REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – SECOND SESSION - 2014

REPORT OF THE

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

ON

THE STATEMENT SOUGHT BY HON. HEZRON AWITI, MP, ON THE TENDERING AND CONSTRUCTION OF THE STANDARD GAUGE RAILWAY FROM MOMBASA TO MALABA

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY, 2014

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PREFACE

MANDATE OF THE COMMITTEE

The Departmental Committee No. L on Transport, Public Works and Housing is established pursuant to the provisions of Standing Order No. 216, with the following terms of reference: -

a) to 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) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
c) to study and review all legislation referred to it;
d) to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
e) to 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 or a Minister; and
f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee is mandated to consider the following **subjects**:-

i) Transport
ii) Roads
iii) Public works
iv) Construction
v) Maintenance of roads, rails and buildings, air, seaports and housing.

The Committee oversees the following Government Ministry and State Department, namely: -

(i) Ministry of Transport and Infrastructure;
(ii) State Department for Housing and Public Works

COMMITTEE COMPOSITION

The Parliamentary Departmental Committee on Transport, Public Works and Housing was constituted on May 20th 2013 and its membership is as follows:-

1) The Hon. Maina Kamanda, M.P. – (**Chairperson**)
2) The Hon. Eng. Mahamud Maalim, M.P. – (**Vice Chairperson**)
3) The Hon. Eng. Stephen Ngare, M.P.
4) The Hon. Ali Wario, M.P.
5) The Hon. Arch. David Kiaraho, M.P.
6) The Hon. Cecily Mbarire, M.P.
7) The Hon. Capt. Clement Wambugu, M.P.
8) The Hon. Eng. John Kiragu, M.P.
9) The Hon. Gideon Konchella, M.P.
10) The Hon. Barchilei Kipruto, M.P.
11) The Hon. Mark Lomunokol, M.P.
12) The Hon. Grace Kipchoim, M.P.
13) The Hon. Mathias Robi, M.P.
14) The Hon. Joseph Lomwa, M.P.
15) The Hon. Peter Shehe, M.P.
16) The Hon. Stephen Manoti, M.P.
17) The Hon. Emmanuel Wangwe, M.P.
18) The Hon. K.K. Stephen Kinyanjui Mburu, M.P.
19) The Hon. Suleiman Dori, M.P.
20) The Hon. Edick Omondi Anyanga, M.P.
21) The Hon. Simon Nyaundi Ogari, M.P.
22) The Hon. Johnson Manya Naicca, M.P.
23) The Hon. Mishi Juma, M.P.
24) The Hon. Aduma Owuor, M.P.
25) The Hon. Chachu Ganya, M.P.
26) The Hon. Omar Mwinyi, M.P.
27) The Hon. Ahmed Abbas Ibrahim, M.P.
28) The Hon. Omulele Christopher, M.P.
29) The Hon. Mukwe James Lusweti, M.P.

1.0 EXECUTIVE SUMMARY

1.1 On Thursday, November 14th, 2013, the Member for Nyali Constituency, the Hon. Hezron Awiti, MP, rose on the floor of the House and requested the Chairperson of the Departmental Committee on Transport, Public Works and Housing to issue a response statement on the tendering and construction of the Mombasa-Malaba Standard Gauge Railway line.

In the statement the Member sought to know why the Government single sourced the provision of the rolling stocks and awarded the tender to China Bridges and Roads Construction Company.

He further tasked the Committee to inquire into and report on the following:-

i) Whether China Road and Bridge Corporation – a construction Company have the capacity to build a railway project and if so, provide evidence of railway projects undertaken by the company in the last ten (10) years and at what costs.

ii) Whether China Road and Bridge Corporation have the capacity to provide Rolling stocks and if so, provide evidence of factories where the rolling stocks are manufactured.

iii) Clarification on whether the government undertook due diligence on the capacity of the Company to build the railway lines and provide Rolling Stocks

iv) Action that will be taken by the Government in case of culpability in awarding the tender to China Bridges and Road Company.

1.2 On Thursday, 21st November, 2013, the Committee held a sitting with the Cabinet Secretary for Transport and Infrastructure who briefed the meeting on the issues surrounding the tendering and construction of the Standard Gauge Railway.

1.3 On Thursday, 9th January, 2014, the Committee held a sitting and deliberated on the way forward on the statement sought by the Member for Nyali Constituency, Hon. Hezron Awiti. The Committee then developed a programme for meetings that would assist the Committee in considering the matter regarding the Standard Gauge Railway procurement process and other related issues. The Committee held a total of seven Sittings and the following persons appeared before the Committee:-

i) Cabinet Secretary for Transport and Infrastructure
ii) Principal Secretary for the State Department of Transport

iii) Acting Managing Director of the Kenya Railways Corporation

iv) Attorney General of the Republic of Kenya

v) Director General of the Public Procurement Oversight Authority (PPOA)

vi) Cabinet Secretary for the National Treasury accompanied by the Principal Secretary for National Treasury.

2. Response to issues raised in the statement by the Honourable Member

2.1 The committee's response to issues raised in the statement based on the information gathered from the officers and the documentary evidence produced, is as follows:

2.1.2 Whether China Road and Bridge Corporation – a construction Company has the capacity to build a railway project and if so, to provide evidence of railway projects undertaken by the company in the last ten (10) years and at what costs

i) The Principal Secretary for the State Department of Transport, Ministry of Transport and Infrastructure confirmed receipt of a letter from the Chinese Embassy recommending China Road and Bridge Corporation (CBBC) for the Mombasa – Nairobi standard gauge railway project. In addition, the Principal Secretary produced evidence that the Government of Kenya sent a delegation to China from 27th October to November 5th, 2012 to undertake due diligence on the capacity of China Road and Bridge Corporation to deliver the Mombasa to Nairobi standard gauge railway project.

ii) The due diligence was supposed to ascertain the Technical, Financial, Legal and Human Resource capacity of CRBC to undertake the implementation of the Project. The Due Diligence Report confirmed that CRBC is a Government institution of the People's Republic of China that has been in operation in China since 1979 and that CRBC is a large scale state-owned foreign trade and economic corporation enterprise that focuses on construction of roads, railways, airports and other transport infrastructure.

iii) The Due Diligence Report also confirmed that CRBC has undertaken several large railway development projects in China including the following:

Name of Project	Kilometres allocated	Estimated cost (US$ Million)
Beijing – Shanghai High Speed Railway	153.7	2,280
Harbin – Dalian passenger dedicated railway line	345.645	3,460
Chongqing – Wanzhoua	53.8	373
Taiyuan – Zhongwei	210	950

iv) China Road and Bridge Corporation therefore has the Technical, Financial, Legal and Human Resource capacity to undertake the implementation of the Mombasa to Nairobi standard gauge railway project.

2.1.3 Whether China Road and Bridge Corporation has the capacity to provide Locomotives and Rolling Stock and if so, provide evidence of factories where the rolling stock are manufactured,

i) The Principal Secretary for the State Department of Transport, Ministry of Transport and Infrastructure confirmed visit to China, the Government Delegation that visited CSR Ziyang Locomotives Manufacturing Company, based in Chengdu and toured the locomotives manufacturing complex. The company will be responsible for manufacturing and supplying the locomotives for the project as per the list of equipment suppliers submitted to Kenya Railways by CRBC.

ii) The delegation undertook due diligence on CSR Ziyang and confirmed that the Company's factories have the capacity to manufacture 500 locomotives annually. The delegation also inspected newly built locomotives including Class DF 8B for freight haulage. These are similar to the locomotives specified for the Mombasa to Nairobi standard gauge railway.

2.1.4 Whether the Government undertook due diligence on the capacity of the Company to build the railway lines and provide Locomotives and Rolling Stocks

As stated above by the PS, the Government Delegation undertook due diligence on CRBC and confirmed that the company has the capacity to build the Mombasa to Nairobi standard gauge railway. Similarly, the delegation undertook due diligence on CSR Ziyang and confirmed that the Company's factories have the capacity to manufacture the locomotives required for the Nairobi standard gauge railway project.

2.1.5 The action that will be taken by the Government in case of culpability in awarding the tender to China Bridges and Roads Corporation (CRBC)

i) The Principal Secretary for the State Department of Transport confirmed to the Committee that China Road and Bridge Corporation will be required to submit to Kenya Railways a Performance Bond and in the case of poor performance by CRBC, Kenya Railways (KR) will use the funds to procure another Engineering Procurement Contract (EPC) contractor.

3.0 The procurement process of the project

3.1 The Director General of PPOA confirmed to the Committee that the provisions of the Public Procurement and Disposal Act, 2005 were adhered to the letter; and that the procurement of the EPC Contractor (in this case a Government to Government procurement) undertaken herein is in accordance with Section 6 (I) of the Public Procurement and Disposal Act, 2005.

3.2 The Attorney General also confirmed to the Committee that his office was (and is) involved in the procurement process of the Mombasa – Nairobi standard gauge railway from the inception of the project and he affirmed that his office will provide the legal opinion on the Financial Agreement when ready to enable the sealing of the contract between the Government of Kenya and the Government of the Peoples Republic of China with regard to this contract.

3.3 The Attorney General confirmed that the Government of Kenya has not signed any Financial Agreement and that the loan by the EXIM Bank of China is undergoing internal credit approval after which the loan documents will be submitted to the Kenyan Treasury for perusal and subsequently submitted to the Attorney General for his legal opinion.

4.0 Debt sustainability and loans repayment,

4.1 The Committee was informed that the National Treasury has undertaken debt sustainability analysis to ensure that the SGR loan is sustainable and is within the debt policy parameters.

4.2 Regarding loans repayment, the National Treasury confirmed having put in place suitable mechanisms to meet the cost of the loans repayment during their tenure such as the Railway Development Fund, budgetary allocations and traffic guarantee for the standard gauge railway operations.

5.0 The cost of the project

5.1 Both the Ministry of Transport and Infrastructure and the National Treasury gave the cost of procuring the EPC as USD 3.804 billion (KShs.327 billion) made up of the Commercial Contract for Civil Works at USD 2.657 billion and the Commercial Contract for the Supply and Installation of Facilities, Locomotives and Rolling Stock at USD 1.146 billion.

5.2 The National Treasury advised of additional costs not yet confirmed to meet the cost of Compulsory Land Acquisition of 2,253 hectares for the railway corridor estimated at **KShs.8.0 billion,** cost of the expansion programme for the Embakasi Inland Container Depot (ICD) including the supply and installation of container handling equipment estimated at **KShs. 10.6 billion,** the cost of additional land required for ICD at **KShs.1.0 billion** and cost of engaging the supervision Consultant at **KShs.3.0 billion.**

6.0 The supervision of the project

Kenya Railways Corporation is in the process of procuring a Consultant to undertake the independent Supervision of the project development including: reviewing the designs; construction, supervision and commissioning of the project and that the Consultant would approve all the certificates before payments are made to China Road and Bridge Corporation – the EPC Contractor.

7.0 Observation:

Justification for the Mombasa to Nairobi standard gauge railway development

According to the Ministry of Transport, more than 22 million tonnes per annum will be transported using the Standard Gauge Railway and hence fast-tracking the movement of cargo in the country and in the region at a lower cost than is possible with the existing metre gauge railway and road transport.

1. Kenya as a country stands to gain economically and socially from the construction stage to operation of the Mombasa to Nairobi standard gauge railway project in this respect, as follows:

    i. Annual GDP growth of at least 1.5% during construction and subsequent operation;
    ii. Reducing congestion at Mombasa Port and therefore strategically placing the port as the preferred facility in the region;

iii. Direct jobs creation of at least 60 new jobs per kilometre of track during construction period. This translates to 40,000 quality jobs in addition to on the job training opportunities for 15,000 people.
iv. Promoting the Railway Training Institute as a centre of excellence for railway skills in the region
v. The project will have the flexibility to source standard locomotives and Rolling Stocks widely used around the world thus lowering the future running cost.

2. From the submissions by the Attorney General and the Director General of the Public Procurement Oversight Authority (PPOA), the Committee concurs that the procurement process of the project was conducted within the provisions of the law.

3. CRBC and its nominated subcontractors have the technical and financial Capacity to deliver the project.

4. The project is therefore essential for the country and the region

9.0 Recommendations

9.1 The Government should proceed with the process of implementing the Mombasa – Nairobi Standard Gauge Railway project due to immense benefits that will accrue to the people of Kenya during the construction period and upon completion of the project.

9.2 The Government of Kenya should fast track the signing of the Financial Agreement between the Government of the Republic of Kenya and the EXIM Bank of the Peoples' Republic of China to enable the project to commence.

9.3 The procurement process of the independent consultant should be fast tracked to facilitate early design review and the proper configuration of the various components of the project.

9.4 The government should fast track the implementation of phase II of the Standard Gauge Railway Project (Nairobi-Malaba) section.

Signed…………..................................... Date…………………………………………………….

Hon. Maina Kamanda, EGH, MP
Chairperson of the Departmental Committee on
Transport, Public Works and Housing

2.0 STATEMENT REQUEST AND BACKGROUND INFORMATION ON THE STANDARD GAUGE RAILWAY

2.1 Introduction

On Thursday, November 14th, 2013, the Member for Nyali Constituency, the Hon. Hezron Awiti, MP, rose on the floor of the House and requested the Chairperson of the Departmental Committee on Transport, Public Works and Housing to issue a response statement on the tendering and construction of the Mombasa-Malaba Standard Gauge Railway line.

In the statement the member tasked the Chairperson to inquire into and report on the following:-

a) Whether China and Roads construction Company have the capacity to build a railway project and if so, provide evidence of railway projects undertaken by the company in the last ten (10) years and at what costs.

b) Whether the China Bridges and Roads Company have the capacity to provide Rolling stocks and if so, provide evidence of factories where the rolling stocks are manufactured.

c) Clarification on whether the government undertook due diligence on the capacity of the Company to build the railway lines and provide Rolling Stocks.

d) Action that will be taken by the Government in case of culpability in awarding the tender to China Bridges and Roads Company.

2.2 PROCEEDINGS OF THE COMMITTEE

2.2.1 PRESENTATION BY CABINET SECRETARY FOR TRANSPORT AND INFRASTRUCTURE

On 21st November, 2013 the Committee invited the Cabinet Secretary for Transport and Infrastructure to shed light on the issues surrounding the tendering and construction of the Standard Gauge Railway. The Committee heard the following submissions from the Cabinet Secretary.

That:-

1. The Government has identified Transport as the critical enabler for the delivery of Vision 2030. As such, the Ministry is focusing on developing and improving the Transport sector as a key driver of economic development.
2. The Railway sector has been underperforming over the years and is in urgent need of overhaul to ensure it plays its rightful role in economic development of the Country and the region as a whole.
3. The existing Railway system, built over 100 years ago, has serious limitations in terms of technology and capacity. The existing railway system handled 0.9 tonnes in 2012/13 compared to Mombasa Port throughput of 22 million tonnes in 2012 at a growth rate of 8% per annum.
4. Despite Concession of existing rail facilities and services to the Rift Valley Railway (RVR) Ltd, the sub-sector continues to underperform, due to the poor condition of infrastructure, facilities, locomotives and rolling stock as a result of lack of investment.
5. The Ministry will require at least US$1 billion to upgrade railway operations to 1980 levels, when the subsector hauled 4.2 million tonnes in that year. This would take at least six years to implement.
6. Due to a realization of the foregoing, the East African Community has developed a Railway Master Plan based on Standard Gauge railway technology. Kenya will implement the sections within its borders.
7. Thus on 28th October, 2008, H.E. the former President, Mwai Kibaki and H.E. Yoweri Museveni of Uganda issued a communiqué at State House Nairobi, that a new high capacity Standard Gauge railway be built linking the port of Mombasa to Kampala with a branch line to Kisumu and Pakwach.
8. Subsequently, the Cabinet on 3rd August, 2012 approved the development of a new standard gauge railway line linking Mombasa to Malaba with a branch line to Kisumu. The Cabinet directed that the railway be built through a Government-to-Government arrangement supported by Government Budget and a Railway Development Fund.
9. The Cabinet also directed that the Government signs a bilateral agreement with the Government of the Republic of Uganda for joint development of the railway and subsequent seamless operation.
10. The Agreement was later broadened to a trilateral agreement to include the Republic of Rwanda, extending the line to Kigali. Each country will develop its section of the railway line. The Mombasa to Kigali railway is expected to be in operation by December, 2018.
11. The trilateral agreement provides for unified technical standards for the railway development and subsequent seamless operations.

12. On 12th August, 2009, the Government of Kenya signed a MoU with China Road and Bridge Corporation (CRBC) - a state owned corporation - for the Feasibility Study and Preliminary Design of Phase I (Mombasa to Nairobi section). The MoU allowed for CRBC to undertake the study at no cost to the Government of Kenya.
13. The resultant Report was submitted to the Government in February, 2011, and following discussions between Kenya Railways and CRBC, Kenya Railways Corporation approved the Feasibility on 7th January, 2012 Study and Preliminary Design Report on 26th June, 2012.
14. The work scope approved in the Feasibility study includes:
    a) Construction of 609 Kms of single track railway
    b) Construction of stations, workshops and freight exchange depots
    c) Supply and installation of facilities (i.e. signaling, communication for trains control, electricity supply, water etc)
    d) Supply and commissioning of 56 locomotives
    e) Supply and commissioning of 1,620 freight wagons
    f) Supply and commissioning of 40 passenger coaches
    g) Training and Capacity building
15. On 8th June, 2012, The Government of the People's Republic of China through its embassy in Nairobi wrote to express support for CRBC's involvement in the railway project.
16. Subsequently, CRBC and Kenya Railways went into negotiations on Commercial Turnkey contracts for civil works and for the supply and installation of facilities, locomotives and rolling stock.
17. The contracts were subsequently approved by the Ministry of Transport and the Attorney General's office and signed by Kenya Railways and CRBC on 11th July, 2012 for the Civil Works and 4th October, 2012 for the Facilities, locomotives and rolling stock.
18. The Government of Kenya is currently in discussions with the EXIM Bank of China (within a Government-to-Government framework directed by the Cabinet) for a concessional and commercial loam to support the project.
19. CRBC is being considered for the position of EPC Contractor in line with Section 6.1 subsection (1) of the Public Procurement and Disposal Act, 2005, which states:

    "Where any provision of this Act conflicts with any obligations of the Republic of Kenya arising from a treaty or other agreement to which Kenya is a party, this Act shall prevail except in instances of negotiated grants or loans."

20. Recognizing that the loan from EXIM Bank may be not be enough to complete 100% of the Construction works, the

Government has put in place measures to ensure adequate funds will be available to meet these obligations.

21. The Government has subsequently budgeted Kshs 22 billion for Railway Development in the 2013/14 budget and established a 1.5% levy on the cost of all imports and is expected to raise at least Kshs 15 billion in 2013/14.
22. Following the signing of the Commercial Contracts, the Government sent a delegation to China from 27th October to November 5th, 2012, to undertake due diligence and ascertain the Technical, Financial and Legal capacity of CRBC to undertake the implementation of the Project.
23. The due diligence report confirmed that CRBC had the capacity to undertake the mega rail project, having undertaken similar projects in China.
24. CSR Ziyang Locomotives Manufacturing Company, based in Chengdu will be working with CRBC to deliver locomotives for the project as per the list of equipment suppliers submitted to Kenya Railways by CRBC.
25. To ensure CRBC adheres to agreed specifications of the railway design; Kenya Railways is in the process of engaging an independent consultant to undertake design review of all the designs and carryout supervision of the construction, supply and installation of facilities and supply and commissioning of all locomotives and rolling stock. This will ensure that Kenya Railways gets value for money in the delivery of the product.

Members expressed several concerns regarding the construction of the Standard Gauge Railway, to which the Cabinet Secretary responded as follows.

That:-

1. **On how the local communities along the Railway line will benefit from the project**; the Cabinet Secretary informed the Committee that there is outright provision in the tender for the participation of locals, especially local contractors, (in these case Kenyans from all walks of life) in the project. A majority of the labour for the project (nearly 60%) will be provided by locals throughout the 33 stations to be built along the line.
2. **What will become of the existing line and facilities**; the Committee heard that the existing line and facilities will remain intact. Kenya Railways is currently revamping some of the facilities to cater for staff and the public when the new railway line is complete and operational. For instance, Changamwe Yard will become the main Marshalling Yard for the Standard Gauge Railway. Additionally,

Kenya Railways will leverage some of its real estate to bolster its financial position.

3. **On supporting infrastructure for the new system;** the Ministry has undertaken preliminary railway line designs for the Coast region, Nairobi and Kisumu with a view to building railway lines in the regions and integrating them into the national system.
4. **Capacity for staff for the new line;** the Committee heard that monies will be put into the Railway Training Institute (RTI) for the training of local capacity for the new railway line.
5. **Fencing off the railway line for security and safety of wildlife;** the Committee heard that the railway line will be raised as high as a 24 storey building in some places for safety of wildlife and the line itself.
6. **Whether a consultant from the Ministry or private sector was involved during the evaluation of technical specifications;** the Committee was informed that the Government had to recall retired, experienced engineers in the subsector to assist with the evaluation of technical specifications for the Standard Gauge Railway. Furthermore, the Government sent a delegation to China from 27th October to November 5th, 2012, to undertake due diligence and ascertain the Technical, Financial and Legal capacity of CRBC to undertake the implementation of the Project.

2.2.2 PRESENTATION BY THE PRINCIPAL SECRETARY FOR THE STATE DEPARTMENT OF TRANSPORT

On Wednesday, 22nd January 2014, the Committee invited the Principal Secretary for Transport and Infrastructure to shed light on the above Statement. The Committee heard the following submissions from the Principal Secretary.

i) The existing Railway system, built over 100 years ago, has serious limitations in terms of technology and capacity. The existing railway system handled 0.9 tonnes in 2012/13 compared to Mombasa Port throughput of 22 million tonnes in 2012 at a growth rate of 8% per annum.
ii) The railway capacity cannot be increased beyond five million tonnes per annual due to the following design limitations:
iii) Steep gradients (2.5%) and tight curvature (175 meters radius), limiting delivery speed to less than 20km/hr
iv) Weak structure limiting axle load of 16 tones, which in turn limits the hauling capacity.
v) The Government has identified Transport as the critical enabler for the delivery of Vision 2030. As such, the Ministry is focusing on

developing and improving the Transport sector as a key driver of economic development.

vi) The East African Community has developed a railway master plan based on the standard gauge railway technology. Kenya will implement the sections within its borders.

vii) The feasibility study was discussed by Kenya Railways Corporation (KRC) and China Road and bridge Corporation (CRBC)and approved in January 2012.The Principal Secretary stated that it addressed the technical, financial and economic feasibility of the project.

viii) On Technical feasibility the Principal Secretary stated that **t**he railway will be dominantly freight carrier and has therefore been designed as a class 1 railway with the following parameters:

- Low gradient
- Shallow horizontal curvature = 1,200 meters radius
- Shallow vertical curvature = 10,000 meters radius
- Axle load = 25 tones
- Annual capacity greater than 22 million tone

ix) On Financial analysis the Principal Secretary stated that the project financial rate of return scheme is higher than the financial bench mark rate of return of 5%. The payback period of investment of the three schemes is respectively 14.75 years. The scheme has capacity to recover the total investment in the calculated years. The repayment period of the loan (including construction period) is 17.46 years. This is considered a good financial status with excellent pay–off ability.

x) On Economic feasibility the Principal Secretary informed the committee that the project economic internal rate of return (EIRR) on the total investment is 14.66 %, which is higher than the social rate of discount of 12%, the result of sensitivity analysis shows this planning has relatively stronger anti risk capability, which can be the recommended for planning purposes based on the result of the analysis from the economic perspective.

xi) Environmental and Social considerations; the engineering will ensure environmental protection giving emphasis to the eco environment along the line. The project implementation will promote the economic development and improve people's well-being along the line. The engineers will ensure protection of wildlife, grade separation of all roads(no level crossing), fencing out the railway line due to the high speed and weight of trains (each freight train will haul 4,000 tones) and where people will be affected by the corridor, compensation measures will be applied in line with the existing Kenya laws.

xii) On the details of the project components the committee was informed that the project involved the commissioning of a new single track high capacity, high speed standard gauge railway from the Port of Mombasa to Nairobi – a distance of 485 kilometers, the total track length being 609.3 kilometers. The project is divided in to two components namely:

- ✓ **Civil works**

The Principal Secretary informed the committee that civil works will comprise of building:

a) Earthworks, bridges, culverts, viaducts and protection works
b) The tracks
c) 33 crossing stations
d) Two (2) large passenger stations – one in Mombasa another in Nairobi
e) Five other passenger stations at Mariakani, Voi, Mtito Andei, Sultan n Hamud and Athi River;
f) Maintenance Workshops for locomotives, rolling stock, the track, facilities (machinery, water supply system, electricity supply system, and signaling, communications and information systems);
g) Marshalling yards
h) Freight exchange yards and shades
i) Training in various aspects of civil works maintenance.
j) Supply and installation of facilities, Locomotives and rolling stock

The committee was informed that this segment will comprise of supply and installation /commissioning of:

a) Signalling equipment at all the major stations and the 33 crossing stations
b) Communication system (for controlling trains) hardware and software
c) Information system (data and voice) hardware and software
d) Water supply and drainage at each of the major stations and crossing stations (there will be a bore hole and pumping system at each station)
e) Machinery and equipment supply at each maintenance depot and station
f) Air conditioning and ventilation required
g) Electricity supply at each of the major stations and crossing stations (there will be built a dedicated high voltage line between Mombasa and Nairobi and connected to each major station and each crossing station)

h) Locomotives. To ensure the railway begins to earn revenue once completed, the study included the supply and commissioning of 56 locomotives broken down as follows:
i) 43 freight locomotives 5,000HP
j) 5 passenger trains locomotives 3, 300 HP
k) 8 shunting locomotives (2,000HP)
l) Rolling stock. To ensure the railway begins to earn revenue once completed, the study included the supply and commissioning of a total of 1,660 freight wagons and passenger s coaches broken down as follows:
m) Passenger Coaches = 40
n) Freight Wagons = 1,620
o) One simulator for training drivers
p) One under-floor wheel lathe
q) One track recording machine
r) Two (2) in motion weigh –bridges
s) Two (2) rescue trains complete with 120 tones rail mounted cranes

- The Principal Secretary informed the committee that following the approval of the feasibility study on 7th January 2012 and preliminary designs presented by(CRBC) on 26th June 2012, KRC and (CRBC) entered into two commercial contracts.
    1. For civil works worth US$ 2.658 billion (Ksh 220.9 billion)
    2. For supply and installation of facilities, locomotives and rolling stock worth US$ 1.146 billion (Ksh 106.1 billion)
- On the details of other issues surrounding the tendering process of the project the Principal Secretary stated that the Ministry of transport and (CRBC) signed an MOU to undertake feasibility study and preliminary designs on Phase 1 of the Standard Gauge Railway that were to be approved by Kenya Railways Corporation and the Ministry of Transport upon completion.

- The salient features of the MOU were :
    - ➢ The Feasibility Study and the Preliminary Designs Report would not be used by any other party except KRC/Ministry of Transport and China Road and Bridge Corporation.
    - ➢ Subject to approval of the Feasibility Study and the Preliminary Designs, China Road and Bridge would endeavour to identify suitable financiers
    - ➢ CRBC to undertake studies at no cost to the Government
    - ➢ China Road and Bridge Corporation would mobilize resources for the construction stage

Financing of the project identified so far is US$ 3.233 billion from the Government of Peoples' Republic of China. This will compromise of a concessional loan of US$ 1.6 billion from EXIM Bank of China and a preferential commercial loan of US$1.633 billion from Exim Bank of China. To confirm the Government to Government financing agreement an MOU was signed on 19th August 2013 in Beijing, China.

- The Principal Secretary informed the committee of the process of identification and funding of projects by Peoples Republic of China as follows:
  - Competent contractors signs an MOU with a client country to undertake Feasibility Study and preliminary design. to determine the economic, financial and environmental viability of the project
  - The Feasibility Study is scrutinized by the client until expectations of the client are met and the study is adopted by the client;
  - The client and the contractor come up with Bills of Quantities from the commercial contract which again is negotiated between the client and the contractor;
  - Treasury then makes a formal request to China based on costs in the commercial contracts;
  - Negotiations are undertaken between the financier (e.g. EXIM Bank) and the client and the funding agreement is signed after which the commercial contract becomes effective.

The committee heard that in evaluating the technical capacity for the contractor to undertake the work, the following was considered:

- The embassy of the Peoples' Republic of China in Kenya wrote confirming the technical capacity for the China Roads and Bridge Corporation to undertake the project
- Due diligence was undertaken by Government officers and the due diligence confirmed that the contractor had the technical, financial and human resource capacity to undertake the project
- China Roads and Bridge Corporation has over 30 years of civil construction experience in Kenya where it has undertaken projects such as construction of Berth No. 19 at the Port of Mombasa, Southern By-pass, Northern Bypass and Mutito Andei – Bachuma gate road reconstruction among others.

Throughout the Study, KRC experts worked with the China Road and Bridge Corporation to ensure that the designs meet the technical standards (Chinese standards) required and the Bill of Quantities and costs were within the acceptable parameters.

- ✓ The Principal Secretary informed the committee that due diligence was undertaken on CRBC by Government of Kenya delegation to China to establish CRBC and its appointed partners have the technical, financial and managerial/human resource capacity to deliver the Railway Project.

Members expressed several concerns regarding the construction of the Standard Gauge Railway, to which the Principal Secretary responded as follows.

That:-

1. **On what action will be taken in the event China Road and Bridge Corporation (CRBC) does not deliver;** The Principal Secretary informed the Committee that the China Road and Bridge Corporation (CRBC) placed performance bonds, in the event that they fail to deliver the government can call upon the bonds and get another company to complete the project.
2. **On whether the government of Kenya will be required to pay the independent consultant and if the independent consultant should be involved in the project from the designing stage;** the committee was informed that it was important for the government to contract and pay an independent supervision consultant to review work section by section before payments are done to (CRBC).The independent consultant will ensure a high level of independence in analysis of the work done. The Principal Secretary stated that Kenya Railways corporation was involved in designing and that the Independent consultant will be involved in:

    a. Design review
    b. Construction supervision
    c. Quality control
    d. Commissioning of the project

3. **Whether NEMA, the office of the Attorney general and County governments have been involved in the project;**

NEMA approval was provided and a certificate issued to that effect, the committee was informed that public hearings were held in all the counties that the Railway line will pass through and members of the public gave their comments. The involvement of the Attorney General in the project was confirmed; the Principal Secretary stated that commercial contracts were submitted to the Attorney General before cabinet approval.

4. **On how the Kenyan business class stands to benefit from the project;** the committee was informed that the independent consultant will ensure that the Kenyan business community stands to benefit and that 40% of the construction material will be acquired locally and competitively.
5. **On why there is a rush to begin the project;** the committee heard the project was not rushed, it started in 2009 and it took three years for the project to be approved by Kenya Railways and then handed over to the then Ministry of Transport.
6. **On the directorship of China Road and Bridge Corporation (CRBC) and why it was identified as the company to undertake the project and on how long would it take the government to get another donor, in the event the project was halted;** The Principal Secretary stated that China Road and Bridge Corporation (CRBC) is a state owned corporation and that the cost of the project is US$3.804 billion (Ksh.327 billion) and there are signed contracts to this effect. The committee was informed that it is possible to begin the whole process again but it will take another three years to design and identify other source of funding.
7. **On provisions for a second track;** the principal Secretary stated that there are provisions for a second track and the railway will be constructed to electric standards, he further stated that the railway will reduce transport costs hence economic gains for Kenya. The Principal Secretary also went ahead to ensure members that the railway will be constructed using Chinise standards.

2.2.3 PRESENTATIONS BY THE ATTORNEY GENERAL

On Wednesday, 22nd January, 2014, the Attorney General took the Members through the following key points aimed at bring the legal issues surrounding the tendering and construction of the Standard Gauge Railway. The Committee heard the following submissions from the Attorney General.

That:-

I. On **11th April 2012** the Office of the Attorney-General (OAG) received a letter from the Corporation Secretary, Kenya Railways Corporation requesting the office of the Attorney General to consider a Draft Bilateral Agreement (MoU) on the development and operation of ***the Standard Gauge Railway line between Mombasa and Kampala between the Government of Kenya and The Government of Uganda*** and advise our approval and clearance of the same.

II. Subsequently on **17th April, 2012** vide a letter by the then Solicitor General, the OAG gave extensive comments and proposed certain amendments to the text to provide for a legally sound document.

III. On **28th June, 2012** OAG received a letter from the Ministry of Transport (MoT) forwarding a draft Commercial contract for developing the **Mombasa – Malaba/Kisumu Standard Gauge Railway phase 1 (Mombasa-Nairobi Section)**. The letter informed OAG that an MoU had been signed on **12th August, 2009**, between **Kenya Railways Corporation (KRC) and China Road and Bridge Corporation (CRBC)** had undertaken feasibility study and preliminary design of the **Mombasa – Nairobi section (Phase 1 of the Project)** and same had been completed to the satisfaction of the technical team. The letter called on the office of the Attorney General to review the draft contract before KRC proceeded to the next phase.

IV. On **4th July, 2012** the then Solicitor General, responded to the above letter and proposed crucial amendments to the draft contract. Including:

Filling in of gaps such as;

a) Indicating of the date of the credit agreement between GoK and EXIM Bank China;

b) Confirm with the National Treasury on any Tax Exemptions granted;

c) Ensure that there is compliance with the Public Procurement and Disposal Act (PPDA);and

d) MoT to confirm if due diligence of the proposed firm had been conducted.

Further the Office of the Attorney General opined that all documents stipulated in the contract should be annexed to the contract.

V. On **30th August, 201**2 OAG received a letter from the Permanent Secretary MoT, forwarding a draft commercial contract for **the supply and installation of the facilities, locomotives and rolling stock for Mombasa – Nairobi section**.

Consequently on **4th September, 2012** OAG vide a letter by the then Solicitor General giving comments to the draft commercial contract. The letter pointed out the following issues among others:

a) The contract lacked information relating to the commercial value of the project (Contract Price);

b) Called for information relating to the procurement method, i.e. if the project was competitively tendered or single sourced and evidence of the same;

c) Called for a clarification on which standards would be used for the project, i.e. Kenya, Chinese or International Standards. We further requested to be supplied with relevant Kenya Bureau of Standards specifications;

d) Advised that the controlling Law should be Kenyan Law and not English Law;

e) Advised that the framework for taxes and duties needed to be cleared with the relevant line Ministry;

f) Pointed out that the cost delayed payments appeared to be punitive and recommended that clearance be obtained from the then Ministry of Finance (The National Treasury); and

g) Noted that the drafting style needed to be improved as the document had substantial gaps that made it difficult to form a legal opinion as to the soundness and propriety of the draft contract, we requested to be availed with a complete set of documents relating to the project.

VI. On **12th September 2012**, OAG received a letter from the Permanent Secretary, MoT replying to the letter from OAG dated **4th September, 2012** and in his letter the PS had enclosed a letter from the then Managing Director KRC, of even dating and which letter addressed the issues that had been raised vide the letter from the AOG dated **4th September, 2012** in particular, KRC made the following clarifications:

a) **The Project Tendering**: That this was an Engineering procurement and Construction (EPC) contract being progressed on a Government to Government arrangement with the intention to seeking funding for the project from the Government of China. The EPC contractor had been sourced on the basis of Section 72 of the PPDA, an approval of the Tender Committee was to be obtained in line with the PPDA;

b) **Evidence of compliance with requisite procedures**: Project approval process would include approvals by:

1) Attorney-General
2) KR Tender Committee
3) Ministry of Finance

Kenya Railways Corporation undertook to comply with all the requirements of the Public Procurement and Disposal Act 2005.

c) **Standards used for the commodities**: Chinese Standards would be used to Manufacture and operate the facilities, Locomotives and rolling stock. These are specialized equipment for which KEBS has no standards;

d) **Technical Standards**: the project would be sought from the Chinese, which demand the adoption of Chinese Standards for equipment and facilities supply. The Specific standards to be applied for each item will be identified a detailed design stage and will be provided accordingly; and

e) **The cost of delayed payment**: the rate to be applied for this project is lower than the one which was applied for the Nairobi Eastern, Northern and Southern Bypass Projects, which are also duty-free development projects. The lower rate was negotiated based on the comparatively higher cost of the project.

Further the details of the specifications for each item would be discussed and agreed upon by KR and the Seller at the detailed design stage.

VII. On **17th September 2012** OAG vide a letter by the then Solicitor General responded to the letters of 12th September, 2012 and advised as follows:

a) KRC would obtain written Clearance from the Treasury before proceeding with the project at hand;

b) It was prudent to obtain concurrence of the Public Procurement and Oversight Authority in its capacity as the entity mandated to provide advice and assistance to procuring entities; and, ensuring that the procurement procedures established under the public procurement and disposal Act are complied with; and

c) The contract be revised to incorporate issues that OAG & DoJ had outlined.

VIII. On **26th September, 2012** OAG received a letter from the Permanent Secretary, MoT forwarding a draft Bilateral Agreement between the Government of Kenya and the Government of Uganda on the Standard Gauge Railway and requested for office of the Attorney General to provide a legal opinion for the same.

IX. On **28th September, 2012**, OAG vide a letter by the Deputy Solicitor General responded to the letter from MoT and informed MoT that the draft Bilateral Agreement was sound from a legal point of view and could be signed.

X. On 1st **October, 2012** the then Managing Director KRC wrote to the OAG in reply to the letter from the OAG dated **17th September, 2012** and recalled a meeting called by the Office of the Head of Public Service and Secretary to the Cabinet on **28th September, 2012** and held at the office of the president, and at which meeting it was noted that there was need to speed up the signing of the Commercial Contract for the supply and installation of the facilities. Locomotives and rolling stock in order to trigger negotiations between the Government of Kenya and the Government of China for the financing of the Mombasa-Malaba/Kisumu Railway project.

Further the letter responded to OAG's letter of **17th September, 2012** as follows:

a) **Project Tendering (EPC Contractor Procurement Process)**: it is likely that the project will be financed through negotiated grants and loans and therefore Section 6.1 of the Public Procurement and Disposal Act is applicable and confirmation of the same will take place during negotiations of the Financing Agreement with the Government of China. AG's Chambers can therefore give a legal opinion on the draft Commercial contract subject to this confirmation, which will be in place when the AG's Chambers reviews the Financing Agreement;

b) **Approval of the project by the Treasury**: it was agreed at the meeting of **28th September, 2012** where treasury was represented by the Financial Secretary that confirmation of approval of the project will be given by the Treasury following conclusion of the Financing Agreement. The AG's Chambers can therefore give an opinion on the draft Commercial contract subject to conclusion of Financing Agreement; and

c) **Standards**: Section 12 has been amended to read: "Refer to Chinese Standards for communication systems, signaling systems, and locomotives and rolling stock for railways. The quality management of above items shall conform to the "International Railway Standards" (IRIS) and/or ISO 9001.

XI. On **3rd October 2012**, OAG vide a letter by the Deputy Solicitor General issued a legal opinion on the contract based on assurances given by the KRC and stated as follows:

a) The Commercial Contract is a component of the entire project and its conclusion is a prerequisite to obtaining financing from the Government of China for the project. Therefore, this legal opinion on the said Contract shall be strictly applied to the terms and conditions of the Contract.

b) Clearance for the Financing Agreement and the project in general shall be subjected to the consideration and approval of the Treasury.

c) The procurement process shall be subjected to the Financing Agreement and therefore Section 6 of the Public Procurement and Disposal Act shall apply.

XII. On **7th March, 2013** the Director-General – Public Procurement Oversight Authority (PPOA) wrote to the Managing Director – KRC, which letter was copied to OAG and in which letter the DG had raise issue with the MD over the procurement related to this subject matter and sought for clarifications and documentation from the MD KRC over the same.

XIII. On **5th April, 2013** OAG received a letter from the DG – PPOA in which letter the DG raised general questions of procurement not relating to the current process. In particular the DG sought advice on the following areas:

a) Whether Section 6(1) of the PPDA can be read in isolation of Section 6(3) of the Act;

b) Whether Section 6(1) of the PPDA can be relied upon in exclusivity, as described in paragraph 9 above, particularly where no element/s of conflict have arisen between a provision of the Act and the intended G – to – G agreement/contract;

c) Whether in instanced where Kenya is a party to an international agreement and negotiates for a loan or grant and Kenya still contributes in any form from her resources towards a procurement activity in Kenya whether the PPDA applies to such an arrangement; and

d) Whether G – to – G arrangements are recognized by the procurement law as "Procurements" for purposes of the Act and whether (or not) such arrangements be they funded by (i) a negotiated grant/loan; or (ii) partly or wholly by the Kenyan Government; are exempt from the application of the provision of the Act.

XIV. On **30th April 2013** OAG vide a letter by the hand of the Attorney General replied to the above letter from the DG, PPOA and stated as follows:

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

b) Section 6(1) of the PPDA, CAP 412C Laws of Kenya is clear that were provisions of this Act conflict with any obligations of the Government arising from a treaty or agreement to which it is a party, the treaty's or agreement's provisions prevail to the extent of the inconsistency. Section 6(3) provides an important statutory clarification that regardless of the treaty or agreement in 6(1), in cases where the Government contributes from her own resources, and in any form, to any procurement process under such agreement or treaty, the Act applies;

c) General principles of statutory interpretation require that when we engage in interpreting the law, we must read the statute as a harmonious whole, and the separate parts (in this instance being sub-sections (1) and (3) of Section 6 should be interpreted within their broader statutory context in a manner that furthers the statutory purpose. It is also the general case that laws have meaning and statutory interpretation must strive to give effect to that meaning…

d) Can Section 6 (1) stand alone had Section 6(3) never been inserted in Law?

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

e) That the PPDA 2005 was enacted to promote fair competition, transparency and accountability, as well as local participation in public procurements in this country… in effect, any deviations from the general principles of application under the law must be the exception rather than the rule;

f) While I do not pronounce myself on the merits of the procedures adopted by the KRC in this matter, owing to absence of primary evidence relating to the same, I must record that it is worrying that a procuring entity can pick and choose alternate procurement methodologies as alleged over the same subject matter, and both of which alternatives require external endorsement (in this case by yourselves) because neither alternative admits of open competition;

g) Government to Government agreements are not methods of procurement, but merely bases that could support procurement activities subsequently;

h) Government to Government agreements are properly bilateral agreements under Act No.45 of 2012, which would demand compliance with the procedures outlined under sections 4 through 10 of the said Act;

i) Government to Government agreement is not a method for selecting suppliers so as to support the award of a contract absent an actual process of selecting project developers or component suppliers, and so on;

j) It was in our opinion that Article 227 of the Constitution should be observed to the uttermost. That is to say, public agencies are expected to implement procurement methods that are fair, equitable, transparent, competitive and cost-effective, and in the instant case, the full application of Cap 412C Laws of Kenya, with the exceptional procurement methods being such, and not the norm;

However the Office of the Attorney General did not discuss the merits or otherwise of the particular procedures adopted by the Kenya Railways Corporation in the instant case. To provide such an opinion, we would have required that we be furnished with all tender-related documentation.

XV. On **28th October, 2013** OAG received a letter from the Chief of Staff at the Office of the Deputy President (ODP), which letter sought to inform them that they had detected numerous *prima facie* anomalies in the tendering award process and documentation contrary with the PPDA and requesting us to expeditiously review the project documents and tender a requisite legal opinion; and

XVI. On **5th November, 2013** OAG vide a letter by the Deputy Solicitor General replied to the ODP and requested the ODP to, kindly highlight the anomalies that they had detected in the tendering – award process and documentation contrary to the PPDA and any other laws to enable us issue a comprehensive legal opinion on the matter.

However, the Office of the Attorney General is waiting for the ODP to revert to them on this matter.

In a nutshell the Attorney General informed the meeting the following:-

- ✓ From a legal point of view the status of this project is as follows, the following Commercial Contracts with conditions precedent have been executed;
  - ❖ Commercial Contract for developing the Mombasa - Malaba/Kisumu Standard Gauge Railway Phase I (Mombasa – Nairobi Section) Dated 11th July, 2012; and
  - ❖ Commercial Contract for Supply and Installation of Facilities, Locomotives and Rolling Stocks for the Mombasa – Nairobi Standard Gauge Railway Project Dated 4th october, 2012.
- ✓ Both Contracts state that the Agreements will come into force and effect when the following conditions are satisfied:

a) "The Government of Kenya and the Financial Institutions of China have entered into the necessary credit agreement relating to provision of financing for the project; and

b) The duly signed credit agreement entered into by the Government of Kenya and the Financial Institutions of China has been endorsed and certified by the State Law office of Kenya".

Lastly, the Attorney General informed the meeting that the Commercial Contracts were signed as a condition precedent to negotiating financing of the project with the Government of the People's Republic of China and the Government of Kenya. The process is therefore ongoing and the OAG will finally pronounce itself when the financing agreements have been availed.

Members expressed several concerns regarding the construction of the Standard Gauge Railway, to which the Attorney General responded as follows.

That:-

i) **On why the Contractor is already on site and yet the Financial Agreement has not been finalized**; the Attorney General informed the Committee that the agreement signed between Kenya and Uganda is an irreversible one and that with the Railway Development Levy Fund the Government of Kenya can proceed to have the contractor undertake the preparatory works awaiting for the finalization of the Financial Agreement.

ii) **On whether there is any reason to preclude that the Attorney General will not to approve the Government to sign the Financial Agreement**; the Committee heard that once the National Treasury has satisfied itself to the extent that they have negotiated best interest rates and good terms for the loans with the Exim Bank, the Office of the Attorney General will not have any reason whatsoever to disapprove the contract.

iii) **On whether the deal from the People's Republic of China was a good deal;** the Attorney General informed the Committee that there is no cause of alarm since nothing has been done as regard to the Standard Gauge Railway project which is illegal.

iv) **On whether the Government of Kenya ignored the advice from the Attorney General on the Standard Gauge Railway;** the Committee heard that his office has been involved in the process and that the government has not declined his legal opinion on the procurement process of the Standard Gauge Railway project. In addition he confirmed to the Committee that his office will not allow anything wrong to happen or to be undertaken in as far as the contract is concerned.

v) **Regarding Uganda assisting the Government of Kenya to repay the loan since they signed the bilateral Agreement to construct the Standard Gauge Railway from Mombasa to Kampala;** the Committee heard that Kenya will pay for the cost of constructing the railway line from Mombasa to Malaba and Uganda will pay for their part.

2.2.4. PRESENTATION BY THE DIRECTOR GENERAL OF THE PUBLIC PROCUREMENT OVERSIGHT AUTHORITY (PPOA)

On Thursday, 23rd January, 2014 the Committee invited the Director General of Public procurement Oversight Authority (PPOA) to shed light on the procurement process for the tendering of the Standard Gauge Railway. The Committee heard the following submissions from the Director General.

That:-

i) By way of a letter **Ref. KRC/PLM/PPOA/003** of **2nd October 2012**, Kenya Railways Corporation (KRC) reported to PPOA that the subject procurement pursuant to Regulation 62 (3) of the Public Procurement and Disposal Regulations, 2006. In the letter, KRC informed PPOA that they had engaged China Road and Bridge Corporation (CRBC), a state Corporation, through direct procurement method at a cost of One Billion, one Hundred and forty six million seven hundred ninety one thousand, eight , cents seventy five (USD. 1, 146,791,008.75). PPOA was also informed that the process was being undertaken based on Memorandum of Understanding and Cooperation made and executed between: - Ministry of Transport (Kenya) and China Road and Corporation, a state owned Corporation by the Chinese Government.

ii) The KRC's report on direct procurement method was accompanied with a letter Ref: MOT/S/2.005 VOL. XIII (138) dated 24th August, 2012 from the then Permanent Secretary, Ministry of Transport, citing a Cabinet meeting held on 3rd August, 2012 which *inter alia* approved:

iii) The development of the Standard Gauge Railway from Mombasa to Kampala with a branch line to Kisumu;

iv) The proposed financing structure for the development of the Railway composed of a Government –to- government arrangement (with appropriate Government/s) which is supplemented by budgetary support and a Railway Development and Maintenance Fund.

v) The report was also accompanied with a copy of the Memorandum of Understanding (MOU) dated 12th August, 2009.

vi) According to the KRC, the use of direct procurement method was premised on Section 74 (2) (b) of the public Procurement and Disposal, Act, 2005 and the fact that there was a Memorandum of Understanding. (MOU);

vii) The aforementioned report by KRC was not accompanied with minutes of the tender committee that awarded the subject procurement to demonstrate that requirements of Section 29 (3) and 74 of the Act were complied with, It was noted by PPOA that KRC had submitted a negotiation report between them and China Road and Bridge Corporation;

viii) By a letter Ref: PPOA. 4/30/21 VOL. II (29) of 15th January, 2013 PPOA informed KRC the risks of engaging a contractor or service provider through direct procurement method since the method is not competitive. In the aforementioned letter, PPOA requested for documents that would assist the Authority in reviewing the subject project.

ix) In response to PPOA letter mentioned in paragraph 5 above, KRC informed PPOA vide a letter Ref: KRC/PLM/PPOA/003 dated 19th February, 2013 that the contract between them and CRBC resulted from a negotiated grant between Kenya Government and Chinese Government on a G-to- G funding and therefore Section 6 of the Act applied to the subject procurement. KRC further stated that their report to PPOA on direct procurement was an error.. However, the response by KRC was silent on the documents requested by PPOA from them vide a letter Ref: PPOA. 4/30/21 VOL. II (29) of 15th January, 2013. Accordingly, PPOA wrote a letter Ref: PPOA/ COMP/30/21 OL. III (9) of 7th March, 2013 (copy attached).

x) In response to the letter Ref: PPOA/COMP/30/21 VOL. 111 (9) of 7th March, 2013, KRC requested for a meeting with PPOA to clarify the issues raised in the previous correspondence on the subject tender. The reason for requesting for the meeting was due to the nature of the contract and the bulky documentation. However, the Authority declined and opted to collect documents from KRC, which it did on 20th March, 2013. A review of the documents showed that:-

a. The award of the tender was communicated to China Road and Bridge Corporation (CRBC) by Kenya Railways Corporation (KRC) vide a letter Ref: OPR. 9 dated 3rd October, 2012. The award was made at USD. 1, 146, 791, 008.75 exclusive of VAT, Customs Duties, IDF Fee, cess and withholding tax.
b. According to the documents availed by KRC, the ender was awarded by the tender committee in its meeting No. 191 held on 1st July, 2012. However, a negotiation committee was appointed vide a memo dated 13th August, 2012. The appointment of the negotiation committee appeared to have been done after the negotiation committee had already commenced negotiations. There were no records submitted to PPOA to demonstrate that the negotiations were approved by the tender committee pursuant to regulations 10 (2) (1);
c. By a letter Ref: AG/CONF/SEC/14/153 VOL. VII dated 3rd October, 2013 (copy attached) from the Deputy Solicitor General noted that the subject procurement shall be subject to the Financing Agreement and therefore Section 6 of the Act shall apply.
d. By a letter Ref: OPR.9 dated 14th March, 2013,KRC informed CRBC that the notification of award letter to them had been withdrawn citing Section 6 Of the Act.
e. KRC and CRBC entered into contract on 4th October, 2012.
f. The cancellation of the award of the tender to CRBC was sanctioned by the tender committee in its meeting held on 13th March, 2013.
g. The financing agreement was not in place as the negotiations between the Government of Kenya and Exim Bank of China, the financier of the project, were in progress. PPOA has ever since reminded KRC to provide them with a copy of the said agreement vide a letter dated 11th December, 2013 and 20th January, 2014 on the understanding that the agreement had been finalized and the agreement is therefore in place. However, to date KRC have not responded to the request.

xi) By a letter Ref: KRC/PLM/PPOA/003 dated 26th March, 2013 KRC informed PPOA that the subject procurement was terminated since the project was a G- to –G contract which is to be funded by a negotiated grant/loan and that it was therefore exempt from the application of the Public Procurement and Disposal Act, 2005 pursuant to Section 6(1) of the Act.

xii) Lastly, the Committee heard that the termination of the procurement proceedings brought to the end the direct procurement that was being reviewed by the authority. The foregoing funding arrangement for procuring the SGR project ousted the application of the Act and its review by PPOA.

Members expressed several concerns regarding the construction of the Standard Gauge Railway, to which the Director General responded as follows.

That:-

i) **On whether due process was followed in the procurement of the Standard Gauge Railway project**; the Director General informed the Committee that the procuring entity complied with the law especially when the procuring entity indicated to PPOA that the procurement of SGR project was on Government to Government arrangement.

ii) **On whether the procedure adopted by KRC to procure the SGR project was unique**; the Committee heard that the procurement process was not unique since it's applicable to other entities. Details of the procurement method and the contracting process will be clearly stated in the financing agreement, just as may the case with all donor funded projects.

iii) **On the role played by PPOA in awarding the tender to CRBC;** the Director General informed the Committee PPOA does not approve procurement under the current law and as such it does not approve awards. In a nutshell it did not play any role.

iv) **On action taken by PPOA to review the Public Procurement and Disposal Act,, 2005 in view of its numerous limitations;** the Committee heard that the Act has been in operation for the last six years and acknowledged the urgent need to review and align the said Act with the Constitution of Kenya 2010. To achieve this, PPOA has consulted best practices and made some proposals with to strengthen the Act. Consequently the Director General assured the Committee that by August, 2014, with the approval of Parliament, there will be a new procurement law in place.

v) **Regarding possession of evidence by PPOA of the meeting that approved the Government to Government funding arrangement of the SGR project;** the Committee heard that the Authority did not have any evidence but they are waiting for the financial agreement which will stipulate the procurement methodology among issues.

vi) **On the possible liabilities Kenya is likely to suffer when the Government decides to terminate the contract;** the Committee heard that the Government of Kenya communicated the termination of the first contract and in as far as the Director General is concerned Kenyans will not stand to suffer any risks or costs should the contract be terminated. He restated that when a procuring entity decides to terminate a contract, the procuring entity shall not be liable to any person.

vii) **On any illegality that PPOA has detected on SGR project so far;** the Committee heard that PPOA has no role in terms of monitoring the procurement process and the Director General further added that PPOA could only comment on the legality of the process once he receives and review the financial agreement.

viii) **As regards to the total cost of the contract of the SGR project**; the Committee heard that the PPOA has details of the cost of the initial contract which was terminated. According to details supplied to them by KRC the initial project was to cost One Billion, one Hundred and forty six million seven hundred ninety one thousand, eight , cents seventy five (USD. 1, 146,791,008.75). He however, indicated to the Committee that he has no details of the cost of the current contract. On whether he was aware of the civil works contracts, he said that he was not aware of one commercial contract which is the supply of locomotives and Rolling Stocks which according to his knowledge the contract was cancelled.

ix) **What powers does the Director General PPOA have;** the Director General stated that under Section 100 of the Public Procurement and Disposal Act, 2005, PPOA is mandated to carryout investigation on implementation of procurement projects. However, for donor funded projects, PPOA has no powers to carry out such investigations. PPOA has powers to audit projects funded by the Government of Kenya. He reiterated that in the event the financial Agreements will indicate that the PPOA monitors and audit the project, PPOA will not take the role. As regard to the impact of investigation Carried by PPOA on projects funded by Government of Kenya; the Director General informed the Committee that pursuant to powers conferred to PPOA under Section 105 of the Public Procurement and Disposal Act, 2005, a procuring entity can be directed to rectify on all contraventions of law detected in a procurement process; terminate a contract signed by a procuring entity and it also have powers to submit report to the Ethics and Anti-corruption Commission recommending investigations of the people involved in impropriety

x) Lastly**, on whether KRC by passed PPOA in the subject procurement**; the Director General, PPOA confirmed to the Committee that KRC has never by passed the Authority at any point.

2.2.5 PRESENTATION BY THE CABINET SECRETARY FOR THE NATIONAL TREASURY

On Friday, 24th January, 2014, the Committee invited the Cabinet Secretary for National Treasury to shed light on the following issues:-

i. the funding arrangement for the Standard Gauge Railway

ii. details of the total cost of the project, grace period of the loan and the repayment period of the loan advanced by EXIM Bank

iii. the effect of the loan to finance the project on debt burden of the country
iv. other issues surrounding the tendering and construction of the Standard Gauge Railway:

The Committee heard the following submissions from the Cabinet Secretary:-

- ✓ **On the funding arrangement for the Standard Gauge Railway:**

The Committee was informed that:-

1. The Standard Gauge Railway will be funded from a combination of loans (both concessional and commercial) from China Exim Bank, proceeds from the Railway Development Levy and any budgetary resources that may be required to meet any shortfalls. To the extent possible, the loans will be repaid through operational revenues once the Standard Gauge Railway is operational.

2. The decision to build a modern high speed, high capacity Standard Gauge Railway network connecting Mombasa and Kampala was made by their Excellencies, President Mwai Kibaki of Kenya and President Yoweri Kaguta Museveni of Uganda issued a joint Communiqué at State House Nairobi on 28thOctober 2008 directing the ministers concerned to fast track the development of the Railway.

3. The committee heard that during its eleventh meeting held on 3rd August, 2012 the Cabinet approved:

   i. The development of the SGR line from Mombasa and Kampala with a branch line to Kisumu;
   ii. The Government-to-Government (China and Kenya) financing structure supplemented by budgetary support and a Railway Development and Maintenance Fund; and
   iii. Signing of a Bilateral Agreement between the Government of the Republic of Kenya and the Government of the Republic of Uganda to facilitate joint development and subsequent seamless operation of the Railway.

4. Following the Cabinet approval, the Ministry of Transport requested the National Treasury to formally request funding from Chinese Government to implement the project. The project involves construction of railway infrastructure (civil works) and procurement of facilities and locomotives on an Engineering, Procurement and Construction (EPC) arrangement at a cost of **US$ 3.8 billion**. Subsequently, the National Treasury submitted a formal request to the Government of China for financial assistance towards implementation of the project on 2nd October, 2012 and 10th October, 2012.

5. The Cabinet Secretary informed the committee that one of the conditions for accessing Chinese Loans requires that evidence of a signed Commercial Contract between the Government implementing agency and a designated Chinese Contractor be submitted to the Exim Bank of China prior to appraisal of the loan request. Consequently, the Kenya Railways Corporation and China Road and Bridge Corporation had signed a commercial contract in July 2012, which was then submitted together with other project documents to the Bank.

6. Subsequently, the Government initiated negotiations with the Government of the People's Republic of China for financial assistance in FY 2012/2013 to implement the project. These negotiations were further progressed during the State Visit of H.E. the President of Kenya to China in August, 2013, culminating in the signing of a Memorandum of Understanding between the Government of Kenya and EXIM Bank of China on the financing of the project.
7. The Cabinet Secretary stated that following several negotiations between the two countries the Bank indicated its willingness to fund the project under both the **Preferential Buyer's Credit (PBC)** and **Commercial Lending** windows. The Government on its part has now met all the requirements of the Bank.

   These include;

   - Assurance that the Government will guarantee minimum freight demand for the Standard Gauge Railway through execution of **take or pay agreement** between Kenya Railways and the Kenya Ports Authority.

   - Confirmation that the Railway Development Fund will be used to repay the loan.

8. Exim Bank of China is currently going through its internal credit approval process following which it will submit to the Government of Kenya, through the National Treasury the Financing Agreements.

✓ **On the details of the total cost of the project, grace period of the loan and the repayment period of the loan advanced by EXIM Bank:**

The Committee heard that:-

i) The total EPC cost of the project is Ksh. 327billion; the same figure the Ministry of Transport and Infrastructure provided to Parliament. The committee was informed that the major financial implications of the project relate to

   a. The EPC contract for **USD 3.8 billion.** This is made up of being the contract for civil works, of **USD 2.657 billion** and the contract for the Facilities, locomotives and rolling stock of **USD 1.146billion**

b. compulsory land acquisition of 2,253 hectare for the railway corridor which is estimated to cost about **Kshs 8.04 billion**

c. Embakasi ICD expansion programme estimated to cost **Kshs 10.6 billion** for facility development and container handling equipment and an additional, **Kshs 1.0 billion** for land acquisition

d. **Kshs. 3 billion** for project supervision.

ii) The Government of Kenya counterpart funding of the EPC contract will be 15% of the total project cost. The balance of **USD 3.23 billion** will be secured through two loans from EXIM Bank of China.

iii) On the Cost of borrowing the Cabinet Secretary stated that:

- Under the preferential Buyers Credit (PBC) concessional loan, the Government has requested for **USD 1.6 billion** to finance civil works. The indicative terms for the PBC are:

• Interest Rate:	2.0% p.a.
• Tenor:	20 years including
• Grace Period:	7 years
• Repayment Period	13 years
• Management:	0.75%
• Commitment Fees:	0.75%

These terms are **concessional** since the Grant Element is above the threshold of 35% which is the minimum required under the current Government external debt borrowing policy.

- Under the commercial loan lending window, the Government has requested for **USD 1.63 billion** to finance civil works including procurement of rolling stocks. The indicative terms are:
    - Interest rate: Six months LIBOR + 360bp
    - Tenor: 15 years including
    - Grace period: 5yrs
    - Insurance Premium 6.93% of the loan amount payable in three Instalments
    - Management: 0.75%
    - Commitment Fees: 0.75%

iv) The cost of insurance premium at 6.93% of the commercial loan portion is **Kshs. 9.8 billion** while the cost of management and commitment fee will be firmed up once the Financing Agreements have been executed.

v) The Cabinet Secretary stated that the Government contribution of 15% (i.e. approximately **US$ 571 million ≈ KShs. 49 billion**) will be met from the Railway Development Fund (RDF). This fund is supported by a 1.5% Levy on the cost of all imports into the country and is estimated to be worth at least **Kshs. 20 billion** annually. The cash flow from the fund will also cover other obligations in the project such as Land Acquisition, Supervision Consultancy, Loan Insurance, Commitment and Management Fees.

vi) The committee heard that the financing structure of the loans requires the following arrangements:

- Creation of an ESCROW account into which revenues from the railway operations will be deposited and from which loan repayments will be made;

- Kenya Railways Corporation and the Kenya Ports Authority to sign a '**Take or Pay**' Agreement. Under this Agreement KPA undertakes to consign a defined minimum volume of freight to the Embakasi ICD to be transported on the Standard Gauge Railway. This Agreement will form part of the security package for the loan; and

- An appropriate policy directive to be issued by the Government to ensure freight is shifted from road to rail transport.

vii) The committee was informed that the government contribution of 15%will be made against each draw-down. This contribution will be made out of the Railway Development Fund and annual budgetary provisions, if necessary.

viii) On the Railway Development Levy, the Government of Kenya, with effect from 1st July 2013, by amending the Customs and Excise Act, through Finance Act, 2013, introduced a Railway Development Levy at the rate of 1.5 percent of the customs value of the goods and the levy payable by the importer of goods at the time of entering the goods for home use.

ix) The objective and purpose of the Levy, as outlined in section 6 of the Finance Act 2013, is to raise resources for financing the construction of standard gauge railway network in order to facilitate transportation of goods to and from the Port.

x) In exercise of the powers conferred by section 117A of the Customs and Excise Act as read together with section 24(4) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury through the Legal Notice No. 118 of 5th July, 2013 established the Railway Development Levy Fund, where the proceeds of the Railway Development Levy charged under section 117A of the Customs and Excise Act shall be deposited.

xi) The Customs and Excise (Railway Development Levy Fund) Regulations 2013 lays the framework for Fund administration. The Cabinet Secretary, National Treasury appointed the Principal Secretary responsible for matters relating to transport to administer the Fund. The Cabinet Secretary also established an Advisory Committee to be responsible for overseeing the management of the

Fund and also to review and approve the annual work programs for the construction of the standard gauge railway network.

xii) The committee was informed that the Railway Development Levy will act as insurance in case revenues under the take or pay arrangement falls short of the amount required to service the loan. It will also be used to finance the Government component of the cost of the railway.

- ✓ **On the effect of the loan to finance the project on debt burden of the country:**

i) The Cabinet Secretary stated that the National Treasury has undertaken debt sustainability analysis to ensure that the SGR loan is sustainable and is within the debt policy parameters.

Public Debt Sustainability

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

ii) From the above indicators, it is noted that the contracting of the SRG loan does not breach Kenya's debt sustainability thresholds.

iii) The committee was informed that a safeguard mechanism to assure that the government will guarantee minimum freight demand for the Railway through execution of **take or pay agreement** between Kenya Railways and the Kenya Ports Authority. In addition the proceeds from the Railway Development Fund will be used to repay the loan.

- ✓ **On other issues surrounding the tendering and construction of the Standard Gauge Railway:**

i) The cabinet Secretary stated that National treasury will not be involved directly in the implementation of the project because it does not fall under its purview. The role of the National treasury is to secure the required financial resources to undertake the project as long as they are in line with the National Development Plans.

ii) The committee was informed that Kenya stands to benefit a lot from the project on Economic benefits which include:

a) Reduction in the cost of transportation in the country and the region making Kenya attractive to investment;
b) Protect the environment through reduced carbon emission;
c) Accelerate industrialization through easier and cheaper transport and the establishment of new industries to service the new railway;
d) Lead to an estimated annual GDP growth of at least 1.5% during construction and subsequent operation;

e) Position Kenya as the transport and logistical hub for the Region;
f) Reduce congestion at Mombasa Port securing the port as the preferred facility in the region;
g) Enhanced freight security compared to road transport;
h) Give Northern Corridor head start
i) Development of EPZ along rail

iii) On Social benefits the Cabinet secretary stated the following benefits:

a) Direct jobs: At least 60 new jobs per Kilometre of track during construction period
b) Local industries: Large qualities of local inputs such as steel, cement, electricity generation and electricity transmission pylons and cables, roofing materials, glass, etc. required from local industries with potential to create at least 10,000 jobs;
c) Service and hospitality industry: estimated 3,000 jobs to provide food, accommodation and leisure;
d) Skills development: estimated 15,000 people to acquire skills suitable for self-employment after construction period (masons, carpenters, mechanics, electricians, etc.)
e) Technology transfer : estimated 400 engineers and high technology technicians will be trained during construction and will be available for local and regional railway development after construction of the Mombasa-Nairobi railway
f) Accidents reduction: the railway will reduce the number of heavy trucks on the roads and so reducing accidents making the roads safer for human traffic.

Members expressed several concerns regarding the construction of the Standard Gauge Railway, to which the Cabinet Secretary responded as follows.

That:-

i) **On whether there is any preferred method or process of signing commercial contracts**; the Cabinet Secretary informed the Committee that the contract was pursued on a government to government arrangement, it is necessary for the contractor to undertake the project be a Chinese firm. As regard to the process of procurement the ministry of Transport undertook the process on the engagement of the contractor and they settled on CRBC.
ii) **Regarding how long will it take the government to get another donor to fund the project should the Government suspend the contract**; the Committee heard that the it will take much time before getting another donor since measures need to be put in place to mitigate the negative publicity on the project first before embarking on the process of sourcing for other donors. He further informed the Committee that other countries from Africa are competing for the loans and in the event the Government suspends the contract, other

countries will take up the loan. China has committed USD 20 billion for Africa and the SGR will take about 20% of the USD 20 billion which is about **USD 3.8 billion**.

iii) **On whether China conducted due diligence on the Government of Kenya with a view to give the country the loan for t**he Cabinet Secretary informed the Committee that the National Treasury has explained to China and the Exim Bank in particular that SGR is a key priority project for the country and that the Government is committed to ensure the implementation of the same.

iv) **On whether Kenya Ports Authority (KPA) and its workers will be affected /involved in the repayment of the loan;** the Committee heard that KPA and Kenya Railways Corporation signed the Take or Pay Agreement which its main objective is to guarantee a minimum cargo that will be transported using the rail with a view to ensure that there is enough resources to repay the loan. He confirmed that it will not be the problem of KPA and its employees. It will be the responsibility of the Government to repay the loan. To this end the Government will utilise money from the Railway Levy Fund to repay the loan.

v) **On whether Kenya Ports Authority (KPA) and its workers will be affected /involved in the repayment of the loan;** the Committee heard that KPA and Kenya Railways Corporation signed the Take or Pay Agreement which its main objective is to guarantee a minimum cargo that will be transported using the rail with a view to ensure that there is enough resources to repay the loan. He confirmed that it will not be the problem of KPA and its employees. It will be the responsibility of the Government to repay the loan. To this end the Government will utilise money from the Railway Levy Fund to repay the loan.

vi) **As regard to the issue of whether Kenya will get value for the money spent in the project;** the Committee heard that there will be value for money since the Government has undertaken a comparative analysis with other countries that have undertaken similar project and the cost is reasonable.

vii) **On whether the National Treasury has paid any money towards SGR;** the Cabinet Secretary confirmed to the Committee that no money has been paid since the government has not signed the financial agreement.

viii) **On whether the Kenya Government has undertaken other EPC projects in the country;** the Cabinet secretary confirmed to the Committee that indeed similar projects have been undertaken, especially in the energy sector.

ix) **Consequences Kenya is likely to suffer in the event, the Exim Bank of China decline to finance the project;** the Committee heard that if the finance agreement is not signed, the contract will collapse and the Government will have to look for other means of constructing the railway.

x) **On the actual cost of the SGR project and the safeguards on fluctuations of exchange currency,** the Cabinet Secretary confirmed to the Committee that the total cost of the project will be Ksh 327 billion. However, there are other additional costs which are yet to be confirmed including compulsory land acquisition of 2,253 hectares for the railway corridor which is expected to cost Kshs 8 billion; expansion program for the Embakasi Inland Container Depot (ICD) estimated to cost 10.6 billion, meant for facility development and supply and installation of container handling equipment; an additional Kshs 1 billion required for land acquisition for the expansion of the ICD and Kshs 3 billion to engage project supervision consultant.

xi) On the currency fluctuation, the Committee was informed that the cost of the project was denominated in foreign currency but during the repayment of the loan, the Government will repay using the existing exchange rate. In addition, he informed the Committee the repayment of the loan has been structured in dollars.

xii) **On the debt burden to the country in case county governments borrows money;** the Committee was informed that the National Treasury will be on the look out to ensure that management of debt in the country is sustainable. However, county governments can only borrow money on guarantees from the national government.

3.0 COMMITTEE OBSERVATIONS, FINDINGS AND CONCLUSIONS

Arising from the various meetings with the officers, the Committee made the following observations and conclusions:-

a) The main justification of the SGR project is that it would fast-track movement of cargo in the region at a cheaper cost.
b) The Committee did. not find any illegality or irregularity in the procurement of this project in light of the submissions and confirmations made by the Attorney General and the Director General of the Public Procurement Oversight Authority (PPOA).
c) The committee concluded that Kenya Stands to gain a lot both economically and socially form the Standard Gauge Rail.
d) Members noted that the National Treasury has undertaken debt sustainability analysis to ensure that the SGR loan is sustainable and is within the debt policy parameters, the loan does not breach Kenya's debt sustainability thresholds.

e) The Committee noted that the total cost of the Standard Gauge Rail has not been fluctuating as reported by the media. The total EPC cost of the project is Ksh. 327billion; the same figure the Ministry of Transport and Infrastructure provided to Parliament. The major financial implications of the project relate to the EPC contract for **USD 3.8 billion.** This is made up of the contract for civil works, of **USD 2.657 billion** and the contract for the Facilities, locomotives and rolling stock of **USD 1.146billion,** Compulsory land acquisition of 2,253 hectare for the railway corridor which is estimated to cost about **Kshs 8.04 billion,** Embakasi ICD expansion programme estimated to cost **Kshs 10.6 billion,** for facility development and container handling equipment an additional **Kshs 1.0 billion** for land acquisition and lastly **Kshs. 3 billion** for project supervision.

f) The committee noted that as far as the Director General of Public Procurement Oversight is concerned, Kenyans will not stand to suffer any risks or costs should the contract be terminated. The law states that... "*When a procuring entity decides to terminate a contract, the procuring entity shall not be liable to any person".*

g) In regards to repaying the loan the committee noted that Kenya will pay for the cost of constructing the railway line from Mombasa to Malaba and Uganda will pay for their part

h) The Committee observed that due process was followed in the procurement of the Standard Gauge Railway project.

i) The Committee observed that Kenya Railways Corporation needs to fast track the contracting of an independent supervision consultant to review the designs and work section by section before payments are done to (CRBC) when the project starts. The independent consultant will ensure a high level of independence in analysis of the work done.

j) The Attorney General confirmed to the Committee that his office was and is involved in the procurement process of the SGR right from the inception and he affirmed that the said office will have the final signature on the financial agreement which will seal the contract between the Government of Kenya and the Government of the Peoples Republic of China as regard to this contract.

k) The Government of Kenya has not signed any financial agreement and that the loan by Exim Bank is undergoing internal credit approval after which the loan documents will be submitted to the Kenyan Treasury for perusal and onward transmission to the Attorney General.

4.0 COMMITTEE GENERAL RECOMMENDATIONS

The Committee recommends that:-

1. **The Government should proceed with the process of implementing the Mombasa – Nairobi Standard Gauge Railway project due to immense benefits that will accrue to the people of Kenya during the construction period and upon completion of the project.**

2. **The Government of Kenya should fast track the signing of the Financial Agreement between the Government of the Republic of Kenya and the EXIM Bank of the Peoples' Republic of China to enable the project to commence.**

3. **The procurement process of the independent consultant should be speeded up to facilitate early design review and the proper configuration of the various components of the project.**

4. **The Government should fast track the implementation of Phase II of the Standard Gauge Railway Project (Nairobi-Malaba) section.**

End