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COMMITTEE	Roads
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Recommended for approval for tabling. THE SENATE

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TWELFTH PARLIAMENT

THIRD SESSION, 2019

③ Hon. Speaker

You may approve
MORRIS
29/11/19

THE STANDING COMMITTEE

ON

ROADS AND TRANSPORTATION

REPORT ON THE INSPECTION VISIT TO MALABA INTERNATIONAL BORDER POST,
BUSIA COUNTY ON 22ND NOVEMBER, 2019

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
P. O. BOX 41842-00100,
NAIROBI.

NOVEMBER, 2019

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ABBREVIATIONS AND ACRONYMS

CSR:	Corporate Social Responsibility
KeNHA:	Kenya National Highways Authority
TMEA:	Trade Mark East Africa
OSBP:	One Stop Border Point
BQ	Bills of Quantities
PPOA	Public Procurement Oversight Authority
PPP	Public Private Partnerships

ADOPTION OF REPORT

The Standing Committee on Roads and Transportation undertook an inspection visit to Malaba International Border Point on 22nd November, 2019. The purpose of the visit was to follow – up on a statement that was requested in the Senate by Sen. Moses Wetang’ula, MP, on the state of Malaba International Border Point. The Committee also undertook an inspection of the Busia International Border Point to address concerns that related to the issues that were raised in the said Statement. The Committee adopts its report as follows

Sen. Wamatangi Kimani, MP,

Chairperson-----


Sen.(Eng.) Hargura Godana, MP,

Vice- Chairperson-----


Sen. Enoch Wambua, MP,

Member-----

Sen. Christine Zawadi, MP,

Member-----


Sen. (Dr.) Lelegwe Ltumbesi, MP,

Member-----

Sen. Cleophas Malala, MP,

Member-----

Sen. Philip Mpaayei, MP,

Member-----

Sen. Sylvia Kasanga, MP,

Member-----

Sen. (Prof.) Ekal Imana, MP,

Member-----

PREFACE

The Standing Committee on Roads and Transportation is established under standing order 218(3) of the Standing Orders of the Senate and is mandated to *consider all matters relating to transport, roads, public works, construction and maintenance of roads, rails and buildings, air and seaports.*

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

Composition of the Committee

The Committee is comprised of the following Members:

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

Members Present During the Visit

The following Members comprised the delegation during the inspection visit to Malaba International Border Post in Busia County on 22nd November, 2019.

- 1) Sen. Wamatangi Kimani, MP, **Chairperson**
- 2) Sen. Hargura Godana, MP, **Vice- Chairperson**
- 3) Sen. Enoch Wambua, MP, Member
- 4) Sen. Christine Zawadi, MP, Member
- 5) Sen. Philip Mpaayei, MP, Member

The Committee was accompanied by Sen. Moses Wetang'ula, MP, who had requested for the Statement.

1.0 SUMMARY OF COMMITTEE ACTIVITIES UNDERTAKEN DURING THE COMMITTEE VISIT TO MALABA INTERNATIONAL BORDER POINT

Standing order 48 (1) provides that a Senator may request for a statement from a Committee relating to any matter under the mandate of the Committee that is of county-wide, inter-county, national, regional or international concern.

Pursuant to this provision, at the sitting of the Senate held on Tuesday, 2nd November, 2019, Sen. Moses Wetang'ula, M.P, requested for a Statement from the Standing Committee on Roads and Transportation concerning the state of the Malaba International Border point.

In the Statement, the Committee was requested to –

- 1) State when the Malaba One Stop border point will be operationalized;
- 2) Explain when the Government plans to improve the road infrastructure to reduce congestion on the road leading to and around the border point on the Kenyan side, considering that the Ugandan side of the road is in good state. For instance, for the last couple of weeks, trucks have formed queues of up to 25 kilometres stretching from Malaba in Busia County to Kimayeti Town in Bungoma County;
- 3) State what other plans the Government has to address safety issues posed by congestion of trucks at the border; some of whose cargo is inflammable and dangerous, but have to queue for hours on end in the sweltering heat of the area and could easily explode; and
- 4) State when the Government plans to construct the Nairobi-Malaba Road, A104, to a dual carriageway to enhance trade with the hinterland countries that use the Mombasa Port, namely; Uganda, Rwanda, Burundi, Democratic Republic of Congo (DRC), South Sudan and beyond.

The Committee sought and facilitated a written response from the Kenya National Highways Authority through the parent Ministry of Transportation, Infrastructure, Housing, Urban Development and Public Works. During the Consideration of the response, it was observed that the response did not provide actionable measures and timelines to address the concerns that were raised in the statement.

On Friday, 22nd November, 2019, the Committee undertook a project inspection visit to Malaba Border point in Busia County, to follow up on a statement that was requested by Sen. Moses Wetang'ula, MP, on the state of Malaba International Border Point. The Committee conducted stakeholder engagements at the Malaba International Border Point facility with a view to getting a better understanding of the issues and seek interventions to among them, the state of congestion and gridlock at the facility.

1.1 Summary of the Committee's Observations

Mr. Speaker Sir,

Following site visits, extensive stakeholder consultations and in-house deliberations, the Committee made a series of observations on the state of Malaba One Stop Border Point (OSBP) as follows-

- 1) Whereas the Malaba OSBP is ranked as the second busiest facility in Africa in terms of trade volume, traders complained that they take two to three days for their goods to be cleared at the facility while on transit. The Committee expressed dissatisfaction at poor state of the Border Post and observed that the facility's pathetic road infrastructure presented the country's image negatively;
- 2) The Malaba Border Point normally experiences long queues of trucks stretching up to of 20 to 30 kilometers which led to delays in business, denied the government revenue and poses socio-economic risks to the local residents. Further, it was also noted that it was unfair for traders to move all the way from Mombasa only to get stuck at Malaba;
- 3) There were no public utility services such as toilets to serve the personnel from the parked and delayed trailers;
- 4) The Congestion had adverse social consequences on the families along the roads and had been the main cause of single parent families as well as early pregnancies and the spread of HIV/ Aids;
- 5) That whereas the Border point was the busiest in the region with a revenue base of around Ksh.250 million per month, there was no Corporate Social Responsibility Projects or programmes to the community;
- 6) The cost of construction for the remaining loop on the road project was too small to warrant the stalling of the project noting that the total payments made was Ksh. 496,932,097 compared with the balance of Ksh. 58,578,687.70 as at the time of termination of the Contract in September, 2016.
- 7) The timeframe of 16 months by Trade Mark East Africa (TMEA) for the execution of the financing agreement, procurement of completion works was too long and that the period could be shortened considering that only a smaller part of the road was remaining Committee;

1.2 Summary of the Committee Recommendations

Mr. Speaker Sir,

From the above observations made by the Committee during its inspection of the Malaba Border Post, the Committee recommends as follows-

1. THAT, the Kenyan Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works should fast-track the improvement of the road infrastructure at the Malaba Border in order to reduce congestion, comply with the One Stop Border Post Act, 2016 and ensure that there was no loss of crucial revenue for the exchequer at the border post;
2. THAT, the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should with immediate effect engage a contractor to complete the remaining works within four (4) months, considering that only a smaller part of the road was remaining.
3. That the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works re-engages the previous contractor and consultant who has the experience, knowledge and background of the said project;
4. THAT, the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works include a parking lot outside the main entry and exit with facilities and amenities that make the facility functional;
5. THAT, the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should with immediate effect, make provisions for an extra lay by lane of at least 20 kilometers to accommodate any overflow of inbound trucks and also to provide for an open lane for other road users; and
6. THAT, the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should procure for the installation of street lighting for the stretch of at least 25 kilometers to the Border Post for more enhance security.

ACKNOWLEDGEMENT

Mr. Speaker Sir,

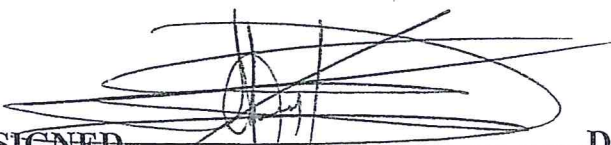
I wish to express my gratitude to the Offices of the Speaker and the Clerk of the Senate for facilitating the site visit to Malaba One Stop Border Point in Busua County including the various meetings that were undertaken by the Committee and which gave valuable insights that led to the production of this report.

The Committee acknowledges the valuable time and considerable effort made by Members of the Committee, the Kenya National Highways Authority, Kenya Revenue Authority, Malaba Transporters, Border Management Committee, National Chamber of Commerce and Industry, County Assembly and the County Executive, Busia County.

The Committee specifically acknowledge the support and logistics received from the, County Commissioner, Busia County, Mr. Jacob Narengo who ensured stakeholders were mobilized during the visit.

Mr. Speaker Sir,

It is now my pleasant duty to table the report of the Standing Committee on Roads and Transportation, in relation to Committee visit to Malaba International Border Point in Busia County.



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

27/11/2019

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

2.0 CHAPTER ONE: BACKGROUND ON MALABA ONE STOP BORDER POST (OSBP)

Introduction

2.1 Statement Requested on the State of Malaba International Border Point

Standing order 48 (1) provides that a Senator may request for a statement from a Committee relating to any matter under the mandate of the Committee that is of county-wide, inter-county, national, regional or international concern.

Pursuant to this provision, at the sitting of the Senate held on Tuesday, 2nd November, 2019, Sen. Moses Wetang'ula, M.P, requested for a Statement from the Standing Committee on Roads and Transportation concerning the state of the Malaba International Border point.

In the Statement, the Committee was requested to –

- 5) State when the Malaba One Stop border point will be operationalized;
- 6) Explain when the Government plans to improve the road infrastructure to reduce congestion on the road leading to and around the border point on the Kenyan side, considering that the Ugandan side of the road is in good state. For instance, for the last couple of weeks, trucks have formed queues of up to 25 kilometres stretching from Malaba in Busia County to Kimayeti Town in Bungoma County;
- 7) State what other plans the Government has to address safety issues posed by congestion of trucks at the border; some of whose cargo is inflammable and dangerous, but have to queue for hours on end in the sweltering heat of the area and could easily explode; and
- 8) State when the Government plans to construct the Nairobi-Malaba Road, A104, to a dual carriageway to enhance trade with the hinterland countries that use the Mombasa Port, namely; Uganda, Rwanda, Burundi, Democratic Republic of Congo (DRC), South Sudan and beyond.

The Committee facilitated the response from the Kenya National Highways Authority through the parent Ministry of Transportation, Infrastructure, Housing, Urban Development and Public Works. During the Consideration of the response, it was observed that the response did not provide actionable measures and timelines to address the concerns that were raised in the statement.

At its sitting held on Wednesday 13th November, 2019, the Standing Committee on Roads and Transportation resolved to undertake the county visit to Malaba Border point

in Busia County to follow up on a statement that was requested by Sen. Moses Wetang'ula, MP, on the state of Malaba International Border Point. The Committee also conducted an inspection of the Malaba International Border Point with a view to addressing the concerns on the congestion and gridlock by the cargo trailers

2.2 Malaba One Stop Border Point

Malaba one stop Border post (Kenya) was initially Co- financed by the World Bank and the Government of Kenya. However, World Bank credit expired in December, 2015 before the Completion of the project. The project was hence forth faced with challenges in budgeting and payments and as a result, the contractor could not finish some of the works. The Contracts were therefore terminated on mutual agreement.

Trade Mark East Africa (TMEA) later came on board and pledged to finance completion of the outstanding road works, improvement of the buildings and minor additional works to a tune of Ksh. 325 Million.

In an effort to fast track completion of the works, the Government of Kenya approached the Government of Uganda to seek an arrangement of amending the Ugandan Contracts (Contractor and Consultant) and have an addendum to include the Works on the Kenyan side. This would have allowed the Ugandan Contractor and consultant who were already mobilized on the ground to undertake the works in the shortest time possible;

However, upon evaluation of the works to be undertaken in Kenya and also considering that Uganda was also processing an addendum to include additional works, it was noted that the threshold for variation of the Ugandan contract was exceeded and therefore an addendum to include Kenyan works could not be done;

TMEA also informed KeNHA that their regulations did not allow direct procurement of works of such value and hence Open Procurement Process had to be undertaken.

TMEA/ KeNHA has already prepared a financing agreement which is currently with the National Treasury, awaiting signing.

3.0 CHAPTER TWO:

SUBMISSIONS DURING THE COMMITTEE VISIT TO MALABA INTERNATIONAL BORDER POINT

The Committee held engagements with the relevant stakeholders and received the following submissions;

3.1 SUBMISSION BY THE KENYA NATIONAL HIGHWAYS AUTHORITY

Eng. Paul Omondi, Deputy Director informed the Committee as follows;

i. Original Contract

OSBP Project	MALABA OSBP
Employer	Kenya National Highways Authority
Project manager	Directorate of Public Works
Initial Financier	World Bank 75% GoK 25%
Current Financier	TMEA 75% GoK 25%
<ul style="list-style-type: none"> • Contract Sum • Contract Period • Commencement • Initial Contract Period • Initial Completion Date • 1st Extension of Time • 2nd Extension of Completion Date • 2nd Extension of Time • 2nd Extension of Completion date • 3rd Extension of Time 	<ul style="list-style-type: none"> Ksh.622,860,329.76 15 months (65 Weeks) 4th July, 2012 15 Months (65 Weeks) 4th October, 2013 27weeks 25th April,2014 25weeks 30th October, 2014 35weeks

<ul style="list-style-type: none"> • 3rd Extension of Completion • Partial Handover/ Completion • 4th Extension for Roads to Completion • 5th Extension of Time (to allow for outbound road construction) • 6th Extension of Time • Overall Extension of Time • Amount Certified to date (I.P.C No.15) 	<p>30th June, 2015 Buildings & inbound Roads No.02 completed and handover 17/07/2016 ..in use</p> <p>30th July, 2016</p> <p>15th October, 2016</p> <p>31/12/2017</p> <p>141 weeks</p> <p>574,760,235.08 (IPC No. 14 &15 are not honoured by employer due to lack of budget and exchequer) IPC No. 14 value Ksh.35, 028,497.18 IPC No. 15 value Ksh. 15,546,417.95 Total Ksh.50,574,915.13</p> <p>79,929,321.84</p>
<ul style="list-style-type: none"> • Advance payments fully Recovered • % work done on Builders Work and Partial Completion • % of work done on Civil Work and Partial Completion 	<p>98%- All Buildings Completed under usage</p> <ul style="list-style-type: none"> • Road No.2- in bound from Uganda and adjacent parkings are completed and hand over and in use. • Parkings at Verification Shed done at 100% • Pending Road No. 1 outbound to Uganda ongoing at 45%

<ul style="list-style-type: none"> ◦ PARTIAL COMPLETION & PARTIAL HAND OVER 	Done on 17/07/2015 to all Buildings and Road No. 02 Handed Over 30/07/2015
<ul style="list-style-type: none"> ◦ Anticipated Practical Completion 	30/05/2018 Now overrun and Extension under consideration
<ul style="list-style-type: none"> ◦ Pending Works as per Contract 	Snag listed works and road No. 01
<ul style="list-style-type: none"> ◦ Contract Status 	Contract for Works and Services are terminated . The State Department of Public Works is in the Process of preparing the final accounts of the project in anticipation of new procurement.

The Committee was informed on the estimate of works done as follows;

✓ Certified-	Ksh. 555,510,785.92
✓ payments made to date-	Ksh. 496,932,097
✓ Amounts due unpaid to terminated contractor-	ksh. 58, 578,687.70
✓ Balance of Contract Sum unused-Ksh.	Ksh. 67,349, 543.80

Scope, Location and Description of the Works

The original Scope of the works to the construction of OSBP comprised of the following;

- Immigration office Block
- Verification Shed
- Warehouse and cold Rooms
- Restaurant
- Generator and Transformer House
- Gate House and Scanning
- Ablution Block
- Sniffer dog Kennels
- Animal Shed
- Incinerator
- Security Perimeter Fence
- Underground Water Tank and Septic Tanks

- Borehole drilling and Overhead water tank
- Out bound road
- In bound Road
- Verification Yard and Parking
- In bound and Restaurant Parking
- Landscaping ; and
- All associated electrical, mechanical and Civil and other external works

Basis of termination of the contract

The Committee heard as follows-

- 1) That the employer, (Kenya National Highways Authority) terminated the works contract due to lack of sufficient budgetary provisions and exchequer release from the National Treasury. This was to avoid anticipated contractual claims from the contractor, due to default by KeNHA to pay for work done in accordance with Clause 56.1 and 56.2 of the Contract.
- 2) That in order to forestall time related claims, it was prudent to terminate the contract and process new contracts when National treasury avails sufficient budget rather than retain a contractor on site executing no works and being paid for idle time
- 3) That on the cost of termination, it was expected that the following costs will be anticipated after formulation of the final accounts by the project Manager-
 - a) Interest on Delayed Payments
 - b) Materials on Site if any;
 - c) Valuation of any certified work done and not captured in the interim certificate No. 15;
 - d) Additional works which were captured in the snag listing which arose and not due to the contractor's workmanship.
- 4) As part of the mutual negotiations, the contractor shall not claim for idle time for plant, personnel and equipment which remained unused during the prolonged period when there was no budget and exchequer release.

Way Forward: The Committee was further informed that in an effort to seek a way forward, KeNHA had held several meetings with Trade Mark East Africa

Further, in an effort to fast track completion of the works, the Government of Kenya approached the Government of Uganda to seek an arrangement of amending the Ugandan Contracts (Contractor and Consultant) and have an addendum to include the Works on the Kenyan side. This would have allowed the Ugandan Contractor and consultant who

were already mobilized on the ground to undertake the works in the shortest time possible;

However, upon evaluation of the works to be undertaken in Kenya and also considering that Uganda was also processing an addendum to include additional works, it was noted that the threshold for variation of the Ugandan contract was exceeded and therefore an addendum to include Kenyan works could not be done;

TMEA also informed KeNHA that their regulations do not allow direct procurement of works of such value and hence Open Procurement Process had to be undertaken.

TMEA/ KeNHA have already prepared a financing agreement which is currently with the National Treasury, awaiting the signing of the contract.

Immediately after the execution of the financing agreement, procurement of completion works through open tendering shall commence in December, 2019 as detailed-

No.	Activity	Duration	Timelines
1.	Procurement of consultant underway	3 Months	October, 2019-January, 2020
2.	Design Review and Packaging of works	3 Months	February 2020- May 2020
3.	Procurement of Contractor	4 Months	September,2020
4.	Total	6 Months	September 2020-March 2021
5.		16 onths	

3.2 SUBMISSION BY THE BORDER MANAGEMENT COMMITTEE

The Border management Committee informed the Committee as follows- That

- 1) Malaba Border point cleared 1100 tracks per day out of which 800 were those with Kenyan registration numbers and a 1200 passengers daily;
- 2) the total Revenue generated per month was 250million and as such was the busiest border along the northern Corridor; and
- 3) The Committee intervention was sought to facilitate Kenya Power and Lightning Company to install a dedicated power line similar to what was at the Airports and fast track the installation of electronic scanners which had been installed on the Ugandan side of the OSBP.

3.2 SUBMISSIONS BY BUSIA COUNTY EXECUTIVE

- 1) The new design for the OSBP to include trailer parking and other facilities as toilets
- 2) Explained that the county Government of Busia has lost its revenue collection targets because it could not collect parking fees on a KenHA Road
- 3) The tax regimes on the Kenyan side of the Border were unfavourable to Kenyan Businessmen and gave undue advantage to Ugandan traders
- 4) Explained that the trailer park was for the County Government of Busia had been utilized without generating any revenue to the County Government;
- 5) There was no drainage along the trailer parking and around the Border post;
- 6) There was no security along the 15-20km snurl up
- 7) Whereas the border post was a leading revenue earner to the exchequer, there was not a single CSR project for the Community and the residents of Malaba;

4.0 CHAPTER THREE:

4.1 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

The Committee made the following observations-

- 1) Whereas the Malaba OSBP is ranked as the second busiest facility in Africa in terms of trade volume, traders complained that they take two to three days for their goods to be cleared at the facility while on transit, the Committee expressed dissatisfaction at the state of the Border Post and observed that the facility's pathetic road infrastructure presented the country's image negatively;
- 2) The Malaba Border Point normally experiences long queues of trucks to the tune of 20 to 30 kilometres which led to delays in business, denied the government revenue and poses socio-economic risks to the local residents. Further, it was also noted that it was unfair for traders to move all the way from Mombasa only to get stuck at Malaba;
- 3) There were no public utility services such as toilets to serve the personnel from the parked and delayed trailers;
- 4) The Congestion had social consequences on the families along the roads and had been the main cause of single parent families as well as early pregnancies and the spread of HIV/ Aids;
- 5) That whereas the Border point was the busiest in the region with a revenue base of 250million per month, there was no Corporate Social Responsibility Projects for the community;
- 6) The cost of construction for the remaining loop on the road project was too small to warrant the stalling of the project noting that the total payments made was Ksh. 496,932,097 compared with the balance of Ksh. 58,578,687.70 as at the time of termination of the Contract.
- 7) The Timeframe of 16 months by Trade Mark East Africa (TMEA) for the execution of the financing agreement, procurement of completion works was too long and that the period could be shortened considering that only a smaller part of the road was remaining Committee;
- 8) The matter of congestion and gridlock could affect regional countries that are dependent on Kenya as a gateway to the region and could render even the SGR and other infrastructure investments irrelevant; and
- 9) The delays had led to loss of jobs, revenue to both the national and County Government of Busia.

4.2 RECOMMENDATIONS

Following the site visit to Malaba, the meeting held with stakeholders and the deliberations of the Committee, it is recommended as follows—

1. **THAT** the both the Governments of Kenya and Uganda should give greater effect to the provisions of section 10 of the East African Community One Stop Border Post Act, 2016 by ensuring that there are synchronized hours of operation of the Malaba Border Post;
2. **THAT** both the Governments of Kenya and Uganda should carry out the provisions of section 39 of the OSBP Act, 2016 and ensure that the harmonization of the structures and facilities in the control zones through coordinated designs and procurement of related construction, maintenance and management services;
3. **THAT** in light of the stakeholder concerns, and the provisions of section 39 of the OSBP Act, both the National Governments of Kenya and Uganda should ensure that both internal and external public and private sector stakeholders are consulted for input regarding their requirements in the control zones; and
4. **THAT** both governments should carry out the provisions of section 40 of the OSBP Act, and ensure that adequate and appropriate facilities are provided within their respective control zones to the public including without limitation, special facilities for persons with disabilities, ablution, food, banking and other essential facilities.

4.3 Specific Recommendations

From the above observations from the inspection of the Malaba Border Post, the Committee recommends as follows;

1. **THAT**, the Kenyan Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works should fast-track the improvement of the road infrastructure at the Malaba Border in order to reduce congestion, comply with the One Stop Border Post Act, 2016 and ensure that there was no loss of crucial revenue for the exchequer at the border post;
2. **THAT**, the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should with immediate effect engage a contractor to complete the remaining works within four (4) months, considering that only a smaller part of the road was remaining.

3. That the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works re-engages the previous contractor and consultant who has the experience, knowledge and background of the said project;
4. THAT, the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works include a parking lot outside the main entry and exit with functional facilities and amenities including toilets;
5. THAT, the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should with immediate effect, make provisions for an extra lay by lane of at least 20 kilometers to accommodate any overflow of inbound tracks and also to provide for an open lane for other road users; and
6. THAT, the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should procure for the installation of street lighting for the stretch of at least 25 kilometers to the Border Post for more enhance security.

ANNEXURES

- Annex 1 Minutes of Adoption of the Report of the Committee on the Inspection visit to Malaba Border Point held on Tuesday, 26th November, 2019;
- Annex 2: Letter from the Office of the Principal Secretary, State Department of Infrastructure on the Inspection Visit of the Malaba One Stop Border Post;
- Annex 3: Submission by Kenya National Highways Authority (KeNHA);
- Annex 4: Memorandum from the leadership of Teso North Sub-County Chamber of Commerce and Industry
- Annex 5: Attendance Register for participants during stakeholder engagements.
- Annex 6: Response by the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works to a Statement that was requested by Sen. Moses Wetang'ula on the state of Malaba International Border Point;

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COMMITTEE ON ROADS AND TRANSPORTATION HELD ON TUESDAY
26TH NOVEMBER, 2019 AT COMMITTEE ROOM 5 AT 8.30.A.M.

MEMBERS PRESENT

- | | |
|--------------------------------------|--------------|
| (1) Sen. Wamatangi Kimani, MP, | -Chairperson |
| (2) Sen. (Prof.) Ekal Imana, MP, | -Member |
| (3) Sen. (Dr.) Lelegwe Ltumbesi, MP, | -Member |
| (4) Sen. Enoch Wambua, MP, | -Member |
| (5) Sen. Christine Zawadi, MP, | -Member |

MEMBERS ABSENT WITH APOLOGY

- | | |
|-------------------------------|--------------------|
| 1) Sen. Hargura Godana, MP, | -Vice- Chairperson |
| 2) Sen. Sylvia Kasanga, MP, | -Member |
| 3) Sen. Philip Mpaayei, MP, | -Member |
| 4) Sen. Cleophas Malalah, MP, | -Member |

SECRETARIAT

- | | |
|---------------------|---------------------|
| 1) Mr. Peter Mulesi | -Clerk Assistant |
| 2) Mr. Malcom Ngugi | -Legal Counsel |
| 3) Mr. John Mungai | -Audio Officer |
| 4) Mr. John Pere | -Sergeant- At- Arms |

MIN/ SCRT/260/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 8.52 am and there followed a word of prayer.

MIN/ SCRT/261/2019:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Christine Zawadi, MP, and seconded by Sen. Enoch Wambua, MP, as follows;

1. Preliminaries
 - a. *Prayer*
 - b. *Remarks by the Chairperson*
2. Adoption of Agenda
3. **Consideration of Draft Committee Report for visit to Malaba International Border Point**
4. Any Other Business
5. Date of Next Meeting and Adjournment.

CONSIDERATION OF DRAFT COMMITTEE
REPORT FOR VISIT TO MALABA
INTERNATIONAL BORDER POINT

The Chairperson thanked the Members who had travelled to Malaba International Border Post in Busia County on 22 November, 2019.

He thanked Sen. Wetangula, MP, who had requested for the statement and which had resulted in the Committee visit to inspect and assess the state of the facility.

Observations by the Committee

He invited Members to consider the draft report and make further input. The Committee reviewed the report and confirmed the following observations;

- 1) Whereas the Malaba OSBP is ranked as the second busiest facility in Africa in terms of trade volume, traders complained that they take two to three days for their goods to be cleared at the facility while on transit, the Committee expressed dissatisfaction at the state of the Border Post and observed that the facility's pathetic road infrastructure presented the country's image negatively;
- 2) The Malaba Border Point normally experiences long queues of trucks to the tune of 20 to 30 kilometres which led to delays in business, denied the government revenue and poses socio-economic risks to the local residents. Further, it was also noted that it was unfair for traders to move all the way from Mombasa only to get stuck at Malaba;
- 3) There were no public utility services such as toilets to serve the personnel from the parked and delayed trailers;
- 4) The Congestion had social consequences on the families along the roads and had been the main cause of single parent families as well as early pregnancies and the spread of HIV/ Aids;
- 5) That whereas the Border point was the busiest in the region with a revenue base of 250million per month, there was no Corporate Social Responsibility Projects for the community;
- 6) The cost of construction for the remaining loop on the road project was too small to warrant the stalling of the project noting that the total payments made was Ksh. 496,932,097 compared with the balance of Ksh. 58,578,687.70 as at the time of termination of the Contract.
- 7) The timeframe of 16 months by Trade Mark East Africa (TMEA) for the execution of the financing agreement, procurement of completion works was too long and that the period could be shortened considering that only a smaller part of the road was remaining Committee;

From the above observations, the Committee further affirmed that the report had correctly captured their recommendations as follows-

1. **THAT** the Kenyan Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works should fast-track the improvement of the road infrastructure at the Malaba Border in order to reduce congestion, comply with the One Stop Border Post Act, 2016 and ensure that there was no loss of crucial revenue for the exchequer at the border post;
2. **THAT** the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should with immediate effect engage a contractor to complete the remaining works within four (4) months, considering that only a smaller part of the road was remaining.
3. That the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works re-engages the previous contractor and consultant who has the experience, knowledge and background of the said project;
4. **THAT** the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works include a parking lot outside the main entry and exit with facilities and amenities that make the facility functional;
5. **THAT** the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should with immediate effect, make provisions for an extra lane at least 20 kilometers to the facility to accommodate traffic and avoid blocking the road; and
6. **THAT** the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works should procure for the installation of street lighting for the stretch of at least 25kilometers to the Border Post for more enhance security.

Adoption of the Report on the visit to Malaba International Border Post

The Committee unanimously adopted the draft report on the inspection visit of the Malaba Border point after having been proposed by Sen. Christine Zawadi, MP and Seconded by Sen. Enoch Wambua, MP.

The Secretariat was directed to urgently process the Report for Tabling in the Senate.

MIN/ SCRT/264/2019: ADJOURNMENT AND THE DATE OF NEXT MEETING

Having exhausted the agenda of the day, the meeting was adjourned at 9.35am.

SIGNED:


CHAIRPERSON – Sen. Wamatangi Kimani Paul, MP

27/11/2019



21 NOV 2019

MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT & PUBLIC WORKS

State Department of Infrastructure
Office of the Principal Secretary

10th Floor,
Works Building
Ngong Road
Email: ps@infrastructure.go.ke

WORKS BUILDING
NGONG ROAD
P.O. Box 30260 - 00100
NAIROBI

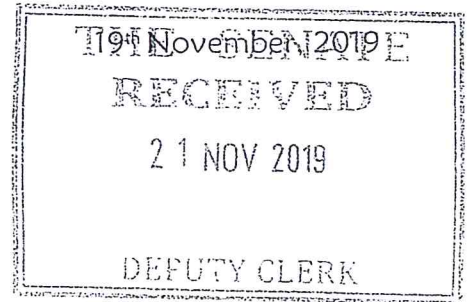
① Dom

Please deal.

REF: MOTIHU/1/S1.11 VOL 1

J.M Nyegenye, CBS
Clerk of the Senate
Parliament Building
NAIROBI.

② C.A.II Roads & Transport
For the Committee
21/11/19



Dear Sir,

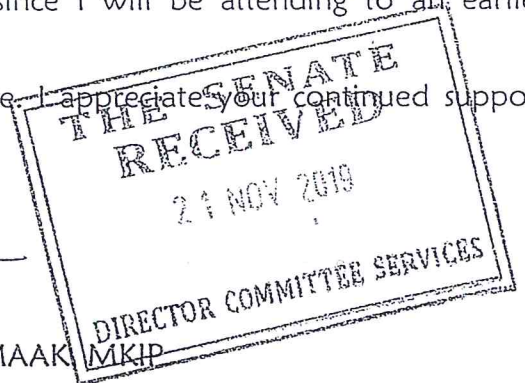
VISIT TO MALABA ONE STOP BORDER POST BY THE STANDING COMMITTEE ON ROADS AND TRANSPORTATION

Reference is made to your letter Ref. SEN/DCS/RT /2019/307 dated 14th November, 2019 and received in our office on the 19th November, 2019 inviting us to accompany the Senate Committee on Roads and Transportation during the inspection visit of Malaba One Stop Border Post on 22nd, November, 2019.

I wish to request that the Regional Manager, Kenya Highways Authority Western Region be allowed to represent us and accompany the team since I will be attending to an earlier scheduled assignment.

Please do accept my sincere apologies for my absence. I appreciate your continued support and cooperation.

Yours Sincerely,



Prof. Arch. Paul M. Maringa CBS, (PhD) Corp, Arch, MAAK
PRINCIPAL SECRETARY

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



MALABA OSBP CURRENT PROJECT STATUS AS AT 21th NOVEMBER 2019

1.0 ORIGINAL CONTRACT

OSBP Project	MALABA OSBP
Employer	Kenya National Highways Authority
Project Manager	Directorate of Public Works
Initial Financier	WB 75%
	GoK 25%
Current Financier	TMEA 75%
	GoK 25%
• Contract Sum	Kshs. 622,860,329.76
• Contract Period	15months (65weeks).
• Commencement Date	4h July 2012
• Initial Contract Period	15 Months (65weeks)
• Initial Completion Date.	October 4th, 2013
• 1st Extension of Time	27 weeks
• 1st Extension Completion Date	April 25th, 2014
• 2nd Extension of Time	25weeks
• 2nd Extension Completion Date	October 30th, 2014
• 3rd Extension of Time	35Weeks
• 3rd Extension Completion	June 30th, 2015
• Partial Handover/Completion	Buildings & inbound Roads No. 02 completed and handover 17/07/2016, in use.
• 4 th Extension for Roads to completion	July 30 th , 2016
• 5 th Extension of Time. (To allow outbound road construction).	15 th October 2016
• 6 th Extension of Time.	31/12/2017
• Overall Extension of Time.	141 weeks.
• Amount Certified To Date (I.P.C No.15)	574,760,235.08 (I.P.C No.14 & 15 are not honoured by Employer due to lack of budget & exchequer) IPC no. 14 value KShs 35,028,497.18

	IPC no. 15 value KShs 15,546,417.95 Total KShs 50,574,915.13
• Advance Payment (Fully Recovered)	79,929,321.84
• %Work Done on Builders Work and Partial Completion.	98% -All Buildings completed under usage only attendance to snagging outstanding due to non-payment to the services sub-contractors whose payments were included in IPC's nos 14 & 15.
• % of Work Done on Civil Work and Partial Completion.	<ul style="list-style-type: none"> • Road NO 02 – In bound from Uganda and adjacent parkings are completed and hand over and in use. • Parkings at Verification Shed done 100%. • Pending Road NO. 01 Out bound Road to Uganda ongoing at 45%
• PARTIAL COMPLETION & PARTIAL HANDOVER.	Done on 17/07/2015 to all Buildings and Road No. 02 Handed over 30/07/2015
• Anticipated Practical Completion.	30/ 05/ 2018 Now Overrun and Extension under consideration.
• Pending works as per contract	Snag listed works and road no. 01
• Contractual Status	Contract for Works and Services are terminated . The State Department of Public works is in the process of preparing the final accounts of the project in anticipation of new procurement.

2.0 ESTIMATION OF WORK DONE (NOTE THIS IS NOT FINAL ACCOUNTS UNDER PREPARATION BY THE PROJECT MANAGER FROM THE DIRECTORATE OF PUBLIC WORKS)

All buildings and road works including facilities	<ul style="list-style-type: none"> • Certified :KShs 555,510,785.92 • Payments made to date :KShs 496,932,097 • Amounts due unpaid to terminated Contractor: • KShs 58,578,687.70 • Balance of Contract Sum unused: KShs 67,349,543.80
Estimation of all outstanding works including additional works which were not in the original contract brought about from lessons learned from completed border posts in the region	Under review

3.0 SCOPE, LOCATION AND DESCRIPTION OF THE WORKS

The original scope of the works included but is not limited to construction of One Stop Border Post comprising of:-

- Immigration Office Block
- Verification shed
- Warehouse and Cold rooms
- Restaurant.
- Generator and Transformer House
- Gate House and scanning (2No)
- Ablution block
- Sniffer Dog Kennels
- Animal Shed
- Incinerator
- Security Perimeter Fence
- Underground Water tank and Septic Tanks
- Borehole drilling and Overhead Water tank
- Out bound road
- Inbound Road
- Verification Yard and Parking
- Impound Yard and Restaurant Parking.
- Landscaping.
- All associated electrical, mechanical and Civil and other External Works

4.0 BASIS OF TERMINATION OF THE CONTRACT

The Employer terminated the works contract due to lack of sufficient budgetary provisions and exchequer release from the National Treasury. This was to avoid anticipated contractual claims from the Contractor, due to default by Employer to pay for work done all in accordance with Clause 56.1 and 56.2 Conditions of Contract.

5.0 JUSTIFICATION

In order to forestall time related Claims it is prudent to terminate the Contracts and process new contracts when National Treasury avails sufficient Budget rather than retain a contractor on site executing no works and being paid for idle time.

6.0 COST OF TERMINATION

It is expected that the following costs will be anticipated after formulation of the Final Accounts by the project manager.

1. Interest on all delayed payments
2. Materials on Site if any
3. Valuation of any certified work done not captured in the interim certificate no 15.
4. Any additional works which were captured in the snag listing which arose and not due to the contractor's workmanship.

As part of the mutual negotiation, the Contractor shall not claim for idle time for plant, personnel and equipment which remained unused during the prolonged period when there was no budget and exchequer release.

7.0 WAY FORWARD

KeNHA has held various meetings with Trade Mark East Africa to try and formulate a way forward.

Malaba One Stop Border Post (Kenya) was initially Co-financed by the World Bank and the Government of Kenya, however, the World Bank Credit expired in December, 2015 before completion of the project. The project was henceforth faced with challenges in budgeting and payments and as a result the Contractor could not finish some of the works. The Contracts were therefore terminated on mutual agreement.

Trade Mark East Africa (TMEA) later came on board and pledged to finance completion of the outstanding road works, improvement of the buildings and minor additional works to a tune of KES 325 million.

In effort to fast-track completion of the works, Kenya approached Uganda to have an arrangement of amending the Ugandan Contracts (Contractor and Consultant) and have an addendum to include the Works on the Kenyan side. This would allow the Ugandan Contractor and Consultant who were already mobilized on ground to undertake the works in the shortest time possible.

However, upon evaluation of the value of works to be undertaken in Kenya and considering that Uganda was also processing an addendum to include additional works, it was noted that the threshold

for variation of the Ugandan contracts was exceeded and therefore an addendum to include Kenyan works could not be done and this was communicated by the Ugandan Government.

TMEA also informed KeNHA that their regulations did not allow direct procurement of Works of such value and hence Open procurement process had to be undertaken. TMEA /KeNHA has already prepared a financing agreement which has been shared with the AG whose comments have been incorporated into the final document, the Financing Agreement is currently with the National Treasury, waiting signing. Immediately after the execution of the financing agreement, procurement of completion works through open tendering shall commence in December 2019 as detailed below:-

No.	Activity	Duration	Time lines
1.	Procurement of Consultant under way	3 Months	October 2019-January 2020
2.	Design Review and Packaging of Works	3 Months	February 2020- May 2020
3.	Procurement of Contractor	4 Months	September 2020
4.	Construction	6 Months	September 2020- March 2021
5.	Total	16 Months	

FROM THE LEADERSHIP OF TESO NORTH SUB-COUNTY CHAMBER OF
COMMERCE AND INDUSTRY

Memo of 22/11/2019
for Malaba
Pwani

ISSUES AFFECTING THE BUSINESS COMMUNITY AND MALABA RESIDENTS

- Poor drainage system
- Poor feeder roads
- Lack of fully functional street lights and daily power outages
- Lack of job creation by the government e.g building industries.
- Lack of proper garbage collection and disposal procedure
- Lack of parking
- Lack of clean water for the residents of the area.
- Lack of proper planning in disaster management e.g incase of fire or floods.
- Lack of proper health systems.

CHAIRMAN

0722 274132

V. CHAIRMAN

0725572354

THE SENATE

STANDING COMMITTEE ON ROADS AND TRANSPORTATION.

STAKEHOLDER ATTENDANCE LIST

ANNEX S.

County: BUSIA
 DATE: 22/11/2019
 Venue: MAHAGA BORDER POST

	NAME	DESIGNATION	CONTACT	SIGNATURE
1	Josiah Boubou	COPY COMMANDER BUSIA	0725491420	
2	WILSON NWAETA	SCPC TOWNTH	0721332-805	
3	WAFULA WAKOLI	MANAGER RGM SANGHELA OFFICE	0721452894	
4	BENSON NABERI	DCIO TESO	0722249735	
5	ENG' PAUL OMONDI	DEPUTY DIRECTOR (KRNHA)	07281444	
6	TAGA-LOMAH	MEDIA (R. Jamba)	0716264734	
7	JOHN KUNTNER	INSPECTOR (AKA)	0723496991	
8	KENNEDY R OMBATI	SUPERVISOR	0721337473	
9	AUTHOMI ETYAMEN	MKA RESIDENT	0725902616	
10	DANIEL IJUFEL	MKS REPRESENT	0720711032	
11	JESIAH NYABOGA (SGT)	INCHARGE A-NK MPLAGA	0729594819	

James Nesing (KRA) Supervisor 0721408553

James Nesing



THE SENATE

STANDING COMMITTEE ON ROADS AND TRANSPORTATION.

STAKEHOLDER ATTENDANCE LIST

County: Busia
 DATE: 22-11-2019
 Venue: Customs Office, Malaba

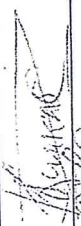

	NAME	DESIGNATION	CONTACT	SIGNATURE
1	Michael Kuti	Asst. Manager ^{KRA}	072 272 463	
2	William Nungu	Principal Immigration	0705600507	
3	Wangui Betu	BANC Secretary	0707645248	
4	HARD DREAM BONYA	ATCC ANTIORO	0773137350	
5	DOMINIC KIHARA	NCHINA BUSINESS CHIEF	07-05572354	
6	Job Reth	ENR EC I	0792222341/2	
7	HUDSON L. SINTARI	ADMN	0727129044	
8	FY. MABA OJANABWA	E.FELM	0724763904	
9	HON. PAPA BERNARD	M.C.A	0724808385	
10	EDWIN O. OTIENO	Accounting Officer	0714142819	
11	John Omet	Head of - force	0720030338	

THE SENATE

STANDING COMMITTEE ON ROADS AND TRANSPORTATION.

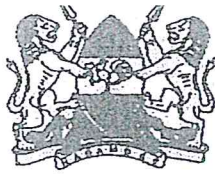
STAKEHOLDER ATTENDANCE LIST

County: Bassa
DATE: 22/11/2019
Venue: Customs Office, Madaba

	NAME	DESIGNATION	CONTACT	SIGNATURE
1	JACKSON KANAI	AIPU (I.P)	0922-780384	
2	GEORGE NCHARI	ICEMHS (Asst. Insp)	0710900521	
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Amisx

22 AUG 2019



DIRECTOR LEGAL SERVICES

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

STATE DEPARTMENT OF INFRASTRUCTURE

*(1) Deom.
Kindly deal.
23/8/19.*
*(2) Mr. Mulesi
Please note.
Agim's
23/8/19*

The Clerk of the Senate/Secretary

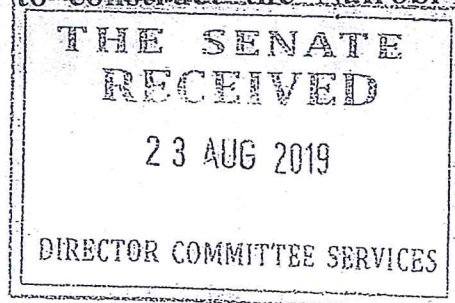
Parliament Buildings

NAIROBI

REQUEST FOR STATEMENT ON STATE OF MALABA INTERNATIONAL BORDER POINT

Reference is made to your letter ref SEN/DCS/RT/2019/243 dated 24th July, 2019 on the above subject matter. At its sitting, the Committee requested for information and clarifications on the following issues:-

- 1) State when the Malaba One Stop Border Point will be operationalized.
- 2) Explain when the Government plans to improve the road infrastructure to reduce congestion on the road leading to and around the border point on the Kenyan side, considering that the Ugandan side of the road is in good state.
- 3) State the plans the Government has to address the safety issues posed by congestion of trucks at the border ;some of whose cargo is inflammable and dangerous, but have to queue for hours regardless of the sweltering heat of the area which could lead to explosions;and
- 4) State when the Government plans to construct the Nairobi-Malaba Road.



Response.

1. State when the Malaba One Stop Border Point will be operationalized.

I wish to state that the Malaba One Stop Border Point is operational under Bilateral Agreement on Operationalization of One Stop Border Posts (OSBP) between the Republic of Kenya and Republic of Uganda. Kenya Revenue Authority (KRA) under a Cabinet Memorandum dated 11th September, 2014 was appointed as the Manager of the OSBP facilities within the East African Community Borders on the Kenyan Side. However in order to achieve full optimum operational level, there are gaps identified in relation to the physical infrastructure mainly the exit or outbound road to Uganda and the road connection to the newly constructed bridge over Malaba river.

Malaba OSBP construction was funded by the World Bank Credit which expired on December, 2015 and later Trade Mark East Africa on 23rd September, 2016 took over to finance the outstanding and additional Works on the Border Post by contributing grant funds amounting to KShs. 59,998,638 (Fifty nine million nine hundred ninety eight thousand six hundred thirty eight shillings being seventy five percentage whereas the Government of Kenya was to contribute 19,999,546 (Nineteen million nine hundred ninety nine thousand five hundred fourty six shillings) towards the full completion of the outstanding and additional works.

Subsequently the project implementation and absorption of the additional funding faced serious budgetary challenges in financing and payment of Contractor's and Supervision Consultant certificates and fee notes respectively from the year 2016. The issues varied from provision of inadequate budget to removal of budgetary allocation in entirety; as a result Contractors IPCs could not be paid for a period of more than 2 Years.

In Consultation with the Project Manager – State Department for Housing and Urban Development for the works, the Contracts both Works and Services were terminated on mutual Agreement on August, 2018 in order to safeguard the Government of Kenya to incur unnecessary contractual bills which could arise from claims of idle plant, equipment, and labour amongst others.

The unfinished roadworks in the Border Post partly resulted to massive traffic congestion attracting outcry from various stakeholders requesting for urgent attention to the situation.

On 20th September, 2018 a Bilateral Site Visit between the Governments of the Republic of Uganda and the Republic of Kenya, under the joint Chairmanship of the Honorable Second Deputy Prime Minister of Uganda and the Cabinet Secretary of East Africa Community and Regional Development Kenya took note of the previous issues affecting the completion of Malaba OSBP of both the Member States of Uganda and Kenya. On the Ugandan side of the border works had also stalled however it was noted that the contractor had since resumed after procurement hurdles.

During that meeting it was agreed that the Republic Kenya and Republic of Uganda pursue the modalities of direct procurement the Contractor and Consultant on the Ugandan side since they were already on the site and taking cognizance of the OSBP Act of 15th April 2016 and Regulations 2017 which recognizes the OSBP control zone as a common border area, the works therein can be under taken by any of the affected respective countries. A case in point is the construction of the Malaba Bridge which was funded wholly by Kenya. This approach was to mitigate against the biggest hurdle being the method of procurement and payment to ensure the project is implemented in the shortest time possible and avoid the past mistakes of budget hitches are not repeated.

To date the Republic Government of Uganda has not officially confirmed the possibility of Direct Procurement of their services providers.

2. Explain when the Government plans to improve the road infrastructure to reduce congestion on the road leading to and around the border point on the Kenyan side, considering that the Ugandan side of the road is in good state.

In effort to fast-track completion of the works on the Kenyan side of the border, KeNHA is working with TMEA on funding of the works. Hence, TMEA is in the process of amending the existing financial agreements with the National Treasury to allow open tendering for the Works which will commence in September, 2019 as detailed below:-

No.	Activity	Duration
1.	Procurement of Consultant	3 Months
2.	Design Review and Packaging of Works	3 Months
3.	Procurement of Contractor	6 Months
4.	Construction	6 Months
5.	Total	18 Months

The above procurement timeline is highly dependent to the signing of the financial agreement and availability of budget by the National Treasury. KeNHA has also requested TMEA for advance procurement to hasten the process.

3. State the plans the Government has to address the safety issues posed by congestion of trucks at the border ;some of whose cargo is inflammable and dangerous, but have to queue for hours regardless of the sweltering heat of the area which could lead to explosions; and

KeNHA has commenced discussions with TMEA with regard to dualling approach roads to the border crossings with an elaborate design taking cognizance of all types of cargo on transit. To date TMEA has pledged USD 300 million as phase one to dual Busia OSBP approach road while discussions to include Malaba OSBP approaches roads are still ongoing.

4. State when the Government plans to construct the Nairobi-Malaba Road.

The Nairobi-Malaba Highway (A104) is an existing Road and the Government is planning to improve it in two phases. Phase One will involve the dualling of Nairobi to Mau Summit under the PPP currently under procurement and it will embark on Phase Two from Mau Summit to Malaba once phase One is complete and its impact evaluated.

However, the Government will continue with maintenance works of the Road to ensure seamless flow of traffic.



James W. Macharia, EGH
CABINET SECRETARY

