers, Mechanics, Shop/Hotel attendants); Increase in crime rate and social ills; and drop in Mombasa County revenue among others.
10. SGR charges roundtrip rates (Mombasa - Nairobi - Mombasa) of US\$ 556 per container, However, last mile rates charged by road transporters from Nairobi ICD to destinations within the Nairobi Metropolitan Area are about US\$ 231, and charges for last mile delivery of empty containers to depots in Mombasa upon return are about US\$ 48. These charges add up to a total of US\$ 833 per container, which compares to road transport charges of US\$ 926 per container (roundtrip).
11. The ministry submitted that a reduction of the Railway Development Levy (RDL) by 0.5% for transporters using the SGR is recommended to act as an incentive for importers to use this service. However, this will have the negative impact of reducing the funds available for the development of rail infrastructure in the country. On the other hand, increased collections due to higher volumes would result in higher returns to the SGR.

One option that should be considered is committing a percentage of the higher SGR returns, probably equivalent to the reduced RDL funds, directly to the RDLF, to support the development of rail infrastructure projects

5.0 COMMITTEE RECOMMENDATIONS

Having conducted the inquiry and after considering the submissions of all stakeholders, the Departmental Committee on Transport, Public Works and Housing makes the following recommendations to the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works:

1. **That;** Importers should have freedom of choice on the mode of transport to haul their goods from the port to the final destination without restrictions from any government agency;
2. **That;** measures should be put in place for the full utilization of Kenya Railway assets where income accrued from all idle KRC land and assets should be channeled to the Railway Development Fund to assist in raising revenue for payment of the SGR loan;
3. **That;** as a revenue raising measure, the Government should consider adjustments to the Railway Development Levy (RDL) to incentivize use of the SGR. Importers who choose to haul their goods using the SGR can pay a preferential RDL of 1.5% of the value of goods. Conversely, importers who choose to use road transport will attract an additional surcharge of 0.3% of the value of goods imported (up to a maximum of US\$ 138). The rate of surcharge can be subject to review by the relevant stakeholders including (but not limited to) the CS Transport, Importers, CFS, Transporters and Kenya National Chamber of Commerce;
4. **That;** to encourage use of the SGR, increase competitiveness in the sector and promote stopover economy along the railway line, the Government should set up an open, non-discriminatory policy that allows private investors to provide rail transport services through private trains and locomotives. This will be in line with international practice as is the case in the UK and more recently, India where private companies have license to provide rail services;
5. **That;** for purposes of last-mile connectivity, the Government should allow private investors to extend the railway line to their respective yards at their own cost;
6. **That;** on Clearance of Cargo, importers should have the freedom to nominate a licensed Container Freight Service (CFS) company of their choice to clear their goods;

7. **That;** the Government should initiate the process of renegotiating the loan terms of the SGR with the lender due to the prevailing economic distress occasioned by the effects of Covid 19, the global pandemic that has affected the World's economic growth ; and,
8. **That;** renegotiation on the current Operation Agreement by planning to reduce the operation costs by at least 50% be initiated by the Government.

SIGN:  DATE: 18/09/2020

THE HON. DAVID PKOSING, MP, CBS





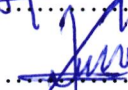
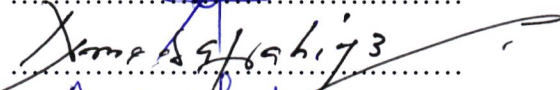
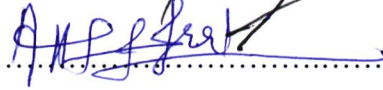


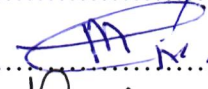
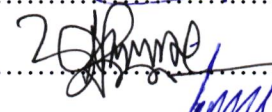
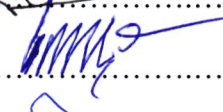

CHAIRPERSON

**DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND
HOUSING**

ANNEX I: ADOPTION LIST

Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing, Pursuant to Standing Order 199, have today 16th September, 2020 adopted this Report on the Inquiry into the use of the Standard Gauge Railway.

1. Hon. David Pkosing, M.P. -Chairperson 
2. Hon. Gathoni Wamuchomba, M.P. -Vice Chair..... 
3. Hon. Samuel Arama, M.P. 
4. Hon. Johnson Many Naicca, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Omar Mwinyi, M.P. 
7. Hon. Ali Wario Guyo, M.P. 
8. Hon. Ahmed Abdisalan Ibrahim, M.P. 
9. Hon. Ahmed Bashane Gaal, M.P. 
10. Hon. David Njuguna Kiaraho, M.P.
11. Hon. Dominic Kipkoech Koskei, M.P. 
12. Hon. Gideon Mutemi Mulyungi, M.P.
13. Hon. Kulow Maalim Hassan, M.P.
14. Hon. Abdul Rahim Dawood, M.P.
15. Hon. Rehema Dida Jaldesa, M.P. 
16. Hon. George Aladwa Omwera, M.P. 
17. Hon. Shadrack John Mose, M.P. 
18. Hon. Tom Mboya Odege, M.P. 
19. Hon. Mercy Wanjiku Gakuya, M.P. 

ANNEX II: CORRESPONDENCE

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote



CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

NATIONAL ASSEMBLY

Ref: NA/DCS/TPWH/CORR/2020/(027)

3rd July, 2020

Mr. Solomon Kitungu, CBS
Principal Secretary
State Department for Transport
Ministry of Transport, Infrastructure,
Housing, Urban Development & Public Works
Transcom House - Ngong Road
NAIROBI

E-MAILED
7/7/20 - 5:32pm

Dr. Margaret W. Mwakima, CBS
Principal Secretary
State Department for Regional & Northern Corridor Development
Ministry of East Africa Community (EAC) & Regional Development
NAIROBI

E-MAILED
7/7/20 - 5:37pm

Eng. Rashid Salim
Ag. Managing Director
Kenya Ports Authority
P.O. Box 95009-80104
MOMBASA

E-MAILED
7/7/20 - 5:39pm

Mr. Philip J. Mainga
Managing Director
Kenya Railways Corporation
Kenya Railways Headquarters
Workshops Road, Off Haile Selassie Avenue
Opposite Technical University of Kenya
NAIROBI

E-MAILED
7/7/20 - 5:42pm

Mr. James Githii Mburu
Commissioner General, Kenya Revenue Authority
Times Tower, 30th Floor
Haile Sellasie Avenue
NAIROBI

E-MAILED
7/7/20 - 5:44pm

Hon. Abdulswamad Shariff Nassir
Member for Mvita Constituency
Parliament Building
NAIROBI

E-MAILED
7/7/20 - 5:47pm

Hon. Mohammed Ali
Member for Nyali Constituency
Parliament Building
NAIROBI

E-MAILED
7/7/20 - 5:48pm

Ms. Carole Karuga
Chief Executive Officer
Kenya Private Sector Alliance (KEPSA)
5th Floor, Shelter Afrique Building
Mamlaka Road
NAIROBI

E-MAILED
7/7/20 - 5:54

Mr. Amos Wangora
Chief Executive Officer
Kenya Trade Network Agency (KenTrade)
1st Floor Embankment Plaza
Longonot Rd, Upperhill Hill
NAIROBI

E-MAILED
7/7/20 - 5:54

Mr. Dennis Ombok
Chief Executive Officer
Kenya Transporters Association
Amkay Plaza, Mezanine Floor
Off Fidel Odinga Road, Nyali
MOMBASA

E-MAILED
7/7/20 - 5:54

Mr. Daniel Nzeki
Chief Executive Officer
CFS Operators Association of Kenya
MOMBASA

E-MAILED
7/7/20 - 3:36

Dear *Sir*

**RE: DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING:
INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY**

Article 95 of the Constitution of Kenya mandates the National Assembly to represent the people, to deliberate on and resolve issues of concern to the people and to exercise oversight of all State organs. The National Assembly has received various requests for statements, questions and petitions on matters relating to cargo transportation by the Standard Gauge Railway (SGR), including:

1. Request for a Statement regarding the government directive to the general public to have all containerized cargo and local import destined for Nairobi and the hinterland to be transported via the SGR, by Hon. Abdulswamad Shariff Nassir, MP, dated 6th August, 2019;
2. Request for a Statement on forced railing of cargo from Mombasa to the Naivasha Inland Container Depot, by SGR by Hon. Abdulswamad Shariff Nassir, dated 2nd June, 2020;
3. Request for a Statement on compulsory transportation of cargo through the SGR, by Hon. Abdulswamad Shariff Nassir, dated 25th June, 2020; and

Following the Ruling by the Speaker of the National Assembly dated 25th June 2020, the Departmental Committee on Transport, Public Works and Housing was directed to conduct an **inquiry** on the above matters and report back to the House.

Committee resolved to seek submissions from stakeholders in order to gather information that that may assist the Committee in addressing the matter. To this end, the Committee is seeking your submissions on the following: -

1. **Government:**

- a) what is the legality of the past directives on cargo transportation by SGR;
- b) what is the socio-economic impact of cargo transportation by SGR; and
- c) could the government explore ways and means of ensuring that the transporters/stakeholders use the SGR willingly.

2. **Stakeholders:**

What would you recommend to the Ministry on the use of SGR that will promote mutual benefit for the government and the stakeholders/citizenry?

The Committee will appreciate to receive your submissions by **Wednesday, 15th July, 2020.**

The liaison officers for this matter are **Ms. Chelagat Tungo Aaron** who may be contacted on Tel. No. 0720436528 or email address ctungo@parliament.go.ke and **Mr. Ahmed Salim Abdalla** who may be contacted on Tel. No. 0710204056 or email address damnan@parliament.go.ke.

Yours *Sincerely,*


SERAH M. KIOKO

For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - **Mr. James Macharia, EGH**
Cabinet Secretary
Ministry of Transport, Infrastructure, Housing,
Urban Development & Public Works
Transcom House - Ngong Road
NAIROBI

E-MAILED
7/7/20 - 5:32pm

Hon. Ali Hassan Joho, EGH
Governor of Mombasa County
Council of Governors
Delta Corner, 2nd Floor
Opp. PWC Chiromo Road, Off Waiyaki Way
NAIROBI

E-MAILED
7/7/20 - 5:59pm

Hon. Amason Jeffah Kingi, EGH
Governor of Kilifi County
Council of Governors
Delta Corner, 2nd Floor
Opp. PWC Chiromo Road, Off Waiyaki Way
NAIROBI

E-MAILED
7/7/20 - 5:59pm

Hon. Salim Mvurya Mgala
Governor of Kwale County
Council of Governors
Delta Corner, 2nd Floor
Opp. PWC Chiromo Road, Off Waiyaki Way
NAIROBI

E-MAILED
7/7/20 - 5:59pm

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone: (254) 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.com
When replying please quote



CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI, KENYA

NATIONAL ASSEMBLY

Ref: NA/DCS/TPWH/CORR/2020/(029)

3rd August, 2020

Mr. Solomon Kitungu, CBS
Principal Secretary
State Department for Transport
Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works
Transcom House - Ngong Road
NAIROBI

E-MAILED
5/8/20 - 1:02 PM

Dr. Margaret W. Mwakima, CBS
The Principal Secretary
State Department for Regional and Northern Corridor Development
Ministry of East Africa Community (EAC) and Regional Development
NAIROBI

E-MAILED
5/8/20 - 1:02 PM

Eng. Rashid Salim
Ag. Managing Director
Kenya Ports Authority
P. O. Box 95009-80104
MOMBASA

E-MAILED
5/8/20 - 1:11 PM

Mr. Philip J. Mainga
Managing Director
Kenya Railways Corporation
Kenya Railways Headquarters
Workshops Road, Off Haile Selassie Avenue
Opposite Technical University of Kenya
NAIROBI

E-MAILED
5/8/20 - 1:11 PM

Mr. James Githii Mburu
Commissioner General, Kenya Revenue Authority
Times Tower, 30th Floor
Haile Sellasie Avenue
NAIROBI

E-MAILED
5/8/20 - 1:11 PM

Hon. Abdulswamad Shariff Nassir
Member for Mvita Constituency
Parliament Building
NAIROBI

E-MAILED
5/8/20 - 12:45 PM

Hon. Mohammed Ali
Member for Nyali Constituency
Parliament Building
NAIROBI

E-MAILED
5/8/20 - 12:45 PM

Ms. Carole Karuga
Chief Executive Officer
Kenya Private Sector Alliance (KEPSA)
5th Floor, Shelter Afrique Building
Mamlaka Road
NAIROBI

E-MAILED
5/8/20 - 1:23 PM

Mr. Amos Wangora
Chief Executive Officer
Kenya Trade Network Agency (KenTrade)
1st Floor Embankment Plaza
Longonot Rd, Upperhill Hill
NAIROBI

E-MAILED
5/8/20 - 1:23 PM

Mr. Dennis Ombok
Chief Executive Officer
Kenya Transporters Association
Amkay Plaza, Mezanine Floor
Off Fidel Odinga Road, Nyali
MOMBASA

E-MAILED
5/8/20 - 1:23 PM

Mr. Daniel Nzeki
Chief Executive Officer
CFS Operators Association of Kenya
MOMBASA

E-MAILED
5/8/20 - 1:23 PM

Dear Sir,

**RE: INQUIRY BY THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS
AND HOUSING INTO THE USE OF THE STANDARD GAUGE RAILWAY**

Reference is made to our letter Ref. NA/DCS/TPWH/CORR/2020/27 dated 3rd July, 2020 on the above subject matter.

Following Committee's resolution, it was agreed that a meeting be scheduled between the Committee and stakeholders to allow deliberation on submissions received so far on the inquiry.

This is therefore, to invite you to a meeting with the Committee to make your presentation on the inquiry as follows:-

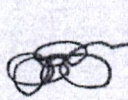
1. Monday 10th August 2020 at 10.00 am - meeting with MPs from the Coastal Region
2. Monday 10th August 2020 at 2.00 pm - meeting with private sector stakeholders
3. Tuesday 11th August 2020 at 10.00 am - meeting with Ministry & Government Agencies

The meetings will be held in the Mini-Chamber, 1st Floor, County Hall, Parliament Buildings.

The Liaison officers for these meetings are Ms. Chelagat Tungo Aaron, on Tel. No. 0720436528 or email addresses: ctungo@parliament.go.ke and Mr. Ahmed Salim Abdalla, who may be contacted on Tel. No. 0710204056 or email addresses: damnan@parliament.go.ke.

Yours *Sincerely,*

SERAH M. KIOKO
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - Mr. James Macharia, EGH **E-MAILED**
Cabinet Secretary 5/8/20 - 1:02 PM
Ministry of Transport, Infrastructure, Housing,
Urban Development & Public Works
 Transcom House - Ngong Road
NAIROBI

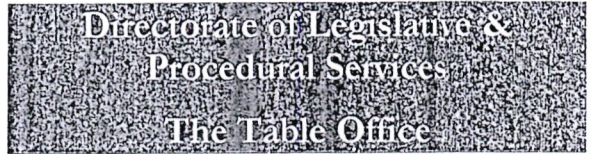
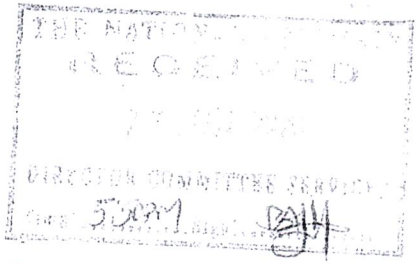
Hon. Ali Hassan Joho, EGH **E-MAILED**
Governor of Mombasa County 5/8/20 - 12:36 PM
Council of Governors
Delta Corner, 2nd Floor
Opp. PWC Chiromo Road, Off Waiyaki Way
NAIROBI

Hon. Amason Jeffah Kingi, EGH **E-MAILED**
Governor of Kilifi County 5/8/20 - 12:36 PM
Council of Governors
Delta Corner, 2nd Floor
Opp. PWC Chiromo Road, Off Waiyaki Way
NAIROBI

Hon. Salim Mvurya Mgala **E-MAILED**
Governor of Kwale County 5/8/20 - 12:36 PM
Council of Governors
Delta Corner, 2nd Floor
Opp. PWC Chiromo Road, Off Waiyaki Way
NAIROBI

**ANNEX III: STATEMENT BY HON
SHARRIF ABDILSWAMMAD M.P.**

531



MEMO

TO : DIRECTOR, COMMITTEE SERVICES (NA)

FROM : PRINCIPAL CLERK ASSISTANT II

DATE : JUNE 25, 2020

SUBJECT : STATEMENTS

The following Statements was requested in the House, today, **Tuesday, June 25th, 2020**: -

- 1) Statement regarding children being raped and killed in Soy Constituency by the Hon. Caleb Kositany, MP (Soy Constituency) *(referred to the Departmental Committee on Administration and National Security);* ✓
- 2) Statement regarding recruitment of the Chief Executive Officer at the Youth Enterprise Development Fund by the Hon. Joash Nyamache Nyamoko (North Mugirango Constituency) *(referred to the Departmental Committee on Labour and Social Welfare);* ✓
- 3) Statement on Compulsory Transportation of Cargo through the Standard Gauge Railways by the Hon. Abdulswamad Sherrif Nassir (Mvita Constituency) *(referred to the Departmental Committee on Transport, Public Works and Housing); and* ✓
- 4) Statement on continued harassment of Kenyans, particularly Fishermen in Lake Victoria by the Hon. (Dr.) Wilberforce Oundo, MP (Funyula Constituency) *(referred to the Departmental Committee on Defence and Foreign Relations).* ✓

Enclosed, please find the Statements for your necessary action.

Rachel Kairu

RACHEL KAIRU

Copy: Clerk of the National Assembly
 Deputy Clerks
 Director, Legislative & Procedural Services

1. CIAZEMBA
 2. TUNGA
 3. HABOUR
 4. VICTOR

Please process/decide
 FMA
 25/6/20

*Hon. Speaker
You may permit
the request.
25/6/20.*

REPUBLIC OF KENYA



Approved.

*BN
NA
25/6/2020*

TWELFTH PARLIAMENT (FOURTH SESSION)
REQUEST FOR STATEMENT
ON COMPULSORY TRANSPORTATION OF CARGO THROUGH
THE STANDARD GAUGE RAILWAY (SGR)

Honourable Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding compulsory transportation of cargo through the Standard Gauge Railway (SGR).

Honourable Speaker, on 2nd June 2020, I requested for a Statement regarding the Government's decision to make mandatory the transit of containers via SGR from Mombasa to Naivasha Inland Container Depot (NICD) for clearance. Subsequently, on Tuesday 16th June 2020, the Chairperson of the Departmental Committee on Transport, Public Works and Housing issued a response to the Statement which had significant variance with the actual situation on the ground. For instance, the response indicated that there was a directive from EAC Heads of States Summit of 12th May 2020 that all transit containers be railed from Mombasa to NICD ostensibly to curb the spread of Covid-19 and that Transport Ministers from the region were directed to implement the directive.

However, **Honourable Speaker**, information available indicates that Uganda is opposed to the mandatory use of SGR and maintains that it should be optional. Secondly, the cost of transporting cargo through SGR vis a vis that of road provided by the Cabinet Secretary for Transport is significantly at variance with those tabulated by industry players. Thirdly, the Cabinet Secretary's contention that SGR will reduce spread of Covid-19 is contradicted by one of the partner states. Fourthly, contrary to the Cabinet Secretary's assertion that the NICD is ready for use; a report prepared by technical officers from Uganda, Rwanda and South Sudan dated 22nd May 2020 paint a different picture. Fifthly, no authority has conducted an economic impact analysis of how the people of Mombasa and those living and working along the transport corridor used by truckers will be affected.

Honourable Speaker, it is on this backdrop that I wish to request you to direct the Departmental Committee on Transport, Public Works and Housing to undertake a comprehensive inquiry into the matter in order to:

- 1) establish reasons why the Cabinet Secretary for Transport made a pronouncement of the order in the absence of a Legal/ Gazette Notice; *and*
- ~~2) establish the actual causes of congestion at the Port of Mombasa and their corresponding mitigation measures, and~~
- 3) direct the halting and reversal of the cargo transportation order pending further consultation involving all stakeholders as well as the conclusion of an economic impact analysis of the arrangement.

I thank you, Honourable Speaker.

Hon. ABDULSWAMAD SHERIFF NASSIR, MP
CHAIRPERSON, PUBLIC INVESTMENT'S COMMITTEE

25/06/2020
RECEIVED
25/06/2020

ANNEX IV: MINUTES

MINUTES OF THE TWENTY SIXTH (26TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 6TH AUGUST 2020 AT 2.00 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING, IN NAIROBI

MEMBERS PRESENT

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. Ahmed Abdisalan Ibrahim, M.P.
3. Hon. Ahmed Bashane Gaal, M.P.
4. Hon. Ali Wario Guyo, M.P.

IN ATTENDANCE VIRTUALLY

5. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
6. Hon. Abdul Rahim Dawood, M.P.
7. Hon. David Njuguna Kiaraho, M.P.
8. Hon. Peris Pesi Tobiko, M.P.
9. Hon. Samuel Arama, M.P.
10. Hon. Omar Mwinyi Shimbwa, M.P.
11. Hon. Dominic Koskei, M.P.
12. Hon. Gideon Mulyungi, M.P.
13. Hon. Mercy Wanjiku Gakuya, M.P.
14. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Johnson Many Naicca, M.P.
2. Hon. George Aldwa Omwera, M.P.
3. Hon. Kulow Maalim Hassan, M.P.
4. Hon. Rehema Dida Jaldesa, M.P.
5. Hon. Shadrack John Mose, M.P.

SECRETARIAT

1. Mr. Ahmed Salim Abdalla - Clerk Assistant II
2. Ms. Mercy Wanyonyi - Legal Counsel
3. Ms. Zainab Wario - Sergeant-at-arm
4. Mr. Brian Ng'etich - Audio Officer

IN ATTENDANCE VIRTUALLY

5. Ms. Chelagat Tungo Aaron - Clerk Assistant I

MIN No. TPWH 141/2020:

PRELIMINARIES

The Chairman called the meeting to order at 2:07 pm followed by a word of prayer. Members confirmed the agenda of the meeting as deliberations on the use of the SGR in Kenya and consideration of the National Aviation Management Bill, 2020.

MIN No. TPWH 142/2020:

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

Confirmation of Minutes of the sitting held on Tuesday, 4th August 2020 was deferred to a later date.

MIN NO. TPWH 143/2020:

BRIEFING BY THE RESEARCH OFFICER ON THE INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY IN KENYA

The Research Officer took Members through the submissions received from stakeholders regarding the use of the Standard Gauge Railway. The Committee was informed that written submissions were so far received from the following:

1. Ministry of Transport, Infrastructure, Housing and Urban Development
2. Kenya Revenue Authority
3. Kenya Ports Authority
4. Kenya Trade Network Agency (KenTrade)
5. Kenya Transporters Association
6. Shippers Council of Eastern Africa
7. Container Freight Stations Association of Kenya

The Committee noted that:

1. There were diverse and good recommendations proposed by the different stakeholders regarding the use of the SGR.
2. It was important to promote both the use of the SGR and the use of road transport.
3. Sittings have been scheduled for 10th and 11th days of August 2020 where the Committee will meet the stakeholders to seek further clarifications.

MIN NO. TPWH 144/2020:

BRIEFING BY THE LEGAL COUNSEL ON THE NATIONAL AVIATION MANAGEMENT BILL, 2020

The Legal Counsel took Members through the submissions received from stakeholders regarding the National Aviation Management Bill, 2020. The Committee was informed that written submissions were so far received from the following:

1. Kenya Airways
2. Kenya Airports Authority
3. Kenya Civil Aviation Authority
4. KALPA
5. Mr. Walter Mocha Ongeru
6. State Department of Interior and Citizen Services

The Committee noted that on 13th August 2020, the Committee will meet the Ministry to seek further clarifications on the Bill, in light of what the stakeholders have submitted. Noting that Committee meetings are now mainly online, Members were urged to thoroughly go through the submissions which are shared by the Secretariat through online platforms.

MIN No. TPWH 145/2020:

ADJOURNMENT

There being no other business to transact, the sitting adjourned at twenty-eight minutes past three o'clock. Next sitting to be held on notice.

Signed...



(Chairperson)

Date...

.....18/09/2020.....

MINUTES OF THE TWENTY SEVENTH (27TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 10TH AUGUST 2020 AT 10.00 A.M. IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS, NAIROBI

MEMBERS PRESENT

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
3. Hon. Peris Pesi Tobiko, M.P.
4. Hon. Samuel Arama, M.P.
5. Hon. Ali Wario Guyo, M.P.
6. Hon. Dominic Koskei, M.P.
7. Hon. Rehema Dida Jaldesa, M.P.
8. Hon. Shadrack John Mose, M.P.
9. Hon. Tom Mboya Odege, M.P.

IN ATTENDANCE VIRTUALLY

10. Hon. Abdul Rahim Dawood, M.P.
11. Hon. David Njuguna Kiaraho, M.P.
12. Hon. Johnson Many Naicca, M.P.
13. Hon. Omar Mwinyi Shimbwa, M.P.
14. Hon. Ahmed Bashane Gaal, M.P.
15. Hon. Gideon Mulyungi, M.P.
16. Hon. Mercy Wanjiku Gakuya, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Ahmed Abdisalan Ibrahim, M.P.
2. Hon. George Aldwa Omwera, M.P.
3. Hon. Kulow Maalim Hassan, M.P.

MEMBERS FROM THE COAST REGION PRESENT

1. Hon. Abdulswamad S. Nassir - Member for Mvita
2. Hon. Mohamed Ali Mohamed - Member for Nyali
3. Hon. Kassim Sawa Tandaza - Member for Matuga
4. Hon. Zuleikha Juma Hassan - Member for Kwale County

SECRETARIAT

1. Mr. Ahmed Salim Abdalla - Clerk Assistant II
2. Mr. Abdinasir Moge - Fiscal Analyst
3. Ms. Zainab Wario - Sergeant-at-arm
4. Ms. Winnie C. Kulei - Research Officer
5. Ms. Noelle Chelagat - Media Relations Officer
6. Mr. Brian Ng'etich - Audio Officer

IN ATTENDANCE VIRTUALLY

7. Ms. Chelagat Tungo Aaron - Clerk Assistant I
8. Ms. Mercy Wanyonyi - Legal Counsel

MIN No. TPWH 146/2020: **PRELIMINARIES**

The Chairman called the meeting to order at 10:15 am followed by a word of prayer. Members confirmed the agenda of the meeting as meeting the Members of Parliament from the Coast Region to seek their views on the use of the Standard Gauge Railways.

MIN No. TPWH 147/2020: **CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING**

Confirmation of Minutes of the sitting held on Thursday, 6th August 2020 was deferred to a later date.

MIN NO. TPWH 148/2020: **MEETING MEMBERS OF PARLIAMENT FROM THE COAST REGION**

The Members of Parliament from the Coast Region appeared before the Committee and presented their views on the SGR issue. They noted that the government directive to transport cargo via SGR to the ICDs has had a negative impact to the economy and the people of Coast Region. They submitted that it has killed the small businesses that depend on trucks and will eventually kill the Container Freight Stations (CFS) in Mombasa thus directly killing business. They submitted that this has led to massive job loss in the region.

The Honorable Members from Coast noted that transporting cargo using SGR is expensive due to the delays in delivery of cargo and the empty containers and the cost associated with the last mile connectivity. The Coastal leadership further reiterated that they support the SGR project but not at the expense of the economy of the region.

Some of the recommendations proposed by the coastal leadership include:

1. Allow private business people to have wagons similar to the air transport. This will make the use of SGR more competitive.
2. The largest landlord in Kenya is the Kenya Railways. The Kenya railways could consider converting all the land for purposes of going to the Railway Development Levy Fund.
3. The Government to issue a directive requiring all bulk and dirty cargo to be transported by use of SGR.
4. The take or pay agreement by the Kenya Railways and the Kenya Ports Authority should be revisited.
5. The Railway Development Levy Fund to be reviewed after every 2-3 years.
6. The business community should not be forced to use the SGR but rather be allowed to choose the mode of transport that they would prefer to transport their cargo to their destination.
7. The Cabinet Secretary Ministry of Transport to come up with a plan of improving the ports.
8. A social impact assessment should have been done and mitigation measures put in place before operationalization of the SGR and before implementing the impugned directives by the government to avoid massive job losses in the region.
9. The government should move to ensure that the Dongo Kundu Special Economic Zone is fast-tracked to mitigate the impact of the directive to the truck drivers, mechanics and others.

MINUTES OF THE TWENTY EIGHTH (28TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON MONDAY, 10TH AUGUST 2020 AT 2.00 P.M. IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS, NAIROBI

MEMBERS PRESENT

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
3. Hon. David Njuguna Kiaraho, M.P.
4. Hon. Ali Wario Guyo, M.P.
5. Hon. Dominic Koskei, M.P.
6. Hon. Mercy Wanjiku Gakuya, M.P.
7. Hon. Tom Mboya Odege, M.P.

IN ATTENDANCE VIRTUALLY

8. Hon. Abdul Rahim Dawood, M.P.
9. Hon. Johnson Many Naicca, M.P.
10. Hon. Omar Mwinyi Shimbwa, M.P.
11. Hon. Samuel Arama, M.P.
12. Hon. Ahmed Bashane Gaal, M.P.
13. Hon. Rehema Dida Jaldesa, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Peris Pesi Tobiko, M.P.
2. Hon. Ahmed Abdisalan Ibrahim, M.P.
3. Hon. George Aldwa Omwera, M.P.
4. Hon. Gideon Mulyungi, M.P.
5. Hon. Kulow Maalim Hassan, M.P.
6. Hon. Shadrack John Mose, M.P.

SECRETARIAT

1. Mr. Ahmed Salim Abdalla - Clerk Assistant II
2. Ms. Zainab Wario - Sergeant-at-arm
3. Mr. Abdinasir Moge - Fiscal Analyst
4. Ms. Winnie C. Kulei - Research Officer
5. Ms. Noelle Chelagat - Media Relations Officer
6. Mr. Brian Ng'etich - Audio Officer

IN ATTENDANCE VIRTUALLY

7. Ms. Chelagat Tungo Aaron - Clerk Assistant I
8. Ms. Mercy Wanyonyi - Legal Counsel

IN ATTENDANCE

1. Hon. Abdulswamad S. Nassir - Member for Mvita / Chairperson, PIC
2. Hon. Said Buya Hiribae - Chairperson, Coast Parliamentary Group
3. Mr. Auni Bhajji - Chairperson, KEPSA
4. Mr. Peter Thairu - Public Private Dialogue Assistant, KEPSA

- | | | |
|------------------------------|---|---|
| 5. Mr. Agayo Ogambi | - | H.O.D. - Shippers Council of E.A. |
| 6. Mr. Philip Arunga | - | Member, Shippers Council of E.A. |
| 7. Mr. David Abiero | - | CEO, KTA |
| 8. Ms. Mercy Ireri | - | Chief Operations Officer, KTA |
| 9. Mr. Michael Musembi John | - | HAKI Africa |
| 10. Ms. Halima Abdalla | - | Fast Action Movement Member |
| 11. Mr. Mohammed Sharif | - | Fast Action Movement Member |
| 12. Mr. Abdullahi Yusuf | - | Fast Action Movement Member |
| 13. Mr. Francis Almond Odero | - | Fast Action Movement Member |
| 14. Ms. Harriet Muganda | - | Fast Action Movement Member & HAKI Africa |
| 15. Mr. Faisal Abass | - | Chairman, CFS Association, Kenya |
| 16. Mr. Daniel Nzieki | - | CEO, CFS Association, Kenya |
| 17. Mr. James Raria | - | Immediate Past Chairman, CFS Association, Kenya |

MIN No. TPWH 150/2020: **PRELIMINARIES**

The Chairman called the meeting to order at 2:10 pm followed by a word of prayer. Members confirmed the agenda of the meeting as meeting private stakeholders to receive their views on the use of the Standard Gauge Railway.

MIN No. TPWH 151/2020: **CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING**

Confirmation of Minutes of the sitting held on Monday, 10th August 2020 was deferred to a later date.

MIN NO. TPWH 152/2020: **MEETING THE PRIVATE SECTOR STAKEHOLDERS TO RECEIVE THEIR VIEWS DURING THE INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY**

The Committee met with various stakeholders and they presented their views to the committee. Some of the stakeholders represented were from the Kenya Private Sector Alliance (KEPSA), the CFS Association of Kenya, the Kenya Transporters Association (KTA), Shippers Council of Eastern Africa and the Fast Action Movement/Haki Africa Organization.

Kenya Private Sector Alliance (KEPSA)

The Kenya Private Sector alliance noted that they are being forced to use the SGR to transport cargo. They further noted that the cost of transporting Cargo has gone up by 10-15% making the cost of doing business up.

They proposed the following:

1. The cargo owners to be allowed to choose the mode of transport they prefer to transport their cargo and the points of clearance of cargo;
2. Kenya Ports Authority to revoke the contract they have on verification with private sectors;
3. The Government should conduct a stakeholder engagement to get their views; and
4. The SGR should make their tariffs competitive to attract more clients.

CFSA

The CFSA gave their way forward as follows:

1. Free trade and practice to be allowed for the importers to choose the clearing agents and the mode of transport.
2. Cargo can be cleared in Mombasa by the CFS and returned to the loading bay to be transported to Nairobi via SGR.
3. Allow the CFS and the clearing and forwarding agents market the SGR services.
4. The KRC to lift the restrictions put.
5. SGR to offer competitive tariffs to attract more business.
6. The Nairobi ICDs does not have sufficient infrastructure therefore the KRC should invest to make it more attractive.
7. The Government should conduct a stakeholder engagement to get the views of the stakeholders.
8. Government to provide facilities at the ICDs to accommodate the CFS.

Kenya Transporters Association (KTA)

The Kenya Transporters Association gave their suggestions as follows:

1. The importers to be allowed to make their choice between transporting the Cargo with the SGR or road transport.
2. The Government to consider subsidizing the rates charged example the RDLF and other taxes to make transporting via SGR more efficient and affordable.
3. The directive imposed by the government requiring all cargo to be transported via SGR be lifted.
4. The Kenya Railways to consider introducing last mile connectivity for the importers; and
5. The Government to invest in infrastructure development at the ICDs to encourage importers consider using the ICDs.

Shippers Council of Eastern Africa

The Council informed the committee that according to the data available there is enough cargo for both the Rail Transport and Road transport. Therefore it is important to have an environment that would encourage both to strive.

They noted that the road transport is preferred vis-à-vis because of the door to door services offered, last mile connectivity and its predictability.

The council suggested as follows:

1. The KPA should address the issues of last mile connectivity by engaging the transporters association to offer the service at a competitive rate.
2. The Kenya Railways to market its services to the cargo owners and the stakeholders to attract more business.
3. The KRC should package itself and regulate cargo in terms of weight.
4. The KRC can consider selling of wagons to the Transporters which they would be willing to invest.
5. The KRC and SGR to offer competitive tariffs in order to attract more clients;
6. Reduction of the RDLF to be considered; and
7. The importers and cargo owners should be at liberty to choose the mode of transport for their cargo.

Fast Action Movement / HAKI Africa

The representative noted that the directive requiring all cargo to be transported from Mombasa by rail has had a negative impact to Mombasa. It has led to job losses especially by the youths in Mombasa and businesses affected leading to economic crisis.

They further noted that the main issue is choice and hence requested the government to allow the importers and cargo owners select the mode of transport they would prefer.

MIN No. TPWH 153/2020: **ADJOURNMENT**

There being no other business to transact, the sitting adjourned at twenty-seven minutes past five o'clock. Next sitting to be held on 11th August, 2020, at 2:00pm.

Signed... 
.....

(Chairperson)

Date... 18/09/2020.....

MINUTES OF THE TWENTY NINTH (29TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 11TH AUGUST 2020 AT 2.00 P.M. IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS, NAIROBI

MEMBERS PRESENT

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
3. Hon. Johnson Many Naicca, M.P.
4. Hon. Omar Mwinyi Shimbwa, M.P.
5. Hon. Samuel Arama, M.P.
6. Hon. Ali Wario Guyo, M.P.
7. Hon. Dominic Koskei, M.P.
8. Hon. Shadrack John Mose, M.P.
9. Hon. Tom Mboya Odege, M.P.

IN ATTENDANCE VIRTUALLY

10. Hon. Abdul Rahim Dawood, M.P.
11. Hon. David Njuguna Kiaraho, M.P.
12. Hon. Ahmed Abdisalan Ibrahim, M.P.
13. Hon. Ahmed Bashane Gaal, M.P.
14. Hon. Gideon Mulyungi, M.P.
15. Hon. Mercy Wanjiku Gakuya, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Peris Pesi Tobiko, M.P.
2. Hon. George Aldwa Omwera, M.P.
3. Hon. Kulow Maalim Hassan, M.P.
4. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Mr. Ahmed Salim Abdalla - Clerk Assistant II
2. Ms. Zainab Wario - Sergeant-at-arm
3. Mr. Abdinasir Moge - Fiscal Analyst
4. Ms. Winnie C. Kulei - Research Officer
5. Ms. Noelle Chelagat - Media Relations Officer
6. Mr. Brian Ng'etich - Audio Officer

IN ATTENDANCE VIRTUALLY

7. Ms. Chelagat Tungo Aaron - Clerk Assistant I
8. Ms. Mercy Wanyonyi - Legal Counsel

IN ATTENDANCE

1. Mr. James Macharia, EGH - CS, Ministry of Transport
2. Mr. Solomon Kitungu - PS, State Department for Transport
3. Dr. Margaret W. Mwakima - PS, S. D. for Regional & Northern Corridor Devpt.
4. Hon. Abdulswamad S. Nassir - Member for Mvita / Chairperson, PIC

- | | | |
|--------------------------------|---|---|
| 5. Hon. Said Buya Hiribae | - | Chairperson, Coast Parliamentary Group |
| 6. Hon. Zuleikha Juma Hassan | - | Member for Kwale County |
| 7. Mr. Githii Mburu | - | Commissioner General, KRA |
| 8. Mr. Philip J. Maingih | - | Managing Director, Kenya Railways |
| 9. Eng. Rashid Salim | - | Acting Managing Director, Kenya Ports Authority |
| 10. Capt. W. Ruto | - | GM, Operations, KPA |
| 11. Mr. Emilio Mugo | - | Secretary, Regional Development |
| 12. Mr. Kipng'etich Arap Korir | - | National Coordinator, Northern Corridor I. Projects |
| 13. Mr. Stephen Kyandih | - | Legal Officer, KPA |
| 14. Mr. James K. Siele | - | Team Leader Operations, Kenya Railways |
| 15. Mr. David Ngarama | - | Ag. Director, Strategy |
| 16. Ms. Rose Ronoh | - | Director, Trade Facilitation, KENTRADE |

MIN No. TPWH 154/2020: PRELIMINARIES

The Chairman called the meeting to order at 2:12 pm followed by a word of prayer. Members confirmed the agenda of the meeting as meeting the Ministry and Government Agencies to receive their views on the use of the Standard Gauge Railway.

MIN No. TPWH 155/2020: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

Confirmation of Minutes of the sitting held on Monday, 10th August 2020 was deferred to a later date.

MIN NO. TPWH 156/2020: MEETING THE MINISTRY AND GOVERNMENT AGENCIES TO RECEIVE THEIR VIEWS DURING THE INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY

Regarding the inquiry into the use of the SGR and on the issues of making the SGR competitive and attractive to the users, the ministries as follows:

Ministry of Transport

The ministry informed the committee that they were confident that the SGR was offering a competitive rate vis-a-vis the road transportation. They submitted that for instance, they give volume based discounts of 5-20% to the clients to attract more people to use SGR.

The Cabinet Secretary explained that the Naivasha ICD was developed to serve the regional partners and the government is in negotiation with the partner states to look into the issue of Tariffs.

The Ministry explained that it was looking on how to offer a comprehensive package from Mombasa to Nairobi and have a last mile connectivity.

The ministry has invested in the rehabilitation of the Meter Gauge Railway from Naivasha to Longonot and to Malaba. This is aimed at making SGR efficient and offering last mile connectivity.

They further acknowledged that it was important to engage the stakeholders to understand the issues being raised and address them.

Commissioner General

The commissioner noted that the uptake of SGR will be guided by stakeholder engagement to ensure that the stakeholders find value in using SGR. He further noted that SGR has benefits that should be explored example monitoring of cargo and hence tampering avoided and reduction in transit diversion.

Ministry of the East African Community

The Principal Secretary in the State Department for Regional & Northern Corridor Development noted that the use of SGR in transportation of cargo was competitive but the main issue currently was that the truck owners were charging more for the last mile connectivity hence making transportation by SGR costly.

She submitted that the last mile connectivity from the ICDs to be addressed by implementing the East Africa master plan in the long run but in the short term the ministry of transport to implement the use of MGR to offer last mile connectivity.

The Principal Secretary in the State Department for Regional & Northern Corridor Development further noted that the Naivasha ICD should be developed.

The specific issues raised by the Committee, the government Ministries and Agencies responded on the following points as follows:

1. Competitive Tariffs:

The cost of transporting cargo via SGR from Mombasa to Nairobi currently is 500usd for a 20ft and 700usd for 40ft. Trucks charge between 80-90usd. The last mile depends on the compound rates of between twenty to twenty-five thousand shillings. The SGR returns the empty containers on the commitment of the customer at a charge of 100usd.

Members suggested a review of the charges charged by SGR and the offering of the last mile connectivity by pre-qualifying the truck transporters and offering a comprehensive package.

The Kenya Railways agreed to work on a comprehensive package for the clients using SGR to transport cargo to destination and return the empty containers.

2. Railway Development Levy:

The members suggested to the ministry to reduce the RDL by 0.5% as an incentive for using SGR.

The ministry of Transport was of the opinion that this may not be practicable since the fund already had a purpose set for. However the ministry would consult more on it.

3. Sale of slots to clients:

The ministry noted that the KR through the SGR can enter into a contractual arrangement. This can be developed further by the ministry.

4. SGR to transport bulk and Dirty Cargo:

The ministry stated that its open to the idea and it could be promoted with the private sector.

5. All government cargo to be transported by SGR:

The ministry noted that this was an idea to be explored.

6. Container Freight Stations (CFS)

MINUTES OF THE THIRTY SEVENTH (37TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 15TH SEPTEMBER 2020 AT 2.00 P.M. IN COMMITTEE ROOM ON SECOND FLOOR, CONTINENTAL BUILDING, PARLIAMENT

MEMBERS PRESENT

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
3. Hon. Johnson Many Naicca, M.P.
4. Hon. Samuel Arama, M.P.
5. Hon. Ahmed Abdisalan Ibrahim, M.P.
6. Hon. Ahmed Bashane Gaal, M.P.
7. Hon. Dominic Koskei, M.P.
8. Hon. Shadrack John Mose, M.P.
9. Hon. Tom Mboya Odege, M.P.
10. Hon. Ali Wario Guyo, M.P.
11. Hon. David Njuguna Kiaraho, M.P.

IN ATTENDANCE VIRTUALLY

12. Hon. Abdul Rahim Dawood, M.P.
13. Hon. Rehema Dida Jaldesa, M.P.
14. Hon. Gideon Mulyungi, M.P.
15. Hon. Kulow Maalim Hassan, M.P.
16. Hon. George Aldwa Omwera, M.P.
17. Hon. Mercy Wanjiku Gakuya, M.P.

MEMBERS ABSENT WITH APOLOGY

18. Hon. Omar Mwinyi Shimbwa, M.P.
19. Hon. Peris Pesi Tobiko, M.P.

SECRETARIAT

1. Ms. Chelagat Tungo - Clerk Assistant I
2. Ms. Sylvia Ocharo - Research Officer
3. Mr. Moses Ndegwa - Sergeant-at-Arms
4. Mr. Brian Ng'etich - Audio Officer

IN ATTENDANCE VIRTUALLY

1. Ms. Winnie Kulei - Research Officer
2. Ms. Noelle Chelang'at - Media Relations Officer

MIN No. TPWH 192/2020:

PRELIMINARIES

The Chairman called the meeting to order at twenty minutes past two o'clock. The agenda of the meeting was adopted after having been proposed by Hon. Samuel Arama, M.P. and seconded by Hon. Tom Odege, M.P.

The Chairman informed the Members that following the Hon. Speaker's directives, the Committee had been granted additional time to reconsider the National Aviation Management

Bill. An advert requesting for submission of memoranda from the stakeholders and members of the public had been placed on the newspapers on **Monday 14th September, 2020** and deadline for submission was set for **Monday 21st September, 2020**.

The Committee resolved to hold an in-house meeting on **Wednesday 23rd September, 2020** at **2.30 p.m.** to consider the additional memoranda received on the Aviation Bill, from the Public before scheduling meetings with stakeholders.

MIN No. TPWH 193/2020: **CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING**

Confirmation of the minutes of the previous sittings were deferred to the next meeting.

MIN No. TPWH 194/2020: **CONSIDERATION OF THE COMMITTEE REPORT ON THE INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY**

The Committee went through the draft report and made a few changes to the Observation and Recommendation Sections as follows;

OBSERVATIONS

1. The Standard Gauge Railway (SGR) project is one of Kenya's Vision 2030 flagship projects. The use of SGR was meant to increase cargo throughput for the Port of Mombasa through enhanced efficiency in evacuation of cargo and container handling.
2. The Ministry of Transport, Public Works, Urban Development and Housing in its submission stated that the main reason for issuing the directive on transit cargo was to contain the spread of covid-19. However, the ministry indicated that it had consulted and satisfied itself that the directive does not contravene Competition law.
3. That for the SGR service to remain the choice for Shippers, it's important to ensure that efficiency, predictability and costs remain the focus of service delivery. Government should allow the multimodal transport concept to thrive while providing enabling environment for competitive yet efficient services. The Government must develop Measures that create a symbiotic multimodal transport system for sustainable economic growth. A competitive rail road complimentary system with supporting inland handling capabilities should be encouraged.
4. Marketing and Promotion to clients on the use of the SGR and the Inland Container Depots should be enhanced. The ICDs are fully dependent on rail services for transportation of cargo to and from the Port of Mombasa thus Kenya Railways (KR) and Kenya Ports

Authority (KPA) must involve shippers to get their buy in to use the Rail freight and the ICDN services competitively.

5. Transporters must be enticed to provide reliable and competitive last mile connectivity. Forcing railage goes against competition act and spirit of the liberalized Market economy. Kenya practices an open free market driven economy and hence the Government must not be seen to break the law.
6. The Kenya Railways Corporation and the SGR Freight Service operator must view themselves as organizations providing transport services like any other transport company. Therefore, they must be ready and able to offer competitive services just like any other transporters in the market.
7. Forced railage is against the International Maritime Laws and World Trade Organization Treaties that allow cargo owners to choose the mode of transport that is competitive in their view. The forced railage has not only increased the cost of doing business because of the high cost of transporting cargo but has also threatened Kenya's position as the regional logistics hub.
8. Freight is payable by Kenya Ports Authority (KPA) customers (shippers) and KPA has no legal power to compel its customers to use the railway services that will be provided by Kenya Railway Corporation (KRC). Customers may wish to use other means of transport.
9. Stakeholders lauded SGR for some positive impacts on Socio-economic welfare that include: Increased throughput; Service closer to customers; Decongesting Mombasa city; increased safety and security of transit cargo; tourism promotion; and environmental protection. On the other hand, negative impacts include: Road truckers collective redundancies; Closure of trucking businesses; impact on warehousing business; Contraction of roadside businesses that have seen many towns mushrooming along the northern transport corridor; relocation or closure of Container Freight Stations; Job Losses (Loaders, Drivers, Mechanics, Shop/Hotel attendants); Increase in crime rate and social ills; and drop in Mombasa County revenue among others.

RECOMMENDATIONS

1. **That;** Importers should have freedom of choice on the mode of transport to haul their goods from the port to the final destination without restrictions from any government agency;

2. **That;** measures should be put in place for the full utilization of Kenya Railway assets where income accrued from all idle KRC land and assets should be channeled to the Railway Development Fund to assist in raising revenue for payment of the SGR loan;
3. **That;** as a revenue raising measure, the Government should consider adjustments to the Railway Development Levy (RDL) to incentivize use of the SGR. Importers who choose to haul their goods using the SGR can pay a preferential RDL of 1.5% of the value of goods. Conversely, importers who choose to use road transport will attract an additional surcharge of 0.3% of the value of goods imported (up to a maximum of \$ 138). The rate of surcharge can be subject to review by the relevant stakeholders including (but not limited to) the CS Transport, Importers, CFS, Transporters, Kenya National Chamber of Commerce;
4. **That;** to encourage use of the SGR, increase competitiveness in the sector and promote stopover economy along the railway line, the Government should set up an open, non-discriminatory policy that allows private investors to provide rail transport services through private trains and locomotives. This will be in line with international; practice as is the case in the UK and more recently, India where private companies have license to provide rail services;
5. **That;** for purposes of last-mile connectivity, the Government should allow private investors to extend the railway line to their respective yards at their own cost;
6. **That;** On Clearance of Cargo importers should have the freedom to nominate a licensed Container Freight Service (CFS) company of their choice to clear their goods;
7. **That;** the Government should initiate the process of renegotiating the loan terms of the SGR with the lender due to the prevailing economic distress occasioned by the global pandemic that has affected the World's economic growth; and
8. **That;** Renegotiation on the current Operation Agreement by reducing the operation costs by at least 50% be initiated by the Government.


MIN No. TPWH 195/2020:

**ADOPTION OF THE REPORT ON ON THE
INQUIRY INTO THE USE OF THE STANDARD
GUAGE RAILWAY**

The report on the inquiry into the use of Standard Gauge Railway was adopted by the Committee, having been proposed and seconded by Hon. Johnson Naicca M.P. and Hon. David Kiaraho, M.P. respectively.

MIN No. TPWH 196/2020: ADJOURNMENT

There being no other business, the sitting was adjourned at half four in the afternoon. The next meeting to be held on Wednesday 23rd September, 2020 at 2: 00 p.m

Signed..... 

(Chairperson)

Date..... 18/9/2020

**MEMORANDA FROM THE OFFICE OF
THE CABINET SECRETARY**

947



**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,
URBAN DEVELOPMENT AND PUBLIC WORKS**
Office of the Cabinet Secretary

Telephone: (020) 2722216
Fax: (020) 2730330
Email: cs@transport.go.ke
Website: www.transport.go.ke

Transcom Building
8th floor
Ngong road
P.O. Box 52592 - 00200
Nairobi

DLGP/Daniels

2/7/20 **2nd July 2020**

REF: MOT&I/C/ADM/034/7/1 VOL.XIII(8)

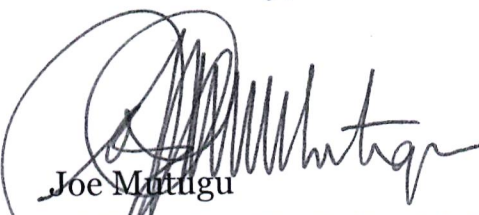
The Clerk to the National Assembly
Parliament Buildings
NAIROBI

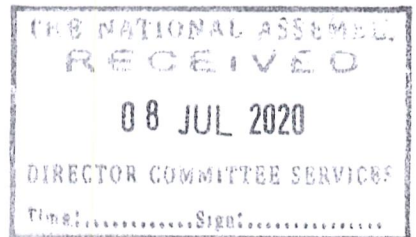
**STATEMENT ON THE TRANSPORTATION OF CARGO USING THE
STANDARD GAUGE RAILWAY**

Enclosed herewith please find attached 15 copies of the requested Statement from the Cabinet Secretary.

Yours sincerely,

~~DLGP~~ Daniels


Joe Mutitu
SPECIAL ADVISOR TO THE CABINET SECRETARY



Encl.

*(2) TUNGO
Please deal
FAA
08/7/20*





**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS**

**STATEMENT ON THE TRANSPORTATION OF CARGO ON THE
STANDARD GAUGE RAILWAY**

Mombasa – Nairobi SGR Cargo Service

In August 2019, an Order was issued jointly by the Managing Director of Kenya Ports Authority (KPA), and the Commissioner General (C.G.) of Kenya Revenue Authority (KRA), mandating the use of the SGR to transport all import cargo destined to Nairobi and beyond.

Subsequent to this, I issued an Order suspending the above Order by the KPA M.D. and C.G., KRA. The said Order by the KPA M.D. and C.G. KRA remains suspended.

Mombasa – Naivasha SGR Cargo Service

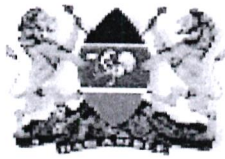
In May 2020, I issued a Directive on Transit Cargo that mandated the use of the SGR to transport transit cargo from Mombasa to Naivasha. The primary reason for this Directive was to contain the spread of Covid-19, and it was the result of consultations between the East African Heads of State, and follow up meetings by the Ministers responsible for Transport from these countries.

Various stakeholders, including our regional partner states, have requested for additional infrastructural investments at the Naivasha ICD and we are making these investments. These additional investments include an expanded marshalling yard, whose work has started and will be completed by 15th July 2020. Meanwhile, we continue to hold consultations with all stakeholders and the use of the Mombasa – Naivasha SGR cargo service remains optional.

**James W. Macharia, EGH.
CABINET SECRETARY**

Date:..... 2/7/2020

**SUBMISSION BY THE STATE
DEPARTMENT FOR TRANSPORT**



① D LCA/Hes
8
30/07/20

MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,
URBAN DEVELOPMENT & PUBLIC WORKS
STATE DEPARTMENT OF TRANSPORT
Office of the Principal Secretary

Telephone: (020) 2729200
Fax. (020) 2726362
Email: ps@transport.go.ke
Website: www.transport.go.ke

② TUNGO
Please deaf
FAA
03/8/20

TRANSCOM BUILDING
NGONG ROAD
P.O. Box 52592 - 00100
NAIROBI

REF: MOT & I/C/ADM/034/7/1 VOL.XIII

15th July 2020

The Clerk National Assembly
Parliament Building
NAIROBI

(Attn: Ms. Serah M. Kioko)

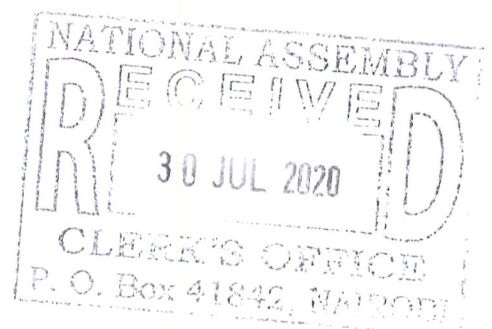
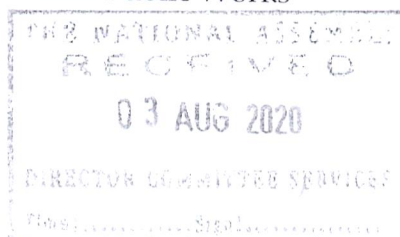
RE: DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY

We refer to letter No.NA/DCS/TPWH/CORR/2020/(027) dated 3rd July 2020 on the above.

Our submission is forwarded herewith.

Solomon Kitungu
PRINCIPAL SECRETARY

Copy to: Mr. James Macharia, EGH
Cabinet Secretary
Ministry of Transport, Infrastructure, Housing,
Urban Development and Public Works
NAIROBI





**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,
URBAN DEVELOPMENT AND PUBLIC WORKS
STATE DEPARTMENT FOR TRANSPORT**

**SUBMISSION TO THE DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING ON EQUITY INTO
THE USE OF THE STANDARD GAUGE RAILWAY**

1. Legality of the past directive on cargo transportation by SGR

The primary reason for issuing the directive on Transit Cargo was to contain the spread of Covid-19. This directive was the result of consultations held by Heads of States, H.E. Paul Kagame, the President of the Republic of Rwanda; H.E. Uhuru Kenyatta, the President of the Republic of Kenya; H.E. Yoweri Kaguta Museveni, the President of the Republic of Uganda and H.E. Salvar Maryardit Kiir, the President of the Republic of South Sudan during their Consultative meeting of the East African Community held by Video Conference on 12th May 2020, and the subsequent consultations among the Partner State Ministers in charge of Transport. The purpose of these consultations was to agree on strategies of stemming the spread of the Covid-19 pandemic in the East Africa Region, whilst at the same time facilitating the smooth flow of people and commerce.

The directive was issued by the Cabinet Secretary as the Cabinet Secretary responsible for Transport, to implement the agreed initiative to compact spreading of COVID-19. Issue has been raised whether this contravenes the competition law. We consulted and satisfied ourselves it does not.

2. Social Economic Impact of Cargo transport by SGR

The Government undertook an environmental and social impact assessment study for both the Mombasa – Nairobi and Nairobi-Naivasha Standard Gauge Railway (SGR) Projects. Disruption and change of local livelihood/outward migration was considered a major negative impact for people directly or indirectly depending on long distance trucks (drivers,

mechanics, turn boys, truck owners, other related/supportive businesses, business owners etc). Negative impact such as reduced revenue for track owners and mechanics, changing of routes or migrating to other areas, selling trucks to finance shift to other business, etc were highlighted.

These were considered against positive social impact such as:-

- (i) Emergence of new towns and urban development;
- (ii) Growth of business and market centres;
- (iii) Reduced road accidents;
- (iv) Reduction in freight haulage and transportation time;
- (v) Reduced pollution along the highway;
- (vi) Fire risk reduction along the highway;
- (vii) Reduction of littering along the highway;
- (viii) Improved tourism opportunities;
- (ix) Increase in property value;
- (x) Economic growth;
- (xi) Reduction of road maintenance costs;
- (xii) Reduction in HIV/AIDS infection incidence;
- (xiii) Revitalization of the Agricultural production in rural areas; and
- (xiv) Rapid industrialization and related job creation.

Taking into account these positive environmental and social benefits, the reports conclusion and recommendations were as follows:-

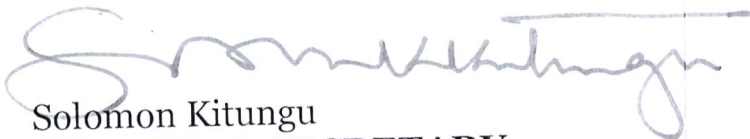
- The project was one of Kenya's Vision 2030 flagship projects which was to contribute significantly to the different sectors in all pillars either directly or indirectly.
- The SGR construction and operation would contribute positively in enhancing the transport system in the country and the East African Region at large and thus help propel Kenya to a middle-income country as envisioned in vision 2030.
- The project would influence all the vision 2030 pillars directly and indirectly and induce economic benefits. SGR was expected to add up to 1.5 per cent to GDP by influencing the Vision 2030 pillars directly or indirectly.
- The project was compliant with Kenya National Transport Policy – Moving a working nation (2009) whose vision for the railway sector is to provide efficient, reliable, safe and secure railway transport services that are integrated with national and regional railway, road, water, pipeline and air transport services for the transportation of goods and passengers on a sustainable and competitive basis and in line with the East African Railways Master plan (2009) whose goal is

to rejuvenate existing railways serving Tanzania, Kenya, Uganda and extending them initially to Rwanda and Burudi and eventually to South Sudan, Ethiopia and beyond.

- The SGR project would significantly reduce congestion and enhance the volumes that will be handled at the port of Mombasa thus spurring intra-country and regional trade. Upon completion cargo handling capacity at Mombasa port which was about 25 million tonnes per year would almost double to 44 million tonnes per year in 2025; 55.6 million tonnes per year in 2030; and 67.46 million tonnes per year in 2040. This would help in securing the port as a preferred facility in the region. It would also reduce road congestion, number of accidents and maintenance cost in the Northern Transport Corridor.
- The SGR would generate employment opportunities for both skilled and semi-skilled workers resulting directly from the construction and maintenance of the SGR-Line and from transport of passengers and freight. The operation phase of the SGR will enhance the transport system in the country which will also ease freight haulage on Kenyan roads. This will make transportation of people, goods and services cheaper, more efficient and safer. Projections indicated that transport costs would be reduced by up to 40%. This would in turn spur industrial growth through establishment of new industries to serve the railway.
- The project implementation would promote regional economic and trade development, support the national economic development in Kenya, and facilitate the regional economy to better and faster development along the line.
- The project was feasible as regards social economic evaluation, financial evaluation and environmental assessment and had stable economic benefits and strong anti-risk capacity. The study of alternative planning showed the project was indispensable and that it needed to be implemented as soon as possible.
- That given the magnitude and complexity of the project, a comprehensive environmental management plan had been developed which also outlined mitigation measures.
- The project as recommended was approved by NEMA because of its enormous contribution to achievement of Kenya Vision 2030 goals.

3. Whether Government could explore ways and means of ensuring that the transporters/stakeholders use the SGR willingly.

The transporters are currently distorting the cost of transporting cargo from Naivasha to Kampala by charging more for that distance compared to what is charged for goods collected from Mombasa or Nairobi for same distance. Other stakeholders will use Naivasha ICD willingly once this distortion is addressed. If the transporters do not address the distortion, it will be addressed easily once the link to the MGR is constructed in the next eight month.



Solomon Kitungu
PRINCIPAL SECRETARY

**SUBMISSION BY THE STATE
DEPARTMENT FOR REGIONAL AND
NORTH CORRIDOR DEVELOPMENT**





2) TUNCO
Please deaf
FAA
11/8/20

REPUBLIC OF KENYA
MINISTRY OF EAST AFRICAN COMMUNITY (EAC)
AND REGIONAL DEVELOPMENT
STATE DEPARTMENT FOR REGIONAL AND NORTHERN
CORRIDOR DEVELOPMENT
OFFICE OF THE PRINCIPAL SECRETARY

Telephone: +254-20-2245741/2211614/2245752
Mobile: 0729111108/0733208888
Wireless: +254-20 2603599/20 2603733
e-mail: ps.rd@meac.go.ke
Website: www.meac.go.ke
When replying please quote:

Railway Headquarters Building
Haile Selassie Avenue
P.O.Box 8846-00200
NAIROBI, KENYA

Ref. SDRNC/5/16/VOL. I



10th August 2020

The Clerk
The National Assembly
P.O. Box 42842 - 00100
Parliament Building
NAIROBI

①
DICT-1001
8
11/08

For the Attention of the Liaison Officers
(Ms. Chelagat Tungo Aaron & Ahmed Salim Abdalla)

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING: INQUIRY INTO THE USE OF STANDARD GAUGE RAILWAY

Northern Corridor Integration Projects (NCIP) arrangement, which was launched on 25th June, 2013 in Entebbe, Uganda brings together four (4) East African Community Partner States including; The Republic of Kenya, The Republic of Uganda, The Republic of Rwanda, and The Republic of South Sudan,

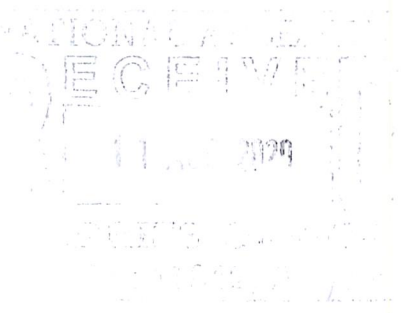
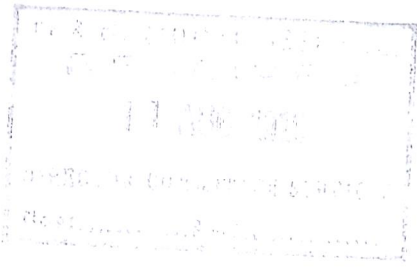
The Tripartite Infrastructure Initiative (Kenya, Rwanda and Uganda) was established and later renamed the Northern Corridor Integration Projects (NCIP) with the entry of South Sudan in 2015.

Standard Gauge Railways (SGR) is one of the key cluster projects being coordinated by the NCIP office within the State Department of Regional and Northern Corridor Development (SDRNCD).

The purpose of this letter therefore, is to forward to you the attached brief on the above SGR inquiry matter.

Margaret W. Mwakima, PhD, CBS
PRINCIPAL SECRETARY

Attch.





RAIL TRANSPORT ALONG THE NORTHERN CORRIDOR

Introduction

The Northern Corridor is a multi-modal trade and transport corridor, encompassing road, rail, pipeline, and inland waterways which are also being monitored by Northern Corridor Transport Transit Authority (NCTTCA).

NCCTA is a regional inter-Governmental Institution composed of six (6) member states of; The Republic of Burundi, The Democratic Republic of Congo, The Republic of Kenya, The Republic of Rwanda, The Republic of South Sudan and The Republic of Uganda. It was established and mandated by the member States to oversee the implementation of NCTTCA, to monitor its performance and transform the Northern route into an Economic Development zone with the objective of making it seamless, efficient, smart and preferred route in the regions

One of NCTTCA's mandate is to track and monitor performance along the Northern Corridor to identify salient issues that impact on trade along the Corridor and provide policy recommendations to guide towards achieving an efficient transport corridor. The efficiency of the corridor offering multimodal transport ensures proper leveraging of the advantages each mode of transport offers. These modal shifts include road, railway, pipeline, and inland waterways.

Over the years, trade volumes have been increasing steadily through the port of Mombasa from 26.7 million tons in 2015 to 34.4 million tons in 2019.

Cargo Throughput

The figure illustrates the volume of cargo throughput at the port of Mombasa for January 2019 to May 2020. It includes break-bulk, liquid bulk, dry bulk, containerized cargo, transit cargo, and transshipment.

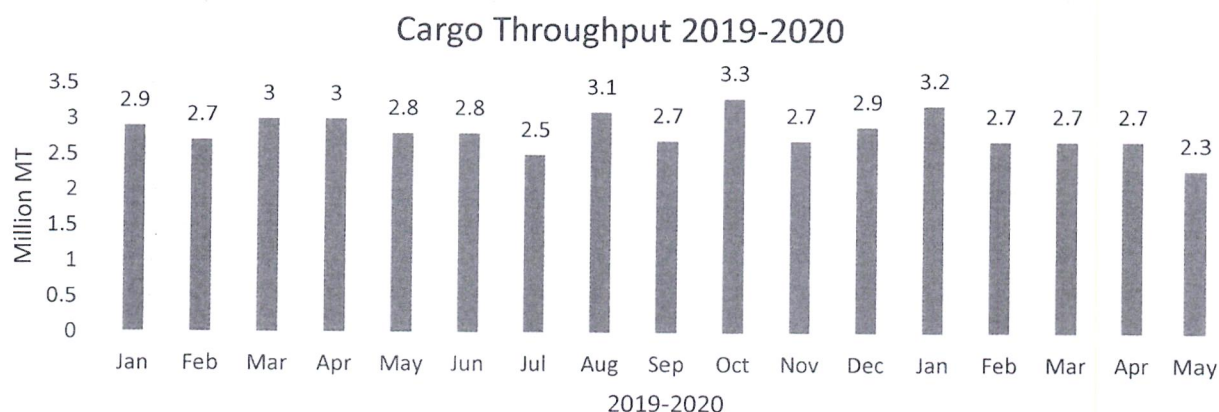


Table one below shows the share of throughput between January and May 2020 per destination.

Table 1: Throughput as a share of market per destination Jan- May 2020 in MT

MT	JAN	FEB	MAR	APR	MAY	TOTAL	Jan-May 2020
Kenya	2,078,568	1,734,762	1,760,746	1,733,989	1,407,971	8,716,036	63.0%
Uganda	726,931	657,889	634,940	639,578	617,148	3,276,486	24.0%
South Sudan	89,478	75,946	78,400	82,846	81,809	408,479	3.0%
DRC	65,125	53,910	46,580	60,875	46,851	273,341	2.0%
Rwanda	20,334	32,713	23,633	35,195	17,839	129,714	1.0%
Tanzania	19,785	19,213	22,399	21,674	14,528	97,599	0.5%
Others	90	110	225	312	615	1,352	0.01%
Burundi	52	280	53	33	36	454	0.00%

Source: KPA data Jan-May 2020

Table 2: Port throughput forecast ('M' DWT)

Scenario	2019 Actual	2019 Forecast	2020 Forecast
Base case	34.4	33.58	35.90
High case		34.47	37.39
Low case		32.62	34.40

Source: KPA Strategic Plan 2018-2022

With the increase in throughput, it is appropriate to invest and expand the capacity of these intermodal channels to remove the bottlenecks that cause the high cost of business and inefficiencies. The port of Mombasa relies on road, rail, pipeline, and inland waterways as the main modes of transport that run along the northern corridor which is the main link to landlocked countries.

Rail Haulage Along the Northern Corridor

Rail transport is considered 'green' due to relatively low emissions compared to other modes of transport as trains burn less fuel per ton-Km than road vehicles.

However, there are additional costs incurred in rail haulage among them; last-mile connectivity, additional handling costs of containers at the port, and a lift cost to transfer the container between the train and the road vehicle. In our case, the SGR line terminating in Naivasha or Nairobi ICD would require double handling to reach the final destination either locally or to transit countries.

The cost of moving empty containers by truckers up to Mombasa by transit to pick imports and deliver empty containers is higher than the last-mile logistics costs associated with the ICDs at Naivasha and Nairobi

On average, longer journeys tend to be less expensive by rail, and shorter journeys are less costly by road. The full benefits of the SGR will be unlocked when the SGR reaches the neighboring countries or when their seamless transfer to the Metre Gauge for onward haulage is achieved as a short-term measure.

To enhance the economic viability of the SGR, it is important to pursue the implementation of the railway Master Plan proposed for rejuvenating existing railways serving Tanzania, Kenya, Uganda, and extending them initially to Rwanda and Burundi and eventually, to South Sudan, Ethiopia and beyond. The linking of these systems will ultimately enhance performance and ensure optimum and viable utilization of the railway system. Also, there is a need to

develop feeder roads and railways to ensure last-mile connectivity that would make use of railway more attractive

SGR performance analysis

Standard Gauge Railway (SGR) freight service (Mombasa-Nairobi return route) was launched in January 2018. The development of the Standard Gauge Railway has revolutionized cargo transport from the port of Mombasa.

Haulage by SGR from Mombasa accounts for about 12% of the total throughput while the meter gauge accounts for 2 percent. Statistics show that the total SGR throughput was approximately 412,584 TEUS or 4,159,094 **MT** from January to December 2019.

Table 2 Volume of cargo by the SGR

Month	Loaded Containers (TEUs)		Empty Containers (TEUs)	Weight (Tones)
	Imports	Exports		
Jan 2019				365,356
	22,628	1,122	11,798	
Feb 2019				308,540
	18,194	1,234	11,636	
Mar 2019				331,906
	19,696	1,153	10,341	
Apr 2019				356,906
	21,862	1,086	10,004	
May 2019				319,757
	20,496	1,062	10,834	
Jun 2019				337,024
	20,938	1,197	11,315	
Jul 2019				394,717
	24,044	1,333	13,947	
Aug 2019				369,647
	23,014	1,312	12,736	
Sep 2019				343,819
	21,732	1,383	12,893	
Oct 2019				342,877
	21,890	1,160	12,114	
Nov 2019				350,611
	21,318	1,006	12,640	
Dec 2019				337,934
	21,106	999	11,361	
TOTAL	256,918	14,047	141,619	4,159,094
Proportion	62%	4%	34%	

The Inland Container Depots in Kenya are directly linked to the port of Mombasa by both the SGR and MGR railways.

The Naivasha Inland Container in December 2019 has been heralded as a key strategy towards enhancing the throughput at the port of Mombasa, decongestion of the port, fast clearance of cargo, and improved container handling. The facility is located 572 Km to the west of Mombasa and 120 km from Nairobi on the Mombasa - Nairobi - Naivasha Standard Gauge Railway (SGR) route

Services offered at Naivasha ICD include; handling of both containerized and loose cargo, stripping and stuffing of containers, consolidation or storage of full/loose export cargo, storage and handling of empty containers, hire of labour and equipment, weighing of containers, cargo documentation finalized at Naivasha ICD, and leasing of yard slots to shipping lines and other interested parties for storage of empty containers

The increased distance of the SGR to Naivasha ICDs is a positive move since rail transport is economical over longer distances, However, there are possible additional transport logistical costs, especially terminal costs for use of ICDs especially for storage of cargo and terminal operations. Some of these may lead to the loading of costs in addition to the freight charges. These include handling fees charged by the ICD for offloading the main haul truck and reloading the goods on the delivery truck; the cost of the final leg of the transport to destination and storage costs. The table below gives the traffic to Naivasha ICD for May and June.

Table 1: Traffic at Naivasha ICD and number of trains

TRAFFIC	IMPORTS (TEUs)	No. Trains (Import)	EXPORTS	EMPTYES (TEUS)	*No. Trains (Exports)	TOTAL (TEUS)
May-20	686	9	28	0	2	714
Jun-20	1,559	15	42	10	4	1,611
Total	2,245	24	70	10	6	2,325

To spur the usage of the Naivasha ICD, in addition to the stimulus tariff for SGR Freight Service, there is a need for improvement of the facilities and linking with the Metre Gauge for efficient intermodal movement of goods.

In summary, the SGR offers shorter and reliable transit times and schedules

Railroads are the most efficient form of land transportation. One train can haul the equivalent of about 100 trucks thus helping in alleviating road congestion, thus lowering emissions

The rail offers fast and cost-effective deliveries over long distances, typically over 800 KM. The integration of the Metre gauge and the SGR can offer longer distances to make the service more attractive.

Historically, rail transport has a strong safety record compared to road transport.

Given the imbalance between exports and imports, the Naivasha ICD will save the transit countries' cost of running empty trucks from Naivasha to Mombasa to collect cargo, thus resulting in reduced transit times. Transit time on SGR is shorter therefore the time cost-benefit should not be overlooked.

For an efficient trucking system, all modes of transport need to be utilized, thus the need to develop facilities at the terminals to support smooth intermodal transport exchange from one transport mode to another.

**SUBMISSION BY THE KENYA
REVENUE AUTHORITY**



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

① DL/Coms
DLPS

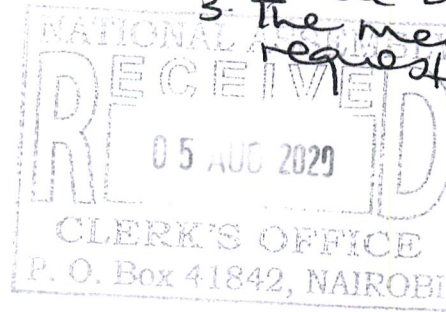
② TUNGU
Please do as
FAA 06/8/20

Besides the line committee, please email a copy to -
1. The office of Majority Leader and Whip
2. Table office
3. The member who requested.

KRA/M&CD/SEEM19/08/E158

4th August, 2020

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI



05/08/20

Dear Mr. Sialai,

**DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING:
INQUIRY INTO THE USE OF STANDARD GAUGE RAILWAY.**

Reference is made to the above subject matter.

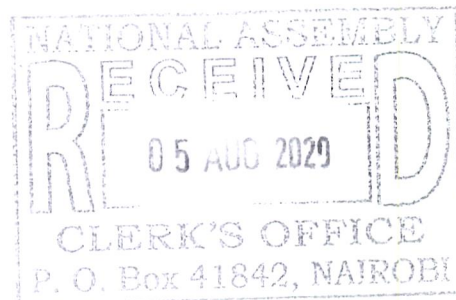
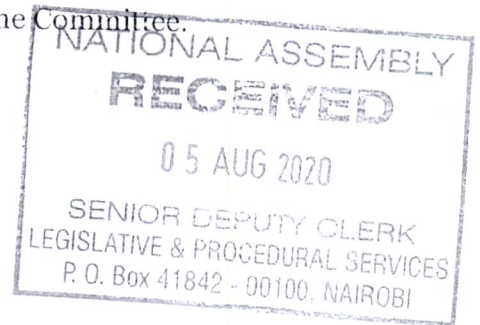
We acknowledge receipt of your letter Ref: NA/DCS/TPWH/CORR/2020/(027) dated 3rd July, 2020 requesting Kenya Revenue Authority to provide response into the inquiry investigating the use of Standard Gauge Railway on matters relating to cargo transportation.

Enclosed please find our submission for consideration by the Committee.

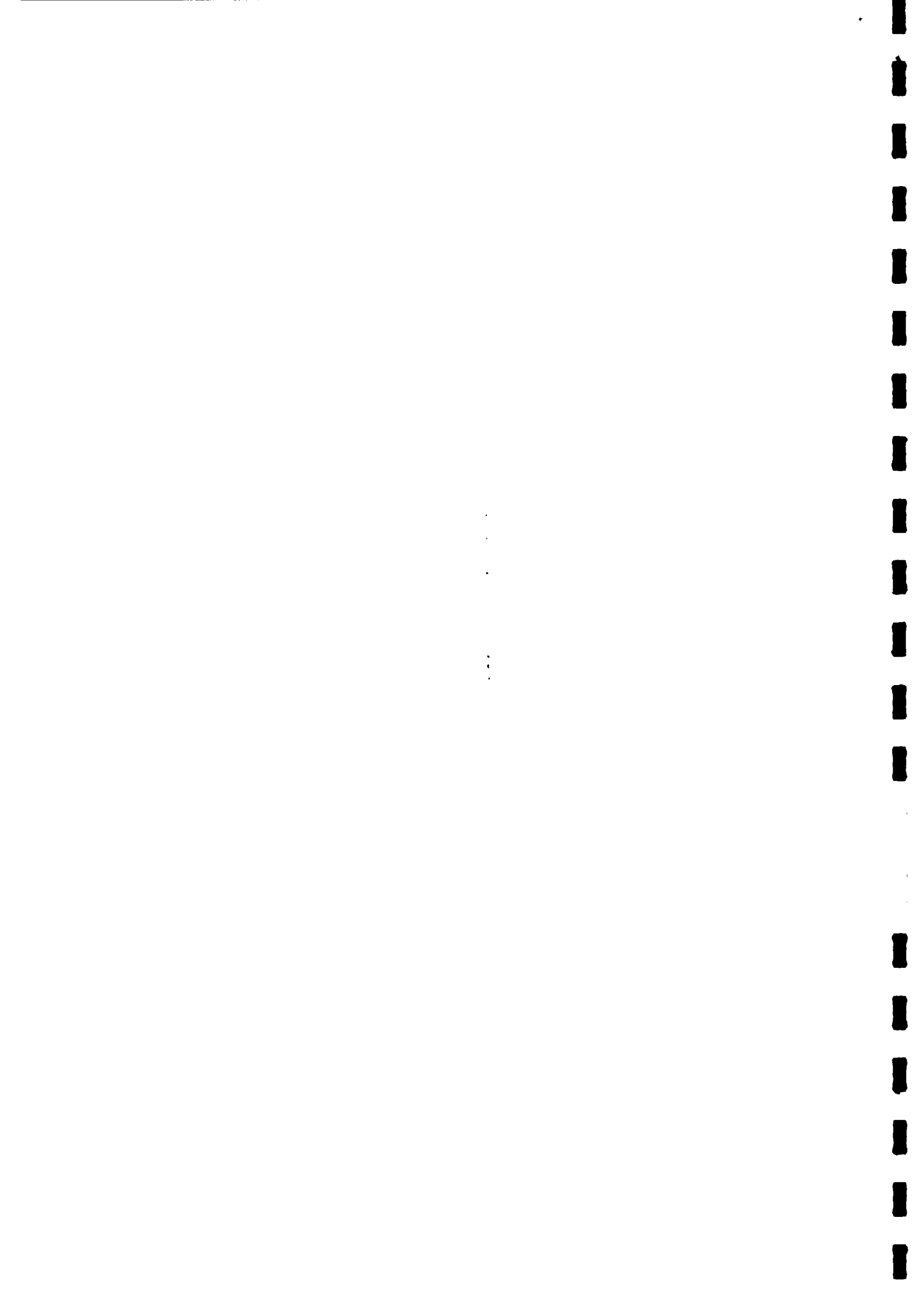
Yours Sincerely,

Grace Wandera

GRACE WANDERA
FOR: COMMISSIONER GENERAL



Tulipe Ushuru, Tujitegeme!





**KENYA REVENUE
AUTHORITY**

ISO 9001:2015 CERTIFIED

**REPORT TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING: AN INQUIRY INTO THE USE OF
STANDARD GAUGE RAILWAY.**

4TH AUGUST, 2020

KENYA REVENUE AUTHORITY
Confirmed
P. O. Box 48240/00100, NAIROBI
Date: 04/08/2020
Sign: G.W.

1.0 INTRODUCTION

The National Assembly Departmental Committee on Transport, Public Works and Housing through their letter **Ref: NA/DCS/TPWH/CORR/2020/027** dated 3rd July, 2020 is conducting an inquiry into the use of Standard Gauge Railway (SGR) on matters relating to cargo transportation by SGR.

A statement requested by Hon. Abdullswammad Sharrif Nassir, MP, Mvita Constituency on forced railing of cargo from Mombasa to Naivasha ICD by SGR stated that...***“on 26th May, 2020, the government through KRA notified all cargo operators at the Port of Mombasa, who includes Partner States of Uganda and Rwanda, that KRA has commenced movement of transit cargo from Port of Mombasa to the newly established Naivasha Inland Container Depot (NICD) as from 1st June, 2020.”***

In lieu of the above, the Committee is conducting an inquiry into the matter and is seeking information from government agencies and affected stakeholders on the matter. To this end, the Committee requests KRA to make submission on the following:

1. What is the legality of past directives on cargo transportation by SGR?
2. What is the socio-economic impact of cargo transportation by SGR?
3. Could the government explore ways and means of ensuring that the transporters /stakeholders use the SGR willingly?
4. What would you recommend to the Ministry on the use of SGR that will promote mutual benefit for the government and stakeholders/citizenry?

2.0 RESPONSES TO THE COMMITTEE

2.1 The Legality of Past Directives on Cargo Transportation by SGR

The role of KRA with respect to clearance of imported cargo include;

- i. Facilitation of Gazettement of facilities and routes used for clearance of cargo such as the gazettement of Naivasha ICD, and the Naivasha –Mai Mahiu transit routes in accordance with the law (EACCMA, 2004 Section 12).

- ii. Monitoring the movement of cargo under Customs control from the point of offloading (from the vessels) to the respective clearance areas in liaison with Kenya Ports Authority and Kenya Railway. KRA's role is to ensure that such goods are not interfered with while being transferred.
- iii. Collection of taxes and timely clearance of cargo once the goods arrive at the customs clearance facilities such as the ICD's at Nairobi or Naivasha.

Section 12 of the East African Community Customs Management Act, 2004 (EACCMA), 2004, provides that the Commissioner may, by notice in the Gazette, appoint Customs areas. Customs areas is defined under EACCMA as "any place appointed by the Commissioner under Section 12 for carrying out Customs operations, including a place designated for the deposit of goods subject to customs control".

Goods arriving from outside Kenya's jurisdiction are under Customs control until they go through Customs clearance process. This implies that they must be offloaded at designated customs areas which include licensed Inland Container Depots as covered by Section 14 of the EACCMA, 2004.

Section 34 (1) of the EACCMA 2004 requires that all cargo unloaded in the country shall be entered within 21 days after commencement of discharge from the vessel. Where such cargo remains un-entered after the 21 days, the goods shall be moved to a Customs warehouse in line with Sec 34(4) of the EACCMA 2004.

Section 42(1) of the EACCMA provides for the sale by public auction all goods deposited into a Customs warehouse, that have not been removed within 30 days of deposit, and after 30 days of the issuance of a Gazette Notice by the Commissioner.

In view of the above legal provisions, hinterland operations is legal in line with EACCMA, 2004 (**Appendix 1**). The laws provide for uncustomed goods to be offloaded in gazetted/approved Customs facilities such Kilindini Port, ICD Nairobi, ICD Naivasha or Transit Sheds for purposes of Customs clearance. The same legal provisions have been used to allow deposit of cargo at Container Freight Stations (CFS's) most of them located in Mombasa because they are designated customs areas.

Further, having additional facilities for cargo clearance ensures smaller amounts of cargo are distributed in different Customs facilities as opposed to having clearance done from one place. This helps to decongest the Port of Mombasa thus ensuring faster clearance of cargo in line with the World Bank Ease of Doing Business indicators.

In this regard, KRA transfers cargo that has overstayed (remained un-entered beyond the legal requirement of 21 days) which is destined for the neighbouring countries to ICD Naivasha.

The use of the SGR to transfer the cargo to ICD-Naivasha has reduced interference with cargo movement through theft and diversion since it is easy and efficient to monitor cargo movement via SGR as opposed to single trucks. This has eliminated cargo diversion hotspots such Mariakani, Machakos Junction and Nairobi. Monitoring by Customs is only done from ICD Naivasha to the border points.

2.2 Socio-Economic Impact of Cargo Transportation by SGR

The Kenya Standard Gauge Railway (SGR) is one of the largest transport infrastructure project in the country since independence. The facility is designed to enhance transport operations in the country and beyond in a bid to boost development and economic growth in line with the Kenya Vision 2030.

While KRA has not undertaken any Social and Economic Impact Assessment (SEIA) that may demonstrate the Impact of SGR on both economic and social fronts, it is our considered view that the SGR has positive impact on KRA's operations in the following ways;

- a) Reduction in the cost of monitoring transit cargo as cargo conveyed to Nairobi or Naivasha ICDs through the SGR has less distance covered in terms of monitoring of tracks.
- b) The reduced monitoring distance also reduces opportunities for diversion of transit cargo along the transit route. Diversion of transit cargo has negative implications including loss of Government Revenue, introduction of goods whose quality has not been checked by the Kenyan Standards Assurance Agencies, distortions in the market as goods on which taxes have not been paid introduce unfair competition in the market.

- c) It is envisaged that the use of Naivasha ICD will have positive impact is containment of Covid-19 pandemic by reducing the distance to the border points therefore reducing opportunities for interaction of truck drivers with people along the transit routes.

2.3 Ways the government could explore to ensure that the Transporters and Stakeholders use the SGR willingly

Trade facilitation is at the core of the mandate of KRA. To this end, KRA is committed to enhancing efficiency in the cargo clearance process which is necessary in promoting the uptake of SGR in the transportation of cargo. Such measures include the following;

- a) Use of scanners to ensure expedited clearance of cargo.
- b) Enhanced use of Regional Cargo Tracking Systems for real time monitoring of cargo along the transit route.
- c) KRA has implemented the Authorized Economic Operator (AEO) program, which is designed to facilitate and enhance the experience of the compliant trader when undergoing Customs clearance processes.
- d) The Authority has facilitated creation of enough storage facilities for cargo through gazetting of the Naivasha ICD and the transit routes. This has helped to decongest the Kilindini Port. Currently, the ICD Naivasha is operating at a capacity of 30%, hence more room for more uptake of cargo.

With respect to the uptake of SGR, KRA is working with other Government Agencies and Ministries in Continued stakeholder (importers, exporters, transporters, warehouse operators, etc.) engagements geared towards promoting voluntary use of SGR in transporting transit cargo to Naivasha ICD.

2.4 Recommendation on the use of SGR that will promote mutual benefit for the government and stakeholders/citizenry

KRA is of the view that the ongoing engagements with stakeholders in the clearance and transportation of cargo which is aimed at resolving concerns of stakeholders will promote better uptake of the SGR in transportation of cargo.

KENYA REVENUE AUTHORITY
Confirmed
P. O. Box 48240 - 00100, NAIROBI
Date: 04/05/2020
Sign: G.W

Appointment of ports
etc.

11. (1) The Council may, by notice in the Gazette, appoint and fix the limits of—

- (a) ports;
- (b) Customs airports;
- (c) places of loading and unloading within ports.

(2) Ports, Customs airports, and places of loading and unloading, may be appointed for specified limited purposes.

Appointment of
Customs areas.

12. (1) The Commissioner may, by notice in the Gazette, appoint —

- (a) boarding stations;
- (b) Customs areas;
- (c) sufferance wharves;
- (d) places for the landing and embarkation of persons;
- (e) places for the examination of goods, including baggage;
- (f) roads or routes in a Partner State over which goods in transit, or goods transferred between the Partner States, shall be conveyed;
- (g) entrances and exits, whether general or special, to and from any Customs area or Customs airport within a Partner State;
- (h) transit sheds;
- (i) internal container depots.

(2) An appointment made under subsection (1) may be subject to such conditions, including the provision of suitable accommodation for officers, as the Commissioner may deem fit; and the Commissioner may, in any particular case and subject to such conditions as he or she may deem fit, permit any boarding station, area, wharf, place, road, route, entrance, or exit, to be used as if it had been so appointed and in any such case this Act shall apply thereto as if it had been so appointed.

(3) The Commissioner may by notice in the Gazette revoke appointment of any Customs area if he or she is satisfied that the conditions imposed under subsection (2) have not been complied with.

Accommodation on
wharves.

13. (1) A wharf owner shall provide, to the satisfaction of the Commissioner—

- (a) suitable office accommodation on his or her wharf or sufferance wharf for the exclusive use of the officer employed at the wharf; and
- (b) such shed accommodation for the protection of goods as the Commissioner may in writing declare to be requisite.

(2) Where any wharf owner contravenes any of the provisions of this section—

- (a) the appointment of a place of loading or unloading or a sufferance wharf may be withheld until the required accommodation is provided to the satisfaction of the Commissioner;
- (b) any existing appointment may be revoked.

14. (1) The Commissioner may, on application, license any internal container depot for the deposit of goods subject to Customs control, and the Commissioner may refuse to issue any such licence and may at any time revoke any licence which has been issued.

Licensing internal
container depot.

(2) The Commissioner shall give reasons for his or her refusal to grant a licence or for revoking a licence under subsection (1).

(3) The owner of an internal container depot shall—

- (a) provide such office accommodation and weights, scales, measures, and other facilities, for examining and taking account of goods and for securing them as the proper officer may require;
- (b) keep a record of all goods in the depot and shall keep such record at all times available for examination by the proper officer;
- (c) provide all necessary labour and materials for the storing, examining, packing, marking cooping, weighing, and taking stock of goods in internal container depot whenever the proper officer so requires;
- (d) maintain such records and accounts relating to goods and to operations, in such form and manner, as the proper officer shall require; and keep such records and accounts at all times available for examination by the proper officer.
- (e) comply with any other requirement as may be specified by the Commissioner.

Amended by EACCM(A)A
201117th February 2011

(4) Where any internal container depot owner contravenes this section, the Commissioner may direct that no other goods shall be kept in the depot until the owner has, in the opinion of the Commissioner, complied with this section.

(5) The owner of an internal container depot who contravenes any of the provisions of this section or of any direction given by Commission under this section commits an offence and shall be liable to a fine not exceeding one thousand dollars

(4) Goods shall not be removed from any part of a Customs area or from a transit shed or a Customs warehouse unless such goods have been duly reported and entered and authority for their removal or delivery has been given by the proper officer:

Provided that the proper officer may, if he or she considers it necessary, direct the agent of any aircraft or vessel from which goods have been landed into any transit shed or Customs warehouse to remove such goods to some other place (which other place shall, for such purpose, be deemed to be a transit shed) selected by such proper officer and, if the agent fails to remove the goods when called upon, the proper officer may have them removed at the risk and expense of such agent;

(5) All goods entered for warehousing shall be removed by the importer by such routes, in such manner, and within such time, as the proper officer may direct to the warehouse for which they were entered and shall be delivered into the custody of the person in charge of the warehouse:

Provided that, if the proper officer so requires, the owner shall first enter into a bond for the due warehousing of the goods.

(6) A person who contravenes this section, or any of the conditions which may have been imposed by, or any of the directions which may have been given by, the proper officer commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Entry, Examination and Delivery

Entry of cargo.

34. (1) Save as otherwise provided in the Customs laws, the whole of the cargo of an aircraft, vehicle or vessel which is unloaded or to be unloaded shall be entered by the owner within twenty one days after the commencement of discharge or in the case of vehicles on arrival or such further period as may be allowed by the proper officer, either for—

- (a) home consumption;
- (b) warehousing;
- (c) transshipment;
- (d) transit; or
- (e) export processing zones.

(2) Where any entry is delivered to the proper officer, the owner shall furnish with the entry full particulars supported by documentary evidence of the goods referred to in the entry.

(3) Entries for goods to be unloaded may be delivered to the proper officer for checking before the arrival at the port of discharge of the aircraft or vessel in which such goods are imported; and in such case the Commissioner may in his or her discretion permit any goods to be entered before the arrival of such aircraft or vessel or vehicle.

(4) Where any goods remain unentered within the period specified under subsection (1) then such goods shall, if the proper officer so requires, be removed by, or at the expense of, the agent of the aircraft or vessel in which such goods were imported to a Customs warehouse.

(5) Where goods entered in accordance with subsection (1) are not removed from the first point of entry within fourteen days from the date of entry, such goods shall be liable to customs warehouse rent. Amended by EACCM(A)A 2011/7th February 2011

35. The surplus stores of any aircraft or vessel may, with the permission of the proper officer, be entered for home consumption or for warehousing.

Surplus stores may be entered.

36. (1) Notwithstanding sections 33 and 34—

Provisions relating to mail, personal baggage, etc.

- (a) mail bags and postal articles in the course of transmission by post may be unloaded and delivered to an officer of the Post Office without entry;
- (b) goods which are the bona fide personal baggage of the passengers, or members of the crew, of any aircraft or vessel may, subject to the provisions of any regulations, be unloaded and delivered to such persons without entry;
- (c) human remains may be released without entry;
- (d) diplomatic bags may be released without entry;
- (e) the proper officer may permit the unloading and delivery to the owner of any bullion, currency notes, coin, or perishable goods, without entry subject to an undertaking being given by such owner to furnish the necessary entry within forty-eight hours of the time of delivery.

(2) An owner who contravenes any undertaking given under subsection (1) (e) commits an offence and shall be liable to a fine not exceeding five hundred dollars.

37. (1) Where the owner of any goods is, by reason of the absence of any, or of any sufficient, documents or information concerning them, unable to furnish full particulars of such goods, he or she shall make and subscribe a declaration on the prescribed form to that effect, and thereupon the proper officer may permit the owner to examine such goods in his or her presence.

Entry in absence of documents.

(b) the amount of the deposit is equal to or less than the full amount of the duty, the deposit shall be brought to account as duty, and the difference, if any, shall thereupon be paid by the owner.

39. (1) The proper officer may subject to such conditions as he or she may impose and to the giving of such security as he or she may think appropriate for the due return of any goods or the payment of the duties thereon, permit the goods to be removed from any transit shed or Customs area without payment of the duty for such purpose, for such period, and in such quantities, as he or she may deem fit.

Delivery from Customs area in special circumstances.

(2) A person who contravenes any conditions imposed under subsection (1) commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

40. The proper officer may permit any goods to be re-packed, skipped, bulked, sorted, lotted, or packed, on any approved place of unloading, or on a sufferance wharf, or in a transit shed, or in a Customs area.

Re-packaging, etc. in Customs area, etc.

41. Goods entered under section 34, may in the presence of the owner, be examined by the proper officer to take account and determine the accuracy of the entry made.

Examination of goods.

Provisions relating to Customs Warehouses

42. (1) Where any goods which have been deposited in a Customs warehouse are not lawfully removed within thirty days after deposit, then the Commissioner shall give notice by publication in the Gazettes of the Partner State or newspaper of wide circulation in the Partner State that unless such goods are removed within thirty days from the date of notice they shall be deemed to have been abandoned to Customs for sale by public auction and may be sold in such manner as the Commissioner may deem fit:

Goods deposited in a Customs warehouse may be sold, etc.

Amended by
EACCM(A)A
201117th February
2011

Provided that any such goods which are of a perishable nature, or are animals, may be sold by the proper officer without notice, either by public auction or by private treaty, at any time after deposit in the Customs warehouse.

(2) Notwithstanding subsection (1) the Commissioner may extend the period for the removal of goods imported by the Partner States' Governments, or diplomatic mission or aid agencies.

(3) Where any goods have been deposited in a Customs warehouse then they shall be subject to such rent and other charges as may be prescribed.

**SUBMISSION BY THE KENYA PORTS
AUTHORITY**

Handwritten mark or signature

Handwritten text, possibly a date or reference number



NOTICE TO EXPORTERS AND CLEARING AGENTS ON SCT CARGO & EXPORTS BY ROAD

11/11/2018

ONLY EXPORTS BY ROAD WILL BE ALLOWED INTO ICDN.

COMMISSIONER GENERAL OF CUSTOMS AND EXCISE
MANAGING DIRECTOR KPA



NOTICE TO SHIPPING LINES/AGENTS

Kenya Ports Authority (KPA) wishes to notify you and the general public that in order to streamline nomination of containers for Mombasa addresses only, KPA will allow manifesting of the commodities listed below to the CFS's of consignee's choice.

1. Sugar
2. Rice
3. Second hand clothes (Mitumba)
4. Billets
5. Reefer Cargo
6. Cooking oil
7. Project Cargo awaiting exemption letters from Government
8. Fertilizer
9. Bitumen

In view of the above a consignee is required to forward a letter of nomination directly to you for this purpose.

As regards to SGR targeted containers (TBL and non TBL) SGR **shall** be given **priority** and will not be transferred to any CFS.

In the event that a consignee provides inaccurate address and is found to fall within the SGR target the container shall be railed to ICDN notwithstanding the above arrangement.

Please note that SGR loading will be in accordance with laid down volume targets provided by the Government and shall remain the priority and prerogative of the Authority to achieve SGR target.

We look forward to your usual cooperation and note that this notice takes effect immediately.


Capt. William K. Ruto

GENERAL MANAGER OPERATIONS & HARBOUR MASTER

Dated: 26th October, 2018



NOTICE TO SHIPPING LINES/AGENTS

Kenya Ports Authority (KPA) wishes to notify you and the general public that further to our notice issued on 26th October, 2018 where KPA granted approval for cargo importers to nominate the below listed commodities to any CFS of their choice, that this notice has been vacated with immediate effect.

1. Sugar
2. Rice
3. Second hand clothes (Mitumba)
4. Billets
5. Reefer Cargo
6. Cooking oil
7. Project Cargo awaiting exemption letters from Government
8. Fertilizer
9. Bitumen

Henceforth shipping lines will not be allowed to endorse Bill of lading (BL) to importers CFS of choice.

We wish to assure the importers that the Government has put in place measures that will streamline the cargo clearance processes at ICD Nairobi and Mombasa to ensure clearance within the free period granted by the Authority.

We look forward to your usual cooperation.

Dr. Arch. Daniel Manduku
MANAGING DIRECTOR
Dated: 15th March, 2019



**KENYA REVENUE
AUTHORITY**
ISO 9001:2015 CERTIFIED



Public Notice

Improvement of Cargo Logistics at the Port of Mombasa And Inland Container Depots

In line with the recent guidelines issued by the Government of Kenya to enhance efficiency at the port of Mombasa and the Inland Container Depot - Nairobi, **Kenya Revenue Authority** and **Kenya Ports Authority** would like to bring to the attention of the general public that all containerised local imports shall be subjected to the following procedures with effect from **7th August, 2019**.

1. All imported cargo for delivery to Nairobi and the hinterland shall be conveyed by **Standard Gauge Railway (SGR)** and cleared at the Inland Container Depot - Nairobi.
2. All imported cargo intended for Mombasa and its environs shall be cleared at the Port of Mombasa.
3. All imported cargo that is not declared and/or removed from the Port of Mombasa or the Inland Container Depot - Nairobi within Twenty One (21) days from the date of discharge of the vessel will be transferred to a designated Customs controlled area awaiting disposal in accordance to the East African Community Customs Management Act, 2004.

KRA and KPA are committed to the highest standards of providing services to all our customers in accordance to the **Port Community Charter**.

**Commissioner General
Kenya Revenue Authority**

**Managing Director
Kenya Ports Authority**



Tulipe Ushuru, Tujitegemee!

KENYA
VISION
2030



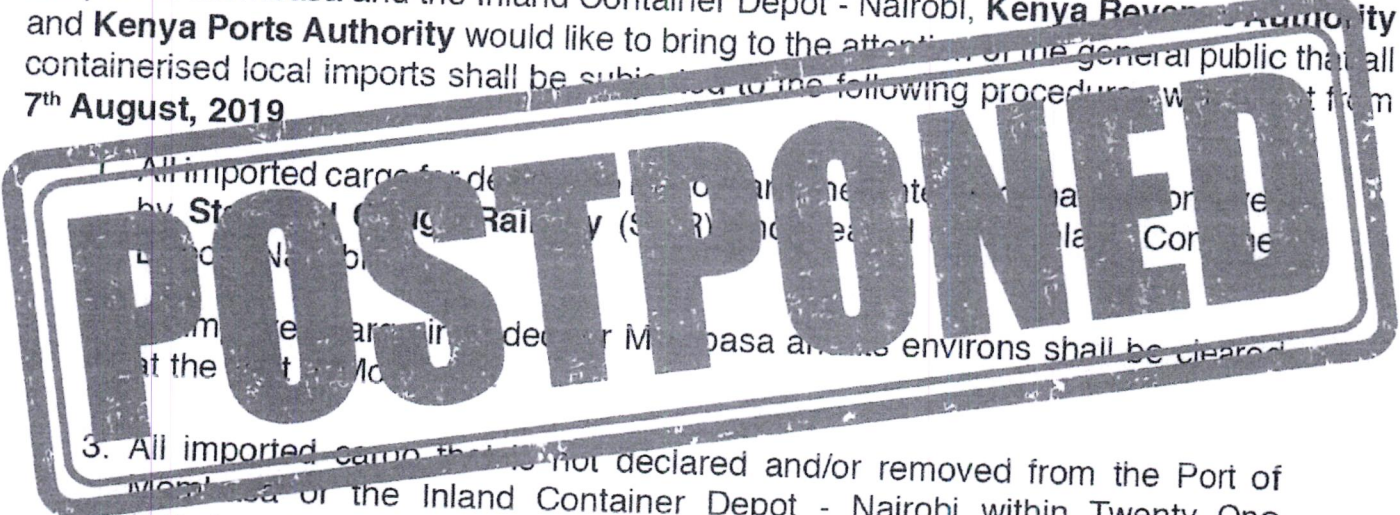
**KENYA REVENUE
AUTHORITY**
ISO 9001:2015 CERTIFIED



Public Notice

Improvement of Cargo Logistics at the Port of Mombasa And Inland Container Depots

In line with the recent guidelines issued by the Government of Kenya to enhance efficiency at the port of Mombasa and the Inland Container Depot - Nairobi, **Kenya Revenue Authority** and **Kenya Ports Authority** would like to bring to the attention of the general public that all containerised local imports shall be subjected to the following procedure, with effect from **7th August, 2019**



1. All imported cargo for delivery to inland container depots in Nairobi and Mombasa or by Standard Gauge Railway (SGR) and coastal shipping companies shall be cleared at the port of Mombasa and its environs shall be cleared

3. All imported cargo that is not declared and/or removed from the Port of Mombasa or the Inland Container Depot - Nairobi within Twenty One (21) days from the date of discharge of the vessel will be transferred to a designated Customs controlled area awaiting disposal in accordance to the East African Community Customs Management Act, 2004.

KRA and KPA are committed to the highest standards of providing services to all our customers in accordance to the **Port Community Charter**.

**Commissioner General
Kenya Revenue Authority**

**Managing Director
Kenya Ports Authority**



Tulipe Ushuru, Tujitegemee!

KENYA 2030



KENYA TRANSPORTERS ASSOCIATION LIMITED
P.O. BOX 88502-80100,
MOMBASA, KENYA.
TEL: 0776726024/0786 815878

16 AUG 2019

Office Copy

The Director-General
Competition Authority of Kenya
Kenya Railways Staff Retirement Benefit Scheme Block 'D', 1st Floor,
Haile Selassie Avenue.
P.O. Box 36265-00200.
Nairobi,
Kenya

OUR REF: KTA.CAK/2019

YOUR REF:

DATE: 15/08/2019

Dear Sir/Madam,

Re: Forced use of the Standard Gauge Railway ('SGR')

Kenya Transporters Association Limited ('KTA')

Monopolistic behavior of the SGR

We refer to the above matter.

We would like to first begin by introducing our Association to yourselves.

The KTA was initially formed in 1969 and was formed to represent the interests of Road Transporters in Kenya. The KTA lobbies on behalf of its Members and carries out fact-based Advocacy for its Members on matters touching on the Road Transport Industry and the Logistics industry in general, in so far as it may touching on Road Transportation.

We refer to the SGR and the move by the Government to make it compulsory for Importers based in Nairobi and in other parts of Kenya to use the SGR. The move by the National Government to make it mandatory for Importers to use the SGR was first effected in 2018. This Notice did not allow Importers the freedom to choose the type of Transport they preferred and Importers have been compelled to use the SGR. This draconian move locked out Road Transporters and those who did not shift their operations to Nairobi were forced to close down due to the creation of this Monopoly.

KENYA TRANSPORTERS ASSOCIATION LTD SECRETARIAT

Location: Amkay Plaza, off Fidel Odinga Road, Nvali, Mombasa | Email: info@kta.co.ke
Website: www.kta.co.ke

To Have A Safe, Reliable, Efficient, Professional, Environmentally Friendly Road Freight Industry

A further notice was issued in the Press (dated 7th August, 2019) but was then 'postponed' due to protestations from Stakeholders in the Logistics Chain who have not been given the opportunity to be heard on the subject of SGR and how its forced use has fundamentally disrupted the Logistics chain in Kenya and is likely to further disrupt the Northern Corridor if left unchecked.

We are of the opinion that the decision of the Government to enter the sphere of private business has effectively created a Monopoly and runs contrary to the spirit and letter of the Competition Act of Kenya No. 12 of 2010, Laws of Kenya (the 'CAK Act')

We would like to touch on the salient provisions of the aforesaid CAK Act to make our argument.

1. Opening Narrative of the CAK Act

The opening narrative of the CAK Act states, in part, that it is '**An Act of Parliament to promote and safeguard the competition in the national economy; to protect consumers from unfair and misleading market conduct..'**

2. Objects of the Act

The CAK Act reads, in part, also:

The object of this Act is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Kenya, in order to—

- (a) increase efficiency in the production, distribution and supply of goods and services;**
- (b) promote innovation;**
- (c) maximize the efficient allocation of resources;**
- (d) protect consumers;**
- (e) create an environment conducive for investment, both foreign and local;**
- (f) capture national obligations in competition matters with respect to regional integration initiatives;**
- (g) bring national competition law, policy and practice in line with best international practices; and**
- (h) promote the competitiveness of national undertakings in world markets.**

It is our submission that the use of the SGR goes against the Objects of the CAK Act as set out above and in no way protects consumers. In fact, what the use of the SGR has done is to drive up costs for manufacturers, who have been forced to pay exorbitant amounts of money in Port Storage and container demurrages, hence passing on the costs to the end consumers. Instead of protecting consumers the SGR has increased the costs of their daily essential purchases.

3. Application of the CAK Act

Please note that that Clause 5 of the CAK Act states that the CAK Act is applicable to all persons including the Government, state corporations and local authorities in so far as they engage in trade.

4. Restrictive Trade Practices

It is our submission that, as per Clause 21 of the CAK Act, the actions by the National Government in enforcing the use of the SGR constitute 'restrictive trade practices and have as their object the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya.'

The use of the SGR cannot be exempted from the provisions of the CAK Act as it does not provide any exceptional or compelling reasons of public policy as to why the agreement, decision, concerted practice or category of the same, ought to be excluded from the prohibitions contained in the CAK Act. On the contrary, the forced use of the SGR is devastating the Coast Region.

The National Government should be cognizant of the adverse effects that this creation of a monopoly has created, both economically and socially. The business community in Mombasa and along the Mombasa- Nairobi Highway (A109) have over the years invested heavily in fuelling stations, Trucks and Trailers, Banking, Container Freight Stations, Insurance, hotels and manufacturing industries which have contributed to the economic bolstering of counties, the common mwanainchi and the growth of the National GDP.

Without any consultations, the National Government has gone ahead to enforce this flawed Directive and put at risk the following investments and jobs in the Coast Region:

Heavy Commercial Transporters under the umbrella of Kenya Transporters Association Limited (KTA)

- a) Investments on Trucks worth Kshs. 120 Billion (15,000 Trucks at an average cost of 8M each)
- b) Investment on land for yards, construction of workshops and offices worth Kshs. 500 Billion
- c) As Heavy Goods Vehicle Transporters, we pay the following tax;
 - Advance Tax worth Kshs. 675 Million (15,000 Trucks at an average cost of Kshs. 45,000 each)
 - Co-operate Tax at 5% of gross sale
 - Value Added Tax at 16%
 - Payee As You Earn (PAYE)
 - Import Tax
 - Railway Development Levy of 1.5% of Customs Value of ALL goods imported into Kenya

Container Freight Stations Association (CFS)

- a) Number of container freight stations, Twenty three (23)
- b) Number of employees affected directly, 6,000 and indirectly, 42,000
- c) Investment worth (Land and equipment) 46 Billion.
- d) Customs Duty payable to the government and related taxes annually worth Kshs. 288 Billion

Kenya Association Of Manufacturers (KAM)/Shippers Council

- a)) Number of manufacturing Companies represented, **800**
- b) In the year 2018, after the commencement of SGR Freight services, importers paid Kshs. **60 Billion** in demurrage to foreign shipping lines.
- c) KAM Members need goods to be timely delivered at a competitive price.

Kenya National Chambers of Commerce and Industry

- a) Mombasa Membership, **6,000**
- b) National Membership of **38,000** with a very large number of employees.

Transport Workers Union (TWU)

- a) Direct employed personnel excluding drivers and turn boys, **90,000** People

Truck Drivers Union (TDU)

- a) Number truck drivers and turn boys, **50,000**

5. Our Request

As per Clause 9 of the CAK Act, the Competition Authority is tasked with, inter alia, enforcing the CAK Act, investigating complaints, carry out research, investigate impediments to competition.

We would like to request that the Competition Authority urgently investigate the SGR Project in its entirety and to prepare a written submission on what we deem to be restrictive trade practices that run contrary to the spirit and letter of the CAK Act.

We look forward to hearing from yourselves in due course.

Yours faithfully,



Chief Executive Officer

Kenya Transporters Association Limited

>neikh

From: Edward O. Opiyo

Sent: 14 August, 2019 9:21 PM

To: Patrick M. Makau <Pmakau@kpa.co.ke>; Brigita M. Kasango <BKasango@kpa.co.ke>; Customer Care Container Operations <CustomerCareContainerOperations@kpa.co.ke>; MCTRMG <MCTRMG@kpa.co.ke>; MCTShiftmanagers <MCTShiftmanagers@kpa.co.ke>; Michael T. Bokole <mbokole@kpa.co.ke>; Jimmy K. Kenga <JKenda@kpa.co.ke>
Cc: Daniel Manduku, MD <danielmanduku@yahoo.com>; Dr. Arch. Daniel O. Manduku <dmanduku@kpa.co.ke>; William K. Ruto <WRuto@kpa.co.ke>

Subject: CFS NOMINATIONS

Team

Please stop any further CFS nominations with immediate effect. Those already documented will be allowed to gate out tonight upto 0700hrs.. bring this yo the attention of all Staff for compliance.

Sent from my Samsung Galaxy smartphone.

10TH Aug. 2019



KENYA TRANSPORTERS ASSOCIATION LTD
Safe Reliable Efficient Professional Environmentally Friendly Road Transporters

JOINT PRESS RELEASE

CFSA

CONTAINER FREIGHT STATIONS ASSOCIATION OF KENYA

REF: NATIONAL GOVERNMENT DIRECTIVE ON FORCED USE OF SGR TO TRANSPORT CARGO FROM PORT OF MOMBASA TO NAIROBI AND THE HINTERLAND

On Tuesday 6th August, 2019, KPA together with CFSA issued a government directive that all local cargo destined to Nairobi and the hinterland will from the 7th August 2019 be transported by SGR only. We the under listed organisations hereby jointly and singly wish to express our strong opposition to this directive as it is monopolistic. This directive violates the World Trade Organisation Rules on Trade Facilitation and United Nations convention of carriage of goods by Sea agreement where Kenya is a signatory. The convention establishes a uniform and modern legal regime governing the rights and obligations of shippers, carriers and consignees under a contract for door-to-door carriage that includes an international sea leg. It also goes against the Competition Act No. 12 of 2010 on Restrictive Trade Practices and whose objective is to enhance the welfare of the people of Kenya by preventing misleading market conducts.

It is vital that the government be cognizant of the adverse effects of this directive both economically and socially. The business community in Mombasa and along the Mombasa-Nairobi Highway (A109) have over the years invested heavily in fuelling stations, banking, insurance, hotels and manufacturing industries which have contributed to the economic bolstering of counties, the commonwealth and the growth of the National GDP. This has improved efficiency of the port. The transport and logistics and its value chain touches on every sector of the economy namely manufacturing sector, the agricultural sector, the business sector, the tourism sector amongst others. Therefore, any policy affecting the sector requires extensive public participation and consultation before implementation.

While the operationalization of the SGR freight services is welcome and supported by all maritime stakeholders our position is that the Government should let the free market forces dictate the cargo owners choice of mode of transport they pick to transport their cargo (see table).

Freedom of Choice is key. It is extremely unfortunate that the Cabinet Secretary for Transport is misleading the public by claiming that importers are free to choose Rail or Trucking to ferry their cargo to Nairobi and the hinterland. **Importers are forced to use the SGR freight.**

Our Trucks delivers cargo picked from the port to the customers doors within a day and therefore a faster mode. It is also important to point out that using the SGR is more expensive than using Road Transport.

Our statistics on the number of employees both direct and indirect, the level of investment made and the social Economic Impact should guide the government to develop policies and directives that will work for the people as the government is for the people.

Bare statistics of the sectors that will be affected by the supposedly suspended retrogressive directive:-

1. Heavy Commercial Transporters under the umbrella of Kenya Transporters Association Limited (KTA)

- a) Investments on Trucks worth Kshs. 100 Billion (15,000 Trucks at an average cost of 8M each)
- b) investment on land for yards, construction of workshops and offices worth **Kshs. 500 Billion**
- c) As Heavy Goods Vehicle Transporters we pay the following tax.
 - Advance Tax worth **Kshs. 675 Million** (15,000 Trucks at an average cost of Kshs. 45,000 each)
 - Co-operate Tax at 30% of gross sale
 - Value Added Tax at 16%
 - Payee As You Earn (PAYE)
 - Import Tax
 - Railway Development Levy at 1.5% of Customs Value

2. Container Freight Stations Association (CFS)

- a) Number of container freight stations, twenty three (23)

- b) Number of employees affected directly, **6,000** and indirectly, **42,000**
- c) Investment worth (Land and equipment) **46 Billion**
- d) Customs Duty payable to the government and related taxes annually worth **Kshs. 288 Billion**

3. Kenya Association Of Manufacturers (KAM)/Shippers Council

- a) Number of manufacturing Companies represented, **800**
- b) In the year 2018, after the commencement of SGR Freight services, importers paid **Kshs. 60 Billion** in demurrage to foreign shipping lines.
- c) KAM Members need goods to be timely delivered at a competitive price.

4. Kenya National Chambers of Commerce and Industry

- a) Mombasa Membership, **6,000**
- b) National Membership of 38,000 with a very large number of employees.

5. Transport Workers Union (TWU)

- a) Direct employed personnel excluding drivers and turn boys, **90,000** People

6. Truck Drivers Union (TDU)

- a) Number truck drivers and turn boys, **50,000**

No	Cargo Type	Trucking Cost (Kshs)	SGR Freight Cost (Kshs)
1	20 Foot Container	80,000 +VAT	Freight Charge, 50,000 Handling, 5,000, Last Mile Charges 25,000 Empty Container Return, 10,000 Total, 90,000 + VAT
2	40 Foot Container	80,000 + VAT	Freight Charge, 74,900, Handling Charges 6,000, Last Mile Charges 25,000, Empty Container Return, 15,000 Total, 120,900 + VAT

From the statistics above it is clearly evident that the directive will lead to massive job losses with devastating effects on the dependants that runs into hundreds of thousands, massive loss of investments and economic slowdown of Mombasa and investments along the Mombasa - Nairobi Highway. This will result in massive loss of revenue to both The National Government and the County Governments, increased unemployment, increased crime rate, school dropouts and other immoral behaviour.

In a nutshell, the following businesses will suffer and risk closing shops if this punitive directive from the Government is implemented:

Motor vehicle and Truck dealerships, motor vehicle service centres in the entire Coast Region, Trailer Manufacturers, Fuel Service Stations, loss of jobs to mechanics, loss of jobs to Drivers and Loaders, loss of warehousing business, loss of jobs in Clearing & Forwarding Industry, loss of business for restaurants, cafes, hotels and road side Kiosks for Wanjiku, loss of business to service centres along the Mombasa - Nairobi highway, loss of business to Tyre and Spare part dealers, imminent job loss to KPA lower cadre staff, lawlessness and insecurity due to massive job loss and loss of rental income by landlords in the Coast Region as tenants will not afford to pay for housing.

In conclusion, we are requesting the Government to reconsider their position of this directive and allow freedom of choice for mode of transport.



**KENYA REVENUE
AUTHORITY**

PUBLIC NOTICE

USE OF WRONG IMPORTER ADDRESS

It has come to the notice of Kenya Revenue Authority (KRA) that some importers whose destination address is Nairobi are currently using falsified Mombasa addresses as destination in a bid to avoid the transfer of their cargo from Mombasa Port to Inland Container Depot (ICD) Nairobi for clearance. This is a deliberate attempt to frustrate the smooth transfer of cargo through SGR to ICD Nairobi.


KRA hereby notifies importers and the general public that Customs clearance shall be facilitated either in Mombasa or Nairobi only when the correct KRA PIN address has been manifested and used in Customs declaration. Importers are further cautioned that any use of wrong address shall be treated as an offence of mis-declaration which attracts severe penalties under the East African Community Customs Management Act.

Importers found culpable of the above type of mis-declaration shall meet the cost of transferring the cargo to the right address.

COMMISSIONER OF CUSTOMS AND BORDER CONTROL

Disclaimer: Taxpayers are notified that KRA will not accept responsibility for payments not received, credited and validated in the relevant Kenya Revenue Authority accounts. Corruption Reporting: +254 (0726) 984 668, Email: corruptionreporting@kra.go.ke. Contact Centre: +254 (020) 4 999 999, +254 (0711) 099 999, Email: callcentre@kra.go.ke. Complaints & Information Center: +254 (0) 20 281 7700 (Hotline), Email: cic@kra.go.ke


 @KRACare

 Kenya Revenue Authority


 Kenya Revenue Authority



Tulpe Ushuru, Tujitegeme!

 KENYA
VISION
2030





**REPORT OF THE JOINT
TECHNICAL
COMMITTEE ON THE
IMPROVEMENT OF
EFFICIENCY AND COST EFFECTIVENESS OF TRANSPORTATION OF
CARGO USING SGR**

1.0 INTRODUCTION

It is observed that cost of doing business and efficiency at the port is dependent on the actions by the government agencies at the port, shipping lines and cargo owners, and the time each of the players take to executive their actions is crucial. It was observed that the number of players and duplication of roles also result in increased processing time and costs of doing business. The report, therefore, contains analysis of factors contributing to increased processing time and costs; the proposed cost structure if inefficiencies are addressed, operational guidelines to be adhered to for efficiency to be realized and strategies/actions necessary to sustain the efficiency.

2.0 ANALYSIS OF CURRENT SITUATION

The analysis delves into the number of interveners and duplication of roles in the cargo processing system from the loading Port, loading from the vessel at the Port of Mombasa, transportation to the Inland Container Depot-Nairobi (ICDN) and cargo release/ gate exits to the door steps of the cargo owners. The analysis brings out the factors contributing to the increased processing time and costs.

2.1 Duplication of roles by Government Agencies at the Port

Currently, the following twenty-seven (27) agencies are operating at the Port of Mombasa which is contrary to international practices:

1. Kenya Ports Authority (KPA)
2. Kenya Revenue Authority (KRA)
3. Kenya Railways (KR)

4. Kenya Bureau of Standards (KEBS)
5. Kenya Plant Health Inspectorate Services (KEPHIS)
6. AFFA-Horticultural Crops Development Department
7. Pharmacy & Poisons Board (PPB)
8. Directorate of Veterinary Services (DVS)
9. Public Health Services (PHS)
10. AFFA-Tea Directorate Department
11. AFFA-Coffee Directorate
12. National Environmental Management Authority (NEMA)
13. National Bio Safety Authority (NBA)
14. Pest Control Products Board (PCPB)
15. AFFA- Sugar Directorate
16. Kenya Dairy Board (KDB)
17. Radiation Protection Board (RPB)
18. Anti-Counterfeit Agency (ACA)
19. Kenya Wild life services (KWS)
20. National Police Services (NPS)

21. Ministry Foreign Affairs and International Trade (MOFA)
22. DRC-OGEFREM
23. Nursing Council of Kenya (NCK)
24. Kenya Medical Laboratories Technicians and Technologists Board (KMLTTB)
25. Department of Fisheries (DF)
26. Directorate of Criminal Investigation (DCI)
27. National Intelligence Service (NIS)

The only processes required at the Port are cargo movement from vessel to the rail side, cargo loading, train marshalling, cargo quality inspection and customs clearance. The critical agencies required at the Port are:

1. Kenya Ports Authority (KPA)
2. Kenya Revenue Authority (KRA)
3. Kenya Railways (KR)
4. Kenya Bureau of Standards (KEBS)

Any other interventions could take place outside the Port in line with international practices to reduce inefficiencies.

2.2 Identification of parties and processes contributing to delays

a) Time breakdown as per sample – average / worst case/ worst case/factors contributing to timelines

ACTIVITY	AVERAGE TIME	BEST TIME	WORST TIME	FACTORS AFFECTING / CONTRIBUTING TO TIMELINES	RESPONSIBLE AGENCY
Movement from vessel to loading at the rail side	42.5 hours	0.03 hours	288 hours	<ul style="list-style-type: none"> The existing policy to put containers on terminal hold without set time limits. Lack of implementation of First in First out (FIFO) model Inadequate operational equipment (terminal tractors) affecting cranes moves per hour Delay in submission of Material Safety Data Sheet (MSDS) by customers for loading of dangerous cargo All activities that take place involving container movement, from vessel to ICD, results in additional costs due to shipping line mark ups. (USD 70 -100) 	KPA
Marshalling, Transit and Raillage to ICDN	20 hours	8.4 hours		<ul style="list-style-type: none"> Lack of implementation of First In First Out (FIFO) model in railgate out of the Port Delay in supply/availability of wagons at loading points Delay in communication to cargo owners on containers with imbalances The cost of returning empties for TBL cargo transported in the up direction via rail is an unnecessary additional cost 	KR
Lodging of manifest by shipping lines	24 hours before vessel arrival	48 hours before vessel arrival	3 hours before vessel arrival	<ul style="list-style-type: none"> Late submission of manifest by shipping lines KRA system challenges impending lodgment of partial manifests 	KSA (Shipping lines) KRA
Entry lodgment and payment by Agents	56 hours	-3 days (pre-clearance)	312 hours (13 days)	<ul style="list-style-type: none"> Requirement for pre- verification negates the logic of the pre-arrival clearance (PAC) process Low uptake of pre-arrival clearance (PAC) programme by shippers Submission of incomplete declaration documents by Clearing agents which also lack relevant government approvals 	KIFWA (Clearing Agents) SCEA KRA

Customs processing and release	134 hours (5.6 days)	6 hours	552 hours (23 days)	<ul style="list-style-type: none"> Non adherence of 24-hour operations by all Partner Government Agencies (PGAs) Undefined and lengthy multi agency processes extending to more than 14 days which is outside clearance timelines Delays at the Document Processing Centre (DPC) attributed to multiple interventions by various agencies, quality of declarations by the clearing agents, valuation and other KRA stops. Manual processes by critical agencies such as KEBS, ACA, NPS, Port Health etc. 	KRA Multi - Agency
Customs release to Cargo collection	156 hours (6.5 days)	6 hours	792 hours (33 days)	<ul style="list-style-type: none"> Delays in approval of waiver processing applications Delay in location of containers at the yard Delay in billing of invoices by KPA Non-automation of gate clearance procedures Non adherence of 24-hour operations Image analysis delays at ICDN gates 	KRA KPA
Truck entry to truck loading and exit	7.2 hours	0.16 hours (10 minutes)	16 hours	<ul style="list-style-type: none"> Location of cleared containers for truck loading is done manually Lack of truck parking areas Limited accessibility to ICDN due to traffic congestion 	KPA
Loading of empties for rail	24hours	6 hours	24Hours	KPA to continually improve timelines for loading of empties	KPA
Movement of empties from ICDN to the Port Reitz and offloading to pre-stack	14hours	12 hours	14 hours	KR to continually improve timelines for movement and offloading of empties	KR
Movement from pre-stack at Port Reitz to vessel	12hours	2hours	24hours	<ul style="list-style-type: none"> Lack of communication from KR & KPA to the clearing agents on delivery of empties from Nairobi to Port Reitz KPA shunting cost of USD 50 (20ft) and USD 100 (40ft) for empty containers at the Port to empty container depots which is unnecessarily adding to the cost of transportation 	KPA/KR

2.3 Prevailing Cost Structure for Road and Rail Transportation

Table 1: Road Transport rates from Mombasa to Nairobi

From	To	20 FT < 20 Tones	20ft > 20 tones 40 FT
Mombasa	Nairobi	650	850

The average transportation cost by road is USD 650 for containers up to a maximum of 15 tons and USD 850 for 20ft containers above 15 tons and all 40ft containers.

Table 2: Rail Transport rates from Mombasa to Nairobi

ITEM	ACTUAL COST		
	20FT	40FT >20 tones	21 – 30 tones
Freight: Mombasa – Nairobi	500	700	750
KPA Remarshalling	110	165	
KPA Storage	180	360	
Transporters Last Mile*	250	350	375
KR Freight: Empty Return – Nairobi – Mombasa	100	100	
KPA Empty Handling	30	45	
Shunting from Port to Shipping line depot	50	100	
Shipping line margins	100	100	
Demurrage	100	200	
Total Cost	1,420	2,120	2,185

The observations made are that:

1. The average transport for 20ft and 40ft container from Mombasa to Nairobi by road is USD 650 and USD 850 respectively.
2. The average transport for rail transport for 20ft and 40ft container from Mombasa to Nairobi is USD 1,420 and USD 2,120 respectively.
3. The difference between road and rail for 20ft and 40ft amount to USD 770 (118% increase) and USD 1,270 (149% increase) respectively.
4. Additional costs are incurred due to re-marshalling, storage and demurrage. If removed, the cost of rail transport for 20ft and 40ft container will be USD 1,030 and USD 1,395/1,470, which is still high compared to road transport by USD 380 and USD 545 respectively.
5. If the cost of empty return by rail, shipping line margins and KPA shunting of empties to empty container depots are removed, the cost of 20ft will be USD 780 and 40ft will be USD 1,095/1,170.

3.0 PROPOSED COST STRUCTURES FOR RAIL TRANSPORT

If the operational inefficiencies are addressed through adoption of operational guidelines by various Agencies, and other intervention strategies, *Table 3* shows the least cost structure for transportation of cargo by SGR that will enable loan repayment. *Table 4* shows that the cost structure can be reduced further by the Government taking over the loan principal repayment or interest and loan principal repayment. Furthermore, with zoning and provision of last mile, the cost structure can be managed.

Table 3
Scenario 1: Less the cost of inefficiencies

ITEM	ACTUAL COST (USD)		
	20FT	40FT <20 tones tones	21-30
Freight: Mombasa – Nairobi	500	700	750
KPA Remarshaling up to 4 days	0	0	
KPA Storage up to 4 days	0	0	
Transporters Last Mile*	150	200	
KR Freight: Empty Return from Nairobi to Mombasa for TBL cargo	0	0	
KPA Empty Handling	30	45	
Shunting from Port Reitz to pre-stack for TBL cargo	0	0	
Shipping line margins	0	0	
Demurrage	0	0	
Total Cost	680	954	1,020

The implementation of the operational guidelines will lead to comparable costs. The average transportation cost by road is USD 650 for containers up to a maximum of 15 tons and USD 850 for 20ft containers above 15 tons and all 40ft containers while the total rail transportation cost of USS 680 and USS 954-USS 1,20 for 20ft and 40ft containers respectively can be achieved.

Table 4
Scenario 2: Government takes over loan repayment

KRC three best case scenarios		
	Case 1	Cost per TEU in Dollars
KR pays	Principal Loan	1,101.6
KR pays	Interest of the loan	
KR pays	Direct Operational cost	
Case 2		
KR Pays	Interest rates	501.9
KR Pays	Direct operational cost	
GoK	Principal loan	
Case 3		
KR Pays	Direct operational cost	384.78
GoK	Interest	
GoK	Principal loan	

3.1 Prevailing Industry Last Mile Rates

	REGION/ZONE	20FT container	40ft container	No. of trips
1.	Nairobi Industrial Areas and its Environs	25,000	40,000	Round trip
2.	Mlolongo, CBD, Langata, Westlands, Ngara	30,000	40,000	Round trip
3.	Kasarani, Athi River, EPZ	30,000	35,000	Round trip
4.	Ruaka, Kiambu, Ongata Rongai, Kitengela, Kikuyu, Kiserian, Ngong	35,000	4,000	Round trip
5.	Limuru, Thika, Konza	45,000	50,000	Round trip
6.	Naivasha Nakuru	55,000	65,000	Round trip

3.2

Proposed Last Mile Pricing

S/NO	DISTANCE FROM NAIROBI – ICD	REGION / ZONE	Amount	No. of Trips
A	0-5 KM	Industrial Area, Airport North Road, Syokimau	Kes. 15,000	2 Round Trips
	6-10 KM	Lusaka Road, Mlolongo, CBD, Langata, Westlands, Ngara	Kes. 18,000	2 Round Trips
	11 – 15 KM	Baba Dogo	Kes.22,000	2 Round Trips
	16 – 25 KM	Kasarani, Athi River, EPZ	Kes. 27,000	1 Round Trip
	26 – 35 KM	Ruaka, Kiambu, Ongata Rongai, Kitengela, Kikuyu, Kiserian, Ngong	Kes. 37,000	1 Round Trip
	36 – 60 KM	Limuru, Thika, Konza	Kes. 40,000	1 Round Trip
	B	Other Zones	Naivasha	Kes. 45,000
Nakuru			Kes. 50,000	1 Round Trip
Machakos			Kes. 45,000	1 Round Trip
Eldoret			Kes. 70,000	1 Round Trip
Kisumu			Kes. 70,000	1 Round Trip
Kericho			Kes. 70,000	1 Round Trip
Malaba			Kes. 90,000	1 Round Trip
Jinja			USD. 1,100	1 Round Trip
Kampala			USD. 1,300	1 Round Trip
Mbale	USD. 1,700	1 Round Trip		

4.0 OPERATIONAL AGENCY GUIDELINES

	Process	Operational Guidelines	Lead Implementing Agency
1.	Cargo movement from vessel to ICDN	<p>Critical agencies required at the Port</p> <ul style="list-style-type: none"> - Kenya Ports Authority (KPA) - Kenya Railways (KR) - Kenya Revenue Authority (KRA) - Kenya Bureau of Standards (KEBS) <ul style="list-style-type: none"> • Manage Terminal hold to conform to 48 hour timelines from container discharge • Adopt FIFO model to avoid delays in transfer of container from vessel to rail side/wagon. • Increase the number of terminal tractors currently at 14 to 20 at the Port, the RTGs and RMGs at ICDN and improve on utilization/efficiency of all equipment • Mandatory submission of Material Safety Data Sheet (MSDS) by cargo owners to KR within 48 hours before vessel arrival • KR to promptly communicate to customers on requirements for movement of Dangerous Goods (DG) containers. 	KPA
2.	Marshalling, Transit and Railage to ICDN	<ul style="list-style-type: none"> • Adopt first in first out (FIFO) model to avoid delays in railage to ICDN • KR to supply wagons at loading points within 1 hour of submission of cargo loading list • Communication by KR to cargo owners on location and necessary actions required within 30 minutes of detection of imbalances on containers • KR to remove additional cost of USD 100 return of empties from its tariff for cargo moved by rail in the up direction. • KR to remove USD 100 for return of empties from the Operations and Maintenance Contract as an operational cost. • KPA to remove USD 50/100 for shunting of empties from Port Reitz to pre-stack for TBL cargo • Marshalling, Transit and Railage to ICDN to be done in 10 hours 	KR

3.	Lodging of manifest by shipping lines	<ul style="list-style-type: none"> Lodging of manifest by shipping lines to be done 48 hours before vessel arrival Manifest to be made available once the ship leaves the port of loading KRA System configuration to allow lodgment of partial manifest 	Shipping lines
4.	Entry lodging and payment by Agents	<ul style="list-style-type: none"> Customers to use the pre-arrival process for expedited processing unless KRA requires pre-verification based on risk profiling KRA to provide online guidelines on quality and complete documentation and declarations All customers to abide by the enriched PVOC which should incorporate all agency requirements. Prior to enrichment, all approvals by other government agencies to be uploaded within 12 hours from receipt of request. Entry lodging and payment by Agents to be done in 24 hours to facilitate customs release process 	Customers/KE/PSA
5.	Customs processing and release	<ul style="list-style-type: none"> All parties to adhere to 24 hour operations Strict adherence by all agencies to the allocated times for verification at ICDN scheduled for 8.30am, 11.00am and 3.00pm Recognition of the Pre-export Verification of Conformity (PVoC) in issuance of Certificates of Conformity (COCs) to avoid unnecessary verifications and duplication of services by multi-agencies KPA to scan all cargo on arrival at ICDN awaiting operationalization of the rail scanner in June 2019 to reduce the need for increased number of KRA physical verifications Automation of process by all Agencies Release of cargo awaiting laboratory tests results by KEBS under seal within 6 hour timeline required for customs processing No additional costs to cargo owners arising from delays in government interventions beyond the agreed timelines Government agencies delaying processes beyond agreed timelines to give rebates of 1% of the value of the goods Investigations by customs to be done within the set timelines of cargo clearance of 6 hours 	KRA
6.	Necessary cargo interventions	<p>Critical agencies required at the Port to carry out the necessary cargo interventions are:</p> <ul style="list-style-type: none"> - Kenya Ports Authority (KPA) - Kenya Railways (KR) - Kenya Revenue Authority (KRA) 	KPA

		- Kenya Bureau of Standards (KEBS)	
		Other adhoc cargo interventions to be carried out outside the Port.	
7.	Use of Certificate of Conformity (CoC) as the only sole document for verification	<ul style="list-style-type: none"> Enriched CoCs, which incorporate all government agencies requirements and issued by agents contracted by KEBS, will be the only document to be relied upon for verification Penalize non-compliant CoCs service providers by making it mandatory to provide professional liability insurance equivalent to 1% of the cargo value. Automate KEBS clearance process and adoption of online releases instead of the current manual process. Importers to ensure their suppliers are conversant with import quality requirements or approved specifications specified in relevant Kenya Standards and that their consignments are accompanied with a Certificate of Conformity (CoC) from the appointed PVoC Agents. CoC to be used as a document for clearance at the port. Where sampling is done for surveillance and product/importer risk profiling, the consignment to be released under seal awaiting the test reports. 	KEBS
8.	Movement of non-essential personnel at Port/ICDN	Security to restrict movement of non-essential personnel in the Port and at ICDN	KPA
9.	Customs release to Cargo collection	<ul style="list-style-type: none"> Bulk messaging by customer to monitor status Customers to provide trucks for pick within 6 hours upon customs release Customers to use KPA/KRA reviewed criteria and guidelines for online and automatic waiver approval/rejection KPA to embrace use of yard mapping and positioning of containers at ICDN Interfacing of the three KPA systems (KWATOS, CIYOS, SAP) to provide end-to-end online operational services Customers to use automated gate clearance process KRA to rely on the reports from the scanning of containers by KPA upon arrival of the train for cargo release in place of the existing manual analysis of image reports at the gate KEPSA/Shippers to develop and enforce Code of Conduct for business in respect of necessary cargo interventions 	Customers/KEPSA KPA KRA

10.	Truck entry to truck loading and exit	<ul style="list-style-type: none"> • KPA to deploy all cargo handling equipment installed with Vehicle Mounted Terminals (VMTs) to handle cleared containers awaiting additional VMTs for other equipment at the yard. • KPA to be allowed to use Kenya Power way-leave land as a truck marshalling yard • Implementation of truck appointment system by KPA • Truck entry to truck loading and exit to be done within 20 minutes • Automation of service lanes at Gate A and B and provision of additional lanes and access gates at ICDN by KPA by 30th March 2019 • Dualing of ICD road and Masai Road (KURA) and completion of Access Road A (KR) to the Southern By-Pass by June 2019. 	KPA
11.	Last mile booking and Truck appointment system	<ul style="list-style-type: none"> • Trucks with tracking devices communicating with the Joint Monitoring System will be notified upon release of a container with an exact time of arrival at ICDN • KPA due process of gate-in and Gate-Out will be observed and followed • Truck will pick container and exit to clients premises in full view of the Joint monitoring Center • Cargo will be delivered and device returned by the driver • Approved last mile charges will apply for all trucks registered with KPA 	KPA
12.	Last mile SGR Freight Tracking system	<ul style="list-style-type: none"> • A web based Joint SGR Freight Tracking system which uses GSM & GPRS magnetic seals developed with assistance of Trademark East Africa (TMEA) shall be used by Kenya Revenue Authority, Kenya Ports Authority and Kenya Railways to track the set timelines for all agencies • All KPA registered trucks will be put on the platform and customers will be expected to download the Last Mile App on their smart phones to allow free entry and exit. 	KPA
13.	Joint Monitoring Center at the ICDN One-Stop Centre	The Joint Monitoring Center, which is currently in its pilot phase with 5000 container tracking units out of the expected 12,000 units, will be fully operationalized by June 2019.	KPA
14.	Bulk messaging and communication	<ul style="list-style-type: none"> • KPA and KenTrade to provide bulk SMS for monitoring of cargo movement and communication to cargo owners • Customer care desk to enhance communication by way of email/sms upon arrival of importer's container 	KPA

15.	Loading of empties for railrage at the ICDN	Loading of empties for railrage to be done in 6 hours	KPA
16.	Movement of empties from ICDN to the Port Reitz and offloading to pre-stack	Movement of empties from ICDN to the Port Reitz and offloading to pre-stack done in not more than 18 hours	KR
17.	Movement of empties from pre-stack at Port Reitz to vessel	Movement of empties from pre-stack at Port Reitz to vessel done in 6 hours	KPA
18.	Management of long stay containers or cargo requiring adhoc interventions	<ul style="list-style-type: none"> • KPA use leased peripheral facilities of Multiple Inland Container Depot (MICD), Mitchell Cotts and Makongeni for the movement and storage of long stay containers. • KPA moves cargo requiring adhoc interventions by multi agencies/ any investigative agency to Multiple Inland Container Depot (MICD), Makongeni, Mitchell Cotts or the importers warehouse. • Containers targeted for further tests and analysis or 100% verification to be undertaken in the peripheral facilities and stripping of containers targeted for 100% verification to be outsourced • Any necessary adhoc tests and analysis, 100% verification and investigations to be completed within set timelines of a maximum of 14 days, upon identification of the need for interventions/collection of test samples, to avoid congestion of the facilities 	KPA
19.	Gazettement of Peripheral customs facilities for other interventions	<ul style="list-style-type: none"> • Gazettement of the KPA leased facilities, Multiple Inland Container Depot (MICD), Makongeni and Mitchell Cotts. • Gazettement of any other facilities owned by the private sector suitable for handling cargo within Nairobi. 	KRA
20.	Partial manifest and pre clearance regime	KRA to allow shipping lines to lodge partial manifest and adopt the pre-arrival clearance regime	KRA
21.	Auctioning and destruction of long stay cargo	<ul style="list-style-type: none"> • KRA to move long stay cargo targeted for auctioning or destruction to customs facilities in Nairobi • KRA to undertake monthly auctioning of long stay containers • KRA to undertake periodic destruction of containers within 90 days. 	KRA

22.	Destruction of condemned cargo	KPA to ensure that the Agency responsible for condemnation removes the cargo from the Port within 5 days, and the destruction is done at the cost of the importer or carrier.	KPA
23.	Review of charges	PGAs/Private sector players should not arbitrarily increase charges as it increases the cost of doing business in the country	All PGAs KEPSA Shipping lines

5.0 STRATEGIES REQUIRED TO ENHANCE PROCESSES AND AID IMPLEMENTATION OF THE OPERATIONAL GUIDELINES

Process	Action/Strategy required to enhance processes	Lead Implementing Agency
1. Cargo movement from vessel to ICDN	<p>Immediate</p> <ul style="list-style-type: none"> KPA to procure 6 additional terminal tractors to increase the number to 20 at the Port by 30th March 2019 <p>Long Term</p> <ul style="list-style-type: none"> Procurement of RTCs and RMGs at ICDN by June 2020 	KPA
2. Marshalling, Transit and Rallage to ICDN	<p>Immediate</p> <ul style="list-style-type: none"> KR to review tariff book and the Operations and Maintenance (O&M) Contract to remove the cost of USD 100 return of empties from its tariff for cargo moved by rail in the up direction by 15th March 2019 KPA to review tariff book to remove USD 50/100 for shunting of empties from Port Reitz to pre-stack for TBL cargo by 15th March 2019 KPA/KMA to engage shipping lines to remove the shipping line mark ups cost of USD 100 <p>Medium Term</p> <ul style="list-style-type: none"> KR to review tariff book and the O&M Contract to make it more industry compliant by 30th June 2019 	KR KPA KPA/KMA KR
3. Lodging of manifest by shipping lines	<p>Immediate</p> <ul style="list-style-type: none"> KPA to engage Shipping lines for the lodgment of manifest 48hours before vessel arrival by 30th March 2019 <p>Medium term</p>	KPA KRA

4.	Entry lodging and payment by Agents	<ul style="list-style-type: none"> KRA System configuration to allow lodging of partial manifest by June 2019 <p>Immediate</p> <ul style="list-style-type: none"> KRA/KEPSA/KEBS to communicate/promote to customers the use of the pre-arrival process and the need to abide by the enriched PVOC by 15th March 2019 KRA to provide online guidelines on quality and complete documentation and declarations by 15th March 2019 	KRA/KEPSA/KEBS KRA
5.	Customs processing and release	<p>Immediate</p> <ul style="list-style-type: none"> KEBS to issue notice to customers and Partner Government Agencies to recognize the Pre-export Verification of Conformity (PVoC) in issuance of Certificates of Conformity (COCs) <p>Medium Term</p> <ul style="list-style-type: none"> KRA/KR to operationalize the rail scanner by June 2019 KEBS to automate processes in line with all other critical agencies' systems by December 2019 All non-critical government agencies to automate their processes for uploading of approvals online by December 2019 <p>Immediate</p> <ul style="list-style-type: none"> All government agencies to provide their requirements to KEBS to enrich the CoCs which will be the only document to be relied upon for verification by 15th March 2019 KEBS to incorporate in the contract for service providers a provision for mandatory professional liability insurance equivalent to 1% of the cargo value by 15th March, 2019. 	KEBS KRA/KR KEBS
6.	Use of Certificate of Conformity (CoC) as the only sole document for verification	<p>Immediate</p> <ul style="list-style-type: none"> KPA to engage KenTrade to develop bulk messaging and sensitize customers on its use by 30th March 2019 KPA/KRA to review criteria and guidelines for online and automatic waiver approval/rejection by 30th March, 2019 KPA to interface the three KPA systems (KWATOS, CIYOS, SAP) to provide end-to-end online operational services by 15th March 2019 KPA/KRA to scan all containers upon arrival of the train and submit image reports online to KRA for customs release by 30th March 2019 	KEBS/Multi-Agency team
7.	Customs release to Cargo collection	<p>Immediate</p> <ul style="list-style-type: none"> KPA to engage KenTrade to develop bulk messaging and sensitize customers on its use by 30th March 2019 KPA/KRA to review criteria and guidelines for online and automatic waiver approval/rejection by 30th March, 2019 KPA to interface the three KPA systems (KWATOS, CIYOS, SAP) to provide end-to-end online operational services by 15th March 2019 KPA/KRA to scan all containers upon arrival of the train and submit image reports online to KRA for customs release by 30th March 2019 	Customers/KEPSA/KPA/KRA KenTrade

		<ul style="list-style-type: none"> • KEPESA/Shippers to develop and enforce Code of Conduct for business in respect of necessary cargo interventions by 30th March 2019 <p>Medium Term</p> <ul style="list-style-type: none"> • KPA to complete full operationalization of yard mapping and positioning of containers at ICDN by 30th June 2019 <p>Immediate</p> <ul style="list-style-type: none"> • KPA to deploy all cargo handling equipment installed with Vehicle Mounted Terminals (VMTs) to handle cleared containers awaiting additional VMTs for other equipment at the yard by 15th March 2019 • KPA to increase and automate service lanes at Gate A and B and provide additional access gate in ICDN by 30th March 2019 <p>Medium Term</p> <ul style="list-style-type: none"> • KPA to fast-track the use of the Kenya Power way-leave land as a truck marshalling yard by 1st March 2019. • KPA to develop truck appointment system by 30th May 2019. • KURA to complete works in dualing of ICD road and Masai Road by 30th June 2019 • KR to complete works on Access Road A to the Southern By-Pass by 30th June 2019. 	KPA
8.	Truck entry to truck loading and exit	<p>Medium Term</p> <ul style="list-style-type: none"> • KPA to ensure all registered trucks pick containers with tracking devices • KPA to ensure that trucks are registered on the platform and customers download the Last Mile App on their smart phones to allow free entry and exit. • KPA to ensure there are adequate security features for the tracking units • KPA to ensure that approved last mile charges are charged by registered trucks. <p>Medium Term</p> <p>KPA to fully operationalize the Joint Monitoring Center by 30th June 2019.</p>	KPA
9.	Last mile service provision		
10.	Joint Monitoring Center at the ICDN One-Stop Centre		KPA

11.	Management of long stay containers or cargo requiring adhoc interventions	<p>Immediate KPA to lease peripheral facilities of Multiple Inland Container Depot (MICD), Mitchell Cotts and Makongeni for the movement and storage of long stay containers by 1st March 2019</p>	KPA/KRA
12.	Gazettement of Peripheral customs facilities for other interventions	<p>Immediate KRA to gazette the KPA leased facilities, Multiple Inland Container Depot (MICD), Makongeni and Mitchell Cotts by 1st March 2019</p> <p>Long Term Private sector to make request to KPA/KRA for gazettelement of any other facilities within Nairobi on need basis</p>	KRA/KPA/KEPSA
13.	Review of charges	<p>PGAs/Private sector players should ensure that there is no arbitrary increase in charges as it increases the cost of doing business in the country</p>	All PGAs KEPSA Shipping lines

6.0 RECOMMENDATION

1. The Head of Public Service to issue a letter instructing all Partner Government Agencies to work as per the Operational Guidelines and implement the required action/strategy for enhancing processes within the agreed timelines.
2. Government to constitute an Inter-Agency Monitoring Team to ensure Operational Guidelines and strategies are implemented.

**SUBMISSION BY THE COAST
PARLIAMENTARY GROUP (CPG)**

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

RE: STATEMENT BY COAST PARLIAMENTARY GROUP ON USE OF THE STANDARD GAUGE RAILWAY AND THE COASTAL ECONOMY

The Coast Parliamentary Group (CPG) held a meeting on Tuesday 11th August, 2020 to discuss ways of mitigating the negative effects of the SGR on the Coastal economy. The meeting looked at ways of ensuring stakeholders in the clearing and forwarding as well transport sector sustain their businesses while encouraging the use of the SGR.

Following the meeting, the CPG came up with the following suggestions on how to maximize business for both the Kenya Railways Corporation (KRC) and the above referenced stakeholders:


1. **Freedom to choose means of transport** - Importers should have freedom of choice on the mode of transport to haul their goods from the Port to the final destination without restrictions from any government agency.
2. **Full utilization of Railway Assets** - Income accrued from all idle KRC land and assets should be channeled to the Railway Development Fund to assist in raising revenue for payment of the SGR loan.
3. **Increasing Railway Development Levy Revenue** – As a revenue raising measure, the Government should consider adjustments to the Railway Development Levy (RDL) to incentivize use of the SGR. Importers who choose to haul their goods using the SGR can pay a preferential RDL of 1.5% of the value of goods.

Conversely, importers who choose to use road transport will attract an additional surcharge of 0.3% of the value of goods imported (up to a maximum of Kshs. 15,000). The rate of surcharge can be subject to review by the relevant stakeholders including (but not limited to) the CS Transport, Importers, CFS, Transporters, Kenya National Chamber of Commerce.

4. **Private use of SGR** - To encourage use of the SGR, increase competitiveness in the sector and promote stopover economy along the railway line, the Government should set up an open, non-discriminatory policy that allows private investors to provide rail transport services through private trains and locomotives. This will be in line with international practice as is the case in the UK and more recently, India where private companies have license to provide rail services.
5. **Last-mile connectivity** - For purposes of last-mile connectivity, the Government should allow private investors to extend the railway line to their respective yards at their own cost.

6. **Clearing of Cargo** – Importers should have the freedom to nominate a Container Freight Service (CFS) company of their choice to clear their goods regardless of the final destination of the goods. Such choice of CFS does not need to be communicated to Kenya Ports Authority as has been the case.
7. **Freedom to choose Transporter** – Importers should be able to choose freely from a pool of transporters to haul their goods. The Kenya Railway Service can maintain a pool of transporters from which importers will choose to transport cargo across the country.
8. **Renegotiation of SGR Loan** – Considering the immense financial obligation of Kenya Railway Corporation to pay off the SGR loan and the prevailing economic distress occasioned by the global pandemic, the Government should initiate the process of renegotiating the loan terms of the SGR with the lender.

We hope that these measures, among others, will ensure the SGR is effectively utilized without negative effects to the economy of the coastal region and its people.



.....

The Hon. Abdullswamad Shariff Nassir, MP

Sponsor of Motion



.....

The Hon. Said Hirbae, MP

Chairperson, Coast Parliamentary Group

SUBMISSION BY KEPSA



KEPSA MEMORANDUM TO THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING INQUIRY ON THE USE OF STANDARD GAUGE RAILWAY

KEPSA is the apex body of the private sector in Kenya to drive economic development through year on year improvements in the business environment by addressing cross cutting business issues, driving investments and addressing socio-economic issues with partners. It brings together business associations, corporate bodies, SMEs and start-ups to speak in one voice, working closely with Government and other stakeholders through structured public – private dialogue platforms and other engagement mechanisms.

In line with KEPSA's core mandate to conduct high-level advocacy on cross-cutting policy-related issues that help Kenya be globally competitive in doing business, KEPSA advocated for the construction for SGR which was envisioned to do the following:

- Reduced freight transport tariff charges from US\$0.20 per ton/kilometer on average to US\$0.083 per ton/ kilometer;
- Reduced transit time of freight trains for instance from 30 hours on the average to less than 8 hours in the Mombasa –Nairobi section;
- An annual GDP growth of at least 1.5% during construction and subsequent;
- Increased rail transport share in the northern corridor hence reducing damage to the roads; and
- Reduced road accidents and damage to the road network.

This was also in support of Kenya's strategic agenda of becoming a regional logistics hub.

However, this has not been achieved because of government directive of forced railage of cargo through the SGR. This has led to heavy cost implication of Kenyan importers and Business costing an addition cost of between 175 and 233 percent for moving Containers by Rail to Nairobi as per the attached analysis.

The forced railage is against the International Maritime Laws and World Trade Organization treaties that allow the cargo owners to choose the mode of transport that is competitive in their view.

The forced railage has not only increased the cost of doing business because of the high cost transporting cargo but has also threatened Kenya position as the regional logistic hubs.

Recently, there is a trend where cargo owners from other countries are now preferring others transport corridors because of the cost implication of the Northern Transport Corridor. This has demonstrated by the declining cargo that has been imported through the Port of Mombasa.

The current cost of cargo transportation is untenable and if not address will affect the cost of doing business and our competitiveness as a country especially as a logistics hub. This will also have a ripple effect to the economy.

Private Sector Proposals

1. Allow the Cargo Owner to choose the mode of transporting cargo (either rail or road). There is enough cargo for both rail and road. This will ensure competitiveness in the industry hence enhancing the services offered.
2. Cargo owner has the right to choose point of clearance be it Mombasa Port or ICD Nairobi or ICD Naivasha or CFS Msa or CFS Nairobi
3. More stakeholders' involvement of all players in the industry before making changes in processes or rates/charges.
4. KPA to write to the shipping line revoking the initial agreement that every cargo to be transported through TBL and allow for merchant haulage.
5. KPA to revoke the contract for verification at ICD Nairobi
6. KPA to revert to 11 days free as stipulated in their tariff guidelines for clearance at ICD Nairobi
7. KPA should STOP charging release penalty which is NOT in the official tariff book
8. KPA should STOP charging for re-marshalling as containers are never moved as stipulated in their Tariff guidelines
9. KRC to reduce their tariff for rail to \$350 for a 20' and \$450 for a 40' for either Nairobi or Naivasha.

Note: Items 5-7 were done arbitrarily by KPA without any Stakeholder participation

Signed:



ANIL BHANU

CHAIR

TRANSPORT & INFRASTRUCTURE SECTOR BOARD

COMPARISON OF ROAD VS RAIL CHARGES FROM MOMBASA TO KAMPALA VIA NAIVASHA

CONTAINER SIZE	20FT		40FT	
	ROAD	RAIL/ROAD	ROAD	RAIL/ROAD
WEIGHT IN TONS	1-14.9TONS	15-30TONS	1-30TONS	UPTO 30 TONS
CURRENCY	USD	USD	USD	USD
MODE OF TRANSPORT	ROAD	RAIL/ROAD	ROAD	RAIL/ROAD
MSA TO KLA BY ROAD DROP OFF KLA	1,000.00	1,900.00	1,900.00	
MSA TO NAIVASHA BY RAIL		600.00	850.00	910.00
NAIVASHA TO KLA BY ROAD		1,400.00	1,400.00	1,400.00
EMPTY RETURN KLA-> NAIVASHA (ROAD)		100.00	100.00	100.00
EMPTY RETURN NAIVASHA-> MSA (RAIL)		120.00	120.00	120.00
EMPTY RETURN KLA TO MSA (ROAD)	100.00	100.00	100.00	
LOCAL SHUNTING EMPTY MSA TO DEPOT		50.00	100.00	100.00
GROSS TRANSPORT RATE	1,100.00	2,000.00	2,270.00	2,630.00
SAVINGS ROAD OVER RAIL IN KES	1,170.00	270.00	570.00	630.00
ADDITIONAL COST IN %	106.36%	13.50%	28.50%	31.50%

COMPARISON OF ROAD VS RAIL CHARGES FROM MOMBASA TO NAIROBI

COMPARISON OF ROAD VS RAIL CHARGES FROM MOMBASA TO NAIROBI

CONTAINER SIZE	20FT		40FT			
	MODE OF TRANSPORT	RAIL	RAIL-TBL	RAIL	RAIL-TBL	
WEIGHT IN TONS	1-14.9TONS	15-30TONS	UPTO15 TONS	1-30TONS	21-30TONS	1-30TONS
CURRENCY	KSHS	KSHS	KSHS	KSHS	KSHS	KSHS
MSA TO NAIROBI RETURN	45,000.00	80,000.00	80,000.00			
MSA TO NAIROBI BY RAIL IN USD(EXC 107)		53,500.00	80,250.00	80,250.00	105,930.00	
LAST MILE IN NAIROBI RETURN TO ICDN		25,000.00	25,000.00	25,000.00	25,000.00	
EMPTY RETURN NAIROBI << MSA (RAIL) (EXC 107)		10,700.00		10,700.00		
LOCAL SHUNTING EMPTY MSA TO DEPOT		5,000.00		8,000.00		
GROSS TRANSPORT RATE	45,000.00	80,000.00	80,000.00	123,950.00	130,930.00	
SAVINGS ROAD OVER RAIL IN KES	49,200.00	56,050.00	25,250.00	43,950.00	50,930.00	
ADDITIONAL COST IN %	209.33%	17.75%	233.89%	31.56%	54.94%	63.66%

Kenya Ports Authority TARIFF

TABLE OF CONTENTS

PREAMBLE:.....	1
A. INTERPRETATION:.....	2
B. PRINCIPLES TO BE APPLIED & NATURE OF CHARGES.....	6
C. GENERAL PROVISIONS	18
SECTION I: (Clause 1-10): Charges for Marine Services & Ships Dues.....	22
SECTION II: (Clause 11-12): Charges for Stevedoring Services	30
SECTION III: (Clause 13-17): Charges for Shorehandling, Wharfage & Storage Services.....	36
SECTION IV: (Clause 18-19): Charges for General Services.....	53

PREAMBLE

The Minister responsible for Kenya Ports Authority has approved the tariff contained in this publication. The tariff shall be effective from the 1st day of December, 2012.

It is notified for general information that the Board of Directors, in pursuance of the powers of Section 30 of the Kenya Ports Authority Act, CAP 391, 1978 has prepared and published this Tariff as approved by the Minister.

These charges shall apply equally to all port users (individuals, persons, firms or corporations engaged in or responsible for handling vessels and cargos including and not limited to cargo agents, charterers, brokers, freight forwarders, shippers or consignees).

Charges and dues appear in Sections I-IV of this Tariff. In the event of any inconsistency or contradiction between the provisions of this Tariff and the provisions of the Act, the latter provisions will prevail.

The whole Tariff has been denominated in United States of America Dollar (US\$). The Kenya Ports Authority Management may allow payment to be made in Kenya Shillings (Kshs.) and reserves the right to prescribe the currency of payment and the exchange rate to be applied.

Managing Director
Kenya Ports Authority
P. O. Box 95009 - 80104
Mombasa, Kenya

A. INTERPRETATION

For the purpose of interpretation, The Kenya Ports Authority Tariff should be read together with the preamble.

In this Tariff unless the context otherwise requires: -

"ACT" means the Kenya Ports Authority Act, 1978 (Cap 391 of the Laws of Kenya) as amended from time to time, and any rules and regulations made thereunder.

"APPOINTED PLACES" means any place within the Harbour or Depot limits officially designated by the Authority as a place for the landing or discharge of goods.

"AUTHORITY" means the Kenya Ports Authority.

"CHARGES" means all sums received or receivable, charged or chargeable for or in respect of Ship or Cargo or any other services performed or for facilities provided by the Authority.

"PER TONNE" or **"HARBOUR TONNE"** in respect of cargo, shall, unless otherwise specified, mean per tonne of 1000 kilograms or 1 cubic metre whichever shall yield the higher charge.

"DEADWEIGHT TONNE (DWT)" means 1,000 kilograms.

"TONNE" In relation to fresh water supplied to Ships, shall mean a unit of charge equivalent to 224 gallons or 1,000 litres of water.

"MANAGING DIRECTOR" means the person appointed under Section 5 (1) of the Act or such other person for the time being performing the duties of the Managing Director.

"CFS" means Container Freight Station

"FCL" means Full Container Load.

"LCL" means Less Container Load.

"LCL/LCL" means Pier to Pier.

"LCL/FCL" means Pier to House.

"FCL/LCL" means House to Pier.

"FCL/FCL" means House to House.

"FINAL DESTINATION" (FND) means country of final destination of the cargo and for purposes of C11/EDI Amendments refers to either Kenya, Transit or Transhipment destination including ICDs and CFSs.

"DEAD SHIP" means vessel not under own steam or not under control due to engine, mechanical or steering failure.

"LIGHT DUES" means charges for use of navigational aids and vessel traffic services.

"SHIPS ENGAGED IN COASTAL TRADE" means Kenya Registered Ships of less than 1000 GT trading exclusively between the limits of Mogadishu in the North and Mwambo in the south and within 50 nautical miles off the Coast.

“HARBOUR AREA” or “DEPOT AREA” means the area within the limits of any Harbour or Depot as defined by an order made under Section 34 of the Act and, in addition to such area;

a) Mombasa

The Port of Mombasa includes Kilindini Harbour, Port Reitz, the Old Port, Port Tudor and the whole of the tidal waters encircling Mombasa Island. The waters of the Port Area are bounded on the Seaward side by a line drawn from Ras Mkungombe to a point off the shore of the mainland, half a nautical mile south of Ras Mwakisenge.

b) Lamu

The Port of Lamu includes Lamu Harbour and that part of the Lamu Bay comprised within a radius of three nautical miles from Shella Lighthouse.

c) Malindi

The Port of Malindi includes the northern anchorage, Malindi shores and so much of the sea as is comprised within a radius of three nautical miles from Malindi (Vasco Da Gama) Lighthouse.

d) Kilifi

The Port of Kilifi includes Kilifi and Takaungu Creeks and so much of the sea as is comprised within a radius of three nautical miles from Ras Kitoka.

e) Shimoni

The Port of Shimoni includes Shimoni Harbour, Funzi, Pungutiayu, Wasini, Vanga, Yimbo and the sea area south of Wasini Island bounded by a line drawn from Ras Yimbo to a point 1.5 nautical miles South of Pungutiayu Light Beacon and Ras Kanda to the North.

f) Mtwapa

The Port of Mtwapa includes Mtwapa Creek and so much of the sea as is comprised within a radius of three nautical miles from Cannon Point.

(g) Kiunga

The Port of Kiunga includes Kiunga Harbour, Kiunga-Mwini Island, Kisiwa Sudhi Island and so much of the sea area within a radius of three nautical miles from the tidal station.

(h) Container Terminal (Mombasa)

Means all container handling areas within the Port of Mombasa.

(i) Inland Container Depots (ICDs)

These include designated container depots managed by the Port Authority in Nairobi, Kisumu, Eldoret and any other depot that the Authority may establish.

(j) Container Freight Stations (CFS)

Customs licensed inland depots appointed by Kenya Revenue Authority for the purpose of handling, storing and delivery of Containerized Cargo and motor Vehicles.

WORKING HOURS

Working hours shall mean the appointed hours of business as may from time to time be prescribed by the Authority for the provision of any particular service or facility.

Stations or small harbors under the jurisdiction of the Authority shall observe regular working hours from 0800 to 1700 hours. Provision of services or facilities outside these hours shall be on prior notification.

Ship and cargo handling operations shall be available 24 hours a day throughout the year. These operations are organized on shift basis as below:-

(a)	First Shift	0700	-	1500 Hours
(b)	Second Shift	1500	-	2300 Hours
(c)	Third shift	2300	-	0700 Hours

B. PRINCIPLES TO BE APPLIED & NATURE OF CHARGES

(a) Tonnage Scale.

Unless otherwise enumerated hereunder, all charges shall be assessed on Harbour Tonne.

(b) Gross Tonnage (GT)

Gross tonnage means the gross tonnage of a vessel provided in the international tonnage certificate issued under the 1969 International Convention on Tonnage Measurement of Ships as amended.

(c) Pick-Up Order/ Pre-Advice/Special Service Request (SSR)

These are accounting documents which incorporate details of services rendered to containers and conventional cargo by the Authority and are lodged/created electronically to facilitate invoicing and delivery/receipt of cargo from/to the Port.

(d) Gate Pass

All cargo leaving the Port shall be issued with a Gate Pass on 24 hour basis. These Gate Passes shall expire as follows:

- i. Conventional Cargo - 6 hours from the time of issue
- ii. Containerized Cargo - 6 hours from the time of issue
- iii. Motor Vehicles - 18 hours from the time of issue

(e) Position Slip

A document issued at the gate indicating the stack position of the container/cargo.

(e) Vessel

A vessel means a water craft including non displacement Craft, Barge, Wing In Ground (WIG) Craft and Seaplane used or capable of being used as a means of transportation on water.

(f) Cellular Container vessel

Fully cellular Container vessel means a vessel purposely built for the transportation of ISO standard containers stacked on top of each other in vertical cell guides.

(g) Non Cellular Container vessel

A non cellular Container vessel means a vessel which is not purposely built to carry ISO standard containers but which may carry non containerized cargo. Not all hatches into which containerized cargo will be loaded or discharged on this vessel will have vertical cell guides although there may be hatches which do.

(h) Ro-Ro vessel

A Ro-Ro vessel means a vessel which has certain cargo decks accessible only by means of a ramp which is lowered onto the quay side and over which cargo is driven on board or off the vessel by means of the ramp.

(i) Container

A container means any container, reefer container, controlled atmosphere container, integral reefer container, and transportable tank or flat that conforms to the ISO type designations. Containers not complying with this standard will be handled at the discretion of the Authority.

(j) Abnormal/Out of Gauge Containers

Any container which contains cargo of which the dimensions exceed any of the external dimensions of the container in or on which it is carried, or any container which cannot be handled by means of standard container handling equipment. This includes ISO standard containers that have been damaged and consequently cannot be handled by means of standard container handling equipment. Such containers are handled at owner's risk.

(k) Reefer Containers

A reefer container means any container, including reefer clip-on units, heated tanks and containers that move via the reefer area and require power connection.

(l) Arrived Vessel

A vessel is deemed to have arrived at the port when she has entered the Harbour limits and reported her presence to the pilot/control station.

(m) Vessel Documentation

The following documents shall be submitted to the Authority electronically as follows;-

- i. Long Haul – at least forty eight (48) hours to ETA
- ii. Short Haul – at least six (6) hours to ETA
(Regional Ports along the East African coastline)

Failure to do so may result to withholding of the vessels from berthing or clearance to sail from the Port until such time as they are made available. Late submission of each EDI file will attract a penalty as per clause 12.11

(i) Discharging Vessels

1. Cargo Stowage plan
2. Cargo manifest
3. Hatch list/discharge list
4. Hazardous and dangerous cargo declaration
5. Passenger manifest

ii) Loading Vessels

1. Cargo stowage plan
2. Cargo Loading list
3. Passenger manifest
4. Container Booking Forecast (8 days minimum prior to opening of stack for exports receiving)

(iii) Sailing Vessels

1. The Ships register
2. International Tonnage Certificate where applicable

(n) Through Bill of Lading Container

A through bill of lading container is an FCL/FCL or FCL/LCL container whose handling charges are paid by the Ship's agents or ICD/CFS Operators or the Cargo Owners as applicable. Such bill covers at least two modes of transport

(o) Status of Containers and Amendments

Amendments of Status or Final Destinations (FND) of containers must be submitted to and approved by the KRA on form C11/EDI Manifest Amendment File and must include all the necessary details, viz; the relevant bill of lading, container numbers/marks and the status for which change is requested. KPA shall effect desired changes in the manifest upon receipt of approved C11/EDI Manifest Amendment File.

If the Status or Final Destination (FND) of the cargo is not declared in the manifest, such cargo will attract C11 levy as per tariff Clause 16.35. Change of destination refers to amendment from Port to ICD/CFS, Domestic to Transit and vice versa.

(p) Ordering and Cancellation of Labour

Requirements for Port labour and facilities must be requested in writing by 1000 Hours each day, to cover 2nd and 3rd shift of that day and 1st shift of the following day. For Saturdays and Sundays the order must be placed by 1000 Hours on Friday. For Public Holidays the order must be placed by 1000 Hours on the preceding working day. These timings are subject to change from time to time.

Cancellation of labour must be notified in writing per shift by 1300 Hours and 1700 Hours for 2nd shift and both 3rd and 1st shift the following day respectively. Weekend cancellation will have to be made 1700 Hours on Friday for all weekend shifts.

Labour cancellation charges will be raised for late cancellation of labour. Cancellation made by 1500 Hours for a 2nd shift and by 1800 Hours for 3rd shift and 1st shift of the following day and weekends shall be charged for a 3 HOUR hire of labour. Cancellation after these times shall be charged for an 8 HOUR hire of labour.

Delays and idle time during shift working which are not caused by the Authority shall be charged as Chargeable Delays.

(q) Direct Delivery for General Cargo

Imported Cargo shall be considered to be directly delivered if the first resting point on the shore side from the vessel is a waiting truck, wagon or other mode of conveyance such as a pipeline, a conveyor or equivalent without landing on the quay. Where such cargo is landed on the quay and handled by shore equipment then it ceases to be a direct delivery and charges for indirect delivery shall apply. The reverse shall apply to exports. Imported vehicles delivered from the ramp to the port exit gates shall also be deemed to be directly delivered.

Importers and Exporters of General Cargo can apply to the Authority for permission to deliver their cargo directly to/from the transport vehicle or wagon from/to a vessel. Such application will be accepted provided that:-

- i. The cargo is homogeneous/uniform in nature.
- ii. They are Explosives or highly dangerous packages.
- iii. They are Heavy Lifts over 20 DWT or awkward packages over 45 cubic meters which cannot be landed on the quay.
- iv. Motor vehicle units delivered via the ramp.

Note:

- a. Cargo in this category shall not attract Shorehandling charges specified in **Clause 13**
- b. The consignee/agent shall notify the Ship Agent to indicate on the manifest that such cargo is due for direct delivery and such manifest shall not be submitted later than 48 hours before arrival of the vessel.
- c. Delivery of such cargo shall not pose any operational impediment and is subject to confirmation.

(r) Customs Warehouse Cargo

Cargo will be declared as Customs Warehouse due when it is declared so by a proper Customs Officer and a Want of Entry issued.

(s) Auction Sales

Unentered goods auctioned by Customs shall attract normal Wharfage and Shorehandling charges as provided in this Tariff prior to removal from the Port.

Entered goods not collected by the Client shall be auctioned to recover charges such as wharfage, shorehandling and storage incurred in accordance with the KPA Act.

(t) Re-Marshalling

Re-marshalling means any shifting, transfer, removal or handling of containers after the free period within the container terminal and include movement within the bays, blocks, yards or transfer to other areas within the Port or other designated areas outside the Port.

(u) Free Storage Period

Means specified periods during which cargo or containers handled over the quay may occupy space assigned to it in the Port free of storage charges, either prior to the loading or subsequent to the discharge of such cargo or containers.

For the purpose of computing storage charges, free period for Imports and Transshipment cargo shall commence from the next day of completion of discharge of the vessel. Export cargo free period shall start from the day of receipt. A day refers to 24 continuous hours running from 0001 hours (midnight). Part of the day shall be deemed as a whole day.

Free days shall run consecutively and shall include Saturdays, Sundays and public holidays.

(v) Transshipment Cargo

Transshipment cargo or Transshipment container means goods landed from a vessel and placed in the custody of the Authority for the purpose of Shipment on another vessel.

To qualify for the Transshipment cargo rates the cargo must be discharged by the first carrier at the Port and remain in the custody of the Authority until it is transhipped onboard the on-carrying vessel. Cargo which leaves the port precincts ceases to be categorized as Transshipment Cargo.

(w) Stevedoring

Stevedoring means transfer or movement of cargo within the vessel and/or between the vessel and the quay or the next mode of transportation.

(x) Shore-handling

Shore-handling means handling, transfer or removal of cargo to or from the quay or jetty and the transit sheds, warehouses or stacking yards. Empty containers for repatriation are exempt from payment of Shore-handling charges.

(y) Wharfage

Wharfage charges shall be raised on all cargo including empty containers passing over the quays, wharves, jetties and buoys. Transshipment cargo which is exclusively handled by the Authority is exempted from this charge.

(z) Storage

Storage is a charge levied on cargo remaining in the Port Area after expiry of the allowed Free Period.

(aa) Exemption from Compulsory Pilotage

The following vessels may be exempted from compulsory Pilotage provided that such exemption will assure safety to Harbour installations, vessels or other crafts:-

- i. Ships owned or operated by the Government other than those engaged in commercial trade.
- ii. Ships owned or operated by the Authority.
- iii. Authorized ferries plying as such exclusively within the Harbour limits.
- iv. Ships of less than 500 Gross Tonnage
- v. Ships trading exclusively between Ports in Kenya.
- vi. Dredgers or similar vessels whose ordinary course of navigation does not extend beyond the Port limits.

(bb) Exemption from Light Dues

- i. Naval Ships on courtesy calls and Government vessels not engaged on trading voyages.
- ii. Passenger/Cruise vessels.
- iii. At the sole discretion of the Authority, vessels entering a Port on account of distress, weather, with mutinous crew or entering when disabled or for medical assistance (provided they do not stay in Port longer than 48 hours.) For any period in excess of 48 hours, such vessels shall pay the normal rate specified under CLAUSE 4 of this Tariff.

(cc) Exemption From Port /Harbour Dues

The following vessels are exempted from payment of these Dues:-

- i. Naval Ships on courtesy calls and Government vessels not engaged on a trading voyage.
- ii. Vessels entering the Port solely for bunkers, fresh water or provisions provided that they do not stay in the port longer than 24 hours.

(dd) Laid Up Vessels

The Owners or Agent(s) of a vessel in Port intending to lay it up shall give Notice of such intention to the Authority and provide proof that: -

- i. The Ship has no cargo on board and is not used for storage purposes.
- ii. The articles of agreements with the crew thereof have been closed other than for the following who must remain on board during the entire period of lay up to maintain the Ship and facilitate safety;
 - An Engineer to man the generators
 - One Deck Officer
 - 2-3 Seamen to deal with any emergency that may arise.
- iii. The Ship has been surveyed and certificate of seaworthiness issued by a competent Authority. On receipt of the notice and proof as above, the Authority may at its discretion grant consent and declare the date on which such vessel shall be treated as a "laid up" vessel.

(ee) Chargeable Delays

The following delays occasioned during operations shall be paid for by parties causing the delay;

- i. Standby attributed to delay in opening or closing hatches by Ship crew.
- ii. Standby attributed to delay in rigging Ships gear by crew (This delay is only applicable if advance notice of requirement of Ship gear was given to the vessel).
- iii. Standby of gangs allocated on the next Ship planned for a berth attributed to failure by a completing vessel to sail on appointed time if the Authority did not contribute to the delayed sailing of the completing vessel.
- iv. Standby of labour attributed to failure by Ship to provide loading/discharging instructions or stowage/bay plan.
- v. Standby of labour attributed to poor supply of empty containers delivered directly to vessel from depots outside the Port.

NOTE: All chargeable delays are subject to 30 minutes free period from commencement of the delay as booked in the supervisor's working report or any relevant document.

(ff) Dangerous Cargo

- i. Dangerous goods are all those substances listed in the I.M.D.G. Code published by the International Maritime Organization (IMO).
- ii. It is mandatory for Ship operators to declare all dangerous goods on board in the form prescribed under the IMDG Code. Trade names of dangerous goods are not acceptable.
- iii. It is mandatory for all Ship's Agents and Clearing and Forwarding Agents to declare all dangerous cargo by class on all documents required in the clearance process.
- iv. Dangerous cargo exempted from payment of surcharge is outlined in the exemption list.

(gg) Waste Reception Facilities

Vessels can only discharge their garbage, sludge and Ship waste into designated Waste Reception Facilities in accordance with the requirements of International Convention for the Prevention of Marine Pollution at Sea (MARPOL), on payment of appropriate published charges.

(hh) Salvage Operations

Vessels within the Port limits are obliged to accept salvage services offered by the Authority. These services shall be charged separately from normal Marine Charges. The charges shall be based on the nature of salvage or as per the Lloyds Open form.

C. GENERAL PROVISIONS

I. Supercession

This Tariff supercedes the Tariff introduced with effect from 1st February, 2008 and any amendments thereto.

II. Consent To Terms Of The Tariff

The use of the Port of Mombasa shall constitute consent to the terms and conditions of this tariff, and evidence, agreement on the part of all vessels, their owners, operators, charterers, mortgagees, or agents, the cargo owners and agents (Shippers or consignee) and other users of the Port to pay all charges specified and to be governed by all rules and regulations appertaining to the Port.

III. Payment For Services Rendered And Levies

All services shall be provided upon payment of the charge or the levy due in accordance with this tariff. Ships agents or owners shall be required to pay in advance or before sailing the full marine and stevedoring charges.

Cargo owners or agents shall pay for services before any service is rendered. Cargo owners and or agents may apply for credit facilities provided they fulfill such conditions for the facilities as may be required by the Authority from time to time.

IV. Late Payment Of Invoices

All invoices shall be payable when they fall due. Failure to pay may cause a lien to be placed on the goods handled at the port and the responsible party may be denied further use of the port until all outstanding charges have been paid. The Authority reserves the right to charge interest on the outstanding amount at the rate of 2% above the Central Bank of Kenya rate (CBR).

V. Charges Or Dues Not Expressly Provided For

The Authority may in respect of services rendered or to be rendered or facilities provided or to be provided but which services or facilities are not specified in this Tariff, determine and raise charges at such rates or for such amounts as the Authority may in each case consider appropriate.

VI. Contracts

The Authority may enter into agreement with any person including any company or association or body of persons corporate for the performance or provision by that person of any of the services or facilities which may, under the Act, be performed or provided by the Authority and raise charges at such rates or for such amounts as may be mutually agreed between them, and such charges or rates shall apply and be collected as if they were set out in this Tariff Book.

VII. Power Of The Authority To Impose Surcharges And Adjust Charges

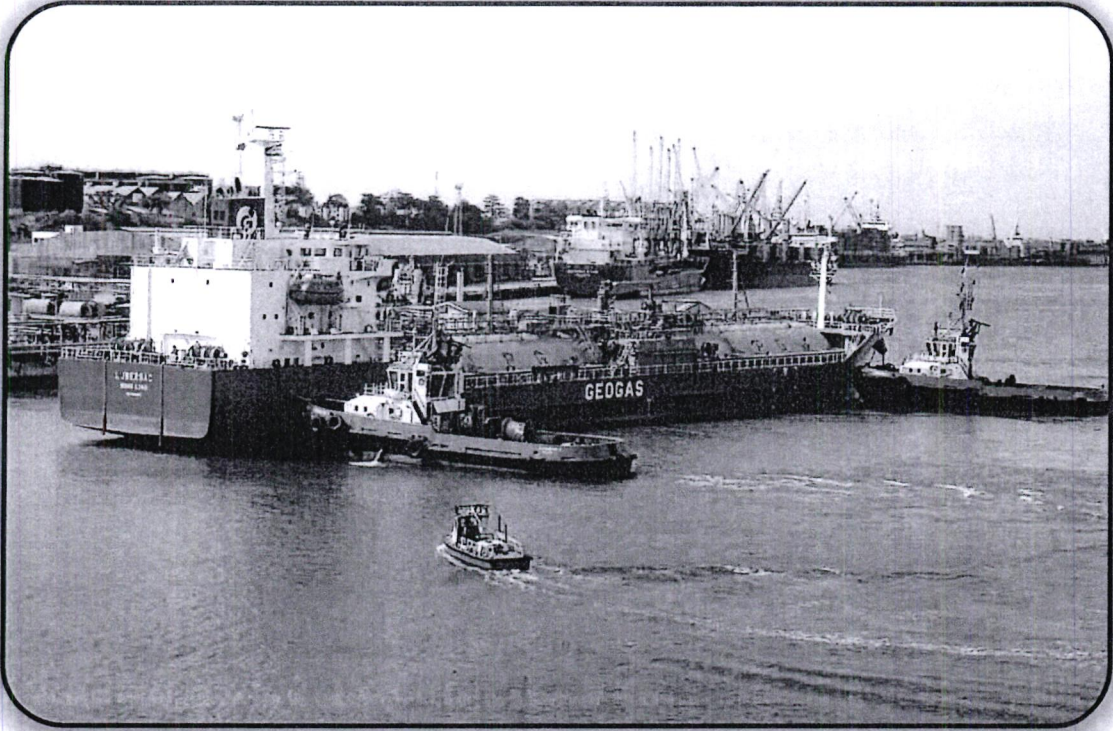
The Authority may impose an individual or general surcharge or adjust the rates set out in this Tariff according to the nature of the services rendered or facility provided or afforded or on account of specific or general economic consideration.

VIII. Value Added Tax (VAT)

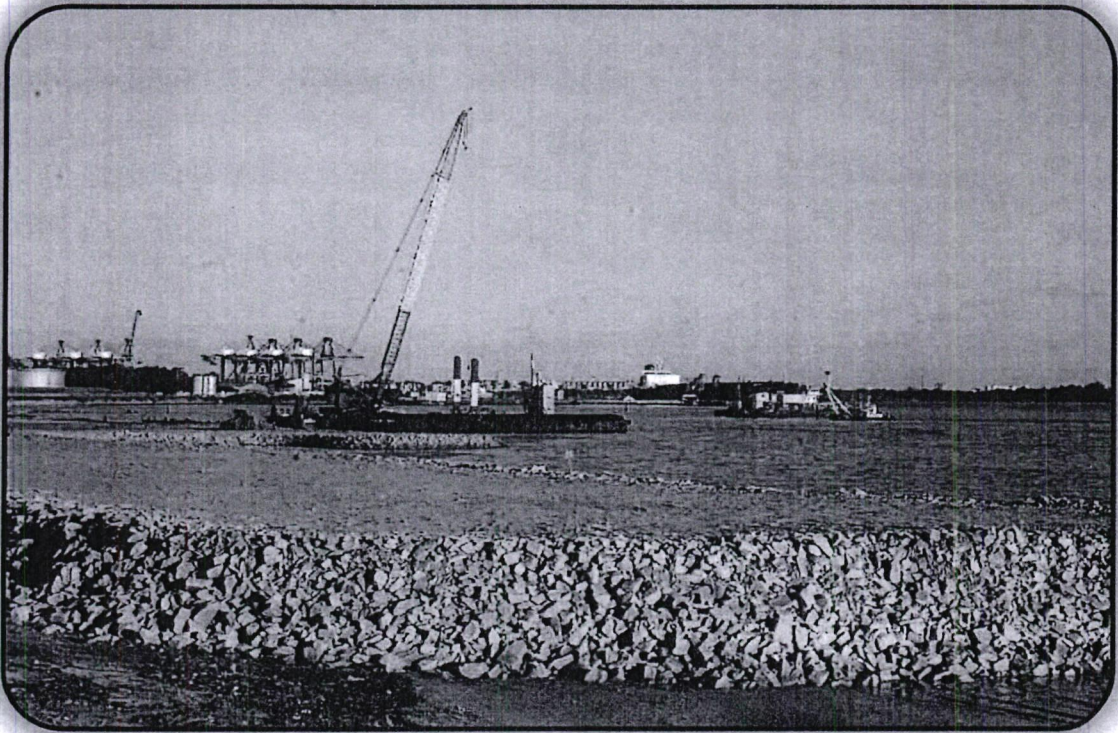
All charges in this tariff exclude VAT and any other statutory charges where applicable. VAT and those other statutory charges/ levies will be applied at the rate(s) applicable at the time of billing.

IX. Revocations

For the avoidance of doubt all verbal or written instructions, exchange of letters for special rates, ruling, understanding(including MOUs) or any other compromises contrary to the provisions of this Tariff but negotiated between the Authority and Port users or otherwise shall from the 1st day of December, year Two Thousand and Twelve (01-12-2012) cease to have validity and/or effect.



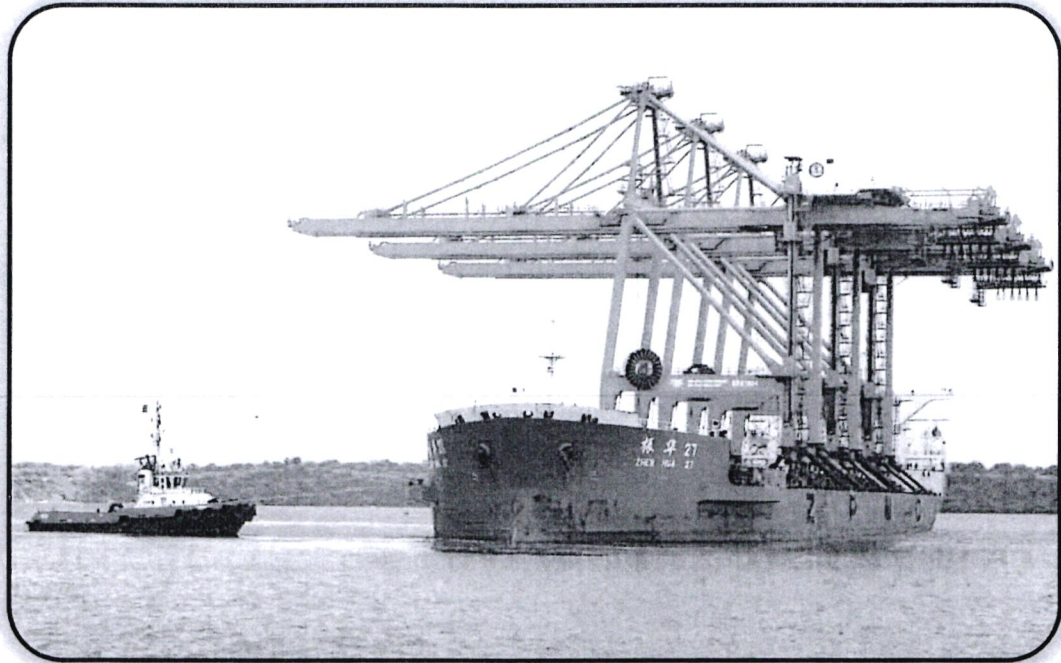
Tug Operations



Second Container Terminal

SECTION I

CHARGES FOR MARINE SERVICES AND SHIP DUES



Arrival of STS cranes



Rail mounted gantries at the terminal

SECTION I**CHARGES FOR MARINE SERVICES AND SHIP DUES****CLAUSE 1: PILOTAGE FEES**

All vessels other than exempted ones navigating whether by entry, leaving or shifting within the port shall be under the charge of a pilot. The Harbour Master shall direct on the use of a pilot in the interest of port safety in which case the appropriate tariff charges shall apply.

Pilotage fees are charged on all vessels, including barges and bunkering vessels. Charges per operation are subject to a minimum charge of **US\$150.00** and shall be as follows:-

RATE PER 100 GT
OR PART THEREOF

- | | | |
|------------|---|---------------|
| 1.1 | Inward, Outward and Internal vessel movements | \$6.00 |
| 1.2 | RORO, Pure Car Carriers and Passenger Vessels shall be charged 80% of the rate shown in Clause 1.1 above | |
| 1.3 | Dead ship movement shall be charged at double 1.1 and 1.2 above | |
| 1.4 | Cancelled Inward, Outward and Internal vessel movement or pilot detention shall be made at the rate shown in clause 1.1 above as described below:- | |
| | (I) Cancellation made over 30 minutes before the confirmed time of service is free of charge | |
| | (II) Cancellation made less than 30 minutes before the confirmed time of service is chargeable | |
| | (III) Where the pilot attends at the time of service but is not picked up or used by the vessel within 30 minutes through no fault of the Authority, every 30 minutes thereafter or part thereof is chargeable. | |

Where exemption from pilotage has been granted to a vessel, certificate of exemption shall be issued to The Master of the vessel.

The certificate shall remain valid for one (1) year from date of issue.

RATE PER YEAR

Pilotage exemption license for Inward, Outward and Internal vessel movements	\$2000.00
---	------------------

CLAUSE 2: TUG SERVICES

All vessels, including barges and bunkering vessels shall be obliged to accept the services of a Tug(s) at the discretion of the Port. Service shall be deemed to have been provided whether the Tug(s) are on standby or used. Charges per Tug per operation are as follows subject to a minimum of US\$300 per Tug:-

	<u>RATE PER 100 GT OR PART THEREOF</u>
2.1 Berthing or unberthing vessels, internal movements or movements within 2 nautical miles of harbour limits	0-10,000 GT \$15.00 Thereafter \$7.50 per tug per operation
2.2 RORO, Pure Car Carriers and Passenger Vessels shall be charged 80% of the rate shown in Clause 2.1 above	
2.3 Dead ship movements shall be charged at Double 2.1 and 2.2 above.	
2.4 Movements between harbour limits and a point beyond 2 nautical miles of harbour limits shall be charged double 2.1 and 2.2 above	
2.5 Tugs ordered and present at the time of service but not used by the vessel within 30 minutes through no fault of the Authority	\$15.00 per every 30 minutes or part thereof
2.6 Towage of lighters, floating crane, pontoons or small crafts of less than 500 GT per Tug (when available)	<u>RATE PER HOUR OR PART THEREOF</u> \$300.00

CLAUSE 3: MOORING SERVICES

Every mooring or un-mooring of any vessel including barges will constitute a separate operation and shall be charged as follows:-

	<u>RATE PER 100 GT OR PART THEREOF</u>
3.1 Mooring, un-mooring or any other mooring service for vessels of 100 GT and above	\$3.30 subject to minimum of \$200.00
3.2 RORO, Pure Car Carriers and Passenger Vessels shall be charged 80% of the rate shown in Clause 3.1 above	
3.3 Vessels less than 100 GT to pay a fixed charge of US\$150.00 per operation	
3.4 Mooring Gang ordered and present at the time of service, but not used by the vessel within 30 minutes through no fault of the Authority	\$3.30 per 30 minutes or part thereof

CLAUSE 4: LIGHT DUES.

Light dues shall be charged on all vessels per call as follows:-

	<u>RATE PER 100 GT OR PART THEREOF</u>
4.1 Vessels, other than those exempted, or paying an annual fee	\$5.50 subject to a minimum of \$150.00
4.2 Vessels which are resident in Kenyan port shall pay an annual fee. The fee charged is US\$600.00 payable annually in advance	

CLAUSE 5: PORT AND HARBOUR DUES

Port and harbour dues are charged on all vessels, including barges and bunkering vessels, per call as follows:-

	<u>RATE PER 100 GT PART THEREOF</u>
5.1 Vessels other than those exempted, or paying an annual fee	\$13.00 subject to a minimum of \$150.00
5.2 RORO, Pure Car Carriers and Passenger Vessels shall be charged 80% of the rate shown in Clause 5.1	
5.3 Vessels which are resident in a Kenyan Port may request to pay an annual fee. The fee charged is US\$600 payable annually in advance.	

Clause 6: DOCKAGE, BOUYAGE AND ANCHORAGE

Dockage dues shall be charged on all vessels, including barges and bunkering vessels whether berthed or double banked per metre per hour or part thereof as follows:-

	<u>RATE PER METRE PER HOUR OR PART THEREOF</u>
6.1 Vessels at quays, wharves or jetties	\$0.26
6.2 Vessels at buoys, or RORO vessels berthed stern to quay RORO vessels berthed alongside or with bow/stern ramp-to-quay, chargeable dockage length is based on length overall (LOA)	\$0.13
6.3 Vessels at anchorage	\$0.07

CLAUSE 7: SUPPLY OF FRESH WATER

Supply of fresh water shall be charged as follows:-

	<u>RATE PER TONNE OR PART THEREOF</u>
7.1 Via shore Hydrants	\$10.00
7.2 In stream by barge or Tug(s)	\$15.00
7.3 In stream supply ordered and present at the time of service, but not used by the vessel within 30 minutes, through no fault of the Authority, shall be charged \$100.00 per each 30 minutes detained thereafter	

Before supply begins the meter reading must be agreed and signed for. Meter testing shall be performed on request at a charge of **\$6.00**, which is refundable if the difference is over 5%.

CLAUSE 8: LAID UP VESSELS

Vessels laid up shall be charged per week of seven (7) calendar days or part thereof as follows:-

	<u>RATE PER 100 GT OR PART THEREOF</u>
8.1 Vessels up to 10,000 GT	\$10.00
8.2 Vessels over 10,000 GT	\$20.00
8.3 RORO, Pure Car Carriers and Passenger Vessels shall be charged 80% of the rates shown in Clauses 8.1 and 8.2 above	

After 12 weeks, laid-up status shall cease and Normal port charges shall apply under **clause 6**. Vessel may re-apply for further laid-up period if required.

CLAUSE 9: PRIVATE MOORING, BUOYS AND JETTIES

The Authority may grant permission for laying buoys or jetties for private use. The charges per calendar year for each buoy and its mooring, or for each jetty shall be as follows:-

	<u>RATE PER YEAR OR PART THEREOF</u>
9.1 Facility used for crafts engaged in commercial activities at the Port of Mombasa	\$5,000.00
9.2 Facility used for crafts engaged in commercial activities outside the Port of Mombasa	\$1,000.00
9.3 Facility used for private craft and yachts (Non Commercial)	\$300.00

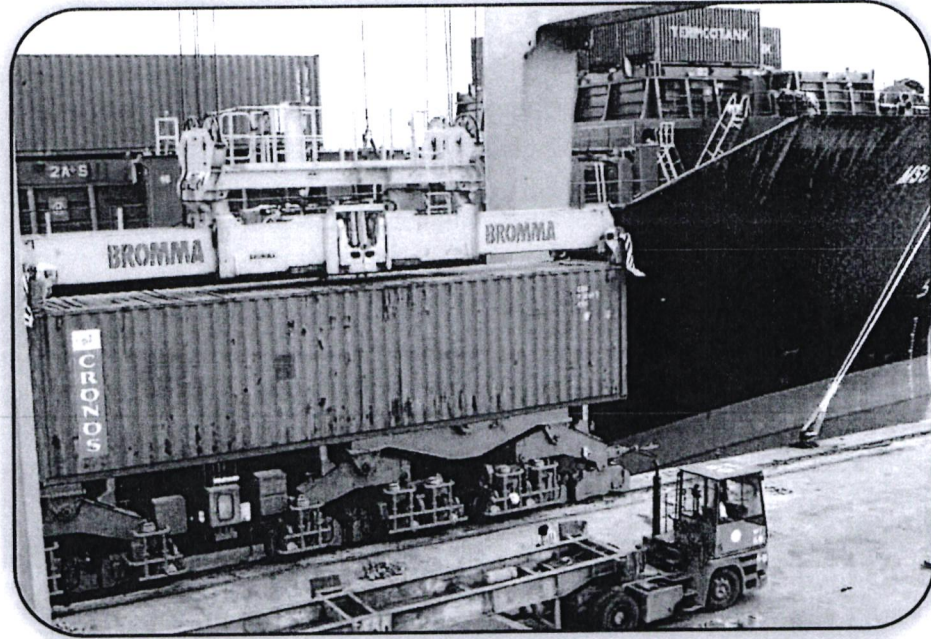
CLAUSE 10: SECURITY DUES

Security dues shall be raised on all vessels per call as follows:-

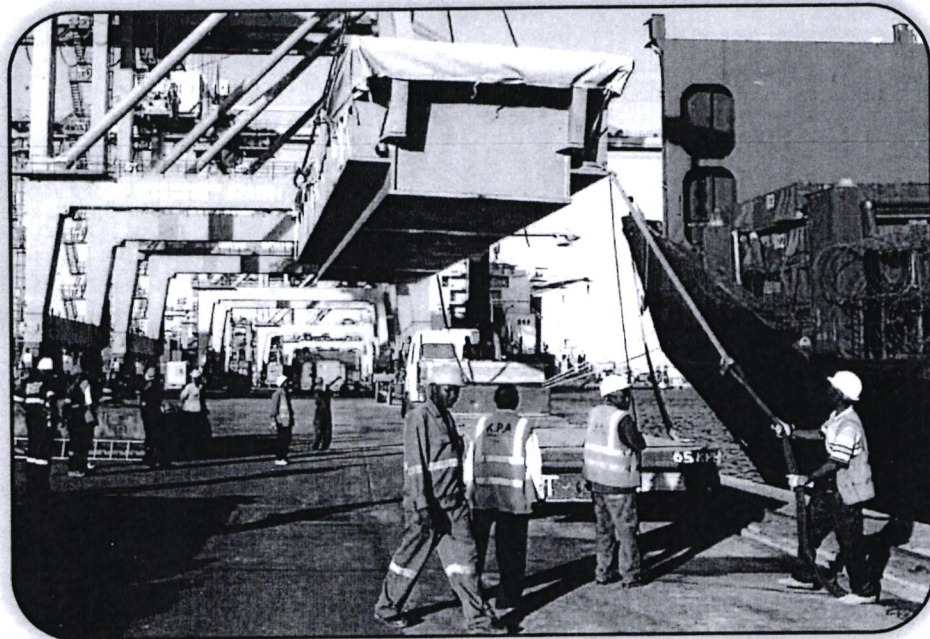
RATE PER 100 GT
OR PART THEREOF

- | | | |
|------|--|--|
| 10.1 | Vessels other than those paying annual fee | \$3.30 subject to a minimum of \$100.00 |
| 10.2 | Vessels which are resident in a Kenyan Port may request to pay an annual fee. The fee charged is 10 times the amount in 10.1 above payable annually in advance. | |

SECTION II CHARGES FOR STEVEDORING SERVICES



Stevedoring Containerised Cargo



Stevedoring General Cargo

SECTION II CHARGES FOR STEVEDORING SERVICES

CLAUSE 11: STEVEDORING – CONVENTIONAL CARGO

Stevedoring charges shall be levied on Dry General, Dry Bulk and Liquid Bulk cargo per Harbour Tonne as follows:

	<u>RATE PER TONNE OR PART THEREOF</u>
11.1 Dry General cargo discharging, loading, shifting on board without landing	\$7.50
11.2 General cargo discharged or loaded from/to a RORO vessel via the ramp	\$6.00
11.3 Loading and discharging of Motor Vehicles (Self Propelled Units)	
	<u>RATE PER UNIT</u>
Saloon, Station Wagon, Van, CUV not exceeding 1.5 MT	\$70.00
Station Wagon, Pick-up, SUV, CUV not exceeding 2.0 MT	\$95.00
Mid sized Truck, Minibus, Tractor not exceeding 5.0 MT	\$200.00
Bus, Truck, Tractor, Light Fork Lift not exceeding 10 MT	\$500.00
Construction/Ind. vehicle, Heavy Duty Lifting Equipmt over 10 MT	\$800.00
Trailer and/or vehicles loaded on top of other units shall be charged as individual units	
General Cargo loaded on any unit shall be charged at appropriate General Cargo Rate	
	<u>RATE PER TONNE OR PART THEREOF</u>
11.4 Discharging and loading of Transshipment cargo	\$6.00
11.5 Over-landed cargo, cargo loaded and re-landed or landed and re-loaded shall be charged at double the rates under clause 11.1 to 11.3 as applicable	
11.6 Dangerous cargo shall be surcharged at 10% above the rates in clause 11.1 to 11.4	
11.7 Import Dry Bulk or Liquid Bulk cargo handled via conveyors or pipeline from the vessel without landing on quay to any existing bulk storage facilities within the port area or to storage areas outside the port	\$1.65
11.8 Export Dry Bulk or Liquid Bulk cargo handled via Conveyors or Pipeline into a vessel without landing on the quay from any existing bulk storage facilities within the port area or a storage facility outside the port	\$1.00
11.9 Import Dry Bulk handled from a vessel via any other mechanical method to a waiting truck or to a bagging facility on the quay	\$4.40

Other cargo not charged per tonne shall be charged as follows:-

	<u>RATE PER ITEM</u>
11.10 Mail per bag, or ships stores per package	\$1.00
11.11 Returning empty bags	\$0.01
11.12 Repairs in the breakage room per package (on request)	\$5.00
11.13 Crated animals	\$8.00
11.14 Animals handled by sling	\$16.00
11.15 Animals walked on/off board	\$1.00
	<u>RATE PER GANG PER HOUR</u>
11.16 Hire of a gang for service such as handling of dunnage or separation of materials, trimming of cargo, sweeping of spillage on quay, or handling of bulk cargo via open-topped rail wagons which require rigging	\$ 100.00
11.17 Labour cancellation, delay, or idle time charge after expiry of 30 minutes free period	\$100.00
<p>In addition to normal stevedoring charges, any package or article weighing over 20 DWT, or awkward packages of over 45 cubic metres other than standard freight containers with I.S.O. corner fittings, wheeled, trucked or any other cargo that can be discharged on a RORO basis, shall be surcharged as follows:-</p>	
	<u>RATE PER LIFT</u>
11.18 21 DWT to 50 DWT	\$60.00
11.19 51 DWT to 80 DWT	\$100.00
11.20 Over 80 DWT	\$200.00
11.21 Awkward packages over forty five (45) cubic metres	\$60.00

CLAUSE 12: STEVEDORING – CONTAINERISED CARGO

Charges shall be levied on standard 20 feet (20') and 40 feet (40') ISO containers to/from ship per move as follows:-

	<u>RATE PER MOVE</u>	
	<u>20'</u>	<u>40'</u>
12.1 Discharging, loading, shifting on board without landing on cellular vessel	\$99.00	\$148.00
12.2 Discharging, loading, shifting on board without landing on non-cellular vessel	\$120.00	\$180.00
12.3 Discharging, loading, shifting on board without landing on a RORO vessel	\$74.00	\$110.00
12.4 Transshipment containers	\$80.00	\$120.00
12.5 Containers loaded and re-landed or landed and re-loaded shall be charged 2 times the rates applicable in clause 12.1 to 12.3		
12.6 Empty containers shall be charged at 60% of the rates shown in 12.1 to 12.4 above		
12.7 Containers holding in whole or in part dangerous cargo shall be surcharged at 10% above rates in clause 12.1 to 12.4		
12.8 Out of Gauge container (Export/Import)	\$200.00	\$300.00

Opening and closing of hatch covers will be performed on request. When such opening or closing exceeds **15 minutes** idle time charges under **clause 11.17** shall apply

	<u>RATE PER MOVE</u>
12.9 Hatch cover or pontoon which can be lifted using a standard ISO twist locks spreader	\$75.00
12.10 Other covers or pontoons	\$100.00
12.11 Penalty for Late Submission of Documents as provided for in part B(m) of this tariff shall attract a penalty of \$30.00 per container or per Bill of Lading for Conventional Cargo up to a maximum of \$2,000.00 per vessel	

SECTION III CHARGES FOR SHOREHANDLING, WHARFAGE & STORAGE SERVICES



Shorehandling rail bound containers



Shorehandling containers

SECTION III CHARGES FOR SHOREHANDLING, WHARFAGE & STORAGE

CLAUSE 13: SHORE HANDLING – CONVENTIONAL CARGO

Shore handling charges shall be levied on Dry General and Dry Bulk cargo per Harbour Tonne as follows:

	<u>RATE PER TONNE OR PART THEROF</u>
13.1 Imports – Domestic	\$8.00
13.2 Exports – Domestic	\$6.50
13.3 Imports – Transit	\$6.50
13.4 Exports – Transit	\$5.00
Where Extra Handling of cargo is required, additional charges shall be levied as follows:-	
13.5 Import cargo Handled at ICD's	\$6.00
13.6 Export Cargo Handled at ICD's	\$4.00
13.7 Shut-out cargo withdrawn from the Port	\$6.00
13.8 Fumigation of cargo	\$3.00
13.9 Import cargo handled at the Port	\$8.00
13.10 Export cargo handled at the Port	\$6.50
13.11 Quay side bagging by the consignee or agent	\$1.00
13.12 Transfer of cargo in the Port Area, or transfer of cargo to Customs Warehouse, or handling of Customs Warehouse Cargo, Shut-out cargo not removed from the Port or empty oil drums/barrels returned to the original Shipperdrums/ barrels returned to the original Shipper	\$2.20
13.13 Dangerous cargo shall be surcharged at 10% above rates in clause 13.1 to 13.4	
13.14 Ship's stores, gear/craft or equipment put over side by the ship with permission from the Authority will not be charged. If eventually landed ashore, it shall be charged as per clause 13.1 to 13.4	

Other cargo not charged per tonne shall be charged as follows:-

13.15 Handling of Self Propelled Units at the CFS or Port- Indirect

	<u>RATE PER UNIT</u>
Saloon, Station Wagon, Van, CUV not exceeding 1.5 MT	\$80.00
Station Wagon, Pick-up, SUV, CUV not exceeding 2.0 MT	\$105.00
Mid sized Truck, Minibus, Tractor not exceeding 5.0 MT	\$265.00
Bus, Truck, Tractor, Light Fork Lift not exceeding 10 MT	\$665.00
Construction/Ind. vehicle, Heavy Duty Lifting Equipt over 10 MT	\$1065.00

Trailer and/or vehicles loaded on top of other units shall be charged as individual units General Cargo loaded on any unit shall be charged at appropriate General Cargo Rate

	<u>RATE PER ITEM</u>
13.16 Mail per bag	\$1.00
13.17 Animals walked across the quay (includes bales of hay/animal food)	\$2.00
13.18 Crated animals	\$4.00
13.19 Cargo handled at Old Port and other designated private jetties outside the port	\$1.00

In addition to normal shore handling charges, any package or article weighing over 20 DWT or awkward package of over 45 cubic metres other than standard ISO freight containers shall be surcharged as follows:

	<u>RATE PER LIFT</u>
13.20 21 DWT to 50 DWT	\$60.00
13.21 51 DWT to 80 DWT	\$100.00
13.22 Over 80 DWT	\$200.00
13.23 Awkward package over forty five (45) cubic metres	\$60.00

CLAUSE 14: SHORE-HANDLING – CONTAINERISED CARGO

Shore-handling rates shall be levied as follows:-

	RATE PER UNIT	
	20'	40'
14.1 Imports – Domestic – Full	\$105.00	\$160.00
14.2 Exports – Domestic – Full	\$53.00	\$80.00
14.3 Imports – Transit – Full	\$85.00	\$125.00
14.4 Exports – Transit – Full	\$40.00	\$65.00
14.5 Out of Gauge container (Export/Import)	\$200.00	\$300.00
14.6 Domestic & Transit FCL Imports to CFS (KPA Nominated)	\$65.00	\$105.00
14.7 Domestic & Transit FCL Imports to CFS (Consignee Nominated)	\$85.00	\$125.00
14.8 Import containers handled at ICDs (Including Shore-Handling)	\$103.00	\$157.00
14.9 Exports containers handled at ICDs (Including Shore-Handling)	\$48.00	\$74.00

Where extra handling of cargo is required, additional charges shall be levied as follows:-

	RATE PER UNIT	
	20'	40'
14.10 Transfer within the Port Area at customer's request or shut-out containers not removed from the port	\$33.00	\$50.00
14.11 Stripping or Stuffing	\$80.00	\$120.00
14.12 Survey Fee	\$60.00	\$100.00
14.13 Reefer containers plugged onto reefer points, per hour or part thereof	\$2.00	\$3.00
14.14 Re-marshalling charge on expiry of free period for both domestic import and transit Import containers Empty containers shall be charged 60% of the above	\$110.00	\$165.00
14.15 In addition to the above, containers holding in whole or in part dangerous cargo shall be surcharged at 10% of the rates in Clause14		

CLAUSE 15: WHARFAGE

Wharfage charges shall be raised on all cargo including empty containers passing over the quays, wharves, jetties, buoys and other installations within the Harbour limits except for Transshipment cargo.

Charges shall be levied as follows:-

	<u>RATE PER UNIT</u>	
	<u>20'</u>	<u>40'</u>
15.1 Domestic and Transit Full containers both Imports and Exports	\$70.00	\$105.00
15.2 Domestic and Transit Empty containers both Imports and Exports	\$30.00	\$45.00
15.3 In addition to the above, containers holding in whole or in part dangerous cargo shall be surcharged at 10% of the rates in Clause 15.1 & 15.2		
	<u>RATE PER TONNE OR PART THEREOF</u>	
15.4 Domestic and Transit Dry General, Dry and Liquid Bulk cargo both Imports and Exports leaving or entering the Port on a truck, train or equivalent mode of transport		\$5.50
15.5 Dry Bulk or Liquid Bulk Cargo handled via conveyor or pipeline from/to the vessel to/from existing liquid bulk facilities within the port or a storage facility outside the port		\$2.20
15.6 Bunkering vessels in port area via pipeline or truck		\$0.5
15.7 Dry or Liquid Bulk Cargo handle through private jetties or buoys		\$1.00
15.8 Dry General cargo handled through private jetties or buoys		\$2.00
15.9 Self Propelled Units (Import or Export) handled directly or indirectly		
	<u>RATE PER UNIT</u>	
Saloon, Station Wagon, Van, CUV not exceeding 1.5 MT		\$65.00
Station Wagon, Pick-up, SUV, CUV not exceeding 2.0 MT		\$80.00
Mid sized Truck, Minibus, Tractor not exceeding 5.0 MT		\$195.00
Bus, Truck, Tractor, Light Fork Lift not exceeding 10 MT		\$485.00
Construction/Ind. vehicle, Heavy Duty Lifting Equipt over 10 MT		\$775.00
Trailer and/or vehicles loaded on top of other units shall be charged as individual units General Cargo loaded on any unit shall be charged at appropriate General Cargo Rate		
15.10 Dangerous cargo shall be surcharged at 10% above rates in clause 15.4 to 15.5		

CLAUSE 16: STORAGE CHARGES AND PENALTIES

Containers remaining in the Authority's premises in excess or free periods shall accrue storage charges as follows:-

		<u>RATE PER DAY OR PART THEREOF</u>	
		<u>20'</u>	<u>40'</u>
16.1	Domestic Import containers;		
	- First 4 consecutive days	Free	Free
	- Thereafter up to the date container is removed from the Port;		
	5 to 7 days	\$30.00	\$60.00
	8 to 15 days	\$35.00	\$70.00
	16 to 24 days	\$40.00	\$80.00
	Over 24 days	\$45.00	\$90.00
16.2	Domestic Export containers;		
	- First 9 consecutive days	Free	Free
	- Thereafter up to the date vessel is berthed	\$20.00	\$30.00
	- Free period not applicable for Withdrawn Containers		
16.3	Transit Import containers;		
	- First 9 consecutive days	Free	Free
	- Thereafter up to the date container is removed from the Port		
	10 to 11 days	\$30.00	\$60.00
	12 to 18 days	\$35.00	\$70.00
	19 to 24 days	\$40.00	\$80.00
	Over 24 days	\$45.00	\$90.00
		<u>RATE PER DAY OR PART THEREOF</u>	
		<u>20'</u>	<u>40'</u>
16.4	Transit Export containers;		
	- First 15 consecutive days	Free	Free
	- Thereafter up to the date vessel is berthed	\$16.00	\$24.00
	- Free period not applicable for Withdrawn Containers		
16.5	Shut Out Export containers;		
	- First 2 consecutive days	Free	Free
	- Thereafter up to the date vessel is berthed	\$20.00	\$30.00
	- Free period not applicable for Withdrawn Containers		

	RATE PER DAY OR PART THEREOF	
	20'	40'
16.6 Domestic Import containers through ICDs;		
- First 11 consecutive days	Free	Free
- Thereafter up to the date container is removed from the depot	\$20.00	\$30.00
16.7 Transit Import containers through ICDs;		
- First 15 consecutive days	Free	Free
- Thereafter up to the date container is removed from the depot	\$16.00	\$24.00
16.8 Domestic and Transit Export containers through ICDs;		
- First 15 consecutive days	Free	Free
- Thereafter up to the date vessel is berthed	\$16.00	\$24.00
- Free period not applicable for Withdrawn Containers		
16.9 Dangerous cargo; from second day of receipt or landing (Export/Import)	\$44.00	\$66.00
16.10 Out of Gauge containers from date of receipt or landing (Export/Import)	\$80.00	\$120.00
16.11 Empty containers through ICDs;		
- First 30 consecutive days	Free	Free
- Thereafter, until the container is removed from the depot or loaded onto Railtainer	\$15.00	\$22.50
16.12 Empty Import containers;		
- First 2 consecutive days from notification date	Free	Free
- Thereafter, until the container is removed from the port or loaded onto vessel	\$15.00	\$22.50
16.13 Nominated Empty Export containers – from date of receipt;		
- First 4 consecutive days	Free	Free
- Thereafter until the container is removed from the port or loaded onto a vessel.	\$15.00	\$22.50

	<u>RATE PER DAY OR PART THEREOF</u>	
	<u>20'</u>	<u>40'</u>
16.14 Transshipment full containers;		
- First 15 consecutive days from arrival of the vessel	Free	Free
- Thereafter up to the date container is re-shipped		
16 to 30 days	\$15.00	\$30.00
31 to 40 days	\$20.00	\$40.00
Over 40 days	\$25.00	\$50.00
16.15 Empty Transshipment containers;		
- First 15 consecutive days from arrival of the vessel	Free	Free
- Thereafter up to the date container is re-shipped	\$15.00	\$22.50
16.16 Over landed full container – from first day of landing to the date of re-shipment	\$27.00	\$40.00
16.17 Empty over landed containers from the date of landing to the date removed from port	\$16.50	\$24.50
16.18 Containers under Through Bills of Lading (TBL);		
- For ICDs; First 15 consecutive days from date of landing	Free	Free
- For Kampala; First 21 consecutive days from date of landing	Free	Free
- Thereafter up to the date container is railed/trucked	\$15.00	\$22.50
Conventional cargo remaining in the Authority premises in excess of free periods shall accrue storage charges as follows:-		
	<u>RATE PER TONNE OR PART THEREOF</u>	
16.19 Domestic Import conventional cargo;		
- First 6 consecutive days	Free	
- Thereafter up to the date cargo is removed from the Port		\$1.60
16.20 Domestic Export conventional cargo;		
- First 10 consecutive days	Free	
- Thereafter up to the date the cargo is nominated		\$1.20

- Free period not applicable for Withdrawn Cargo		
16.21 Shut Out Export Cargo;		
- First 2 consecutive days	Free	
- Thereafter up to the date cargo is re-nominated	\$1.30	
- Free period not applicable for Withdrawn Cargo		
16.22 Transit Import conventional cargo;		
- First 11 consecutive days	Free	
- Thereafter up to the date cargo is removed from the port	\$1.30	
16.23 Transit Export cargo;		
- First 15 consecutive days	Free	
- Thereafter up to the date cargo is nominated	\$1.00	
- Free period not applicable for Withdrawn Cargo		
		<u>RATE PER TONNE OR PART THEREOF</u>
16.24 Transhipment cargo;		
- First 15 consecutive days	Free	
- Thereafter up to the date of re-shipment	\$1.00	
16.25 Over landed cargo;		
- From date of landing to the date of re-shipment	\$1.60	
16.26 Dangerous cargo;		
- From date of receipt/landing (export/import) to the date removed from Port/Shipped	\$2.50	
16.27 Import Motor Vehicles;		
- Domestic: First 4 consecutive days	Free	
- Transit: First 9 consecutive days	Free	
- Thereafter per unit up to the date the vehicle is removed from the Port		
		<u>DOMESTIC TRANSIT</u>
Saloon, Station Wagon, Van, CUV not exceeding 1.5 MT	\$20	\$15
Station Wagon, Pick-up, SUV, CUV not exceeding 2.0 MT	\$25	\$20
Mid sized Truck, Minibus, Tractor not exceeding 5.0 MT	\$50	\$40
Bus, Truck, Tractor, Light Fork Lift not exceeding 10 MT	\$120	\$100
Construction/Ind. vehicle, HD Lifting Equipt over 10 MT	\$200	\$150

The following penalties shall be levied as follows:-

- 16.28 Mis-Declaration of Weight, Measurement or nature of cargo/goods shall attract a penalty of 100% on the correct weight, measurement or nature chargeable as per clause 11 to 16 of the tariff book.
- 16.29 In the event of mis-declaration and the Authority's equipment is used in handling an over-weight cargo unit, the party or parties causing such use shall be held liable for all losses, claims, demands and suits for damages including death and personal injury, legal and court expense, directly and indirectly resulting from such use.
- 16.30 Non- declaration of Dangerous Cargo shall attract a penalty of **100%** on the chargeable rates as per **clauses 11, 12, 13, 14, and 16** of the tariff.
- 16.31 Alterations/certification/cancellation/extra printing per document shall be charged **US\$5.00**. Alterations for containers and unitized cargo shall be charged at \$2.00 each
- 16.32 Imported Motor Vehicles on Direct Delivery and all loaded trucks will be charged as follows;

<u>MOTOR VEHICLES</u>	<u>LOADED TRUCKS</u>	<u>RATE PER UNIT</u>
0 to 18 hours	0 to 6 hours	Free
19 to 24 hours	7 to 12 hours	\$10.00
25 to 36 hours	13 to 24 hours	\$20.00
Over 36 hours	Over 24 hours	\$30.00

- 16.33 Request for Late Acceptance of Export cargo shall attract a penalty of **US\$100** per container and **US\$4** per tonne for conventional cargo
- 16.34 FCL containers Unmanifested/Unknown status from date of landing up to the date charges are secured **\$50.00 \$75.00**
- 16.35 Change of Status/Destination (C-11);
Per Bill of Lading to a maximum of **\$2000.00** **\$100.00**

AUSE 17: SHORE-HANDLING, WHARFAGE & STORAGE CHARGES
FOR CONTAINERS HANDLED AT NOMINATED CFSs

All CFS destined containers shall be cleared/evacuated from the port within 48 hours of vessel completion time.

Shore-handling rates shall be levied by Container Freight Stations as follows:-

	RATE PER DAY OR PART THEREOF	
	20'	40'
17.1 Import – Domestic – Full	\$90.00	\$135.00
17.2 Imports – Transit – Full	\$80.00	\$120.00
Wharfage charges shall be levied as follows:-		
17.3 Domestic and Transit Full containers both Imports and Export	\$70.00	\$105.00
17.4 Re-marshalling charge on expiry of free period for both domestic Import and transit Import containers	\$110.00	\$165.00
Containers remaining at Nominated CFSs in excess of free periods shall accrue storage charges as follows:-		
17.5 Domestic Import containers; - First 4 consecutive days	Free	Free
5 to 7 days	\$25.00	\$50.00
8 to 15 days	\$30.00	\$60.00
16 to 24 days	\$40.00	\$80.00
over 24 days		
17.6 Transit Import containers;		
- First 9 consecutive days	Free	Free
- Thereafter up to the date container is removed from the CFS;		
10 to 11 days	\$20.00	\$40.00
12 to 18 days	\$25.00	\$50.00
19 to 24 days	\$30.00	\$60.00
Over 24 days	\$35.00	\$70.00

17.7 Transshipment full containers;

- First 15 consecutive days from arrival of the vessel
- Thereafter up to the date container is re-shipped

Free Free

16 to 30 days

\$15.00 \$30.00

31 to 40 days

\$20.00 \$40.00

Over 40 days

\$25.00 \$50.00

CFS handling charges;-

- 17.8 Import containers handled at CFSs
– Domestic & Transit

\$20.00 \$30.00

SECTION IV CHARGES FOR GENERAL SERVICES



Labour hired for handling loose cargo

SECTION IV CHARGES FOR GENERAL SERVICES

CLAUSE 18: HIRE OF LABOUR AND EQUIPMENT

Charges for hire of staff and equipment not covered elsewhere in this tariff shall be applied as follows:-

	<u>RATE PER HOUR OR PART THEREOF</u>
18.1 Management or supervisory staff	\$12.00
18.2 Skilled staff e.g. Crane Driver, Forklift Driver, Serang, Artisan, Firemen, Clerk	\$10.00
18.3 Semi – skilled staff e.g. Labourer, Watchman	\$6.00
18.4 Pilot boat inclusive of crew	\$1000.00
18.5 Mooring boat inclusive of crew	\$500.00
18.6 VIP launch inclusive of crew	\$1000.00
	<u>RATE PER HOUR OR PER MOVE</u>
18.7 Fire appliance inclusive of minimum crew for non operational activities	\$150.00
18.8 Tipper truck or flatbed lorry inclusive of driver	\$100.00
18.9 Van, Pick-up or Saloon Car inclusive of driver	\$50.00
18.10 Forklift or Tractor less than 10 tonnes inclusive of driver	\$50.00
18.11 Forklift or Tractor 10 to 16 tonnes inclusive of driver	\$100.00
18.12 Forklift or Tractor 20 to 25 tonnes inclusive of driver	\$200.00
18.13 Reachstacker inclusive of driver	\$300.00
18.14 Mobile Crane 35 to 49 tonnes inclusive of driver	\$200.00
18.15 Mobile Crane 50 to 99 tonnes inclusive of driver	\$500.00
18.16 Mobile Crane over 99 tonnes inclusive of driver	\$1000.00
18.17 Terminal Tractor inclusive of driver	\$300.00
18.18 Weighing of cargo – per truck	\$40.00

Charges for towage services shall be applied as follows:-

	<u>RATE PER TOWAGE</u>
18.19 Empty Truck below 7 tonnes	\$70.00
18.20 Empty Truck and Transfer	\$100.00
18.21 Loaded Truck with 20' container	\$140.00
18.22 All other loaded trucks	\$200.00

All Towage requirements outside the Port will attract additional \$30.00 per hour over these rates

Rates for hire of staff and /or equipment not specified above may be quoted by the Authority on application.

CLAUSE 19. GENERAL SERVICES

Unless otherwise provided for in this tariff book, the following licenses/ fees shall be required and may be issued on application. Licenses shall be for 12 consecutive months from 1st day of month of issue and are subject to the conditions notified to licensees from time to time.

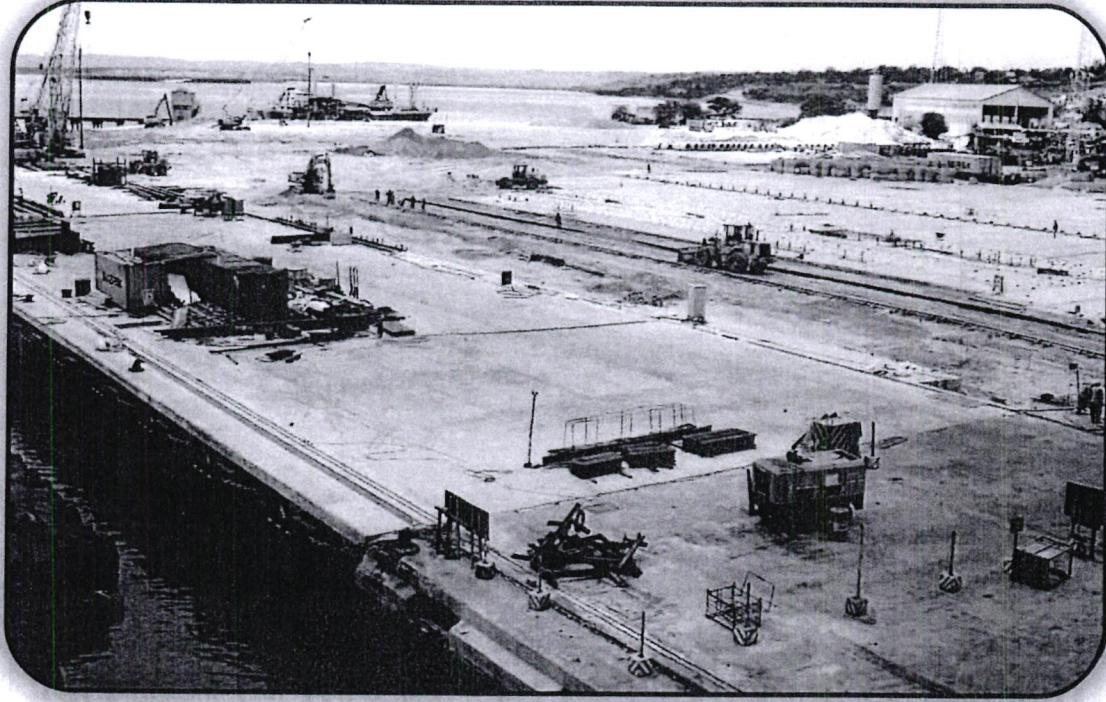
Annual Licenses	<u>RATE PER YEAR</u>
19.1 Specialized cargo services providers	\$5,500.00
19.2 Bunker Supplier, Bunkering Agent, Barge operator (water/Bunkers), Fresh Water Suppliers (road tankers)	\$3,000.00
19.3 Marine Engineer, Cargo Surveyor, Ship Surveyor	\$350.00
19.4 Ship Chandlers, Safety and Ship Equipment Suppliers	\$350.00
19.5 Marine Contractors, Ship Contractors and Pest Control Service	\$350.00
19.6 Garbage and Ship Waste Collector, Sludge Collector/waste water	\$350.00
19.7 Insurance Broker, Banking/ATM/Forex Bureau, Travel agent, Postal services	\$350.00
19.8 Small Boat Operator	\$200.00
19.9 Soft Drinks Distributors, Shops, Confectionery Distributor, Canteen, Scratch Cards Vendor and Telephone Services Provider (per booth)	\$100.00
19.10 Curio Vendor	\$15.00

19.11 Newspaper Vendor	\$5.00
19.12 Taxi Operator	\$150.00
19.13 Tour Operator	\$500.00

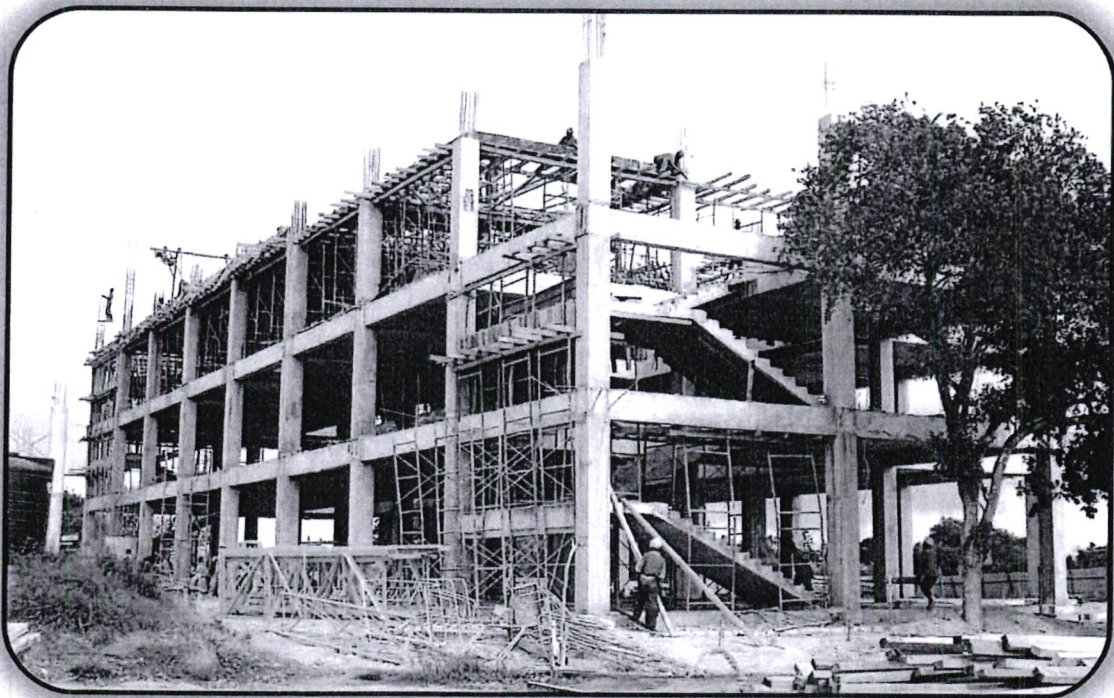
NB: Rates for licenses for services not specified above may be quoted by Authority on application.

19.14 Annual Port Pass/Entry Charges	<u>RATE IN KES PER TWELVE CONSECUTIVE MONTHS</u>
Ordinary Pass	1,000.00
VIP Pass	3,000.00
Motor Bike, Scooter (Vespa)	300.00
Saloon	750.00
Pick Up, SUV, CUV	1,000.00
Taxi	1,500.00
Van, Canter, Mini Bus	2,000.00
Lorry, Tractor, Crane, Forklift	3,000.00

19.15 Daily Port Pass/Entry Charges	<u>RATE IN KES PER DAY</u>
Person	100.00
Motor Bike, Scooter (Vespa)	300.00
Saloon Car	300.00
Pick Ups, Van, SUV, CUV	600.00
Lorries, Tractors, Cranes, Bulldozers	1,000.00

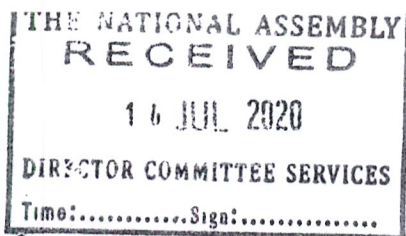


Development of Berth 19 Dec 2012



Development of Lamu port Dec 2012

SUBMISSION BY KENTRADE



① D1 call
8
14/07

KENYA TRADE NETWORK AGENCY (KENTRADE)

Simplifying Trade Processes For Kenya's Competitiveness

REF: KTNA/ADM/I3/(2)

July 13, 2020

Mr. Michael R. Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI

② TUNGA
Please deal
HAA
14/7/20

Dear *Mr. Sialai*

RE: DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING: INQUIRY INTO THE USE OF THE STANDARD GAUGE RAILWAY

Reference is made your letter Ref: NA/DCS/TPWH/CORR/2020/(027) of July 3, 2020 on the above subject.

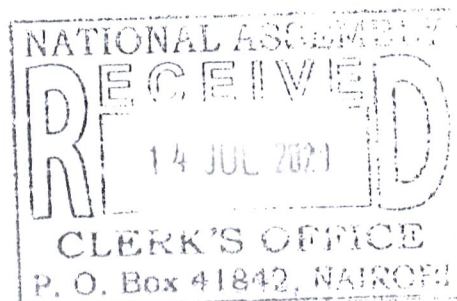
As an Agency involved in trade facilitation through the implementation of the Single Window System, we believe that over time, the SGR will be able to revolutionize trade and transport logistics in the region. We are however aware that this may have some level of negative social impact in the short run stemming from the elimination of the inefficiencies of road cargo transport that has over time created some economic activities especially along the main road route. This in the long run should however cease to be a challenge as the region reaps more benefits from the more efficient rail transport.

Below are our comments:

I. The socio-economic impact of cargo transportation by SGR

The Standard Gauge Railway (SGR) is a good investment for the country since it decongests our roads and provides alternatives for faster movement

Embankment Plaza
P.O Box 36943 – 00200
Upper Hill Nairobi, Kenya



Tel: +254 20 2795000
Website: www.kentrade.go.ke
Email: info@kentrade.go.ke

of goods across the northern corridor. The social-economic impact of cargo transportation by the SGR includes the following;

- a) In the long run, it is expected that faster cargo evacuation from the port of Mombasa will save on demurrage costs subsequently reducing the cost of consumer goods in Kenya and beyond the borders.

It has however been observed that users have complained that the current cost of transporting cargo via the SGR is higher than use of trucks, which increases the costs of the end product in the market. We however expect that this is the scenario in the short-run which should be reversed in the long-run due to the benefits associated with economies of scale and as the SGR breaks even and is hence able to reduce on cost.

- b) With faster evacuation of cargo at the Port, there will be increased competitiveness of Mombasa Port as a port of choice due to provision of alternatives to cargo evacuation as opposed to having only one option for cargo evacuation. This will see more opportunities being created at the port and all its inland depots.
- c) The SGR has the capacity to carry more cargo compared to trucks on road transport that require to make multiple trips for the same cargo thereby depreciating Kenya's road networks faster.
- d) The SGR has the potential of growing economies at towns where substations have been established especially for local cargo transportation. This will lead to increased employment.
- e) The SGR will reduce road carnage since it will reduce the number of trucks on highways.
- f) The SGR can facilitate for easy movement of agricultural produce to market on areas where it passes. This will bring down the cost of foodstuff in markets.

2. Exploring ways and means of ensuring that the transporter/stakeholders use SGR willingly

There are various ways in which the government may explore to ensure SGR transportation is attractive to stakeholders. These may include:

- a) Competitive charges for the SGR compared to road transport to attract cargo owners to use it.
- b) Streamlining the last mile procedures to FastTrack the clearance processes at Inland Container Depot (ICDs).
- c) Completion of the SGR to connect to Uganda will make use of SGR competitive.
- d) Provision of supporting facilities such as warehouses at ICD's where the SGR stations are located.
- e) Improvement of the road network access to ICDs where SGR terminates.
- f) Full implementation of a Logistics Coordination and Information system that will make it easier for Cargo owners to monitor the location of their Cargo on a real time basis.
- g) Stakeholder engagement with clearing and forwarding agents, exporters and importers, transporters and other players in the international trade will help better communicate the government's policy and also give an ear to trading community concerns. This should involve an elaborate and comprehensive Change Management exercise.

Yours

Sincerely



Amos S. Wangora
CHIEF EXECUTIVE OFFICER

**SUBMISSION BY THE SHIPPERS
COUNCIL OF EASTERN AFRICA**

03 AUG 2020

② Tunao
Please deal
for
03/8/20

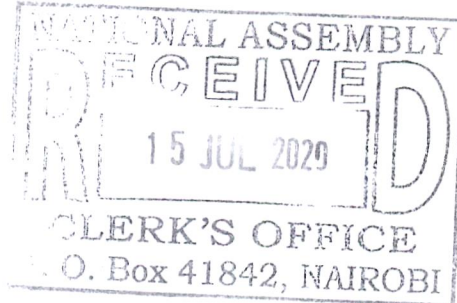
9 The Crescent, off Parklands Road, Westlands (After Kalsion Towers)
P. O. Box 1291-00606 Nairobi, Kenya
T: +254 773 829 547/8, +254 733 888 540, +254 708 299 175
E: info@shipperscouncilea.org
W: www.shipperscouncilea.org

Shippers
Council of
Eastern
Africa



Ref: SCEA/NA/001/SGR

15th July 2020
The Clerk of the National Assembly
Parliament Buildings
P.O Box 41842-00100
Nairobi, Kenya



For the attention of the Liaison Officers Ms. Chelagat Tungo Aaron / Ahmed Salim Abdalla

① Dlawt
15/7/20

Dear Madam/Dear Sir

RE: DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING INQUIRY INTO THE USE OF STANDARD GAUGE RAILWAY

Reference is made to the letter dated 3rd July 2020, Reference Number: NA/DCS/TPWH/CORR/2020/ (027) regarding Departmental Committee on Transport, Public works and Housing: Inquiry into the use of The Standard Gauge Railway.

The Shippers Council of Eastern Africa (SCEA) is the umbrella body representing cargo owners in Eastern Africa. SCEA advocates for a reliable logistics environment that will translate to reduced cost of doing business to improve the competitiveness of business entities in Eastern Africa. SCEA provides a platform for shippers to articulate their concerns and demands to logistics service providers and government regulatory institutions. SCEA, as a private sector body, focuses exclusively on the development of freight transport policies that will not only be beneficial to the Kenyan economy but also to the entire EAC economy for growth and development.

The importance of the rail transport system in Kenya and the East African region cannot be underestimated. The SGR Freight service was built with a target to haul a minimum of 40% of the port throughput to Nairobi and beyond hence giving the desired relief to the road network. This target has however not been achieved. Despite government efforts to improve services at the ICD Nairobi which is the main receiving point of the SGR freight service both importers and their agents have continued to resist the use of rail transport over road. The source of this resistance can largely be attributed to the manner in which the government introduced and enforced the use of the SGR service. The impact of this was the disruption of supply chains that had taken years to build.

An analysis of the cargo throughput through the Port of Mombasa shows the port

*Vision: An efficient logistics chain that enhances the competitiveness of cargo owners in Eastern Africa
Mission: To offer proficient, research based advocacy and value-add services to cargo owners*

performance surpassed the projected 33.58 million tons in total throughput, recording **34.44 million tons** in 2019 against **30.92 million tons** handled in 2018. This represents a growth of 11.4%.

Container traffic grew by 112,702 TEUs in 2019 representing 8.7% growth, from **1,303,862 TEUs** in 2018 to **1,416,654 TEUs** in 2019. The improved throughput was largely attributed to increased handling of transshipment traffic. The port realized total transshipment traffic of **211,204 TEUs** in 2019 compared to **121,577 TEUs** handled in 2018. This represents a 74% growth. Transit cargo recorded a growth of 3.6% to record **9.95million tons** in 2019 against **9.60 million tons** in 2018.

Uganda maintained its dominance controlling 23.6 percent of total port throughput which represents 81.8% of the total port throughput.

PORT PERFORMANCE: 2018 – 2019

	2018	2019	V.CHANGE (2018-2019)	% CHANGE (2018-2019)
IMPORTS ('000' DWT)				
Containerized Cargo	8,011	9,202	1,191	14.9%
Conventional Cargo	1,771	1,996	225	12.7%
Dry Bulk	7,929	7,784	-145	-1.8%
Liquid Bulk	7,764	8,576	812	10.5%
TOTAL	25,475	27,558	2,083	8.2%
EXPORTS ('000' DWT)				
Containerized Cargo	3,303	3,583	280	8.5%
Conventional Cargo	44	37	-7	-15.9%
Dry Bulk	733	602	-131	-17.9%
Liquid Bulk	45	55	10	22.2%
TOTAL	4,125	4,277	152	3.7%
TOTAL IMPORTS & EXPORTS	29,600	31,835	2235	8%
Transshipment ('000' DWT)	1247	2,495	1248	100%
Restows	76	110		
TOTAL THROUGHPUT ('000' DWT)	30,923	34,440	3,517	11.4%
Container Traffic (TEU)	1,303,862	1,416,654	112,792	8.7%

Of the above traffic for the 2019 throughput, SGR carried **3, 619,184 Tons** representing a **39.33%** market share for containerized cargo. A further 24,557 Tons representing **1.23%** of the conventional cargo was carried by SGR. The total market share combined for all the Port throughput for SGR accounted for **13.22%**. The total import and export Market share of SGR in 2019 as a percentage of the Port Throughput for only 13.07% of the Port Traffic as shown in the table below;

PORT THROUGHPUT 2019		SGR VOLUMES 2019	% MARKET SHARE 2019	SGR
IMPORTS	TONS	TONS		
Containerized cargo	9,202,000	3,619,184	39.33%	
Conventional cargo	1,996,000	24,557	1.23%	
Dry bulk	7,784,000			
Liquid cargo	8,576,000			
TOTAL IMPORTS	27,558,000	3,643,741	13.22%	

Of which Transit cargo 9,244,000

EXPORTS	TONS	TONS		
Containerized cargo	3,583,000	515,547	14.39%	
Conventional cargo	37,000			
Dry bulk	602,000			
Liquid cargo	55,000			
TOTAL EXPORTS	4,277,000	515,547	12.05%	
TOTAL IMPORTS & EXPORTS	31,835,000	4,159,288	13.07%	

Transshipment cargo 2,495,000

TOTAL THROUGHPUT	34,330,000			
Container Traffic (TEUs)	1,416,654	270,915	19.12%	

From the above analysis, even with the implementation of SGR there is sufficient cargo available to sustain SGR and the Road Transport while allowing the existing infrastructure to take up the liquid and dry bulk, conventional cargo and the balance of the over 60% of the containerized cargo. Of the 1,416,654 TEUs, 30% of the cargo is transit cargo accounting for approximately 425,000 TEU. Of the remaining 850,000 TEUs, 270,915 TEUs accounting for 30% of the local Containerized traffic. With 10% of the local traffic remaining for use in Mombasa and its surrounding, the balance of over 50% of the local TEUs is available for road transport. Preference was made for clearance of cargo in Mombasa pre-SGR because of the facilities and capacity that was offered by Container Freight Stations (CFS).

When analyzed the main reasons why importers and their agents preferred Mombasa as a clearance point for their consignments can be summarized below;

- a) They are able to negotiate extended free storage period from facilities in Mombasa. This free period can range from 7 days up to 30days and is used to cushion them against any penalties that may arise due to delays in the customs clearance process.
- b) Because of the extended free period they also enjoy flexible delivery schedules for their cargo meaning they are not under pressure to move all their cargo at the same time when their customs clearance is complete.
- c) They get efficient services during verification, delivery and cargo location in the yard.
- d) There are no hidden and/or un-receipted charges. This is important as it gives the cargo owners the ability to fix their importation cost per container for the duration of their contract term.
- e) They get daily updates and personalized services from the facility operators in Mombasa
- f) In many instances they get unsecured credit facilities for port charges allowing for better financial planning on their part.
- g) When their consignments incur storage charges they are able to negotiate instant waivers and/or discounts on storage incurred beyond the agreed free period. Because of the extended free period they also enjoy flexible delivery schedules for their cargo meaning they are not under pressure to move all their cargo at the same time when their customs clearance is complete.

Unfortunately, in recent discussions the key benefits of the use of SGR rail have largely been down played and these need to be emphasized;

- a) SGR offers cheap transport from Mombasa to Nairobi and vice versa. At USD450/20' and USD750/40'.
- b) It provides a mode transport with high safety standards for cargo minimizing damages and pilferage for the goods in transit.
- c) 70% of the local imports are destined for the Nairobi and up-country market. The SGR freight service has ensured that the cargo is brought to a clearance point that is closer to the end user.
- d) Shipping lines are ready to embrace the service and offer through bill of lading deliveries to Nairobi which minimizes the cargo receivers' exposure to demurrage charges.
- e) The empty container return process has been streamlined and can be improved further to address any additional concerns that importers may have.

For SGR service to remain the choice for Shippers, it's important to ensure that efficiency, predictability and costs remain the priority. Government should allow the multimodal transport concept to thrive while providing enabling environment for competitive yet efficient services.

The Government must develop Measures that create a symbiotic multimodal transport system for sustainable economic growth. A competitive rail road complimentary system with supporting inland handling capabilities should be encouraged.

The cost of transportation is the biggest factor that potential users of facilities would consider. The general perception from the market is that the cost of use of SGR is higher compared to use of road transport. A competitive tariff to attract cargo traffic to the Nairobi and Naivasha ICDs can be explored for stakeholders to willingly take up SGR.

Marketing and Promotion to clients on the use of the SGR and the Inland Container Depots should be enhanced. The ICDs are fully dependent on rail services for transportation of cargo to and from the Port of Mombasa thus Kenya Railways (KR) and Kenya Ports Authority (KPA) must involve shippers to get their buy in to use the Rail freight and the ICDN services competitively.

Further the Transporters must be enticed to provide reliable and competitive last mile connectivity. Forcing railage goes against competition act and spirit of the liberalized Market economy. Kenya practices an open free market driven economy and hence the Government must not be seen to break the law.

For competitive services, SGR should consider introducing open access and train slots to satisfy the flexible needs of freight traffic and customer unique demands. Volume discounts should be introduced to encourage volumes while government should consider policy and taxation incentives for those who use rail services including rebates on Road maintenance levy on Rail petroleum and Railway Development levy.

Shippers rely heavily on predictable logistics for continuous and sustainable production and supply chain. The use of Private facilities that provided additional services, timelines and logistics coordination in Mombasa was the major driving force for the growth of CFS business Model and the improved dwell time performance of the Port of Mombasa. An effective framework that encourages collaboration, Partnership and usage of such capacities in Nairobi would see the increased uptake of SGR services and complimentary growth of Road Transport first/last mile usage, these facilities can also play a major role in increased usage export consolidation.

The facilities should focus on the handling of full and empty Container Loads, Consolidated containers, Dangerous Cargo classified goods and reefers containers among others, this will have the impact of giving the end receivers the choice that they have been asking for. The ICD Nairobi in the current performance levels cannot offer competitive services to the cargo owners and will therefore continue to be a bottleneck to the full realization of the SGR targets.

The facility operators will be expected to work in partnership with shipping lines to market

themselves as a complementary facility to ICD Nairobi for cargo clearance and therefore help to improve the throughput on the SGR freight service. This will have a direct impact on the improvement of Dwell time and utility of the ICDN facility thus increasing the overall throughput of the port of Mombasa. By addressing the concerns here above cited by importers there will be no other reason why an importer would prefer Mombasa clearance if they can get similar or better services in Nairobi considering the fact that the safety of their cargo of Rail is almost guaranteed and its faster.

The Kenya Railways Corporation and the SGR Freight Service operator must view themselves as organizations providing transport services like any other company. Therefore, they must be ready and able to offer competitive services just like any other transporters.

There is need for close collaboration between KPA/SCEA/KSAA and partnership for win-win relations with the Transporters Association to ensure that Multimodal systems are implemented effectively. Use of technology to track and monitor cargo is encouraged to increase efficiency.

The ultimate goal is to see an efficient, value based, cost effective multimodal transport system responsive to the needs of the shippers while creating a strong enabler to attainment of the Big 4 agenda and economic growth potential.

Yours Sincerely



Gilbert K. Langat
Chief Executive Officer

**SUBMISSION BY THE CONTAINER
FREIGHT STATIONS ASSOCIATION OF
KENYA**

CFSA

**CONTAINER FREIGHT STATIONS
ASSOCIATION OF KENYA**

② TUNGO
Please deal
AAA
28/7/20

Email: admin@cfs.or.ke
: cfsakenya@gmail.com

Webpage: www.cfs.or.ke
P.O. Box 80038, MOMBASA

Ref: 20071401

14th July 2020

Clerk of The National Assembly
National Assembly
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI

① D/ant
20/7/20

Dear Sir

RE: PROPOSAL FOR WORKING ARRANGEMENT BETWEEN KENYA PORTS AUTHORITY,
KENYA RAILWAYS CORPORATION AND CFS OPERATORS TO SUPPORT THE SGR
FREIGHT SERVICE.

1.1 PROFILE

CFS ASSOCIATION OF KENYA

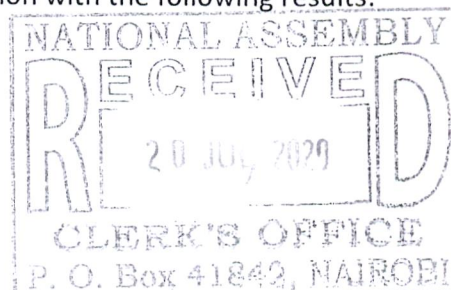
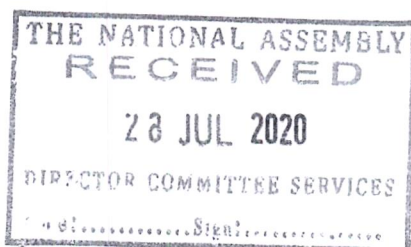
The CFS Association of Kenya is registered under the Societies Act (Cap 108) and recognized by the new constitution.

One of the key objects of the CFSA is to encourage and promote; Just, Fair, Legal and Honorable practices between its members.

All the members of the CFSA are licensed by Kenya Revenue Authority, and recognized by Kenya Maritime Authority and Kenya Ports Authority, due to its composition as a member of The Civil Society.

1.2 THE RATIONAL

CFS's wish to boost the SGR services by routing containers cleared from the CFS for onward rail transportation to ICD Nairobi for collection with the following results:



- a. Early collection of import taxes and other taxes as the goods are already cleared in Mombasa and moving to Nairobi for collection.
 - b. Advance collection of SGR freight rates by KPA at Mombasa while processing the CFS Pick UP Orders unlike the current practise of taking cargo to ICD Nairobi and waiting for importers to turn up for clearance.
 - c. In addition KPA will also collect from Mombasa in advance Shore Handling and Wharfage from CFS instead of waiting for importers to turn up for collection at ICD Nairobi then invoice them.
 - d. Decongestion of ICD Nairobi due to faster evacuation at ICD Nairobi to two hours because the cargo is already customs cleared in Mombasa with no need for further interventions.
 - e. Increase the volumes of containers to be transferred by SGR to ICD through running of block trains by CFS's
 - f. Help KPA meet the envisaged target set on cargo volumes moving on Rail to ICD
 - g. Create efficiency on cargo transfer and delivery.
-
- h. Impact positively on trade

1.3 PROPOSED RESPONSIBILY MATRIX

1. CFS

- CFS's will approach all Nairobi based clients and actively market SGR services.

The CFS's therefore requests KPA support on this initiative by not subjecting their nominated containers to HOLD since this will be counterproductive to our quest in supporting SGR through client nominations.

2. KPA

- Dedicate an area at Mombasa port and ICD Nairobi

Through delivery of containers directly to SGR loading area by CFS operators, the efficiency of loading operations for the freight service will be expected to improve significantly. This will ease pressure on KPA who are currently running multiple activities of normal port operations including tracing and transferring containers to the SGR designated loading areas.

3. KRC / SGR

CFS operators will undertake the marketing of SGR freight service to their customers. This will come along with specific targets per CFS operators that have to be met daily. KRC will gain from the CFS's by having an assured controlled source of cargo for the SGR freight service.

- Loading and railage of the containers within 24hrs of handover at SGR loading area.
 - Clearance and release to customers within a maximum of 6hrs after they present their cargo pick up orders load at ICD Embakasi.
 - Receipt and loading of empty from ICD Embakasi to Mombasa within 24hrs of being handed over in Nairobi.
 - Issuance of container interchange at point of container handing over i.e. SGR loading area, I.C.D.E full and I.C.D.E Empty.
 - KRC to provide container tracking update for both full and empty units on a daily basis for ease of follow up by the customers. Additionally KRC will give an undertaking regarding the container demurrage penalties that may arise due to failure on their part to rail the containers within the agreed timelines.
 - KRC to provide the relevant assurance on the security of the goods whilst in transit to and from Nairobi
4. KRA (Customs Services Department)
- Customs services already present in CFS's will carry on with the normal duties of verification and release of cargo. This will ease the pressure on customs clearance at ICD Embakasi.
 - KRA to give dedicated space / area for cleared cargo
 - CFS Operators will deliver customs cleared cargo to SGR freight for transport to ICD Embakasi for collection only.

We look forward to your positive response and an opportunity to meet your committee that will work on our proposal.

Yours sincerely



Daniel Nzeki
Chief Executive Officer
Container Freight Stations Association of Kenya

**SUBMISSION BY THE KENYA
TRANSPORTERS ASSOCIATION**

KENYA TRANSPORTERS ASSOCIATION REPORT ON THE DIRECTIVE DATED 5TH AUGUST 2019 BY
KPA/KRA ON FORCED CARGO EVACUATION BY SGR AND ITS IMPACT ON THE TRUCKING
INDUSTRY AND THE KENYAN ECONOMY.



12th November, 2019.

Table of Contents

Abbreviations	3
Preamble	4
Contributions of transporters to the Economy.	5
Chronology of Events	6
Contentious Issues	7
Our Proposal	13
References	14
Appendices	15

ABBREVIATIONS

ICDN – Inland Container Depot, Nairobi

KPA – Kenya Ports Authority

KRA – Kenya Revenue Authority

KRC – Kenya Railway Corporation

SGR – Standard Gauge Railway

CS–Cabinet Secretary

SCT – Single customs Territory

PREAMBLE:

Kenya Transporters Association is an association of Heavy Commercial truckers based in Kenya and operating within East African Region and other neighboring Countries. Its main role is advocacy and lobbying for an enabling business environment. Over the years, our Members have operated their businesses in such a way that has made Kenya a transport hub in the region.

Cognizant of the role of Parliament, we wish to submit this report of the situational analysis in the transport sector and the consequences of the KRA and KPA joint directive issued on 5th August 2019 that all cargo destined to Nairobi and the hinterland will from 7th August, 2019 be transported by SGR only.

We wish to bring to the attention of this Senate Committee that when the notice was issued, there was public outcry due to the fact that there was neither public involvement nor participation and on the 6th August 2019 there was a notice postponing the implementation of the earlier notice. The CS for Transport and Infrastructure promised to have a consultation with the stakeholders. To date, the consultations have not taken place. We have raised concerns several times that the directive was still being implemented despite it being 'postponed' by the CS. It therefore remained postponed on paper but on the ground the notice was/is still being implemented. This is impacting our businesses adversely and has led to job losses and heavy loss on investment.

We wrote to the Competition Authority of Kenya ('CAK') in August this year, demanding to know the legality of the notice but no substantive reply has come from them, merely requests for more time to consult the Ministry of Transport. All the communication with them has been documented on email and two meetings between our officials and CAK officials have not led to any substantive conclusion on the matter.

We together with the Coastal leaders held a meeting with CS's Matiangi and Macharia on 3rd October 2019 in Nairobi over the same and after deliberations, CS Macharia made a public pronouncement confirming the cancellation of the notice. However, on the ground nothing changed as the notice is still being implemented.

Our position is very simple. Importers should be allowed to choose which mode of transport to use and the provisions of the Competition Authority Act No. 12 of 2010 should prevail.

Transporters contribution to the Economy

The Trucking industry offers direct employment for those working in the trucking industry and has created indirect employment for those working in the following Industries in Mombasa and the transport corridor to Nairobi:

1. Trucks dealerships
2. Motor vehicle service centers
3. Fuel stations
4. Trailer manufacturers
5. Spare Parts Dealers
6. Tyre Dealers
7. Restaurants and cafeterias
8. Property (Hotels and other Accommodation)
9. All other businesses that count Transporters as their Customers

The number of people employed in the Trucking industry (both direct and indirect) numbers over 250,000 and one has to appreciate that those working in these Industries have dependents who rely on their income. With increasing numbers of people losing their jobs this has a direct impact of tens of thousands of families.

Apart from Employment creation, the Transport Industry pays the following taxes:

1. Advance tax at an average of Kshs 45,000 per truck per year. An approximate of 15,000 trucks translates to Kshs 675 million.
2. Corporate tax at a rate of 30%
3. Value added tax at a rate of 16%
4. Import Duty
5. Railway development levy of 1.5% on all inputs to the Transport Industry (e.g. Spare Parts, Tyres, Fuels, Lubricants, other Tools used in the Transport Industry).
6. Pay As You Earn ('PAYE')
7. Fuel Levy

CHRONOLOGY OF EVENTS

The first notice by KPA and KRA on 31st March 2019 to exporters and clearing agents on SCT Cargo and Exports by road gave the condition that only exports by rail will be allowed into ICDN. That all trucks conveying intra cargo to partner states and all other exports by road shall not be accepted at the ICDN. -----**Annex-1**

On 26th October 2018 KPA management issued a notice to shipping lines and agents listing the commodities that will be allowed for manifesting and nomination to various CFS's. On the very notice they indicated that SGR will be given priority for targeted containers (TBL and non TBL) -----**Annex 2**

On 15th March 2019, another notice from KPA management was issued vacating the earlier notice that was issued on the 26th October 2018-----**Annex 3**

Notice issued on 5th August 2019 on forceful cargo conveyance by SGR for cargo destined to Nairobi and the hinterland and clearance to be done in Nairobi. Only Mombasa bound cargo were to be cleared in Mombasa-----**Annex 4**

There was public outcry and on the 7th August 2019 there was a notice postponing the 3rd August notice-----**Annex 5**

As KTA, we wrote to competition authority of Kenya (CAK) questioning the legality of the notice. To date they have not replied -----**Annex 6**

KPA did not issue any internal communication to stop the implementation of the 3rd August notice hence although in paper it stood postponed, on the ground it was being implemented. As a proof that KPA is not acting on the postponement of the August 2019 notice, an internal communication from Mr. Edward Opiyo, The Terminal Manager directing his team to stop any further CFS nominations on the 14th August 2019-----**Annex 7**

We issued press release on the 10th August on the status on the ground providing cost analysis for road transport against rail transport-----**Annex 8**

There was further notice by KRA on use of wrong importer address to ensure cargo destined to Nairobi and beyond are not cleared in Mombasa-----**Annex 9**

Earlier the joint technical committee on improvement of the efficiency and cost effectiveness of transportation of cargo using SGR and the report also has indicative figures of the cost analysis showing that road transport is cheaper-----**Annex 10**

CONTENTIOUS ISSUES

The policies and directive – KRA/ KPA directive dated 5th August 2019 are compelling importers to use The SGR for all cargo destined to Nairobi and the hinterland (Annex 1 to 4).

This directive violates the World Trade Organization Rules on Trade Facilitation and The United Nations Conventions of Carriage of Goods by Sea, (Annex 5) and International Maritime Organization (IMO)-(Annex6) of which Kenya is a signatory.

The Cabinet Secretary for Transport, Infrastructure and Housing Mr. James Macharia issued a three week window during which he undertook to consult the stakeholders on this directive but to-date we have not been consulted, on the contrary, the directive is still being implemented.

We wish to bring to your attention the socio-economic impact of the directive:

1. Direct impact on business

Heavy commercial transporters have invested heavily in purchase of trucks and development of the infrastructure associated with trucking industry. Our members own about 15000 trucks. Each Truck costs about Kshs 8 million, this translates to Kshs 120 Billion, the cost of the associated infrastructure (Workshops, Storage Areas, Truck Parking) is about Kshs 500 Billion.

Of the cargo that lands in Mombasa, about 30% is transit and 70% is local cargo, out of the local cargo received at the port, the bigger volume is destined to Nairobi and other parts of the country.

Prior to the operationalization of the SGR, truckers had expanded their capacity to transport all the cargo that arrived at the port to the various destinations efficiently and competitively which has contributed to a reduction in transport rates and the improved transit turn -around time despite the increase in fuel cost. As a result of the directive, truck owners have had reduced volumes to carry leaving many trucks without cargo. This has led to closure of a number of trucking firms especially those that were depending on local cargo. With reduced business, many truckers are not able to service their loans from banks. There is heavy loss on investment and loss of foreign exchange.

2. Job losses

A good number of the over 250,000 people employed in the trucking industry have lost their jobs as a result of the directive and more will continue to lose their jobs if the government does not rescind its position on the directive as transporters are left with no choice but to downsize their workforce. Nearly all the drivers that were transporting local cargo to Nairobi have lost their jobs.

3. High Cost of Living

The 2019 Finance Household Survey (Central Bank of Kenya) shows that 51% of Kenyans are living hand to mouth a rise from initial 34.3 % in 2016.

Kenya Maritime Authority, 2018 survey showed that Importers paid Shipping Line Demurrages of ksh. 20 Billion due to logistical challenges in clearance of goods at ICD Nairobi. In addition, Shippers Council of Eastern Africa technical report March 2019 showed that Importers paid port storage charges of Ksh. 10 Billion to Kenya Ports Authority.

According to these reports, the high cost of living is brought about by an increase in the price of basic commodities. This can be directly attributed to the increased cost of doing business like the cost of transporting imported goods or raw materials from Mombasa to Nairobi by SGR has been proven to be expensive to cargo owners. This cost is then passed down to consumers at the end of the day raising the cost of living.

4. A liner shipping connectivity index 2019

UNCTAD 2019, Kenya's maritime trade connectivity has worsened to a five-year low according to the published global scorecard points to the logistical challenges experienced at the port of Mombasa.

A liner shipping connectivity index (LSCI) for 2019 by the United Nations Trade and Development Agency (UNCTAD) ranked Kenya at 16.98 points breaking a streak of back-to-back improvements since 2013. A country's position in the global container shipping network its connectivity is an important determinant of its trade costs and competitiveness.

Kenya's 2019 performance marks a sharp decline from the previous year's 21.08 points which was the country's best ever score since the LSCI was launched in 2006. This can be attributed to the uncertainty presented by the Government to the cargo owners and importers with regards to their

Choice on which mode of transport is efficient and cost effective to them.

5. Effect on the Financial institutions

In May 2019 Bank loan defaults hits 10- year new high as borrowers struggled to repay their Loans. Defaulters have pushed up banks' bad loans portfolio to a new decade high of 12.9 per cent in two months from March to April 2019, according to the Central Bank of Kenya. This is a clear manifestation that businesses are struggling to meet their financial obligations. The problem is well captured by the increased advertising by auctioneers in the local daily newspapers. Heavy commercial transporters are becoming heavy defaulters as a result of the Government directives and the unfavorable business environment that they create. A once thriving businesses sector in Mombasa is dwindling as a result.

6. Single Business Permits in Mombasa

In Mombasa, a Single Business Permit serves to regulate business enterprises operating in the county government of Mombasa while EBPS is an automated system used to process application for the issuance of a SBP.

As at July 2019 Mombasa County had issued 55,000 single business permits to the businesses operating within their jurisdiction.

Among the 55,000 permits issues, 16,000 have been issued to Medium trader level of 5-20 employees who pay Kshs. 10,000 per annum. 4,300 permits have been issued to Logistics related companies at an average cost of Kshs. 30,000 per company per year.

The County Government of Mombasa will lose revenue close to 300 million in 2020 from this revenue stream if the ongoing trend is anything to go by. Companies that will relocate to Nairobi from Mombasa will not renew the SBP while others will go out of business completely.

7. Empty Business Premises in Mombasa

According to Urban Landlords and Tenants Association of Kenya (ULTAK), office-buildings owners in Mombasa are struggling to retain or attract new tenants amid the mass exodus of logistics related businesses from Mombasa in a development that threatens to destroy the glory of the county's real estate sector. Case in Point: the current state of office occupancy along Moi Avenue, Mombasa which is at an all-time low

8. Youth Unemployment

The ten year World Bank survey projects unemployment rate in Kenya to rise by 10.5 per cent this year before slowing to a rate of 10 per cent in 2020.

Kenya has to create at least 900,000 jobs annually between now and the Year 2025 to absorb the high number of youths joining the job market, according to the latest World Bank report. The major question that needs to be asked how this will be achieved if major industries such as Road trucking are going through such a crisis.

The rate of unemployment in the country, especially among the youth is almost at crisis level.

In Mombasa, it is estimated that 562,000 are unemployed which represents 45% of the total population according to the KNBS 2017 report.

This will be compounded further by the fact that the companies that would be their potential employers are either relocating to Nairobi or closing down their operations in Mombasa. This then makes the unemployed youth vulnerable to joining gangs and unlawful outfits like Al-Shabaab and local militia groups e.g. Wakali Kwanza, Sungusungu, Wakali Leo e.t.c creating a security problem for the entire country.

9. Spare Parts Businesses;

Anxiety has gripped thousands of motor vehicle spare parts dealers in Mombasa who are currently experiencing low sales on heavy commercial parts as transporters grapple with the Government directive to carry all cargo from the port of Mombasa by rail to Nairobi.

Kenyans spent upwards of Sh10.1 billion last year on importation of motor vehicle spare parts, according to 'The motorist' preference data from Economic Survey 2019.

The disruption in the transport sector currently being witnessed will in turn reduce the import duty the government collects from imported spare parts, tyres and other tools of the trade used by Transporters.

10. Missed Target By KRA On Petroleum Products

The taxman collected Ksh.14.6 billion from the newly introduced levy on petroleum products, missing the target by almost Sh3 billion. Treasury had targeted to raise Sh17.5 billion from the levy. Fuel consumption has dropped to its lowest level in three years on increased taxes, pointing to slowed activity in the economy and a gloomy earning outlook for oil marketers. Latest figures by the Petroleum Institute of East Africa (PIEA) -- the professional body for the oil and gas industry in the region -- show that fuel consumption dipped by six per cent to 5.92 billion litres in the year ended December 2018. The dip in consumption has been attributed to a reduction of fuel consumption by Heavy Commercial Vehicles.

11. The Informal Sector In Mombasa

The informal sector in Mombasa is estimated to be at 45% (Make reference) which is a lower percentage if you compare to the informal sector in Nairobi which stands at 83.3%. This means that 51% of the population in Mombasa relies on formal employment by Transporters, Logistics Firms, Manufactures, EPZs and Government Parastatals.

This will adversely be affected by the trend witnessed in the past few months where companies are closing down their operations. This means the government will miss out on the Pay as You Earn (P.A.Y.E) initially collected from their employers.

12. Collapse Of Towns

With the forced SGR cargo haulage directive a number of trucks for long distance cargo transport are edged out and towns and market centers that were heavily reliant on trucks for business opportunities have had economic downfall as establishments such as eateries, social joints, fuel stations, auto cares, hawkers and garages will collapse due to lack of customers.

13. County's Population to be affected;

	COUNTY	MAJOR URBAN AREA	ESTIMATED POPULATION SIZE
1	MOMBASA	Changamwe	199,009
2	MOMBASA	Jomvu	138,277
3	KILIFI	Mazeras	25,251
4	KILIFI	Mariakani	43,199
5	KWALE	Mackinon Road	31,128
6	KWALE	Samburu	32,641
7	TAITA	Voi	87,103
8	MAKUENI	MtitoAndei	34,354
9	MAKUENI	Masongaleni	32,270
10	MAKUENI	Kibwezi	248,704
11	MAKUENI	Makindu	42,094
12	MAKUENI	Emali	25 657
13	KAJIADO	Sultan Hamud	17, 096
14	MACHAKOS	Athi River	51, 293
15	NAIROBI	Mlolongo	940,907
	OTHERS (10% of the Above)		194,898
	Total		2,143,881

Source: Kenya National Population and Housing Census, 2009(Look for census figures for the Year 2019).

The directive is hurting these businesses due to the unfair competition created thereof, causing huge losses of investment and businesses.

14. That the logistics and supply value chain originating from the Port of Mombasa created employment to a population of over 2,143,881 people directly and

indirectly along the Mombasa- Nairobi Highway (ESIA Study Report for the Mombasa- Nairobi Standard Gauge Railway Project, 2012) .

15. That the economy of the Coastal region like many other regions in the Republic of Kenya depends on the natural resources within the region. The directive is transferring the opportunities arising from the coastal natural resources to other regions and leaving the region impoverished.
16. While SGR is a welcome National project and we support its operationalization, it should not infringe on the freedom and Rights of the citizens as enshrined on the Kenyan Constitution, 2010, Bill of Rights, Chapter 4.
17. The National Government, in its quest to make the SGR a financially viable National Project, has created a Monopoly of transport services by entering into private commerce, instead of facilitating trade for its Citizens. This in-turn has completely disrupted the Logistics supply chain in this country in an unfair manner (see Competition Act No. 12 Sec 21- 22 of 2010)

Lastly, it is important to note that the loss of business in the Coastal region and the consequential loss of jobs will lead to the collapse of the regional economy, leading to increased crime rates and insecurity, immorality and high school dropouts as people will no longer afford to pay school fees. With an increased crime rate the Tourism sector will inevitably collapse and this shall not only affect the Coast region but the country as a whole in the form of lost foreign exchange for Hotels and Conference tourism and a loss of vital foreign exchange for our country

THE LEGAL VIEW

The Illegality of the Directive

We have to remember that the Republic of Kenya remains a nation governed by its laws.

We cannot implement Policy Directives in a vacuum, i.e. in the absence of Laws, no matter how noble the intentions may be and the SGR Directive is a case in point.

i) Competition Act of Kenya No. 12 of 2010

We have referred in our petition to our communication with the Competition Authority of Kenya and would like to expound on this further.

The Competition Authority of Kenya is governed by the Competition Act of Kenya No. 12 of 2010, Laws of Kenya (the 'CAK Act').

The CAK Act is very clear on the creation of restrictive trade practices and the fact that it also applies to the Government.

1. Opening Narrative of the CAK Act

The opening narrative of the CAK Act states, in part, that it is 'An Act of Parliament to promote and safeguard the competition in the national economy; to protect consumers from unfair and misleading market conduct.'

2. Objects of the Act

The CAK Act reads, in part, also:

The object of this Act is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Kenya, in order to—

- (a) Increase efficiency in the production, distribution and supply of goods and services;**
- (b) Promote innovation;**
- (c) Maximize the efficient allocation of resources;**
- (d) Protect consumers;**
- (e) Create an environment conducive for investment, both foreign and local;**
- (f) Capture national obligations in competition matters with respect to regional integration initiatives;**
- (g) Bring national competition law, policy and practice in line with best international practices; and**
- (h) Promote the competitiveness of national undertakings in world markets.**

It is our submission that the use of the SGR goes against the Objects of the CAK Act as set out above and in no way protects consumers. In fact, what the use of the SGR has done is to drive up costs for manufacturers, who have been forced to pay exorbitant amounts of money in Port Storage and container demurrages, hence passing on the costs to the end consumers. Instead of protecting consumers the SGR has increased the costs of their daily essential purchases.

3. Application of the CAK Act

Please note that that Clause 5 of the CAK Act states that the CAK Act is applicable to all persons including the Government, state corporations and local authorities in so far as they engage in trade.

4. Restrictive Trade Practices

It is our submission that, as per Clause 21 of the CAK Act, the actions by the National Government in enforcing the use of the SGR constitute **'restrictive trade practices and have as their object the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya..'**

The use of the SGR cannot be exempted from the provisions of the CAK Act as it does not provide any exceptional or compelling reasons of public policy as to why the agreement, decision, concerted practice or category of the same, ought to be excluded from the prohibitions contained in the CAK Act. On the contrary, the forced use of the SGR is devastating the Coast Region.

The National Government should be cognizant of the adverse effects that this creation of a monopoly has created, both economically and socially. The business communities in Mombasa and along the Mombasa- Nairobi Highway (A109) have over the years invested heavily in fuelling stations, Trucks and Trailers, Banking, Container Freight Stations, Insurance, hotels and manufacturing industries which have contributed to the economic bolstering of counties, the common mwanainchi and the growth of the National GDP.

Without any consultations, the National Government has gone ahead to enforce this flawed Directive and put at risk the afore mentioned investments and jobs in the afore mentioned areas in the Coast Region.

ii) Constitution of Kenya 2010

We have referred to the failure of the Government to consult with stakeholders before implementing the SGR Directive and this was alluded to by the CS for Transport and Infrastructure when 'postponing' the SGR Directive. These substantive consultations with the CS himself have yet to take place.

The Constitution of Kenya enshrines the political and economic rights of its citizenry under Chapter 4 (Bill of Rights), Consumer Rights (under Clause 46 of the Constitution) and the Right of Access to Information (under Article 35 of the Constitution).

The SGR Directive is infringing the basic rights of our Members and the wider business community and arguably is an infringement of the most supreme law of the land, the Constitution of the Republic of Kenya.

iii) **Access to Information Act, 2016**

This Act is an ACT of Parliament to give effect to Article 35 of the Constitution referred to above.

The Entire SGR Project seems to be shrouded in secrecy and the People of Kenya have not had the opportunity to study the document/s detailing the salient financial provisions of the SGR Project, the Financing Arrangement, the Agreement signed by the Kenya Ports Authority and the arrangement through which Africa Star Railway Operations Co., Ltd has been contracted to manage the SGR Operations at a cost to the taxpayer of K.Shs. 1.3bn per month. This is an astronomical amount of money and the Government has to give a full accounting of the owners of this Company and how exactly these funds are being utilized.

Pursuant to the Act, every Citizen has the Right to Information (Clause 4 of the Act) and Public Entities shall disclose information to the Public (Clause 5 of the Act). The Act is very clear on the Right of Access to Information by the Public. These rights are even more important in the case of a Project of this magnitude that has had a fundamental effect on the people of this Country.

It is our humble request that the Senate Committee examine the SGR Directive (and indeed the SGR Project as a whole) in conjunction with the Laws of the Republic of Kenya. As a Nation, we should be guided by our Laws and any act, whether by a Citizen or the State should always be taken in accordance with the Laws of Kenya.

OUR PROPOSAL:

From the foregoing we are petitioning Parliament to legislate on the following proposals that are workable in addressing the concerns captured above;

1. Unconditionally withdraw the directive and any other pronouncements on the movement of cargo from Mombasa to Nairobi.
2. Allow Freedom of Choice on the mode of transport to be used by cargo owners.

The government should consider reviewing the Railway Development Levy to 5% so that they Government can meet the Loan obligations towards the SGR Project

REFERENCES

- Bill of Lading for Carriage of Goods by Sea*, (1968) United Nations
- Economic Survey*, (2019) Kenya National Bureau of Statistics
- Environmental and Social Impact Assessment Study Report for the Proposed Mombasa-Nairobi Standard Gauge Railways Project*, (2012) Kenya Railways Corporation
- Fin Access Household Survey*, (2019) Central Bank of Kenya
- Liner Shipping Connectivity Index*, (2019) United Nations Conference on Trade & Development
- Manufacturing Priority Agenda*, (2019) Kenya National Chamber of Commerce
- Report of the Joint Technical Committee on the Improvement of efficiency & Cost Effectiveness of Transportation of Cargo using SGR*, (2019) Ministry of Transport & Infrastructure, Kenya,
- Statistical Abstract*, (2017) Kenya Bureau of Statistics

ANNEXES

Annex 1----Notice by KPA and KRA on 31st March 2019 to exporters and clearing agents on SCT Cargo and Exports by road gave the condition that only exports by rail will be allowed into ICD

Annex 2-----Notice by KPA to shipping lines and agents listing the commodities that will be allowed for manifesting and nomination to various CFS's dated 26th October 2018

Annex 3----- Notice from KPA management was issued vacating the earlier notice that was issued on the 26th October 2018

Annex 4-----Notice issued on 5th August 2019 on forceful cargo conveyance by SGR for cargo destined to Nairobi and the hinterland and clearance to be done in Nairobi

Annex 5-----Notice by KRA and KPA postponing the August 5th 2019 Notice

Annex 6----Letter by KTA, we wrote to competition authority of Kenya (CAK) questioning the legality of the notice.

Annex 7----Internal communication from KPA Terminal Manager directing his team to stop any further CFS nominations on the 14th August 2019

Annex 8----KTA press release on the 10th August on the status on the ground providing cost analysis for road transport against rail transport

Annex 9----Notice by KRA on use of wrong importer address to ensure cargo destined to Nairobi and beyond are not cleared in Mombasa

Annex 10-----Joint technical committee report on improvement of the efficiency and cost effectiveness of transportation of cargo using SGR.