

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

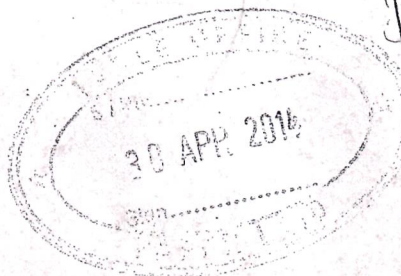
ELEVENTH PARLIAMENT- SECOND SESSION

THE PUBLIC INVESTMENTS COMMITTEE

SPECIAL REPORT ON THE PROCUREMENT AND
FINANCING OF THE CONSTRUCTION OF STANDARD
GAUGE RAILWAY FROM MOMBASA TO NAIROBI
(PHASE I)

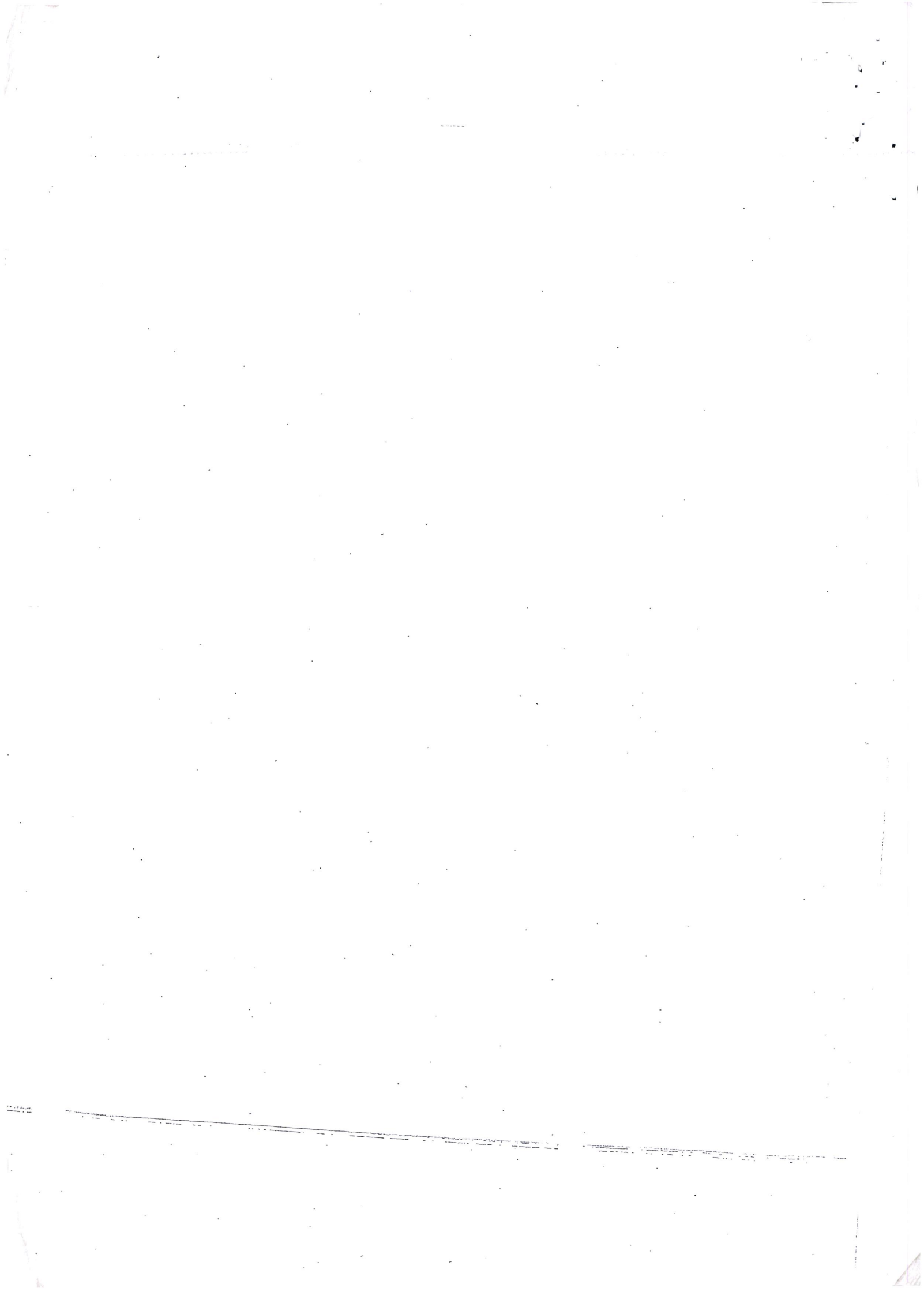
APRIL, 2014

Clerk's Chambers
Parliament Buildings
Nairobi



Approved
Bung'A
29/4/14

Paper laid by Hon Keyman on 30/4/2014



ACRONYMS AND ABBREVIATIONS

AG	Attorney General
CRBC	China Road and Bridge Corporation
DG	Director-General
EAC	East Africa Community
EPC	Engineering, Procurement and Construction
EPZ	Export Processing Zones
EXIM	Export Import
G-to- G	Government to Government
GoK	Government of Kenya
ICD	Inland Container Depot
KEBS	Kenya Bureau of Standards
KPA	Kenya Ports Authority
KRA	Kenya Revenue Authority
KRC	Kenya Railways Corporation
LIBOR	London Interbank Offered Rate
MD	Managing Director
MoT	Ministry of Transport
MOTI	Ministry of Transport and Infrastructure
MOU	Memorandum of Understanding
NEMA	National Environmental Management Authority
PBC	Preferential Buyer Credit
PPOA	Public Procurement Oversight Authority
PPDA	Public Procurement and Disposal Act
PIC	Public Investments Committee
RDF	Railway Development Fund
SGR	Standard Gauge Railway
USD	United States Dollars

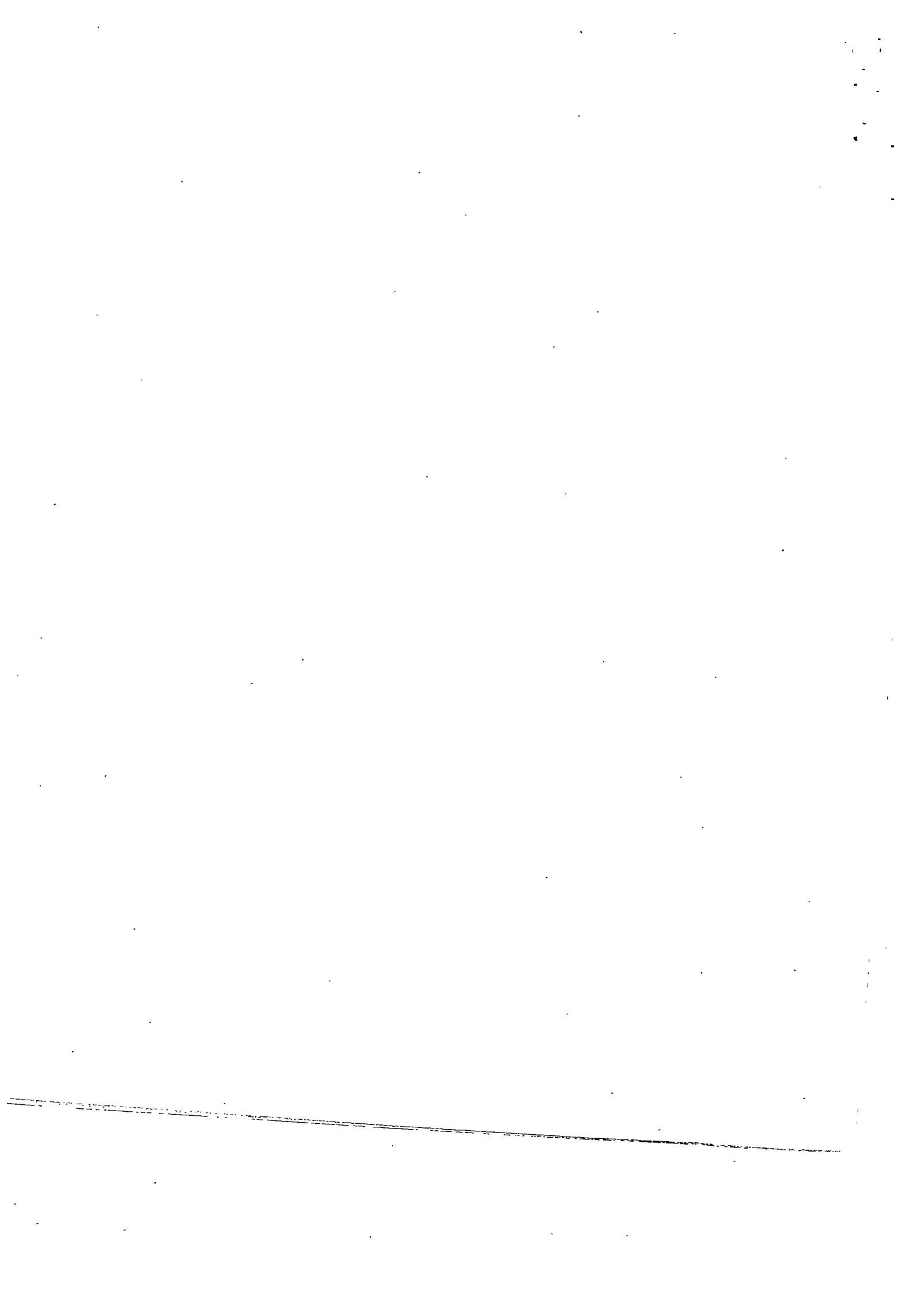
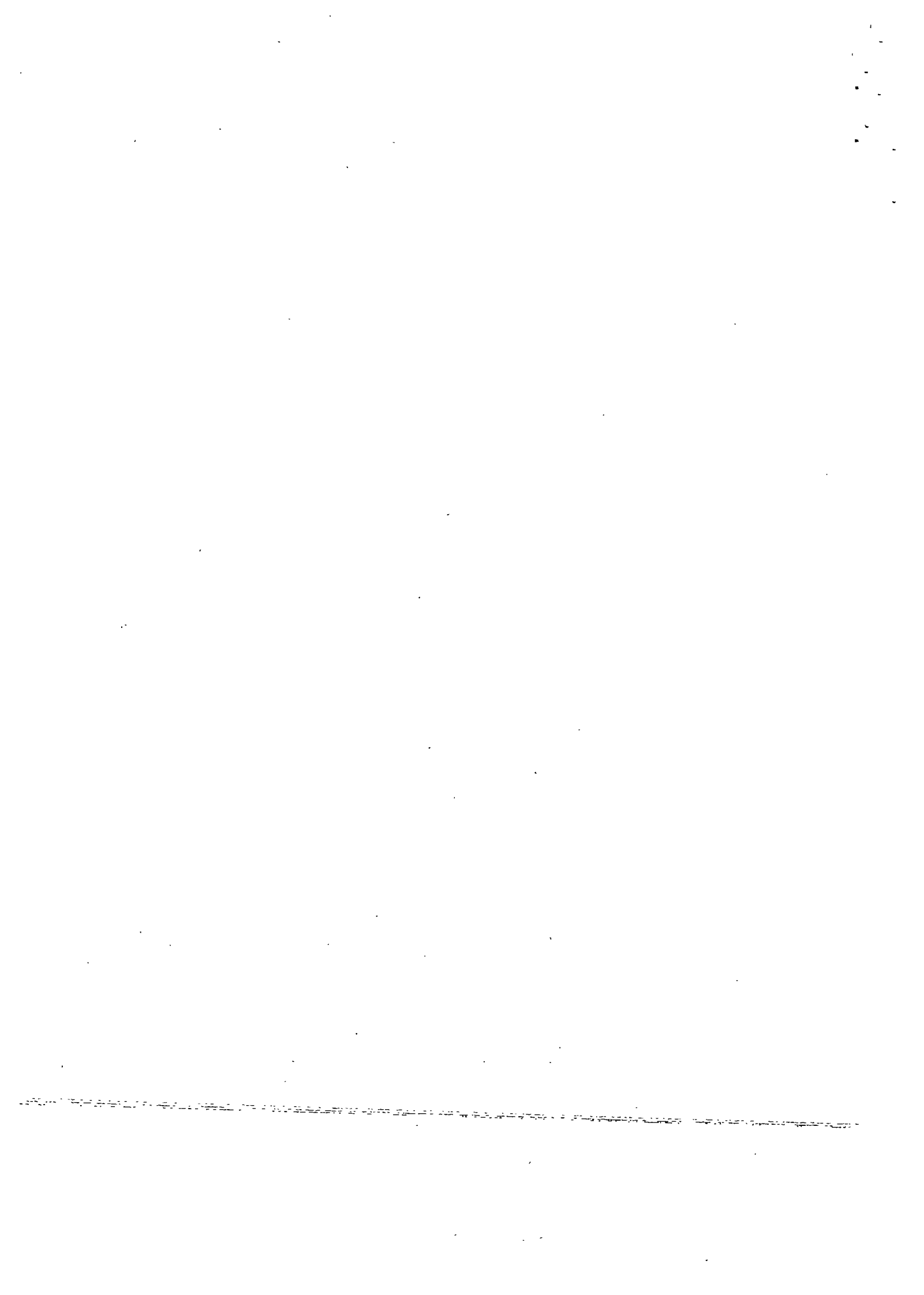


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1.0 PREFACE

Mr. Speaker Sir,

The Public Investments Committee is a Select Committee established under Standing Order No. 206 and is responsible for the examination of the working of public investments.

1.1 Establishment and Mandate of the Committee

The Committee is mandated to:-

- (a) Examine the reports and accounts of the public investments;*
- (b) Examine the reports, if any, of the Auditor General on the public investment;*
- (c) Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.*

The Committee shall however not examine:-

- (a) Matters of major Government policy as distinct from business or commercial functions of the public investments;
- (b) Matters of day-to-day administration; and,
- (c) Matters for the consideration of which machinery is established by any special statute under which a particular public investment is established.

The procedure of a Select Committee and other related matters thereto is covered under Standing Order No. 173 – 203. The Committee has power, under the provisions of the Constitution, National Assembly (Powers and Privileges) Act (Cap. 6), the State Corporations Act (Cap. 446) and the Public Audit Act (Cap. 412), to summon witnesses, examine them on oath and receive evidence.

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1.2 Committee Membership

The Committee comprises of the following Members:-

- (1) Hon. Adan Keynan, CBS, MP - Chairperson
- (2) Hon. Kimani Ichung'wah, MP - Vice Chairperson
- (3) Hon. Sammy Mwaita, MP
- (4) Hon. Cornelly Serem, MP
- (5) Hon. Bare Shill, MP
- (6) Hon. Korei Ole Lemein, MP
- (7) Hon. Adan M. Noor, MP
- (8) Hon. Mithika Linturi, MP
- (9) Hon. Beatrice Nyaga, MP
- (10) Hon. John M. Nyaga, MP
- (11) Hon. Njogu Barua, MP
- (12) Hon. Irungu Kang'ata, MP
- (13) Hon. Onesmus Njuki, MP
- (14) Hon. Eng. John Kiragu, M.P
- (15) Hon. Johana Ngeno, MP
- (16) Hon. Mwadeghu Thomas, MP
- (17) Hon. Abdullswamad Sheriff, MP
- (18) Hon. Paul Otuoma, MP
- (19) Hon. John Aluoch Olago, MP
- (20) Hon. Francis Nyenze Mwanzia, MP
- (21) Hon. Dr. Oburu Oginga, MP
- (22) Hon. Major (Rtd) John K. Waluke, MP
- (23) Hon. Ogutu John Omondi, MP
- (24) Hon. Mary Keraa Sally, MP

(25) Hon. Wafula Wamunyinyi, MP

(26) Hon. Bernard Munyoki Kitungi, MP

(27) Hon. Chrisanthus Wamalwa, MP

1.3 Referral of the matter by the House to the Committee

1.3.1 On 4th December, 2013 the Hon. Korei Ole Lemein, MP rose pursuant to Standing Order 44 (ii) (c) seeking a Ministerial Statement from the Leader of Majority Party regarding the construction of the Mombasa-Kampala-Kigali-Juba Standard Gauge Railway line. The Member requested in his statement that, the Leader of Majority Party should inquire into and report on:-

- (i.) The actual cost of the project and the sources of funds;
- (ii.) Whether the procurement process and the legal requirements were followed in awarding the tender;
- (iii.) The list of all the tenderers and their financial and technical evaluation reports;
- (iv.) The sustainability and cost effectiveness of the project, clearly defining the safeguards put in place to ensure the contract sum is sustained; and
- (v.) Finally, the environmental impact assessment of the project.

1.3.2 The Leader of Majority requested the Speaker to direct the statement to the Public Investments Committee to investigate and report to the House due to the seriousness of the matter and also because it is an issue of investment.

1.3.3 The Speaker directed that the Public Investments Committee examines the matter with regard to the prudence and soundness of the financial decisions revolving around the venture.

1.4 Committee Proceedings

1.4.1 The Committee held nineteen (19) sittings in which it closely examined and heard evidence from witnesses. The Minutes of the Committee are hereto annexed and copies of the Hansard Report may be obtained at the National Assembly Library. In its inquiry into whether or not the affairs of the public investments (Kenya Railways Corporation) were managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received both oral and written evidence from the Hon. Alfred Keter, MP; Cabinet Secretary for Transport and Infrastructure; Cabinet Secretary, the National Treasury; the Public Procurement Oversight Authority; Kenya Railways Corporation; The Attorney General; Kenya Revenue Authority; The Registrar General; the Hon. Chirau Ali Mwakwere, former Minister for Transport; Eng. Abdirizak, former Permanent Secretary, Ministry of Transport; Mr. Nduva Muli, former Managing Director, Kenya Railways Corporation; the Hon. Amos Kimunya, former Minister for Transport; Dr. Cyrus Njiru, former Permanent Secretary, Ministry of Transport; Board of Directors, Kenya Railways Corporation and other relevant witnesses.

1.4.2 The Committee also considered a progress report from the Office of the Auditor-General on the procurement and financing of the Mombasa – Malaba/Kisumu Standard Gauge Railway. The records of evidence adduced, documents and notes received by the Committee form the basis

of the Committee's observations and recommendations as outlined in the Report and can be obtained in the HANSARD reports of the proceedings of the Committee available in the National Assembly Library.

1.4.3 The observations and recommendations, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent investment and proper financial management and profitability in State Corporations and the public investments sector as a whole and will guide in future procurement and financing of major projects by State Corporations. The observations and recommendations contained herein will help the Kenya Railways Corporation to implement the project in a more efficient transparent and accountable manner.

1.5 Committee's General Observations

Below is a summary of the Committee's observations contained in this Report on the procurement and financing of the Mombasa – Nairobi Standard Gauge Railway.

(a) Memorandum of Understanding

1.5.1 A Memorandum of Understanding (MOU) was signed between the GoK and CRBC in August, 2009 wherein CRBC offered to carry out the feasibility study and preliminary designs of the Mombasa – Nairobi section at no cost to the Government of Kenya, provided that the report could only be used by GoK/KRC and CRBC. The feasibility study was also subject to KRC review and approval. This is a standard requirement for Chinese funded projects, to establish the feasibility themselves before involving their Treasury and Banks.

1.5.2 The National Treasury of Kenya and Exim Bank of China signed an MOU on financing of the Standard Gauge Railway. The MOU is not legally binding to both the Government of Kenya and EXIM Bank of China and only serves as an instrument for further discussions on the terms of the loans and the loan agreements.

(b) Justification for the Project

1.5.3 The Standard Gauge Railway was conceived to make use of standard equipment such as locomotives and rolling stock, ease cargo transport, congestion and relieve the Kenyan roads from damage by heavy axle load vehicles.

1.5.4 In the long run it is cheaper to operate the Standard Gauge Railway as opposed to the one meter gauge railway line, source for equipment and ensure faster movement of freight and passengers.

1.5.5 The railway will open up the East African region and tap into the transport market extending into eastern DRC and South Sudan. The project is economically viable in the long run and Kenya stands to gain economically and socially through the development of the Standard Gauge Railway.

(c) Approval for the project

1.5.6 Kenya, Uganda and Rwanda signed a Tri-partite agreement on August 2013 for the development of a Standard Gauge Railway in the three countries so as to ensure seamless railway operations. Each country will develop the railway network within its borders.

1.5.7 The project was approved by the Cabinet in 2012 and the Government to Government financing arrangement has been endorsed by the Government of Kenya and the Government of the People's Republic of China.

1.5.8 The Attorney General approved the two commercial contracts between CRBC and KRC for civil works and for the supply and installation of facilities, locomotives and rolling stock. The Contract would however not come into force until a financier was identified and funding commitment made.

(d) Tendering

1.5.9 Kenya Railways Corporation had initially used a wrong procurement method, direct procurement, but this was corrected with its termination and substitution with the Government to Government transaction.

(e) Debts Sustainability Analysis

1.5.10 The National Treasury has undertaken a debt sustainability analysis and to ensure that the SGR loan does not compromise the debt policy parameters spelt out in the debt sustainability strategy paper and is sustainable. The results of the debt sustainability analysis are presented below:

Public debt sustainability analysis

Indicator (Threshold)	2014	2015	2016	2017	2018
PV of Public Sector debt To GDP ratio (56) without SGR	38.7	38.1	38.3	38.7	38.6
PV of Public Sector debt To GDP ratio (56) with SGR	39.5	41.1	42.5	43.8	43.8

1.5.11 A safeguard mechanism to assure business for the SGR will also be put in place through execution of "take or pay" agreement between Kenya Railways and the Kenya Ports Authority.

1.5.12 In addition, in the unlikely event that the revenues from railway operations are inadequate for one reason or another, the proceeds from the Railway Development Fund will be used to repay the loan.

(a) **Cost and Financing of the Project**

1.5.13 The Cabinet Secretary for Transport and Infrastructure gave the total estimated cost of the project to be USD 3.804 billion and external financing for the project identified so far is USD 3.233 billion from the Government of the People's Republic of China covering 85% of the funding while the remaining 15% will be funding from the Government of Kenya.

1.5.14 The Cabinet Secretary, National Treasury provided the Committee with cost estimates of the projects as follows:

- (i) Construction of railways infrastructure (civil works) and procurement of facilities and locomotives on EPC arrangement at cost of US\$ 3.8 billion (**Kshs. 327 billion**)
- (ii) Construction of railways infrastructure (civil works); procurement of facilities and locomotives; compulsory land acquisition; Embakasi ICD expansion; and project supervision a total of **Kshs. 349.4 billion**.
- (iii) Construction of railways infrastructure (civil works); procurement of facilities and locomotives; compulsory land acquisition; Embakasi ICD expansion; and project supervision; cost of insurance premium and interests at a total cost of **Kshs. 447 billion**. This excludes other important costs such as cost of resettlement, demolition cost and relevant expenses; VAT, Duty and relevant tax; and other statutory expenses.

(b) **Design, Review, Construction and supervision**

1.5.15 The Government has put in place measures to safe guard the project through an independent review and supervision consultant who will oversee the construction and adherence to specification and guarantee quality works.

1.5.16 Commercial viability of the Mombasa-Nairobi Standard Gauge Railway (Phase I) is dependent upon the implementation of Phase II of the project (Nairobi – Malaba/Kisumu) and concurrent development of the Standard Gauge Railway by Partner States (Uganda and Rwanda) who signed the Tri-partite Agreement.

(c) **Conduct of witnesses**

1.5.17 The conduct particularly of Hon. Amos Kimunya was contemptuous of Parliament and his demeanor and conduct was condescending. He blatantly refused to give information and answer questions raised by Members during the meeting in contravention of Article 35(1)(b) read together with Article 125 of the Constitution, section 23 of the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya and Standing Order 191.

1.5.18 The conduct and demeanor of Mr. Chirau Ali Mwakwere was condescending. He alleged that the information sought was not in his possession.

1.5.19 The Committee on diverse dates invited the General Manager, China Road and Bridge Corporation, a state owned Corporation of the People's Republic of China to appear before it to adduce evidence on the procurement and financing of the Standard Gauge Railway but the Firm failed to honour the Committee's invitation and summons and instead the Ministry of Foreign Affairs after receiving a note verbale from the Embassy of the People's Republic of China wrote to the Committee

indicating that CRBC is a state owned Corporation and should not therefore be summoned by the Committee. The Ministry of Foreign affairs cautioned the Committee that summoning CRBC would have 'serious and irrevocable negative consequences to Kenya's national interests and relations with China'. (*Annex 20*) This is in contravention of Article 125 of the Constitution, section 14 and 23 of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya and Standing Order 191.

1.5.20 The Committee observed that CRBC is a state owned Corporation specially created to undertake commercial activities and therefore can sue and be sued. The Corporation therefore being a commercial entity should not enjoy the same immunity that is accorded to a diplomatic Mission/Embassy.

1.5.21 China Road and Bridge Corporation Kenya Limited, a company registered in Kenya under Registration No. C.166624 with its Directors being Mr. Peter Maingi Gatere and Mr. Leonard Mwangi Ndungu and registered office located at LR NO.209/1184/11, Mpaka Road, Westlands was also invited by the committee to adduce evidence on the matter but failed to honour the Committee's invitations in contravention of Article 125 of the Constitution, section 14 and 23 of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya and Standing Order 191.

1.5.22 There has been a tendency on the part of the government officials to commission projects without budgetary provisions/finances and adherence to Public Procurement laws. The project was commissioned without the procuring entity assuring itself of budget or source of finances thus begging the question what would happen if the financing agreement

is not signed or the expected source of financing fails to materialize? This

tendency of commissioning projects without budget or assurance of source of financing has led to failure to adhere to procurement laws, lack of transparency and accountability in the implementation of such projects..

1.6 Committee's Recommendations

Based on the evidence adduced and written submissions, the Committee recommends that:-

1.6.1 The development of the Standard Gauge Railway project from Mombasa to Nairobi should proceed on condition that the Government fulfils the following recommendations:-

- (a) Fastracks the feasibility study, preliminary designs and costing for Phase II covering Nairobi- Malaba with a branch line to Kisumu in line with the tri-partite agreement;
- (b) Fastrack the Procurement of Phase II (Nairobi- Malaba/Kisumu) of the Standard Gauge Railway once the financing agreement for Phase I is concluded, taking into account the provisions of Article 227 of the Constitution and the provisions of part IV of the Public Procurement and Disposal Act, 2005;
- (c) Government initiates sourcing of funding from development partners and put measures in place for prudent management of RDF for the commencement of Phase I covering Mombasa to Nairobi.
- (d) Urgently initiate the procurement of an independent consultant to facilitate design review, oversee construction and ensure specifications and quality is guaranteed through a transparent, fair and competitive tender in line with Article 227 of the Constitution, the Public Procurement and Disposal Act, 2005 and with the approval of the Attorney General.

- 1.6.2 KRC ensures that all the pertinent issues that were raised in the feasibility and preliminary study report regarding design concept single or dual track; building standards; travelling speed and train operation; motive power; rolling stock specifications; and maintenance of facilities be reviewed by an independent consultant to make sure the main goals of the project are achieved in line with Vision 2030.
- 1.6.3 KRC and Ministry of Transport and Infrastructure ought to ensure that the project addresses the connectivity to Mombasa Island, Kilindini Port, within Nairobi and to other areas of economic interests such as the proposed Konza Techno City. If the connectivity and routing is not fully addressed it will cause major operational problems and litigation challenges particularly at the port of Mombasa and Nairobi where the already existing meter gauge railway line is being operated by Rift Valley Railways (RVR).
- 1.6.4 The Cabinet Secretary National Treasury and the Cabinet Secretary in charge of Transport and Infrastructure should spearhead the formation of an inter-ministerial technical and implementation team to manage the project and to review cost and benefit analysis of expansion of important infrastructure such as bridges, tunnels and via duct to allow for future expansion of a single to double track vis-avis the cost of construction of a double track line in the first phase.
- 1.6.5 The Government adopts Public Private Partnership arrangement in the operation of train services. To this end, the Government should reconsider spending more money on the construction/development of infrastructure and less on the locomotives and wagons which can be sourced by the private sector.

- 1.6.6 The Standard Gauge Railway phase I project addresses operational challenges associated with use of single line track for both freight and passenger services which require different speeds and safety standards with emphasis to KRC's initial goals of this project.
- 1.6.7 The Ministry of Transport and Infrastructure and KRC should put in place measures to ensure capacity development including technology transfers and capacity building of Kenyans in areas such as design, construction, maintenance, operation and management of the Standard Gauge Railway.
- 1.6.8 The National Treasury should finalize the negotiations on the financing agreement to pave way for the implementation of Phase I of the project covering Mombasa to Nairobi.
- 1.6.9 The Cabinet Secretary for Transport and Infrastructure and the Cabinet Secretary for the National Treasury should constitute an inter-ministerial technical team to provide an accurate total cost estimate of the whole project from Mombasa to Nairobi and implement the Standard Gauge Railway project. This cost estimate should include critical cost components such as cost of land acquisition; demolition cost and relevant expenses; Value Added Taxes; Duty and relevant tax; financing, loan interest and relevant expense; and other statutory expenses.
- 1.6.10 Kenya Railways Corporation hastens the commencement of the process of procurement of an independent consultant to facilitate design review, oversee construction and ensure specifications and quality is guaranteed through an open, transparent, fair and competitive tender in line with Article 227 of the Constitution, the Public Procurement and Disposal Act, 2005 and with the approval of the Attorney General.
- 1.6.11 The Government of Kenya should liaise closely with the Government of Uganda in line with the provisions of the tri-partite agreement for the
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development of Phase II of the Kenya section of the Standard Gauge Railway to ensure a seamless railway network between the two countries.

- 1.6.12 The Registrar General deregisters China Road and Bridge Company Kenya Limited, a Kenyan firm with the same name as the State owned Chinese company that the office of the Registrar had allegedly registered inadvertently.
- 1.6.13 The Criminal Investigation Department investigates the missing file of China Road and Bridge Company Kenya Limited, its activities and operations and the circumstances under which the Registrar of Companies registered two companies with the same name. Appropriate action should be taken on those found culpable.
- 1.6.14 The Government and all procurement entities must at all times ensure that Article 227 of the Constitution and the provisions of Public Procurement and Disposal Act, 2005 are observed to the letter i.e. public agencies should at all time implement procurement methods that are fair, equitable, transparent, competitive and cost-effective.
- 1.6.15 The “Take or Pay” proposal between KRC and KPA should be reviewed by the Government to plan for intermodal transportation that treat road transport as complementary and not a competitor to rail transport.
- 1.6.16 The present governance structure and management of the Railway Development Fund (RDF) does not allow for transparency and accountability. To strengthen the structure and management of the Fund, a proper legal framework should be prepared by the Cabinet Secretary and submitted to Parliament within two months for approval and enactment.
- 1.6.17 The Government should fast track the mobilization of domestic resources for the development of the Standard Gauge Railway projects in the

Country through the Railway Development Fund rather than relying on borrowed Funds which puts pressure on the Country's Debt Sustainability.

- 1.6.18 The Government should ensure that all its development programmes are coordinated and budgeted properly by all Government Ministries and agencies to avoid situations under which Government Ministries/agencies give conflicting information on the same subject matter.
- 1.6.19 The financing agreement should explicitly state the financing by the EXIM Bank of China will cover costs for the railway line, civil works construction, acquisition of rolling stock and locomotives. Other peripheral costs such as land acquisition etc will be financed by the Kenya Government in the 15% contribution.
- 1.6.20 The former Minister for Transport, Hon. Amos Kimunya be prosecuted by the Director of Public Prosecution for contravening Article 125 read together with Article 35 (1) (b) of the Constitution, the provisions of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya and the Standing Order No.191 and for contempt of the Committee and failing to answer to issues raised by the Committee.
- 1.6.21 The Public Procurement Oversight Authority should be more pro-active and vigilant in its oversight role over public procurement and advice ministries and Government agencies on the best procurement procedures.
- 1.6.22 Government officials should desist from commissioning projects before financing and or budgetary provision have been secured and proper procurement provisions followed so as to ensure transparency and accountability in projects implementation and adherence to the rule of law.
- 1.6.23 The Tripartite Agreement should be availed and subjected to scrutiny by the Attorney General to ensure compliance with Kenyan Laws and
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ratification as required by Article 2(6) read together with the Treaty Making and Ratification Act (No 45 of 2012), of the Constitution and the treaties and ratification law.

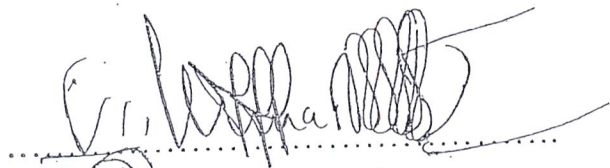
1.7 Acknowledgement

The Committee wishes to record its appreciation to the office of the Speaker and Clerk of the National Assembly for facilitation. The Committee also appreciates all the witnesses who appeared and adduced evidence before it. Further, the Committee is indebted to the staff of the National Assembly, Kenya National Audit Office, the Inspectorate of State Corporations and the Department of Government Investments and Public Enterprises (The National Treasury) for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

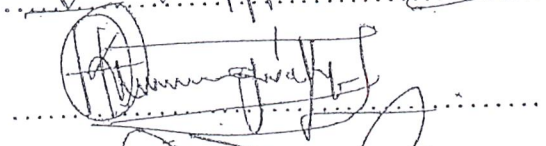
ADOPTION OF THE SPECIAL REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON THE PROCUREMENT AND FINANCING FOR THE CONSTRUCTION OF THE STANDARD GAUGE RAILWAY FROM MOMBASA TO MALABA/KISUMU

We the Members of the Public Investments Committee have pursuant to Standing Order 199 adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity:- :

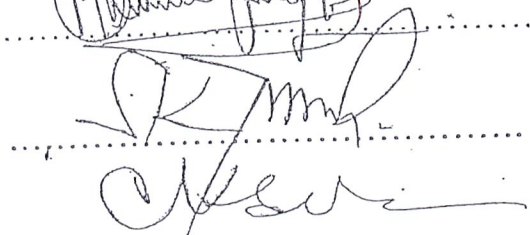
1. Hon. Adan Keynan, CBS, MP



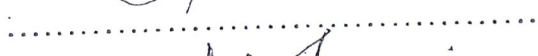
2. Hon. Kimani Ichung'wah, MP



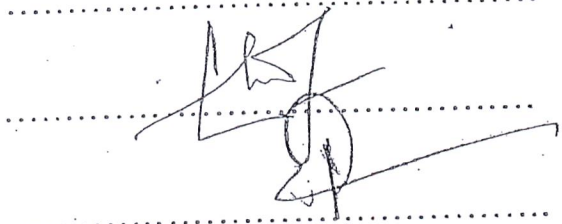
3. Hon. Sammy Mwaita, MP



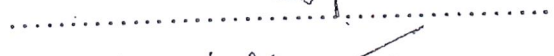
4. Hon. Cornelly Serem, MP



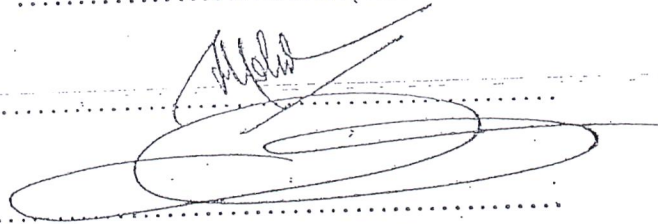
5. Hon. Bare Shill, MP



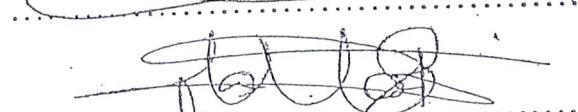
6. Hon. Korei Ole Lemein, MP



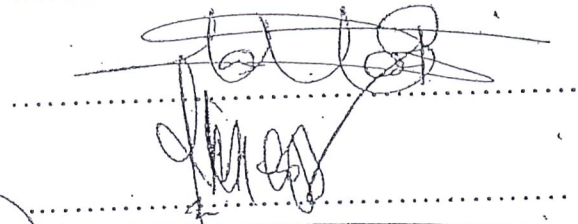
7. Hon. Adan M. Noor, MP



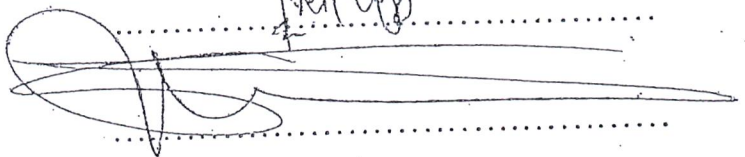
8. Hon. Mithika Linturi, MP



9. Hon. Beatrice Nyaga, MP



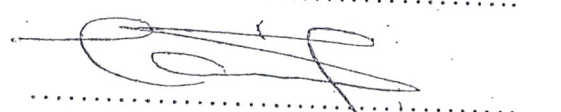
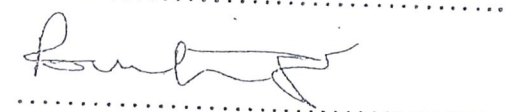
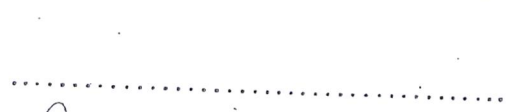
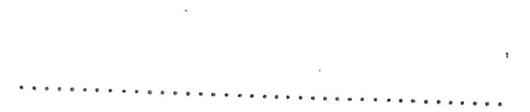
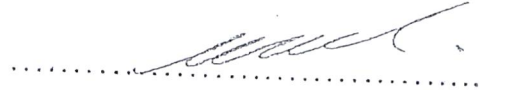

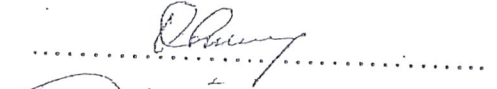
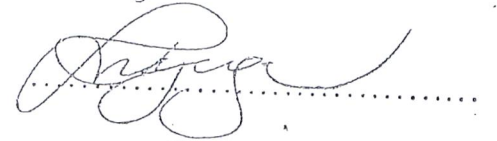
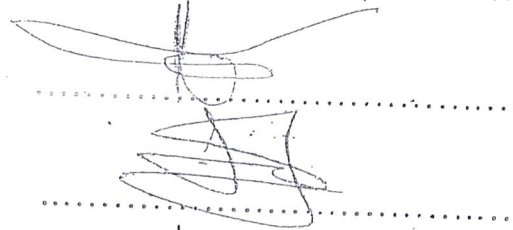
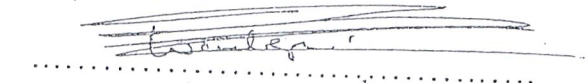
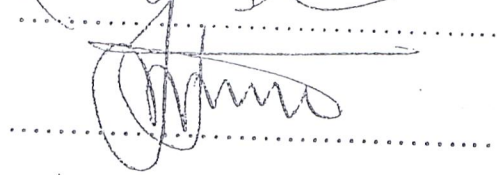
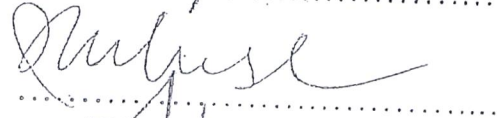
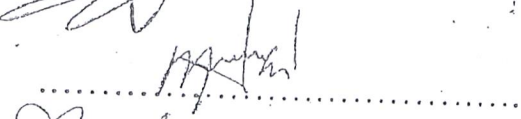
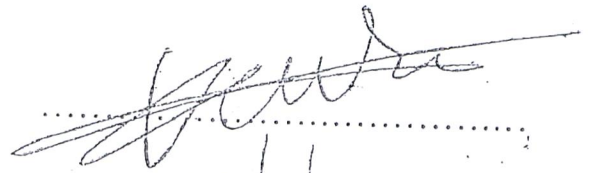
10. Hon. John M. Nyaga, MP



11. Hon. Njogu Barua, MP

Special Report of the PIC on the Procurement and Financing for the Construction of the Standard Gauge Railway from Mombasa to Malaba/Kisumu

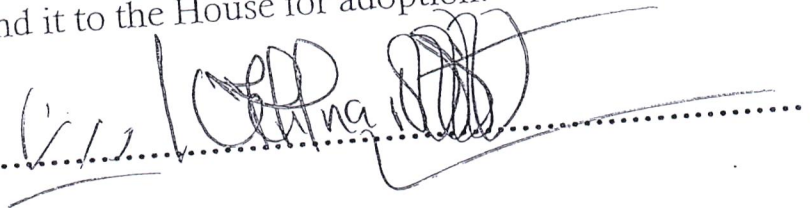
12. Hon. Irungu Kang'ata, MP
13. Hon. Onesmus Njuki, MP
14. Hon. Eng. John Kiragu, M.P
15. Hon. Johana Ngeno, MP
16. Hon. Mwadeghu Thomas, MP
17. Hon. Abdullswamad Sheriff, MP
18. Hon. Paul Otuoma, MP
19. Hon. John Aluoch Olago, MP
20. Hon. Francis Nyenze Mwanzia, MP
21. Hon. Dr. Oburu Oginga, MP
22. Hon. Major (Rtd) John K. Waluke, MP
23. Hon. Ogutu John Omondi, MP
24. Hon. Mary Keraa Sally, MP
25. Hon. Wafula Wamunyinyi, MP
26. Hon. Bernard Munyoki Kitungi, MP
27. Hon. Chrisanthus Wamalwa, MP



Mr. Speaker,

On behalf of the Members of the Public Investments Committee, I beg to table the special Report of the Committee on the procurement and financing of the Mombasa - Nairobi Standard Gauge Railway pursuant to Standing Order 199 (6) and commend it to the House for adoption.

Sign:



HON. ADAN. W. KEYNAN, CBS, MP
CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

Date:

24/4/2014

2.0 BACKGROUND OF THE STANDARD GAUGE RAILWAY

- 2.1 The Government of Kenya has identified transport as the critical enabler for the delivery of vision 2030, which aims to make Kenya a middle income country by the year 2030. Vision 2030 aspires for a country firmly interconnected through a network of roads, railways, ports, airports, water and sanitation facilities, and telecommunications.
- 2.2 The Government through the Ministry of Transport and Infrastructure is focusing on developing and improving the transport sector as a key driver of economic development. The railway sub-sector, which has been underperforming over the years, is in urgent need of revamping to ensure it plays its rightful role in the economic and social development of the country and the region as a whole.
- 2.3 The current railway system in Kenya linked to Uganda was developed over 100 years ago and now has serious limitations in terms of technology, speed and capacity. Regarding capacity, the current railway handled only 0.9 million tons in 2012/2013 compared to Mombasa port throughput of 22 million tons in 2012 at a growth rate of 8% per annum. The balance of the traffic was therefore handled by road transport resulting to very high cost of road maintenance and carnage.
- 2.4 The existing railway is on concession to the Rift Valley Railway since 1st October, 2006, in spite of this, its performance has continued to decline due to the poor condition of the infrastructure, facilities, locomotives and rolling stock as a result of lack of investment. The purpose for developing the Standard Gauge Railway project is to provide additional transport capacity on the Northern Transport corridor and also open the country to less expensive and readily available locomotive and rolling stock built to SGR specifications.

2.5 On 3rd August, 2012, the Cabinet granted approval for the SGR project and specifically for:-

- (i) The development of a new Standard Gauge Railway linking Mombasa to Malaba with a branch line to Kisumu;
- (ii) The Standard Gauge Railway to be developed through a Government to Government arrangement supported by Government budget and a railway development and maintenance fund; and
- (iii) The Government to sign a bilateral agreement with the Government of the Republic of Uganda for joint development of the railway and subsequent seamless operation.

3.0 REPORT OF THE AUDITOR GENERAL

The Auditor General in his letter dated 28th March, 2014 (*Annex I*) informed the Committee that the audit of the Standard Gauge Railway is in the planning stage, however from a desk review the following have been observed:-

- 3.1 The need for the Standard Gauge Railway is well entrenched in Kenya's economic blue print of Vision 2030.
- 3.2 Statistics from the Kenya Railways Corporation emphasize the need for the Standard Gauge Railway and indicate that in 2011 only 8% of the cargo from the port of Mombasa was transported by rail and the remaining 92% was transported by road transport.
- 3.3 The feasibility study was conducted as well as Environmental Impact Assessment as required by section 58 of the Environmental Management Conservation Act (*No 8 of 1999*).

3.4 Although a Commercial Contract between Kenya Railways Corporation and China Road and Bridge Corporation has been signed, the loan agreement has not been signed so, no funds have been disbursed. Consequently it would not be prudent at this juncture to make conclusions as regard to the procurement process or the value for money aspect.

Committee's Observations

3.5 The Committee observed that:-

- (i) The need for the Standard Gauge Railway is well entrenched in Kenya's economic blue print of Vision 2030.
- (ii) The feasibility study was conducted as well as environmental impact assessment as in accordance with section 58 of the Environmental Management Conservation Act (*No 8 of 1999*).
- (iii) Two Commercial Contracts have been signed between Kenya Railways Corporation and China Road and Bridge Corporation but the loan agreement has not been signed and therefore no funds have been disbursed.

4.0 EVIDENCE BY WITNESSES

4.1 EVIDENCE BY HON. ALFRED KETER, MP

The Hon. Alfred Keter, Member of Parliament for Nandi Hills appeared before the Committee on 15th January and 22nd January, 2014 to adduce evidence on the Mombasa – Nairobi Standard Gauge Railway. He informed the Committee that:-

4.1.1 The country needs an efficient railway system to ease transport congestion and reduce the cost of transportation. The procurement, agreement and

financing of the SGR tender from Mombasa to Malaba is fraught with irregularities and is in contravention of Article 227 of the Constitution, the provisions of the Public Procurement and Disposal Act, 2005.

4.1.2 In April 15th and September 9th, 2008 China Road and Bridge Corporation (CRBC) wrote as a private investor to the then Transport Minister Hon. Chirau Ali Makwere and the then Prime Minister Hon. Raila Odinga respectively seeking to invest in the transport sector and more specifically in the construction of an electric railway System in Kenya (*Annex 2*). The China Road and Bridge Corporation (CRBC) engaged the Government as a private entity and entered into a contract with Kenya Railways Corporation in its private capacity and therefore the contract/procurement was never a Government to Government procurement. It was initiated as a private business venture.

4.1.3 On August 12, 2009 the then Ministry of Transport and China Road and Bridge Corporation (CRBC) signed a Memorandum of Understanding (MOU) in which CRBC was to undertake a free feasibility study on the Standard Gauge Railway. The MOU provided that all facets of the Standard Gauge Railway project will be undertaken in accordance with the Laws of Kenya. The MOU also gave financing options for the project under which CRBC was to source for funding of the project.

4.1.4 Kenya Railways had initiated a procurement process of an independent feasibility study by advertising in the media. An independent consulting firm was identified and tender awarded but the Ministry of Transport (MoT) cancelled the procurement process. Ideally a new procurement

process should have been initiated and fair practice applied but instead CRBC was chosen to undertake the feasibility study.

4.1.5 After completion of the feasibility study, CRBC presented its report to the Ministry of Transport in January, 2012 in which it recommended that the SGR be changed from an electric engine to a diesel powered engine. The cost of the SGR is estimated at USD 3.4 – 3.8 billion.

4.1.6 The Ministry of Finance on 4th January, 2010 wrote to the Government of China requesting for a concessional loan for the construction of a new Standard Gauge Railway at a cost of USD 2.5 Billion (*Annex 3*). The funding of the project is not a grant to Kenya but rather a loan that the people of Kenya are going to pay. Already Kenyans are being taxed (Railway Development Levy) to repay the loan even before the project commences.

4.1.7 The Attorney General (AG) had advised Kenya Railways Corporation to ensure that the requirements of the Public Procurement and Disposal Act, 2005 are followed when the former sought the AG's comments and approval on the commercial contracts.

4.1.8 CRBC undertook the feasibility study, design and preparation of bill of quantities for the project and was later awarded the contract based on the feasibility study and costing that it had done. This is clearly a case of conflict of interest. The Government ought to have appointed an independent firm to undertake the feasibility study and costing of the project as part of due diligence and to get value for money in the project.

- 4.1.9 A similar project is being undertaken in Ethiopia but at a lower cost yet the Ethiopian railway is a duo line railway. Open tendering should have been allowed for Kenyans to get value for money and the different components of the system (railway line, locomotives and spares) should have been awarded to different contractors and not to one contractor to mitigate the risk of failure and allow fair competition.

- 4.1.10 In previous engagements between the Government of Kenya and the Government of China tenders for projects were procured competitively. Chinese companies were allowed to compete openly for the tenders for example during the concession loan for the Kenya Rural Telecommunication Development Project (Phase II, 2007) (*Annex 4*).

- 4.1.11 China Road and Bridge Corporation and its mother company China Communications Construction Company Limited were debarred by the World Bank from participating in any of its projects for the period January 2009 to January 2017 due to fraud/corruption and flouting procurement regulations for a road project they undertook in the Philippines (*Annex 5*).

- 4.1.12 The leadership was misled into commissioning a project that is laden with irregularities. Due diligence ought to have been undertaken before commissioning the project. His interest in the matter is transparency and value for money for Kenya and exercise of his Constitutional right under Article 95.

Committee's Observations

4.1.13 The Committee observed that:-

- (i) Article 227 of the Constitution of Kenya provides that public procurement should be fair, equitable, transparent, competitive and cost effective.
- (ii) China Road and Bridge Corporation initiated the project and undertook the feasibility study, design and costing for the project and was awarded the tender. This raises issues of conflict of interest and lack of due diligence as well as questions as to whether Kenyans will get value for money on the project due to lack of competition in the procurement process.
- (iii) China Road and Bridge Corporation and its mother company China Communications Construction Company Limited were debarred by the World Bank from participating in any of its projects for the period January 2009 to January 2017 due to fraud or corruption and flouting procurement regulations for a road project they undertook in the Philippines.
- (iv) No specific costing data was given to assist in cost comparison of proposed SGR in Kenya and others outside the country.
- (v) The project was commissioned before securing financing.

4.2 EVIDENCE BY THE PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

The Director General of the Public Procurement Oversight Authority (PPOA), Mr. Maurice Juma, appeared before the Committee on 20th January, 2014 to adduce evidence on the procurement process for the construction of the Nairobi – Mombasa Standard Gauge Railway. He informed the Committee that:-

4.2.1 Kenya Railways Corporation (KRC) on October 2nd, 2012 reported to the Public Procurement Oversight Authority pursuant to regulation 62 (3) of

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public procurement and disposal regulations, 2006. The Procuring entity reported that it had engaged China Road and Bridge Corporation through a direct procurement at a cost of USD 1,146,791,008.75. According to KRC, the use of direct procurement was premised on section 74 (2) (b) of the procurement law and the fact that there was an MOU between the Ministry of Transport and CRBC for a feasibility study with the option of considering construction of the Standard Gauge Railway.

4.2.2 Upon completion of the feasibility study and review by Kenya Railways Corporation (KRC), CRBC was awarded a tender in July, 2012 and communicated to the company in October, 2012 to construct the Standard Gauge Railway (SGR) at a cost of USD 1,146,791,008.75 exclusive of VAT, Customs Duties, IDF fee, Cess and withholding tax (*Annex 6*). A negotiation committee was appointed in August, 2012.

4.2.3 Kenya Railways Corporation withdrew the award citing that the procurement was Government to Government and was therefore not subject to the provisions of the Public Procurement and Disposal Act, 2005. PPOA advised KRC against the use of direct procurement since the method was not competitive and requested for additional information on the subject project for purposes of review (*Annex 7*). The documents were never availed. KRC wrote citing that the contract with CRBC resulted from a negotiated grant between the Government of Kenya and the Government of China thus G-G funding and therefore section 6 (1) of PPDA, 2005 applied.

4.2.4 According to section 6 (3) of the Public Procurement and Disposal Act, 2005 Government to Government procurement should have a negotiated grant. There was no documentary evidence submitted by KRC to suggest that the contract was Government to Government except their letter indicating a Government to Government arrangement.

4.2.5 The KRC had entered into a commercial agreement with CRBC on the development of a Standard Gauge Railway.

4.2.6 In a letter dated 3rd October, 2012, the Solicitor General indicated that the said procurement shall be subject to the financing agreement and therefore section 6 of the Public Procurement and Disposal Act shall apply (*Annex 8*).

4.2.7 PPOA had not done due diligence on CRBC. It was the procuring entity that was to undertake the due diligence on the contractor.

Committee's Observations

4.1.8 The Committee observed that:-

- (i) The Attorney General had offered general advice to the Public Procurement and Oversight Authority relating to Government to Government transaction or arrangements.
- (ii) The commercial contract between KRC and CRBC resulted from a negotiated grant between the Government of Kenya and the Government of China.

4.3 EVIDENCE BY MANAGEMENT OF KENYA RAILWAYS CORPORATION

The Acting Managing Director, Kenya Railways Corporation, Mr. Alfred Matheka appeared before the Committee on 20th January, 2014 to adduce evidence on the procurement and financing for the construction of the Standard Gauge Railway. He informed the Committee that:-

- 4.3.1 A Tri-partite agreement was signed by the Governments of Kenya, Uganda and Rwanda for the construction of a Standard Gauge Railway. To action the Communiqué by the Presidents of EAC the Cabinet in August, 2012 approved the development of a Standard Gauge Railway linking Mombasa to Malaba with a branch line to Kisumu.
- 4.3.2 The then Ministry of Transport on 12th August, 2009 signed an MOU with China Road and Bridge Corporation (CRBC) for a feasibility study and preliminary design of Mombasa-Nairobi section of the railway with the option of considering the construction. Under the Memorandum, CRBC could identify the financiers and mobilize resources at no cost to the Government of Kenya (*Annex 9*).
- 4.3.3 The Feasibility study report was submitted to Kenya Railways Corporation (KRC) in January, 2012 and KRC approved the feasibility study and preliminary designs report on 26th June, 2012.
- 4.3.4 The scope of works approved in the feasibility study report included:
- (a) construction of 609 Kilometers of single track railway;
 - (b) construction of stations, workshops and freight exchange depots;

- (c) supply and installation of facilities including signaling and communication, electricity and water supply;
- (d) supply and commission of 56 locomotives;
- (e) supply and commissioning of 1,620 freight wagons;
- (f) Supply and commission of 40 passenger coaches; and
- (g) Training and capacity building.

4.3.5 Upon completion of the feasibility study and review by KRC, CRBC was awarded a tender (*Annex 6*) to construct the Standard Gauge Railway (SGR). Kenya Railways Corporation withdrew the award citing that the procurement was Government to Government and was therefore not subject to the provisions of the Public Procurement and Disposal Act, 2005.

4.3.6 The standards of the SGR compared to the currently existing meter gauge Railway is as follows:

Item	Standard Gauge Railways	Meter Gauge Railways
Classification	Class I	Class III
Gauge	1,435 mm	1,000mm
Track	Single Track	Single Track
Axle Load	25 tones	16 tones
Speed	120Km/h	40Km/h
Minimum Curve Radius	1,200m, difficult 800m	175 m (10 degrees)
Ruling gradient	1.2%	1.5%

Traction category	Diesel	Diesel
Locomotives power	Passenger: 3,200 HP Freight: 5,000 HP	Passenger and Freight 2,600 HP
Trailing Load	4,000 tones (216 (TEUs))	1,000 tones (34 TEUs)
Effective Length of Crossing	880 meters	450 meters
Type of signaling	Automatic inter-station block (Computer aided)	Manual (Currently there is no signaling)
Construction Clearance	Double-stacked container wagon and future electrification	Single Track Containers
Targeted Traffic	Freight and Long distance passengers	Freight and Passengers
Design hauling capacity	28 million tones	1.5 million tones

4.3.7 The Kenya Railway Corporation had entered into a commercial agreement with CRBC on the construction of a SGR at a total cost of USD 3.804 billion. The contract was to come into force once financiers had been identified. KRC used the provisions of section 6 (1) of the Public Procurement and Disposal Act, 2005 to undertake the procurement of the project under a Government to Government arrangement.

4.3.8 Due diligence was undertaken on CRBC by KRC through an inter-ministerial delegation that undertook a visit. The Chinese Embassy, Nairobi wrote on 8th June, 2012 expressing support and confirming the capacity of CRBC to undertake the project (*Annex 10*).

4.3.9 A delegation from Kenya also visited the company and some of the projects undertaken by CRBC in China (*Annex 11*). The company had undertaken mega projects in Kenya such as birth 19 at the Kenya Ports Authority, Thika Super Highway, Mama Lucy Hospital among others.

4.3.10 The Government is seeking a loan of USD 3.233 billion part of which is concessional loan of USD 1.6 billion and USD 1.633 billion commercial loans. 85% of the project is to be financed by the loan while 15% equivalent to USD 571 Million (Kshs. 50 billion) is to be financed by the Government of Kenya using the Railway Development Levy. The interests on the loan is 2% per annum and the insurance on the commercial loan is 6.93% of the loan to be paid in three premium installments. The loan is insured by a Chinese firm China Export and Credit Insurance Corporation (SinoSure) with no local broker.

4.3.11 An independent consultant will be hired to supervise the construction, supply and installation of facilities and commissioning of all locomotives and rolling stock in addition to undertaking design review of all the designs. Cash flow analysis was done to determine that the project will have sufficient cash flow and that the debt limit will be sustainable. An Environmental Impact Assessment of the project was also undertaken with NEMA certificate obtained with mitigation measures being factored in the project.

Committee's Observations

4.3.12 The Committee observed that:-

- (i) The Cabinet in August, 2012 approved the development of a Standard Gauge Railway linking Mombasa to Malaba with a branch line to Kisumu.
- (ii) Kenya Railways Corporation awarded CRBC a tender to construct the Standard Gauge Railway (SGR) using direct procurement but this was withdrawn by the procuring entity citing that the procurement was Government to Government.
- (iii) KRC used the provisions of section 6 (1) of the Public Procurement and Disposal Act, 2005 to undertake the procurement of the project under a Government to Government arrangement.
- (iv) An independent consultant will be hired to review designs and supervise the track construction, supply and installation of facilities and commissioning of all locomotives and rolling stock in addition to undertaking design review of all the designs.
- (v) A Cash flow analysis had been done by the National Treasury to determine that the project will have sufficient cash flow and that the debt limit will be sustainable.
- (vi) An Environmental Impact Assessment of the project was also undertaken with NEMA certificate obtained with mitigation measures being factored in the project.

4.4 EVIDENCE BY THE NEGOTIATION COMMITTEE OF KENYA RAILWAYS CORPORATION

Eng. S. Ouna, Chairman of the Contract Negotiation Team, appeared before the Committee to adduce evidence. He informed the Committee, that:-

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4.4.1 CRBC and KRC appointed negotiation teams to negotiate commercial turnkey contracts for civil works and for the supply and installation of facilities, locomotives and rolling stock.

4.4.2 The purpose of the negotiation was to prepare a draft commercial contract that was to be signed between KRC and CRBC for the civil works of the proposed Mombasa to Nairobi SGR Project. The negotiation was to focus on the following areas:

- (a) Particular conditions of the projects,
- (b) Schedule of Payment,
- (c) Bills of Quantities,
- (d) KRC requirements and specifications and,
- (e) Contract price.

4.4.3 The contract is aligned to FIDIC 1999 conditions of Contract for EPC/Turnkey Projects (Part II) and the Bills of quantities were based on preliminary design of the railway as well as agreed specifications.

4.4.4 The standards that will determine the performance of the railway include: Design speed, class of the railway, maximum gradient, minimum curvature, axle load, and the length of the crossing loop. The agreed parameter will enable the railway to have a maximum capacity of 22 million tons per annum, which would enable it to be lifting at least 40 % of freight delivered at Mombasa by 2035.

4.4.5 The parties considered certain unit costs and made appropriate adjustments which reduced the original estimate by Kshs. 2,641,283,124.69 bringing the contract price for civil works to Kshs. 220, 921,502,221.08.

Committee's Observations

4.4.6 The Committee observed that:-

- (i) CRBC and KRC appointed negotiation teams to negotiate commercial turnkey contracts for civil works and for the supply and installation of facilities, locomotives and rolling stock with the purpose of preparing a draft commercial contract.
- (ii) The parties considered certain unit costs and made appropriate adjustments which reduced the original estimate by Kshs. 2,641,283,124.69 thus bringing the contract price for civil works to Kshs. 220, 921,502,221.08.

4.5 EVIDENCE BY THE DUE DILIGENCE TEAM OF KENYA RAILWAYS CORPORATION

The due diligence team informed the Committee that:-

4.5.1 The GoK undertook due diligence on CRBC to confirm its suitability to undertake the implementation of the project by sending a delegation to China from 27th October to 5th November 2012. The objective of the due diligence included:-

- (i) Confirming that CRBC technical, financial and managerial/human resource capacity to deliver the railway project;

- (ii) Visiting CRBC nominated partners for the Railway project development and confirming their capacity to deliver supporting facilities for the project; and
- (iii) Experiencing Chinese technology in design and functionality of the railway infrastructure and support facilities to be applied to Mombasa-Malaba/Kisumu Railway.

4.5.2 The CRBC due diligence report confirmed the following:-

- (i) CRBC is a registered corporation by the State Administration for Industry and Commerce since 8th December, 2005, registration No. 1000001003996;
- (ii) The registered address is C 88 Andingmenwai Road Dongcheng District Dajie Zhounle Plaza Beijing;
- (iii) CRBC is a large scale state-owned foreign trade and economic corporation enterprises that focuses on construction of roads, railways, airports and other transport infrastructure;
- (iv) The Corporation serves as a window and plat form for the overseas operations of China Communications Constructions Company Limited;
- (v) CRBC has established relevant branches in 40 countries globally including Kenya;
- (vi) CRBC is a reputable company with national and international recognition for the delivery of infrastructure projects;
- (vii) The Corporation has undertaken several large railways development projects in China including Beijing- Shanghai High Speed Railway, Hrabn-Dalian passenger dedicated line, Guangkun mixed traffic among others; and
- (viii) CRBC has the technical, financial and managerial/ human resource capacity to deliver the proposed Mombasa- Nairobi SGR.

- (ix) **CSR Ziyang Locomotives Manufacturing Company** based in Chengdu in China has been identified by CRBC to partner with it to deliver locomotives for the project as per the equipments suppliers submitted to KRC by CRBC. The facility has a production capacity of 500 diesel and electric locomotive per year.
- (x) Locomotive range from meter gauge to broad gauge and from heavy haul passenger and shunting locomotives.
- (xi) One of the standard locomotives manufactured by the company is type DF8B-a3680KW locomotive similar to the one specified for the Mombasa- Nairobi SGE freight haulage. The locomotive has been developed in China along with engine and electrical transmission and has a proven technology dating back to 1998. The locomotives is currently operating in Turkmenistan and Kazakhstan
- (xii) The facility also manufactures and exports locomotives parts such as crank-shaft, wheels, and braking gear to the US, EU and India.

Committee's Observations

4.5.3 The Committee observed that:-

- (i) The GoK undertook due diligence on CRBC to confirm its suitability to undertake the implementation of the project by sending a delegation to China between the 27th of October, 2012 and the 5th of November, 2012. The due diligence confirmed that CRBC and its appointed sub contractors have the technical, financial and managerial or human resource capacity to deliver the proposed Mombasa- Nairobi SGR.

4.6 EVIDENCE BY THE CHAIRMAN OF THE BOARD OF KENYA RAILWAYS CORPORATION

General (Rtd) J. M. Kianga, Chairman of the Board of Kenya Railway Corporation, appeared before the Committee to adduce evidence on the procurement and financing of the construction of the Standard Gauge Railway. He informed the Committee that:-

- 4.6.1 Following the entering into the concession agreement with Rift Valley Railway in October 2006, the mandate of KRC was redefined in line with Vision 2030 through a five year strategic plan, 2007-2012. One of the key strategic objectives of the plan was to develop a national railway network. This led to the development of the Kenya National Railway master plan which was adopted at the EAC to become part of the East African Community. The Mombasa-Malaba/Kisumu SGR is a key component of this plan. This informed the tender for the Feasibility Study and Preliminary Design of the Mombasa-Malaba/Kisumu SGR.
- 4.6.2 The feasibility study report by CRBC was submitted to KRC by the Permanent Secretary, MoT in February 2011 for review. The study covered items such as: traffic forecast; project necessity; route selection and terminals; technical standards; operation planning; technical description; environmental assessment; construction period assessment; economic valuation; and conclusion and recommendations.
- 4.6.3 The procurement of CRBC was through an MOU between the Ministry of Transport and CRBC and signed by then Minister for Transport, Hon. Chirau Ali Mwakwere on behalf of the Ministry of Transport.
- ~~4.6.4 KRC was involved in the process of vetting and reviewing the Feasibility Study and Preliminary Design. Prior to the approval of the Feasibility~~

Study and Preliminary Design, KRC received affirmation vide letter dated 8th June 2012 from the Embassy of the Government of the People's Republic of China in Kenya expressing their support to CRBC in their involvement in the project.

4.6.5 The need to include the supply and installation of the facilities and equipment in a turnkey project is to ensure seamless development of the railway and for the railway to commence revenue generation immediately the infrastructure is ready.

Committee's Observations

4.6.6 The Committee observed that:-

- (i) The procurement of feasibility study was through an MOU between CRBC and the Ministry of Transport, signed by the then Minister for Transport, Hon Chirau Ali Mwakwere.
- (ii) The tender for the Feasibility Study and Preliminary Design of the Mombasa-Malaba/Kisumu SGR, was informed by the Kenya National Railways Master Plan that was adopted by the East African Community.
- (iii) KRC was involved in the process of vetting and reviewing the Feasibility Study and Preliminary Design done by CRBC.

4.7 EVIDENCE BY CABINET SECRETARY FOR TRANSPORT AND INFRASTRUCTURE

Mr. Michael Kamau, the Cabinet Secretary for Transport and Infrastructure, appeared before the Committee on 20th January, 2014 to adduce evidence on the

procurement and financing of the construction of the Standard Gauge Railway. He informed the Committee that:-

4.7.1 A Tri-partite agreement was signed by the Governments of Kenya, Uganda and Rwanda for the construction of a Standard Gauge Railway. The objective of the project is to ensure seamless and efficient railway that will result in lower cost, quality of services and high level of safety. The salient features of the agreement were that:-

- (a) The three countries were to use unified standards for the construction of the SGR;
- (b) The construction and completion is to be undertaken within set timelines; and
- (c) There should be seamless operation of the Railway line.

4.7.2 The Ministry of Transport signed an MOU with China Road and Bridge Corporation (CRBC) for a feasibility study with the option of considering the construction (*Annex 9*). Under the MOU, CRBC could identify the financiers and mobilize resources at no cost to the Government of Kenya.

4.7.3 Upon completion of the feasibility study and review by Kenya Railways Corporation (KRC), CRBC was awarded a tender to construct the Standard Gauge Railway (SGR) (*Annex 6*). Kenya Railways Corporation later withdrew the award citing that the procurement was Government to Government and therefore applied the provisions of section 6 (1) of the Public Procurement and Disposal Act, 2005 to undertake the procurement of the project under a Government to Government arrangement.

4.7.4 The Attorney General authorized the signing of the commercial contract and subsequent action by the Attorney General indicated approval for the project (*Annex 12*). The contracts would not come to force until a financier was identified and funding commitment made.

4.7.5 The project was procured through a Government to Government arrangement. This is normally the case where the Government uses development partner funds. Under such circumstances the rules of the funding partner are used. The Chinese procedure requires that a feasibility study is done by the same company that will undertake the development of the project. KRC had entered into a commercial agreement with CRBC on the construction of a SGR. The total cost of the project was USD 3.804 billion. The contract was to come into force once financiers had been identified.

4.7.6 Kenya Railways Corporation undertook due diligence on CRBC through inquiries from the Chinese Embassy, Nairobi which wrote confirming the capacity of CRBC to undertake the project. KRC also sent a due diligence technical team/delegation to visit the company and some of the projects it had undertaken in China. Further the company had undertaken mega projects in Kenya such as birth 19 at the Kenya Ports Authority, Thika Super Highway, Mama Lucy Hospital etc.

4.7.7 The total cost of the project is USD 3.2 billion part of which is a concessional loan of USD 1.6 billion and a commercial loan of USD 1.63 billion. 85% of the project cost is to be financed by the loan while 15% is to be financed by the Government of Kenya using the Railway Development

Levy. The Interests on the loan is 2% per annum and the insured by a Chinese firm, SinoSure, at the rate of 6.9% of the loan to be paid in installments.

4.7.8 An independent consultant will be hired to review designs and supervise the project before it starts and during construction phase. A cash flow analysis was done to determine that the project will have sufficient cash flow and that the debt limit will be sustainable. An Environmental Impact Assessment of the project was also undertaken, with NEMA certificate obtained, with mitigation measures being factored in the project.

4.7.9 American standards were used in the project. The implementation of the project will ensure that there is capacity building where skills and knowledge will be transferred. The project seeks to implement a monolithic railway but structures such as bridges, tunnels will be built to accommodate an additional line in future. Brand new workshops will also be built in Embakasi to cater for maintenance facilities.

Committee's Observations

4.7.10 The Committee observed that:-

- (i) There was no competitive bidding on the project since it is only one firm (China Road and Bridge Corporation) that initiated the project and undertook the feasibility study, design and costing and was subsequently awarded the tender (CRBC).
- (iii) The MOU on the feasibility study provided that CRBC undertook the feasibility study, design and costing of the project at no cost to the Government.

- (iv) Kenya Railways Corporation invoked section 6(1) of the Public Procurement and Disposal Act, 2005 in exclusion of section 6 (3) of the same Act citing that the financing of the project was by a negotiated grant.
- (v) The Attorney General authorized the signing of the commercial contract and subsequent action by the Attorney General indicated an approval for the project.
- (vi) Kenya Railways Corporation undertook due diligence on CRBC through inquiries from the Chinese Embassy, Nairobi which confirmed the capacity of CRBC to undertake the project and a due diligence technical team/delegation that visited the company and some of the projects it had undertaken in China.
- (vii) An independent consultant would be hired to review the design and supervise the construction to ensure that the public gets value for money.
- (viii) American standard and not Chinese standards are the choice of the project.

4.8 EVIDENCE BY THE CABINET SECRETARY FOR NATIONAL TREASURY

Mr. Henry Rotich, the Cabinet Secretary for Treasury, appeared before the Committee on 21st January, 2014 to adduce evidence on the procurement and financing for the construction of the Standard Gauge Railway. He informed the Committee that:-

4.8.1 Treasury is not directly involved in the implementation of projects. The responsibility of the procurement and implementation of capital projects including monitoring and evaluation lies with the line Ministries/State agencies while Kenya National Audit Office provides independent audits as required by law. The role of National Treasury in respect of such

projects is to secure the required financial resources to undertake the projects as long as they are in line with the National Development Plans.

- 4.8.2 The Cabinet approved the development of the Standard Gauge Railway in August, 2012 followed by the signing of a bi-lateral agreement by the Governments of Kenya and Uganda for the construction of a Standard Gauge Railway and later converted to a Tri-partite agreement after Rwanda joined the project.
- 4.8.3 The Standard Gauge Railway project involves construction of a railway infrastructure (civil works) and procurement of facilities and locomotives on an Engineering, Procurement and Construction (EPC) arrangement at a cost of USD 3.8 billion.
- 4.8.4 The project will be financed through a loan that will cover 85% of the project and Government of Kenya contributing 15% of the cost of the project. The National Treasury submitted a formal request to the Government of China for financial assistance towards implementation of the project in October, 2012 (*Annex 13*) The Kenyan component will be financed through the Railway Development Levy. The Treasury has already issued regulations on the Railway Development Levy.
- 4.8.5 The loan will cost USD 3.23 Billion from EXIM Bank of China comprised of a concessional loan of USD 1.6 billion and a commercial loan of USD 1.63 billion. The concessional loan is for 20 years and has a grace period of 7 years and an interest rate of 2% per annum while the commercial loan is

the commercial loan and interest of six months LIBOR + 360 basis point. The loan has a grant element of 35%. The insurance component is always available for any commercial loan. For China, the insurance cover has to be done by a Chinese firm, SinoSure. The insurance cover is to take care of nonpayment.

4.8.6 The major financial implications of the project will be Kshs. 349.44 billion relating to:-

- (d) EPC contract for USD 3.8 billion covering USD 2.657 billion for civil works, and USD 1.146 billion for facilities, locomotives and rolling stock;
- (e) Kshs. 8.04 billion for compulsory acquisition of 2,253 hectares of land for the railway corridor;
- (f) Kshs. 10.6 billion for Embakasi Inland Container Depot (ICD) expansion programme, facility development and container handling equipment;
- (g) Kshs. 1 billion for land acquisition for the Embakasi inland depot; and
- (h) Kshs. 3 billion for project supervision.

4.8.7 Treasury signed an MOU in July, 2012 with EXIM Bank in China that was witnessed by the President of the Republic of Kenya (*Annex 14*). The MOU was based on the commercial agreement between Kenya Railways Corporation and China Road and Bridge Corporation (CRBC). There is no sovereign guarantee by the Government of Kenya on the loan. There was direct borrowing from Exim Bank of China. The loan is to the Government of Kenya and is on lent to Kenya Railways Corporation. GoK and EXIM

Bank of China signed an MOU because EXIM Bank provided the funds and represented the People's Republic of China.

4.8.8 The Government of Kenya has met all the requirements of the EXIM Bank of China which include; an Assurance that the Government will guarantee minimum freight demand for the SGR through execution of take or pay agreement between KRC and the Kenya Ports Authority and confirmation that Railway Development Fund will be used to repay the loan. EXIM Bank of China is currently going through its internal credit approval process following which it will submit to GoK, through the National Treasury the Financing Agreements. The financing agreement has not yet been signed.

4.8.9 Kenya Railways Corporation had awarded CRBC a tender under direct procurement which it later cancelled. The cancellation of the award under direct procurement did not negate the commercial contract signed in July, 2012. The cancellation was only meant to correct the procurement process from direct procurement to Government to Government arrangement.

4.8.10 An arrangement will be struck with Kenya Ports Authority to ensure that sufficient volumes of freight go through the Standard Gauge Railway. No guarantee has, however, been given on the volumes for the railway cargo.

4.8.11 The current GoK debt limit is Kshs. 889 billion against a ceiling of Kshs. 1.3 trillion approved by Parliament: The debt ratio is therefore 38.7%.

4.8.12 The Attorney General provided guidance on the procurement process and cleared the commercial contract.

4.8.13 An independent consultant will be hired to supervise the project once it starts to ensure that the project is completed.

Committee's Observations

4.8.14 The Committee observed that:-

- (i) The Cabinet approved the development of the Standard Gauge Railway in August, 2012 followed by the signing of a bi-lateral agreement by the Governments of Kenya and Uganda for the construction of a Standard Gauge Railway that was later upgraded to a tri-partite agreement when Rwanda joined.
- (ii) Treasury signed an MOU in July, 2013 with EXIM Bank in China that was witnessed by the President of the Republic of Kenya, based on the commercial agreement between Kenya Railways Corporation and China Road and Bridge Corporation (CRBC).
- (iii) There is no guarantee to ensure that sufficient volumes of freight go through the Standard Gauge Railway since no agreement has been signed between Kenya Ports Authority and Kenya Railways Corporation.
- (iv) There is no financing agreement yet signed between the Government of Kenya and EXIM Bank in China.
- (v) There is no sovereign guarantee by the Government of Kenya on the commercial and concessional loan from the Government of China.
- (vi) An independent consultant would be hired to ensure the project is completed timely.

4.9 EVIDENCE BY THE ATTORNEY GENERAL

Prof. Githu Muigai, the Attorney General, appeared before the Committee on 21st January, 2014 to give evidence on the procurement and financing for the construction of the Standard Gauge Railway. He informed the Committee that:-

4.9.1 The office of the Attorney General is an advisory office that offers legal advice to the Government of Kenya, promotes rule of law and good governance.

4.9.2 Kenya Railways Corporation has executed two commercial contracts; one for the development of the Mombasa - Nairobi SGR and the other for the supply of facilities, locomotives and rolling stock for the Mombasa - Nairobi section of the Standard Gauge Railway. The Attorney General advised that, amendments be made on the contract and that there must be compliance with the Public Procurement and Disposal Act, 2005. The signing of the commercial agreements is a condition precedent to the financing agreement. The financing agreement has not yet been signed and it must be certified by the State Law office.

4.9.3 A Government to Government (G-G) arrangement is not a procurement method but an arrangement between sovereign nations that could support procurement activities. A G-G agreement is not a method for selecting suppliers so as to support the award of a contract. The purchase of BVR kits brought to the fore challenges in this kind of arrangement and this experience informed the advice given to Public Procurement Oversight Authority (PPOA) by the office of the Attorney General (*Annex 15*).

4.9.4 The Attorney General's office did not validate the procurement process but approved the commercial agreements conditional to the Ministry Department and Agency (MDA's) fulfilling the conditions and amendments proposed by the Attorney General. The office advised that Article 227 of the Constitution of Kenya should be observed to the utmost. Public agencies are expected to implement procurement methods that are fair, equitable, transparent, competitive and cost effective and with full application of the Public Procurement and Disposal Act No. 3 of 2005, Laws of Kenya.

4.9.5 The Attorney General advised PPOA against allowing certain kinds of contracts and advised KRC and the Ministry to put in place certain amendments before signing the commercial contracts

4.9.6 There will be no liability on the part of the Government of Kenya if the contract fails since the financing agreement has not been effected.

Committee's Observations

4.9.7 The Committee observed that:

- (i) Article 227 of the Constitution of Kenya provides that public procurement should be fair, equitable, transparent, competitive and cost effective.
- (ii) A Government to Government (G-G) arrangement is not a procurement method but an arrangement between sovereign nations that could support procurement activities.
- (iii) The Office of the Attorney General approved the commercial agreements conditional to the Ministry of Transport and Kenya Railways Corporation fulfilling the conditions and amendments proposed by the Attorney General.

- (iv) There are no contractual liabilities on the part of the Government of Kenya since the financing agreement has not been effected and it is the financing agreement that is bound to create such contractual obligations.

4.10 EVIDENCE BY THE COMMISSIONER GENERAL, KENYA REVENUE AUTHORITY

The Commissioner General, Kenya Revenue Authority, Mr. Njiraini appeared before the Committee on 22nd January, 2014 to give evidence on the status of the revenue collected under the Railway Development Levy. He informed the Committee that:-

- 4.10.1 In the Budget Statement for Fiscal Year 2013/14 delivered on 13th June, 2013 the Cabinet Secretary for the National Treasury proposed an amendment to the Customs and Excise Act, Cap 472, Laws of Kenya, so as to introduce a Railway Development Levy of 1.5 % of the customs value of all imported goods (*Annex 16*).
- 4.10.2 The objective was to mobilize funds for the construction of a Standard Gauge Railway network in order to facilitate the transportation of goods. Therefore the Railway Development Levy collection was introduced with effect from 1st July 2013, payable by all importers at a rate of 1.5% of the customs value of the imports.
- 4.10.3 The Finance Bill, 2013 indicates that all imports of domestic use are subject to the 1.5 % Railway Development Levy to be paid by the importer at the entry point. It further indicates that the Cabinet Secretary shall establish a Railway Development Levy Fund where all the proceeds are to be paid and is to be managed, administered or wound up in accordance with the Public Financial Management Act, 2012 and its regulations.

4.10.4 The total collection of Railway Development Levy for the period 1st July, 2013 to 31st December, 2013 was Kshs. 10,052,287,901 against a target of Kshs. 6,780,260,980.11. The full year Treasury target for the Financial Year 2013/14 is Kshs. 13,500,000,000 hence the remaining balance to meet the target is Kshs. 3,447,712,099.

4.10.5 The Railway Development Levy is facing challenges in its application to diplomats, goods destined for EAC Member States and bonded goods destined for EPZ areas. The Authority is consulting with the National Treasury on ways of addressing the challenges.

Committee's Observations

4.10.6 The Committee observed that:-

- (i) The Railway Development Levy was established to mobilize funds for the development of a Standard Gauge Railway network in order to facilitate the transportation of goods and is paid by the importer at the entry point.
- (ii) Kenya Revenue Authority had surpassed its target in collection of the Railway Development Levy.
- (iii) All proceeds of the Railway Development Levy are channeled to the Railway Development Levy Fund which is to be managed, administered or wound up in accordance with the Public Financial Management Act, 2012 and the regulations thereunder.
- (iv) The Railway Development Levy is facing challenges in its application to diplomats; goods destined for EAC Member States and bonded goods destined for EPZ areas.

4.11 EVIDENCE BY HON. CHIRAU ALI MAKWERE, FORMER MINISTER FOR TRANSPORT

Hon. Chirau Ali Makwere, former Minister for Transport appeared before the Committee on 3rd February, 2014 to give evidence on the procurement and financing of the Mombasa - Nairobi Standard Gauge Railway. He informed the Committee that:-

4.11.1 He served as the Minister for Transport from 2005 to 2010 and was succeeded thereafter by Hon. Amos Kimunya. During his tenure as Minister for Transport, he prioritized infrastructure development. He identified CRBC with his own initiative through the internet and initiated contact with CRBC based on their capability to undertake the project taking into account the nature of work that the company had done in China such as the development of the Beijing - Shanghai Railway Line. The company was later awarded the tender for the construction of the Mombasa - Nairobi Standard Gauge Railway.

4.11.2 There was a Cabinet approval for the development of the Standard Gauge Railway. The specifications for the railway were made by the Ministry of Transport.

4.11.3 He signed the MOU as the Minister for Transport but never awarded the contract. At that point he would not confirm that this was going to be a Government to Government arrangement since it was subject to review by other Government Ministries and agencies.

4.11.4 The CRBC wrote to Hon. Mwakwere congratulating him for being appointed a Minister and presented a draft MOU.

4.11.5 The cost of the railway varies in different sections of the Mombasa – Nairobi railway depending on the terrain, weather patterns, Wildlife migratory routes among other factors.

4.11.6 He was aware that China Road and Bridge Corporation was blacklisted by the World Bank in the Philippines. The Philippines issue was an isolated case since the company has been in business in Kenya for many years without any issue of integrity being raised against it.

4.11.7 He does not know the Board of Directors of CRBC or when they were registered in Kenya.

Committee's Observations

4.11.8 The Committee observed that:-

- (i) The CRBC wrote to Hon. Mwakwere congratulating him for being appointed a Minister and presented a draft MOU for the feasibility study. This implies that the SGR was initiated by CRBC and not the Ministry of Transport.
- (ii) The MOU between the Ministry of Transport and CRBC was the genesis and the basis on which the project was premised and executed. The MOU provided the grounds for the feasibility study upon which the implementation of the Standard Gauge Railway is based.
- (iii) The Hon. Chirau Ali Mwakwere was non-committal to any of the issues raised by the Committee. The Committee noted that through his demeanor

Hon. Mwakwere had demonstrated arrogance and a condescending attitude.

4.12 EVIDENCE BY MR. NDUVA MULI, PRINCIPAL SECRETARY,
MINISTRY OF TRANSPORT AND INFRASTRUCTURE

Mr. Nduva Muli appeared before the Committee on 5th February, 2014 to adduce evidence as a former Managing Director of Kenya Railways Corporation, on the procurement and financing of the Mombasa - Nairobi Standard Gauge Railway. He informed the Committee that:-

4.12.1 The railway system linking Kenya and Uganda was developed over 100 years ago and now has serious limitations in terms of technology and capacity. The railway sub-sector, which has been underperforming over the years, is in urgent need for revamping to ensure it plays its rightful role in the economic and social development of the Country and the region.

4.12.2 The current railway capacity handled only 0.9 million tons in 2012/13 compared to Mombasa Port throughput of 22 million tons in the same period at a growth rate of 8 % per annum. This means that 96 % of the goods from Mombasa Port are presently handled by the more expensive road transport. The performance of the existing railway line which is on concession to Rift Valley Railway since 1st October 2006 has continued to decline due to poor condition of the infrastructure, facilities, locomotives and rolling stock. This is as a result of lack of investment.

~~4.12.3 The current railway capacity cannot be increased beyond five million tons~~

per annum due to the following limitations:-

- (i) Steep gradient of 2.5 % and tight curvature of 175 meters radius limiting delivery speed to less than 20 Km/h.
- (ii) Weak structure limiting axle load to 16 tones, which in turn limits the hauling capacity.

4.12.4 On 3rd August, 2012 the Cabinet granted approval for the project as follows:-

- (i) The development of a new Standard Gauge Railway linking Mombasa to Malaba with a branch line to Kisumu;
- (ii) The Standard Gauge Railway to be developed through a Government to Government arrangement supported by Government Budget and a Railway Development and Maintenance Fund; and
- (iii) The Government to sign a bilateral Agreement with the Government of the Republic of Uganda for joint development of the railway and subsequent seamless operation.

4.12.5 KRC initiated procurement of feasibility study but was overtaken by events when CRBC offered to carry out the study at its own cost as agreed with the Ministry of Transport

4.12.6 KRC project specifications and concern for SGR study were drawn to provide parameters of study and were finally discussed and agreed to prior to completion of the study.

4.12.7 The development of the Mombasa to Malaba/Kisumu Standard Gauge Railway will involve the construction and subsequent operation of

approximately 1,250 kilometers and will be split up in two phases (Phase 1- Mombasa to Nairobi; Phase 2 - Nairobi to Malaba and Kisumu).

4.12.8 The Government recognized the need to commence with the development of Phase I (Mombasa- Nairobi) since 70% of freight handled at the port of Mombasa originates from or is destined to Nairobi. Phase I would therefore resolve the perennial freight congestion problem at the port and secure the position of Mombasa as the port of choice for the region and Kenya as a transport hub. Phase I is expected to be completed by December, 2016.

4.12.9 On 1st October, 2009 the technical officers from both Kenya and Uganda finalized the Bilateral Agreement and the Minister for Transport (Kenya) signed and dispatched it to Uganda for signature. The Agreement has since been scaled up to a Tripartite Agreement after the Republic of Rwanda ratified the agreement on 28th October, 2013 in order to extend the line to Kigali. Each country would however develop the railway network within its borders to avoid procurement challenges. The Mombasa to Kigali Railway is expected to be in operation by December, 2018.

4.12.10 The tender for the construction of the Standard Gauge Railway from Mombasa to Malaba was viable and the Mombasa – Nairobi section was awarded within the law.

4.12.11 Kenya Railways Corporation was involved in the vetting and review of the feasibility study as well as the preliminary design done by China Road and Bridge Corporation for the project. Following the approval of the

feasibility study and preliminary designs presented by CRBC, on 26th June 2012, KRC and CRBC entered into two commercial agreements. One commercial contract was for civil works worth USD 2.658 billion (Kshs. 220.9 billion) and the other commercial contract was for the supply and installation of facilities, locomotives and rolling stock worth USD 1.146 billion (Kshs. 106.1 billion). Therefore the total cost of the project is USD 3.804 billion (Kshs. 327 billion) at the exchange rate of Kshs. 86 per USD). The contracts would not come to force until a financier was identified and funding commitment made.

4.12.12 The due diligence conducted by Kenya Railways Corporation confirmed that China Road and Bridge Corporation is a Government institution of the People's Republic of China. It was formally established as a state-owned enterprise in 1979 with the name of China Road and Bridge Engineering Company. (CRBEC). CRBC was registered by the State Administration for Industry and Commerce on 8th December, 2005 and in 2006 it became a fully owned subsidiary company of China Communication Construction Company (CCCC).

Committee's Observations

4.12.13 The Committee observed that:-

- (i) Kenya, Uganda and Rwanda signed a tri-partite agreement for the development of a Standard Gauge Railway network in the three countries.
- (ii) There was a Cabinet approval for the development of a Standard Gauge Railway.

- (iii) KRC had initiated the procurement of a feasibility study for SGR but terminated it as directed by the then Minister for Transport.
- (iv) China Road and Bridge Corporation did the feasibility studies, design, costing and finally was awarded the tender for the construction of Standard Gauge Railway from Mombasa to Nairobi.
- (v) KRC had proposed fundamental issues to be addressed by the feasibility study and implementation of the SGR project.
- (vi) Kenya Railways Corporation was involved in the vetting and review of the feasibility study as well as the preliminary design done by China Road and Bridge Corporation for the project.
- (vii) The development of the Standard Gauge Railway will involve the construction and subsequent operation of approximately 1,250 kilometers and will be split up into two phases (Phase 1- Mombasa to Nairobi; Phase 2 - Nairobi to Malaba and Kisumu).

4.13 EVIDENCE BY ENG. ABDIRIZAK ALI, FORMER PERMANENT SECRETARY, MINISTRY OF TRANSPORT

Eng. Abdirizak Ali, the former Permanent Secretary (PS), Ministry of Transport (MoT) appeared before the Committee on 12th February, 2014 to adduce evidence on the Mombasa – Nairobi Standard Gauge Railway. He informed the Committee that:-

4.13.1 There was no Cabinet approval for the project during his tenure as a Permanent Secretary. This might have been done after he had left the Ministry.

4.13.2 The Memorandum of Understanding on the feasibility study was presented to his office for consideration and endorsement. On review of

the MOU they observed that the MOU should remain as a gentleman's

agreement between the two parties with no contractual obligations to the Government and that the study must be bankable and the Government must draw the terms of reference for the study and be able to supervise and approve it.

4.13.3 There were no discussions on the design and construction of SGR since the consultations only focused on the terms of reference, content and quality of the study, bankability of the study and that there was no obligation arising on the part of the Government due to the MOU.

4.13.4 He is not aware that CRBC did the feasibility study, preliminary design, costing and sourcing for funds and later awarded contract to construct the railway.

Committee's Observations

4.13.5 The Committee observed that:-

- (i) The MOU signed between MoT and CRBC was an understanding between the two parties with no contractual obligations to the Government.
- (ii) Consultations between MoT and CRBC on the feasibility study focused on the terms of reference, content, quality and bankability of the study and not the design or construction of the Standard Gauge Railway.

4.14 EVIDENCE BY REGISTRAR GENERAL

Mrs. Bernice Gachehu, the Registrar General appeared before the Committee on 13th February and 12th March, 2014 to give evidence on the legal status and registration of China Road and Bridge Corporation. She informed the Committee that:-

4.14.1 China Road and Bridge Corporation was initially registered as China Road and Bridge Engineering Company under part 10 of the Companies Act (Cap 486) on 28th December, 1984 under registration number F66/84. Part 10 of the Companies Act, provides for registration of Companies incorporated outside Kenya. Section 633 (1) states that *“once a foreign company establishes a place of business within Kenya, it should within 30 days of their establishment deliver to the Registrar of Companies, a certified copy of its charter and or memorandum and Articles, a list of its Directors and Secretaries, the names and postal address of persons authorized to accept service of process on behalf of the company and the full address of the registered or principal office of the company.”*

4.14.2 On 24th December, 1984 the following documents were supplied to the Registrar of Companies in compliance with section 366 of the Companies Act.

- a) Form 236, dated 20th December 1984, which shows the list of documents that were delivered to the Registrar for registration of the Company.
- b) Form 237 dated 20th December 1984 which shows the list and particulars of the Directors and Secretary of the Company.
- c) Form 238 dated 20th December 1984, which shows names and address of persons resident in Kenya authorized to accept service on behalf of the Company.
- d) Form 250 dated 20th December 1984, which shows the situation of the registered or principal office of the Company in China.

e) A notarized Business Certification and Statute of the Company and their translation in English.

4.14.3 Having satisfied the requirements of section 366, the Company was issued with a Certificate of Compliance dated 28th December, 1984 as per section 367 of the Companies Act (*Annex17*).

4.14.4 There is a local registered Company under the Name China Road and Bridge Corporation Kenya Limited which was registered on 23rd December, 2008 under Registration No. C.166624 with its Directors being Mr. Peter Maingi Gatere and Mr. Leonard Mwangi Ndungu. The registered office is LR NO.209/1184/11, Mpaka Road, Westlands (*Annex 18*).

4.14.5 This name was inadvertently issued to this Company because when they sought registration on 23rd December, 2008 there was in existence another Company under the name China Road and Bridge Corporation F66/84 on 9th September, 1996 through a change of name from China Roads and Bridges Engineering Company. China Road and Bridge Corporation Kenya Limited has since been directed to change its name in accordance with section 20 (2) (a) of the Companies Act.

Committee's Observations

4.14.6 The Committee observed that:-

- (i) The nature of work and the undertaking by China Road & Bridge Corporation Kenya Limited is not known. Its Memorandum and Articles of Association are missing in the registry at the Registrar of Companies.

- (ii) For the last 30 years that CRBC (K) ,which is a Chinese firm, has been in Kenya, it has never filed its audited accounts with the Registrar as required in the Companies Act.
- (iii) The CRBC Kenya Limited has also never filed its returns with the Registrar's office, in contravention of the Companies' Act, Cap 486, Laws of Kenya.
- (iv) The Kenyan company, CRBC Kenya Limited, issued with a certificate on December 23, 2008 was registered inadvertently since CRBC China was already in existence at the time.

4.15 EVIDENCE BY HON. AMOS KIMUNYA, FORMER MINISTER FOR TRANSPORT

Hon. Amos Kimunya, former Minister for Transport, appeared before the Committee on 17th February, 2014 to adduce evidence on the procurement and financing of the Mombasa - Nairobi Standard Gauge Railway (SGR). He informed the Committee that:-

4.15.1 The SGR project had been discussed severally since 2003. It is an integral part of Vision 2030 as an enabler of trade and movement. Regionally it is a core component of the modernization of the Northern Corridor (Mombasa to Democratic Republic of Congo). Officially, it was launched in State House, Nairobi in October 2008, in a joint communiqué by President Mwai Kibaki and President Yoweri Museveni of Uganda. This was followed by bilateral discussions between Kenya and Uganda which culminated in a bilateral agreement documenting the necessary frameworks. In Kenya, this was approved by Cabinet in August 2012, and

signed. Rwanda has since joined this agreement thus converting it into a Tri-partite agreement.

4.15.2 Kenya Railways Corporation (KRC) is a State Corporation set up under an Act of Parliament, and is a designated procurement entity as per the Public Procurement and Disposal Act, 2005. In the past, Ministries have been restrained from, and even reprimanded by Parliament and the Public Procurement Oversight Authority (PPOA) on involvement in procurement matters of State Corporations. The Government of Kenya (GoK) was represented in the KRC Board by the PS-Treasury, PS-Transport and the Attorney General.

4.15.3 Negotiations on the financing of Government projects are the mandate of the National Treasury. Due diligence review was conducted in October/November, 2012 by a high level GoK/KRC team. The Embassy of China in Kenya also expressed its support for China Road and Bridge Corporation (CRBC).

4.15.4 A Memorandum of Understanding (MOU) was signed between the GoK and CRBC in August, 2009 wherein the CRBC offered to carry out the feasibility study and preliminary designs of the Mombasa – Nairobi section at no cost to the Government of Kenya, provided that the report could only be used by GoK/KRC and CRBC. The feasibility study was also subject to KRC review and approval. This is a standard requirement for Chinese funded projects, to establish the feasibility themselves before involving their Treasury and Banks.

4.15.5 The first Draft report of the feasibility study was forwarded to his office as the then Minister for Transport in 2011 by CRBC when they visited the Ministry as part of an official delegation accompanying the Chinese Vice Minister of Transport.

4.15.6 The cost of the railway is high due to the gradient considering that the terrain from Mombasa is varied rising from sea level to flat terrain and high altitude. The railway was changed to diesel driven due to challenges of power but in future the trains could be converted to be electric driven.

4.15.7 The Standard Gauge Railway was conceived to ease cargo transport congestion. The railway will open up the East African region and tap into the transport market extending into eastern DRC and South Sudan. In the meantime the cost is high but in the long run the project will be worthwhile.

4.15.8 He stopped tendering for a feasibility study by KRC because there was already a feasibility study underway by CRBC at no cost to the Government. He stopped the parallel study to save money that was to be used in procuring the feasibility study by KRC.

Committee's Observations

4.15.9 The Committee observed that:-

- (i) The Hon. Amos Kimunya issued a directive through the Permanent Secretary for the cancellation of an independent feasibility study that was to be commissioned by Kenya Railways Corporation.

- (ii) There was interference by the Ministry of Transport on the procurement process of the Standard Gauge Railway. The procuring entity was sidelined to the periphery during the procurement of CRBC to undertake the feasibility study and preliminary designs.
- (iii) The conduct of Hon. Amos Kimunya was contemptuous of Parliament and his demeanor and conduct was condescending. He blatantly refused to give information and answer questions raised by Members during the meeting in contravention of Article 35(1) (b) read together with Article 125 of the Constitution, section 23 of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya and Standing Order 191.

4.16 EVIDENCE BY DR. CYRUS NJIRU, FORMER PERMANENT SECRETARY MINISTRY OF TRANSPORT

Dr. Cyrus Njiru, former Permanent Secretary, Ministry of Transport appeared before the Committee on 27th February, 2014 to give evidence on the procurement and financing of the Mombasa – Nairobi Standard Gauge Railway. He informed the Committee that:-

4.16.1 The Ministry of Transport had signed an MOU with CRBC for a feasibility study and preliminary design of the Standard Gauge Railway. CRBC was to undertake the feasibility study at no cost to the Government. The MOU ought to have been interrogated further.

4.16.2 There are certain projects that can be undertaken by the contractor who did the feasibility study, design and costing. This is, however, an unconventional method of infrastructure development and is normally

done for huge projects where funding is a challenge and where the contractor can source for funding. Many countries were approached by the Government to fund the project but declined except China.

4.16.3 The prompt implementation of the project will be beneficial to Kenya and the region. There should however be professional supervision of the implementation of the project.

4.16.4 Kenya Railways Corporation had initiated a process for procuring an independent feasibility study. During this period there was a discussion within Government that a parallel study should not be commissioned. As a result he was directed by the Minister, Hon. Kimunya, to terminate the procurement process of a parallel feasibility study.

4.16.5 Kenya Railways raised issues on the feasibility study and a simulation and sensitivity analysis was done.

4.16.6 Kenya Railways Corporation was involved in the vetting and review of the feasibility study as well as the preliminary design done by China Road and Bridge Corporation for the project.

Committee's Observations

4.16.7 The Committee observed that:-

- (i) The MOU signed by the Ministry of Transport implied that CRBC was to execute the project through a clause that provided that the feasibility study was only to be used by MoT, KRC and CRBC.
- (ii) The Ministry of Transport terminated the procurement of an independent consultant by Kenya Railways who was to undertake a feasibility study. An independent feasibility study could have produced independent costing of the project and therefore value for money.

- (iii) There is need to separate the cost of the railway line from the locomotives and other services.

4.17 EVIDENCE BY THE NATIONAL LAND COMMISSION

Mr. Muhammad Swazuri, Chairman, National Land Commission appeared before the Committee on 13th March, 2014 to adduce evidence on the land acquisition for the Standard Gauge Railway. He informed the Committee that:-

- 4.17.1 The Commission received a request from Kenya Railways Corporation to acquire land for the Standard Gauge Railway on 19th August, 2013.
- 4.17.2 The land acquisition and compensation sub-committee of the National Land Commission held meetings with Kenya Railways to explain preliminary details since there were no details to allow the Commission undertakes the acquisition.
- 4.17.3 Kenya Railways Corporation has so far submitted information for the first 56 km that extends from part of Mavumbo and South Samburu Group Ranches in Taita Taveta County, the Kenya Wildlife Tsavo East and Tsavo West Parks in Taita Taveta County to Kathekani in Makueni County. The Corporation is yet to avail information for the next 220 km stretch for verification and validation.
- 4.17.4 The National Land Commission subsequently gazetted the notice of intention to acquire on 7th February, 2014 (*Annex 19*). The Commission is awaiting Kenya Railways to facilitate it to issue gazette notices, of intention to acquire land, to respective land owners as legally provided for.

4.17.5 The Commission is already receiving inquiries from the public about the corridor of the Standard Gauge Railway. Details are yet to be submitted by Kenya Railways Corporation.

4.17.6 The National Land Commission will undertake due process as legally provided by law on compulsory acquisition.

Committee's Observations

4.17.7 The Committee observed that:-

- (i) The National Land Commission, following consultations with Kenya Railways Corporation gazetted the notice of intention to compulsorily acquire land for the Standard Gauge Railway.
- (ii) The National Land Commission will undertake due process as legally provided by law on compulsory acquisition and compensate affected land owners in line with Article 40 (3) of the Constitution.

4.18 OTHER WITNESSES

(a) **China Road and Bridge Corporation Limited**

4.18.1 The Committee on diverse dates invited the General Manager, China Road and Bridge Corporation to appear before it to adduce evidence on the procurement and financing of the Standard Gauge Railway (*Annex 20*).

4.18.2 The firm did not honour the Committee's invitation and summons issued in contravention of Article 125 of the Constitution, section 14 and 23 of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya and Standing Order 191.

- 4.18.3 The Ministry of Foreign Affairs after receiving a note verbale from the Embassy of the People's Republic of China (Annex 20) wrote to the Committee indicating that CRBC is a state owned Corporation and should not therefore be summoned by the Committee. The Ministry of Foreign affairs cautioned the Committee that summoning CRBC would have 'serious and irrevocable negative consequences to Kenya's national interests and relations with china' (*Annex 21*).
- 4.18.4 The Committee observed that CRBC is a state owned Corporation specially created to undertake commercial activities and therefore can sue and be sued. The Corporation therefore being a commercial entity should not enjoy the same immunity that is accorded to a diplomatic Mission/Embassy.
- 2.5.1 China Road and Bridge Corporation International was formally established in China and entered the international project contracting market in the year 1979.
- 2.5.2 CRBC International became a wholly-owned subsidiary of China Communications Construction Company Limited (CCCC) after a major corporate restructuring in 2005.
- 2.5.3 On December 18th, 2005, China Harbour Engineering (Group) Company and China Road & Bridge Corporation (CRBC) were merged by consolidation to form a new company, China Communications Construction Group (CCCCG) a central enterprise supervised by State-owned Assets Supervision and Administration Commission of the State Council of China.
- 4.18.5 On October 8th, 2006, with the approval from the State Council, CCCC was reorganized and reformed and it initiated and founded China Communications Construction Company Limited

4.18.6 The World Bank Group on July 29th, 2011 announced the debarment of China Communications Construction Company (CCCC) Limited, and all its subsidiaries, for fraudulent practices under Phase 1 of the Philippines National Roads Improvement and Management Project. Under the sanction, CCCC is ineligible to engage in any road and bridge projects financed by the World Bank Group until January 12, 2017.

4.18.7 China Road and Bridge Corporation (CRBC) was, along with six other firms and one individual, debarred by the World Bank for eight years, beginning January 12, 2009, following an investigation of the National Roads Improvement and Management Project in Philippines by the World Bank Group.

(b) China Road and Bridge Corporation Kenya Limited

4.18.8 China Road and Bridge Company Kenya Limited which was registered locally in Kenya on 23rd December, 2008 under Registration No. C.166624 with its Directors being Mr. Peter Maingi Gatere and Mr. Leonard Mwangi Ndungu. The registered office is LR NO.209/1184/11, Mpaka Road, Westlands

4.18.9 The Committee invited the Company through their Directors on record to appear before the Committee to adduce evidence before it (*Annex 22*). The said directors failed to appear before the Committee as invited in contravention of section 14 and 21 of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya.

4.18.10 The registered Directors of the Company a Mr. Peter Maingi Gatere and Mr. Leonard Mwangi Ndungu did not respond to the invitations of the Committee.

5.0 COMMITTEE'S GENERAL OBSERVATIONS

(d) Memorandum of Understanding

- 5.1 A Memorandum of Understanding (MOU) was signed between the GoK and CRBC in August, 2009 wherein CRBC offered to carry out the feasibility study and preliminary designs of the Mombasa – Nairobi section at no cost to the Government of Kenya, provided that the report could only be used by GoK/KRC and CRBC. The feasibility study was also subject to KRC review and approval. This is a standard requirement for Chinese funded projects, to establish the feasibility themselves before involving their Treasury and Banks.
- 5.2 The National Treasury of Kenya and Exim Bank of China signed an MOU on financing of the Standard Gauge Railway. The MOU is not legally binding to both the Government of Kenya and EXIM Bank of China and only serves as an instrument for further discussions on the terms of the loans and the loan agreements.

(e) Justification for the Project

- 5.3 The Standard Gauge Railway was conceived to make use of standard equipment such as locomotives and rolling stock, ease cargo transport, congestion and relieve the Kenyan roads from damage by heavy axle load vehicles.
- 5.4 In the long run it is cheaper to operate the Standard Gauge Railway as opposed to the one meter gauge railway line, source for equipment and ensure faster movement of freight and passengers.
- 5.5 The railway will open up the East African region and tap into the transport market extending into eastern DRC and South Sudan. The project is

economically viable in the long run and Kenya stands to gain economically and socially through the development of the Standard Gauge Railway.

(f) Approval for the project

5.6 Kenya, Uganda and Rwanda signed a Tri-partite agreement on August 2013 for the development of a Standard Gauge Railway in the three countries so as to ensure seamless railway operations. Each country will develop the railway network within its borders.

5.7 The project was approved by the Cabinet in 2012 and the Government to Government financing arrangement has been endorsed by the Government of Kenya and the Government of the People’s Republic of China.

5.8 The Attorney General approved the two commercial contracts between CRBC and KRC for civil works and for the supply and installation of facilities, locomotives and rolling stock. The Contract would however not come into force until a financier was identified and funding commitment made.

(d) Tendering

5.9 Kenya Railways Corporation had initially used a wrong procurement method, direct procurement, but this was corrected with its termination and substitution with the Government to Government transaction.

(e) Debts Sustainability Analysis

5.10 The National Treasury has undertaken a debt sustainability analysis and to ensure that the SGR loan does not compromise the debt policy parameters spelt out in the debt sustainability strategy paper and is sustainable. The results of the debt sustainability analysis are presented below:

Public debt sustainability analysis

Indicator	2014	2015	2016	2017	2018
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(Threshold)

PV of Public Sector debt					
To GDP ratio (56) without SGR	38.7	38.1	38.3	38.7	38.6
PV of Public Sector debt					
To GDP ratio (56) with SGR	39.5	41.1	42.5	43.8	43.8

5.11 A safeguard mechanism to assure business for the SGR will also be put in place through execution of “take or pay” agreement between Kenya Railways and the Kenya Ports Authority.

5.12 In addition, in the unlikely event that the revenues from railway operations are inadequate for one reason or another, the proceeds from the Railway Development Fund will be used to repay the loan.

(i) Cost and Financing of the Project

5.13 The Cabinet Secretary for Transport and Infrastructure gave the total estimated cost of the project to be USD 3.804 billion and external financing for the project identified so far is USD 3.233 billion from the Government of the People’s Republic of China covering 85% of the funding while the remaining 15% will be funding from the Government of Kenya.

5.14 The Cabinet Secretary, National Treasury provided the Committee with cost estimates of the projects as follows:

(iv) Construction of railways infrastructure (civil works) and procurement of facilities and locomotives on EPC arrangement at cost of US\$ 3.8 billion (**Kshs. 327 billion**)

(v) Construction of railways infrastructure (civil works); procurement of facilities and locomotives; compulsory land acquisition; Embakasi ICD expansion; and project supervision a total of Kshs. 349.4 billion.

(vi) Construction of railways infrastructure (civil works); procurement of facilities and locomotives; compulsory land acquisition; Embakasi ICD expansion; and project supervision; cost of insurance premium and interests at a total cost of Kshs. 447 billion. This excludes other important costs such as cost of resettlement, demolition cost and relevant expenses; VAT, Duty and relevant tax; and other statutory expenses.

(j) Design, Review, Construction and supervision

5.15 The Government has put in place measures to safe guard the project through an independent review and supervision consultant who will oversee the construction and adherence to specification and guarantee quality works.

5.16 Commercial viability of the Mombasa-Nairobi Standard Gauge Railway (Phase I) is dependent upon the implementation of Phase II of the project (Nairobi – Malaba/Kisumu) and concurrent development of the Standard Gauge Railway by Partner States (Uganda and Rwanda) who signed the Tri-partite Agreement.

(k) Conduct of witnesses

5.17 The conduct particularly of Hon. Amos Kimunya was contemptuous of Parliament and his demeanor and conduct was condescending. He blatantly refused to give information and answer questions raised by Members during the meeting in contravention of Article 35(1)(b) read ~~together with Article 125 of the Constitution, section 23 of the National~~

Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya and Standing Order 191.

- 5.18 The conduct and demeanor of Mr. Chirau Ali Mwakwere was condescending. He alleged that the information sought was not in his possession.
- 5.19 The Committee on diverse dates invited the General Manager, China Road and Bridge Corporation, a state owned Corporation of the People's Republic of China to appear before it to adduce evidence on the procurement and financing of the Standard Gauge Railway but the Firm failed to honour the Committee's invitation and summons and instead the Ministry of Foreign Affairs after receiving a note verbale from the Embassy of the People's Republic of China wrote to the Committee indicating that CRBC is a state owned Corporation and should not therefore be summoned by the Committee. The Ministry of Foreign affairs cautioned the Committee that summoning CRBC would have 'serious and irrevocable negative consequences to Kenya's national interests and relations with China'. (*Annex 20*) This is in contravention of Article 125 of the Constitution, section 14 and 23 of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya and Standing Order 191.
- 5.20 The Committee observed that CRBC is a state owned Corporation specially created to undertake commercial activities and therefore can sue and be sued. The Corporation therefore being a commercial entity should not enjoy the same immunity that is accorded to a diplomatic Mission/Embassy.
- 5.21 China Road and Bridge Corporation Kenya Limited, a company registered in Kenya under Registration No. C.166624 with its Directors being Mr. Peter Maingi Gatere and Mr. Leonard Mwangi Ndungu and registered
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office located at LR NO.209/1184/11, Mpaka Road, Westlands was also invited by the committee to adduce evidence on the matter but failed to honour the Committee's invitations in contravention of Article 125 of the Constitution, section 14 and 23 of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya and Standing Order 191.

5.22 There has been a tendency on the part of the government officials to commission projects without budgetary provisions/finances and adherence to Public Procurement laws. The project was commissioned without the procuring entity assuring itself of budget or source of finances thus begging the question what would happen if the financing agreement is not signed or the expected source of financing fails to materialize? This tendency of commissioning projects without budget or assurance of source of financing has led to failure to adhere to procurement laws, lack of transparency and accountability in the implementation of such projects..

6 RECOMMENDATIONS OF THE COMMITTEE

Based on the evidence adduced and written submissions, the Committee recommends that:-

6.1 The development of the Standard Gauge Railway project from Mombasa to Nairobi should proceed on condition that the Government fulfils the following recommendations:-

(a) Fastracks the feasibility study, preliminary designs and costing for Phase II covering Nairobi- Malaba with a branch line to Kisumu in line with the tri-partite agreement;

(b) Fastrack the Procurement of Phase II (Nairobi- Malaba/Kisumu) of the Standard Gauge Railway once the financing agreement for Phase

I is concluded, taking into account the provisions of Article 227 of the Constitution and the provisions of part IV of the Public Procurement and Disposal Act, 2005;

(c) Government initiates sourcing of funding from development partners and put measures in place for prudent management of RDF for the commencement of Phase I covering Mombasa to Nairobi.

(d) Urgently initiate the procurement of an independent consultant to facilitate design review, oversee construction and ensure specifications and quality is guaranteed through a transparent, fair and competitive tender in line with Article 227 of the Constitution, the Public Procurement and Disposal Act, 2005 and with the approval of the Attorney General.

6.2 KRC ensures that all the pertinent issues that were raised in the feasibility and preliminary study report regarding design concept single or dual track; building standards; travelling speed and train operation; motive power; rolling stock specifications; and maintenance of facilities be reviewed by an independent consultant to make sure the main goals of the project are achieved in line with Vision 2030.

6.3 KRC and Ministry of Transport and Infrastructure ought to ensure that the project addresses the connectivity to Mombasa Island, Kilindini Port, within Nairobi and to other areas of economic interests such as the proposed Konza Techno City. If the connectivity and routing is not fully addressed it will cause major operational problems and litigation challenges particularly at the port of Mombasa and Nairobi where the already existing meter gauge railway line is being operated by Rift Valley Railways (RVR).

- 6.4 The Cabinet Secretary National Treasury and the Cabinet Secretary in charge of Transport and Infrastructure should spearhead the formation of an inter-ministerial technical and implementation team to manage the project and to review cost and benefit analysis of expansion of important infrastructure such as bridges, tunnels and viaduct to allow for future expansion of a single to double track vis-avis the cost of construction of a double track line in the first phase.
- 6.5 The Government adopts Public Private Partnership arrangement in the operation of train services. To this end, the Government should reconsider spending more money on the construction/development of infrastructure and less on the locomotives and wagons which can be sourced by the private sector.
- 6.6 The Standard Gauge Railway phase I project addresses operational challenges associated with use of single line track for both freight and passenger services which require different speeds and safety standards with emphasis to KRC's initial goals of this project.
- 6.7 The Ministry of Transport and Infrastructure and KRC should put in place measures to ensure capacity development including technology transfers and capacity building of Kenyans in areas such as design, construction, maintenance, operation and management of the Standard Gauge Railway.
- 6.8 The National Treasury should finalize the negotiations on the financing agreement to pave way for the implementation of Phase I of the project covering Mombasa to Nairobi.
- 6.9 The Cabinet Secretary for Transport and Infrastructure and the Cabinet Secretary for the National Treasury should constitute an inter-ministerial technical team to provide an accurate total cost estimate of the whole project from Mombasa to Nairobi and implement the Standard Gauge

Railway project. This cost estimate should include critical cost components such as cost of land acquisition; demolition cost and relevant expenses; Value Added Taxes; Duty and relevant tax; financing, loan interest and relevant expense; and other statutory expenses.

6.10 Kenya Railways Corporation hastens the commencement of the process of procurement of an independent consultant to facilitate design review, oversee construction and ensure specifications and quality is guaranteed through an open, transparent, fair and competitive tender in line with Article 227 of the Constitution, the Public Procurement and Disposal Act, 2005 and with the approval of the Attorney General.

6.11 The Government of Kenya should liaise closely with the Government of Uganda in line with the provisions of the tri-partite agreement for the development of Phase II of the Kenya section of the Standard Gauge Railway to ensure a seamless railway network between the two countries.

6.12 The Registrar General deregisters China Road and Bridge Company Kenya Limited, a Kenyan firm with the same name as the State owned Chinese company that the office of the Registrar had allegedly registered inadvertently.

6.13 The Criminal Investigation Department investigates the missing file of China Road and Bridge Company Kenya Limited, its activities and operations and the circumstances under which the Registrar of Companies registered two companies with the same name. Appropriate action should be taken on those found culpable.

6.14 The Government and all procurement entities must at all times ensure that Article 227 of the Constitution and the provisions of Public Procurement and Disposal Act, 2005 are observed to the letter i.e. public agencies

should at all time implement procurement methods that are fair, equitable, transparent, competitive and cost-effective.

- 6.15 The “Take or Pay” proposal between KRC and KPA should be reviewed by the Government to plan for intermodal transportation that treat road transport as complementary and not a competitor to rail transport.
- 6.16 The present governance structure and management of the Railway Development Fund (RDF) does not allow for transparency and accountability. To strengthen the structure and management of the Fund, a proper legal framework should be prepared by the Cabinet Secretary and submitted to Parliament within two months for approval and enactment.
- 6.17 The Government should fast track the mobilization of domestic resources for the development of the Standard Gauge Railway projects in the Country through the Railway Development Fund rather than relying on borrowed Funds which puts pressure on the Country’s Debt Sustainability.
- 6.18 The Government should ensure that all its development programmes are coordinated and budgeted properly by all Government Ministries and agencies to avoid situations under which Government Ministries/agencies give conflicting information on the same subject matter.
- 6.19 The financing agreement should explicitly state the financing by the EXIM Bank of China will cover costs for the railway line, civil works construction, acquisition of rolling stock and locomotives. Other peripheral costs such as land acquisition etc will be financed by the Kenya Government in the 15% contribution.
- 6.20 The former Minister for Transport, Hon. Amos Kimunya be prosecuted by the Director of Public Prosecution for contravening Article 125 read together with Article 35 (1) (b) of the Constitution, the provisions of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya

and the Standing Order No.191 and for contempt of the Committee and failing to answer to issues raised by the Committee.

- 6.21 The Public Procurement Oversight Authority should be more pro-active and vigilant in its oversight role over public procurement and advice ministries and Government agencies on the best procurement procedures.
- 6.22 Government officials should desist from commissioning projects before financing and or budgetary provision have been secured and proper procurement provisions followed so as to ensure transparency and accountability in projects implementation and adherence to the rule of law.
- 6.23 The Tripartite Agreement should be availed and subjected to scrutiny by the Attorney General to ensure compliance with Kenyan Laws and ratification as required by Article 2(6) read together with the Treaty Making and Ratification Act (*No 45 of 2012*), of the Constitution and the treaties and ratification law.

7.0 CONCLUSION AND WAY FORWARD

7.1 The Standard Gauge Railway is a key flagship project under Vision 2030 and is critical for the economic development of Kenya and the wider East Africa region. The project should therefore proceed taking into consideration the observations and recommendations by the Committee and review of the project to ensure value for money since as of now there are no contractual/financing obligations on the part of the Government until a financing agreement is signed

7.2 From the evidence adduced by the Auditor General, Attorney General, Cabinet Secretary to the National Treasury and the Cabinet Secretary for

Transport and Infrastructure, the project has so far been procured within the law and that the Government would not incur any losses since the financing agreement has not been signed.

- 7.3 The Government should competitively procure an independent supervision consultant so as to assure cost effectiveness, adherence to specification, quality guarantee and value for moneys.
- 7.4 The Government should fastrack Phase II of the project to achieve the maximum viable economic potential in the region.
- 7.5 The Public Procurement and Oversight Authority reviews the Public Procurement and Disposal Act, 2005 to align it with the Constitution and the evolving procurement processes more particularly sections 3,9,23 and 137 of the Public Procurement and Disposal Act, 2005.
- 7.6 A proper legal framework should be prepared by the Cabinet Secretary and submitted to Parliament within two months for approval and enactment so as to strengthen the structure and management of the RDF and ensure transparency.
- 7.7 There has been a tendency on the part of the government officials to commission projects without budgetary provisions/finances and adherence to Public Procurement laws. This should cease with immediate effect so as to assure transparency, accountability and adherence to the rule of law.

MINUTES



MINUTES OF THE 1ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY 15TH JANUARY 2014 IN COMMITTEE ROOM 2ND
FLOOR, PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Adan M. Nooru, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Korei Ole Lemein, M.P.
7. Hon. John M. Nyaga, M.P.
8. Hon. Johana Ngeno, M.P.
9. Hon. Ogutu John Omondi, M.P.
10. Hon. John Aluoch Olago, M.P.
11. Hon. Mary Keraa Sally, M.P.
12. Hon. Njogu Barua, M.P.
13. Hon. Bernard Munyoki Kitungi, M.P.
14. Hon. Chrisanthus Wamalwa, M.P.
15. Hon. Dr. Oburu Oginga, M.P.
16. Hon. Cornelly Serem, M.P.

ABSENT WITH APOLOGY

1. Hon. Wafula Wamunyinyi, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.
3. Hon. Abdullswamad Sheriff, M.P.
4. Hon. Paul Otuoma, M.P.
5. Hon. Onesmus Njuki, M.P.
6. Hon. Mithika Linturi, M.P.
7. Hon. Mwadeghu Thomas, M.P.
8. Hon. Irungu Kang'ata, M.P.
9. Hon. Sammy Mwaita, M.P.
10. Hon. Eng. John Kiragu, M.P.
11. Hon. Beatrice Nyaga, M.P.

IN - ATTENDANCE

NATIONAL ASSEMBLY

1. Hon. Alfred Keter, MP
2. Hon. Samuel Moroto, MP
3. Hon. Kanini Kega, MP

- | | | |
|------------------------|---|-----------------------------|
| 4. Mr. Nicholas Emejen | - | Principal Clerk Assistant I |
| 5. Mr. Abdullahi Aden | - | First Clerk Assistant |
| 6. Mr. Joash Kosiba | - | Fiscal Analyst |

MINUTE NO. 01/2014 - STANDARD GAUGE RAILWAY LINE

The Chairperson informed the Committee that:-

- (i) The Committee is inquiring in to the procurement, agreement and financing of the Standard Gauge Railway tender from Mombasa to Malaba.
- (ii) The Speaker of the National Assembly]y has given the Committee the go ahead to probe in to the matter surrounding the Standard Gauge Railway tender from Mombasa to Malaba
- (iii) Article 125 (1) of the Constitution empowers Parliament to summon any person to appear before it for the purpose of giving evidence.

MINUTE NO. 02/2014 EVIDENCE BY HON.- ALFRED KETER, MP ON THE STANDARD GAUGE RAILWAY

The Hon. Alfred Keter, MP, Member of Parliament for Nandi Hills, thanked the Committee for according him the opportunity to appear before it and share information relating to the Standard Gauge Railway. Hon. Keter, MP informed the Committee that:-

- (i) The country needs an efficient railway system to ease transport congestion and cost of transportation. The procurement, agreement and financing of the Standard Gauge Railway tender from Mombasa to Malaba is fraught with irregularities and in contravention of Article 227 of the Constitution, the provision of the Public Procurement and Disposal Act, 2005 and lacked due diligence.
- (ii) In April 15th and September 9th, 2008 China Road and Bridge Corporation (CRBC) wrote as a private investor to the then Transport Minister Hon. Chirau Ali Makwere and also to the then former Prime Minister Hon. Raila Odinga respectively seeking to invest in the transport sector and more specifically in the construction of an electric railway System in Kenya. China Road and Bridge Corporation (CRBC) engaged the Government as a private entity and entered into a contract with Kenya Railways Corporation in its private capacity and therefore the contract/procurement was never a Government to Government procurement as alluded to by Government officials.
- (iii) On August 12, 2009 the then Ministry of Transport and China Road and Bridge Corporation Kenya signed an MOU which provided that all facets of the Standard Gauge Railway project will be undertaken in accordance with the Laws of Kenya. The MOU also gave financing options for project.

- (iv) On 4th January, 2010 wrote to the Government of China requesting a concessional loan for the construction of a new Standard Gauge Railway at accost of US \$ 2.5 Billion.
- (v) In January 2012 CBRC presented a report on the feasibility study recommending that the SGR be changed from an electric engine to a diesel engine. The cost of the SGR is estimated at US \$ 3.4 – 3.8 billion.
- (vi) CRBC undertook the feasibility study, design and preparation of bill of quantities for the project and was later awarded the contract based on the feasibility study and costing that it had done. This is clearly a case of conflict of interest. The Government ought to have appointed an independent firm to undertake the feasibility study and costing of the project so as to get value for money in the project as well as due diligence.
- (vii) The Office of the Attorney General (AG) had advised Kenya Railways Corporation to ensure that the requirements of the Public Procurement and Disposal Act, 2005 are followed when the former sought the AG's comments and approval on the commercial contract.
- (viii) The funding of the project is not a grant to Kenya but rather a loan that the people of Kenya are going to pay. Already Kenyans are being taxed (Railway Levy) to repay the loan even before the project commences.
- (ix) A similar project is being undertaken in Ethiopia but at a lower cost yet the Ethiopian railway is a duo line railway. Open tendering should have been allowed for Kenyans to get value for money and the different components of the system (railway line, locomotives and spares) should have been awarded to different contractors and not to one contractor to mitigate risk of failure and allow fair competition.
- (x) The leadership was misled into commissioning a project that is fraught with irregularities. Due diligence ought to have been undertaken before commissioning the project.

The Hon. Alfred Keter, MP requested the Committee to grant him an opportunity to appear before the Committee again to shed more light on the matter.

MINUTE. NO. 03/2014 - CONSIDERATION OF COMMITTEE PROGRAM OF
ACTIVITIES FOR THE PERIOD JANUARY –
FEBRUARY, 2014

- (i) The Committee considered its program of activities for the period January to February, 2014 and adopted it.
- (ii) The Committee resolved that:-
- (a) The Hon. Alfred Keter, MP be invited to appear before the Committee on Monday 20th January, 2014 at 8.30 am.
 - (b) The issues surrounding the procurement of the NSSF Tassia housing project be examined in detail. The Secretary General COTU, Managing Trustee, NSSF and the Cabinet Secretary Labour, Social Security and Services be invited on 21st, 22nd and 23rd January, 2014 respectively on the above issue.
 - (c) Pursuant to Standing Order 86 no Member should refer to the issue of the Standard Gauge Railway outside the Committee proceedings until the Committee produces its report.

MINUTE NO. 04 /2013 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Fifty Minutes past Four O'clock

Signed:

(Chairperson)

Date:

27/01/14

MINUTES OF THE 2ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON MONDAY 20TH JANUARY, 2014 IN COMMITTEE ROOM, SECOND
FLOOR, CONTINENTAL HOUSE AT 9.00 AM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Adan M. Nooru, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Korei Ole Lemein, M.P.
7. Hon. John M. Nyaga, M.P.
8. Hon. Johana Ngeno, M.P.
9. Hon. Ogutu John Omondi, M.P.
10. Hon. John Aluoch Olago, M.P.
11. Hon. Mary Keraa Sally, M.P.
12. Hon. Njogu Barua, M.P.
13. Hon. Bernard Munyoki Kitungi, M.P.
14. Hon. Chrisanthus Wamalwa, M.P.
15. Hon. Dr. Oburu Oginga, M.P.
16. Hon. Cornelly Serem, M.P.

ABSENT WITH APOLOGY

1. Hon. Wafula Wamunyinyi, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.
3. Hon. Abdullswamad Sheriff, M.P.
4. Hon. Paul Otuoma, M.P.
5. Hon. Onesmus Njuki, M.P.
6. Hon. Mithika Linturi, M.P.
7. Hon. Mwadeghu Thomas, M.P.
8. Hon. Irungu Kang'ata, M.P.
9. Hon. Sammy Mwaita, M.P.
10. Hon. Eng. John Kiragu, M.P.
11. Hon. Beatrice Nyaga, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

1. Hon. Alfred Keter, MP
2. Hon. Kanini Kega, MP

3. Mr. Nicholas Emejen – Principal Clerk Assistant I

- | | | |
|-----------------------|---|-----------------------|
| 4. Mr. Abdullahi Aden | - | First Clerk Assistant |
| 5. Mr. Joash Kosiba | - | Fiscal Analyst |

MINUTE NO. 05/2014: EVIDENCE BY THE PUBLIC PROCUREMENT OVERSIGHT AUTHORITY ON THE STANDARD GAUGE RAILWAY

The Director General of the Public Procurement Oversight Authority (PPOA), Mr. Maurice Juma, appeared before the Committee to adduce evidence on the procurement process for the construction of the Standard Gauge Railway. He informed the Committee that:-

- (i) Kenya Railways Corporation (KRC) on October 2nd, 2012 reported to the Public Procurement Oversight Authority Pursuant to regulation 62 (3) of Public Procurement and Disposal Regulations, 2006. The Procuring entity reported that it had engaged China Road and Bridge Corporation through a direct procurement at a cost of US\$ 1,146,791,008.75. According to KRC, the use of direct procurement was premised on section 74 (2) (b) of the procurement law and the fact that there was an MOU.
- (ii) The then Ministry of Transport had signed an MOU with China Road and Bridge Corporation (CRBC) for a feasibility study with the option of considering the construction.
- (iii) Upon completion of the feasibility study and review by Kenya Railways Corporation (KRC), CRBC was awarded a tender in July 2012 and communicated to the company in October 2012 to construct the Standard Gauge Railway (SGR) at a cost of USD 1,146,791,008.75 exclusive of VAT, Customs Duties, IDF fee, Cess and withholding tax. A negotiation committee was appointed in August, 2012.
- (iv) Kenya Railways Corporation withdrew the award citing that the procurement was Government to Government and was therefore not subject to the provisions of the Public Procurement and Disposal Act, 2005.
- (v) PPOA advised KRC against the use of direct procurement since the method was not competitive and requested for additional information on the subject project for purposes of review. The documents were never availed. KRC wrote citing that the contract with CRBC resulted from a negotiated grant between the Government of Kenya and the Government of China thus G-G funding and therefore section 6 (1) of Public Procurement and Disposal Act, 2005 applied.
- (vi) According to section 6 (3) of the Public Procurement and Disposal Act, Government to Government procurement should have a negotiated grant. There was no documentary evidence submitted by KRC to suggest that the contract was Government to Government except their letter indicating a Government to Government arrangement.
- (vii) The KRC had entered into a commercial agreement with CRBC on the development of a Standard Gauge Railway. This agreement was nullified and ceased to exist when

KRC terminated the award of the contract on which the commercial contract was based.

- (viii) PPOA had not done due diligence on CRBC. It was the procuring entity that was to undertake the due diligence on the contractor.
- (ix) The Solicitor General noted in a letter dated 3rd October, 2013 that the subject procurement shall be subject to the financing agreement and therefore section 6 of the Public Procurement and Disposal Act, 2005 shall apply.

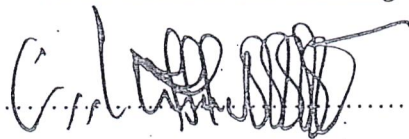
MINUTE NO. 06 /2014: COMMITTEE OBSERVATIONS

- (i) The Committee observed that:-
 - a) Article 227 of the Constitution of Kenya provides that public procurement should be open, transparent and competitive. The procurement of the Standard Gauge Railway should have been competitively tendered by Chinese contractors if the procurement was Government to Government.
 - b) China Road and Bridge Corporation initiated the project and undertook the feasibility study, design and costing for the project and was awarded the tender. This raises issues of conflict of interest and due diligence as well as value for money on the project.
 - c) The project was initiated by CRBC as a private commercial enterprise in Kenya and not as an agency of the People's Republic of China and therefore the contract could not have been procured on a Government to Government basis.
- (ii) The Committee directed that PPOA avails a comprehensive report, by January 27, 2014, on the whole procurement process and attach the following documents:-
 - (a) Memorandum of understanding between Ministry and China Road and Bridges Corporation
 - (b) Contract agreement between Kenya Railways Corporation and CRBC
 - (c) Copy of the report submitted by KRC to PPOA in error indicating use of direct procurement
 - (d) Due diligence report conducted to determine suitability and capacity of CRBC to undertake the project successfully
 - (e) Costing of the project

MINUTE NO. 07/2014: ADJOURNMENT

There being no other business the meeting adjourned at Twenty Two Minutes past Eleven O'clock.

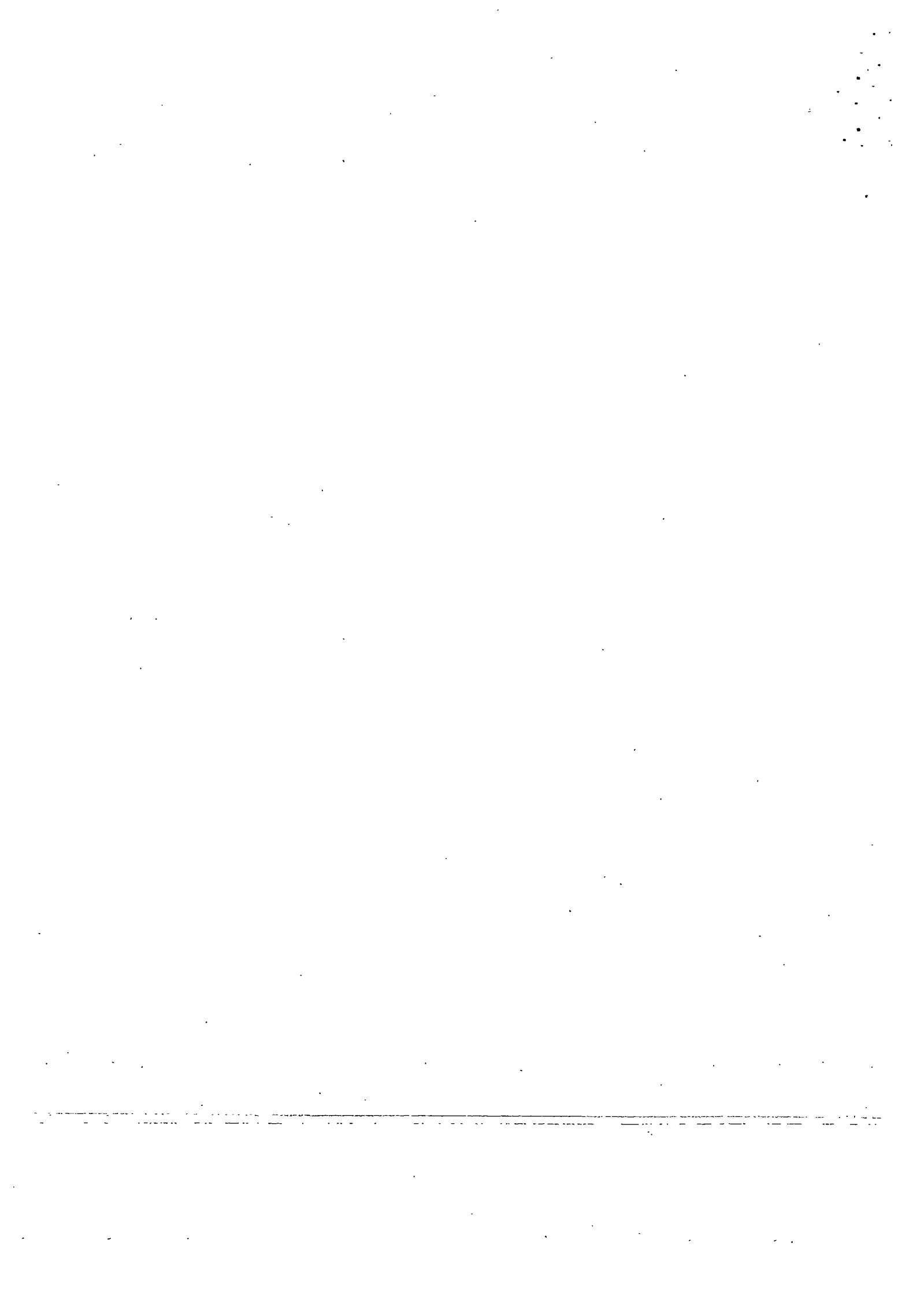
Signed:.....



Date:.....

27/01/14

(Chairperson)



MINUTES OF THE 3RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON MONDAY 20TH JANUARY, 2014 IN COMMITTEE ROOM, SECOND
FLOOR, CONTINENTAL HOUSE AT 11.30 AM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Bare Shill, M.P.
5. Hon. Korei Ole Lemein, M.P.
6. Hon. John M. Nyaga, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Ogutu John Omondi, M.P.
9. Hon. John Aluoch Olago, M.P.
10. Hon. Mary Keraa Sally, M.P.
11. Hon. Njogu Barua, M.P.
12. Hon. Bernard Munyoki Kitungi, M.P.
13. Hon. Chrisanthus Wamalwa, M.P.
14. Hon. Dr. Oburu Oginga, M.P.
15. Hon. Cornelly Serem, M.P.
16. Hon. Paul Otuoma, M.P.
17. Hon. Onesmus Njuki, M.P.
18. Hon. Mithika Linturi, M.P.
19. Hon. Mwadeghu Thomas, M.P.
20. Hon. Sammy Mwaita, M.P.
21. Hon. Major (Rtd) John Waluke, M.P.
22. Hon. Eng. John Kiragu, M.P.
23. Hon. Beatrice Nyaga, M.P.

ABSENT WITH APOLOGY

1. Hon. Wafula Wamunyinyi, M.P.
2. Hon. Abdullswamad Sheriff, M.P.
3. Hon. Irungu Kang'ata, M.P.
4. Hon. Adan M. Nooru, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

1. Hon. Alfred Keter, MP
2. Hon. Kanini Kega, MP
3. Mr. Nicholas Emejien – Principal Clerk Assistant I
4. Mr. Abdullahi Aden – First Clerk Assistant
5. Mr. Joash Kosiba – Fiscal Analyst

MINUTE NO. 08/2014: EVIDENCE BY KENYA RAILWAYS CORPORATION ON
THE STANDARD GAUGE RAILWAY

The Acting Managing Director, Kenya Railways Corporation, Mr. Alfred Matheka, appeared before the Committee to adduce evidence on the procurement and financing for the construction of the Standard Gauge Railway. He informed the Committee that:-

- (i) A Tri-lateral agreement was signed by the Governments of Kenya, Uganda and Rwanda for the construction of a Standard Gauge Railway. To action the Communiqué by the Presidents of EAC the Cabinet in August, 2012 approved the development of a Standard Gauge Railway linking Mombasa to Malaba with a branch line to Kisumu.
- (ii) The then Ministry of Transport on 12th August, 2009 signed an MOU with China Road and Bridge Corporation (CRBC) for a feasibility study and preliminary design of Mombasa-Nairobi section of the railway with the option of considering the construction. Under the MOU CRBC could identify the financiers and mobilise resources at no cost to the Government of Kenya. Feasibility study report was submitted to Kenya Railways Corporation in January 2012 and KRC approved the feasibility study and preliminary designs report on 26th June, 2012.
- (iii) The scope of works approved in the feasibility study report included:
 - construction of 609 Kms of single track railway;
 - construction of stations, workshops and freight exchange depots;
 - supply and installation of facilities including signaling and communication, electricity and water supply;
 - supply and commission of 56 locomotives;
 - supply and commissioning of 1,620 freight wagons;
 - supply and commission of 40 passenger coaches; and
 - training and capacity building.
- (iv) Upon completion of the feasibility study and review by Kenya Railways Corporation (KRC), CRBC was awarded a tender to construct the Standard Gauge Railway (SGR).
- (v) Kenya Railways Corporation withdrew the award citing that the procurement was Government to Government and was therefore not subject to the provisions of the Public Procurement and Disposal Act, 2005.
- (vi) The KRC had entered into a commercial agreement with CRBC on the construction of a SGR. The total cost of the project was US \$ 3.804 billion. The contract was to come into force once financiers had been identified.
- (vii) KRC used the provisions of section 6 (1) of the Public procurement and oversight authority to undertake the procurement of the project under a government to government arrangement.
- (viii) Due diligence was undertaken on CRBC by KRC. The Chinese Embassy, Nairobi wrote on 8th June 2012 expressing support and confirming the capacity of CRBC to

undertake the project. A delegation from Kenya also visited the company and some of the projects undertaken. The company had undertaken mega projects in Kenya such as birth 19 at the Kenya Ports Authority, Thika Super Highway, Mama Lucy Hospital etc.

- (ix) The total cost of the project is US \$ 3.804 billion. The government is seeking a loan of USD 3.233 billion part of which is concessional loan of USD 1.6 billion and USD 1.633 billion commercial loan. Eighty five percent (85%) of the project is to be financed by the loan while fifteen percent (15%) equivalent to USD 571 Million (Kshs. 50 billion) is to be financed by the Government of Kenya using the Railway Development Levy. The Cabinet Secretary signed a financing agreement on 19th August, 2014 while in China. The Interests on the loan is 2% pa and the insurance on the commercial loan is 6.93% of the loan to be paid in three premium installments. The loan is insured by a Chinese firm China Export and Credit Insurance Corporation (SinoSure) with no local broker.
- (x) An independent consultant will be hired to supervise the construction, supply and installation of facilities and commissioning of all locomotives and rolling stock in addition to undertaking design review of all the designs. Cash flow analysis was done to determine that the project will have sufficient cash flow and that the debt limit will be sustainable. An Environmental Impact Assessment of the project was also undertaken with NEMA certificate obtained with mitigation measures being factored in the project.

MINUTE NO. 09/2014: COMMITTEE OBSERVATIONS

(i) The Committee observed that:-

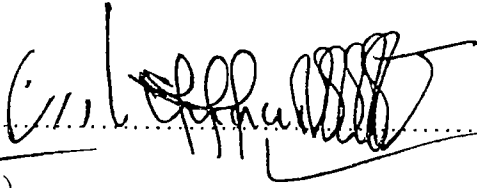
- (a) Article 227 of the constitution of Kenya provides that public procurement should be open, transparent and competitive. The procurement of the Standard Gauge Railway should have been competitively tendered by Chinese contractors if the procurement was Government to Government.
- (b) China Road and Bridges Corporation initiated the project and undertook the feasibility study, design and costing for the project and was awarded the tender (CRBC) this raises issues of conflict of interest and due diligence as well as value for money on the project.
- (c) The procurement of the SGR went ahead in spite a moratorium by the government on all major projects covering the period prior and just after the elections before the coming in of the new administration.
- (d) If the loan was guaranteed by GoK then it should not be insured.

(ii) The Committee directed that KRC avails a comprehensive report, by January 27, 2014, on the whole procurement process clarifying the distance to be covered, cost of the various components in the project, change from electric train to diesel powered engines and G-G procurement. All necessary documents should be attached.

MINUTE NO. 10/2014: ADJOURNMENT

There being no other business the meeting adjourned at Twenty Five Minutes past One O'clock.

Signed:.....



Date:.....

27/01/14

(Chairperson)

MINUTES OF THE 4TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON MONDAY 20TH JANUARY, 2014 IN COMMITTEE ROOM, SECOND
FLOOR, CONTINENTAL HOUSE AT 2.30 PM

PRESENT

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Bare Shill, M.P.
5. Hon. Korei Ole Lemein, M.P.
6. Hon. John M. Nyaga, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Ogutu John Omondi, M.P.
9. Hon. John Aluoch Olago, M.P.
10. Hon. Mary Keraa Sally, M.P.
11. Hon. Njogu Barua, M.P.
12. Hon. Bernard Mũnyoki Kitungi, M.P.
13. Hon. Chrisanthus Wamalwa, M.P.
14. Hon. Dr. Oburu Oginga, M.P.
15. Hon. Cornelly Serem, M.P.
16. Hon. Paul Otuoma, M.P.
17. Hon. Onesmus Njuki, M.P.
18. Hon. Mithika Linturi, M.P.
19. Hon. Mwadeghu Thomas, M.P.
20. Hon. Sammy Mwaita, M.P.
21. Hon. Major (Rtd) John Waluke, M.P.
22. Hon. Eng. John Kiragu, M.P.
23. Hon. Beatrice Nyaga, M.P.

ABSENT WITH APOLOGY

1. Hon. Wafuła Wamunyinyi, M.P.
2. Hon. Abdullswamad Sheriff, M.P.
3. Hon. Irungu Kang'ata, M.P.
4. Hon. Adan M. Nooru, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

1. Hon. Alfred Keter, MP
2. Hon. Kanini Kega, MP

3. Mr. Nicholas Emejien – Principal Clerk Assistant I

4. Mr. Abdullahi Aden - First Clerk Assistant
5. Mr. Joash Kosiba - Fiscal Analyst

MINUTE NO. 11/2014: EVIDENCE BY CABINET SECRETARY FOR
TRANSPORT AND INFRASTRUCTURE ON THE
STANDARD GAUGE RAILWAY

The Cabinet Secretary for Transport and Infrastructure, Mr. Michael Kamau, appeared before the Committee to adduce evidence on the procurement and financing for the construction of the Standard Gauge Railway. He informed the Committee that:-

- (i) A Tri-lateral agreement was signed by the Governments of Kenya, Uganda and Rwanda for the construction of a Standard Gauge Railway.
- (ii) The then Ministry of Transport had signed an MOU with China Road and Bridges Corporation (CRBC) for a feasibility study with the option of considering the construction. Under the MOU CRBC could identify the financiers and mobilise resources at no cost to the Government of Kenya.
- (iii) Upon completion of the feasibility study and review by Kenya Railways Corporation (KRC), CRBC was awarded a tender to construct the Standard Gauge Railway (SGR). Kenya Railways Corporation later withdrew the award citing that the procurement was Government to Government and was therefore not subject to the provisions of the Public Procurement and Disposal Act, 2005.
- (iv) The office of the Attorney General authorized the signing of the commercial contract and subsequent action by the Attorney General indicated approval for the project.
- (v) The project was procured through a Government to Government arrangement. This is normally the case where the Government uses development partner funds. Under such circumstances the rules of the funding partner are used. The Chinese procedure requires that a feasibility study is undertaken by the same company that will undertake the development of the project. The KRC had entered into a commercial agreement with CRBC on the construction of a SGR. The total cost of the project was US \$ 3.804 billion. The contract was to come into force once financiers had been identified.
- (vi) KRC used the provisions of section 6 (1) of the Public Procurement and Disposal Act, 2005 to undertake the procurement of the project under a Government to Government arrangement.
- (vii) There was no feasibility study or engineers estimates and preliminary designs done by KRC however KRC subjected the feasibility study and designs by CRBC to due diligence.
- (viii) Due diligence was undertaken on CRBC by KRC. The Chinese Embassy, Nairobi wrote confirming the capacity of CRBC to undertake the project. A delegation from Kenya also visited the company and some of the projects undertaken. The company had

undertaken mega projects in Kenya such as birth 19 at the Kenya Ports Authority, Thika Super Highway, Mama Lucy Hospital etc.

- (ix) The total cost of the project is US \$ 3.2 billion part of which is concessional loan of US \$ 1.6 billion and a commercial loan of US \$ 1.63 billion. Eighty Five percent (85%) of the project is to be financed by the loan while fifteen percent (15%) is to be financed by the Government of Kenya using the Railway Development Levy. The Cabinet Secretary signed a financing agreement on 19th August, 2013 while in China. The Interests on the loan is 2% pa and the insurance on the commercial loan is 6.9% of the loan to be paid in installments in three years. The loan is insured by a Chinese firm Sinasure.
- (x) An independent consultant will be hired to supervise the project once it starts. A cash flow analysis was done to determine that the project will have sufficient cash flow and that the debt limit will be sustainable. An Environmental Impact Assessment of the project was also undertaken with NEMA certificate obtained with mitigation measures being factored in the project.
- (xi) American standards were used in the project and the implementation of the project will ensure that there is capacity building where skills and knowledge will be transferred. The project seeks to implement a monolithic railway but structures built to accommodate an additional line in future. Brand new workshops will also be built in Embakasi to cater for facilities.

MINUTE NO. 12/2014: COMMITTEE OBSERVATIONS

- (i) The Committee observed that:-
- (a) Article 227 of the constitution of Kenya provides that public procurement should be open, transparent and competitive. The procurement of the Standard Gauge Railway should have been competitively tendered by Chinese contractors if the procurement was Government to Government.
 - (b) There was no competitive bidding on the project since it is only firm (China Road and Bridges Corporation) that initiated the project and undertook the feasibility study, design and costing for the project and was awarded the tender (CRBC).
 - (c) The project was designed to circumvent/bypass the provisions of the Public Procurement and Disposal Act, 2005 by first using direct procurement and later adopting a G-G procurement arrangement
 - (d) The MOU on the feasibility study ensured that only CRBC undertook the feasibility study, design and costing of the project.
 - (e) The procurement of the SGR went ahead in spite a moratorium by the Government on all major projects covering the period prior and just after the elections before the coming in of the new administration.
 - (f) If the loan was guaranteed by GoK then it should not be insured.
 - (g) Kenya Railways Corporation used section 6(1) of the Public Procurement and Disposal Act, 2005 in exclusion of section 6 (3) of the same act.

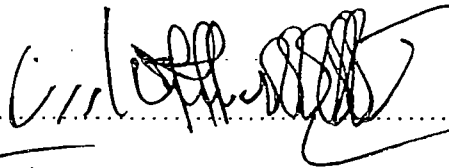
(ii) The Committee directed that the Cabinet Secretary avails a comprehensive report, by January 27, 2014, on the whole procurement process clarifying the procurement process, cost of the various components in the project, cabinet memorandum and G-G procurement. All necessary documents should be attached.

(iii) The Committee resolved that the former Ministers hon. Ali Mwakwere, Amos Kimunya, former PS Cyrus Njiru be invited to appear before the Committee to adduce evidence on the procurement of SGR. The Committee further resolved that Mr. Nduva Muli be invited in his capacity as a former managing director Kenya Railways Corporation.

MINUTE NO. 13 /2014: ADJOURNMENT

There being no other business the meeting adjourned at Forty Six Minutes past Four O'clock.

Signed:



Date:

27/01/14

(Chairperson)

MINUTES OF THE 5TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY 21ST JANUARY, 2014 IN THE MAIN CONFERENCE ROOM,
COUNTY HALL AT 9.00 AM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Bare Shill, M.P.
5. Hon. Korei Ole Lemein, M.P.
6. Hon. John M. Nyaga, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Ogutu John Omondi, M.P.
9. Hon. John Aluoch Olago, M.P.
10. Hon. Mary Keraa Sally, M.P.
11. Hon. Njogu Barua, M.P.
12. Hon. Bernard Munyoki Kitungi, M.P.
13. Hon. Chrisanthus Wamalwa, M.P.
14. Hon. Dr. Oburu Oginga, M.P.
15. Hon. Cornelly Serem, M.P.
16. Hon. Paul Otuoma, M.P.
17. Hon. Onesmus Njuki, M.P.
18. Hon. Mithika Linturi, M.P.
19. Hon. Mwadeghu Thomas, M.P.
20. Hon. Sainmy Mwaita, M.P.
21. Hon. Major (Rtd) John Waluke, M.P.
22. Hon. Eng. John Kiragu, M.P.
23. Hon. Beatrice Nyaga, M.P.
24. Hon. Wafula Wamunyinyi, M.P.

ABSENT WITH APOLOGY

1. Hon. Abdullswamad Sheriff, M.P.
2. Hon. Irungu Kang'ata, M.P.
3. Hon. Adan M. Nooru, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

1. Hon. Alfred Keter, MP
2. Hon. Kanini Kega, MP

Mr. Nicholas Emején

– Principal Clerk Assistant I

Mr. Abdullahi Aden - First Clerk Assistant
Mr. JoashKosiba - Fiscal Analyst

MINUTE NO. 14/2014: EVIDENCE BY CABINET SECRETARY FOR TREASURY
ON THE STANDARD GAUGE RAILWAY

The Cabinet Secretary for Treasury, Mr. Henry Rotich, accompanied by appeared before the Committee to adduce evidence on the procurement and financing for the construction of the Standard Gauge Railway. He informed the Committee that:-

- (i) Treasury is not directly involved in the implementation of projects.
- (ii) The Cabinet approved the development of the Standard Gauge Railway in August 2012 followed by the signing of a bi-lateral agreement by the Governments of Kenya and Uganda for the construction of a Standard Gauge Railway and later converted to a tri-lateral agreement after Rwanda joined the project.
- (iii) The Standard Gauge Railway project involves construction of a railway infrastructure (civil works) and procurement of facilities and locomotives on an engineering, procurement and construction (EPC) arrangement at a cost of USD 3.8 billion.
- (iv) The project will be financed through a loan that will cover Eighty Five percent (85%) of the project and Government of Kenya contributing fifteen percent (15%) of the cost of the project. The National Treasury submitted a formal request to the Government of China for financial assistance towards implementation of the project in October, 2012. The Kenyan component will be financed through the railway levy. The Treasury has already issued regulations on the railway development levy.
- (v) The loan will cost US \$3.23 Billion from Exim Bank comprised of a concessional loan of US\$1.6 billion and a commercial loan of US \$1.63 billion. The concessional loan is for 20 years and has a grace period of 7 years and an interest rate of 2% pa while the commercial loan is for 10 years and grace period of 5 years and insurance cover of 6.93% of the commercial loan and interest of six months labor + 360bp. The loan has a grant element threshold of 35%. The insurance component is always available for any commercial loan. For China the insurance cover has to be done by a Chinese firm, Sino sure. The insurance cover is for nonpayment.
- (vi) The major financial implications of the project relate to:-
 - (a) EPC contract for USD 3.8 billion being contract for civil works at USD 2.657 billion and facilities, locomotives and rolling stock USD1.146 billion.
 - (b) 8.04 billion for compulsory acquisition of 2253 hectares of land for the railway corridor,
 - (c) 10.6 billion for Embakasi ICD expansion programme, facility development and container handling equipment,
 - (d) 1 billion for land acquisition for the Embakasi inland depot, and
 - (e) 3 billion for project supervision

The total cost for the project will be Kshs. 349.44 billion

- (vii) The financing agreement has not yet been signed. Treasury signed an MOU with EXIM Bank in China that was witnessed by the president. The MOU was based on the commercial agreement between Kenya Railways and China Road and Bridges Corporation (CRBC) signed in July 2012.
- (viii) No due diligence has been carried out by treasury on CRBC. He is not comfortable with the arrangement where one firm does the feasibility study, design and costing undertaking the project.
- (ix) The cancellation of the direct procurement did not negate the contract signed in July 2012. The cancellation was only meant to correct the procurement process from direct procurement to Government to Government.
- (x) An arrangement will be struck with Kenya ports authority to ensure that sufficient volumes of freight go through the railway. No guarantee has however been given on the volumes for the railway cargo.
- (xi) There is no sovereign guarantee by the government of Kenya on the loan. There was direct borrowing from EXIM Bank of China. The loan is to the government of Kenya and is on lent to Kenya Railways Corporation. GoK and EXIM bank signed an MOU because EXIM bank provided the funds and represented the People's Republic of China.
- (xii) The current GoK debt limit is Kshs. 889 billion against a ceiling of Kshs. 1.3 trillion approved by Parliament. The debt ratio is 38.7%.
- (xiii) The Attorney General provided guidance on the procurement process and not the commercial contract. The Attorney General cleared the commercial contract.
- (xiv) An independent consultant will be hired to supervise the project once it starts to ensure that the project is completed.

MINUTE NO. 15/2014: COMMITTEE OBSERVATIONS

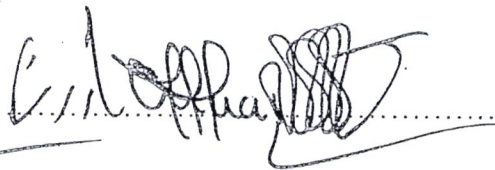
- (i) The Committee observed that:-
 - a) Article 227 of the constitution of Kenya provides that public procurement should be open, transparent and competitive. The procurement of the Standard Gauge Railway should have been competitively tendered by Chinese contractors if the procurement was Government to Government.
 - b) There was no competitive bidding on the project since it is only one firm (China Road and Bridges Corporation) that initiated the project and undertook the feasibility study, design and costing for the project and was awarded the tender (CRBC).
 - c) The project was designed to circumvent/bypass the provisions of the public procurement and disposal act, 2005 by first using direct procurement and later adopting a G-G procurement arrangement
 - d) The project will cost 447.5 billion from Mombasa to Nairobi including all costs.

- e) The procurement of the SGR went ahead in spite a moratorium by the government on all major projects covering the period prior and just after the elections before the coming in of the new administration.
 - f) If the loan was guaranteed by GoK then it should not be insured.
- (ii) The Committee directed that the Cabinet Secretary avails a comprehensive report, by January 27, 2014, on the whole procurement process clarifying the procurement process, cost of the various components in the project, cabinet memorandum, MOU on the financing, debt sustainability analysis and G-G procurement. All necessary documents should be attached including individuals to be compensated through compulsory acquisition.
- (iii) The Committee noted with concern that China Road and Bridge Corporation had failed to attend the meeting and resolved that the firm appears on 30th January, 2014 without fail.

MINUTE NO. 16 /2014: ADJOURNMENT

There being no other business the meeting adjourned at Fifteen Minutes past One O'clock.

Signed:.....



Date:.....

28/01/14

(Chairperson)

MINUTES OF THE 6TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY 21ST JANUARY, 2014 IN THE MAIN CONFERENCE ROOM,
COUNTY HALL AT 2.30 PM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Bare Shill, M.P.
5. Hon. Korei Ole Lemein, M.P.
6. Hon. John M. Nyaga, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Ogutu John Omondi, M.P.
9. Hon. John Aluoch Olago, M.P.
10. Hon. Mary Keraa Sally, M.P.
11. Hon. Njogu Barua, M.P.
12. Hon. Bernard Munyoki Kitungi, M.P.
13. Hon. Chrisanthus Wamalwa, M.P.
14. Hon. Dr. Oburu Oginga, M.P.
15. Hon. Cornelly Serem, M.P.
16. Hon. Paul Otuoma, M.P.
17. Hon. Onesmus Njuki, M.P.
18. Hon. Mithika Linturi, M.P.
19. Hon. Mwadeghu Thomas, M.P.
20. Hon. Sammy Mwaita, M.P.
21. Hon. Major (Rtd) John Waluke, M.P.
22. Hon. Eng. John Kiragu, M.P.
23. Hon. Beatrice Nyaga, M.P.
24. Hon. Wafula Wamunyinyi, M.P.

ABSENT WITH APOLOGY

1. Hon. Abdullswamad Sheriff, M.P.
2. Hon. Irungu Kang'ata, M.P.
3. Hon. Adan M. Nooru, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

1. Hon. Alfred Keter, MP
2. Hon. Kanini Kega, MP

Mr. Nicholas Emejen – Principal Clerk Assistant I
Mr. Abdullahi Aden – First Clerk Assistant

MINUTE NO. 17/2014: EVIDENCE BY THE ATTORNEY GENERAL ON THE
STANDARD GAUGE RAILWAY

The Attorney General, Prof. Githu Muigai, accompanied by Hon Githu Mwigai, Attorney General Mr. Njee Muturi Solicitor General, Mrs Dorcus Achapa, Deputy Solicitor General, Mrs Christine Agimba, Deputy Solicitor General, Mrs Roselyn Amadi, Senior Deputy Chief State Counsel appeared before the Committee to adduce evidence on the procurement and financing for the construction of the Standard Gauge Railway (SGR). He informed the Committee that:-

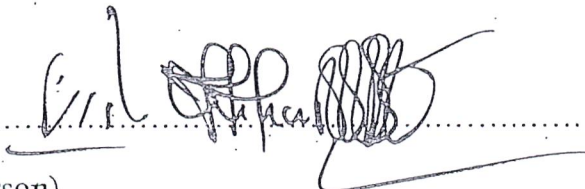
- (i) The Attorney General office is an advisory office. It offers legal advice to the Government of Kenya, promotes rule of law and good governance.
- (ii) On 11th April, 2012 Kenya Railways Corporation (KRC) requested for advice on a bilateral agreement between Kenya and Uganda on the construction of the Standard Gauge Railway.
- (iii) Kenya Railways Corporation has executed two contracts; for the development of the Mombasa - Nairobi SGR and the other for the supply of facilities, locomotives and rolling stock for the Mombasa Nairobi section of the Standard Gauge Railway. The attorney general advised that amendments be made and that there must be compliance with the Public Procurement and Disposal Act. The signing of the commercial agreements is a condition precedent to the financing agreement. The financing agreement must to be certified by the State Law office which has not been done yet.
- (iv) A Government to Government (G-G) arrangement is not a procurement method but an arrangement between sovereign nations that could support procurement activities. A G-G agreement is not a method for selecting suppliers so as to support the award of a contract. His cautious approach and advice to Public Procurement and Oversight Authority (PPOA) was informed by the issues raised in the purchase of BVR kits which was done through a G-G arrangement.
- (v) The Attorney General's office did not validate the procurement process but approved the commercial agreements conditional to the MDA fulfilling the conditions and amendments proposed by the Attorney General. The office advised that Article 227 of the Constitution should be observed utmost. Public agencies are expected to implement procurement methods that are fair, equitable, transparent, competitive and cost effective and full application of Cap 412 C Laws of Kenya.
- (vi) The Attorney General advised PPOA against allowing certain kinds of contracts and advised KRC and the Ministry to put in place certain amendments before signing the commercial contracts.
- (vii) There will be no liability on the part of the Government of Kenya if the contract fails since the financing agreement has not been effected.

MINUTE NO. 18/2014: COMMITTEE OBSERVATIONS

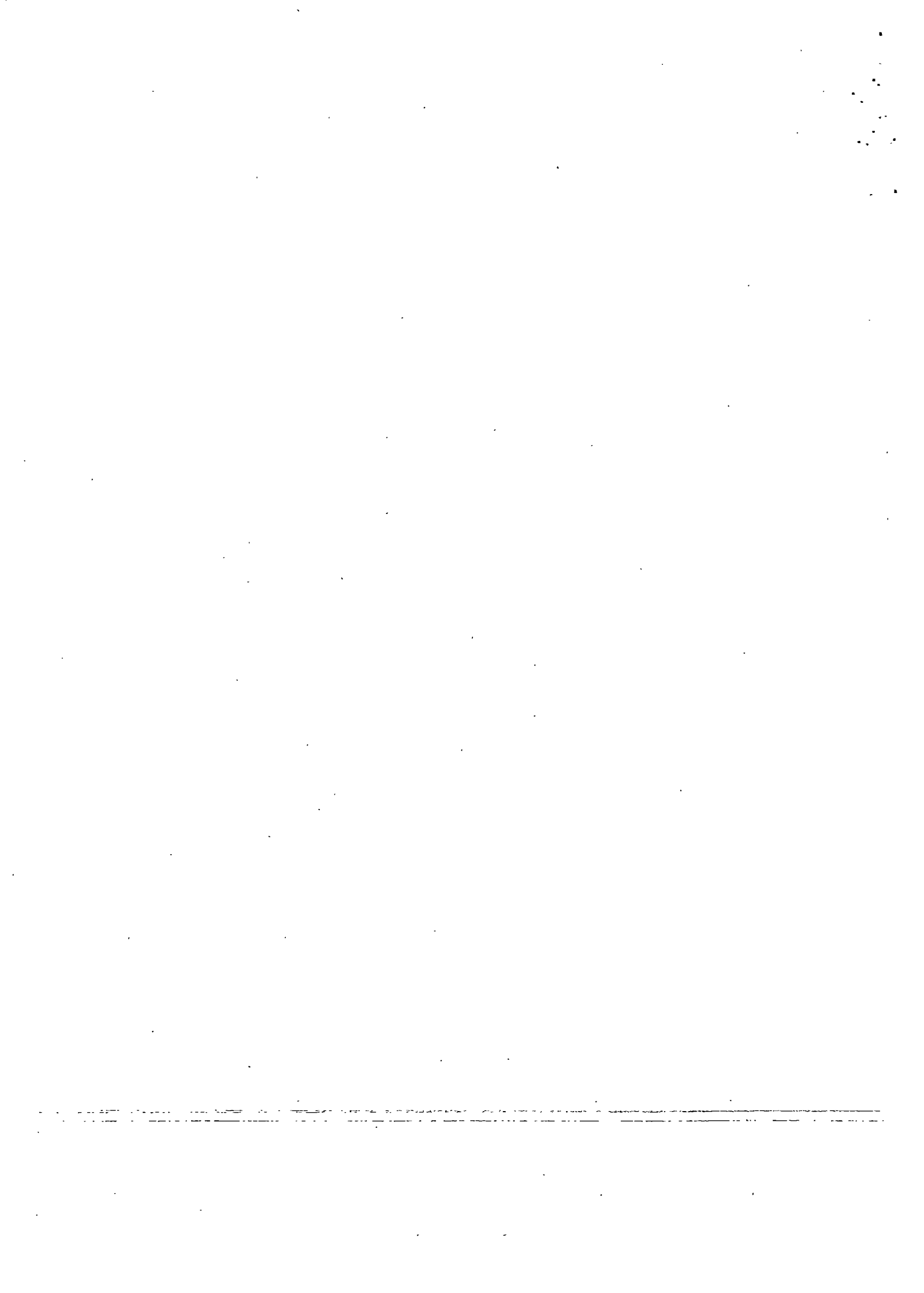
- (i) The Committee observed that:-
- (a) Article 227 of the Constitution of Kenya provides that public procurement should be open, transparent and competitive. The procurement of the Standard Gauge Railway should have been competitively tendered by Chinese contractors even if the procurement was Government to Government.
 - (b) There was no competitive bidding on the project since it is only one firm (China Road and Bridges Corporation) that initiated the project and undertook the feasibility study, design and costing for the project and was awarded the tender (CRBC).
 - (c) The project was designed to circumvent/bypass the provisions of the Public Procurement and Disposal Act, 2005 by first using direct procurement and later adopting a G-G procurement arrangement.
- (ii) The Committee directed that the Attorney General avails a comprehensive report on the Standard Gauge Railway project within two days.

MINUTE NO. 19 /2014: ADJOURNMENT

There being no other business the meeting adjourned at Twenty Seven Minutes past Four O'clock.

Signed:  Date: 28/01/14

(Chairperson)



MINUTES OF THE 7TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY 22ND JANUARY 2014 IN COMMITTEE ROOM 2ND
FLOOR, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Adan M. Nooru, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Korei Ole Lemein, M.P.
7. Hon. John M. Nyaga, M.P.
8. Hon. Johana Ngeno, M.P.
9. Hon. Ogutu John Omondi, M.P.
10. Hon. John Aluoch Olago, M.P.
11. Hon. Mary Keraa Sally, M.P.
12. Hon. Njogu Barua, M.P.
13. Hon. Bernard Munyoki Kitungi, M.P.
14. Hon. Chrisanthus Wamalwa, M.P.
15. Hon. Dr. Oburu Oginga, M.P.
16. Hon. Cornelly Serem, M.P.
17. Hon. Paul Otuoma, M.P.
18. Hon. Onesmus Njuki, M.P.
19. Hon. Mithika Linturi, M.P.
20. Hon. Mwadeghu Thomas, M.P.
21. Hon. Irungu Kang'ata, M.P.
22. Hon. Sammy Mwaita, M.P.
23. Hon. Eng. John Kiragu, M.P.
24. Hon. Beatrice Nyaga, M.P.

ABSENT WITH APOLOGY

1. Hon. Wafula Wamunyiinyi, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.
3. Hon. Abdullswamad Sheriff, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

1. Hon. Alfred Keter, MP
2. Hon. Kanini Kega, MP

Mr. Nicholas Emejen

– Principal Clerk Assistant I

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

MINUTE NO. 20/2014 EVIDENCE BY HON. ALFRED KETER, MP ON THE
STANDARD GAUGE RAILWAY

The Hon. Alfred Keter, MP, Member of Parliament for Nandi Hills, thanked the Committee for according him the opportunity to appear before it again and share further information relating to the Standard Gauge Railway. Hon. Keter, MP informed the Committee that:-

- (i) The procurement, agreement and financing of the Standard Gauge Railway (SGR) tender from Mombasa to Malaba is fraught with irregularities and in contravention of Article 227 of the Constitution, the provision of the Public Procurement and Disposal Act, 2005 and lacked due diligence.
- (ii) In April 15th and September 9th, 2008 China Road and Bridge Corporation (CRBC) wrote as a private investor to the then Transport Minister Hon. Chirau Ali Makwere and also to the then former Prime Minister Hon. Raila Odinga respectively seeking to invest in the transport sector and more specifically in the construction of an electric railway System in Kenya. The China Road and Bridge Corporation engaged the Government as a private entity and entered into a contract with Kenya Railways Corporation in its private capacity and therefore the contract/procurement was never a Government to Government procurement as alluded to by Government officials.
- (iii) On August 12, 2009 the then Ministry of Transport and China Road and Bridges Corporation Kenya signed an MOU which provided that all facets of the Standard Gauge Railway project will be undertaken in accordance with the Laws of Kenya. The MOU also gave financing options for the project.
- (iv) On 4th January, 2010 Treasury wrote to the Government of China requesting for a concessional loan for the construction of a new Standard Gauge Railway at a cost of US \$ 2.5 Billion.
- (v) In January 2012, CRBC presented a report on the feasibility study recommending that the SGR be changed from an electric engine to a diesel engine. The cost of the SGR is estimated at US \$ 3.4 – 3.8 billion.
- (vi) CRBC undertook the feasibility study, design and preparation of bill of quantities for the project and was later awarded the contract based on the feasibility study and costing that it had done. This is clearly a case of conflict of interest. The Government ought to

have appointed an independent firm to undertake the feasibility study and costing of the project so as to get value for money in the project as well as due diligence.

- (vii) The office of the Attorney General had advised Kenya Railways Corporation to ensure that the requirements of the Public Procurement and Disposal Act, 2005 are followed when the former sought the AG's comments and approval on the commercial contract.
- (viii) The funding of the project is not a grant to Kenya but rather a loan that the people of Kenya are going to pay. Already Kenyans are being taxed (Railway Levy) to repay the loan even before the project commences.
- (ix) A similar project is being undertaken in Ethiopia but at a lower cost yet the Ethiopian railway is a duo line railway. Open tendering should have been allowed for Kenyans to get value for money and the different components of the system (railway line, locomotives and spares) should have been awarded to different contractors and not to one contractor to mitigate risk of failure and allow fair competition.
- (x) The tender award was cancelled and therefore a new process should have been initiated and fair practice applied.
- (xi) China Road and Bridges Corporation and its mother company China Communications Construction Company Limited were debarred by the World Bank from participating in any of its projects for the period January 2009 to January 2017 due to fraud/corruption and flouting procurement regulations for a road project they undertook in Philippines.
- (xii) In previous engagements between the Government of Kenya and the Government of China tenders for projects were procured competitively. Chinese companies were allowed to compete openly for the tenders for example during the concession loan for the Kenya Rural Telecommunication Development Project (Phase II, 2007)
- (xiii) The leadership was misled into commissioning a project that is fraught with irregularities. Due diligence ought to have been undertaken before commissioning the project.
- (xiv) His interest in the matter is transparency and value for money for Kenya and exercise of his constitutional right under Article 95.

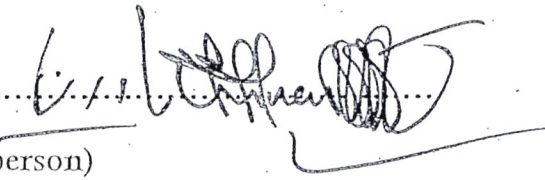
MINUTE NO. 21/2014 - COMMITTEE OBSERVATIONS

The Committee observed that:-

- (i) In the MOU between the Ministry of Transport and CRBC the parties agreed in the MOU to follow the Laws of Kenya in the execution of the project.
- (ii) CRBC and its mother company were debarred by the World Bank from participating in its tenders due to irregularities in a road construction.
- (iii) It may invite Ambassador Muthaura and the former Prime Minister Raila Odinga if need arises.

MINUTE NO. 22 /2013 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Thirty Six Minutes past Eleven O'clock

Signed: 
(Chairperson)

Date: 28/01/14

MINUTES OF THE 8TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY JANUARY 22ND 2014 IN THE MAIN CONFERENCE
ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 12.00 PM

PRESENT:

Hon. Adan Keynan, CBS, M.P. – Chairperson
Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
Hon. Francis Nyenze Mwanzia, M.P.
Hon. Korei Ole Lemein, M.P.
Hon. Johana Ngeno, M.P.
Hon. John Aluoch Olago, M.P.
Hon. Mary Keraa Sally, M.P.
Hon. Njogu Barua, M.P.
Hon. Bernard Munyoki Kitungi, M.P.
Hon. Chrisanthus Wamalwa, M.P.
Hon. Major (Rtd) John Waluke, M.P.
Hon. Cornelly Serein, M.P.
Hon. Sammy Mwaita, M.P.
Hon. Onesmus Njuki, M.P.
Hon. Mithika Linturi, M.P.
Hon. Beatrice Nyaga, M.P.

ABSENT WITH APOLOGY

Hon. Dr. Oburu Oginga, M.P.
Hon. John M. Nyaga, M.P.
Hon. Adan M. Nooru, M.P.
Hon. Ogutu John Omondi, M.P.
Hon. Bare Shill, M.P.
Hon. Wafula Wamunyinyi, M.P.
Hon. Abdullswamad Sheriff, M.P.
Hon. Paul Otuoma, M.P.
Hon. Mwadeghu Thomas, M.P.
Hon. Irungu Kang'ata, M.P.
Hon. Eng. John Kiragu, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

Mr. Nicholas Emejen	–	Principal Clerk Assistant I
Mr. Abdullahi Aden	–	First Clerk Assistant
Mr. Joash Kosiba	–	Fiscal Analys

MINUTE NO. 22/2014 - KENYA REVENUE AUTHORITY

Mr. John Njiraini, the Commissioner General Kenya Revenue Authority informed the Committee that;

- (i) In the Budget Statement for Fiscal Year 2013/14 delivered on 13th June 2013 the Cabinet Secretary for the National Treasury proposed an amendment to the Customs and Excise Act to introduce a Railway Development Levy of 1.5 percent of the customs value of all imported goods.
- (ii) The objective was to mobilize funds for the construction of a Standard Gauge Railway network in order to facilitate the transportation of goods. Therefore the railway development levy collection was introduced with effect from 1st July 2013, payable by all importers at a rate of 1.5% of the customs value of the imports.
- (iii) The Finance Bill 2013 indicates that all imports of domestic use are subject to the 1.5% rail Development Levy to be paid by the importer at entry point. It further indicates that the Cabinet Secretary shall establish a Railway Development Levy Fund where all the proceeds are to be paid and is to be managed, administered or wound up in accordance with section 24 of the Public Financial Management Act, 2012 and its regulations.
- (iv) The total collections of Railway Development Levy for the period 1st July, 2013 to 31st December, 2013 was Kshs. 10,052,287,901 against a target of Kshs. 6,780,260,980.11. The full year Treasury target for the Financial Year 2013/14 is Kshs. 13,500,000,000 hence the remaining balance to meet the target is Kshs. 3,447,712,099.

MINUTE NO. 23 /2013 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Fifty Minutes past at twelve O'clock.

Signed: .....

Date: 28/01/14.....

(Chairperson

MINUTES OF THE 15TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY JANUARY 29TH 2014 IN COMMITTEE ROOM 2ND FLOOR,
PARLIAMENT BUILDINGS AT 10.00AM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Adan M. Nooru, M.P.
5. Hon. Bernard Munyoki Kitungi, M.P.
6. Hon. Chrisanthus Wamalwa, M.P.
7. Hon. Sammy Mwaita, M.P.
8. Hon. Mithika Linturi, M.P.
9. Hon. Beatrice Nyaga, M.P.
10. Hon. Eng. John Kiragu, M.P.
11. Hon. Dr. Oburu Oginga, M.P.
12. Hon. Cornelly Serem, M.P.
13. Hon. John M. Nyaga, M.P.
14. Hon. Irungu Kang'ata, M.P.
15. Hon. Johana Ngeno, M.P.
16. Hon. Mwadeghu Thomas, M.P.
17. Hon. Paul Otuoma, M.P.
18. Hon. Major (Rtd) John Waluke, M.P.
19. Hon. Ogutu John Omondi, M.P.
20. Hon. Mary Keraa Sally, M.P.

ABSENT WITH APOLOGY

1. Hon. Onesmus Njuki, M.P.
2. Hon. Njogu Barua, M.P.
3. Hon. Bare Shill, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. John Aluoch Olago, M.P.
6. Hon. Wafula Wamunyinyi, M.P.
7. Hon. Abdullswamad Sheriff, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

Mr. Nicholas Emejien	–	Principal Clerk Assistant I
Mr. Abdullahi Aden	-	First Clerk Assistant

MINUTE NO. 44/2013 COMMITTEE CONSIDERATIONS ON THE STANDARD GAUGE RAILWAY

The Chairperson informed the Committee that the Oversight role of Parliament is guided by the Constitution, Statutes and Standing Orders.

Members noted that the Committee is guided by the provisions of Articles 94 (2) (4), 95 (2) (4) (5), 125 (1), 201 and 227 (1) of the Constitution of Kenya, the Public Procurement and Disposal Act, 2005 and Standing Order 206.

The Committee reiterated that it will not be swayed by political utterances made by the Government officials and politicians on the Standard Gauge Railway and will only be guided by facts and truth during its investigations and called upon members of the public with information to tender such information before the Committee.

MINUTE NO. 45 /2014 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Thirty Minutes past Eleven O'clock.

Signed: 

(Chairperson)

Date: 18/02/14

MINUTES OF THE 18TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON MONDAY FEBRUARY 3RD 2014 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT:

1. Hon. Adan Keynan, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Johana Ngeno, M.P.
6. Hon. John Aluoch Olago, M.P.
7. Hon. Bernard Munyoki Kitungi, M.P.
8. Hon. Major (Rtd) John Waluke, M.P.
9. Hon. Cornelly Serem, M.P.
10. Hon. Mithika Linturi, M.P.
11. Hon. Bare Shill, M.P.
12. Hon. Onesmus Njuki, M.P.
13. Hon. Sammy Mwaita, M.P.
14. Hon. Dr. Oburu Oginga, M.P.
15. Hon. Adan M. Nooru, M.P.

ABSENT WITH APOLOGY

1. Hon. Chrisanthus Wamalwa, M.P.
2. Hon. Mary Keraa Sally, M.P.
3. Hon. Paul Otuoma, M.P.
4. Hon. John M. Nyaga, M.P.
5. Hon. Eng. John Kiragu, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Ogutu John Omondi, M.P.
8. Hon. Wafula Wamunyinyi, M.P.
9. Hon. Abdullswamad Sheriff, M.P.
10. Hon. Mwadeghu Thomas, M.P.
11. Hon. Irungu Kang'ata, M.P.
12. Hon. Beatrice Nyaga, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

MINUTE NO. 46/2014 - EVIDENCE BY FORMER TRANSPORT MINISTER
HON. CHIRAU ALI MAKWERE

Hon Makwere informed the Committee that;

- (i) He initiated contact with the China Road & Bridge Corporation, the company that was awarded the tender on the construction of the standard gauge railway from Mombasa to Malaba.
- (ii) He was aware that the China Roads and Bridges Construction was blacklisted by the World Bank in the Philippines.
- (iii) The Cabinet had approved the the Construction of the Standard Gauge Railway Line from Mombasa to Malaba.
- (iv) China Roads and Bridges Construction built China, Beijing Shanghai railway line.
- (v) Hon Makwere further informed the committee that he does know the Board of Directors of CRBC.

MINUTE 47/2014 COMMITTEE OBSERVATION

The Committee observed that:-

- (i) Article 125 (1) of the constitution empowers the Parliament to summon any person to appear before it for the purpose of giving evidence.
- (ii) And for the purpose of clause (1) a House of Parliament and any of its Committees has the same powers as the High Court.
- (iii) In a letter dated 9th September Dr Manu Chandaria congratulated Hon. Makwere for an advertisement that appeared on the Daily Nation of 8th September 2009 for contracts for feasibility study of the Standard Gauge dual track Railway.
- (iv) Henceforth Hon Makwere cancelled the feasibility study and single sourced China Roads and Bridges Company.
- (v) The committee will be guided by the Constitution, the Public finance Management act, the Public Procurement oversight Authority Act and the standing orders.
- (vi) The committee noted the matter was of public concerned and was determined to get all the facts and disseminate the information to the public through their elected representatives.
- (vii) The Committee agreed to summon former Transport Minister Hon. Amos Kimunya on Tuesday 11th February, 2014 for failing to honor the invitation by the committee on the tender regarding the construction of Standard Gauge Railway Line from Mombasa to Malaba.

(viii) The Committee further agreed to invite former Permanent Secretary Ministry of Transport Eng. Abdirizak Ali Aden and the Board of Directors, Kenya Railway Corporation

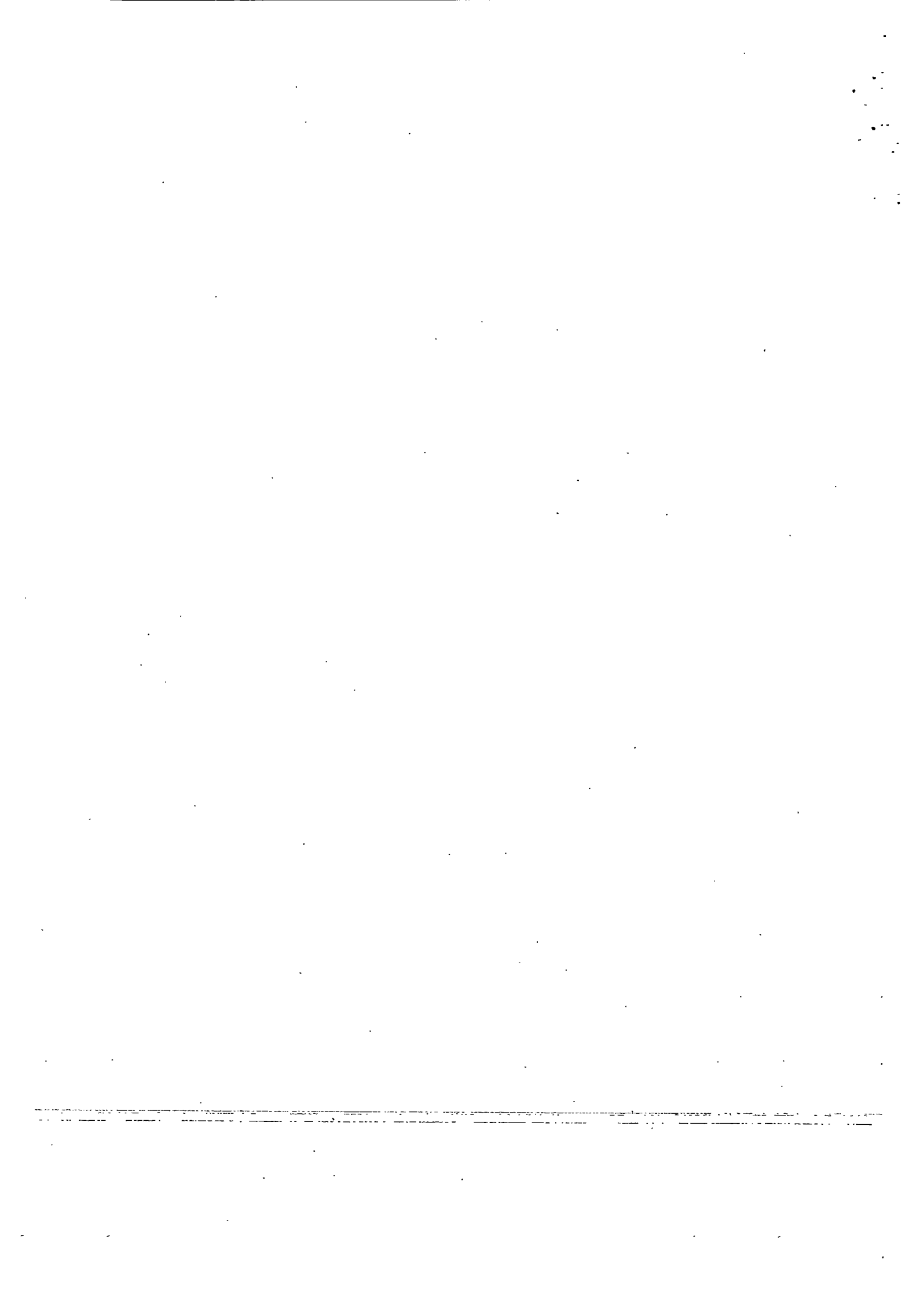
MINUTE NO. 48 /2013 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Fifteen Minutes past One O'clock.

Signed: 

Date: 18/02/14

(Chairperson)



MINUTES OF THE 19TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY FEBRUARY 5TH, 2014 IN COMMITTEE ROOM, 4TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Nyagah M. Jonh, MP
5. Hon. Korei Ole Lemein, M.P.
6. Hon. John Aluoch Olago, M.P.
7. Hon. Bernard Munyoki Kitungi, M.P.
8. Hon. Major (Rtd) John Waluke, M.P.
9. Hon. Bare Shill, M.P
10. Hon. Eng. John Kiragu, M.P.
11. Hon. Mwadeghu Thomas, M.P.
12. Hon. Wafula Wamunyinyi, M.P.
13. Hon. Cornelly Serem, M.P
14. Hon. Adan M. Nooru, M.P.
15. Hon. Njogu Barua, M.P.
16. Hon. Paul Otuoma, M.P.
17. Hon. Chrisanthus Wamalwa, M.P
18. Hon. Onesmus Njuki, M.P.

ABSENT WITH APOLOGY

1. Hon. Mary Keraa Sally, M.P.
2. Hon. Ogotu John Omondi, M.P.
3. Hon. Johana Ngeno, M.P.
4. Hon. Mithika Linturi, M.P
5. Hon. Sammy Mwaita, M.P.
6. Hon. Dr. Oburu Oginga, M.P
7. Hon. Abdullswamad Sheriff, M.P.
8. Hon. Irungu Kang'ata, M.P
9. Hon. Beatrice Nyaga, M.P.

IN – ATTENDANCE

NATIONAL ASSEMBLY

Mr. Abdullahi Aden	-	First Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst

AUDITOR GENERAL OFFICE

Mr. Charles Nyanyuki - Ag. Director
Mr. Obed k. Chweya - Senior Auditor

MINUTE NO. 54/2014 - EVIDENCE BY THE PRINCIPAL SECRETARY,
MINISTRY OF TRANSPORT, MR. NDUVA MULI

Mr. Nduva Muli appeared before the Committee in his capacity as the former Managing Director of Kenya Railways Corporation to adduce evidence on the procurement and financing of the standard gauge railway. He informed the Committee that:-

- (i) The tender for the construction of the railway line from Mombasa to Malaba was viable and awarded within the law.
- (ii) Kenya Railways (KR) was involved in vetting and review of the feasibility study as well as the preliminary design done by China Road and Bridge Corporation for the project.
- (iii) On 3rd August 2012, the Cabinet granted approval for the project as follows:-
 - (a) The development of a new standard gauge railway linking Mombasa to Malaba with a branch line to Kisumu;
 - (b) The standard gauge railway to be developed through a Government to Government arrangement supported by Government Budget and a Railway Development and Maintenance Fund; and
 - (c) The Government to sign a bilateral Agreement with the Government of the Republic of Uganda for joint development of the railway and subsequent seamless operation.
- (iv) The development of the Mombasa to Malaba/Kisumu standard gauge railway will involve the construction and subsequent operation of approximately 1,250 kilometers and will be split up into two phases (Phase 1- Mombasa to Nairobi; Phase 2 Nairobi to Malaba and Kisumu)
- (v) The Government recognized the need to commence with the development of Phase 1 (Mombasa- Nairobi) since 70% of freight handled at the port of Mombasa originates from or is destined to Nairobi. Phase 1 would therefore resolve the perennial freight congestion problem at the port and secure the position of Mombasa as the port of choice for the region and Kenya as transport hub. Phase 1 is expected to be completed by December 2016.

(vi) On 1st October, 2009, the technical officers from both Kenya and Uganda finalized the Bilateral Agreement and Minister for Transport from Kenya signed and dispatched it to Uganda for signature. The Agreement has since been scaled up to Tripartite Agreement after the Republic of Rwanda ratified the agreement on 28th October, 2013 in order to extend the line to Kigali. Each country would develop the railway network within its borders to avoid procurement challenges. The Mombasa to Kigali Railway is expected to be in operation by December, 2018.

(vii) The due diligence confirmed that China Road and Bridges Corporation is government institution of the People's Republic of China. It was formally established as a state-owned enterprise in 1979 with the name of China Road and Bridge Engineering Company. (CRBEC)

(viii) In 2005, China Road and Bridge Corporation and China Harbor Engineering Company Limited merged to form China Communications Construction Group (CCCC). Accordingly, CRBC was registered again by the State Administration for Industry and Commerce on 8th December, 2005 retaining its name. CCCC is a state-owned enterprise. In 2006, CCCC founded China Communication Construction Company (CCCC) and CRBC became fully owned subsidiary company CCCC.

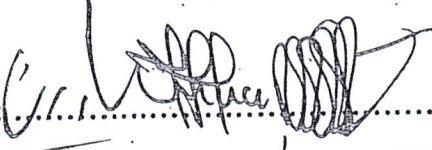
MINUTE NO. 55/2014 - COMMITTEE OBSERVATIONS

The Committee observed that:-

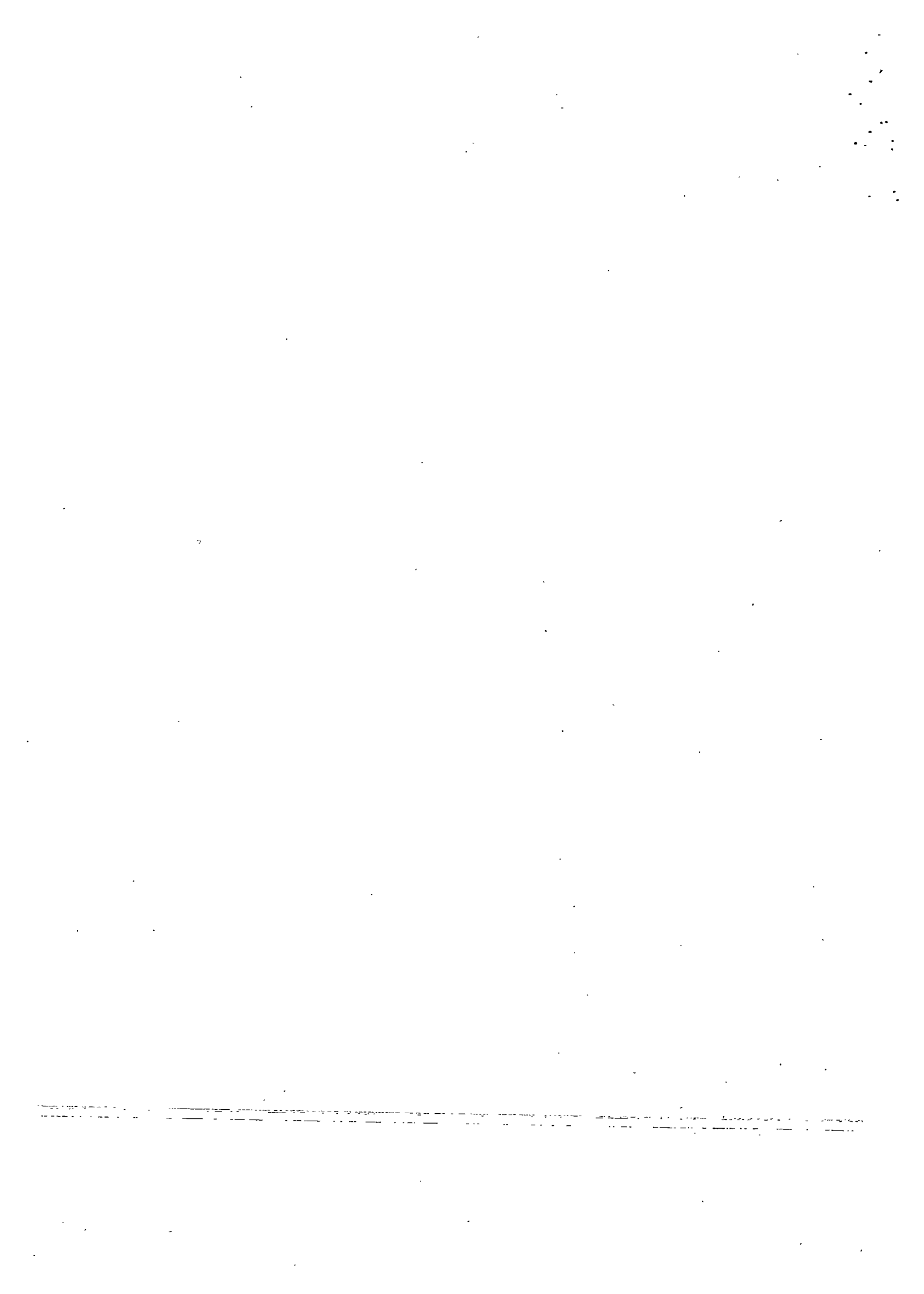
- (i) China Roads and Bridges Corporation did the feasibility studies, design, costing and finally was awarded the tender on the construction of Standard Gauge Railway line from Mombasa to Nairobi.
- (ii) The Cost of the standard gauge Railway as was quoted by different Ministries varies from 220 billion to 447 Billion.

MINUTE NO. 56 /2013 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Forty five Minutes past twelve O'clock.

Signed: 
(Chairperson)

Date: 18/02/14



MINUTES OF THE 22ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY FEBRUARY 11TH 2014 IN COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11.30 AM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Sammy Mwaita, M.P.
5. Hon. Korei Ole Lemein, M.P.
6. Hon. John Aluoch Olago, M.P.
7. Hon. Beatrice Nyaga, M.P.
8. Hon. Bare Shill, M.P.
9. Hon. Eng. John Kiragu, M.P.
10. Hon. Chrisanthus Wamalwa, M.P.
11. Hon. Bernard Munyoki Kitungi, M.P.
12. Hon. Wafula Wamunyinyi, M.P.
13. Hon. Mary Keraa Sally, M.P.
14. Hon. Ogutu John Omondi, M.P.
15. Hon. Dr. Oburu Oginga, M.P.

ABSENT WITH APOLOGY

1. Hon. Major (Rtd) John Waluke, M.P.
2. Hon. Onesmus Njuki, M.P.
3. Hon. Njogu Barua, M.P.
4. Hon. Nyagah M. Jonh, MP
5. Hon. Mithika Linturi, M.P.
6. Hon. Adan M. Nooru, M.P.
7. Hon. Francis Nyenze Mwanzia, M.P.
8. Hon. Mwadeghu Thomas, M.P.
9. Hon. Johana Ngeno, M.P.
10. Hon. Paul Otuoma, M.P.
11. Hon. Abdullswamad Sheriff, M.P.
12. Hon. Irungu Kang'ata, M.P.

IN – ATTENDANCE - NATIONAL ASSEMBLY

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

MINUTE NO.63/2014 - FORMER MINISTER FOR TRANSPORT HON. AMOS
KIMUNYA

- (i) The Committee was informed that the Hon. Amos Kimunya had not been served with the Summons since he had not been traced at his residence.
- (ii) The Committee observed that:-
- (a) It discharges its duties in accordance with Article 125 (1) of the Constitution that empowers Parliament to Summon any person to appear before it for the purpose of giving evidence, as read with Article 94 and 95 of the Constitution on the role and functions of Parliament in its oversight role.
- (b) Committees of Parliament have the same powers as the High Court
- (iii) The Committee resolved that:-
- (a) The Hon. Amos Kimunya to be issued with another summon including through the two major daily papers and email so as to appear before the it on Thursday 13th February 2014 at 9.30 am.
- (b) The Chief Sergeant at Arms to brief the Committee on Wednesday 12th February, 2014 on the summons issued to Hon. Amos Kimunya.

MINUTE NO.64 /2013 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Thirty Minutes past twelve O'clock.

Signed:.....

(Chairperson)

Date: 18/02/14.....

MINUTES OF THE 24TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY FEBRUARY 12TH, 2014 IN COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 3.00 PM

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Korei Ole Lemein, M.P.
4. Hon. John Aluoch Olago, M.P.
5. Hon. Bernard Munyoki Kitungi, M.P.
6. Hon. Major (Rtd) John Waluke, M.P.
7. Hon. Bare Shill, M.P.
8. Hon. Mwadeghu Thomas, M.P.
9. Hon. Cornelly Serem, M.P.
10. Hon. Adan M. Nooru, M.P.
11. Hon. Paul Otuoma, M.P.
12. Hon. Mithika Linturi, M.P.
13. Hon. Beatrice Nyaga, M.P.
14. Hon. Nyagah M. John, MP
15. Hon. Irungu Kang'ata, M.P.
16. Hon. Eng. John Kiragu, M.P.
17. Hon. Johana Ngeno, M.P.
18. Hon. Francis Nyenze Mwanzia, M.P.
19. Hon. Mary Keraa Sally, M.P.
20. Hon. Dr. Oburu Oginga, M.P.
21. Hon. Wafula Wamunyinyi, M.P.

ABSENT WITH APOLOGY

1. Hon. Chrisanthus Wamalwa, M.P.
2. Hon. Ogutu John Omondi, M.P.
3. Hon. Onesmus Njuki, M.P.
4. Hon. Njogu Barua, M.P.
5. Hon. Sammy Mwaita, M.P.
6. Hon. Abdullswamad Sheriff, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

AUDITOR GENERAL'S OFFICE

Mr. Dennis Kariuki - Director of Audit

Mr. Obed K Chweya - Senior Manager
Mr. Muli Kalinda - Manager

INSPECTORATE OF STATE CORPORATIONS

Mrs. Joyce Wesonga - Assistant Inspector General

MINUTE NO. 68/2014 - FORMER PERMANENT SECRETARY, MINISTRY OF
TRANSPORT, ENG. ABDIRIZAK ALI

Eng. Abdirizak Ali, the former Permanent Secretary, Ministry of Transport informed the Committee that:-

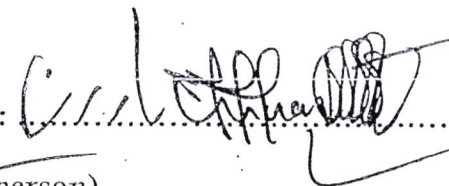
- (i) The limitation to access information on the issues raised and the fact the he left the Ministry of Transport in September 2009 has hindered him to shed light on the matter.
- (ii) The Ministry forwarded the MOU to the Ministry of Finance and the Attorney General Office.
- (iii) He be granted more time to prepare his submission.

MINUTE NO. 69/2014 - COMMITTEE RESOLUTIONS

The Committee resolved that the former Permanent Secretary be invited again to appear before the Committee with a written presentation on the Standard Gauge Railway Tender on 27th February, 2014.

MINUTE NO. 70/2014 /2014 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at fifteen minutes past Four O'clock.

Signed:  Date: 18/02/14
(Chairperson)

MINUTES OF THE 25TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON THURSDAY FEBRUARY 13TH, 2014 IN COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

1. Hon. Adan Keynan, CBS, M.P. – **Chairperson**
2. Hon. Kimani Ichung'wah, M.P. – **Vice Chairperson**
3. Hon. Korei Ole Lemein, M.P.
4. Hon. John Aluoch Olago, M.P.
5. Hon. Major (Rtd) John Waluke, M.P.
6. Hon. Bare Shill, M.P.
7. Hon. Mwadeghu Thomas, M.P.
8. Hon. Cornelly Serem, M.P.
9. Hon. Adan M. Nooru, M.P.
10. Hon. Paul Otuoma, M.P.
11. Hon. Mithika Linturi, M.P.
12. Hon. Beatrice Nyaga, M.P.
13. Hon. Nyagah M. John, MP
14. Hon. Eng. John Kiragu, M.P.
15. Hon. Johana Ngeno, M.P.
16. Hon. Francis Nyenze Mwanzia, M.P.
17. Hon. Mary Keraa Sally, M.P.
18. Hon. Dr. Oburu Oginga, M.P.
19. Hon. Wafula Wamunyinyi, M.P.
20. Hon. Chrisanthus Wamalwa, M.P.
21. Hon. Ogutu John Omondi, M.P.
22. Hon. Njogu Barua, M.P.
23. Hon. Abdullswamad Sheriff, M.P.

ABSENT WITH APOLOGY

1. Hon. Bernard Munyoki Kitungi, M.P.
2. Hon. Irungu Kang'ata, M.P.
3. Hon. Onesmus Njuki, M.P.
4. Hon. Sammy Mwaita, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

AUDITOR GENERAL'S OFFICE

Mr. Edward Ouko - Auditor General

Mr. Dennis Kariuki - Director of Audit
Mr. Obed K Chweya - Senior Manager
Mr. Muli kalinda - Manager

INSPECTORATE OF STATE CORPORATIONS

Mrs Joyce Wesonga - Assistant Inspector General

MINUTE NO. 71/2014 - REPORT BY THE AUDITOR GENERAL

(i) The Auditor General informed the Committee that:-

- (a) His office had not finalized on the Special Audit Report as requested by the Committee. His office was still collecting information on the Standard Gauge Railway tender and requested that in two weeks time the office of the Auditor General and the Committee form a working group on the matter.
- (b) His team may need to travel to China to cover the international aspect of the project before it compiles its final report to be shared with the parliamentary committee.
- (c) His office be granted six weeks to give a report on the Standard gauge Railway.

(ii) The Committee considered the Auditor General's request and resolved that the working group meets on Thursday 27th February 2014.

MINUTE NO. 72/2014 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Twenty Minutes past Eleven O'clock.

Signed: 

Date: 18/02/14

(Chairperson)

MINUTES OF THE 26TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON THURSDAY FEBRUARY 13TH, 2014 IN COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11.30AM

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. John Aluoch Olago, M.P.
4. Hon. Sammy Mwaita, M.P.
5. Hon. Major (Rtd) John Waluke, M.P.
6. Hon. Mwadeghu Thomas, M.P.
7. Hon. Cornelly Serem, M.P.
8. Hon. Paul Otuoma, M.P.
9. Hon. Mithika Linturi, M.P.
10. Hon. Beatrice Nyaga, M.P.
11. Hon. Nyagah M. John, MP
12. Hon. Eng. John Kiragu, M.P.
13. Hon. Chrisanthus Wamalwa, M.P.
14. Hon. Njogu Barua, M.P.
15. Hon. Abdullswamad Sheriff, M.P.
16. Hon. Onesmus Njuki, M.P.

ABSENT WITH APOLOGY

1. Hon. Wafula Wamunyinyi, M.P.
2. Hon. Bare Shill, M.P.
3. Hon. Adan M. Nooru, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Bernard Munyoki Kitungi, M.P.
6. Hon. Irungu Kang'ata, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Francis Nyenze Mwanzia, M.P.
9. Hon. Dr. Oburu Oginga, M.P.
10. Hon. Ogutu John Omondi, M.P.
11. Hon. Mary Keraa Sally, M.P.

IN ATTENDANCE NATIONAL ASSEMBLY

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

AUDITOR GENERAL'S OFFICE

Mr. Dennis Kariuki - Director of Audit
Mr. Obed K Chweya - Senior Manager
Mr. Muli Kalinda - Manager

INSPECTORATE OF STATE CORPORATIONS

Mrs Joyce Wesonga

Assistant Inspector General

MINUTE NO 73/2014 - EVIDENCE BY REGISTRAR GENERAL

Mrs. Bernice Gachehu, the Registrar General appeared before the Committee to adduce evidence on the legal status and registration of China Road and Bridges Corporation. She informed the Committee that:-

- (i) China Road and Bridge Corporation was initially registered as China Road and Bridge Engineering Company under part 10 of the Companies Act (Cap 486) on 28th December 1984 under registration number F66/84.
- (ii) Part 10 of the Companies Act provides for registration of Companies incorporated outside Kenya. Section 633 (1) states that *"once a foreign company establishes a place of business with in Kenya, it should within 30 days of their establishment deliver to the Registrar of Companies, a certified copy of its charter and or memorandum and Articles, a list of its Directors and Secretaries, the names and postal address of persons authorized to accept service of process on behalf of the company and the full address of the registered or principal office of the company."*
- (iii) On 24th December 1984, the following documents were supplied to the Registrar of Companies in compliance with section 366 of the Companies Act.
 - a) Form 236, dated 20th December 1984, which shows the list of documents that were delivered to the Registrar for registration of the Company.
 - b) Form 237 dated 20th December 1984 which shows the list and particulars of the Directors and Secretary of the Company.
 - c) Form 238 dated 20th December 1984, which shows of names and address of persons resident in Kenya authorized to accept service on behalf of the Company.
 - d) Form 250 dated 20th December 1984, which shows the situation of the registered or principal office of the Company in China.
 - e) A notarized Business Certification and Statute of the Company and their translation in English.
- (iv) Having certified the requirements of section 366, the Company was issued with a Certificate of Compliance dated 28th December 1984 as per section 367 of the Companies Act.
- (v) There is a local Company by the Name China Road and Bridges Corporation Kenya Limited which was registered on 23rd December 2008 under Registration No. C.166624

with its Directors being Mr. Peter Maingi Gatere and Mr. Leonard Mwangi Ndungu. The registered office is LR NO.209/1184/11, Mpaka Road, Westlands.

- (vi) This name was inadvertently issued to this Company because when they sought registration on 23rd December 2008, there existed another Company under the name China Road and Bridge Corporation F66/84 on 9th September 1996 through a change of name from China Road and Bridge Engineering Company.
- (vii) The above Company has since been directed to change its name in accordance with section 20 (2) (a) of the Companies Act.

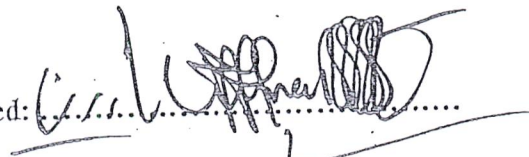
MINUTE NO 74/2014 - COMMITTEE OBSERVATIONS

The Committee observed that:-

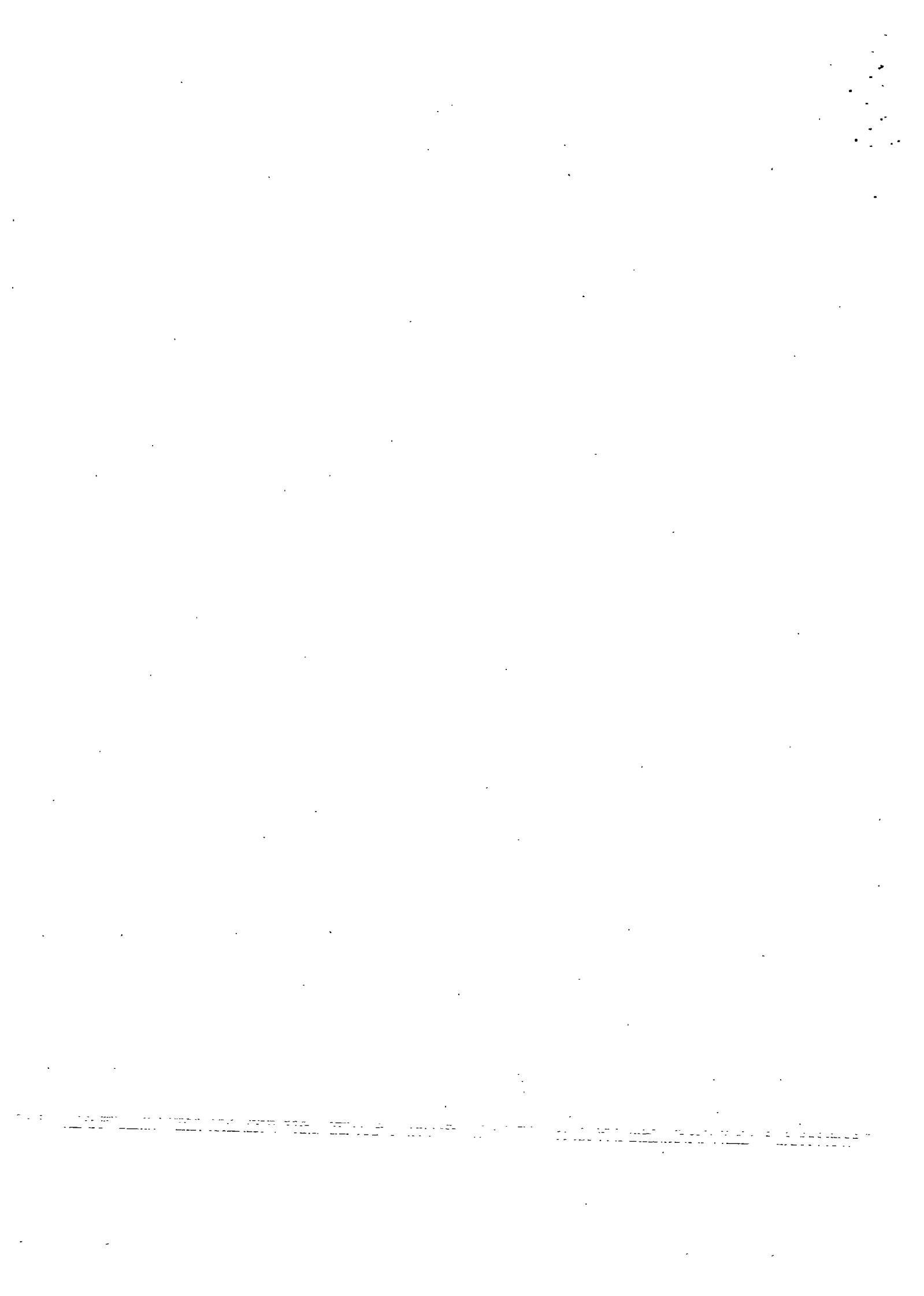
- (i) For the last 30 years that CRBC China firm has been in Kenya, it has never filed its annual accounts with the Registrar as required in the Companies Act.
- (ii) The CRBC Kenya Limited has also never filed its returns with the Registrar's office, also in total contravention of the law.
- (iii) The Kenyan company which was issued with a certificate on December 23, 2008 was registered inadvertently since the China firm was already in existence at the time.

MINUTE NO.75 /2014 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at One O'clock.

Signed: 
(Chairperson)

Date: 18/02/14



MINUTES OF THE 27TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON THURSDAY FEBRUARY 13TH, 2014 IN COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 3.00 PM

1. Hon. Adan Keynian, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Sammy Mwaita, M.P.
4. Hon. Major (Rtd) John Waluke, M.P.
5. Hon. Mwadeghu Thomas, M.P.
6. Hon. Cornelly Serem, M.P.
7. Hon. Mithika Linturi, M.P.
8. Hon. Beatrice Nyaga, M.P.
9. Hon. Nyagah M. John, MP
10. Hon. Eng. John Kiragu, M.P.
11. Hon. Sammy Mwaita, M.P.
12. Hon. Adan M. Nooru, M.P.
13. Hon. Johana Ngeno, M.P.
14. Hon. Ogutu John Omondi, M.P.
15. Hon. Bernard Munyoki Kitungi, M.P.
16. Hon. Abdullswamad Sheriff, M.P.

ABSENT WITH APOLOGY

1. Hon. Chrisanthus Wamalwa, M.P.
2. Hon. John Aluoch Olago, M.P.
3. Hon. Paul Otuoma, M.P.
4. Hon. Onesmus Njuki, M.P.
5. Hon. Njogu Barua, M.P.
6. Hon. Wafula Wamunyinyi, M.P.
7. Hon. Bare Shill, M.P.
8. Hon. Korei Ole Lemein, M.P.
9. Hon. Irungu Kang'ata, M.P.
10. Hon. Francis Nyenze Mwanzia, M.P.
11. Hon. Dr. Oburu Oginga, M.P.
12. Hon. Mary Keraa Sally, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Abdullahi Aden	-	First Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst

AUDITOR GENERAL'S OFFICE

Mr. Dennis Kariuki - Director of Audit
Mr. Obed K. Chweya - Senior Manager
Mr. Muli Kalinda - Manager

INSPECTORATE OF STATE CORPORATIONS

Mrs Joyce Wesonga - Assistant Inspector General

KENYA RAILWAYS CORPORATION

Mr. Atanas K. Maina - Managing Director
Mr. Alfred Matheke - Finance Manager
Eng. Solomom Ouna - Chairman, Negotiating Team

MINUTE. NO. 76/2014 - EVIDENCE BY KENYA RAILWAY CORPORATION

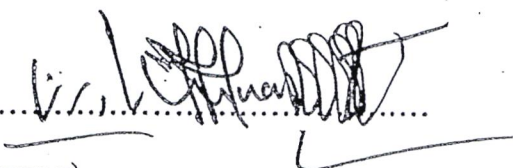
The Committee requested presentation from Kenya Railway Corporation on the Standard Gauge Railway Line from the following:-

- (i) Chairperson, Board of Directors
- (ii) Chairperson, Negotiating team/ Technical team
- (iii) Technical/ Due diligence team that visited the People Republic of China.

The Kenya Railway Corporation requested for one week to prepare presentations as per the request of the Committee.

MINUTE NO. 77/2014 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Four O'clock

Signed: 
(Chairperson)

Date: 18/02/14

MINUTES OF THE 28TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY FEBRUARY 17TH, 2014 IN COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.30 PM

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Sammy Mwaita, M.P.
4. Hon. Cornelly Serem, M.P
5. Hon. Mithika Linturi, M.P
6. Hon. Beatrice Nyaga, M.P.
7. Hon. Nyagah M. John, MP
8. Hon. Eng. John Kiragu, M.P.
9. Hon. Sammy Mwaita, M.P.
10. Hon. Adan M. Nooru, M.P.
11. Hon. Ogutu John Omondi, M.P
12. Hon. Bernard Munyoki Kitungi, M.P
13. Hon. Onesmus Njuki, M.P.
14. Hon. Njogu Barua, M.P.
15. Hon. Bare Shill, M.P
16. Hon. Korei Ole Lemein, M.P.
17. Hon. Francis Nyenze Mwanzia, M.P.
18. Hon. Dr. Oburu Oginga, M.P
19. Hon. Mary Keraa Sally, M.P.
20. Hon. John Aluoch Olago, M.P.

ABSENT WITH APOLOGY

1. Hon. Johana Ngeno, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.
3. Hon. Abdullswamad Sheriff, M.P.
4. Hon. Mwadeghu Thomas, M.P.
5. Hon. Chrisanthus Wamalwa, M.P
6. Hon. Wafula Wamunyinyi, M.P.
7. Hon. Paul Otuoma, M.P.
8. Hon. Irungu Kang'ata, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

AUDITOR GENERAL'S OFFICE

Mr. Dennis Kariuki - Director of Audit
Mr. Obed K. Chweya - Senior Manager
Mr. Muli Kalinda - Manager

INSPECTORATE OF STATE CORPORATIONS

MINUTE NO. 78/2014 - EVIDENCE BY HON. AMOS KIMUNYA, FORMER
MINISTER FOR TRANSPORT

Hon. Amos Kimunya appeared before the Committee to adduce evidence on the procurement and financing of the Nairobi - Mombasa Standard Gauge Railway (SGR). He informed the Committee that:-

- (i) The SGR project had been discussed severally since 2003. It is an integral part of the Vision 2030 as an enabler of trade and movement. Regionally it is a core component of the modernization of the Northern Corridor (Mombasa to Democratic Republic of Congo). Officially, it was launched in State House Nairobi in October 2008, in a joint communiqué by President Kibaki and President Museveni of Uganda. This was followed by bilateral discussions between Kenya and Uganda which resulted in a bilateral agreement documenting the necessary frameworks. In Kenya, this was approved by Cabinet in August 2012, and signed. Rwanda has since joined this agreement thus converting it into a tri-lateral agreement.
- (ii) Kenya Railways Corporation (KRC) is a State Corporation set up under an Act of Parliament, and is a designated procurement entity as per the Public Procurement and Disposal Act, 2005. In the past, Ministries have been restrained from, and even reprimanded by Parliament and Public Procurement Oversight Authority (PPOA) on, involvement in procurement matters of State Corporations. The Government of Kenya (GoK) was represented in the KRC Board by the PS-Treasury, PS-Transport and the Attorney General.
- (iii) Negotiations on the financing of Government projects are the mandate of the National Treasury.
- (iv) Due diligence review was conducted in October/November 2012 by a high level GoK/KRC team. The Embassy of China in Kenya expressed its support for China Road and Bridges Corporation (CRBC) in writing.
- (v) A Memorandum of Understanding (MOU) was signed between the GoK and CRBC in August, 2009 wherein the CRBC offered to carry out the feasibility study and preliminary designs of the Mombasa – Nairobi section at no cost to the Government of Kenya, provided that the report could only be used by GoK/KRC and CRBC. The feasibility study was also subject to KRC review and approval. This is a standard requirement for Chinese funded projects, to establish the feasibility themselves before involving their Treasury and Banks.
- (vi) The first Draft report was forwarded to my office as the then Minister for Transport in 2011 by CRBC which was part of an official delegation accompanying the Chinese Vice Minister of Transport.

- (vii) The cost of the railway is high due to the gradient. The terrain from Mombasa is varied rising from sea level to flat terrain and high altitude. The railway was changed to diesel driven due to challenges of power but in future the trains could be converted to electric.
- (viii) The Standard Gauge Railway was conceived to ease cargo transport congestion. The railway will open up the East African region and tap into the transport market extending into eastern DRC and South Sudan. In the meantime the cost is high but in the long run the project will be worthwhile.
- (ix) He stopped advertisement for feasibility study by KRC because there was already a feasibility study underway by CRBC at no cost to the Government. He stopped the parallel study to save money that was to be used in procuring the feasibility study by KRC.

MINUTE NO. 79/2014 - COMMITTEE OBSERVATIONS

The Committee declared Hon. Amos Kimunya a hostile witness due to his demeanor and conduct.

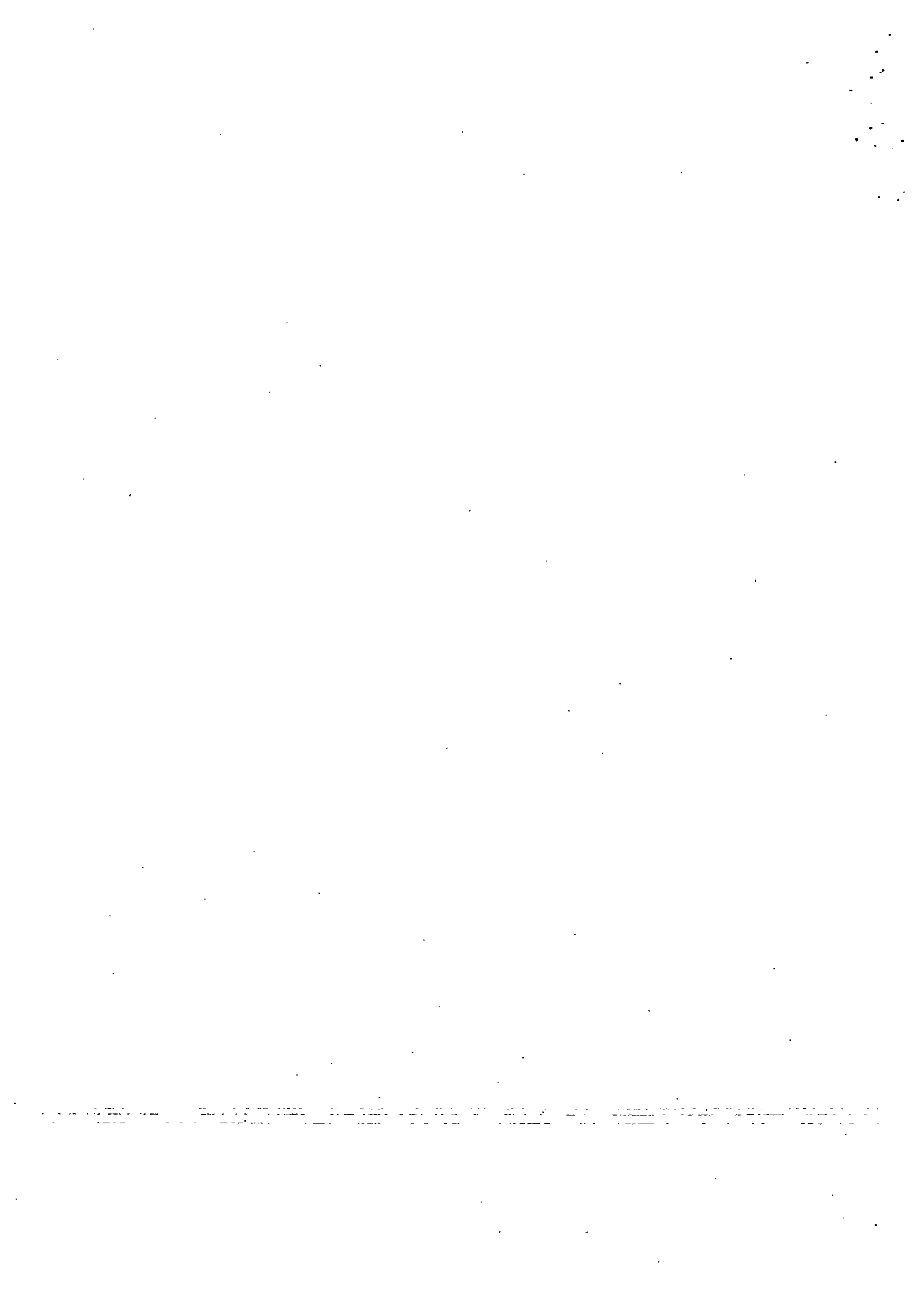
MINUTE NO. 80/2014 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Fifteen Minutes past four O'clock.

Signed: 

Date: 18/02/14

(Chairperson)



MINUTES OF THE 29TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY FEBRUARY 18TH, 2014 IN COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

1. Hon. Adan Keynan, CBS, M.P. – **Chairperson**
2. Hon. Kimani Ichung'wah, M.P. – **Vice Chairperson**
3. Hon. Sammy Mwaita, M.P.
4. Hon. Cornelly Serem, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Beatrice Nyaga, M.P.
7. Hon. Eng. John Kiragu, M.P.
8. Hon. Sammy Mwaita, M.P.
9. Hon. Ogutu John Omondi, M.P.
10. Hon. Onesmus Njuki, M.P.
11. Hon. Bare Shill, M.P.
12. Hon. Korei Ole Lemein, M.P.
13. Hon. Dr. Oburu Oginga, M.P.
14. Hon. Mary Keraa Sally, M.P.
15. Hon. John Aluoch Olago, M.P.
16. Hon. Major (Rtd) John Waluke, M.P.
17. Hon. Wafula Wamunyinyi, M.P.
18. Hon. Paul Otuoma, M.P.

ABSENT WITH APOLOGY

1. Hon. Johana Ngeno, M.P.
2. Hon. Bernard Munyoki Kitungi, M.P.
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Nyagah M. John, MP
5. Hon. Njogu Barua, M.P.
6. Hon. Adan M. Nooru, M.P.
7. Hon. Abdullswamad Sheriff, M.P.
8. Hon. Mwadeghu Thomas, M.P.
9. Hon. Chrisanthus Wamalwa, M.P.
10. Hon. Irungu Kang'ata, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

AUDITOR GENERAL'S OFFICE

Mr. Dennis Kariuki - Director of Audit
Mr. Obed K. Chweya - Senior Manager

Mr. Muli Kalinda - Manager

INSPECTORATE OF STATE CORPORATIONS

Mrs Joyce Wesonga - Assistant Inspector General

MINUTE. NO 81/2014 - APPEARANCE BY DR. CYRUS NJIRU FORMER PERMANENT SECRETARY FOR TRANSPORT

The Committee noted with concern that Dr. Cyrus Njiru, the former Permanent Secretary, Ministry of Transport had failed to appear before it. The Committee directed that the former Permanent Secretary be invited again to adduce evidence before the Committee.

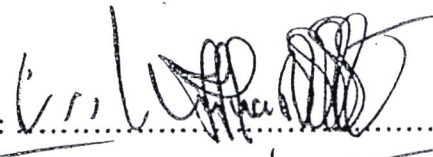
MINUTE NO. 82/2014 - CONFIRMATION OF MINUTES

Minutes of the following sitting were confirmed and signed as true record of deliberations of the Committee.

- (i) Minutes of the 12th sitting were proposed by Hon. Bare Shill, MP and seconded by Hon. Korei Ole Lemein, MP.
- (ii) Minutes of the 13th sitting were proposed by Hon. Kimani Ichung'wah, M.P and seconded by Hon. Korei Ole Lemein, MP.
- (iii) Minutes of the 14th sitting were proposed by Hon. Korei Ole Lemein, MP and Seconded by Hon. Bare Shill, MP.
- (iv) Minutes of the 15th sitting were proposed Hon. Mary Keraa Sally, M.P and seconded by Hon. Paul Outoma, MP.
- (v) Minutes of the 16th sitting were proposed by Hon. Korei Ole Lemein, MP and seconded by Hon. Mary Keraa Sally, MP.
- (vi) Minutes of the 17th sitting were proposed by Hon. Korei Ole Lemein, MP and seconded by Hon. Olago Aluoch, MP.
- (vii) Minutes of the 18th sitting were proposed by Hon. Mary Keraa Sally, MP and seconded by Hon. Olago Aluoch, MP.

MINUTE NO. 83/2014 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Thirty Minutes past Eleven O'clock.

Signed: 
(Chairperson)

Date: 29/03/14

MINUTES OF THE 38TH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON THURSDAY MARCH 13TH, 2014, IN COMMITTEE
ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT
10.00 AM

Hon. Kimani Ichung'wah, M.P. – Vice Chairperson

Hon. Korei Ole Lemein, M.P.

Hon. John Aluoch Olago, M.P.

Hon. Bernard Munyoki Kitungi, M.P.

Hon. Major (Rtd) John Waluke, M.P.

Hon. Cornelly Serem, M.P.

Hon. Adan M. Nooru, M.P.

Hon. Mithika Linturi, M.P.

Hon. Nyagah M. Jonh, MP

Hon. Irungu Kang'ata, M.P.

Hon. Onesmus Njuki, M.P.

Hon. Mary Keraa Sally, M.P.

Hon. Dr. Oburu Oginga, M.P.

Hon. Abdullswamad Sheriff, M.P.

Hon. Sammy Mwaita, M.P.

Hon. Bare Shill, M.P.

Hon. Mwadeghu Thomas, M.P.

Hon. Ogutu John Omondi, M.P.

Hon. Paul Otuoma, M.P.

Hon. Chrisanthus Wamalwa, M.P.

ABSENT WITH APOLOGY

Hon. Adan Keynan, M.P. – Chairperson

Hon. Beatrice Nyaga, M.P.

Hon. Francis Nyenze Mwanzia, M.P.

Hon. Eng. John Kiragu, M.P.

Hon. Johana Ngeno, M.P.

Hon. Njogu Barua, M.P.

Hon. Wafula Wamunyinyi, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Abdullahi Aden

First Clerk Assistant

NATIONAL LAND COMMISSION

Mr. Muhammad A. Swazuri Phd OGW

- Chairman

Mrs. Salome L Murubi - Director Taxation & Valuation

AUDITOR GENERAL OFFICE

Mr. Sammy Kimunguji - Assistant Manager

Mr. Justus Ole Kimiri - Senior Supervisor

IN-ATTENDANCE INSPECTORATE OF STATE CORPORATIONS

Mrs Joyce Wesonga - Assistant Inspector General

MINUTE. NO 04/2014 - EVIDENCE BY THE CHAIRMAN, NATIONAL LAND COMMISSION

The National Land Commission received a request from the Kenya Railway Corporation to acquire land for the Standard Gauge Railway on 19th August 2013. Consequently the Land Acquisition and Compensation Sub-Committee of the National Land Commission held several meetings with Kenya Railways Corporation Staff to explain prerequisite preliminary details since they had no tangible information to allow us undertake the acquisition. Preliminary requirements before any land acquisition or easement is procured by the commission should include the following information and documents:-

1. Cadastral drawings showing how the infrastructure excises each parcel, the parcel list table detailing land parcel numbers, total area of land parcels and acreage affected by the infrastructure for each parcel. These drawings shall be submitted to the commission for scrutiny and records.
2. Provide a listing for parcel numbers indicating the plot reference number; registered owner and affected acreage column in acres. This should be submitted in both soft and hard copy.
3. Official searched of affected land parcels be produced by the Agency. However the Commission will assist where there are challenges in the land registries.

Each agency will have to take the Land Acquisition and committee sub-committee members on a site tour for general appreciation of the locations involved. This will ease in decision making.

Kenya Railways Corporation has so far sub-mitted the first 56km that extends from part of Mavumbo and South Samburu Group ranches in Taita Taveta County, the Kenya wild Life Tsavo –East and Tsavo West parks in Taita –Taveta County to Kathekani in Makueni County. The Kenya Railways Corporation have yet to avail information to the next 220km stretch for verification and validation by the commission.

The National Land Commission subsequently gazette the Notice of Intention to Acquire on the 7th February. 2014 as per the attachment. We are waiting for Kenya Railways Corporation to facilitate the Commission to issue the gazette Notices of Intention to acquire to respective land owners as legally provide for.

The commission is already receiving inquires from the public about the corridor of the standard gauge Railway. However, we have been informing them that the details are yet to be submitted by Kenya railways Corporation. Upon this submission, The national land Commission shall undertake due process as legally provided by the law on compulsory acquisition.

MINUTE NO 05/2014 - COMMITTEE OBSERVATIONS

The Committee observed that:-

- (i) The National Land Commission has not yet received the compensation money from Kenya Railways Corporation as stipulation under Article 40 (3) b (i) which requires prompt payment in full.
- (ii) The National Land Commission has no mandate to acquire land on behalf of Kenya Railways Corporation forcefully.
- (iii) The committee urged the National land Commission to move fast and do the right valuation of the land to fast rack compensation of the land owners.

MINUTE NO.06/2014 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at thirty minutes past five O'clock

Signed:.....

(Chairperson)

Date:23/04/14.....

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MINUTES OF THE 47TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY APRIL 22ND 2014, AT SAROVA WHITE SANDS RESORT IN
MOMBASA AT 10.00 AM

PRESENT:

Hon. Adan Keynan, CBS M.P. – Chairperson
Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
Hon. Francis Nyenze Mwanzia, M.P.
Hon. Bare Shill, M.P.
Hon. Adan M. Nooru, MBS, M.P.
Hon. Chrisanthus Wamalwa, M.P.
Hon. Abdullswamad Sheriff, M.P.
Hon. John M. Nyaga, M.P.
Hon. Dr. Paul Otuoma, EGH, M.P.
Hon. Beatrice Nyaga, M.P.
Hon. Cornelly Serem, M.P.
Hon. Dr. Oburu Oginga, M.P.
Hon. John Aluoch Olago, M.P.
Hon. Johana Ngeno, M.P.
Hon. Onesmus Njuki, M.P.
Hon. Mithika Linturi, M.P.
Hon. Mwadeghu Thomas, M.P.
Hon. Irungu Kang'ata, M.P.
Hon. Bernard Munyoki Kitungi, M.P.
Hon. Eng. John Kiragu, M.P.
Hon. Njogu Barua, M.P.
Hon. Sammy Mwaita, M.P.
Hon. Korei Ole Lemein, M.P.
Hon. Ogutu John Omondi, MP.
Hon. Major (Rtd) John Waluke, M.P.

ABSENT WITH APOLOGY

Hon. Mary Keraa Sally, M.P.
Hon. Wafula Wamunyinyi, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

Mr. Nicolas Emejen	Principal Clerk Assistant
Mr. Abdullahi Aden	First Clerk Assistant
Mr. Joash Kosiba	Fiscal Analyst
Mr. Wilson Dima	Senior Legal Counsel

MINUTE. NO. 109/2014 ADOPTION OF REPORT ON THE PROCUREMENT OF THE TENDER FOR THE CONTRUCTION OF REGIONAL OFFICES AND LABORATORIES FOR THE KENYA BUREAU OF STANDARDS IN MOMBASA

The Committee unanimously adopted the Kenya Bureau of Standards (KEBS) Report which was proposed by Hon. Mithika Linturi, MP and Seconded by Hon. Chrisanthus Wamalwa, MP.

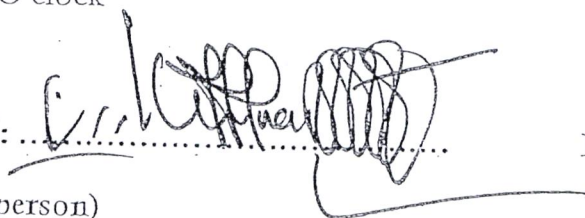
MINUTE NO. 110/2014 - ADOPTION OF THE REPORT ON THE PROCUREMENT AND FINANCING OF THE STANDARD GAUGE RAILWAY FROM MOMBASA TO NAIROBI

The Committee unanimously adopted the Standard Gauge Railway Tender Report which was proposed by Hon. Thomas Mwadeghu, MP and seconded by Hon. Serem Cornelly, MP.

MINUTE NO. 111 /2014 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at thirty Minutes past Seven O'clock

Signed:



(Chairperson)

Date:

24/04/14

ANNEXES



ANNEX 1

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REPUBLIC OF KENYA

Telephone: +254-20-342330

Fax: +254-20-311482

E-mail: eng@kenao.go.ke

Website: www.kenao.go.ke



P. O. Box 30084-00100
NAIROBI

Date.....

KENYA NATIONAL AUDIT OFFICE

C.868 F/ (39)

The Clerk,
National Assembly,
Parliament Buildings
P.O Box 41842-00100
NAIROBI.



28 March 2014

Attention: Mr. Emejien Nicholas

**REPORT WRITING RETREAT BY THE INVESTMENTS COMMITTEE
MOMBASA - 27TH TO 30TH MARCH, 2014**

We make reference to your letter dated 26 March, 2014 and referenced KNA/PIC/CORR/2014 (53) in regard to the above report writing retreat on the Standard Gauge Railway, Telkom Kenya Limited and the Petroleum Refineries Limited.


The audit of the Standard Gauge Railway is still in the planning stage:-

- i) We have been collecting data, besides attending committee meetings to obtain information to aide in our planning process.
- ii) Our planning entails collecting and collating data from various sources to enable well informed decision and assistance to the committee.
- iii) The office has also written to third parties with a view to collaborating on certain areas.

We have however performed desk review and observed the following amongst other issues:-

- i) The need for the Standard Gauge Railway project is well entrenched in Kenya's economic blue print of Vision 2030.
- ii) This is further emphasized by statistical figures from the Kenya Railway Corporation that indicate that in 2011 only 8% of the cargo from the port of Mombasa was transported by rail. The (92%) was transported by the expensive road transport.
- iii) Feasibility study was conducted as well as Environmental impact assessment as required by the Environmental Management Conservation Act of 1999.
- iv) Although a commercial contract between Kenya Railways Corporation and China Road and Bridges Corporation has been signed, the loan agreement has not been signed so, no funds have been disbursed. Consequently it would not be prudent at this juncture to make conclusions as regard to the procurement process or the value for money aspect.

Going forward, and as the project is implemented, the Auditor-General will be able to appraise the Committee on audit findings.



D. T. Kariuki
FOR: AUDITOR-GENERAL

ANNEX 2

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中国路桥 (集团) 总公司

CHINA ROAD & BRIDGE CORPORATION (KENYA)

NAIROBI OFFICE: PLOT L.R. 330/265 Haiharu Rd., Lavington, Nairobi
P.O. BOX 39037, NAIROBI, KENYA. TEL: (254-2) 570031/570272, FAX: 570334

April 15, 2008

Hon. Chirau Ali Mwakwere
Minister for Transport
Transcom House, Ngong Road
P.O.Box 52692-00200
Nairobi

Dear Sir,

RE: MOMBASA – NAIROBI ELECTRIC RAILWAY SYSTEM

Firstly, we would like to congratulate you on your appointment to this vital ministry.

We are a state owned corporation, based in Beijing, and have been in road construction projects in Kenya for more than 20 years. It is our intention in the spirit of cooperation with emerging markets such as Kenya, to assist in supporting the country's priority areas of growth.

In this regard, we seek to assist in establishing Kenya's first electric railway system. We would gladly appreciate your Ministry's able facilitation of this venture. Our first priority would be to secure an understanding with your Ministry (MOU attached). To begin with, this MOU seeks to allow CRBC access to facilitate a feasibility study at our cost. This study should take a period of 3 to 4 months. Once this is complete, CRBC and MOT can make a review and decide on the most suitable way forward.

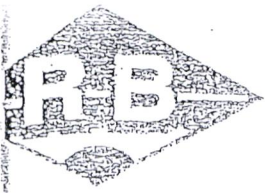
The investment on this project would be large. As we have stated in the MOU, the funding sources of this venture, should it prove viable, will be either a). direct investment from CRBC; and/or b). Buyers credit from (GOV), and/or c). Sellers credit from CRBC; and/or d). Direct investment from other financial institutions. We are also prepared to explore any other methods, should MOU suggest.

Sir, we look forward to your early response on this matter.

Yours Sincerely,

Du Bin
General Manager
China Road and Bridge Corporation (Kenya)

Encl. MOU



中国路桥(泰国)总公司
CHINA ROAD & BRIDGE CORPORATION (KENYA) 2

NAIROBI OFFICE: PLOT L.R. 330/265 Hathi Rd, Limington, Nairobi
P.O. BOX 39037, NAIROBI, KENYA TEL: (254-2) 570331/ 570272. FAX: 570334

September 9th, 2008

H.E. The Prime Minister
Hon. Raila Odinga
Treasury Building
Nairobi, Kenya

Your Excellency Sir,

RE: MOMBASA - NAIROBI ELECTRIC RAILWAY SYSTEM

We write reference above. In April this year, we wrote to the Ministry of Transport (copy attached) seeking consultations on a planned investment on the above reference. We were granted audience by the Honourable Minister, where we were accompanied by our Ambassador H.E. Zhang Ming.

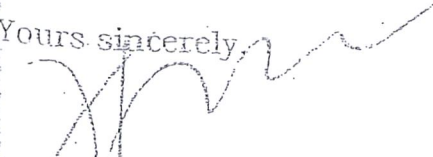
We presented a memorandum of understanding (copy attached) detailing our intention to carry out a feasibility study, at no cost to Government of Kenya, as well as our plans for what maybe Kenya's largest foreign direct investment since independence.

The Minister, subsequently wrote to us expressing Government of Kenya's excitement of the project in July (copy attached). Unfortunately, despite various attempts since this letter, we have had not correspondence from the Ministry of Transport.

Sir, we seek your assistance to this MOU facilitating the feasibility study. Our intention was to complete the study within a period of 100 days and thereafter present our planned investment proposal to the Government of Kenya. We have a team ready to conduct this study immediately.

We await your response Sir.

Yours sincerely,


MR. DU FEI
General Manager

Encls: Support documents

ANNEX 3

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REPUBLIC OF KENYA
OFFICE OF THE DEPUTY PRIME MINISTER
AND MINISTRY OF FINANCE

Telegraphic Address: 22921
FINANCE - NAIROBI
Telephone: 2252299
When replying please quote



MIN. TREASURY
P.O. BOX 30007-00100
NAIROBI
KENYA

Ref. No.: EA/FA 214/78/01/A VOL.VI

10th January 2010

H.E. Mr. Deng Hongbo
Ambassador
Embassy of People's Republic of China
P.O. BOX 30308
NAIROBI.

Your Excellency,

RE: REQUEST FOR A CHINESE FINANCIAL ASSISTANCE TO CONSTRUCT
A STANDARD GAUGE RAILWAY LINE FROM MOMBASA TO
MALABA AND TO DEVELOP LAMU PORT AND ITS ASSOCIATED
INFRASTRUCTURE.

As you are aware, the Government of Kenya is currently implementing the Vision 2030 that seeks to transform Kenya into a middle income country providing high quality of life to all its citizens in a clean and secure environment. The development of infrastructure has been identified as key to support the realization of the Vision objectives.

Kenya is a transit hub supporting the neighbouring countries namely; Uganda, Rwanda, Burundi and the Democratic Republic of Congo. In recognition of the above role, the Government of Kenya continues to invest heavily in the improvement of Northern Corridor Road Network. In deed, the section from Mombasa to Lamu has been reconstructed to high standard road network and the Government is now in the process of improving the section between Lamu and Kisumu City under the Northern Corridor Transport Improvement Project. However, the heavy investment made on the Northern Corridor and benefits accrued are in danger since the railway line has been non-functional for some time and therefore unable to cope with the current and future demands.

The Government of Kenya recognizes the importance of safeguarding the heavy investment made on the Northern Corridor Road Network, and therefore, the need to construct a standard gauge railway line from

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~~that it is enforceable.~~ In the circumstances that for what you need is an enforceable agreement which can only be considered and actioned by the Ministry of Finance.

By a copy of this letter both the Ministry of Finance and Kenya Railways Corporation are advised accordingly.

Yours Sincerely

Adnan

Eng. Abdulrazzaq Adan Ali, HSC
PERMANENT SECRETARY

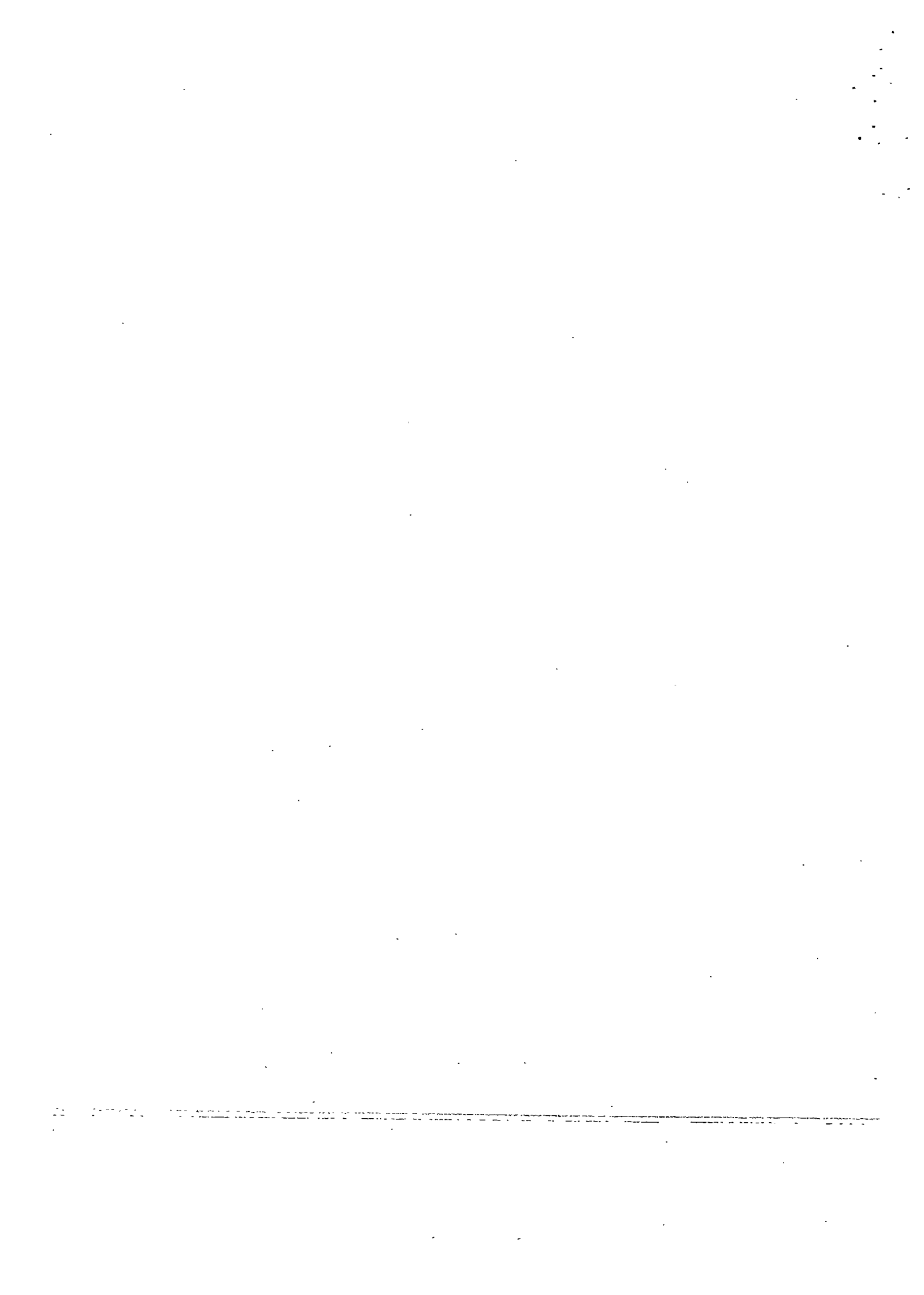
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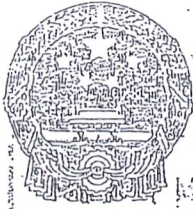
Mr. Joseph K. Kinyua, CBS
Permanent Secretary
Ministry of Finance
TREASURY

Mr. Wanjuki Mucheri, CBS
Solicitor General
State Law Office
NAIROBI

Mr. Nduga Muli
Managing Director
Kenya Railways Corporation
NAIROBI

ANNEX 4

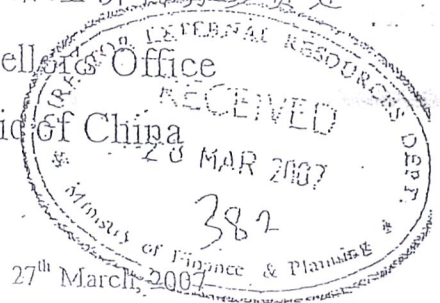




中华人民共和国驻肯尼亚共和国大使馆经济商务参赞处

SECRETARIAT OF FINANCE RECEIVED
Economic and Commercial Counsellor's Office
Embassy of the People's Republic of China

P.O. Box 30007
NAIROBI



Mr. JOSEPH K. KINYUA
Permanent Secretary
Ministry of Finance
NAIROBI

①
JTC
Tina 25/3
JTC

Dear Sir,

Re. Concessional Loan for Kenya Rural Telecommunications Development Project (Phase II)

Kindly refer to your letter EA/FA 214/78/01/W/(72) of January 29, 2007 to H.E. Mr. Zhang Ming, Ambassador of the People's Republic of China, on the above subject.

The Chinese Government is in full support of the Kenya Rural Telecommunications Development Project (Phase II) and we have no objection that this project is tendered competitively by Chinese companies represented in the country.

③ we had requested Chinese Govt to ensure competitive bidding for the project and have agreed

Yours sincerely

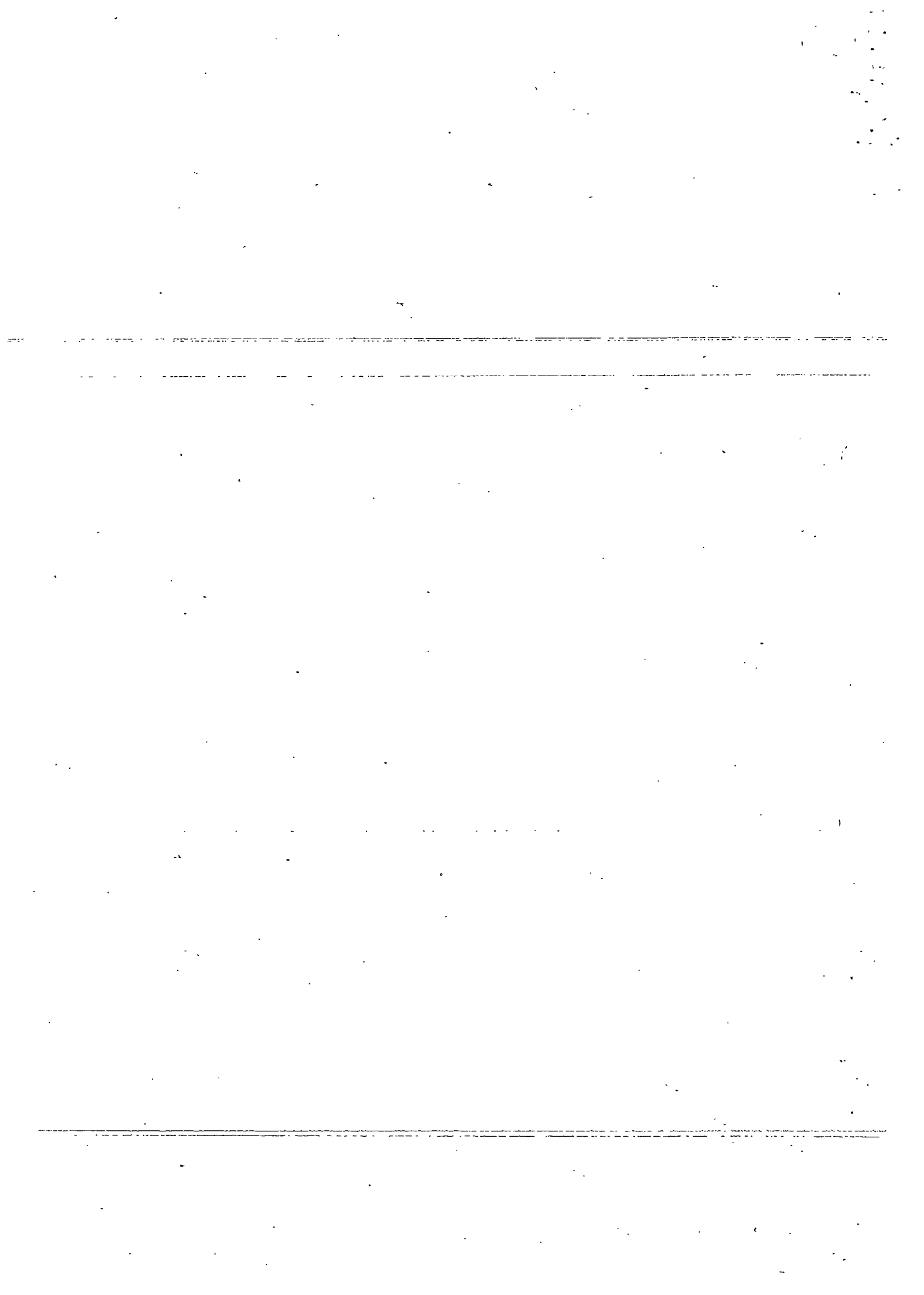
[Handwritten signature]



Li Yuan
Economic and Commercial Counsellor
Embassy of the People's Republic of China

② Mr. Mofcom
Dear
He
25/3/07





REPUBLIC OF KENYA
MINISTRY OF FINANCE

Telegraphic Address: 22921
FINANCE - NAIROBI
Telephone: 252299
When replying please quote



THE TREASURY
P.O. Box 30007-00100
NAIROBI
KENYA

Ref. No. EA/FA 214/78/01/W/(72)

29th January, 2007

H.E. Mr. Zhang Ming
Ambassador
Embassy of the People's Republic of China
P.O. Box 30508
NAIROBI

Your Excellency,

RE: CONCESSIONAL LOAN FOR THE KENYA RURAL
TELECOMMUNICATIONS DEVELOPMENT PROJECT (PHASE
II)

I am writing to first express our appreciation to your Government and the people of China for availing funds for the Phase I of the Kenya Rural Telecommunications Development project, which is now under implementation.

As you may be aware, we submitted an application for another concessional loan financing for the Phase II of the above project on 26th September, 2006 and are grateful to note that our request is now under consideration. We are also aware that Exim Bank procedures require that a Commercial Contract be signed between the implementing Agency (Ministry of Information and communications) and a Chinese Company, prior to the signing to the Loan Agreement.

In view of the above, the Government would be grateful if the project is tendered competitively by Chinese Companies represented in the country.

This will not only enable the Government to get value for money, but also promote transparency in as far as the project's procurement process is concerned.

Please accept, Your Excellency, assurances of our highest consideration.

Yours

Sincerely,



JOSEPH K. KINYUA, CBS
PERMANENT SECRETARY/TREASURY

c.c. Dr. Bitange Ndemo
Permanent Secretary
Ministry of Information and Communications
P.O. Box 30025
NAIROBI

ANNEX 5

World Bank Listing of Ineligible Firms & Individuals

Available in: [Español](#)

Fraud and Corruption

This List is Current

The firms and individuals listed in Table 1 below are ineligible to be awarded a World Bank-financed contract for the periods indicated because they have been sanctioned under the Bank's fraud and corruption policy as set forth in the [Procurement Guidelines](#) or the [Consultant Guidelines](#). Such sanction was imposed as the result of:

(1) an administrative process conducted by the Bank that permitted the accused firms and individuals to respond to the allegations. Through July 2007, this process was conducted in accordance with the [Sanctions Committee Procedures](#) adopted on August 2, 2001. Since then, the process has been conducted in accordance with the [Sanctions Procedures](#) of the World Bank Group Sanctions Board. For more information on the two-tier sanctions process go to [Sanctions Management](#) webpage.

OR

(2) cross-debarment in accordance with the Agreement for Mutual Enforcement of Debarment Decisions dated 9 April 2010, which, as of July 1, 2011, has been made effective by the World Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, and African Development Bank.

Click [here](#) to see additional notes on debarred firms and individuals and [here](#) to see an explanatory note on the application of cross-debarment.

The Bank may also apply other actions to firms and individuals that do not result in debarment. For the current list, see [Table 2: Other Actions](#).

To report allegations of fraud and corruption in Bank-financed projects, please contact the [Integrity Vice Presidency](#).

Table 1: Debarred & Cross-Debarred Firms & Individuals

Note: To obtain the best results when performing a search, it is advised that only a portion of the firm/individual name be entered. This allows for the greatest chance of seeing all sanctioned entities with names close to or exactly as those being searched. For example, to search for:

C.V. ABCD, enter ABCD;
 ABCD Engineers SRL, enter ABCD or ABCD Engineers; or
 ABCD Royal Consulting Co., enter ABCD, or ABCD Royal, or Royal Consulting

Please also avoid accentuated characters and generic terms such as: Ltd.; Limited; Corp.; etc.

Debarred Firms and Individuals

Name: Country:

Firm Name	Address	Country	Ineligibility Period		Grounds
			From	To	
CHINA HUNAN CONSTRUCTION ENGINEERING GROUP CORPORATION (CHCEGC)*165	HEADQUARTERS ADDRESS: 788 SECTION 1, SOUTH FUROUNG AVENUE,	China	01-OCT-2013	30-SEP-2015	Procurement Guidelines, 1.14(a)(ii)

	CHANGSHA, HUNAN				
CECEP NEW HOPE & TARLROAD (BEIJING) ENVIRONMENTAL TECHNOLOGY CO., LTD.*157	FLOOR 6, BLOCK A, JIENENG BUILDING, 42 XIZHIMEN NORTH ST., HAIDIAN DISTRICT, 100082, BEIJING	China	28-JUN-2013	28-JUN-2015	2006 Procurement Guidelines, para. 1.14(a)(ii)
SNC-LAVALIN (CHINA) ENGINEERING AND MANAGEMENT INC.*150	888 SHENDA ROAD, SHENYANG ECONOMIC & TECHNOLOGICAL DEVELOPMENT ZONE, SHENYANG	China	17-APR-2013	17-APR-2023	Consult. Guidelines 1.22(a) (i)-(ii); Proc. Guidelines 1.15(a)(i)-(ii)
SNC-LAVALIN (SHANGHAI) INTERNATIONAL TRADING CO. LTD.*150	401-405 HUA WEN PLAZA, 999 ZHONGSHAN ROAD (WEST), 20051, SHANGHAI	China	17-APR-2013	17-APR-2023	Consult. Guidelines 1.22(a) (i)-(ii); Proc. Guidelines 1.15(a)(i)-(ii)
ZHONGHAO OVERSEAS CONSTRUCTION ENG. CO., LTD.*106	SUITE 617 EAST PLAZA, 5 NORTH ROAD, WEST 4TH RING ROAD, HAI DIAN DISTRICT, 100195, BEIJING	China	30-MAY-2012	29-MAY-2014	Procurement Guidelines, 1.14(a)(ii)
ALSTOM HYDRO CHINA CO., LTD.*97	NO. 237, JINGSAN ROAD, AIRPORT ECONOMIC AREA, TIANJIN,	China	21-FEB-2012	20-FEB-2015	1996 Procurement Guidelines 1.15(a)(i)-(ii)
CHINA FIRST METALLURGICAL CONSTRUCTION CORPORATION (CFMCC) *57	NO. 3, INDUSTRY AVENUE, QINGSHAN DISTRICT, WUHAN, HUBEI, 430081,	China	26-SEP-2011	25-SEP-2014	Procurement Guidelines 1.15(a)(ii)
CHINA FIRST METALLURGICAL GROUP CO., LTD.*57	NO. 3, INDUSTRY AVENUE, QINGSHAN DISTRICT, WUHAN, HUBEI, 430081,	China	26-SEP-2011	25-SEP-2014	Procurement Guidelines 1.15(a)(ii)
ZHEJIANG ZHEDA INSIGMA GROUP CO. LTD. (INSIGMA GROUP)	212 WENER ROAD, HANGZHOU, ZHEJIANG 310007	China	15-SEP-2011	11-AUG-2014	Cross Debarment: EBRD
ZHEJIANG ZHEDA INSIGMA TECHNOLOGY CO. LTD.	NO. 226 TIANMUSHAN ROAD, 12F, HANGZHOU, ZHEJIANG 310007	China	15-SEP-2011	11-AUG-2014	Cross Debarment: EBRD
ZHONGKE LIFE SCIENCE & TECHNOLOGY CO., LTD. *40	NO. 88, ZHIYUAN ROAD, WUKANG TOWN, DEQING COUNTY, ZHEJIANG 313200	China	26-JUL-2011	25-JUL-2014	Procurement Guidelines 1.14(a)(ii)

HEFEI HIGHWAY & BRIDGE PROJECT CO. LTD. *37	NO. 199, BLOCK B, HAOZHOU ROAD, HEFEI CITY, ANHUI PROVINCE,	China	28-JUN-2011	Ongoing	Procurement Guidelines 1.14(a)(ii)
MR. YANG LIN * 30	C/O SUITE 617 EAST PLAZA, NO. 15 NORTH ROAD, WEST 4TH RING ROAD, HAI DIAN DISTRICT, 100195, BEIJING	China	11-MAY-2011	10-MAY-2014	Procurement Guidelines 1.14(a)(ii)
DAQING OILFIELD HIGHWAY & BRIDGE ENGINEERING CO., LTD.	NO. 19, XIJING ROAD, RANGHULU DISTRICT, DAQING CITY	China	07-MAR-2011	19-NOV-2017	Cross Debarment: ADB
CHINA COMMUNICATIONS CONSTRUCTION COMPANY LIMITED, as the successor or assign to China Road and Bridge Corporation *21	NO. 85, DESHENG MENWAI STREET, BEIJING 10008,	China	12-JAN-2009	11-JAN-2017	Procurement Guidelines 1.15(a)(ii)
CHINA STATE CONSTRUCTION ENGINEERING CORPORATION (CSCEC) *22	N/A, BEIJING	China	12-JAN-2009	11-JAN-2015	Procurement Guidelines 1.15(a)(ii)
CHINA WUYI CO. LTD *23		China	12-JAN-2009	11-JAN-2015	Procurement Guidelines 1.15(a)(ii)

Notes on Debarred Firms & Individuals

Several firms above are marked with an asterisk (*). The explanations for these are as follows:

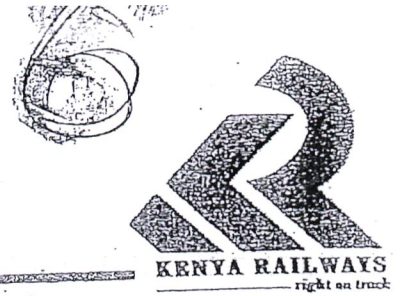
- *1 The period of ineligibility of the sanctioned firm extends to any firm directly or indirectly controlled by the sanctioned firm.
- *2 The period of ineligibility of Eksen Proje İnşaat Turizm Ve Ticaret Anonim Şirketi ("Eksen") extends to any organization directly or indirectly controlled by the sanctioned firm. The period of ineligibility of Eksen may be reduced by up to one year if, after two years of ineligibility, Eksen has taken appropriate steps to cooperate with the World Bank and if Eksen has put in place an effective corporate compliance program acceptable to the World Bank and has implemented this program in a manner satisfactory to the World Bank.
- *6 The period of ineligibility of Global Spin-Weave Limited extends to any firm directly or indirectly controlled by the sanctioned firm. The period of ineligibility of Global Spin-Weave Limited may be reduced by up to one year if, after four years of ineligibility, Global Spin-Weave Limited has put in place an effective corporate compliance program acceptable to the World Bank, and has implemented this program in a manner satisfactory to the World Bank.
- *10 The period of ineligibility of Glocoms, Inc. extends to any legal entity that it directly or indirectly controls. The minimum period of ineligibility is the eight-year period indicated in the posting above; provided, however, that after this minimum period of ineligibility of eight years, Glocoms, Inc. may be released from ineligibility only if it has demonstrated to the World Bank Group's Integrity Compliance Officer that it has complied with the following conditions: (a) it has taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (b) it has put in place an effective integrity compliance program acceptable to the Bank and has implemented this program in a manner satisfactory to the Bank.
- *11 The period of ineligibility of Maurence Anguh extends to any legal entity that he directly or indirectly controls, including but not limited to The Glocoms Group, Inc., Global Technology Solutions, Inc. and Glosolve Limited. The minimum period of ineligibility is the eight-year period indicated in the posting above; provided, however, that after this minimum period of ineligibility of eight years, Maurence Anguh may be released from ineligibility only if he has demonstrated to the World Bank Group's Integrity Compliance Officer that he has complied with the following conditions: (a) he has taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned; (b) he has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics; and (c) any legal entity that he directly or indirectly controls has put in place an effective integrity compliance program acceptable to the Bank and has implemented this program in a manner satisfactory to the Bank.
- *15 The period of ineligibility of OREDAR extends to any firm directly or indirectly controlled by the sanctioned firm. The period of ineligibility of OREDAR may be reduced by up to one year if, after one year of ineligibility, the Sanctions Board determines that OREDAR has put in place a corporate compliance program acceptable to the World Bank and has implemented this program in a manner satisfactory to the World Bank.
- *21 Pursuant to Section 9.05 of the Sanctions Procedures, the ineligibility of China Road and Bridge Corp. applies to China



ANNEX 6

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P. O. Box 30121 - 00100, Nairobi, Kenya
Tel: +254-020-2215211, 2215796
Cell: 0728-603581, 0728-603582
Fax: +254-020-340049/224156
E-mail: md@krc.co.ke
Website: www.krc.co.ke



Ref: OPR. 9

Date: 3rd October, 2012

M/s China Road and Bridge Corporation (CRBC)
C88, Zhonglu Plaza,
Andingmenwai Dajie, 11
BEIJING, CHINA

Tel: 0086 10 64280055, Fax: 0086 10 64285667

Dear Sirs,

**RE: SUPPLY AND INSTALLATION OF THE FACILITIES, LOCOMOTIVES
AND ROLLING STOCKS FOR THE MOMBASA-NAIROBI
STANDARD GAUGE RAILWAY PROJECT**

LETTER OF AWARD

This is to notify you that the Kenya Railways Corporation has accepted your proposal dated 18th June, 2012 for **Supply and installation of the facilities, locomotives and rolling stocks for the Mombasa-Nairobi Standard Gauge Railway Project** for the amount USD1,146,791,008.75 (Say United States Dollars One Billion One Hundred Forty Six Million Seven Hundred Ninety One Thousand Eight and Cents Seventy Five Only) exclusive of Value Added Tax, Customs Duties, IDF Fee, Cess, and Withholding Tax.

The aforementioned amount is the Contract Price payable in consideration of the execution and completion of Services as prescribed in the Contract Document.

In accordance with the provisions of the contract, the Managing Director of Kenya Railways Corporation will be the Buyer's Representative. The Managing Director shall appoint a Representative to perform the duties set under the said Conditions of Contract.

The Powers and Authority of the Buyer's representative shall be notified to you in writing.

008

All correspondence should be addressed to the Managing Director

You are now required to give a formal written unconditional acceptance of this offer and to produce a detailed and resourced Program of Works with superimposed cash flow based on the forty eight (48) months period for completion of the contract, both to be approved by the Managing Director.

This Notification of Award shall lead to conclusion of a contract between the parties, which shall be confirmed through the signing of the Contract Agreement by you and the Buyer.

Yours faithfully,



Nduva Muli
MANAGING DIRECTOR



ANNEX 7

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P.O. Box 30121 - 00100, Nairobi, Kenya
Tel: +254-020-2215211, 2215796
Cell: 0728-603581, 0728-603582
Fax: +254-020-340049/ 224156
E-mail: md@krc.co.ke
Website: www.krc.co.ke



Ref: OPR:9

Date: 14th March, 2013

M/s China Road and Bridge
Corporation (Kenya)
Plot L.R.330/265 Hatheru Road,
Lavington
P.O. Box 39037 - 00623
NAIROBI
Tel: 020 3870331

Dear Sirs,


**RE: TENDER NO.KRC/PLM/31/2012 - SUPPLY AND INSTALLATION
OF FACILITIES, LOCOMOTIVES AND ROLLING STOCK FOR THE
MOMBASA NAIROBI STANDARD GAUGE RAILWAY PROJECT**

This is to inform you that our award Letter dated 3rd October, 2012 for the above tender is hereby withdrawn.

The decision to withdraw the award letter is based on the review of section 6(1) of the PPD Act 2005, which states as follows: "where any provision of this Act conflicts with any obligations of the Republic of Kenya arising from a treaty or other agreement to which Kenya is a party, this Act shall prevail except in instances of negotiated grants or loans".

The above provision of the PPD Act exempts this procurement from the application of the Act, as this is a procurement to be funded by a negotiated grant /loan on a G to G memorandum of understanding. The award letter therefore has no relevance to this project.

Yours faithfully,


Nduva Muli
MANAGING DIRECTOR

On 14/03/2013

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ANNEX 8

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THE STATE LAW OFFICE
DEPARTMENT OF TREATIES AND AGREEMENTS

MOT/S/8.002 VOL.II/42

3rd October, 2012

Ref: _____

Date: _____

AG/CONF/SEC/14/153 VOL VII

Ref: _____

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Dr. Eng. Cyrus Njiru, PhD., CBS
Permanent Secretary,
Ministry of Transport
Transcom House
Ngong Road
NAIROBI

SUPPLY AND INSTALLATION OF THE FACILITIES, LOCOMOTIVES AND ROLLING STOCKS FOR THE MOMBASA-NAIROBI STANDARD GAUGE RAILWAY PROJECT

We refer to the letter Ref: MOT/S/8.002 VOL. II/ (34) dated 27th September 2012 from your Ministry and the letter received from the Kenya Railways dated 1st October 2012 and referenced OPR.9 in response to our Ref: AG/CONF/14/153 VOL.VII dated 17th September 2012 raising issues on the above subject matter.

We have taken note of the response received from the Kenya Railways Corporation (KRC) to the issues which we had raised vide our letter mentioned above. We wish therefore, to respond as follows:

1. Local address for the representative: We note that KRC has provided the local address of the Seller M/S China Road and Bridge Corporation (CRBC) as we had proposed.
2. Project procurement: We note that KRC has confirmed that it will rely upon the provisions of Section 6 of the Public Procurement and Disposal Act.
3. Completion Certificates: We note that KRC has amended the Contract to reflect this requirement.
4. Overland transportation of Commodities: We note that KRC has amended the Contract in line with our recommendation.

5. Standards: We have taken note of the revised provision and find the same appropriate.
6. Arbitration: Kindly note that the revision made on this clause in Section 11 is potentially more disadvantageous than the former provision. Therefore, we propose that in the event the Parties fail to agree to the seat of arbitration the seat of arbitration shall be London.

Based upon the letter mentioned above received from KRC, we can surmise the following undertakings from the Corporation:

- A. The Commercial Contract is a component of the entire project and its conclusion is a prerequisite to obtaining financing from the Government of China for the project. Therefore, this legal opinion on the said Contract shall be strictly applied to the terms and conditions of the Contract.
- B. Clearance for the Financing Agreement and the project in general shall be subjected to the consideration and approval of the Treasury.
- C. The procurement process shall be subjected to the Financing Agreement and therefore Section 6 of the Public Procurement and Disposal Act shall apply.

Based on the above, the Commercial Contract may be signed on behalf of the Government as a step in the process of carrying out the Project at hand.

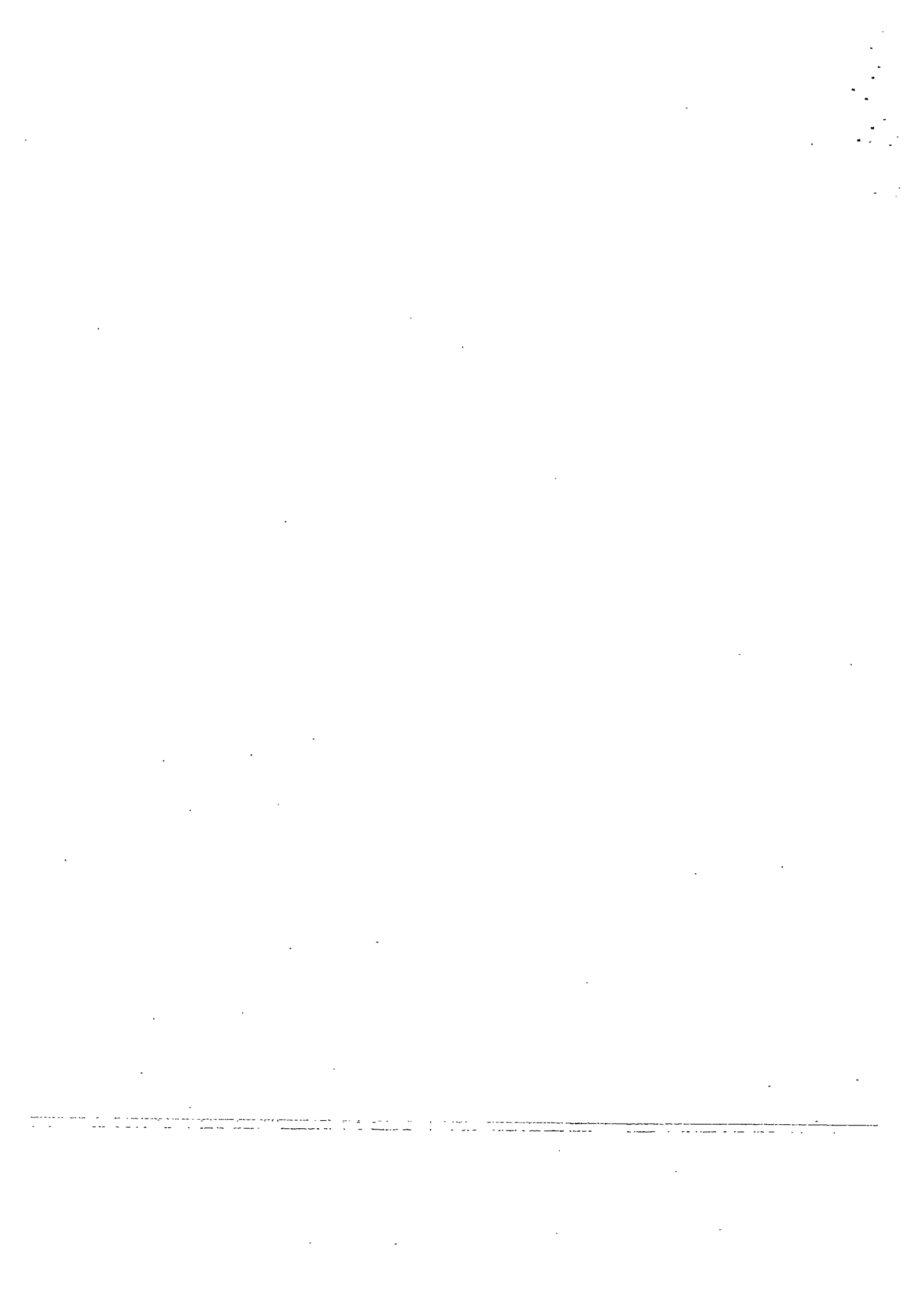


DORCAS ACHAPA, MBS
DEPUTY SOLICITOR-GENERAL

Copy to: **Mr. Joseph K. Kinyua, CBS**
Permanent Secretary
Ministry of Finance/Treasury
NAIROBI

Mr. Nduva Muli
Managing Director
Kenya Railways Corporation
P. O. Box 30121 00100
NAIROBI

ANNEX 9



Annex

MEMORANDUM OF UNDERSTANDING AND COOPERATION

The Memorandum made and executed on the 12th day of August, 2009 at Nairobi, Kenya, by and between.

The Ministry of Transport with office at the Transport House, Nairobi Road, P.O. Box 52692-09200, Nairobi, represented herein by Hon. Anib. Chirau Ali Mwakwere, Minister for Transport, and hereinafter referred to as "MOT".

- and -

CHINA ROAD AND BRIDGE CORPORATION, a state owned corporation created and organized under the laws of the People's Republic of China, with principle office at Zhonglu Plaza C88 Andingmenwai Dajie, Beijing, China, with branch office in the Republic of Kenya at P.O. Box 39037, Nairobi and represented herein by its General Manager, Kenya Office, Mr. Du Fei, hereinafter referred to as the "CRBC"

WHEREAS, the Government of the Republic of Kenya (the Kenyan Government) seeks to construct and develop an orderly and efficient Mombasa - Nairobi Electric Railway system with a total length of about 500Km ("The Project").

WHEREAS, the Kenyan Government realizes the urgency and necessity of the construction and completion of the Project and has agreed to accept the technical and financial assistance offered by various financial institutions and the China Road and Bridge Corporation through CRBC to undertake Design, Construction, and supervision of the Project;

WHEREAS, the MOT considers the above CRBC proposal to be advantageous to the interests of the Kenyan Government and has agreed to CRBC's initial proposal to undertake a Feasibility Study including preliminary design (the "Study") of the Project, at no cost to MOT;

NOW THEREFORE, the parties hereto agree as follows

I. THE STUDY

Scope of the study. The CRBC shall undertake the Study and such other related studies as it may deem necessary on the feasibility of the Project. Upon the request of MOT, the scope of the Study will be extended from Nairobi to Malaba. The Study shall consider the technical details of the Project, the financing required and the legal manner by which the Project shall be implemented. The Study shall include, but not be limited to,

the assessment of the financial, legal and financial viability of the Project, including technical feasibility and cost estimates taking into consideration the requirements of related financial institutions and/or CRBC

Preliminary Information. Within thirty days (30) from the execution of this Memorandum, CRBC shall provide MOT, with a list of requirements with respect to information which CRBC would like MOT to supply (the "List") for the study. Within thirty (30) days from receipt of the list, MOT shall furnish CRBC with the information requested by CRBC provided such information is available to MOT.

Presentation of the Study. As soon as practicable after execution of this Memorandum, CRBC shall organize and appoint a team of experts to undertake the Study. The CRBC shall present the Study to MOT within 5 months from the date of this Memorandum.

Reservation. The MOT shall not be bound whatsoever by the results and conclusion of the study. The MOT reserves the right to evaluate, study, accept, reject, adopt and/or utilize the Study for its own purposes and uses without any liability whatsoever, provided however that the MOT shall not permit the contents or information contained in the study or any relevant documents and/or information produced by the Study including any information disclosed by CRBC to the MOT, to be disclosed to or otherwise used in any way or for any purpose whatsoever by anyone other than the parties hereto except for the purpose of enabling CRBC to pursue and implement the project.

Cost of the Study. All costs and expenses to undertake and complete the Study shall be for the sole account of CRBC, provided that any relevant information which is in the possession of the MOT or which can be obtained by the MOT without cost to it shall be provided to CRBC by the MOT free of the cost and charges to CRBC.

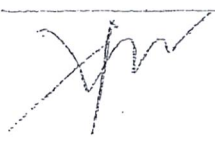
The Term of Reference of the Study shall be prepared by CRBC in consultation with MOT.

The Study shall include the legal implications of the implementation of the Project in light of the existing contracts, Joint Venture Agreements and the like affecting the Site/location of the Project.

Completion of the Study. After completion of the study, the parties hereto will conduct consultation on the result of the study and explore in good faith the possibilities of the parties having a meaningful participation in undertaking the Project in accordance with law of Kenya. If the Study was approved by MOT, CRBC would be the sole agent to design (Engineering, Procure and Contract), construct and supervise all the works of the Project.

II. THE EPC CONTRACT

If the Study was approved by MOT, CRBC shall dispatch an expert team to carry out the preliminary design of the Project immediately with the help from MOT.



The design shall include the technical and financial aspects of the Project as well as terms and conditions of the EPC Contract after consultation with MOT

After the completion and agreement of design from MOT and CRBC, both parties shall appoint their own committee to start the negotiation immediately on the commercial contract of the Project on the basis of EPC.

An EPC commercial contract for the Project will be duly signed by both parties

III. FINANCING OF THE PROJECT

After the signing of the commercial contract of the Project, CRBC shall try its best to look for the sources for the funding of the Project.

The following two ways may take the fund/loan to execute the commercial contract after the agreement between Kenya Government and CRBC a. to establish a firm (concessioning) and/or b. Kenya Government.

The funding resources may be the followings:

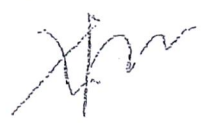
- a. Direct investment from CRBC; and/or
- b. Buyer's credit from Kenya Government; and/or
- c. Seller's credit from CRBC; and/or
- d. Direct investment from other financial institutions; and/or
- e. Other sources identified in future.

IV. GENERAL PROVISIONS

Separability: If any provision contained herein is declared ineffective, void, voidable or unenforceable by other parties that provision shall (without in any way affecting the effectivity, validity, legality and enforceability of remainder hereof) be severable herefrom and this Memorandum shall be read and construed and take effect for all intents and purposes as if that provision were not contained herein.

Further Review: This Memorandum shall be subject to further review in pertinent government institutions in Kenya and China, if such review is deemed necessary

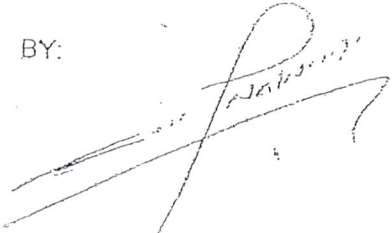
IN WITNESS WHEREOF, the parties hereto set their hand on the date and place first above written.



Ministry of Transport

China Road and Bridge Corporation

BY:



Hon. Amb. Chirau Ali Mwakwere, FCILT, EGH, MP
Minister for Transport

BY:



Du Fei
General Manager
China Road and Bridge Corp (Kenya)

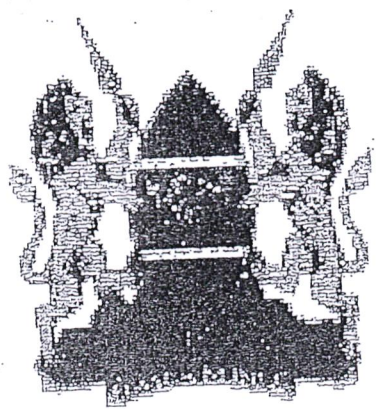
ANNEX 11

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Annex 1/

to



**THE MOMBASA TO KAMPALA AND KISUMU
STANDARD GAUGE RAILWAY DEVELOPMENT
PROJECT**

**DUE DILIGENCE REPORT ON CHINA ROAD AND
BRIDGE CORPORATION**

NOVEMBER 2012

1.0 BACKGROUND

The Government of Kenya has identified transport as the critical enabler for the delivery of Vision 2030, which aims to make Kenya a middle income country by the year 2030. In line with this, the Government through the Ministry of Transport is focusing on developing and improving the transport sector as a key driver to economic development. The railway sub-sector, which has been underperforming over the years, is in urgent need of revamping to ensure it plays its rightful role in the economic and social development of the Country and the Region

The current railway system in Kenya linked to Uganda was developed over 100 years ago and now has serious limitations in terms of technology and capacity. Regarding capacity, the current railway handled only 1.6 million tonnes in 2011 compared to Mombasa Port throughput of 20 million tonnes the same year at a growth rate of 6%. The balance of the traffic was therefore handled by the more expensive road transport. The current railway system will therefore not achieve the development aspirations of Vision 2030.

Under the auspices of the East African Community, the East African Railway master Plan for the standard gauge railway network has been prepared and various standard gauge railway networks are contemplated.

On 28th October, 2008, the H. E Mwai Kibaki the President of the Republic of Kenya and H. E. Yoweri Kaguta Museveni the President of the Republic of Uganda issued a communiqué at the State House Nairobi that a new high capacity Standard Gauge Railway be built linking the port of Mombasa to Kampala with a branch line to Kisumu and Pakwach (the Railway).

In order to action the communiqué, the Cabinet, on 3rd August, 2012, approved the development of a new standard gauge railway linking Mombasa to Malaba with a branch line to Kisumu. The Cabinet directed that the railway be developed through a Government-to-Government arrangement supported by Government Budget and a Railway Development Fund. The Cabinet also directed that the Government signs a bilateral Agreement with the Government of the Republic of Uganda for joint development of the railway and subsequent seamless operation. The Ministers responsible for

transport in Kenya and Uganda have since signed the Bi-lateral Agreement.

2.0 THE MOMBASA TO MALABA/KISUMU STANDARD GAUGE RAILWAY DEVELOPMENT

The development of the Railway will involve the construction and subsequent operation of approximately 1,250 kilometres of standard gauge railway between Mombasa and Malaba and Kisumu. The project development will be split up the development of the Railway into two phases (Phase 1 – Mombasa to Nairobi; Phase 2 Nairobi to Malaba and Kisumu).

On 12th August 2009, the Government signed a Memorandum of Understanding with China Road and Bridge Corporation (a state owned corporation) for the Feasibility Study and Preliminary Design of Phase 1 (Mombasa to Nairobi section). The Report was submitted to the Government in January 2012 and following discussions between Kenya Railways and China Road and Bridge Corporation, Kenya Railways approved the Feasibility Study and Preliminary design Report on 26th June, 2012.

Following the approval of the Feasibility Study and Preliminary Design, Kenya Railways and China Road and Bridge Corporation negotiated commercial turnkey contracts for Civil Works and for the Supply and Installation of Facilities, Locomotives and Rolling Stock. The contracts were then approved by the Ministry of Transport and the Attorney General's Office and subsequently signed by Kenya Railways and China Road and Bridge Corporation on, 11th July, 2012 for the Civil Works and 4th October, 2012 for the Facilities, Locomotives and Rolling Stock. The commercial contracts are prerequisite to the negotiations for identifying funding for the project from The People's Republic of China and will become effective only after executing the Financial Agreement.

3.0 DUE DILIGENCE ON CHINA ROAD AND BRIDGE CORPORATION (CRBC)

Following the signing of the commercial contracts, it became necessary to ascertain the technical, financial and legal capacity of CRBC to undertake the implementation of the project. The Government therefore sent a delegation to China from 27th October to

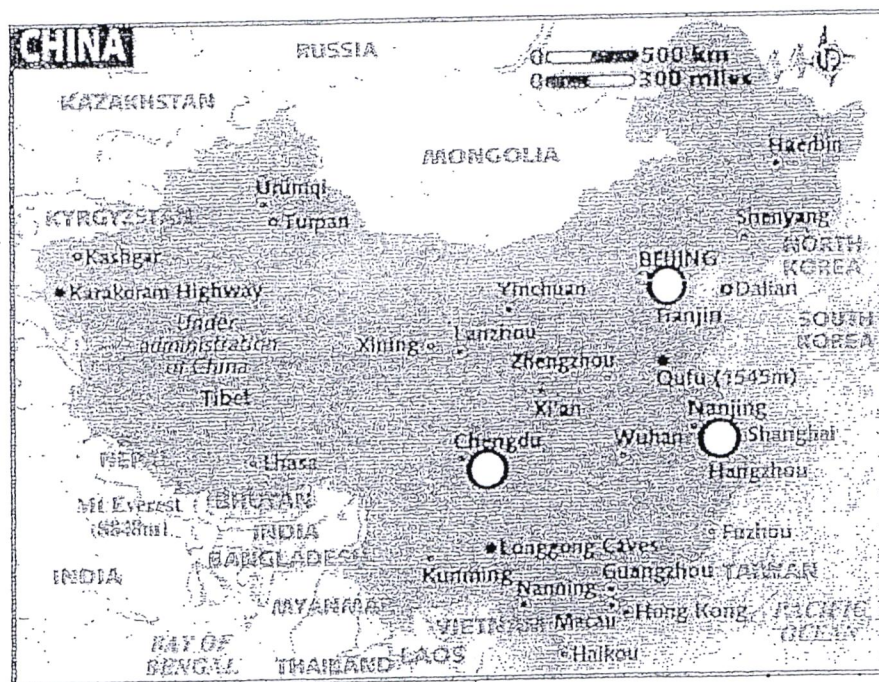
5th November, 2012 to undertake due diligence on CRBC. The Delegation took advantage of the visit to China to discuss with EXIM Bank of China the details and conditions for funding of the project.

3.1 Composition of the Delegation

Name	Organisation	Designation	Expertise
Mr. Nduva Muli	KR	Managing Director	Leader of the Delegation
Ms. Teresa Icharia	Ministry of Transport	Senior Assistant Director – Supplies Chain Management	Procurement
Mr. Robert Julius Wanyondu Gatonga	Ministry of Finance	Senior Economist	Finance
Mr. Alfred Matheka	KR	General Manager (Finance)	Finance
Ms. Marianne Kitany	KR	ICT Manager	Signalling and communication
Eng. Solomon. Ouna	KR	Project Manager (SGR & CS)	infrastruciere, locomotives and rolling stock

3.2 Cities Visited

The due diligence process took the Delegation to Beijing, Nanjing and Chengdu as illustrated in the map below.



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3.3 Objectives of the due diligence

- i) Confirm China Road and Bridge Corporation **technical, financial and managerial/human resource** capacity to deliver the Railway Project
- ii) Visit China Road and Bridge Corporation nominated partners for the Railway Project development and confirm their capacity to deliver supporting facilities for the project
- iii) Experience Chinese technology in design and functionality of railway infrastructure and support facilities to be applied to Mombasa – Malaba/Kisumu Railway
- iv) Confirm with China EXIM Bank that China Road and Bridge Corporation meets the EXIM Bank criteria for the Bank to support projects being undertaken by CRBC.

3.4 Methodology of the Due Diligence

The Delegation adopted the following methodology:

- i) Site visits to:
 - CRBC Headquarters
 - Construction sites of ongoing projects being undertaken by CRBC – description of the project
 - Equipment manufacturing facilities
 - EXIM Bank
- ii) Gaining experience on:
 - Chinese railway operations, management and technology
- iii) Review CRBC document including:
 - Financial Statements – 2009 to 2011 (Annex I)
 - Project profiles (on completed and ongoing projects) (Annex II)
 - Kenya Mombasa to Nairobi Railway project Construction Plan (Annex III)

4.0 DUE DILIGENCE PROCESS

4.1 Visit to CRBC Headquarters

CRBC is a Government institution of the People's Republic of China. The Corporation is registered by the State Administration for Industry and Commerce since 8th December, 2005; registration No. 1000001003996. The registered address is C88 Andingmenwai Road Dongcheng District Dajie Zhonglu Plaza Beijing. The findings by the Delegation regarding the status of CRBC are listed below.

- CRBC is a large scale state-owned foreign trade and economic corporation enterprise that focuses on construction of roads, railways, airports and other transport infrastructure
- The Corporation serves as a window and a platform for the overseas operations of China Communications Construction Company Limited
- CRBC has established relevant branches in 40 countries globally
- The Corporation has undertaken several large railway development projects in China including Beijing – Shanghai High Speed Railway, Harbin – Dalian passenger dedicated line, Guangkun mixed traffic railway among others;
- CRBC is a reputable company with national and international recognition for the delivery of infrastructure projects
- CRBC has the technical, financial and managerial/human resource capacity to deliver the Railway Project

The The Government of Kenya may therefore enter into discussions with CRBC for the development of the Mombasa to Nairobi standard gauge railway

4.2 Visit to CRBC construction sites and workshops for Nanjing – Anqing Intercity Rail project

CRBC are undertaking major railway infrastructure development in this area. The Delegation visited the Project Headquarters where the engineer in-charge described the work in progress. The details of the work as well as staffing organisation are shown in Attachment 1. The Delegation visited three sites. The Works in progress at each site were as follows:

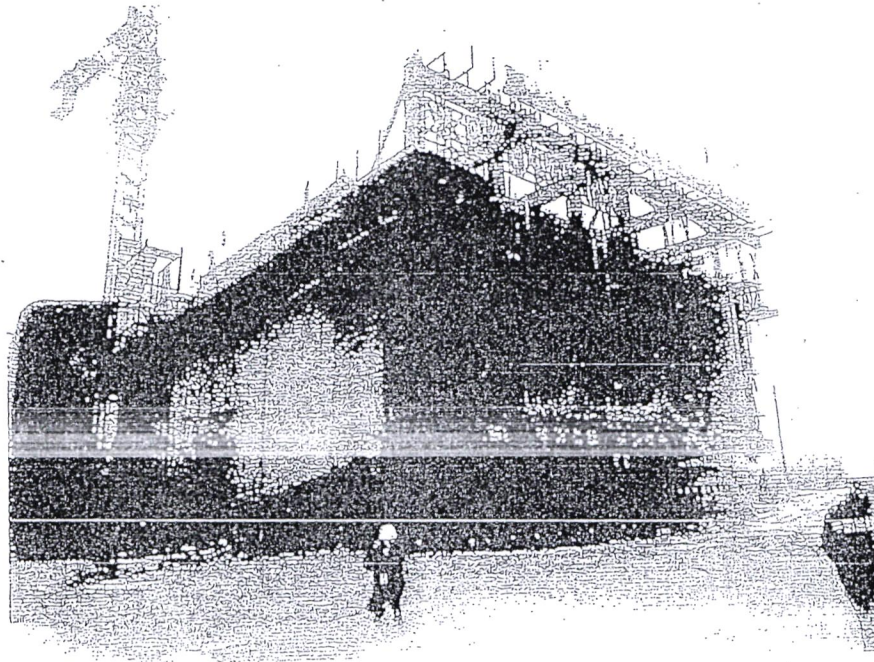
- Site 1:** Work in progress building a four track railway bridge in situ across a river
- Site 2:** Work in progress building viaduct pillars in situ
- Site 3:** Workshop dedicated for manufacturing steel reinforced girders of various sizes; the work in progress was for the manufacture of 90 tonnes 32 metres long girders, which would be subsequently transported by road and rail to the installation sites.

The visits confirmed CRBC capacity to undertake the construction of the Mombasa – Nairobi standard gauge railway, which will have at least 29 kilometres of the route on viaducts. The visit to the construction sites and the workshop also demonstrated CRBC capacity in the following areas:

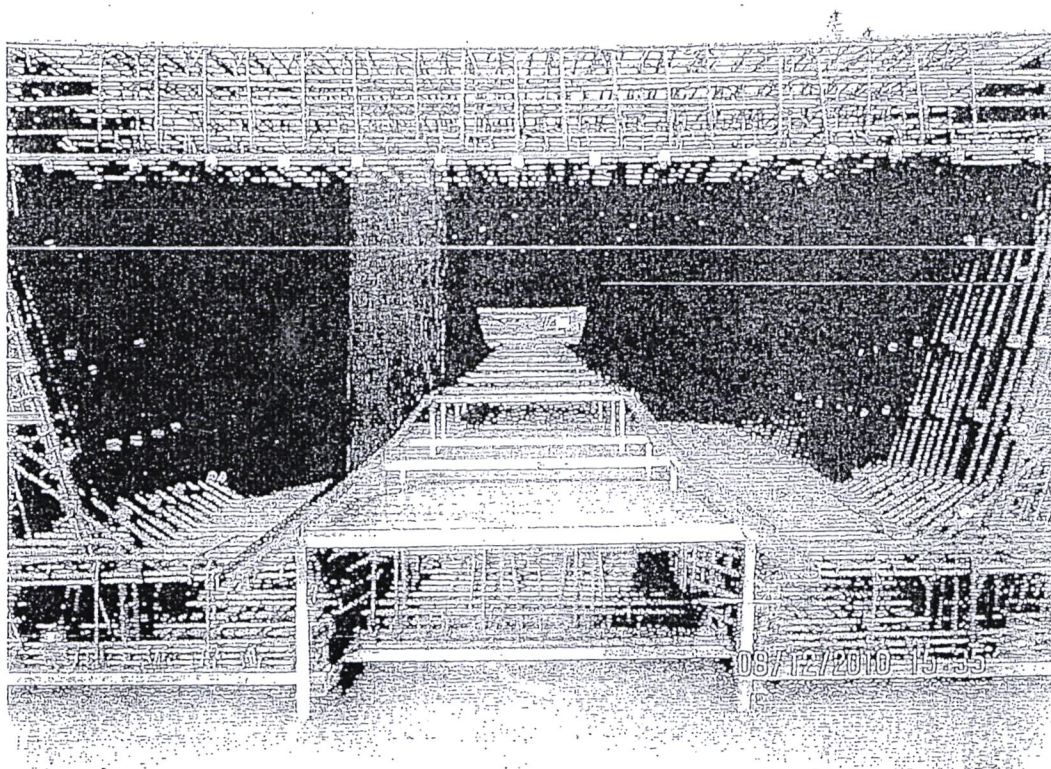
- Management of construction sites and workshops
- Use of modern technology for the design and manufacture of high capacity girders
- Access to high technology equipment for handling, transporting and installing girders and capacity to build railway bridges
- Training: At each construction site and the workshop the Delegation saw facilities for site training as well as young trainees. It was clear to the Delegation that the company takes training seriously.

At the company headquarters the Delegation had earlier been shown wall displays of a variety of infrastructure development projects (including building of railways) already completed by the company as well as a wide range of machinery that was employed. The Delegation was able to confirm at the three sites CRBC technical and managerial capacity to undertake railway construction.

Four tracks railway bridge deck under construction in situ by CRBC



Reinforced steel binding for fabricating girder in the Workshop



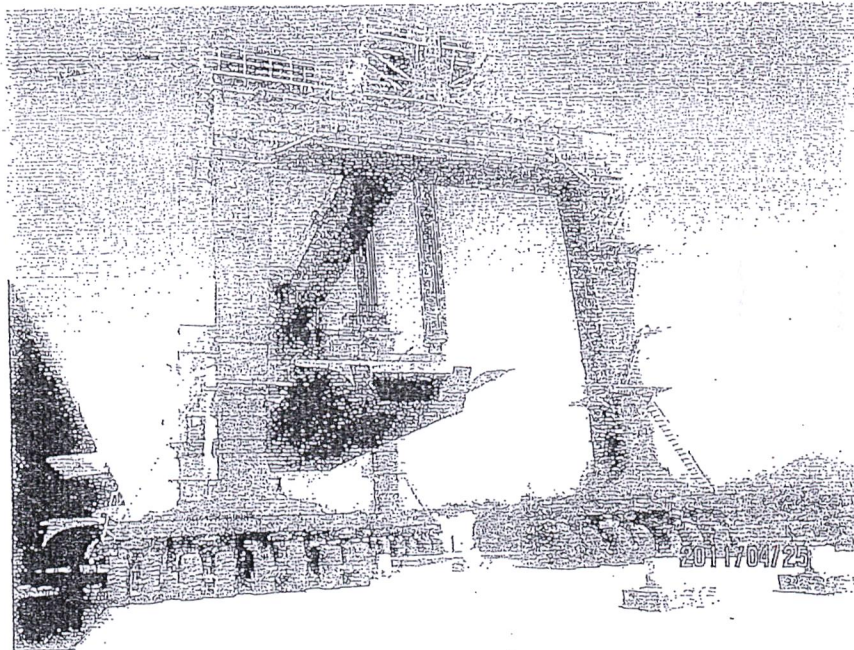
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90 tonnes steel reinforced concrete prefabricated box girder at CRBC Workshop ready for transportation to the construction site



Transportation of prefabricated steel reinforced concrete box girder to a site for erection. Similar machines will be used for the construction of Mombasa – Nairobi Standard gauge Railway



BY

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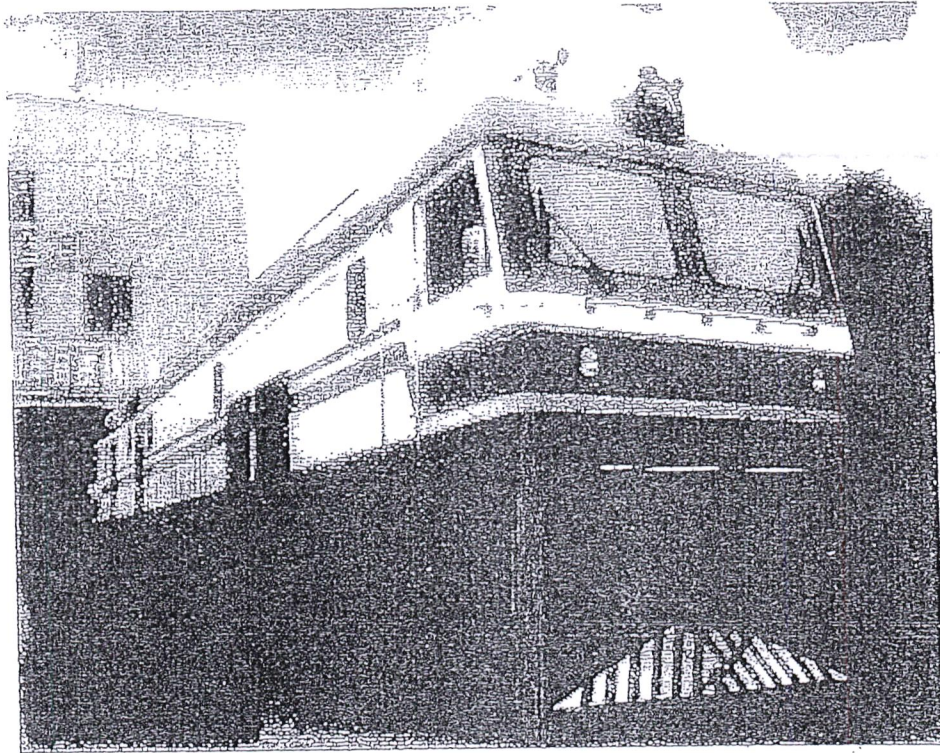
4.3 Visit to Equipment manufacturing facilities (CSR Ziyang Locomotives Manufacturing Company)

The Delegation visited **CSR Ziyang Locomotives Manufacturing Company** in Chengdu. The facility management made a brief presentation describing the facility and its products following which there was discussion to enable the Delegation understand the relevance of the products to the Mombasa – Nairobi standard gauge railway project.

Summary of the presentation and subsequent discussions

- Production capacity ≈ 500 diesel and electric locomotives per year; actual production depends on orders received. Locomotives range from metre gauge to broad gauge and from heavy haul to passenger and shunting locomotives
- A major locomotives manufacturer in China
- Has exported locomotives to Turkmenistan, Viet Nam, Sudan, Australia, Brazil and Kazakhstan
- Has developed home grown diesel powered AC-DC-AC locomotive technology
- Manufacturer of locomotives components such as crankshafts, connecting rods, camshafts, gears, hydraulic transmissions and pistons for export to Europe, India and America
- Manufacturer of Tunnel Boring machines for domestic and export market
- One of the standard locomotives manufactured by the company is Type: DF8B – a 3680 KW locomotive similar to the one specified for the Mombasa – Nairobi standard gauge railway freight haulage. The locomotive has been developed in China along with its engine and electrical transmission and has proven technology dating back to 1998
- The company has manufactured and delivered metre gauge push-pull Diesel Multiple Units (DMUs) of formation M+13T+M to Vietnam and Malaysia. KR is interested in similar units for the Nairobi Commuter Rail service
- The Company confirmed they will be working in partnership with CRBC to deliver locomotives for the project. The list of equipment suppliers submitted to Kenya Railways by CRBC includes CSR Ziyang Locomotives Manufacturing Company as the supplier of locomotives and freight wagons.

DF8B 3680kW (\approx 5,000 HP) mainline locomotive – similar to those proposed for Mombasa – Nairobi standard gauge railway

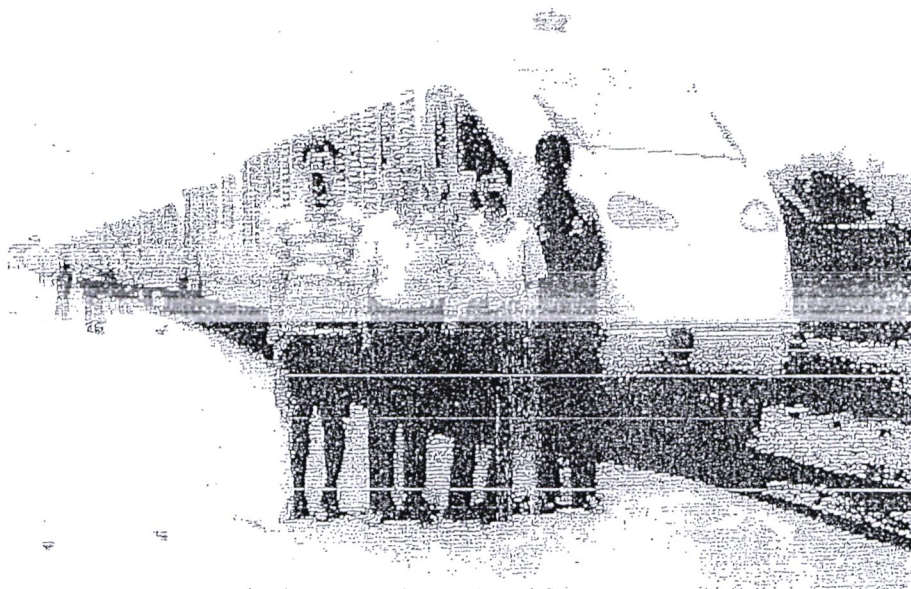


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SA [Signature]

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M+13T+M metre gauge push-pull DMU for Vietnam – KR is considering operating DMUs for Nairobi Commuter Rail project



Tour of the facility and findings

The Delegation toured the locomotives manufacturing facility and confirmed the firm's capacity to manufacture and assemble locomotives. In particular the Delegation confirmed the firm's capacity to manufacture the sensitive parts of locomotive engines including: crankshafts, connecting rods, camshafts, gears, hydraulic transmissions, engine blocks and pistons. The Delegation saw expensive quality control machines supporting the manufacture of the parts. The Delegation took particular interest in equipment said to cost US\$ 18 million, which is used for measuring machining tolerances of those sensitive engine parts. To sustain the condition of the equipment, it is housed in a room whose temperature, humidity and air quality are strictly controlled. Other production lines observed included:

- Wheels production and assembly
- Bogies machining and assembly
- Engines assembly
- Complete locomotives assembly and testing

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3.5 Gaining experience in Chinese railway operations, management and technology

Train ride Beijing to Nanjing

CRBC participated in building the Beijing – Shanghai high speed line by building 157 kilometres of the track. The delegation has a ride on this line between Beijing and Nanjing – some 1,160 kilometres. The journey took 4 hours and 15 minutes.

The Delegation made the following observations:

- The ride was comfortable and despite an average speed of 300 km/hr (maximum speed achieved was 310 km/hr), the pressurised interior of the coaches remained quiet without the motion noise interfering overly with any level of voice communication.
- The train was well patronised with all the 1,060 seats taken confirming that the operations were meeting passengers' expectations
- The line is almost entirely suspended on viaducts to achieve the stringent gradients and curvatures (2% and 7000 metres respectively).
- The railway bridge across the Yangtze River is a particularly imposing structure and an engineering masterpiece.

Visit to Beijing Railway Station Centralized Traffic Control (CTC)

This facility located next to Beijing South Railway Station is the nerve centre for controlling trains into and out of the Station. The Delegation was told that the facility despatches and receives more than 350 trains daily and because of the large number, the operation is completely automated with minimal human intervention. The Delegation confirmed the automation in the control room, where hardly five technicians were in the room controlling that large number of trains. All the Information and data are collected on each train via GSMR in real time and processed in the equipment (housed behind the control room) to facilitate:

- Trains despatch
- Power dispatch

CSR Ziyang Locomotives Company has the capacity and technology to manufacture and support exported locomotives. The Delegation learnt that the company will partner with CRBC to manufacture and deliver the locomotives specified in the Commercial Contract for the supply and Installation of Facilities, Locomotives and rolling stock.

Delegation inspecting a high capacity engine crankshaft being manufactured at the CSR Ziyang Locomotives manufacturing plant



4.4 Visit to EXIM Bank of China

Delegation confirmed that EXIM Bank:

- Has previously supported CRBC to undertake infrastructure development locally and overseas including the ongoing construction of the Southern Bypass in Nairobi.
- Will continue supporting CRBC infrastructure projects on request and subject to EXIM Bank terms and conditions.
- Is willing to support CRBC for the Mombasa – Nairobi standard gauge railway project subject to EXIM Bank terms and conditions.

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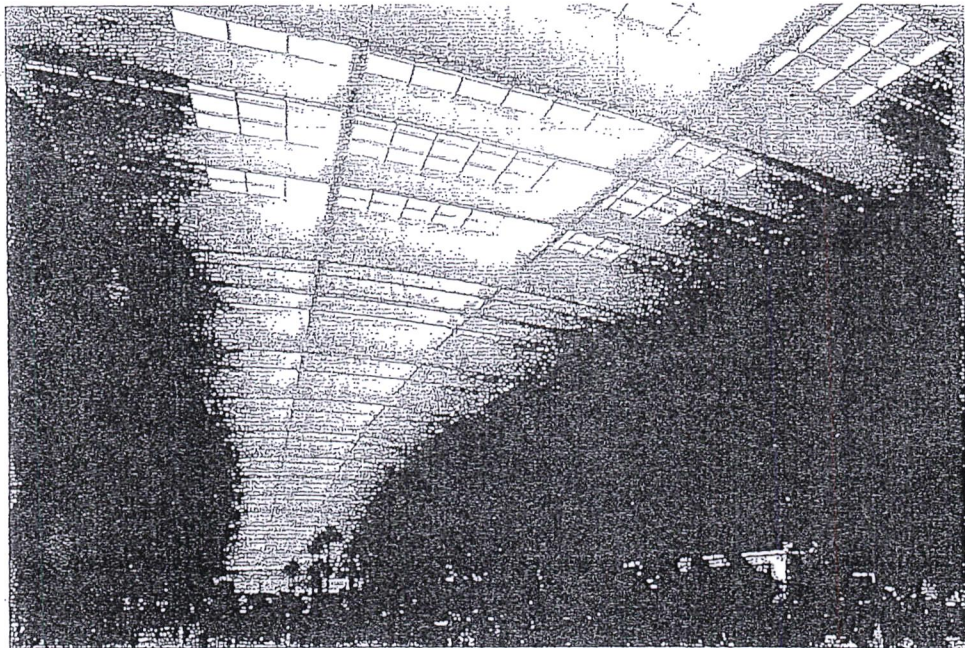
- Signal dispatch
- Passing over information to maintenance and rescue staff

The Delegation was told that the equipment and software have been developed in China and that arising from continuous improvement its reliability has been up-scaled to near perfection. The Delegation was also told that a similar facility would be installed for the operations in the proposed Mombasa – Nairobi standard gauge railway with adequate spare capacity to accommodate future extension of the railway to Malaba, Kisumu and Kampala.

Visit to Beijing South Railway Station

Built in 2008, this is probably the most modern and largest railway station in the World. The station is built entirely of steel structures and glass on the sides and the roof, which allows in natural light during the day. Passengers handling facilities are on first floor and the platforms on ground floor. The design is modelled in the likeness of an airport with similar arrangements for ticketing and screening of passengers. The station is well patronised as seen in the picture below.

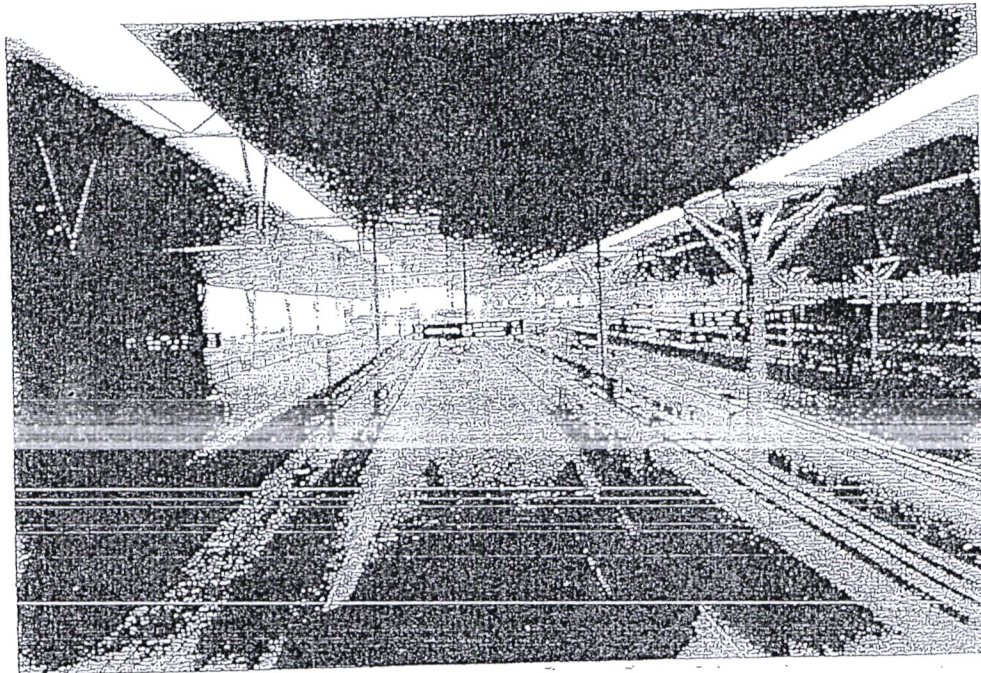
Beijing South Railway Station first floor: note the steel structure, glass skyline and passengers queuing for ticketing and security check.



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Beijing South Railway station Ground floor: note the platforms and the high speed trains and the staircase leading to the underground metro



Visit to Beijing freight marshalling yard

The Delegation was taken through the general layout and operational features of the yard from a scale model. The Yard is divided into two sections – UP and DOWN with the space between the two occupied by maintenance facilities for locomotives, freight wagons, and infrastructure including track and signalling. The main features of the Yard are the fully automated HUMP marshalling facilities in each section with combined capacity to marshal 350 trains per day from 25,000 freight wagons movements. The Delegation later witnessed live operations at the UP-yard and appreciated and sampled the effectiveness of the facility. It was noted that the facility has enhanced both labour and equipment productivity with the operations requiring only one shunting locomotive and three attendants – locomotive driver, wagons separation attendant and the supervisor monitoring the operations on a computer.

The Delegation noted the technical details of freight wagons in use. The wagons were four (4) wheelers (bogie wagons) of gross weight 100 tonnes (axle load 25 tonnes), tare weight between 19 and 23.5

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tonnes and net load carrying capacity between 76.5 and tonnes 81. Similar wagons will be available for operation in the Mombasa – Nairobi section and will satisfy Kenya Railways specification of a high capacity railway intended to reduce the cost of transportation. The technical details of the fuel tank wagons were of particular interest registering a carrying capacity of 78,500 litres. Existing KR tank wagons carry on average 36,000 litres. The wagons will be suitable for cost effective transportation of crude and refined products within the region. KR and UR discussing harmonisation of standards for the railway between Mombasa and Kampala and will be providing specifications for specialised wagons suitable for transporting high viscosity crude oil from the region.

The Delegation confirmed Chinese railway operations, management and technology to be suitable for application to proposed Mombasa – Nairobi standard gauge railway.

5.0 Documents review

The delegation received the following documents from CRBC:

- i) Report of Auditors for three (3) years = 2009 – 2011
- ii) Railway projects profile
- iii) Mombasa to Nairobi Railway project Construction Plan

5.1 Report on Financial capacity

The Delegation reviewed four year audited financial statements for CRBC to establish the entity's financial capability to undertake the project and made the following observations:

- In the four years reviewed; 2008, 2009, 2010 and 2011, the company received unqualified opinion from its auditors on its financial statements;
- The annual sales turnover was a minimum of US\$ 1.6 Billion and an average of US\$ 1.9 Billion for the four years;
- The profit margin showed an upward trend from 5% (2008) to 10% (2011);
- The company's asset base grew from US\$ 1.4Billion (2008) to US\$ 2.7Billion (2011) with return on assets growing from 4% (2008) to 9% (2011);

- The company's current ratio stood at 1 meaning it was able to finance its current liabilities from current operations;
- Owners' equity grew from US\$ 1.5 Billion (2008) to US\$ 3.6 Billion (2011) maintaining a debt/equity ratio of below 17%.

Report of the Auditors (2009 – 2011) is attached as Annex I

From the foregoing we can conclude that CRBC has the required financial capability to undertake the Mombasa to Nairobi standard gauge railway project.

5.2 CRBC railway projects profile

The company has listed fourteen completed railway related projects complete with certified copy of Notification of Award. Below is a brief description of three of the projects:

- **Beijing – Shanghai High Speed Railway project** – speed = 350 Km/hr, total length = 163.787 kilometres, total length of viaducts = 129.052 kilometres, total length of bridges = 23.301 kilometres, completed in 2011.
- **Harbin – Dalan High Speed Railway Project** – speed = 350 Km/hr, length allocated = 345.645 Kilometres, total length of bridges, viaducts and culverts = 292.4 Km, to be completed December 2012.
- **Guiyang – Guangzhou Railway Project** – mixed traffic railway, speed 200 km/hr for passenger trains, length allocated = 62.637 km, tunnelling = 47.723 km, bridges, viaducts and culverts = 11 kilometres, to be completed October, 2012.

The project profiles demonstrate CRBC capability to deliver civil works for railway projects.

Railway Project Profile is attached as Annex II

5.3 Mombasa – Nairobi Railway project Construction Plan

The submission includes:

- The work plan
- Project management structure

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- Electricity transmission and Communications erection and testing equipment
- Methodology to deliver the projects including Gantt Charts for the project delivery period (covering 2014 to 2018)
- Provision for safety and quality assurance measures
- Civil works construction, transportation and erection and testing equipment.

This submission demonstrates CRBC preparedness to undertake the job as well as availability of adequate managerial and technical capacity.

Kenya Mombasa to Nairobi Railway project Construction Plan is attached as **Annex III**

6.0 Conclusions

- i) Following the review of the documents, the Delegation is satisfied that CRBC has the legal standing to enter into a contract for the delivery of the Mombasa – Nairobi standard gauge railway.
- ii) From the submitted financial Accounts, the Delegation is satisfied that CRBC is not insolvent; is a going concern; has a respectable asset base and therefore has financial capacity to undertake the project.
- iii) Having visited ongoing project sites and reviewed submissions on Project Profiles and Mombasa – Nairobi Railway Project Construction Plan, the Delegation is satisfied that CRBC has the necessary technical Capacity to deliver the project
- iv) Following the visit to EXIM Bank, the Delegation is satisfied that CRBC has a good business relationship with the China EXIM Bank and that The EXIM bank expressed the willingness to to support the project.

7.0 Recommendations and way forward

- i) CRBC has the capacity to deliver the project; hence the Government of Kenya and Kenya Railways may enter into further negotiations for the implementation of the project.
- ii) The construction, delivery and installation of the standard gauge railway will be preceded by detailed design and facilities

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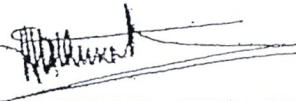
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and equipment specifications. To ensure the best standards of quality and best practices it is recommended that the Government of Kenya and Kenya Railways procure an independent project supervisor (Client's Engineer) to approve the detailed designs, bills of quantities, specifications, technology to be applied and eventually supervise the works and issuance of certificates for all works.

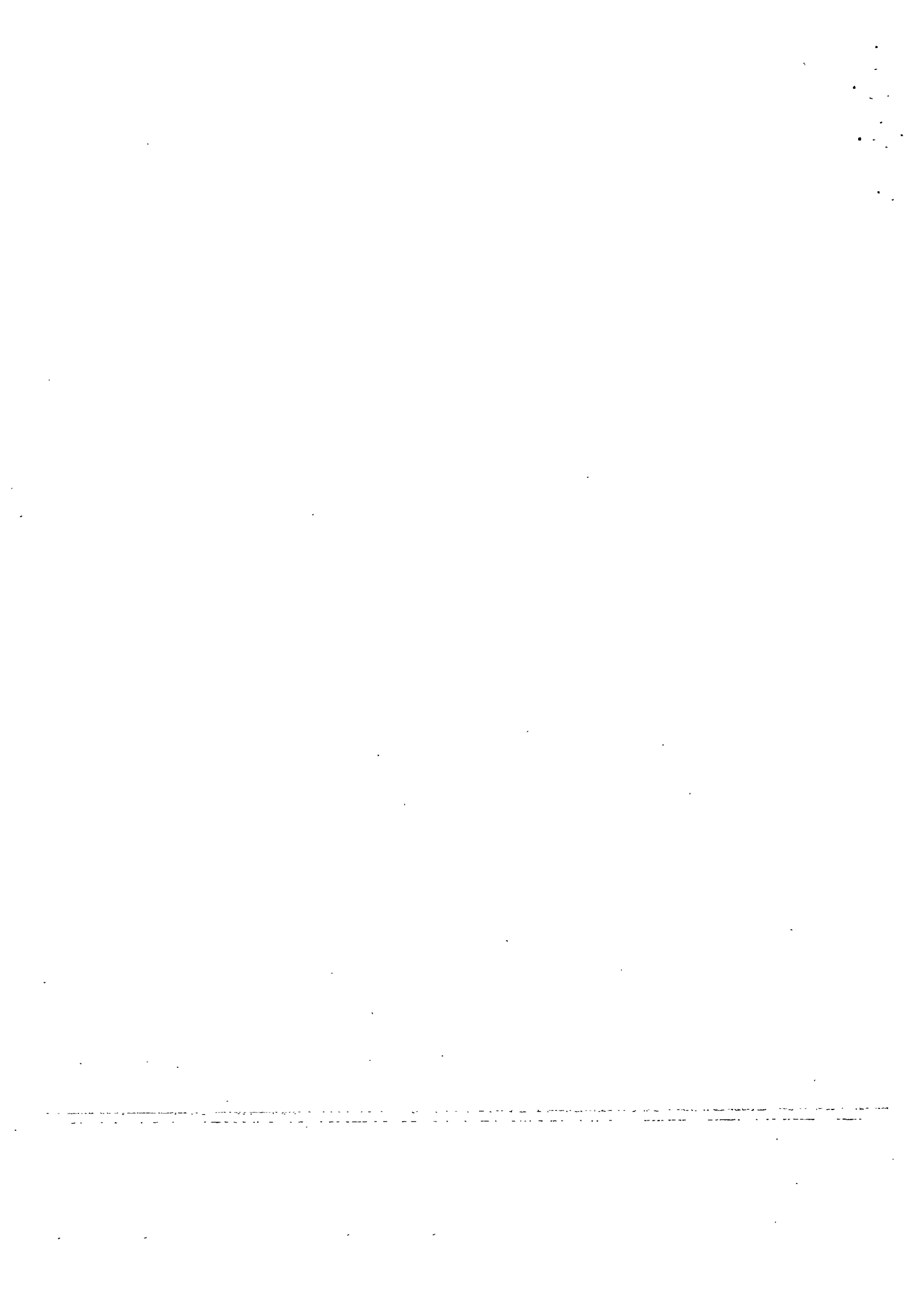
8. List of Annexes

Annex	Title
I	Report of the Auditors (2009 – 2011)
II	Project profiles (on completed and ongoing) projects
III	Kenya Mombasa to Nairobi Railway project Construction Plan

9. Signatures

Name	Designation	Signature
Mr. Nduva Muli	Managing Director – Kenya Railways (Leader of the Delegation)	
Ms. Teresa Icharia	Senior Assistant Director Supplies Chain Management – Ministry of Transport	
Mr. Robert Julius Wanyonda Gatonga	Senior Economist – Ministry of Finance	
Mr. Alfred Matheka	General Manager (Finance) – Kenya Railways	
Ms. Marianne Kitany	ICT Manager – Kenya Railways	
Eng. Solomon Ouna	Project Manager (SGR & CS) – Kenya Railways	

ANNEX 12



05 JUL 2012

Telephone: +254-20-2227461

Fax: +254-20-2214343

E-mail: sg@ag.go.ke

When replying please quote

Ref. No. AG/CONF/14/153 Vol. VII (22)
and date



THE STATE LAW OFFICE

THE SOLICITOR-GENERAL
THE STATE LAW OFFICE
ATTORNEY-GENERAL'S CHAMBERS
P.O. BOX 40112-00100
NAIROBI, KENYA

4th July 2012 20

Dr. Cyrus Njiru, PhD, CBS
Permanent Secretary
Ministry of Transport
NAIROBI

Dear *Dr. Njiru,*

RE: DRAFT COMMERCIAL CONTRACT FOR DEVELOPING THE MOMBASA -
MALABA/KISUMU STANDARD GAUGE RAILWAY PHASE I (MOMBASA -
NAIROBI SECTION)

We refer to the above matter and to your letter dated 28th June 2012 under reference number MOT/S/8.002 Vol. II/15.

We have studied the draft Commercial Contract between Kenya Railways Corporation and China Road and Bridge Corporation (CRBC), together with all the annexures and appendices thereto and herebelow please find our comments:-


1. The contract between the two parties is based on Conditions of Contract for EPC Turnkey Projects published by FIDIC as amended by the parties. It is presumed that the parties have fully negotiated and agreed on pertinent terms, and, consequently, all the gaps in all the documents of the draft contract should be filled in.
2. The date of the credit agreement between the Government of Kenya and the Export - Import Bank of China should be indicated, as this is a condition precedent to the coming into effect of this contract.
3. The exemption of Employer from Value Added Tax in respect to the proposed contract as set out in Section 3 should be confirmed as it is subject to prior approval by the Ministry of Finance.
4. The Format for Advanced Payment Guarantee (contained in Appendix 1 of Section 6) should indicate that the applicable law as the law of Kenya.

5. The specific requirement for this contract is for a 'standard gauge' railway line. However, Section 8.1 on General Requirements on the Major Technical Parameters refers to the standard design as 'Chinese Railway Design Standard' Section 8.2 on the Specifications also refers to 'China Standard Specifications' while Section 8.3 refers to a 'China Design Manual'. These two specifications ('Standard' and 'China' based) should be harmonised for purposes of clarity, and it is recommended that international best practice standards should be used.
6. The following documents stipulated in clause 2 of Section 1 as being part of the proposed contract should be inserted:-
 - a. A letter of Acceptance as required under Section 2.
 - b. The amended Schedule of Payments under Section 6.
 - c. The Preliminary Engineering Scheme and the Non-binding and Bill of Quantities (BOQs) under Section 7.
 - d. Schedules of Supplementary Information required under Section 9.3
7. Compliance with the requirements of the Public Procurement and Disposal Act should be ensured.
8. The Ministry should confirm that due diligence has been conducted to affirm that the intended contractor is capable of implementing this project.

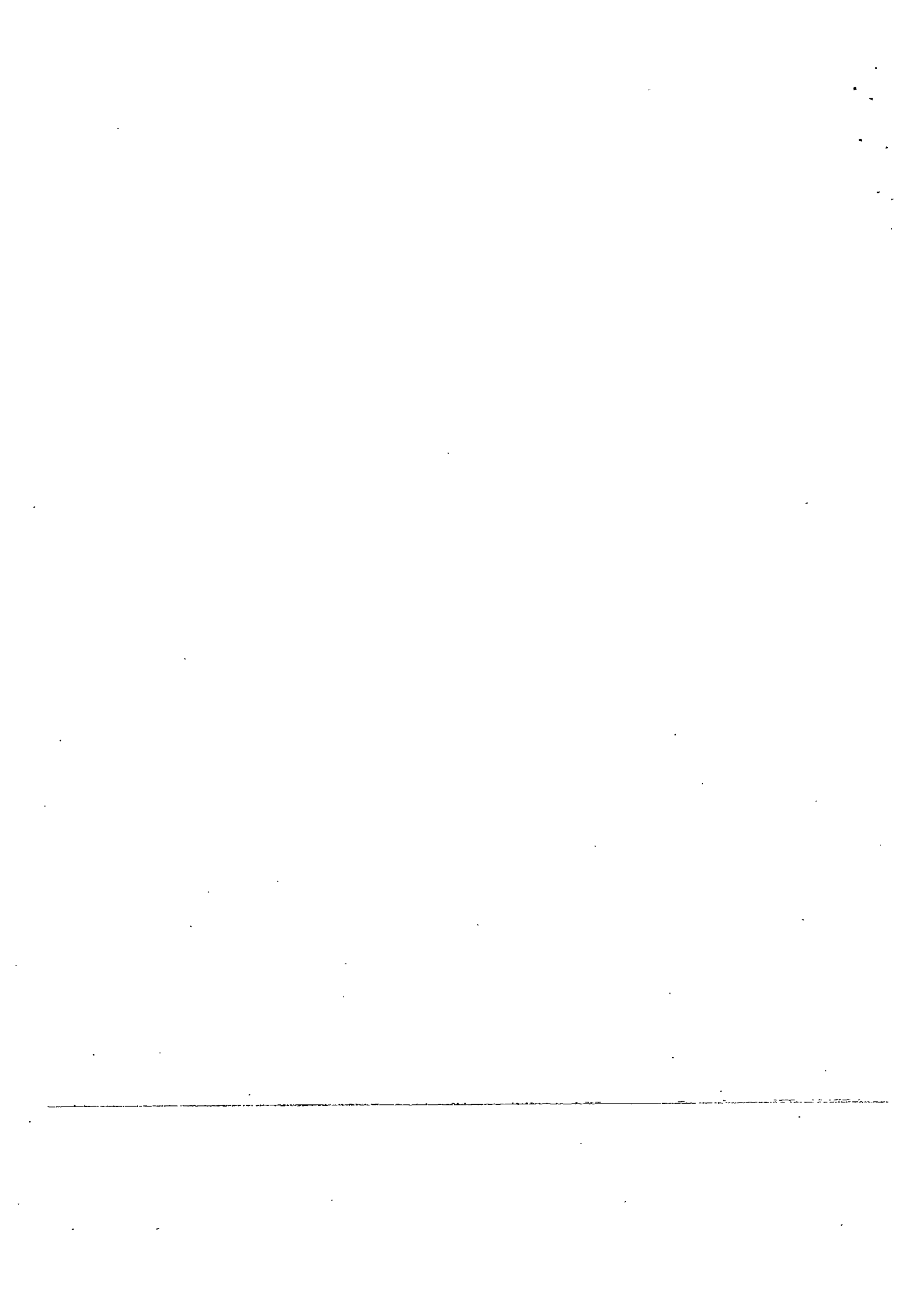
Save for the above concerns, we find the draft agreement to be in order, and you may proceed to finalise the same.

Yours

Sincerely,


WANJUKI MUCHEMI, CBS
SOLICITOR GENERAL

ANNEX 13

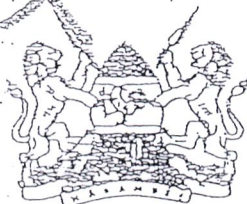


Telegraphic Address: 22921

FINANCE - NAIROBI

Telephone: 2252299

When replying please quote



THE TREASURY
P.O. Box 30007-00100
NAIROBI
KENYA

Ref. No. EA/FA 214/78/01

2nd October 2012

H.E. Mr. Liu Guangyuan

Ambassador

Embassy of People's Republic of China

P.O. BOX 30308

NAIROBI

Your Excellency,

RE: REQUEST FOR CHINESE PREFERENTIAL BUYER CREDIT FOR
THE CONSTRUCTION OF CIVIL WORKS OF MOMBASA TO
NAIROBI STANDARD GAUGE RAILWAY PROJECT

As you are aware, the Government of Kenya is currently implementing the Vision 2030 that seeks to transform Kenya into a middle income country providing high quality of life to all its citizens in a clean and secure environment. The development of infrastructure has been identified as key to support the realization of the Vision objectives.

Kenya is a transit hub supporting the neighbouring countries namely; Uganda, Rwanda, Burundi and the Democratic Republic of Congo. In recognition of the above role, the Government of Kenya continues to invest heavily in the improvement of Northern Corridor Road Network. In deed, the section from Mombasa to Mau Summit has been reconstructed to high standard road network, and the Government is now in the process of improving the section between Mau, Summit and Kisumu City under the Northern Corridor Transport Improvement Project. However, the heavy investment made on the Northern Corridor and benefits accrued are in danger since the railway line has been non-functional for some time and therefore unable to cope with the current and future demands.

The Government of Kenya recognizes the importance of safeguarding the heavy investment made on the Northern Corridor Road Network, and therefore, the need to construct a standard gauge railway line from the port of Mombasa to Malaba town is vital as it will provide an alternative cheaper and more economical mode of transport. Due to the magnitude of the project, the Government of Kenya plans to develop Phase 1 Section starting from the Port of Mombasa to the City of Nairobi. Upon its completion, the project will play an important role in strengthening

cooperation among East African Member States and promote Kenya's economic development. The project will also improve the country's transportation network through the provision of reliable train service both for freight and passenger traffic. This is also one of the flagship projects identified in the Vision 2030 for implementation.

According to the project's feasibility study report, the cost of implementing the project is US\$ 2.66 billion, and the construction period will be forty eight months on turnkey basis. Clearly, this is not possible from the Government's own resources. It is for this reason that the Government of Kenya now requests the Government of China for a Preferential Buyer Credit loan for the Construction of a Standard Gauge Railway Line from Mombasa to the City of Nairobi.

To support our request, we enclose the project's feasibility study report as well as the Commercial Contract duly signed by the relevant parties and look forward to your Government's favourable consideration to the request.

Accept, Your Excellency, assurances of our highest consideration.

Yours

Sincerely

Mutua Kilaka

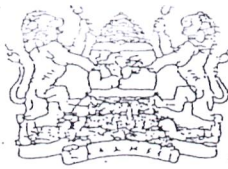
MUTUA KILAKA, CBS, SS
FINANCIAL SECRETARY
FOR: PERMANENT SECRETARY/TREASURY

c.c. Mr. Francis Kimemia, CBS
Permanent Secretary/Secretary to the Cabinet and Ag. Head of
Public Service.
Nairobi

Eng. (Dr) Cyrus Njiru, CBS
Permanent Secretary
Ministry of Transport
Nairobi

Mr. Li Ruogu
President of the Export-Import Bank of China
No. 30, Fu Xing Men Nei Street
Xicheng District
Beijing 100031, China.

Telegraphic Address: 22921
FINANCE - NAIROBI
Telephone: 2252299
When replying please quote



THE TREASURY
P.O. Box 30007-00100
NAIROBI
KENYA

Ref. No. EA/FA 214/78/01

10th October, 2012

H.E. Mr. Liu Guangyuan
Ambassador
Embassy of People's Republic of China
P.O. BOX 30308
NAIROBI.

Your Excellency,

RE: REQUEST FOR CHINESE GOVERNMENT PREFERENTIAL BUYER'S CREDIT FOR SUPPLY AND INSTALLATION OF THE FACILITIES, LOCOMOTIVES AND ROLLING STOCKS FOR MOMBASA TO NAIROBI STANDARD GAUGE RAILWAY PROJECT

The Government of Kenya is currently implementing the Vision 2030 that seeks to transform Kenya into a middle income country providing high quality of life to all its citizens in a clean and secure environment. The development of infrastructure has been identified as key to support the realization of the Vision objectives.

Kenya is a transit hub supporting the neighbouring countries namely; Uganda, Rwanda, Burundi and the Democratic Republic of Congo. In recognition of the above role, the Government of Kenya continues to invest heavily in the improvement of Northern Corridor Road Network. However, the heavy investment made on the Northern Corridor and benefits accrued are in danger since the railway line in its current state is inefficient and therefore unable to cope with the current and future transport demands.

The Government of Kenya recognizes the importance of safeguarding the heavy investment made on the Northern Corridor Road Network. As you are aware, the Government recently made an official request to the Government of China, for financial support to construct Phase 1 of Standard Gauge Railway Line starting from the Port of Mombasa to the City of Nairobi. The completion of this railway line will improve the country's transportation network through the provision of reliable train service both for freight and passenger traffic. The project will also play an important role in strengthening cooperation among East African Member States and promote Kenya's economic development.

This is also one of the flagship projects identified in the Vision 2030 for implementation.

In view of the Government's decision to construct a standard gauge railway line discussed above, it has now become imperative to also procure locomotives and rolling stocks to complement the new railway line. It is for this reason that the Government of Kenya now requests the Government of China for a Preferential Buyer's Credit for the Supply and Installation of the Facilities, Locomotives and Rolling Stocks for the Mombasa - Nairobi Standard Gauge Railway Line. The total cost of the project is US\$ 1,146,791,008.75 (United States Dollars One Billion One Hundred Forty Six Million Seven Hundred Ninety One Thousand Eight and Cents Seventy Five Only)

To support our request, we enclose the project's Commercial Contract duly signed by the relevant parties and look forward to your Government's favourable consideration to the request.

Accept, Your Excellency, assurances of our highest consideration.

Yours

Sincerely

Mutua Kilaka

MUTUA KILAKA, CBS, SS
FINANCIAL SECRETARY
FOR: PERMANENT SECRETARY/TREASURY

c.c. Mr. Francis Kimemia, CBS
Permanent Secretary/
Secretary to the Cabinet and
Ag. Head of Public Service,
Nairobi

Eng. (Dr) Cyrus Njiru, CBS
Permanent Secretary
Ministry of Transport
Nairobi

Mr. Li Ruogu
~~President of the Export-Import Bank of China~~
No. 30, Fu Xing Men Nei Street
Xicheng District
Beijing 100031, China.

ANNEX 14



MEMORANDUM OF UNDERSTANDING

On

Kenya Mombasa-Nairobi Standard Gauge Railway Project

Between

The Government of the Republic of Kenya

Represented by

The National Treasury

And

The Export-Import Bank of China

Dated August 19, 2013

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MEMORANDUM OF UNDERSTANDING ON FINANCIAL
SUPPORT FOR MOMBASA-NAIROBI STANDARD GAUGE
RAILWAY PROJECT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF KENYA REPRESENTED BY THE NATIONAL
TREASURY AND THE EXPORT-IMPORT BANK OF CHINA

This Memorandum of Understanding on financial support for Mombasa-Nairobi Standard Gauge Railway Project (hereinafter referred to as the "MOU") is entered into between the Government of the Republic of Kenya represented by the National Treasury (hereinafter referred to as the "National Treasury") and the Export-Import Bank of China (hereinafter referred to as the "China Eximbank").

WHEREAS

Kenya Railways Corporation (hereinafter referred to as the "KRC") and China Road and Bridge Corporation (hereinafter referred to as the "CRBC") have entered into on July 11 and October 4, 2012 the Commercial Contracts on civil works and supply and installation of the facilities, locomotives and rolling stocks for Mombasa-Nairobi Standard Gauge Railway Project (hereinafter referred to as "the Project") with a total amount of USD 3.804 billion for the purpose of implementation of the Project.

The Government of the Republic of Kenya is desirous to request for financing support of China Eximbank, which is conscious of the significance of the Project to social and economic development of the Republic of Kenya, and is willing to provide a financial support to implement the Project after conducting a preliminary review.

NOW THEREFORE, in order to further enhance the bilateral good relations between the Republic of Kenya and the People's Republic of China, National Treasury and China Eximbank hereby agree as follows:

1. National Treasury undertakes to take necessary legal procedures to conclude the internal approval procedure for the Project and to provide necessary documents, which China Eximbank may reasonably request, for the final approval of the loan and signing of the Loan Agreement for the Project at its earliest convenience.

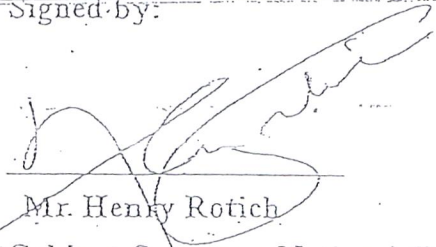
2. The financing portion is 85% of the Commercial Contract amount, and the self-raised portion by Kenya Government will be 15%. The financing package for the Project would comprise of Preferential Buyer Credit Loan and Buyer Credit Loan. The facility amount and terms of Preferential Buyer Credit Loan will be mutually decided by China Eximbank and Chinese Government, and the balance of financing portion will be provided by Buyer Credit Loan. For the terms of Buyer Credit Loan, the interest rate will be six months Libor plus 360bp per annum, each rate of management fee and commitment fee will be 0.75%, the tenor will be 15 years with 5 years grace period, and the facility of Buyer Credit is to be insured by the insurance provided by China Export and Credit Insurance Corporation (Sinosure).
3. The Loan Agreements for the Project shall only be signed between China Eximbank and National Treasury subject to the Loan approval by the Evaluation Committee of China Eximbank and the consent by the relative authority and/or institution of China and the other conditions as may request by the Evaluation Committee of China Eximbank are satisfied. China Eximbank and National Treasury will make joint efforts to expedite the evaluation process with respect to the Project, and facilitate the final signing of the loan agreements.
4. Each party shall keep all the terms and conditions in connection with this MOU strictly confidential. Without the prior written consent of one party to this MOU, the other party shall not disclose any information hereunder or in connection with this MOU to any third party or the public unless required by applicable law.

For avoidance of doubt, this MOU is intended only to serve as a guide for further discussion of the terms of the loans and the loan agreements, and is NOT legally binding under any jurisdiction. Neither National Treasury nor China Eximbank shall initiate any legal process against each other based upon this MOU.

IN WITNESS WHEREOF, the undersigned being the duly authorized representatives of the Parties have signed this MOU in two originals in English language. Both sides will keep one thereof.

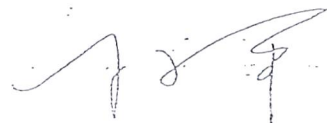
Done at Beijing on this 19th day of August 2013.

Signed by:



Mr. Henry Rotich
Cabinet Secretary/National Treasury
of the Republic of Kenya
On behalf of:
The Government of the Republic of
Kenya

Signed by:



Mr. Sun Ping
Vice President of the Export-Import
Bank of China
On behalf of:
The Export-Import Bank of China

ANNEX 15





15

THE STATE LAW OFFICE
OFFICE OF THE ATTORNEY-GENERAL

Your Ref: PPOA/COMP/30/21 VOL.III(17)

Date: 30 April 2013

Our Ref: AG/CONF/2/C/90 VOL.I

Mr. M.J.O. Juma
Director-General
Public Procurement Oversight Authority
NAIROBI

Dear *Mr. Juma*

RE: TENDER NO. KRC/PLM/31/2012 SUPPLY AND INSTALLATION OF FACILITIES, LOCOMOTIVE AND ROLLING STOCK FOR THE MOMBASA NAIROBI STANDARD GAUGE RAILWAY PROJECT

Reference is made to your letter REF: PPOA/COMP/30/21 VOL.III(17) dated 5th April 2013 on the above-stated subject matter. I have carefully reviewed the draft agreement and observe the following.

1. Note is taken of the factual and historical accounting of how the procurement process for the stated subject matter has evolved. This Office has not however seen any document either titled or speaking to the subject of a Government to Government Agreement between Kenya and China on the stated project. To ventilate the question whether its provisions support the construction of a G-to-G arrangement, this Office would need to be furnished with full details of the relevant agreements.

2. Section 6(1) of the Public Procurement and Disposals Act, Cap 412C, Laws of Kenya is clear that where provisions of this Act conflict with any obligations of the Government arising from a treaty or other agreement to which it is a party, the treaty's or agreement's provisions prevail to the extent of the inconsistency. Section 6(3) provides an important statutory clarification that regardless of the treaty or agreement in 6(1), in cases where the Government contributes from her own resources, and in any form, to any procurement process under such agreement or treaty, the Act applies. The question then is whether either sections 6(1) and (3) can be read separately and have independent meaning from each other.

3. General principles of statutory interpretation require that when we engage in interpreting the law, we must read the statute as a harmonious whole, and the separate parts (in this instance being sub-sections (1) and (3) of section 6) should be interpreted within their broader statutory context in a manner that furthers the statutory purpose. It is also the general case that laws have meaning, and statutory interpretation must strive to give effect to that meaning. These principles are quite consistent with the doctrines enshrined in Article 259 of the Constitution, which requires that the Constitution – and by extension all laws in Kenya – be interpreted in a manner that gives effect to its purposes, values and principles, and in a manner that promotes the rule law, permits the development of the law and contributes to good governance – among others. As a general rule, therefore, it is not good practice to read one portion of the law in isolation and with disregard to other parts of the same law.

4. With that general frame of construction clarified, the first two issues in your letter could be re-stated to ask whether either of the sub-sections in question would have meaning and statutory validity were the other never-existent in statute. In other words, can s.6(1) stand alone had s.6(3) never been inserted in the law? The obvious answer to either

scenario is in the affirmative. However, that is no fiat for a deduction that the two clauses therefore operate as exclusive provisions statutorily. In fact, it is my construction that the two sub-sections complement each other, as opposed to being in competition or conflict.

5. It must be recalled that the Public Procurement and Disposal Act 2005 was enacted to promote fair competition, transparency and accountability, as well as local participation in public procurements in this country. It created and sustains a framework of competition in public procurements that must be taken as establishing general rules, to which all actors in that realm ought to be deferent under the doctrines of rule of law. In effect, any deviations from the general principles of application under that law must be the exception rather than the rule.
6. While I do not pronounce myself on the merits of the procedures adopted by the Kenya Railways Corporation in this matter, owing to absence of primary evidence relating to the same, I must record that it is worrying that a procuring entity can pick and choose alternate procurement methodologies as alleged over the same subject matter, and both of which alternatives require external endorsement (in this case by yourselves) because neither alternative admits of open competition. In adopting initially a procedure under s.29 and s.74 of the Act, and awarding a contract on that basis, only to subsequently cancel it, and purport to re-award it under alternative arrangements, raises doubt about the integrity of the statute's authority, and assails at the notions of rule of law. Procuring entities ought to be judicious in selecting procurement methodologies under the Act. Consequently, I cannot resolve the second legal issue in your letter in the absence of further evidence that should be supplied to this Office by Kenya Railways Corporation.

7. The third issue you raise for resolution relates to s.6(3), and the law is clear that where the Government of Kenya contributes in any form from her own resources to a procurement process, s.6(1) ceases to apply even where the collaborating partner is a foreign sovereign. In effect, the issue is resolved in the affirmative.

8. The fourth legal issue gives rise to weighty questions. What is a Government to Government agreement? Does the Treaty Making and Ratification Act No.45 of 2012 apply to such compacts? In other words, can the so-called G-to-G agreements be classified as bilateral agreements under s.3 of Act No.45 of 2012? Furthermore, are G-to-Gs a method of procurement or would such agreements merely form the basis for future traditional procurements under the various areas of cooperation documented under the G-to-G? More worrying, however, is the increasing phenomenon of government MDAs employing the G-to-G tool to circumvent the requirements of the Public Procurement and Disposals Act 2005. Under the principles I suggest in paragraph 5, I would favour a construction that holds government to government agreements as not being methods of procurement, but merely bases that could support procurement activities subsequently. Furthermore, it is my opinion that government to government agreements are properly bilateral agreements under Act No.45 of 2012, which would demand compliance with the procedures outlined under sections 4 through 10 of the said Act.

9. In effect, it is my opinion that a so-called government to government agreement is not a method for selecting suppliers so as to support the award of a contract absent an actual process of selecting project developers or component suppliers, and so on. It is also my opinion that Article 227 of the Constitution should be observed to the uttermost. That is to say, public agencies are expected to implement procurement methods that are fair, equitable, transparent, competitive and cost-effective, and in the instant case, the full application of Cap

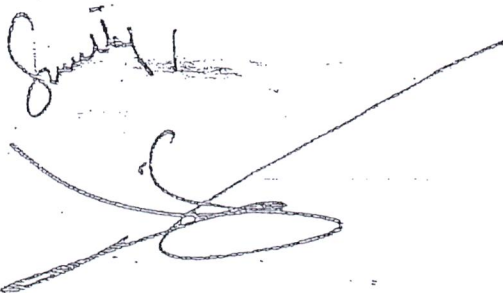
412C Laws of Kenya; with the exceptional procurement methods being such, and not the norm.

10. These interpretations are consistent with the philosophy underlying such principles as the Paris Declaration on Aid Effectiveness – which require that development partners align themselves to the systems, standards, procedures and development priorities of recipient states with the view to, among others, building their capacities, eliminating wasteful duplication, and promoting accountability.

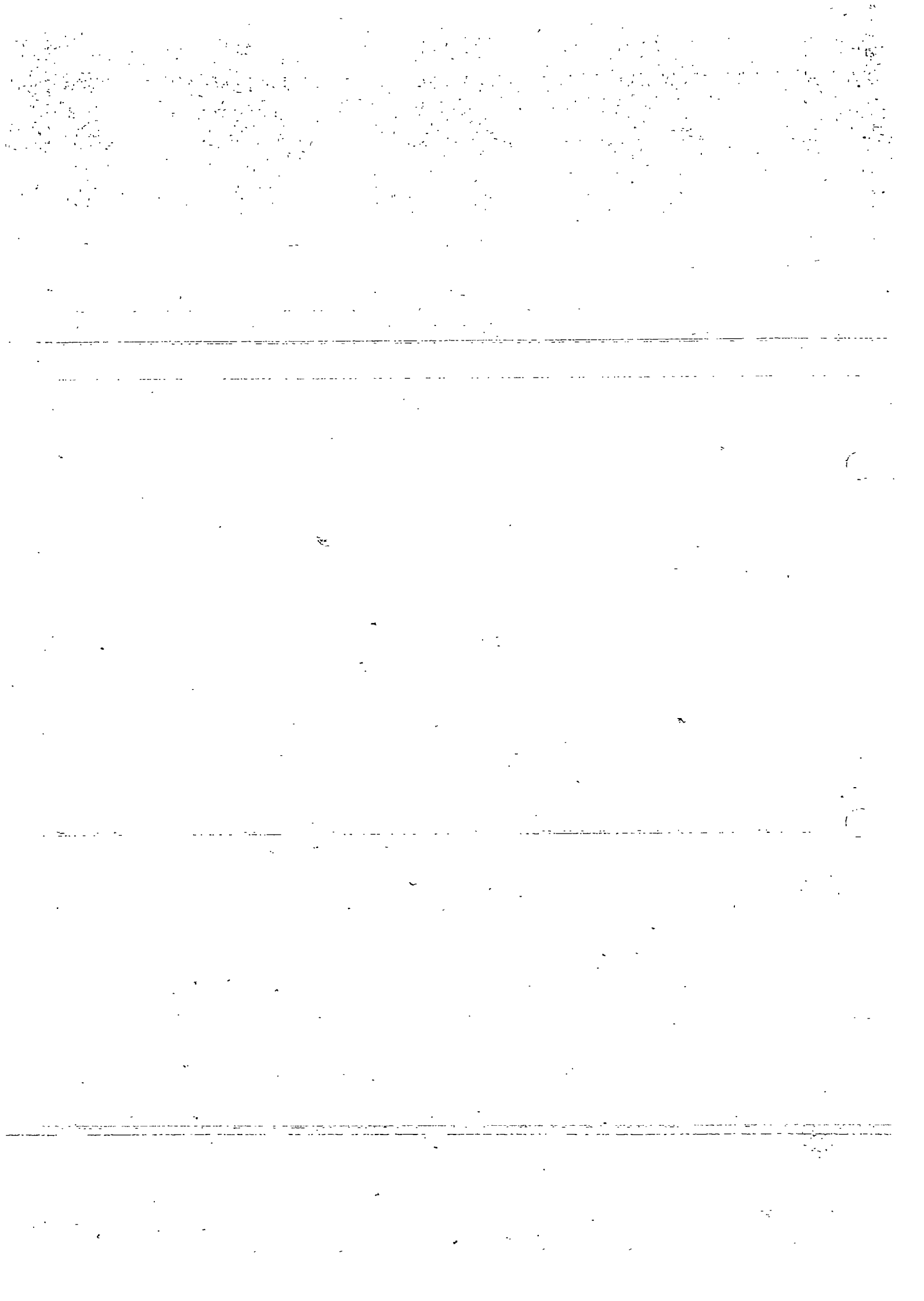
11. I have provided this opinion on the substantive legal questions, and not on the merit or otherwise of the particular procedures adopted by the Kenya Railways Corporation in the instant case. To provide such an opinion, I would require that I be furnished with all tender-related documentation.

12. I have provided this opinion in my capacity as the Attorney General, a constitutional mandate my Office does not share with any other entity in the Republic.

Yours

A handwritten signature in black ink, appearing to read 'Githu Muigai', with a long horizontal line extending to the right.

GITHU MUIGAI, SC
ATTORNEY GENERAL



ANNEX 16



Transitional Authority has gazetted all the county functions to be performed by County Governments, starting July 1st 2013. They have also assessed the capacity of the County Governments to provide the services assigned to them. Those counties, which will not be in a position to perform any of the transferred functions may request the National Government to assist as their capacities are being developed.

IV: TAX MEASURES AND MISCELLANEOUS AMENDMENTS

Overview of the Proposed Tax Measures

61. Hon Members, the rest of my highlights outlines various tax measures I intend to introduce through the Finance Bill 2013, and other regulations I have tabled in this house, toward accelerating broad-based economic growth, job creation and poverty reduction.

62. The tax measures and other miscellaneous amendments I intend to propose hereunder are broadly categorised into five priority areas, which complements the various policies I have already outlined in the earlier part of my statement:

- i. Facilitating infrastructure development for a competitive economy;
- ii. Encouraging Growth of Industries for Faster Development
- iii. Further Ensuring Equity and Fairness in our Tax System
- iv. Deepening Tax Reforms and Enhancing Tax Administration; and
- v. Further Strengthening Financial Systems for Sustainable Development

Facilitating Infrastructure Development for a Competitive Economy

63. Hon members, I have proposed tax measures aimed at facilitating development of infrastructure facilities such as railway and energy in order to reduce the cost of transport and energy and make our economy competitive.

64. Hon Members, rail transport is the most economical mode of transportation for freight and passenger. However, our railway facilities have not received much incentives compared to other transportation infrastructure. In this regard, I propose to exempt import duty on importations of items used to facilitate railway operations in order to support the expansion and development of the railway network in the region.

65. I have, in addition, proposed amendment to the Customs and Excise Act to introduce a Railway Development Levy of 1.5 percent on all imported goods, in order to mobilize additional Ksh 15 billion to fund construction of a standard gauge railway line from Mombasa to Kisumu. This project, as I have already stated, when completed in three years time, will reduce significantly the cost of freight, thereby saving businesses huge resources.

Insertion of new
section 117A in Cap.
472.

5. The Customs and Excise Act is amended by inserting the following new section immediately after section 117—

Railway
development
levy.

117A. (1) There shall be paid a levy to be known as the railway development levy on all goods imported into the country for home use.

(2) The levy shall be at the rate of 1.5 percent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use.

(3) The purpose of the levy shall be to provide funds for construction of a standard gauge railway network in order to facilitate the transportation of goods.

(4) The Cabinet Secretary shall, in regulations, establish a railway development levy fund with which all the proceeds of the levy shall be paid.

(5) The fund referred to in subsection (4) shall be established, managed, administered or wound up in accordance with section 24 of the Public Financial Management Act, 2012 and the regulations made under that Act.

Amendment to Part
III of the Fifth
Schedule to Cap.
472.

6. The Fifth Schedule to the Customs and Excise Act is amended in Part III—

- (a) by deleting the words "financial service providers" appearing in item 7 and substituting therefor the words "financial institutions";
- (b) by inserting the following new paragraph immediately after paragraph 8—

9. For the purposes of items 7 and 8—

"financial institutions" means —

Establishment of
Parliamentary Fund
and other national
government public
funds.

24. (1) There is established a fund to be known as the Parliamentary Fund.

(2) The Secretary to the Parliamentary Service Commission shall, on the directions of the Commission, open and operate such bank accounts as may be necessary for the purposes of the Parliamentary Fund.

(3) Notwithstanding any other provisions of this Act, where a Fund is established under any other law for the purposes of Parliament or a House of Parliament, the Parliamentary Service Commission shall—

- (a) establish procedures and systems for proper and effective management of the monies and property of the Fund;
- (b) establish accounting procedures and systems for the Commission to properly account for the monies and property;
- (c) superintend the expenditure of the monies of the Fund to ensure that the monies are properly accounted for;
- (d) prepare and submit accounts for each financial year in accordance with the written law for the time being relating to audit for audit by the Auditor-General; and
- (e) ensure that accounts prepared under paragraph (d) comply with the provisions of this Act.

(4) The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly.

(5) The Cabinet Secretary shall designate a person to administer every national public fund established under subsection (4).

(6) The administrator of a national public fund shall ensure that the earnings of, or accruals to a national public fund are retained in the fund unless the Cabinet Secretary directs otherwise.

(7) The administrator of a national public fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (6), is spent only for the purposes for which the fund is established.

(8) The Cabinet Secretary may wind up a national public fund with the approval of the National Assembly.

(9) On the winding up of a national public fund—

(a) the administrator of the national public fund shall pay any amount remaining in the fund into the National Exchequer Account for the credit of the national government; or

(b) the Cabinet Secretary shall pay any deficit in the fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and

(c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.

(10) The administrator of a national public fund—

(a) shall prepare financial statements for the fund for each financial year in a form specified by the Accounting Standards Board; and

(b) not later than three months after the end of each financial year, submit those statements to the Auditor-General and deliver a copy of the statements to the National Treasury, Commission on Revenue Allocation and the Controller of Budget.

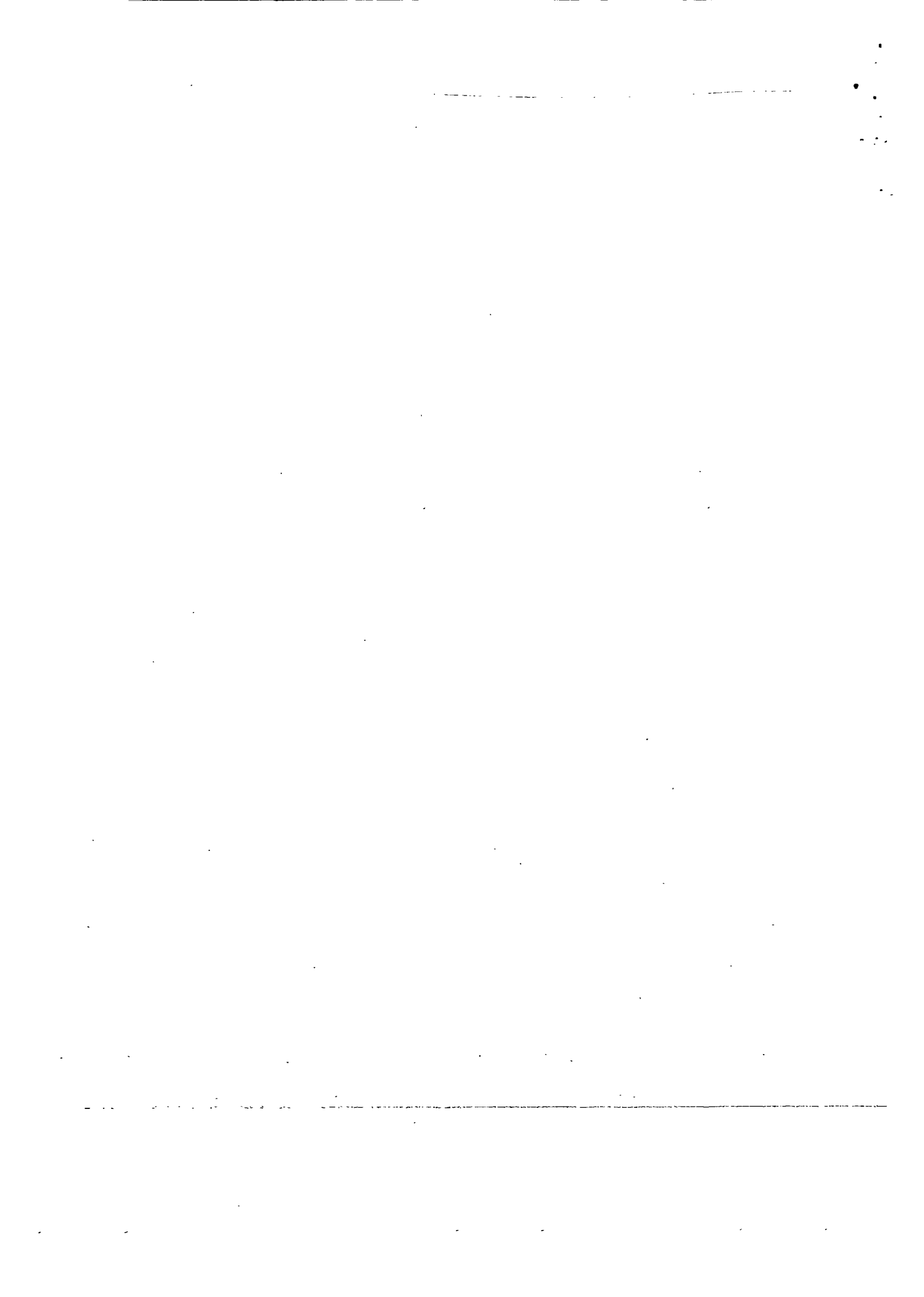
(11) The regulations shall provide for the establishment, management, operation or winding-up of national public funds.

(12) This section applies to all other national public funds including funds earmarked for specific purposes established by an Act of Parliament but does not apply to a public fund established by the Constitution.

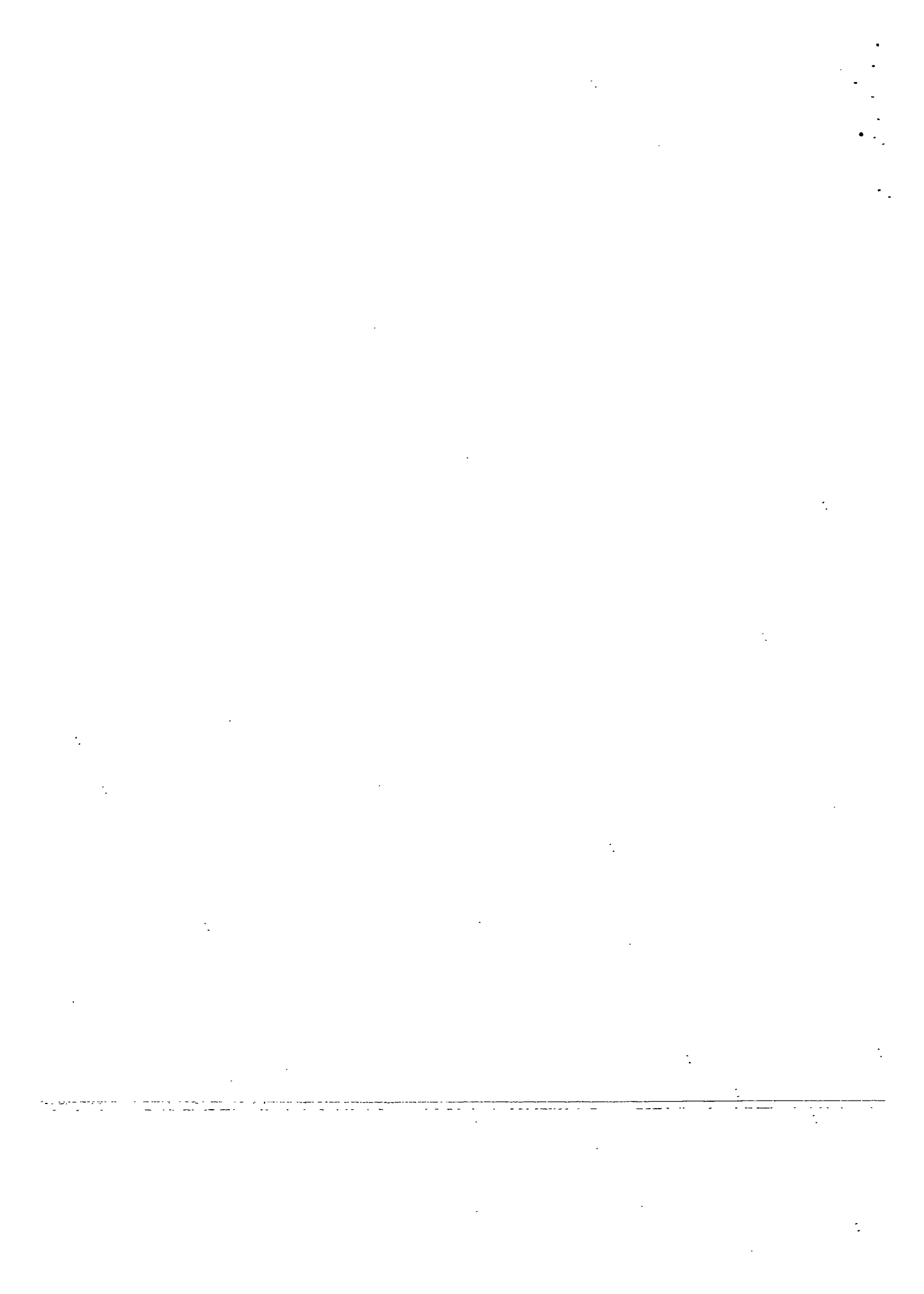
(13) In this section—

“administrator”, in relation to a national public fund, means a person designated by the Cabinet Secretary under sub-section (5) to administer the fund; and

“national public fund” means a public fund established under subsection (4).



ANNEX 17



17

No. F. 66/84



CERTIFICATE OF COMPLIANCE

With section 366 of the Companies Act, Cap. 486

I hereby Certify, that—

24.4.2002
A.A.

CHINA ROAD & BRIDGE CORPORATION KENYA

a Company incorporated in PEOPLES REPUBLIC OF CHINA
has this day delivered to me for registration the documents and particulars
specified in section 366 of the Companies Act (Cap. 486).

Given under my hand at Nairobi this TWENTY EIGHTH day
of DECEMBER One Thousand Nine Hundred and EIGHTY FOUR.

Sgd. J.K. MUCHAE.
Ag. Snr. Dy. Registrar of Companies.

Statutes of China Road and Bridge Corporation

Chapter One: General Provision

Article 1. China Road and Bridge Corporation (hereinafter referred to as the Corporation) is a state-owned enterprise affiliated to the Ministry of Communications of the People's Republic of China, whose foreign operations are duly regulated by the Ministry of Foreign Economic Relations and Trade. Registered with the State Administration for Industry and Commerce, the Corporation shall have the status of a corporate legal person. The English name of the Corporation is China Road and Bridge Corporation.

Article 2. The Headquarters of the Corporation shall be located at C88, Andingmenwai Dajie, Beijing, China. It shall set up branches in certain provinces, municipalities, autonomous regions and in some foreign countries to engage in international and domestic construction projects, labor cooperation, technical service, production and installation of equipment, and so on.

Article 3. The corporation shall conduct business activities in accordance with the relevant laws, decrees, regulations and rules of the Chinese government and the internationally accepted norms and practice, and in light of the scope of business stipulated in the Statutes.

Article 4. The business objective of the Corporation is to serve the construction cause of China and other countries or regions in the world with "fine engineering quality, advanced science and technology, upper-grade service attitude and good social credibility". It shall develop various types of cooperation with both domestic and foreign enterprises in the spirit of equality, mutual benefit and economic prosperity. The Corporation shall carry out business activities under the principle of "abiding by contract, ensuring quality, reaping low profit and stressing friendship".

*True Copy of
The original*

[Signature]

Article 5. The registered capital of the Corporation shall be RMB 388.32 million yuan. The financial sources are state-allocated funds and self-owned funds.

Chapter Two: Scope and Form of Business

Article 6. The Corporation shall mainly undertake, at home and abroad, construction projects of highways, bridges, tunnels, airport runways, infrastructure, earth works, houses as well as wharves, goods yards, warehouses, storing ground, ship locks, water supply and sanitation system, sewerage treatment system, railway, power stations, anti-flood locks and dams, agricultural irrigation system, and so on.

Article 7. To provide technical and labor services for the aforesaid construction projects.

Article 8. To contract the projects of foreign economic and technical aid from the Chinese government.

Article 9. To undertake the tasks of survey, design and research for the aforesaid projects and to provide domestic and foreign customers with technical consultancy (including construction agency, supervision of design and construction, etc.).

Article 10. To undertake design, manufacture, installation and exportation of special products and mechanic equipment for highway, bridge and transport projects both at home and abroad.

Article 11. To engage in leasing and maintenance servicing of construction machinery and equipment.

Article 12. To conduct investment activities as well as technological and economic cooperation both at home and abroad.

Article 13. To accept the entrustment of foreign enterprises for procurement of materials, placement of orders, and to act as agent in dealing with special equipment and selling product.

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the original
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(6) Given the requirement of circumstances, the chairman may call meetings of the Standing Board or plenary Board conferences on ad hoc basis.

Article 18. The Corporation shall apply the president responsibility system, which embodies one president and three vice presidents. The president shall be the legal representative of the Corporation and shall have the following responsibilities:

(1) To implement the Corporation's business policies and operational plans adopted by the Board of Directors in accordance with the Statutes.

(2) To preside over the all-round operation and management of the Corporation.

(3) To appoint and dismiss the departmental managers of the Corporation and the heads of its branches both at home and abroad in accordance with the personnel administration authority stipulated by the superior organization.

(4) To organize the formulation of the Corporation's long-term program, yearly operated plan and construction plan, and to submit them to the Board of Directors for approval.

(5) To submit to the Board of Directors the Corporation's annual work report, final accounts and plans of profit distribution, and

(6) To propose to the Board of Directors the convention of emergent meetings for discussing important issues and implementing the decisions adopted at such meetings.

Article 19. There shall be vice presidents, chief engineer, chief accountant and chief economist in the Corporation. Nominated by the president, they shall be appointed in accordance with the authority limit of personnel administration. Under the leadership of the president, vice presidents, chief engineer, chief accountant and chief economist

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Original.*

[Signature]

shall be responsible for the management of business, technology and finance, and shall report to the president.

Article 20. There shall be several business and administrative departments within the headquarters of the Corporation, which shall work under the leadership of the president.

The responsibilities of different departments are as follows:

President's Office:

Responsible for handling documents, files, data, and public relations, etc.

General Planning Department:

Responsible for long-term planning, management of business plans, economic and technical targets, analysis of investment results and business decisions, statistics, dispatch, and economic aid projects.

Enterprise Management Department:

Responsible for system restructuring, perfection of operational mechanism, formulation of regulations and systems concerned, all-round quality control and upgrading of the enterprise.

Engineering Department:

Responsible for preparation of project bid, offer, project management, construction management, assessment and application of research achievements, quota control, technical consultancy, etc.

Business Development Department:

Responsible for seeking projects, business development, information study, document translation and examination, prequalification documents preparation, contract management, dealing with legal affairs.

Finance and Accounting Department:

Responsible for financial management and accounting of the affiliated units and the overseas contracted projects, labor service cooperation and aid projects.

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Material and Equipment Department:

Responsible for application, negotiation and conclusion of supply contracts; dispatch and management of materials and equipment both at home and abroad.

Personnel and Training Department:

Responsible for daily administration of personnel, labor and wage, organization, establishment, employee education, training and examination, labor protection, screening of people to be sent working abroad and handling formalities of going abroad, etc.

Auditing Department:

Responsible for financial auditing, examination of economic efficiency and economic laws and disciplines.

Supervision and Security Department:

Responsible for implementing the state's policies, decrees, regulations and for supervision inspection, monitoring required by the superior organization; and responsible for anti-corruption and the security of the organization.

Administration Department:

Responsible for the management of fixed office assets, office appliances, vehicles, traffic safety, offices, staff housing, health care, and administrative funds and other administrative affairs.

Chapter Four: Management of Operations

Article 21. The Corporation shall apply the system of independent accounting, self-responsibility for profits and losses, and management by different levels. Independent business and financial regime shall be established in accordance with the accounting system, for state-owned construction enterprises and the financial management regulations for state-run foreign contracting enterprises. Bank of China and China Merchants' Bank are entrusted to provide guarantee for the Corporation's

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the original*

business. The Corporation shall be under the supervision of the superior auditing organization, financial department and banks, and after paying taxes accounting to state's regulations, distribution of after-tax profits shall be carried out in light of the state's regulations concerned.

Article 22. The Corporation shall apply the state's wage system and welfare system. The employees shall be given necessary training, and all the employees shall receive regular examinations. Rewards or penalties shall be meted out according to the results of examinations.

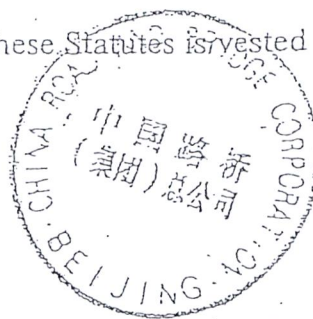
Article 23. In accordance with the state's regulations concerned, the Corporation shall apply the two employment systems of fixed worker and contractual worker respectively. A reward mechanism catering to its own features shall be established in light of the principle of "To one according to what he does" and by taking account of the different interests of state, enterprises and individuals.

Article 24. The Corporation shall apply the contract system in dealing with others, and shall fulfill contracts and strictly live up to its credibility.

Chapter Five: Supplementary Provisions

Article 25. These Statutes were amended on January 24, 1991, which shall become effective after approval by the Ministry of Communications and endorsement by Administration for Industry and Commerce. The amendment and termination are the same as above.

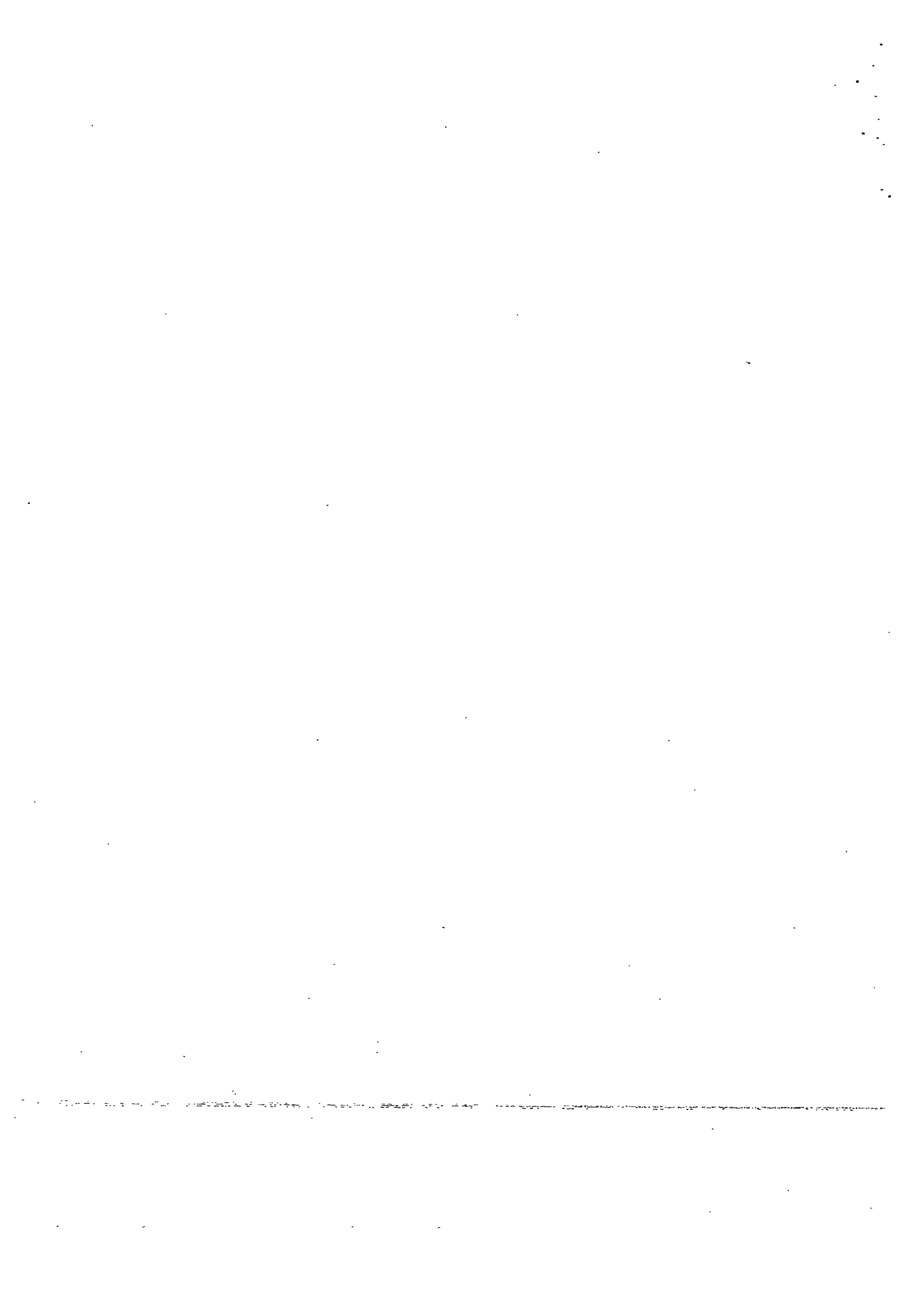
Article 26. The right of interpretation of these Statutes is vested in the Corporation.



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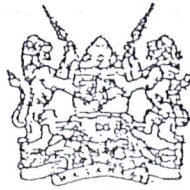
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ANNEX 18



DUPLICATE FOR THE FILE

18



No. C. 166624

CERTIFICATE OF INCORPORATION

I hereby Certify, that—

CHINA ROAD & BRIDGE CORPORATION KENYA LIMITED

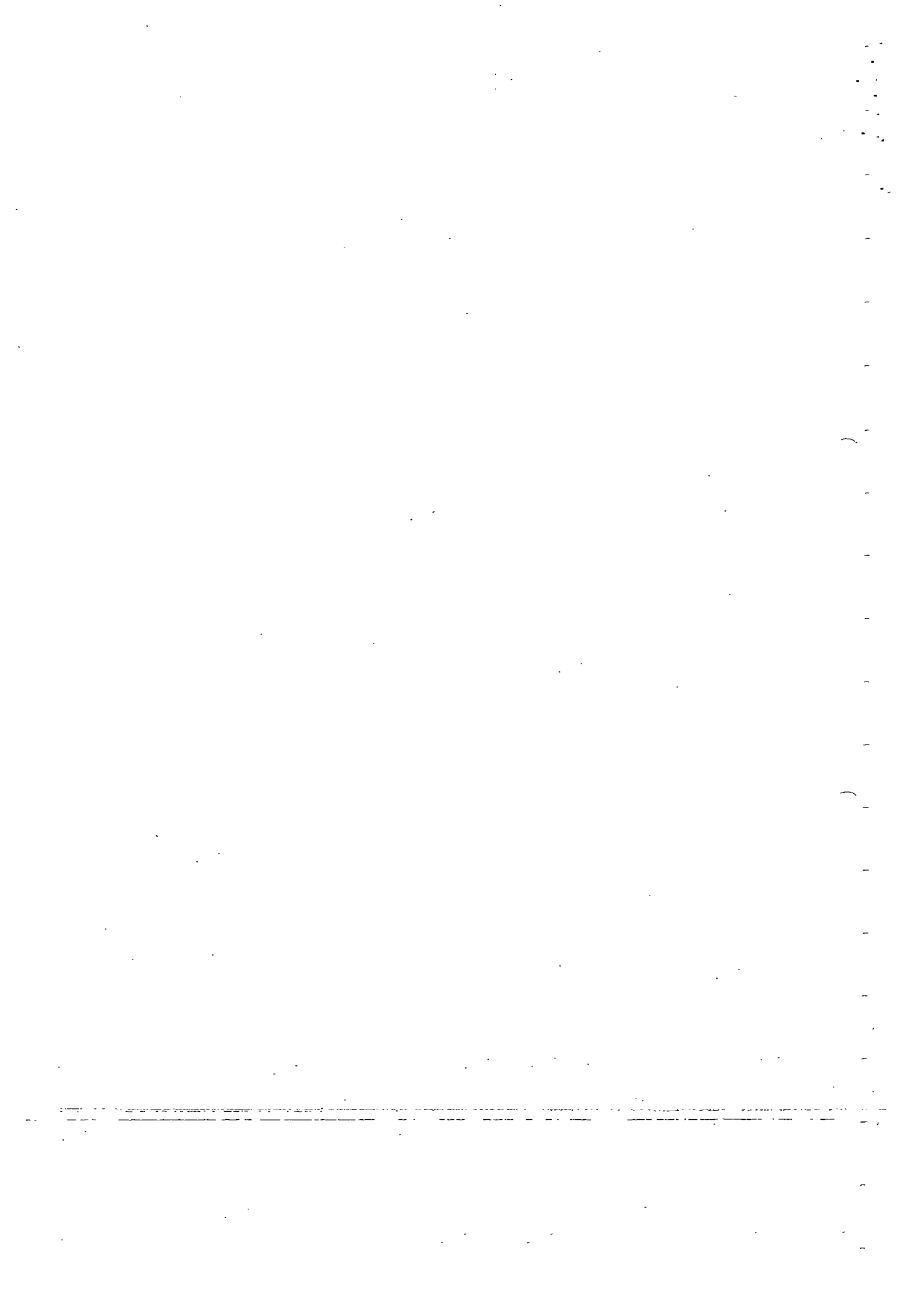
in this day Incorporated under the Companies Act (Cap. 486) and that the Company is LIMITED.

Given under my hand at Nairobi this TWENTY THIRD day
of DECEMBER Two Thousand AND EIGHT.

Certificate received by

Date

J. S. M. Ng'ang'a
Dy. Registrar of Companies



Note: - this margin is reserved for binding, and must not be written across.

[THIS SPACE IS RESERVED FOR STAMPS]



D/SO
D/SF
2/12
H

THE NOMINAL CAPITAL of

CHINA ROAD & BRIDGE CORPORATION (K), LIMITED

is Sh. 100,000/- divided into 1,000 Shares

of Sh. 100/- each.

Signature

Description DIRECTOR

Date 2/12/08

22007
G. 0368281
22/12 08
H

I CERTIFY THAT THE STAMPS APPEARING
HEREIN WERE EMBOSSED ON THIS DOCUMENT
ON THE 3rd DAY OF 12 2008.
H
COLLECTOR OF STAMP DUTIES

GPK (L)

No. OF CERTIFICATE

THE STAMP DUTY ACT

(CAP. 480)

(Section 39 and the Schedule, Article 8)

CHINA ROAD & BRIDGE CORPORATION KENYA, LIMITED

STATEMENT OF NOMINAL CAPITAL

(Note.- The Stamp Duty on the Nominal Capital is Shillings Twenty for every Sh. 2,000 or fraction of Sh. 2,000)

This Statement is to be filed with the Memorandum of Association or other Document when the Company is registered.

Presented for registration by:

CAXIRI MORA & Co.

ADVOCATES P.O. BOX

1983-0020 (M.N.B.)

THE COMPANIES ACTS
(Cap. 486)

DECLARATION OF COMPLIANCE WITH THE REQUIREMENTS OF THE
COMPANIES ACT ON APPLICATION FOR REGISTRATION OF A COMPANY
(Section 17(2))

Name of the company CATINA ROAD & BRIDGE CORPORATION KENYA Limited
Presented by GAKIRI MORARA & COMPANY ADVOCATES P.O. BOX 1783-NAIROBI
I, CHARLES GAKIRI MORARA
of P.O. BOX 1783-NAIROBI


Do solemnly and sincerely declare that I am (a) AN ADVOCATE OF THE HIGH COURT ENGAGED IN THE
FORMATION of CATINA ROAD & BRIDGE CORPORATION KENYA Limited
and that all the requirements of the Companies Act in respect of matters precedent to the registration of the
said company and incidental thereto have been complied with. And I make this declaration conscientiously
believing the same to be true and according to the Oaths and Statutory Declarations Act.

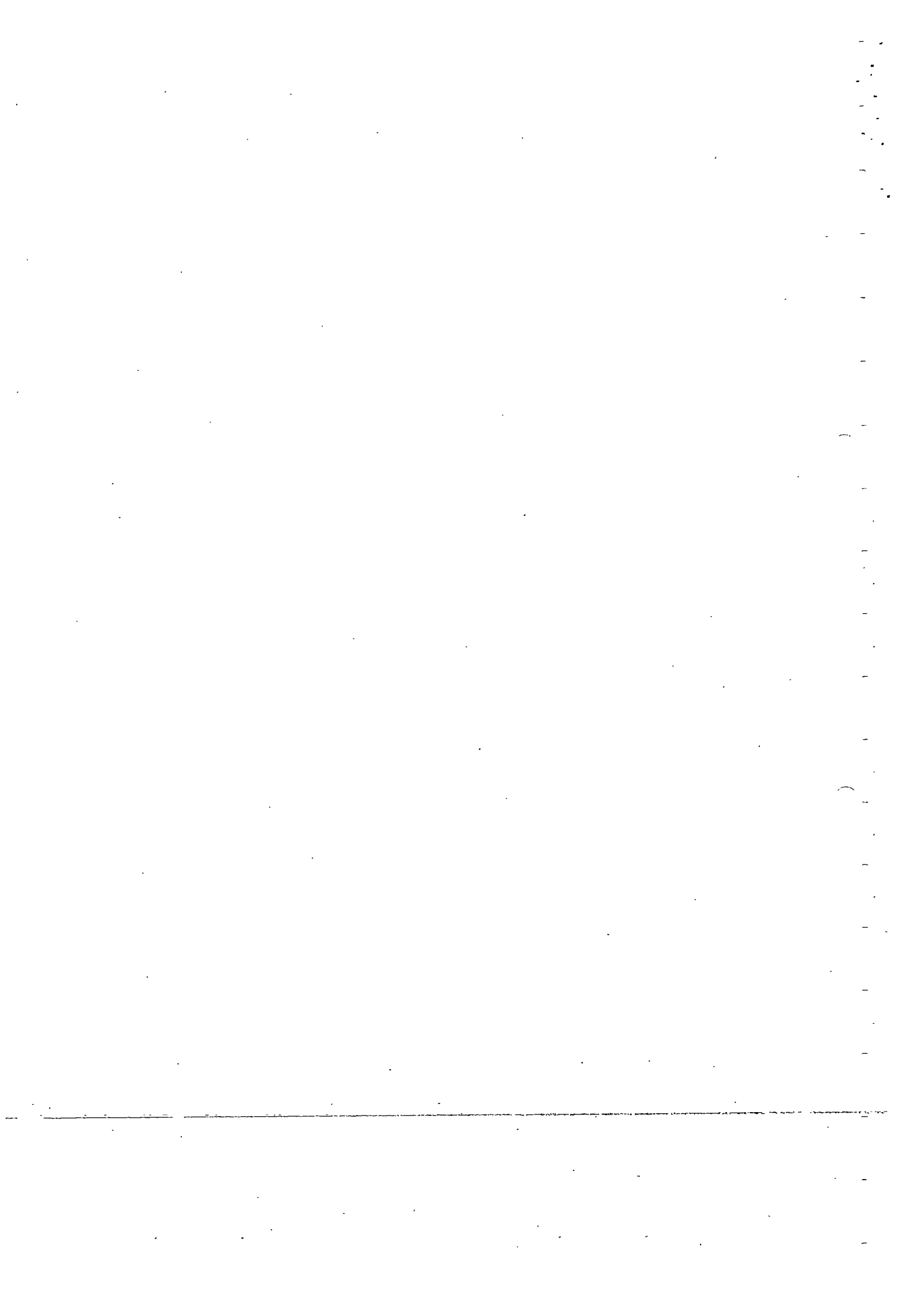
Declared at NAIROBI this 18th Day
Of DECEMBER 2008 Before me } Gambiri
A commissioner for Oaths (By )

Fee Sh. 20.

- (a) insert "advocate of the High Court engaged in the formation", or "a person named in the articles of association as a director or secretary".
- (b) Or "Notary Public" or "Magistrate".

GPK(L)

2008-
C 0368281
22/12/08




THE COMPANIES ACT

(Cap. 486)

NOTICE OF SITUATION OF REGISTERED OFFICE
OR OF ANY CHANGE THEREIN

(Section 108)

Name of Company CHINA ROAD & BRIDGE CORPORATION KENYA Limited

Presented by GAKIRI MORAA & COMPANY ADVOCATES
P.O. BOX 1783-10200 NAIROBI

To: THE REGISTRAR OF COMPANIES

CHINA ROAD & BRIDGE CORPORATION KENYA limited hereby gives you
notice, in accordance with section 108 of the Companies Act, that the registered office of the

*company on incorporation is situated at LR No: 209/1184/11 MPAKA ROAD
WESTLANDS NAIROBI P.O. Box 1783-10200 NAIROBI

or *with effect from the day of, 20
has been changed to

..... P.O. Box
Date Signature *Chumf*

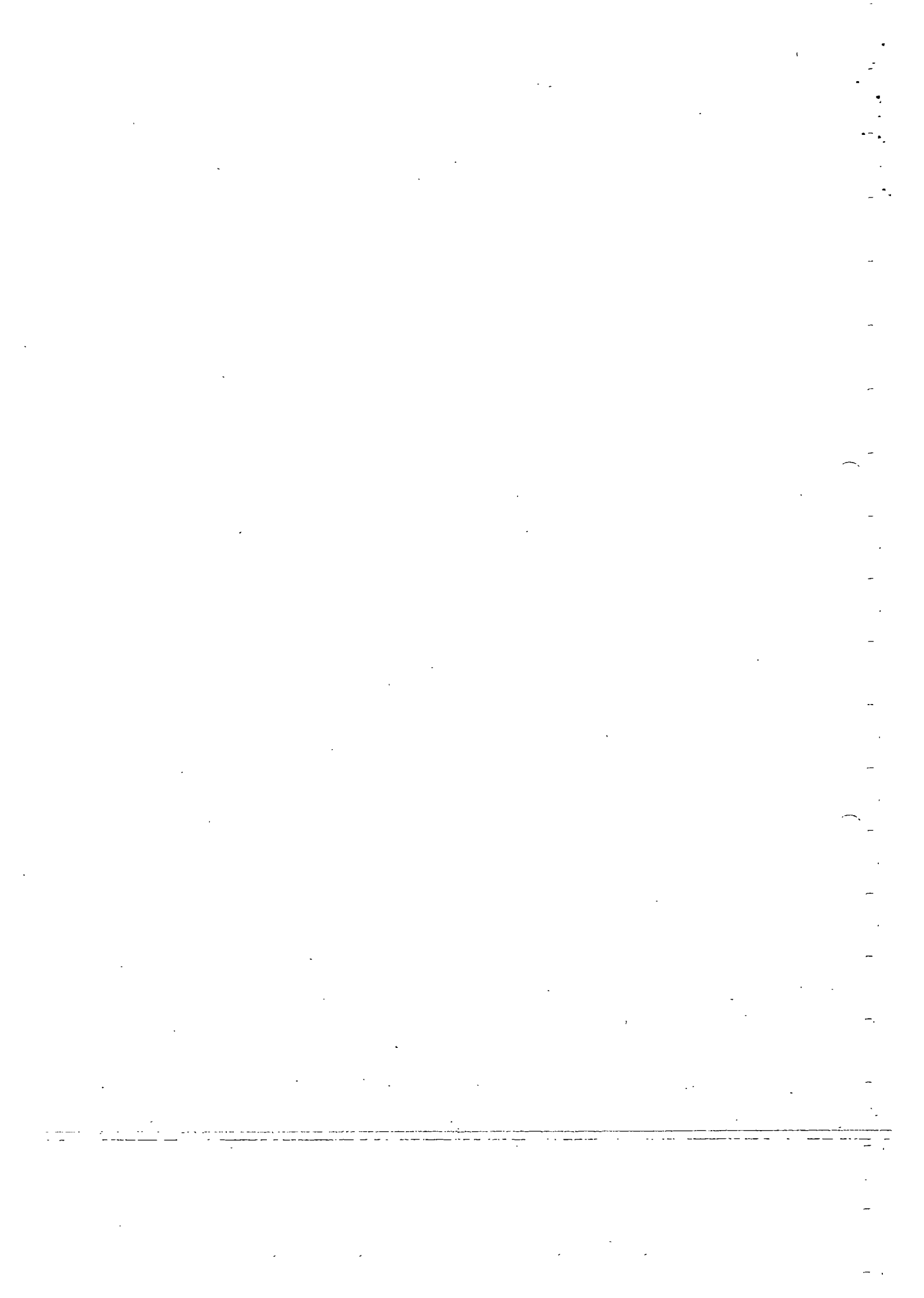
(State whether Director or Secretary)

Fee: KSh. 20

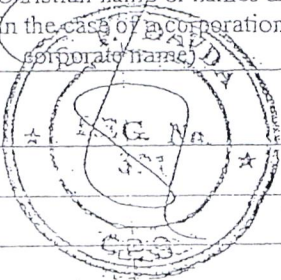

GPK (L)

*Delete words inapplicable.

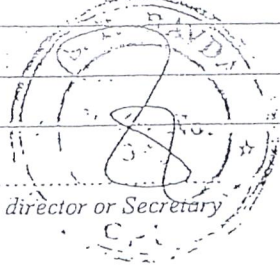
2007 =
C 0368281
22/12
08



Particulars of the person who is the secretary of the Company at the date of this return

(1) Name (in the case of an individual sent Christian name or names and surnames; in the case of a corporation the corporate name)	(2) Any former Christian name or names and surnames.	(3) Postal address (in the case of a corporation, the registered or principal office)
		
NCL PROPERTIES CPS 391		BOX 46283 NAIROBI

Date 18TH DEC. 2008

Signed 
State whether director or Secretary

Fee: Sh 200

NOTES

"Directors" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Christian name" includes a forename, and "surname", in the case of a peer or person usually known by a title different from his surname, means that title.

"former Christian name" and "former surname" do not include-

- (a) in the case of a peer or a person usually known by a title different from his surname, the name by which he was known before the adoption of or succession to the title; or
- (b) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been change or disused for a period of not less that twenty years; or
- (c) in the case of a married woman, the name or surname by which she was known before the marriage.

Directorships. - The names of all bodies corporate incorporated in Kenya of which the director is also a director should be given, except bodies corporate of which the company making the return is the wholly owned subsidiary or bodies corporate which are the wholly owned subsidiaries either of the company or of another company of which the company is the wholly owned subsidiary. A body corporate is deemed to be the wholly owned subsidiary of another if it has no members except that other's and that other's wholly owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this form.

Date of birth need only be given in the case of a company by which is subject to section 186 of the Companies Act (cap. 486), namely a company which is not a private company, or which, being a private company is a subsidiary of a body corporate incorporated in Kenya, which is not a private company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

REPUBLIC OF KENYA

TRIPPLICATE

0368281

C

THE REGISTRAR-GENERAL

Registry	Form	File No.	Amount	
			Sh.	cts.
panics				
Trade Names				
Trade Marks				
Patents				
Trade Transfer				
Trade Adv.				
Total			SA	400

Satisfaction

Application

Registration

Filing

Copying

Certificates

Received from: *SA 400*

the sum of Sh. *400/-*

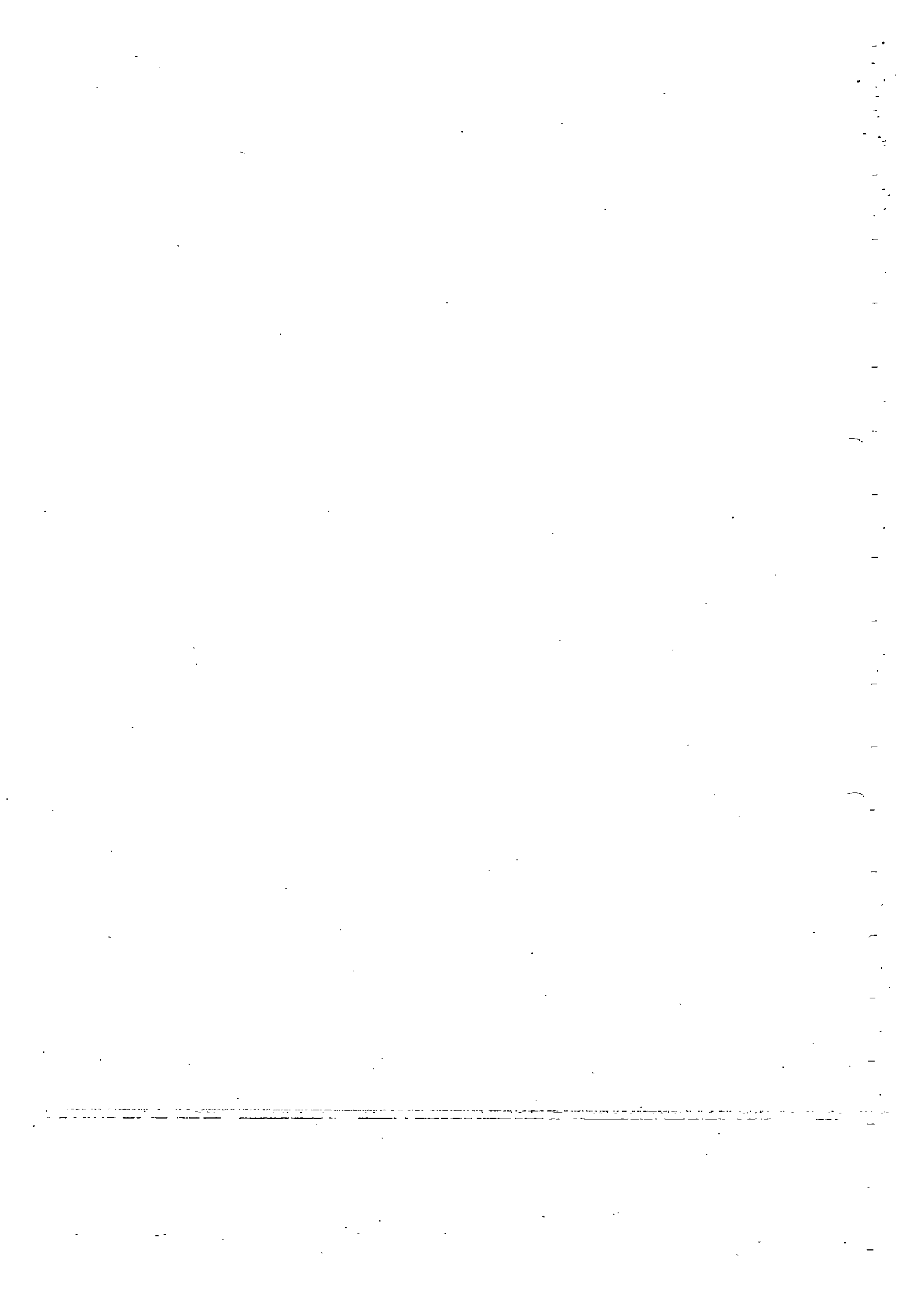
for Registrar-General

25/11/2008

Date

for Registrar-General

REG-000 REG-6/2008



Kenya Revenue Authority

DOMESTIC TAXES DEPARTMENT

P.O. BOX 30165 NAIROBI (00100); TEL: 310900 FAX: 253532

STAMP DUTY DECLARATION, ASSESSMENT & PAY-IN SLIP

PART I: TO BE COMPLETED BY THE STAMP DUTY PAYER

Date of Instrument	Nature of Transaction	Title Number	LR Number	Sublocation/Township	Area/Size	Declared Value
(1)	Memo of Statement of					
(2)	N Capital					
(3)						
(4)						
(5)						

Particulars of Parties	Name	CPIN	Postal Address & Code	Tel. No.
(6) (Tick as appropriate) Owner/Vendor				
Transferor				
Others (specify)				
(7) Transferee				
Agent/Advocate	CAKIRI MUSA ADV.	A016982306	P Box 1783-00200 NRB	

NB; Please provide additional information if any on the space provided overleaf

PART II: TO BE COMPLETED BY THE REGISTRAR

Amount of Duty Assessed: (9) Kshs. 3070

Penalty Amount (Where applicable) (10) Kshs.

Does it Qualify for Valuation? Yes (11) No (12)

Amount of Duty Payable in Words: Name of Registrar/Assessor: F.N. ORARE 217 Designation: Signature: Date: 1/12/08



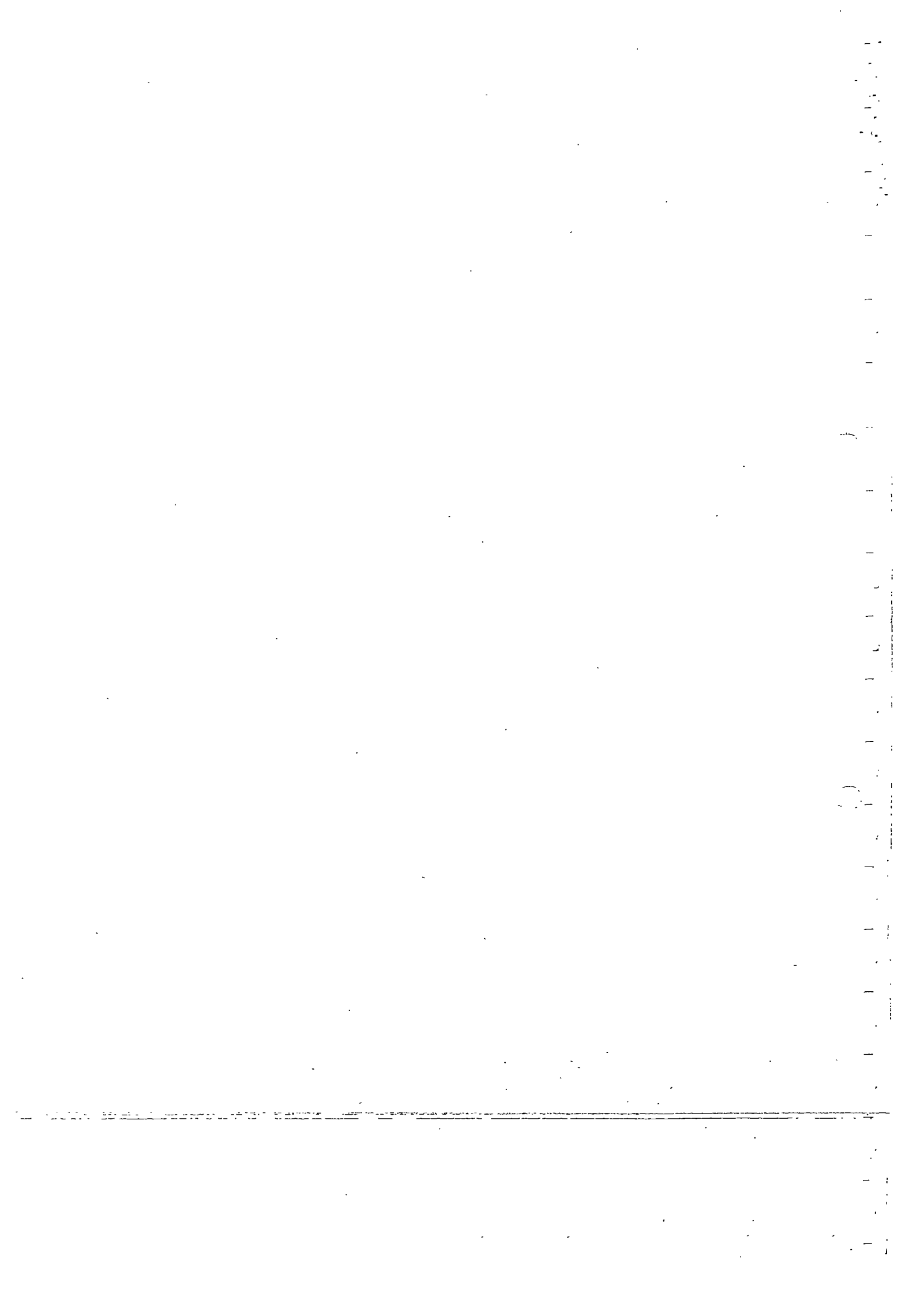
PART III: PAYMENT DETAILS

Cash/Cheque Number	Drawer's Bank Name & Branch	Amount (Kshs.)
		3070
		100
		3170

Amount Paid In Words: Three thousand one hundred & ten only (Amount Paid By) Signature: Date: 1-12-08

Form to be filled in Quadruplicate & Distributed as follows: White - Duty Payer's Copy, Blue - Commissioner of Domestic Taxes Copy, Green - District Registrar's Copy, Yellow - Bank's Copy

(Please turn overleaf for instructions)



ANNEX 19

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GAZETTE NOTICE NO. 721

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

THE NYANDARUA COUNTY TASKFORCE ON LAND
PLANNING AND DEVELOPMENT

APPOINTMENT

PURSUANT to the provision of section 30 (1) and 102 of the County Governments, Act, 2012, Governor of Nyandarua County appoints—

John Maina Kariuki (Fr.),
Julius Muthanwa,
John Nginye Macharia (Rev.),
Gitau Thambanja,
Mirjam Wanjiku Waweru,
Stephen Kari Githiaka,
Harrison Kiragu Wachira,
Joseph Njoroge Njugi
Mary Wanjiru Njogo.

as members of the Nyandarua County Task Force on Land Planning and Development for a period of 90 days.

Dated the 24th January, 2014.

D. W. MWANGI,
Governor, Nyandarua County.

GAZETTE NOTICE NO. 722

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

THE COUNTY ASSEMBLY OF MANDERA

REGULAR SITTINGS OF THE COUNTY ASSEMBLY

PURSUANT to Standing Orders of the Standing Orders of the Mandera County Assembly, it is notified for the information of Members of the County Assembly and the general public that the Assembly shall resume its regular sittings of the Second Session in the County Assembly Chambers at the County Assembly Buildings, on Tuesday, 11th February, 2014 at 2.30 p.m.

Dated the 3rd January, 2014.

A. S. HASSAN,
Speaker.

GAZETTE NOTICE NO. 723

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

THE COUNTY ASSEMBLY OF MACHAKOS

RELOCATION OF THE COUNTY ASSEMBLY

PURSUANT to notice of motion dated Thursday 21st November, 2013, it is notified for the information of the Members of the County Assembly of Machakos and the general public that the County Assembly of Machakos shall relocate from County Hall, from Saturday 1st February, 2014, to Mavoko Sub-County Town Hall Chambers for a period of three months to pave way for renovation of the Machakos County Assembly Chambers after which the County Assembly shall resume its sittings at the Machakos County Hall from Friday 2nd May, 2014.

During the said period the Assembly business shall be transacted at Mavoko Town Hall Chambers.

B. M. MUNG'ATA,
Speaker, Machakos County Assembly.

GAZETTE NOTICE NO. 724

THE LAND ACT

(No. 6 of 2012)

MOMBASA-NAIROBI STANDARD GAUGE RAILWAY
PROJECT

INTENTION TO ACQUIRE LAND

IN PURSUANCE of the transitional provisions contained in section 162 (2) of the Land Act and section 6 (2) of the Land Acquisition Act (repealed), the National Land Commission gives notice that the government intends to acquire the following parcels of land for the Kenya Railways Corporation for the construction of the Mombasa-Nairobi standard gauge railway in Taita Taveta, Kwale and Makueni Counties.

Parcel No.	Registered Owner	Area to be Acquired (Ha.)
Kathekani 395	Jonah Mutisya Iksuya	3.101
Kathekani 396	Joseph Nduta Kyengo	0.7700
Kathekani 636	Rose Kavee Muindi	1.503
Kathekani 637	Pauline Kasusu Malyunga	0.203
Kathekani 677	John Mbithi Peter	0.1931
Kathekani 676	Margaret Ikinga Wachira	1.334
Kathekani 679	Fredrick Matembe Juma	0.0131
Kathekani 715	Milkah Ndunge Kilavi	0.6345
Kathekani 714	Paulinah Munini Kiilu	0.0897
Kathekani 737	Jonah Mutisya Iksuya	1.347
Kathekani 726	Rodah Mutinda	0.0699
Kathekani 378	Samuel Mutua Ngewa	0.4618
Kathekani 375	Luka Muli	0.8565
Kathekani 376	Peter Muoka Munyao	0.0350
Kathekani 334	Paul Musyimi Mwove	0.5031
Kathekani 385	Amos Muli Mutua	0.1581
Kathekani 386	Rael Wausi Musyoka	0.1369
Kathekani 389	Samuel Mutua Ngewa	0.6016
Kathekani 387	Agnes Mukina Mauta	0.2744
Kathekani 203	Moses Kimani Gacheba	0.6922
Kathekani 390	Alphonse Katunga Keli	0.0205
Kathekani 202	Francis Kiruka Njoroge	0.4988
Kathekani 201	Margaret Ikinga Wachira	0.4557
Kwale/Mwavumbo/1	Mwavumbo Group Ranch	14.05
Kwale/South Samburu/58	South Samburu Group Ranch	28.34
LR 24360	Kenya Wildlife Service	65.81
LR 24361	Kenya Wildlife Service	35.90

Plans for the affected land may be inspected during office hours at the office of the National Land Commission, Ardhi House, 1st Ngong Avenue, 3rd Floor, Room No. 305 and at respective Lands offices in Makueni, Wundanyi and Kwale.

Notice for the inquiries will be published in the Kenya gazette after 30 days as per section 112 (1) of the Land Act of 2012.

Dated the 2nd February, 2014.

MUHAMMAD A. SWAZURI,
Chairman, National Land Commission.

GAZETTE NOTICE NO. 725

THE LAND REGISTRATION ACT

(No. 3 of 2012)

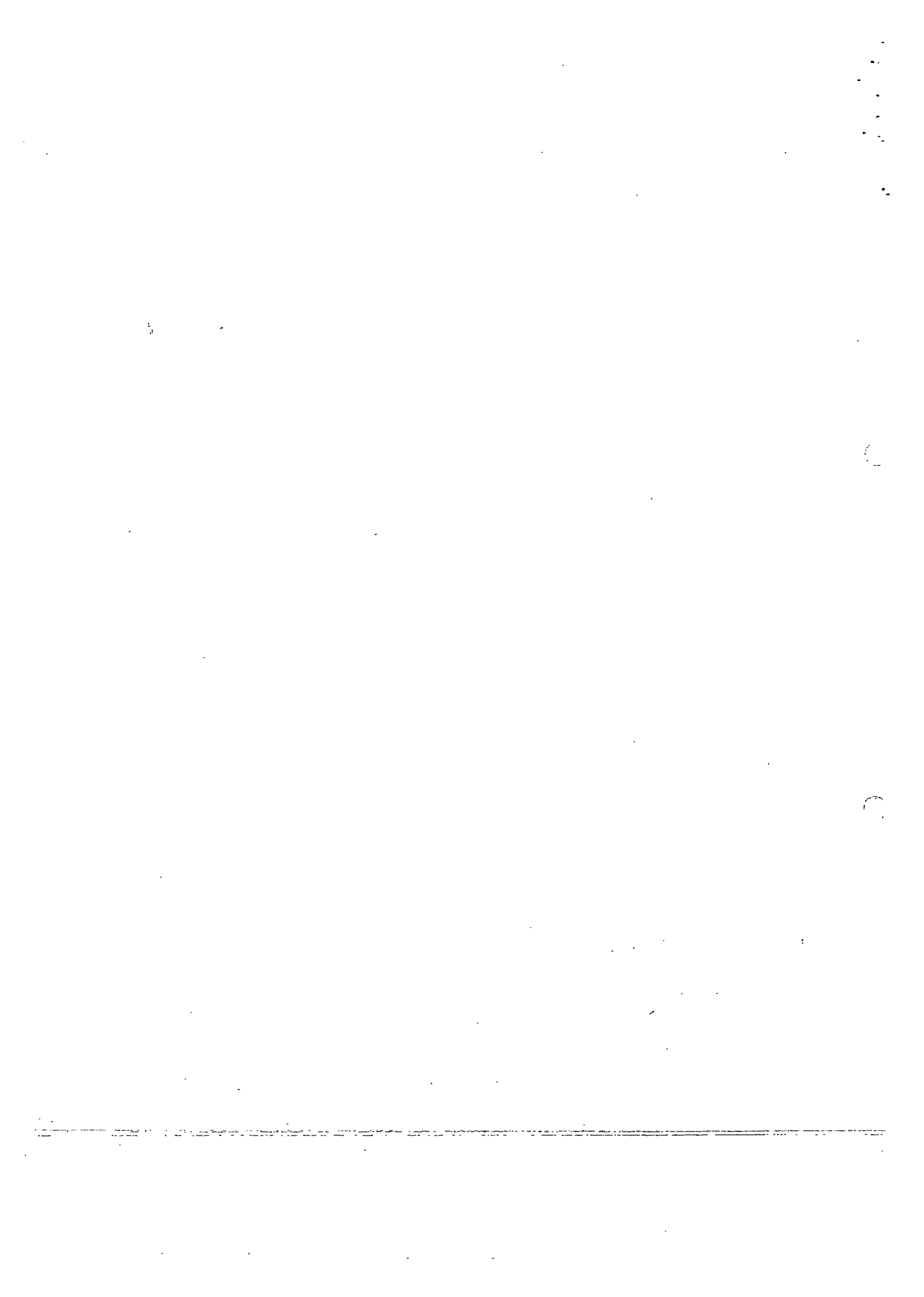
ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Samuel Kevin Kimani, of P.O. Box 54279-00200, Nairobi in the Republic of Kenya, is the registered proprietor/lessee of that piece of land known as L.R. No. 209/4966, situate in the city of Nairobi, by virtue of a grant registered as L.R. 11802/1, and whereas sufficient evidence has been adduced to show that the said grant issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 7th February, 2014.

MR/4122229

G. M. MUYANGA,
Registrar of Titles, Nairobi.



ANNEX 20

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REPUBLIC OF KENYA



Telegraphic Address

'Bunge', Nairobi

Telephone 221291

Fax: 2243694

E-mail: clerk@parliament.go.ke

When replying please quote

KNA/PIC/CORR/2013/ (13)

Clerk's Chambers

National Assembly

Parliament Buildings

P. O. Box 41842, 00100 GPO

NAIROBI, Kenya

January 23, 2013

Mr. Li Qiang

General Manager,

China Road and Bridges Construction Corporation,

Plot 330/265 Hatheru Road, Lavington

P. O. Box 39037 - 00623,

NAIROBI

Dear

**RE: APPEARANCE BEFORE THE PUBLIC INVESTMENTS COMMITTEE -
CONTRACT, TENDERING PROCESS AND FINANCING FOR THE
CONSTRUCTION OF THE MOMBASA-NAIROBI STANDARD GAUGE
RAILWAY LINE AND PROVISION OF ROLLING STOCKS**

Reference is made to our letter Ref: KNA/PIC/CORR/2013/ (126) dated December 17, 2013 inviting you for a meeting with the Committee on Public Investments.

The Public Investments Committee was established by the House pursuant to Standing Order No. 206 and is mandated, amongst others, to:-

- Examine the reports and accounts of the public investments;
- Examine the reports, if any, of the Auditor General on the public investment;
- Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

Following a request for a statement on 2nd December, 2013, the House directed the Public Investments Committee to investigate and report on the agreement, tendering process and financing of the construction of the Mombasa-Malaba Standard Gauge Railway Line and provision of stocks.

During its Sitting held on 21st January, 2014, the Committee deliberated on your failure to attend the sitting and resolved to invite you again for a meeting on **Thursday 30th January, 2014 at 10.00 am in the Main Conference Room, County Hall, Main Parliament**

Buildings. The purpose of the meeting is for the General Manager to brief the Committee on:-

- (i) The bilateral agreement on the construction of the Standard Gauge Railway from Mombasa to Busia/Malaba and provision of running stock;
- (ii) The Commercial Agreement between Kenya Railways and China Road and Bridge Corporation for the construction of the Mombasa - Nairobi railway;
- (iii) Procurement process for the project including bidding, tender evaluation and award;
- (iv) Financing of the Kenyan section of the project – actual amount of the loan, financiers and how they were identified, repayment of the loan and the actual cost of the project;
- (v) Whether China Road and Bridge Construction Company has the capacity to build a railway of such magnitude and provide rolling stocks;
- (vi) Procurement of the Feasibility study undertaken on the project, its cost and findings; and
- (vii) The Environmental Impact assessment of the project.

A written submission on the above issues should be sent to the Committee Twenty Four Hours before the meeting.

Yours

Michael R. Sialai

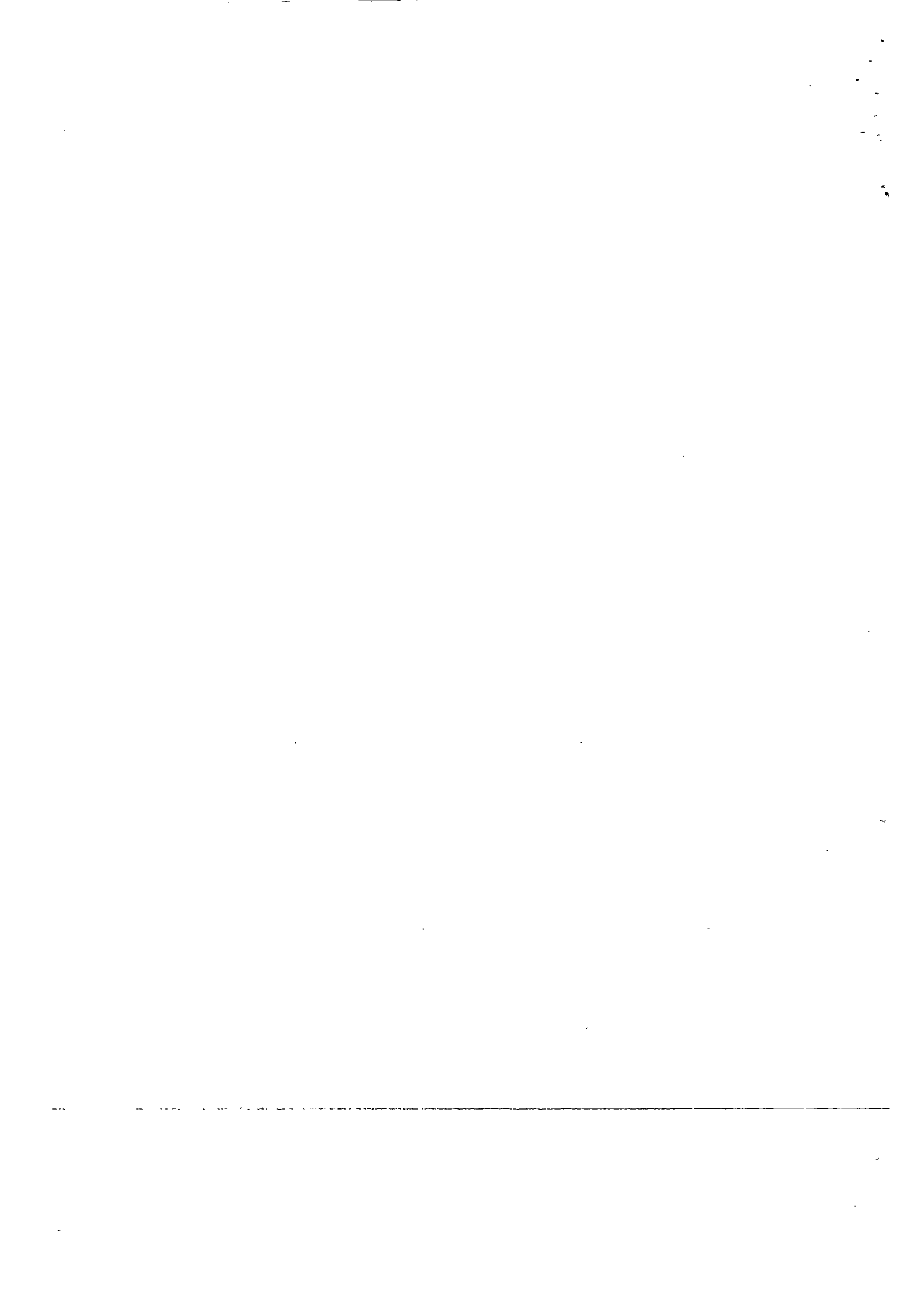
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: Mr. Edward Ouko
Auditor General,
Kenya National Audit Office,
Anniversary Towers,
Nairobi

Mrs. Esther Koimett, CBS
Investments Secretary,
The National Treasury,
Nairobi

Mr. Edward Ngigi
Ag. Inspector General,
Inspectorate of State Corporations,
KICC,
Nairobi

ANNEX 21



Telephone: +254-20-318888
Fax: +254-20-2240066/341935/344333
E-mail: communication@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and date



HARAMBEE AVENUE
P.O. BOX 30551-00100
NAIROBI, KENYA

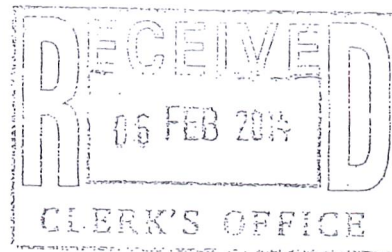
MINISTRY OF FOREIGN AFFAIRS

5th February, 2014

MFA. REL. 13/38

Ref. No.

Mr. Justin N. Bundi,
Clerk of the National Assembly,
Parliament of Kenya,
NAIROBI.



Dear *Justin*

INVITATION TO THE CHINA ROAD AND BRIDGE CORPORATION TO APPEAR BEFORE PARLIAMENT

The Ministry is informed that China Road and Bridge Corporation has been invited to appear before a Committee of Parliament discussing matters relating to the development of a standard gauge railway as agreed between the Government of Kenya and the Government of China. This information was availed to the Ministry following a request from the Public Procurement and Oversight Authority seeking confirmation as to whether China Road and Bridge Corporation was a state owned corporation.

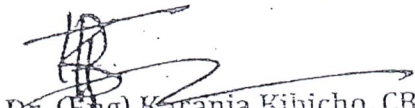
The Ministry has since received and forwarded evidence and confirmation to the Public Procurement and Oversight Authority to the effect that China Road and Bridge Corporation is indeed a Chinese state owned corporation. Attached herewith is a copy of a note from the Embassy of the People's Republic of China in Nairobi detailing the same.

It is the opinion of this Ministry that summoning and questioning China Road and Bridge Corporation on this matter would be tantamount to summoning the Government of China since the corporation is fully owned and acting on behalf of the Chinese Government. Such a measure is likely to have serious and irrevocable negative consequences to Kenya's national interests and relations with China.

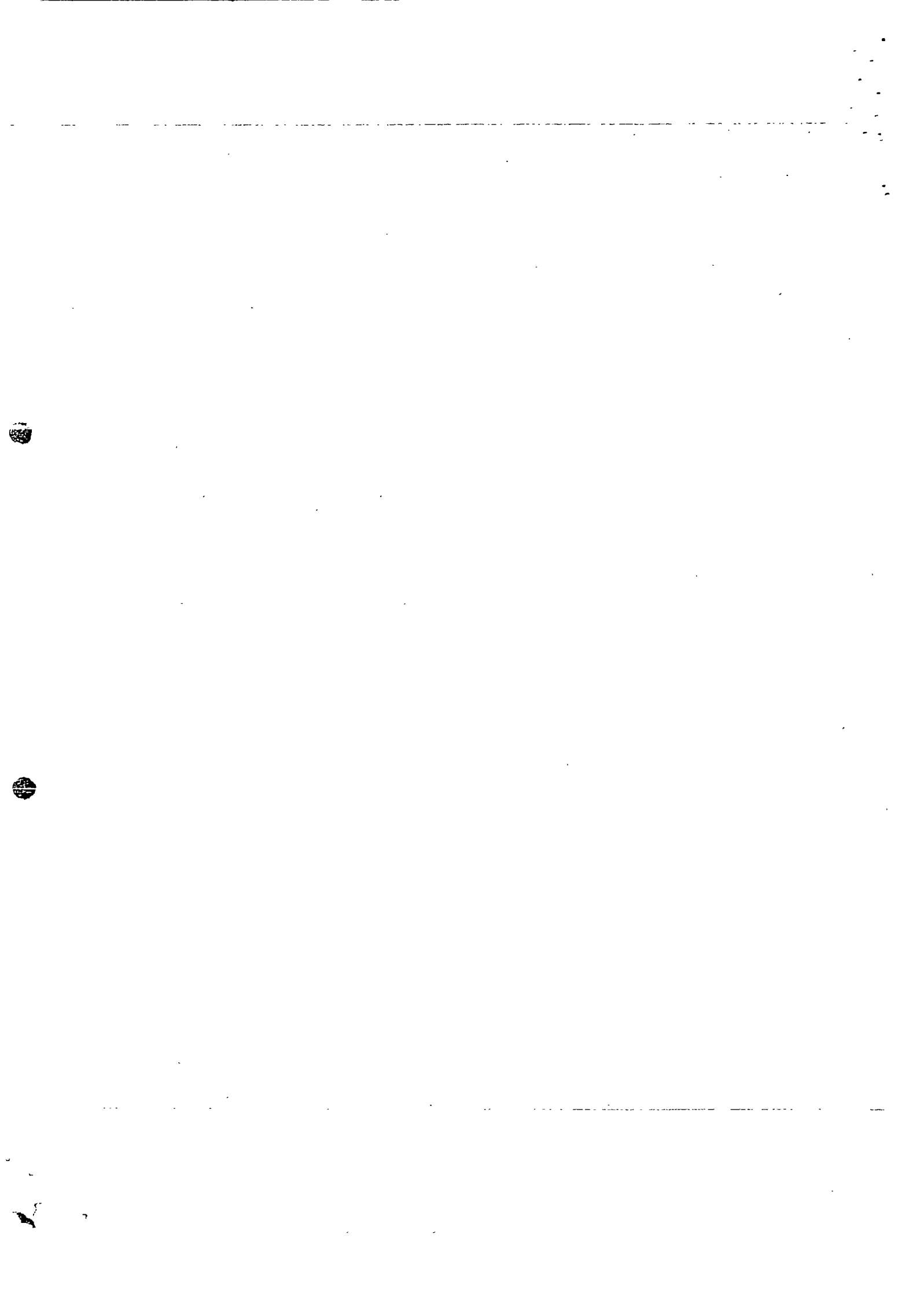
In the exceptional circumstance that Parliament is compelled to seek clarification from the Government of China on its actions and those of its agents in this matter, the appropriate and customary measure is to convey such a request through this Ministry for onward transmission to the Government of China through diplomatic channels.

Your favourable consideration is appreciated.

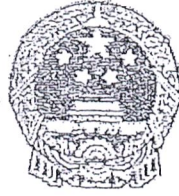
Yours *Sincerely,*


Dr. (Eng) Karanja Kibicho, CBS
PRINCIPAL SECRETARY

Encls (Note Verbale Ref. CEK14/018)



7 05 FEB 2014

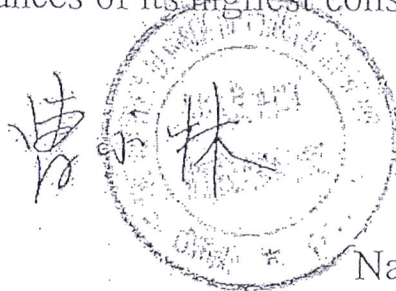


中 华 人 民 共 和 国 大 使 馆

CEK 14/018

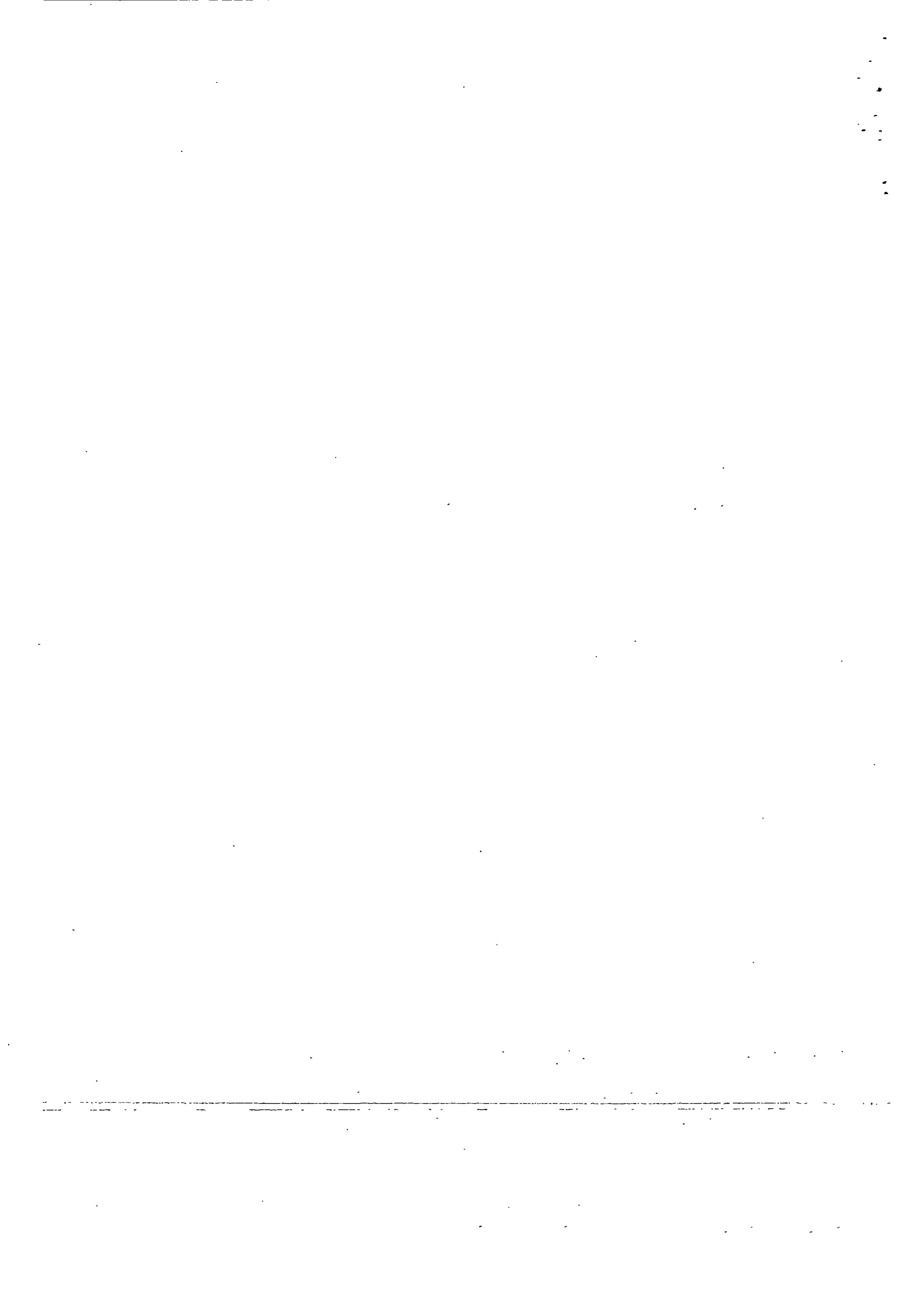
The Embassy of the People's Republic of China in the Republic of Kenya presents its compliments to the Ministry of Foreign Affairs and International Trade of the Republic of Kenya and, with reference to the Note Verbal MFA.REL.13/38 of the Ministry dated 4th February, 2014, has the honor to confirm that China Road and Bridge Corporation (CRBC) is a state-owned company in China with head office located at 1008, C88, Andingmenwai Dajie, Beijing, China. CRBC (Kenya) is a branch office of CRBC which represents CRBC to operate the business in Kenya since 1984.

The Embassy of the People's Republic of China in the Republic of Kenya avails itself of this opportunity to renew to the Ministry of Foreign Affairs and International Trade of the Republic of Kenya the assurances of its highest consideration,



Nairobi, 4th February, 2014

Ministry of Foreign Affairs and International Trade
of the Republic of Kenya,
NAIROBI.



ANNEX 22

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REPUBLIC OF KENYA



Telegraphic Address
Bunge, Nairobi
Telephone 221291
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842, 00100 GPO
NAIROBI, Kenya

KNA/PIC/CORR/2014/ (43)

5th March, 2014

Mr. Peter Mwangi Gatere
Director
China Road and Bridge Corporation Kenya Limited,
LR No. 209/1184/11, Mpaka Road, Westlands,
P. O. Box 1783 - 00200
Nairobi

Mr. Leonard Mwangi Ndungu
Director,
China Road and Bridge Corporation Kenya Limited,
LR No. 209/1184/11, Mpaka Road, Westlands,
P. O. Box 1783 - 00200
Nairobi

Dear *Peter*

RE: APPEARANCE BEFORE THE PUBLIC INVESTMENTS COMMITTEE

The Public Investments Committee was established by the House pursuant to Standing Order No. 206 and is mandated, amongst others, to:-

- (a) Examine the reports and accounts of the public investments;
- (b) Examine the reports, if any, of the Auditor General on the public investment;
- (c) Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

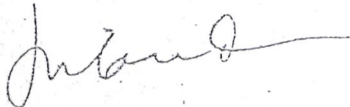
The Public Investments Committee has been investigating on the procurement process for the construction of the Mombasa-Malaba Standard Gauge Railway and provision of stocks. In the course of its investigations the committee established that your company was registered under a similar name as China Road and Bridges Corporation, a State Corporation incorporated in China.

During its Sitting held on 20th February, 2014 the Committee resolved to invite you, as the directors of China Road and Bridge Corporation Kenya Limited, for a meeting to be held on Tuesday 18th March, 2014 at 3.00 pm in the Committee Room, 5th Floor, Continental House, Parliament Buildings. The purpose of the meeting is for you to brief the Committee on the legal status of China Road and Bridge Corporation Kenya Limited and in particular:-

- (i) Registration of China Road and Bridge Corporation Kenya Limited;
- (ii) The nature of work and undertakings done by China Road and Bridges Corporation Kenya Limited;
- (iii) Whether China Road and Bridge Corporation Kenya Limited was awarded the tender for the construction of the Standard Gauge Railway;
- (iv) The Memorandum and Articles of Association of China Road and Bridge Corporation Kenya Limited; and
- (v) Any other information relating to the legal status of China Road and Bridge Corporation Kenya Limited:

A written submission on the above issues should be sent to the Committee on or before 13th March, 2014.

Yours



JUSTIN N. BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

Copy to: Mr. Edward Ouko
Auditor General,
Kenya National Audit Office,
Anniversary Towers,
Nairobi

Ms. Esther Koimett, CBS
Investments Secretary,
The National Treasury,
Nairobi

Mr. Edward Ngigi
Ag. Inspector General,
Inspectorate of State Corporations,
KICC,
Nairobi

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION

PUBLIC INVESTMENTS COMMITTEE

THE REPORT ON
INSPECTION VISIT OF PHASE I OF THE STANDARD GAUGE
RAILWAY (MOMBASA - NAIROBI LINE) UNDERTAKEN
BETWEEN 16TH - 18TH JUNE, 2016
AND
IMPLEMENTATION STATUS OF PHASE I AND II OF THE
STANDARD GAUGE RAILWAY

**CLERK'S CHAMBERS,
NATIONAL ASSEMBLY,
PARLIAMENT BUILDINGS,
NAIROBI.**

NOVEMBER, 2016

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LIST OF ABBREVIATIONS AND ACRONYMS

CBD	-	Central Business District
CCCC	-	China Communications Construction Company
CRBC	-	China Roads and Bridges Corporation
CSE	-	Communications, Signals and Electricity
EPC	-	Engineering Procurement Construction
GoK	-	Government of Kenya
ICD	-	Inland Container Depot
JKIA	-	Jomo Kenyatta International Airport
KRC	-	Kenya Railways Corporation
MIA	-	Moi International Airport
MoU	-	Memorandum of Understanding
MoTI	-	Ministry of Transport & Infrastructure
SGR	-	Standard Gauge Railway
TEU	-	Twenty-Foot Equivalent Unit
TSDI	-	Third Railway Survey and Design Institute
USD	-	United States Dollars

1.0 PREFACE

The Public Investments Committee is a Select Committee established under Standing Order No. 206 and is responsible for the examination of the working of public investments.

1.1 Mandate of the Committee

The Committee is mandated to: -

- (a) Examine the reports and accounts of the public investments;
- (b) Examine the reports, if any, of the Auditor General on the public investment;
- (c) Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

The Committee shall however not examine: -

- (a) Matters of major Government policy as distinct from business or commercial functions of the public investments;
- (b) Matters of day-to-day administration; and,
- (c) Matters for the consideration of which machinery is established by any special statute under which a particular public investment is established.

The procedure of a Select Committee and other related matters thereto is covered under Standing Order No. 173–203. The Committee has power, under the provisions of the Constitution, National Assembly (Powers and Privileges) Act (Cap. 6), the State Corporations Act (Cap. 446) and the Public Audit Act (Cap. 412), to summon witnesses, examine them on oath and receive evidence.

1.2 Committee Membership

The Committee comprises of the following Members: -

1. Hon. Adan Wehliye Keynan, CBS, MP **- Chairperson**
2. Hon. Anthony Ichung`wah Kimani, MP **- Vice Chairperson**
3. Hon. Francis Mwanzia Nyenze, EGH, MP
4. Hon. Dr. Oburu Oginga, MGH, MP
5. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
6. Hon. Adan Mohammed Nooru, MP
7. Hon. Franklin Mithika Linturi, MP
8. Hon. Wafula Wamunyinyi, MP
9. Hon. Elias Bare Shill, MP
10. Hon. Sammy Silas Komen Mwaita, MP

11. Hon. John Olago Aluoch, MP
12. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
13. Hon. (Eng). John Kiragu, MP
14. Hon. Dorcas Kedogo, MP
15. Hon. Abdullswamad Sheriff Nassir, MP
16. Hon. Beatrice Nkatha Nyaga, HSC, MP
17. Hon. Bernard Munywoki Kitungi, MP
18. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
19. Hon. Cornelly Serem, MP
20. Hon. Eng. Stephen Ngare, MP
21. Hon. Irungu Kang'ata, MP
22. Hon. Johana Kipyegon Ngeno, MP
23. Hon. John Muchiri Nyaga, HSC, MP
24. Hon. John Ogutu Omondi, MP
25. Hon. Korei Ole Lemein, MP
26. Hon. Mary Sally Keraa, MP
27. Hon. Onesmus Muthomi Njuki, MP

1.3 Objectives of the Inspection Visit

Pursuant to Standing Order 206 7(c), the Committee in its 49th sitting held on 7th June, 2016 resolved to undertake an inspection visit of the standard gauge railway (SGR) line from Nairobi to Mombasa (Phase I) with the objective of ascertaining the project's implementation status; especially the extent to which the Committee's recommendations as contained in its *Special Report on the Procurement and Financing of the construction of the Standard Gauge Railway from Mombasa to Nairobi (Phase I) adopted by the House on 24th June, 2014*, were taken into account, for successful implementation and timely completion of the Project.

The Committee also tabled a *Special Report on Procurement of the Independent Consultant for Design Review and Construction Supervision for the Standard Gauge Railway from Mombasa to Nairobi and Procurement of facilities, locomotives and rolling stock* laid before the table of the House on 2nd December, 2014.

As evidenced by the two reports, the Committee has been consistent in advocating for efficiency, cost effectiveness and timely completion of the Project.

1.4 Delegation

The fact-finding visit was undertaken between 16th and 18th June, 2016 by the following

Committee members: -

1. Hon. Adan Wehliye Keynan, CBS, MP - **Chairperson**
2. Hon. Anthony Ichung`wah Kimani, MP - **Vice Chairperson**
3. Hon. Dr. Oburu Oginga, MGH, MP
4. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
5. Hon. Adan Mohammed Nooru, MP
6. Hon. Wafula Wamunyinyi, MP
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8. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
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15. Hon. John Muchiri Nyaga, HSC, MP
16. Hon. John Ogutu Omondi, MP
17. Hon. Korei Ole Lemein, MP
18. Hon. Mary Sally Keraa, MP
19. Hon. Onesmus Muthomi Njuki, MP

1.5 Sites Visited

The visit commenced on 16th June, 2016 at the Nairobi South SGR Terminus in Syokimau with a presentation on the status of SGR Project. The two-day visit ended at the Port of Mombasa on 17th June, 2016.

During the visit, the Committee held meetings with the officials of Kenya Railways Corporation, the Consultant's staff including expatriates from TSDI, local personnel from APEC and EDON and the China Road and Bridge Corporation (CRBC) personnel at various sites with key installations and facilities along the SGR corridor.

Among the construction sites the Committee visited and inspected are Nairobi South SGR Terminus (Nairobi South Station) in Syokimau, Athi River SGR Bridge, Emali T-Beam and Rail Sleeper Factory, Simba Railway Station, Tsavo River Super Bridge, Taru Super Bridge, Mariakani SGR Materials Quality Control laboratories as well as Mombasa West Station and Mombasa Port.

Committee General Observations

The Committee made the following observations following the two-day tour of the Standard Gauge Railway –

1. Implementation of Phase I of the standard gauge railway is on course with substantial civil works, track works and procurement of installations of associated facilities and railway stations having been already done. With an overall of 81% progress of civil works achieved and 324 Km of track laid, the project is due for completion in June 2017 ahead of the scheduled date of completion of June 2019.
2. For long-term viability, the Project should incorporate future plans for expansion of the line to a double track with a high speed line and to create room for electric powered trains to save on costs for future expansion.
3. The Committee was informed that the construction period of the SGR was reduced by two years following an Executive directive. The KRC management and Project Consultant however assured the Committee that quality of works would not be compromised in executing the Executive directive on implementation of the project.
4. The timeline of completion of Phase I of the Project may not be realised following the ruling on Petition 171 of 2016 by Judge A. Omollo of the Environment and Land Court in Mombasa on 21st June, 2016 which temporarily halted construction of the railway. This petition was filed by landowners in Mombasa County who are yet to be compensated despite their land having been compulsorily acquired for construction of the railway.
5. The successful completion of the SGR will significantly improve the passenger and freight transport in Kenya, boost the economy of the towns along its route, strengthen Kenya's political and economic status and promote integration process of East Africa Community.
6. There is an urgent need to interlink the SGR line with Jomo Kenyatta International Airport, Moi International Airport and the two major cities, namely Nairobi and Mombasa Central Business District to facilitate ease of transportation of freight and passengers.
7. The main contractor, China Road and Bridge Corporation (CRBC) has directly engaged local suppliers to supply materials and subcontracting services to the project, some of the local sub-contractors' input on the project include drainage works, grassing as well as supply of materials such as sand, cement, fuel and steel, however compliance of the forty per centum of local content engagement has not been achieved as per the contract.
8. The SGR project is viable as envisaged in the tripartite Agreement signed between the governments of Kenya and Uganda in 2009.
9. The Committee was informed that environmental impact assessment is taken into consideration at every stage during the construction of the Project and all the relevant stakeholders are consulted.

10. The Committee was informed that the contractor has made provision for fibre optic cables and power lines for future internet and electricity connectivity along the Standard Gauge Railway.
11. The Committee also observed that there is need to engage an independent quality assurer for purposes of inspection and laboratory testing of materials procured and used by the contractor to conform to standards as per the contract.

Committee Recommendations

I. General Recommendations

The Committee makes the following general recommendations: -

- (i) The urgency to complete and deliver the project two years ahead of the scheduled date should not compromise quality, scope and budget of the project. The Contractor should undertake the project in accordance with the contractual obligations and specifications.
- (ii) The Project should incorporate future plans for expansion of the line to a double track with high speed in addition to provision of fibre optic cables and power lines for future electrification of the line.
- (iii) KRC should consider an open-access model for the standard-gauge line where companies with their own trains can use the line at specified times and pay the Corporation an access fee.
- (iv) There is need improve road network along the railway and industrial areas to improve transshipment and connectivity and create efficiency and ease of transport.
- (v) There is need to expand the Standard Gauge Railway to other parts of the country with high business volumes.

II. Phase 1 Recommendations

On Phase I of the Standard Gauge Railway, the Committee makes the following recommendations:

- (i) To ensure the viability of the Phase 1 of the SGR, KRC should hasten construction of railway line to connect Nairobi SGR Terminus to Nairobi CBD, Jomo Kenyatta International Airport and the Inland Container Depot Terminal at Embakasi and also connect Mombasa West Station to Mombasa CBD, Wilson Airport and Moi International Airport to ensure enhanced efficiency in transport of passengers and freight in the two major Kenyan cities.
- (ii) KRC should appoint an operator who is acceptable to the Contractor CRBC and China Exim Bank to initially operate the line to generate enough revenue to cover the cost of operation and maintenance of the line and rolling stock as well as meet external loan obligations and meet any revenue shortfalls when the line becomes operational.
- (iii) The Contractor, CRBC should endeavour to enhance skills and technology transfer to the local staff who will manage and operate the trains, rolling stock and the line after

the handing over of the project to the Kenya Railways Corporation.

III. Phase 2 Recommendations

On Phase 2 of the Standard Gauge Railway, the Committee makes the following recommendations:

- (i) For Kenya to fully realize the benefit of the SGR project, the implementation of Phase 2 of the Project (Naivasha-Kisumu-Malaba) should be expedited to allow movement of cargo to the neighbouring countries as envisaged in the tripartite Agreements signed between the governments of Kenya and Uganda in 2009 and Kenya, Uganda and Rwanda in 2013.
- (ii) The Committee also recommends that a formal agreement be entered into with KRC, Kenya National Highways Authority and Kenya Wildlife Service to resolve any conflict involving the right of way of the SGR line as construction of Phase 2 commences.

Acknowledgement

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitation in fulfilment of its mandate. The Committee is also grateful to all the Kenya Railways Management, the Project Contractor CRBC and Staff of TSDI-APEC-EDON Consortium who adduced evidence before it and guided the Committee during the visit. The Committee would also like to appreciate the National Police Service for providing adequate security to the Committee throughout the visit.

Further, the Committee is grateful to the staff of the National Assembly, Office of the Auditor-General, the Inspectorate of State Corporations and the National Treasury for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

On behalf of the Members of the Public Investments Committee, I beg to table the Committee's Report on Fact-Finding Tour of Phase I of the Standard Gauge Railway pursuant to Standing Order 199.

Sign:

Date:

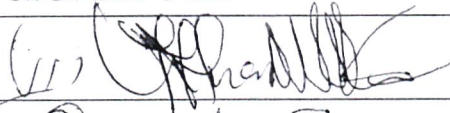
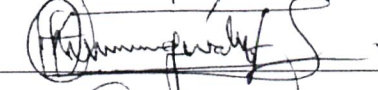
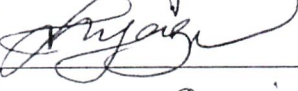
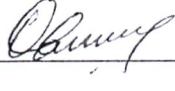
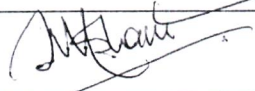
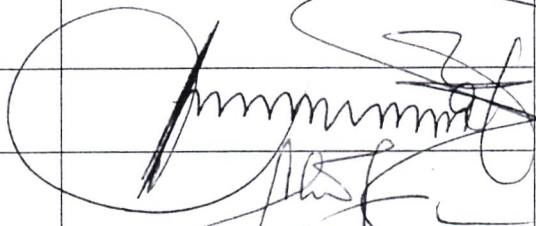


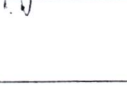
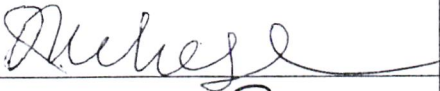
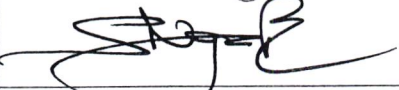

HON. ADAN W. KEYNAN, CBS, MP

CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

PUBLIC INVESTMENTS COMMITTEE

ADOPTION OF THE REPORT ON INSPECTION VISIT OF PHASE I OF THE STANDARD GAUGE RAILWAY (MOMBASA - NAIROBI LINE) UNDERTAKEN BETWEEN 16TH - 18TH JUNE, 2016 AND IMPLEMENTATION STATUS OF PHASE I AND II OF THE STANDARD GAUGE RAILWAY

DATE: 18/11/2016

	NAME	SIGNATURE
1.	Hon. Adan Wehliye Keynan, CBS, MP	
2.	Hon. Anthony Kimani Ichung'wah, MP	
3.	Hon. Francis Mwanzia Nyenze, EGH, MP	
4.	Hon. (Dr.) Oburu Oginga, MGH, MP	
5.	Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP	
6.	Hon. Adan Mohammed Nooru, MP	
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11.	Hon. John Olago Aluoch, MP	
12.	Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP	
13.	Hon. (Eng.) John Kiragu, MP	
14.	Hon. (Eng.) Stephen Ngare, MP	
15.	Hon. Abdullswamad Sheriff Nassir, MP	

2.0 IMPLEMENTATIONS STATUS OF PHASE I (MOMBASA-NAIROBI) OF THE STANDARD GAUGE RAILWAY PROJECT

2.1 Description of the Project

Kenya Railways Corporation is developing a new standard gauge railway (SGR) line for passengers and cargo transportation between Mombasa, the largest port in East Africa, and Nairobi. The line, on completion is proposed to connect Mombasa to Malaba on the border with Uganda and continue onward to Kampala, Uganda's capital city. It will further run to Kigali in Rwanda with a branch line to Juba in South Sudan.

The project aims to connect Kenya, Uganda, Rwanda and South Sudan and is expected to simplify transport operations in the country and across the borders and reduce travel costs, shorten the passenger travel time from Mombasa to Nairobi from more than ten hours to a little more than four hours. Freight trains will complete the journey in less than eight hours apart from benefiting the economies of Kenya and the neighbouring countries.

The Mombasa – Nairobi line constitutes the first phase of the SGR and is Kenya's flagship project under the Kenya Vision 2030 development agenda.

The Standard Gauge Railway is the biggest infrastructural project in Kenya since independence and is estimated to cost Kshs 327 billion (\$3.804 billion). The Project is financed through a loan, which is part concessional and part commercial from the Exim Bank of China which amounts to 90% (KES. 294.3 billion) while the remaining 10% (KES. 32.7 billion) is financed by the Kenyan Government, through the Railway Development Fund levy.

Cost of land acquisition is estimated to be Kshs. 15 billion financed from the Railway Development Levy.

The Government contracted China Roads and Bridges Corporation (CRBC) Ltd to construct the line under Engineering Procurement Construction (EPC), where two commercial contracts of USD 2.66 billion for construction of the proposed Mombasa – Nairobi SGR line and supply and installation of facilities, locomotives and rolling stock and USD 1.44 billion for communications, signals and electricity (CSE) were signed on 11th July, 2012.

TSDI-APEC–EDON consortium was contracted on 3rd June 2014 by KRC for supervision for the construction of the line from Mombasa to Nairobi and procurement and installation of facilities, locomotives and rolling stock.

The project commenced on 12th December, 2014 with a signed contract duration of 60 months.

The total length of the main line is 472.253 km with 77 bridges including super, major and medium bridges covering 29 km, which is 6.3% of the entire alignment. The bridges are frame bridges and box culverts.

The whole line is designed in accordance with Chinese Standards for class I single line with uniform design specification and standard gauge of 1435mm that will permit seamless operations across the borders.

2.2 Rolling stock of the SGR line

The line will initially carry diesel trains while electrification is possible in future. Multiple unit passenger trains having a capacity of 960 passengers will travel at a speed of 120km/h on the line.

Freight trains will have a capacity of 216 TEUs and travel at an average speed of 80km/h. A typical freight train on the line will consist of 54 double stack flat wagons and measure 880m-long.

2.3 Project Details at a quick glance

Project Name	MOMBASA-NAIROBI STANDARD GAUGE RAILWAY (SGR) PROJECT
Funded by	Government of Kenya : 10%
	Import-Export Bank of China (EXIM Bank): 90%
Overall Responsibility	Ministry of Transport and Infrastructure, Kenya
Employer	Kenya Railways Corporation (KRC)
Employer's Representative (TSDI-APEC-EDON Consortium)	The Third Railway Survey and Design Institute Group Co., Ltd (TSDI)
	APEC Consortium Co., Ltd (APEC)
	EDON International Consulting Co., Ltd (EDON)
EPC Contractor	China Road and Bridge Corporation (CRBC)
Contract sum	USD 3.804 Billion
Project Components	Contract I : Construction of a Standard Gauge Railway from Mombasa to Nairobi, Kenya (USD 2.66 Billion)
	Contract II : Supply and installation of the facilities, locomotives and rolling stock for the Mombasa-Nairobi Standard Gauge Railway Project (USD 1.144 Billion)
Date of Commercial Contract	Contract I : 11 th July, 2012
	Contract II: 4 th October 2012
Date of Loan agreement	11 th May 2014
Mile stone dates	Commencement date: 12 th December 2014
	Completion date: 1 st June 2017

3.0 IMPLEMENTATION STATUS OF PHASE 2 (NAIROBI – MALABA SGR) INCLUDING NEW KISUMU PORT AND INLAND CONTAINER DEPOT (ICD) IN NAIROBI

3.1 Background

The Nairobi - Malaba SGR is part of the Mombasa - Kampala - Kigali - Juba SGR, which is one of the projects under the Northern Corridor Integrated Projects initiative for which Kenya, Uganda, Rwanda and South Sudan have signed and ratified the SGR Protocol. Each Country is required to develop the sections within its borders, hence Kenya is developing the Mombasa - Malaba section.

3.2 Progress made in Implementation of Phase 2

Due to the difficult terrain in this section, the Government has decided to split the development into three sub-phases as follows:

- **Phase 2A** = Nairobi - Naivasha (120 kilometres)
- **Phase 2B** = Naivasha - Kisumu (262 kilometres) including developing a new high capacity port at Kisumu. This phase includes the purchase of 35 locomotives, 724 freight wagons and 64 passenger coaches, which will be adequate for the entire Phase
- **Phase 2C** = Kisumu - Malaba (107 kilometres)

KRC signed a MoU with CCCC on 14th October, 2014 to develop Phase 2. Since then, the Feasibility Studies and preliminary designs were completed paving way for KRC and CCCC to sign commercial contracts for the three sub sections. The general progress made is described below: -

3.2.1 Development of Phase 2A (Nairobi - Naivasha)

The Executive resolved to fast track the development of Phase 2A (Nairobi - Naivasha section) to serve the proposed Naivasha Industrial Park to be located within the Geothermal fields south of Lake Naivasha. KRC and China Communications and Construction Company (CCCC) are evaluating route options for a branch line to serve the Park from the proposed Mai Mahiu Station or Longonot Station. Phase 2A project will be financed by GoK budgetary allocations (15%) and a loan from the EXIM Bank of China 85%) signed by the two parties on 3rd December, 2015.

The parties are in the process of discussing conditions precedent to the disbursement of the Loan with construction expected to commence on 26th September, 2016. CCCC will be the EPC Contractor in line with a MoU signed between KR and CCCC on 14th October, 2014.

The route for Phase 2A starts at Nairobi South Station then turns south, crossing the Nairobi National Park from where it will pass through the southern outskirts of OngataRongai Town, cross the Magadi Road and head towards Ngong' Hills. From there, the line descends

into the Rift Valley through a 4.5 km tunnel and runs along the Rift Valley escarpment to Mai Mahiu and Longonot. The route is 120 kilometres long.

KRC will need to engage a supervision consultant to undertake designs review and construction supervision. Discussions with MoTI are underway for appropriate way forward to fast track the procurement process of a Supervision Consultant for Nairobi - Naivasha section without infringing GoK procurement laws and regulations.

3.3.2 Development of Phase 2B (Naivasha – Kisumu) and Phase 2C (Kisumu - Malaba)

The route runs from Longonot to Narok along the southern boundary of the Mau Forest from where it connects to Malaba through Bomet, Sondu, Ahero, Kisumu, Yala and Mumias. The terrain is undulating, thus requiring mitigation by long bridges and tunnels. As part of the project, a new high capacity port (to handle at least 600,000 tonnes annually) will be developed at Kisumu, approximately seven (7) kilometres to the west of the entrance into Kisumu International Airport.

The Cabinet approved the development of the Naivasha - Malaba section (including the development of the new high capacity port at Kisumu) on a G-to-G platform on 23rd March, 2016, paving the way for requesting for the AG's comments on the draft Commercial Contracts prepared by KR and CCCC.

Three (3) draft Commercial Contracts had been prepared for this section as follows:

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

The Attorney General approved the draft Commercial Contracts on 24th March 2016 and these were signed by KRC and CCCC on 24th March, 2016 and witnessed by the Cabinet Secretary MoTI, members of KRC Board and Management. The signed documents have been submitted to MoTI and the National Treasury to initiate the process of financing identification from the Government of the Peoples Republic of China.

3.3 Development of ICD in Nairobi

The Feasibility Study Report for the development of the Mombasa - Nairobi SGR recognised the need to modernise and expand the existing ICD in Nairobi in order to accommodate anticipated increased number of containers through the depot from the SGR operations. The cost of the project was to be borne by GoK. The ICD project was made a Condition Subsequent in the Financing Agreement for the development of Mombasa - Nairobi SGR, wherein the 4th Disbursement would only be made once EXIM Bank was satisfied that substantial progress had been made by GoK towards realising the ICD project.

In order to emphasise the need for developing the ICD, the Financing Agreement signed

between GoK and EXIM Bank of China on 3rd December, 2015, for the development of the Nairobi - Naivasha SGR made the ICD development a condition precedent to the disbursement. The disbursement would only commence after CCCC and KRC have signed a Commercial Contract for the development of the ICD. GoK fulfilled this condition on 24th March, 2016 when KRC and CCCC signed a Commercial Contract for the development of the ICD with CCCC as the EPC Contractor. The Commercial Contract has since been submitted to MoTI and forwarded to the National Treasury for financing identification.

Summary of progress made Phase 2 (Nairobi - Malaba SGR)

	Segment	Description	Route length or Capacity	Contract sum (US\$ MN)	Progress made
1.	Phase 2A	Nairobi - Naivasha	120 Km	1,483	<ol style="list-style-type: none"> 1. Financial Contract signed on 03-12-15 2. Conditions Precedent being discussed between TNT and EXIM Bank of China 3. MoTI will provide way forward for the procurement process for Supervision Consultant 4. Construction expected to commence on 26th September, 2016.
2.	Phase 2B	Naivasha - Kisumu (including provision of locomotives and rolling stock and branch line to new Kisumu Port)	262 Km	3,663	<ol style="list-style-type: none"> 1. Commercial Contract signed on 24th March, 2016 and submitted to MoTI and TNT to initiate financing identification. 2. (Naivasha -Malaba SGR) Management discussing with MoTI procurement process for Supervision Consultant
3.	Phase 2C	Kisumu - Malaba	107 Km	1,229	- ditto -
4.	New Kisumu Port	New development	600,000 tonnes	137	- ditto -

	Segment	Description	Route length or Capacity	Contract sum (US\$ MN)	Progress made
5.	Inland Container Depot	Expansion and modernisation of ICD in NRB	405,000 TEUs	213	Commercial Contract signed on 24 th March, 2016 and submitted to MoTI and TNT to initiate financing identification
	TOTAL		Nairobi-Malaba = 489 km	6,725	

EMERGING ISSUES

Environment Concerns

1. Several proposed routes for exiting Nairobi in Phase 2 of the Project were not technically possible due to environmental concerns and high cost of compensation when acquiring land.

Kenya Railways Corporation is in consultation with Kenya Wildlife Service (KWS) with regards to a proposal of having a 6.4 kilometre bridge constructed on the entire southern edge of the Nairobi National Park. The railway would then pass through Rongai and Ngongtowns which are high population areas before exiting the escarpment into the Rift Valley via a tunnel. Discussions on this proposed route have not been finalized. An earlier proposal to have a tunnel dug under the Nairobi National Park was not approved by KWS due to concerns on the effect of tunnelling to animal habitat in the Park.

2. The Corporation is working in consultation with KWS to ensure environmental sustainability of the project. They have so far met all conditions set by KWS.

Route Concerns

3. The proposed route dubbed the ‘Southern route’ would then proceed to pass through Suswa, Naivasha, Narok, Ahero and Sondu towns before terminating in Kisumu. The route had been considered due to the difficult terrain of the escarpment along the Northern Corridor as well as the cost of acquiring land along the Northern corridor. These factors would greatly increase the cost of building the railway along the Northern corridor. The Southern route is considered relatively virgin and land cost would be minimal.
4. A proposed depot in Naivasha will serve the large commercial centres along the Northern corridor such as Nakuru and Eldoret via trucks.

Project Sustainability in the EAC Region

5. According to KRC management, the three countries that signed the Tripartite Agreement, i.e. Kenya, Rwanda, Uganda are still intent on building their section of the SGR. The efficiency of the Kenyan corridor would ensure business people will choose it even if Tanzania is constructing a similar SGR.

4.0 TOUR OF THE STANDARD GAUGE RAILWAY (NAIROBI – MOMBASA)

4.1 Meeting with KRC Management and Project Consultant at Nairobi SGR Terminus

The Managing Director Kenya Railways Corporation Mr. Atanas Maina accompanied by KRC Railways Operations Manager Eng. Maxwell Mengich, Eng. J.M. Karanja, Architect Jeremiah Ndong and Architect Tobias Okoth from TSDI-APEC-EDON Consortium (TAEC) briefed the Committee as follows: -

1. China Roads and Bridge Corporation was contracted by Kenya Railways to undertake Phase I of the Mombasa – Nairobi SGR Project vide two commercial contracts namely, Civil Works EPC Turnkey commercial contract and Supply and installation of facilities, locomotives and rolling stock contract.
2. TSDI-APEC-EDON Consortium was contracted to undertake design review and construction supervision of the contracts to ensure that the main contractor CRBC meets quality standards and adheres to specifications of the project.
3. The proposed standard gauge railway line starts at the port of Mombasa and runs in a north westerly direction traversing Kwale, Kilifi, TaitaTaveta, Makueni, Kajiado and Machakos counties and terminates in the city of Nairobi at Embakasi.
4. The single line track will have a superior design catering for robust and low-maintenance requirement. The new line will run parallel to the existing meter gauge railway and the Mombasa-Nairobi Road or A109 Highway for the most part. It will deviate at certain points to attain the desired gradient and curvature.
5. The route length of the line is 472 km and the total track length is 609 km. The line has 77 bridges including super, major and medium bridges covering 29.687 km. A further length of 2.038 km is to be laid at the Marshalling yard and station in the port of Mombasa.
6. The project will have two major stations in Mombasa and Nairobi. The stations incorporate the main station building, power substations, dispatch centre, comprehensive maintenance office building, locomotive depot and signals buildings, locomotive and vehicle workshops, materials shed and warehouses, living houses, water supply house, boiler room and guard room. The Nairobi South Station in Syokimau covers an area of 400 acres of land and will serve as an operations area and railway terminus for trains heading out of Nairobi. The station will have locomotive and vehicle workshops for maintenance, servicing and repair of locomotives. The

station is equipped with dispatch and signal control centre where all signals for marshalling the locomotives will originate from. Metre- gauge railway line is provided for connection to the city centre.

7. There will be seven (7) intermediate stations namely Mariakani, Miasenyi, Voi, MitoAndei, Kibwezi, Emali and Athi River and thirty-three (33) crossing/passing stations incorporating signal building tower, pump house for water well, comprehensive workshop building, living house and guard room.
8. With the stations in place, it means that 25 trains can be on the line at a single time.
9. Other civil works carried out include: -
 - (i) Electrification of the infrastructure
 - (ii) Build main freight exchange and passenger stations at Mombasa and Nairobi
 - (iii) Build intermediate freight exchange and passenger stations at Mariakani
 - (iv) Build 33 crossing (passing) stations
 - (v) Build Marshalling Yards at the Port of Mombasa and Nairobi hub
 - (vi) Build 8 underpasses for animals within Tsavo National Park
 - (vii) Fence out the track throughout its length
 - (viii) Supply and Installation of Facilities, Locomotives and Rolling Stock
10. Electrification was not included in the feasibility studies and preliminary designs for the Mombasa – Malaba SGR but it will be considered in future as one of the options for increasing the line capacity beyond the design capacity of 22 million tonnes per annum.
11. The Project is at an advanced stage and as at 31stMay, 2016, 70% of civil works had been completed with 30% of track laying done mainly between Mombasa and Voi. **It is due for completion in June 2017 ahead of the scheduled date of completion of 2019. This was attributed to timely conclusion of land acquisition by KRC and subsequent mobilisation of resources by the contractor. The President also issued an executive order for early of completion and delivery of the project.**
12. The reduction in time of completion does not however affect the scope, budget and quality of the works of the project.
13. **KRC further signed another contract with China Communications Construction Company (CCCC) for the development of Naivasha – Malaba section of the project with the following four elements: -**
 - (i) Naivasha – Kisumu SGR line
 - (ii) Kisumu – Malaba SGR line
 - (iii) Kisumu Port Development; and

- (iv) Modernisation and expansion of the Inland Container Depot at Embakasi in Nairobi
14. Phase II of the SGR project is proposed to connect Nairobi to Malaba on the border with Uganda and continue onward to Kampala, Uganda's capital city. It will further run to Kigali in Rwanda with a branch line to Juba in South Sudan. Branch lines along the route will extend to Kisumu, Kasese and Pakwach.
 15. The governments of Kenya and Uganda signed a memorandum of understanding (MoU) in October 2009 to construct the SGR from Mombasa to Kampala. A tripartite agreement was signed by the governments of Kenya, Uganda and Rwanda in August 2013 to fast track the development of the railway to their respective capital cities. The objective of this agreement was for the three countries to adopt new technologies to enhance economic development in the region. The SGR project is meant to spur economic growth and development of the parties by reducing cost of doing business and increase the regions competitiveness. It would also enhance spatial development along the SGR corridor.
 16. The Ugandan section of the SGR line was launched in October 2014. The SGR line from Mombasa to Kigali is expected to be completed by 2018. Kenya Railways Corporation is responsible for the construction of the 1,300km-long track inside Kenya from Mombasa to Malaba via Nairobi.

Committee Observations

The Committee observed THAT –

- (i) The standard gauge railway has begun taking shape with substantial civil works done, track works and procurement of installations of associated facilities having been already been done;
- (ii) It is imperative that Kenya Railways Corporation ensures provision for SGR line connection to the Container Depot Terminal in Embakasi, Jomo Kenyatta International Airport and the Nairobi Central Business District for enhanced transport of freight and passengers;
- (iii) For long-term viability, the Project should have incorporated a future plan for expansion of the track to a double track with a high speed line to save on costs and savings for future expansion.
- (iv) The viability of the Project as envisaged in the tripartite Agreement signed between the governments of Kenya and Uganda in 2009 and Kenya, Uganda and Rwanda in 2013 may be at risk following reports that Rwanda has opted to connect to the Tanzanian SGR line which is deemed cheaper and less time-consuming than connecting through Kenya-Uganda.

The Committee was, however, informed that both Uganda and Rwanda are still party to the signed Agreements. In fact, Exim Bank of China has committed to provide

funds for the construction of the Ugandan SGR line. The Tanzanian SGR line is also an important part of the larger East African Railway network.

- (v) The Committee also expressed concern on the reduction of construction period by two years following an Executive Order. The KRC management and Project Consultant assured the Committee that quality of works was not compromised in executing the Order.
- (vi) On environmental concerns, the KRC management and the consultant assured the Committee that environmental impact assessment is taken into consideration during the construction of the Project and that Kenya Wildlife Service and the National Environmental Management Authority were and continue to be consulted in the implementation of the Project.

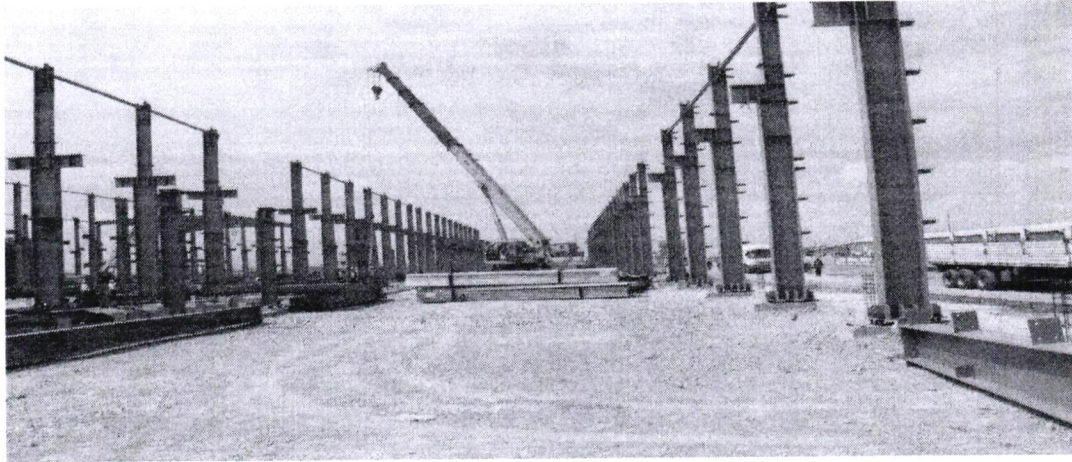
4.2 Tour of Nairobi SGR Terminus

The Nairobi SGR Terminus is one of the two major stations of the project, the other being Mariakani West station. The station is still under construction and on completion it will comprise the following facilities namely: - main station building, power substations, dispatch centre, comprehensive maintenance office building, locomotive depot and signals buildings, locomotive and vehicle workshops, materials shed and warehouses, living houses, water supply house, boiler room and guard room.

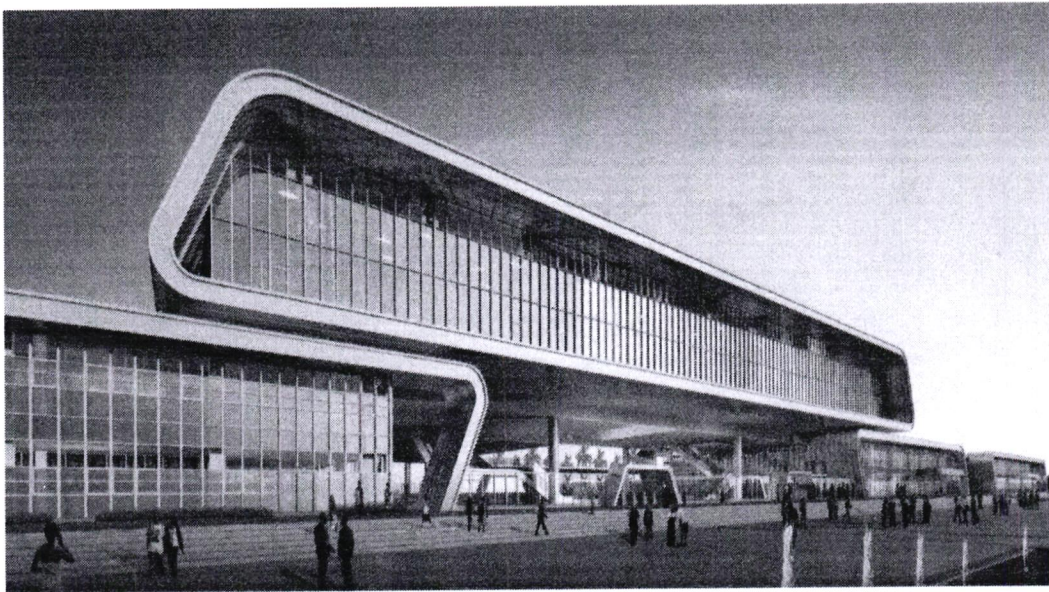
It will serve as an operations area and railway terminus for passenger trains.



Picture 1: PIC delegation at Nairobi SGR Terminus construction site



Picture 2: Ongoing construction Work at Nairobi SGR Terminus construction site



Picture 3: Façade view of Nairobi Station Building

4.3 Tour of Athi River Super Bridge

Eng. Solomon Njeru, the Project's Chief Geomatic Engineer accompanied by Eng. J.M. Karanja, Architect Jeremiah Ndong and Architect Tobias Okoth from TSDI-APEC-EDON Consortium (TAEC) briefed the Committee as follows: -

The SGR project has a series of railway bridges along the course of the track. The changing terrain and presence of delicate ecosystems requires elevation of the railway to accommodate movement of traffic and wild animals.

The total number of bridges along the line from Mombasa to Nairobi will be 98, covering 29km of the line to cross rivers, Mombasa road at Emali and Taru, valleys and the old line and eight animal crossing corridors over seven metres high and over 50 metres long in Tsavo East and West national parks.