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NATIONAL ASSEMBLY

12<sup>TH</sup> PARLIAMENT (FOURTH SESSION)

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

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

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

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

SEPTEMBER, 2020

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## LIST OF ABBEVIATIONS AND ACROYNYS

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

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

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

## **CHAIRPERSON'S FOREWORD**

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

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

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

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

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

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

**THE HON. DAVID PKOSING, MP, CBS**

**CHAIRPERSON**

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



## EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

## 1.0 PREFACE

### 1.1 Committee Mandate

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

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

## 1.2 Committee Membership

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

### **Chairperson**

Hon. David Pkosing, M.P.

Member for Pokot South Constituency

### **Jubilee Party**

### **Vice-Chairperson**

Hon. Gathoni Wamuchomba, M.P.

Member for Kiambu County

### **Jubilee Party**

### **Members**

Hon. Dominic Kipkoech Koskei, M.P.

Member for Soitik Constituency

### **Jubilee Party**

Hon. Peris Tobiko, M.P.

Member for Kajiado East Constituency

### **Jubilee Party**

Hon. Kulow Maalim Hassan, M.P.

Member for Banisa Constituency

### **Economic Freedom Party (EFP)**

Hon. Abdul Rahim Dawood, M.P.

Member for North Imenti Constituency

### **Jubilee Party**

Hon. Samuel Arama, M.P.

Member for Nakuru Town West

### **Jubilee Party**

Hon. Shadrack John Mose M.P.

Member for Kitutu Masaba Constituency

### **Jubilee Party**

Hon. Ali Wario Guyo M.P.

Member for Garsen Constituency

### **Orange Democratic Movement Party**

Hon. Rehema Dida Jaldesa M.P.

Member for Isiolo County

### **Jubilee Party**

Hon. Ahmed Bashane Gaal M.P.

Member for Tarbaj Constituency

### **Peoples Democratic Party**

Hon. David Njuguna Kiaraho M.P.

Member for Ol Kalou Constituency

### **Jubilee Party**

Hon. Johnson Many Naicca M.P.

Member for Mumias West Constituency

### **Orange Democratic Movement Party**

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

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

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

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

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

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

### **1.3 Committee Secretariat**

Ms. Chelagat Tungo Aaron  
**First Clerk Assistant**  
**Head of Secretariat**

Mr. Ahmed Salim Abdalla  
**Second Clerk Assistant**

Ms. Mercy Wanyonyi  
**Legal Counsel I**

Mr. Abdinasir Moge Yusuf  
**Fiscal Analyst**

Ms. Winnie Kulei  
**Research Officer III**

Mr. Brian Ngetich  
**Audio Recording Officer**

Ms. Zainabu Wario  
**Sergeant at Arms**

## 2.0 BACKGROUND OF THE INQUIRY

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **B. SUPPLEMENTARY INFORMATION**

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

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

### **On how the Government can make the SGR tariffs competitive**

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

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

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

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

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

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

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

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

#### **On the Role of Container Freight Stations (CFS)**

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

### **On Cargo that must move by SGR**

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

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

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

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

### **On SGR to Uganda**

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

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

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

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

### **3.2 Ministry of East African Community and Regional Development**

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

#### **a) On Cargo Throughput**

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

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



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

#### **b) On Rail Haulage Along the Northern Corridor**

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

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

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

#### **c) On SGR performance analysis**

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

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

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

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

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

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

### **3.3 Kenya Revenue Authority (KRA)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3.4 Kenya Ports Authority (KPA)**

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

#### **a) On legality of directives on cargo transportation by SGR**

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

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

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

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

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

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

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



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

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

**c) On Social-Economic Impact of Transportation by SGR**

The Kenya Ports Authority submitted that positive Impacts include:

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

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

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

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

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

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

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

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

### 3.5 The Coast Region Leadership

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

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

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

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

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

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

### **3.6 Kenya Private Sector Alliance (KEPSA)**

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

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

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

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

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

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

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

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

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

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

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

### **3.7 Kenya Trade Network Agency (KENTRADE)**

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

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

The Agency further submitted as follows:

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

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

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



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

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

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

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

### **3.8 Container Freight Stations Association of Kenya (CFSA)**

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

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

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

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

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

**iv) Kenya Revenue Authority (KRA) (Customs Services Department):** Customs services already present in CFS's will carry on with the normal duties of verification and release of cargo. This will ease the pressure on customs clearance at ICD Embakasi.

- KRA to give dedicated space / area for cleared cargo
- CFS Operators will deliver customs cleared cargo to SGR freight for transport to ICD Embakasi for collection only.

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

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

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

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

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

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

**b) On what CFSs are**

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

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

**c) On what CFSs do.**

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

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

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

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

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

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

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

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

### **3.9 Shippers Council of Eastern Africa (SCEA)**

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

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

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

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

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

According to the council, of the traffic for the 2019 throughput, SGR carried 3, 619,184 Tons representing a 39.33% market share for containerized cargo. A further 24,557 Tons representing TPWHC: *Report on the Inquiry into the use of the Standard Gauge Railway*

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3.10 Kenya Transporters Association Ltd (KTA)**

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

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

The association submitted as follows:

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

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

#### 4.0 COMMITTEE OBSERVATIONS

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

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

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

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

## 5.0 COMMITTEE RECOMMENDATIONS

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

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



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

SIGN:  DATE: 18/09/2020

**THE HON. DAVID PKOSING, MP, CBS**



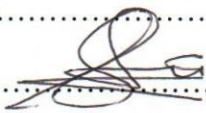


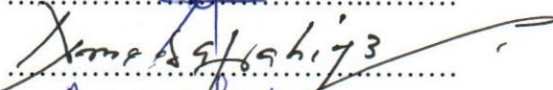






**CHAIRPERSON**

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



### Adoption of the Report

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

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