REPUBLIC OF KENYA

PARLIAMENT

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THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION, 2019

THE STANDING COMMITTEE

ON

ROADS AND TRANSPORTATION

REPORT ON COMMITTEE INITIATED INQUIRIES ON PROJECTS UNDERTAKEN BY KENYA MARITIME AUTHORITY (KMA), KENYA FERRY SERVICES (KFS) AND NATIONAL SOCIAL SECURITY FUND (NSSF).

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ABBREVIATIONS AND ACRONYMS

BOOT	—Build Operate Own and Transfer
BQ	— Bill of Quantities
EPC	— Engineering, Procurement and Construction
FY	— Financial Year
KFS	—Kenya Ferry Services
KFSL	— Kenya Ferry Services Limited
KMA	— Kenya Maritime Authority
MLA	— Mandated Lead Arranger
NEMA	— National Environmental Management Authority
NSSF	— National Social Security Fund
PIIP	— Privately Initiated Investment Proposal
PPOA	— Public Procurement Oversight Authority
PPP	— Public Private Partnerships
SLA	— Service Level Agreements

ADOPTION OF REPORT

The Standing Committee on Roads and Transportation in 2018 initiated inquiries on various projects undertaken by the National Social Security Fund, the Kenya Ferry Services and the Kenya Maritime Authority and adopts its report as follows:-

Sen. Wamatangi Kimani, MP,	**Chairperson**------------------------------------
Sen. Hargura Godana, MP,	**Vice- Chairperson**------------------------------
Sen. Enoch Wambua, MP,	Member--
Sen. Christine Zawadi, MP,	Member--
Sen. (Dr.)Lelegwe Ltumbesi, MP,	Member--
Sen. Cleophas Malala, MP,	Member--
Sen. Philip Mpaayei, MP,	Member--
Sen. Sylvia Kasanga, MP,	Member--
Sen. (Prof.) Ekal Imana, MP,	Member--

PREFACE

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

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

Composition of the Committee

The Committee is comprised of the following Members:

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

Summary of Committee initiated inquiries

Pursuant to Senate standing order 218(3), the Committee undertook inquiries into the following issues—

1. The proposed Likoni Cable Car project of the Kenya Ferry Services to establish the following:
    i. Details of the concession agreement between Trapos Ltd and the Kenya Ferry Services (KFS) on the Likoni Car Cable project;
    ii. Total cost of the project;
    iii. The mode of financing;
    iv. Details of project implementing partners; and
    v. The expected project commencement and completion dates.

Further, following the Likoni Ferry Tragedy on 29th September 2019, the Committee resolved to make a site visit to inspect the Likoni Ferry managed by the KFS and seek statements from the KFS, the Ministry of Transport, Infrastructure and Housing and relevant stakeholders including the Mombasa County Government.

2. The Construction of the Kenya Maritime Authority Headquarters specifically to ascertain the following:
    i. the total projects cost;
    ii. the tendering process; and
    iii. Bills of Quantities (BQs).
    iv. Value for money for the project

3. The project implementation status of Hazina Towers by the National Social Security Fund to establish the following:
    i. The status of the stalled construction of Hazina Towers including the sequence of events; and
    ii. The circumstances that gave rise expenditure and variations where ¼ of the project was undertaken with the same cost over 10 years.

Summary of the Committee's Observations

Following site visits, extensive stakeholder consultations and in-house deliberations, the Committee made a series of observations on each state corporation:

A. Kenya Ferry Services: The Likoni Cable Car Project

i. *Fees Charges:* The Ksh 20 fee that had been prescribed to foreigners and tourists were far below international and comparable charges, which would severely compromise the projected income of the project.

ii. *Project Viability & Public Participation:* The viability of the project was a concern. There was also the issue of public and stakeholders involvement in the conceptualization of the project;

iii. *Value for Money:* How the project costs were derived and the value for money of the project was questioned by the Committee.

Further to these observations, the Committee raised the following concerns—

a. The justification for awarding the Cable Car Tender to Trapos Ltd as a non-compete, Privately Initiated Investment Proposal (PIIP) under Section 61(1) and (2) of the PPP Act, 2013);

b. The Committee questioned the nature of invention or innovation by Trapos Ltd to justify the intellectual property rights; and

c. The identity and capacity of Trapos Ltd including the history of undertaking similar cable car projects, shareholding, financial foothold and value of value proposition in the project; and

d. Whether the Cable Car project was well value- propositioned

In relation to the Likoni Accident of 29th September 2019, the Committee made the following observations□

a. The Likoni Ferry Route had a high volume of vehicle and pedestrian traffic which required constant marshalling;

b. The victims of the ill-fated vehicle had not followed the proper lines when boarding the ferry;

c. The ramp of the ferry on which the ill-fated vehicle was not properly drawn which left the vehicle at a sloping angle;

d. The video replays of the incident indicate that the driver and the passenger of the vehicle, the late Ms. Mariam Kigenda and Amanda Mutheu had not in fact exited their vehicle nor lowered their windows which meant that they could not escape in the event that the vehicle slipped into the sea;

e. That there were no emergency rescue vehicles at the time of the accident which meant that the victims could not be saved from drowning;

f. That some of the ferries in operation, particularly the older vessels did not have functional ramps which left users at risk of slipping overboard into the sea; and

g. That a rudimentary rescue service was in place following the accident, and that more needed to be done to avoid similar incidents in the future.

B. Kenya Maritime Authority

i. *Value for money:* the Committee questioned the necessity of the building with consideration to the capacity of the intended building and whether the KMA was capable of adequately utilizing the intended facility;

ii. *Variation of cost:* there was a question on the variation of the initial cost of the project as a result of continuous adjustments and alterations; and

iii. *Accountability of the project:* the Committee noted that the KMA generates its own revenue and that this revenue could be used for various projects as opposed to concentrating on constructing a new ultra-modern headquarters.

C. The National Social Security Fund

i. The original project design of Hazina Towers has been changed three times from 24 floors to 21 to 17 to the current 15;

ii. The project has not changed despite the multiple alterations made to the proposed design of the building;

iii. The Committee noted with concern that despite the constructors of the project changing over time, the consultants to the project remain the same;

iv. There is pending litigation between the anchor tenant (Nakumatt) and NSSF that has yet to be resolved conclusively; and

v. The consultants in the project were paid in advance despite the construction works not being completed.

Summary of the Committee's recommendations

From the above observations of the Committee Initiated Inquiries, the following recommendations were made—

A. Kenya Ferry Services: The Likoni Cable Car Project

i. There should be value for money for effective implementation and utilization of the project;

ii. The award process of the project should be open, transparent and fair within the provisions of law; and

iii. Demands provision of information on the background of project proponents including their global undertakings, financial capacity, competency and integrity.

B. Likoni Ferry Operations

i. The Committee recommended the halting of the defective ferries such as MV Harambee, MV Nyayo and MV Kilindini until funds were available to procure new ferries;The Ministry of Transport should ensure that all future ferry vessels have available spare parts within the market for ease of maintenance;

ii. The Cabinet Secretary, Ministry of transport and the Managing Director Kenya Ferry Services to be invited to a meeting of the Committee to provide evidence of action on all the issues that had been raised by the Committee failure of which all ferries would be declared as a disaster and ordered for grounding.

iii. All operating ferries should have functional ramps in order to prevent a repeat of the incident on 29th September 2019;

iv. That the KFS should outfit its vehicles for persons with disabilities in accordance with section 23 of the Persons with Disabilities Act,2003;

v. That the KFS should ensure that it is protected from potentially adverse litigation arising from breach of occupier's liability; and

vi. The Kenya Coast Guard Service Act, 2018 should be implemented immediately and in particular section 8(i) regarding the provision of search and rescue services.

C. Kenya Maritime Authority

i. The management or responsible entities to account for the adjustment of the initial cost of the project as budgeted
ii. The project implementation process and award of tender to various subcontractors be further be investigated by the investigative authorities to ascertain prudence and value for money; and
iii. To incorporate risk management and feasibilities when undertaking future projects.

D. The National Social Security Fund

i. The adjudication issues surrounding the project be speedily resolved in order to avoid onerous costs of litigation;
ii. The Office of the Auditor-General should undertake investigations into the Hazina Towers Project in order to ascertain the viability of the project and whether there have been any irregularities in payments to consultants in the project; and
iii. The NSSF should indicate a final deadline for the completion of the Hazina Towers Project.

ACKNOWLEDGEMENT

Mr. Speaker Sir,

I wish to express my gratitude to the Offices of the Speaker and the Clerk of the Senate for facilitating consideration of the site visits and various meetings that were undertaken by the Committee and which gave valuable insights that led to the production of this report.

The Committee acknowledges the valuable time and considerable effort made by Members of the Committee, the Ministry of Transport, Infrastructure, Housing and Urban development, the Kenya Maritime Authority (KMA), the Kenya Ferry Services(KFS), and the National Social Security Fund(NSSF)..

Mr. Speaker Sir,

It is now my pleasant duty to table the report of the Standing Committee on Roads and Transportation, in relation to Committee Initiated Inquiries from 2018 to date.

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

SEN. WAMATANGI KIMANI PAUL, M.P.
CHAIRPERSON,
<u>STANDING COMMITTEE ON ROADS AND TRANSPORTATION</u>

CHAPTER ONE

1.0 THE LIKONI CABLE CAR PROJECT INQUIRY

1.1 Background

The Committee invited the management of the Kenya Ferry Services to a formal meeting held at the Parliament Buildings, Nairobi. The purpose of the meeting was a follow-up to the meeting held at the Kenya Ferry Services offices in Mombasa on 18th May, 2018.

The Committee raised issues concerning the proposed Likoni Car Cable project, which was estimated to cost Ksh. 5.8 billion. The Committee further invited submissions from the service provider, Trapos Ltd and their partners Doppelmayr to establish the justification for the privately initiated investment proposal (PIIP) and the value proposition of the project.

1.2 Submissions from Kenya Ferry Services

Mr. Bakari Gowa, Managing Director, Kenya Ferry Services made submissions to the Committee as follows:

i. Mombasa is the second-largest city in Kenya, with a population of about 1.2 million. As a regional cultural and economic hub, the city has a large port and an international airport. It is also considered as an important regional tourism centre;
ii. On daily basis, over 350,000 commuters travel between Likoni on the mainland and Mombasa Island which has occasioned significant congestions during peak travelling hours;
iii. The ferry service is a critical part of the city's transport system however, it has faced numerous challenges;
iv. Landing ramps for the ferries had been expanded even though the existing roads connecting to the ramps (ramp approaches) remained narrow thereby posing traffic management difficult;
v. Ships entering and leaving the port of Mombasa created logistical challenges by disrupting ferry movements across the channel;
vi. The cable car project was a proposal to implement an aerial cable car connection for the Likoni crossing to link the South Coast to the Mombasa Island. The Likoni Cable Express would alleviate some of the challenges by offering passengers a safer and faster mode to cross the channel. In addition, it will be a landmark installation with the potential to become an attraction for tourists visiting the area;
vii. He further stated that a cable car is a type of aerial lift, which is supported and propelled by cables from above. It consists of a loop of steel cable that is strung between two stations, or sometimes over intermediate supporting towers.

viii. The cable is driven by a bull wheel in a terminal, which was typically connected to an engine or electric motor. They are often considered continuous systems since they feature a haul rope which continuously moves and circulates around two terminal stations.

ix. Very limited space is required to build the cable car stations on either side of the channel. The cable will be carried by two towers (one on each side of the crossing) and maritime vessels will be able to pass under the cable. The passenger transport solution would operate seven days a week with a journey time of 3-4 minutes.

1.3 Objectives of Likoni Cable Car Express

The Committee was informed that the objective of the project was to create an aerial cable car connection for the Likoni crossing thus providing commuters with a high-speed transport alternative. It also provides tourists with a new and scenic highlight on their way to the beaches.

The Committee further heard that the Likoni Cable Car project would offer several benefits, which included:

i. **Feasible Alternative solution:** Aerial cable cars have no problem passing over roads, residential areas, rivers, oceans and existing infrastructure. This solution offers the only alternative to passage compared to an overhead bridge or underground tunnels which have been found to be unfeasible given the short distance between the island and the town;

ii. **Complementary passage** for commuters: It will create more space for vehicles on the ferry as well as schedule better maintenance time for Ferries given the alternative of the Cable Car;

iii. **Decongestion:** Given the capacity of the system as well as its ability to operate even whilst ships are crossing the channels, the project would greatly assist in decongesting the area. As a result, commuter time will be saved each year in turn, thus benefiting the economy;

iv. **Traffic Management:** The project would be constructed with state of the art ticketing, boarding and disembarking areas. This will make it easier to control the human traffic as well as improve safety and security at the crossing;

v. **Greater Capacity and Faster Speed:** The cable car speed was about 7.5m/s crossing time 3min 40 sec with a capacity to ferry 5500 passengers per hour per direction (28 cabins each carrying maximum of 38 pax);

vi. **All weather operations**: The cable car solution was developed initially for ski resorts and tough terrains and was capable of handling harsh weather conditions operating in environments of wind speeds at over 100kph crosswise;

vii. **Revenue Generation**: The Pay as You Go system would provide KFS with an alternative revenue generation channel thus promoting financial stability. The funds could be used to pursue other projects within its mandate as well as maintain the facility. There was a proposed car park by the county Government of Mombasa, which would benefit immensely due to the improved infrastructure with the possibility of integrating rental spaces for additional revenue streams.

viii. **Access to Finance**: Aware that the project costs for this kind of venture were quite hefty with estimates of about 80 Million Euros, the PPP model would provide necessary finance to make the project possible. Further, the asset would revert to KFS after the Concession period of 25 years expired.

ix. **Socio-economic Benefits**: The Committee was further informed of other substantial social and economic benefits at regional and national level which were enumerated as follows;

a) Job creation of 50 permanent jobs, and 200 jobs created during construction;
b) The instalment of a long term cable car company which would be very meaningful corporate tax payer;
c) Housing development/social standards would greatly benefit from proximity of the new departure/ arrival stations
d) Large number of add-on business would be created (guided tours for tourists, service providers of all kinds to commuters);
e) A landmark installation and tourist attraction with far reaching scenic views (+20 km) over Mombasa, the beaches and Indian Ocean;
f) It would attract other forms of investment including faster real estate development of the South Coast Area.

1.3.1 Project Scope

The project would be undertaken as a Turnkey Solution, taking on the Build Operate Own and Transfer (BOOT) Model. The expected output would be provision of an aerial cable connection on the Likoni crossing complete with the actual system, associated infrastructure and billing/management capability.

This would include the End-to-End Operation and Management with Service Level Agreements (SLA) and Clear deliverables both from an Operational and Financial basis. (Facility reverts to KFSL after expiry of concession period).

1.3.2 Project Implementation Plan

The Project would be carried out into four distinct phases as follows;

(a) **Project Approval phase (ongoing)** – During this phase, the Consortium and Government would agree on terms and details on the consortium's exclusivity to develop and finance the project under the Public Private Partnership (PPP) Act. Upon the successful granting of exclusivity, the project development phase would commence.

The agreement to grant exclusivity would also commit the consortium to bear the costs of project development and would commit the Government to refund costs of project development, should they not agree to a concession agreement in the next phase;

(b) **Project Development phase (6 - 9 months)** – During this phase, detailed design and feasibility would be completed and a financial model and legal documentation would be created to help Government and the consortium understand risks in the project. The phase would also be used to understand demand for the service and agree on a final tariff structure for the project. A concession agreement would be finalized between the Government and consortium and would include the exclusive right for the Consortium to develop and operate the cable car solution to the Likoni crossing for an agreed period. The concession agreement among others, govern rights and obligations of the parties in the event that the contract was terminated.

(c) **Construction phase (12-18 months)** – the length of the construction period would be informed by the detailed design of the project.

(d) **Operation phase (25 years)** – the consortium needs the exclusive right to operate the project for an agreed period of time to recover the initial investment costs as well as operating costs and generate a reasonable return for investors.

The following points were enumerated as direct benefits of the Likoni Cable Express:

i. Increased crossing resiliency by offering a complementary service to the ferry;
ii. Increased channel capacity, allowing more commuters to cross as their numbers increase;
iii. Faster mode of passenger crossing in under 4 minutes for a no-wait service;
iv. Non -interaction with maritime vehicles, this being an aerial service, hence better handling of emergency services;
v. All-weather service, even when wind speeds are up to 100km/hr and Tsunami warnings are in force; and
vi. Provides spaces for high-visibility advertising and mounting of broadcasting antenna.

1.3.3 Target Customers

Four segments of customers were targeted for the services offered. They were listed as follows;

i. Rapid mass transit of commuters between Likoni district and the Mombasa Island;

ii. Local and International tourists attracted to the cable car for the ride and a bird's eye view of Mombasa area (+20km views);
iii. Advertising firms on the high-visibility opportunities availed in the towers, cabins and stations; and
iv. Broadcasting firms on the opportunities to mount antennas on the towers.

1.3.4 Risk Assessment and Mitigation

The KFS informed the Committee of the risks that had been identified during project Development, construction, operations and maintenance as follows;

A. **Project Development phase:** The biggest risk in this phase was the failure to get lenders and equity contributors to the project. CFC Stanbic Bank, the Mandated Lead Arranger (MLA), in the preliminary financial modelling, however, believe that the project will be bankable. The MLA would develop detailed financial model that would be used to understand demand for the service and agree on a final tariff structure for the project.

B. **Construction phase:** The biggest risk in construction phase was failure to deliver the project on budget, on time or at all. To mitigate failure of technology in the project, the EPC technology partner Doppelmayr was the largest cable car manufacturer in the world with 65% market share.

C. **Operations and Maintenance phase:** There were two major risks in this phase:

(a) lack of sufficient ridership to create enough revenue to service the debt and provide return to equity holders and

(b) system availability being lower than anticipated.

D. **Project Affordability:** Affordability related to the capacity to pay for constructing, operating and maintaining the project, together with the levels of cash flow required to repay the debt and provide a fair return to the equity investors. From the basic financial model developed for the project by the Mandated Lead Arranger, the following could be concluded.

a. The cost of ridership estimated USD 0.50 was considered affordable to the commuters especially when bundled together in an end-to-end journey originating from the mainland to island by affiliating accredited buses. Further, sensitization of the potential customers on the need to pay would commence as early as possible during the project cycle;
b. At the end of concession period, the Contracting Authority would take possession of the project.
c. Estimated total corporate tax to be paid by the project in the concession period would be USD $171 million, which was a clear benefit to the County and National governments.
d. From the above, the project was certified as affordable to the users, contracting authority and debt and equity holders

1.3.5 Project Value for Money

The Committee heard that the project would yield value for money to the society when implemented under Public Private Partnership (PPP) basis because of the following reasons:

a. The capital outlay is large at USD $80 million and project funding would not be feasible from finances of the Contracting Authority, given its many other competing priority projects.
b. Because the technology to be deployed was new in the region, the private party would take the construction and operational risks associated with the project, thereby keeping the associated risks away from the Contracting Authority;
c. The payment model was on pay as you use (whether riders, advertising firm etc.) and the initial pricing was aimed at mass market at USD $0.5 per ride that was considered affordable.
d. The project would be a meaningful employer, with about 200 jobs during construction and 50 permanent staff of all cadres;
e. The Project company would be a large tax payer contributing to both local and central government;
f. Many other spill-off businesses would be created around the cable car, including tour guides, hotels etc.
g. Successful implementation of the project would bring many other added benefits, including:
    - Redevelopment of the Likoni district allowing for diversified economic activities with added mode of commuter transportation;
    - The cabins do not have engines and as such cannot pollute the ocean by way of oil spillage and service is quiet. Further, since the cable car system would be electrically driven, the carbon emissions in Mombasa area would be reduced by the numbers of persons moved from the ferry to the aerial system;
    - By reducing the passengers in the ferry, more vehicles can be accommodated leading to higher ferry income. Further, the ferry maintenance frequency would be reduced because of fewer trips.

It was justified that it was therefore preferable to procure the project under PPP terms, instead of waiting for the time when the contracting authority would raise internal funds to build the project under traditional PPOA method.

1.3.6 Project Budget

The project proponent, M/s Trapos Ltd would arrange project funding under a PIIP arrangement. The capital cost of the project comprised three main components, the civil works the machinery and equipment as well as the necessary soft issues (consultancies) ranging from legal fees, development fees and other project costs.

The project cost was estimated at 40.75 million US dollars apportioned in the ratio of 1:3:1 for the three components as stated below;

CAPEX

S/No	DESCRIPTION	USD
1.	Electromechanical (Doppelmayr)	28,000,000
2.	Civil and hydraulic works	12,750,000
3.	Total Construction cost (CAPEX)	40,750,000
4.	Contingency for Civil and hydraulic as a result of removals and piling work	5,000,000
5.	**Total construction cost including contingency**	**45,750,000**

1.3.7 Income Projection

The Revenue model under the Financial Commitment and Contingent Liability (FCCL) analysis made by Arup, the feasibility consultant, gave revenue projections under two components of rider fees and other income. The rider fees were based on a user fee of Kshs 20 per person per crossing. Kenya Ferry Services Ltd was entitled to 10% of the gross revenues generated from the project as follows:

YEAR	RIDER INCOME	OTHER INCOME	TOTAL INCOME	KFSL INCOME
	USD	USD	USD	USD
0	-	-	-	-
1	3,222,938.00	4,121,801.00	7,344,739.00	734,473.90
2	4,945,603.00	4,230,392.00	9,175,995.00	917,599.50
3	7,589,039.00	4,344,411.00	11,933,450.00	1,193,345.00
4	11,645,385.00	4,464,132.00	16,109,517.00	1,610,951.70
5	13,759,793.00	4,729,838.00	18,489,631.00	1,848,963.10
6	14,447,782.00	5,013,030.00	19,460,812.00	1,946,081.20
7	15,170,171.00	5,314,918.00	20,485,089.00	2,048,508.90
8	15,928,680.00	5,636,798.00	21,565,478.00	2,156,547.80
9	16,725,114.00	5,980,064.00	22,705,178.00	2,270,517.80
10	17,561,370.00	6,311,302.00	23,872,672.00	2,387,267.20
11	18,439,438.00	6,665,273.00	25,104,711.00	2,510,471.10

12	19,361,410.00	7,043,608.00	26,405,018.00	2,640,501.80
13	20,329,481.00	7,448,057.00	27,777,538.00	2,777,753.80
14	21,345,955.00	7,880,503.00	29,226,458.00	2,922,645.80
15	22,413,252.00	8,342,967.00	30,756,219.00	3,075,621.90
16	23,533,915.00	8,837,621.00	32,371,536.00	3,237,153.60
17	24,710,611.00	9,366,804.00	34,077,415.00	3,407,741.50
18	25,946,141.00	9,933,017.00	35,879,158.00	3,587,915.80
19	27,243,448.00	10,538,965.00	37,782,413.00	3,778,241.30
20	28,605,621.00	11,187,548.00	39,793,169.00	3,979,316.90
21	30,035,902.00	11,881,882.00	41,917,784.00	4,191,778.40
22	31,537,697.00	12,625,322.00	44,163,019.00	4,416,301.90
23	33,114,582.00	13,421,474.00	46,536,056.00	4,653,605.60
24	34,770,311.00	14,274,218.00	49,044,529.00	4,904,452.90
	482,383,639.00	**189,593,945.00**	**671,977,584.00**	**67,197,758.40**

1.3.8 Tendering Process

The Likoni Cable Car Express Project was procured as a Privately Initiated Investment Proposal under Section 61(1) b) and c) of the PPP Act, 2013 that allows for a non-compete process. The basis for use of the non- compete process was the cost of the intellectual property in the proposed project system.

The PPP Unit at the National Treasury had granted its approval for the non-compete process and for direct negotiations with the project proponents on the 18th September 2015, on the project's technical, financial and commercial terms in accordance with section 61(2) & (3)0f the Public Private Partnerships Act 2015.

The Committee was informed of the stages the project proposal had undergone. These stages were as follows—

Stage 1; Concept Paper

i. Vide a letter dated 30th July 2013, addressed to the State Department of Transport, Trapos Ltd wrote an expression of interest to develop a cable car solution at the ferry crossing, to complement the existing Likoni ferry services in Mombasa.

ii. The State Department of Transport submitted the proposal to KFSL through their letter dated 2nd August 2013.

iii. The State Department had directed that the matter be placed before the Board of Directors for discussion thereafter seek the advice of the PPP Unit at the Treasury for guidance under the PPP Act 2012 section 62 (2) which states:-

> *"A contracting authority shall, before commencing negotiation with a private party under this section-*
> *(b) submit the proposal to the Unit for consideration and recommendation (c) upon obtaining the recommendation of the Unit, apply for and obtain approval from the Committee to negotiate the contract."*

iv. The Board of Directors at its 123rd Board of Directors meeting held on 4th September 2013 gave the Management a go ahead to proceed with the proposal's implementation as per the PPP Act.

v. On the 25th September 2013 the Company submitted the proposal to the Public Private Partnership Unit for consideration and recommendation

vi. The PPP Unit on their response to KFSL through the Ministry on their letter dated 29th November, 2013 noted among other issues, that the proposed Likoni Cable Car solution was an unsolicited proposal within the requirements of section 61 of the Public Private Partnerships Act 2013.

vii. The decision was considered by the PPP unit during its meeting held on 27th November 2013. The project was referred back to KFSL.

viii. M/s. Trapos Limited submitted a draft business case for the Likoni Cable Express Project to KFSL

ix. A consultative meeting between the KFSL PPP Node and the PPP Unit was held on 7th February 2014 at the Company Boardroom to discuss the Business case before submission. One of the resolutions made was to conduct a feasibility study of the proposed project

x. On the 28th March 2014 the PPP Unit in response to KFSL submission of the proposal, advised KFSL to undertake a feasibility study, in order to submit a full application in accordance with the format requirement of PPP Unit.

Stage 2; Feasibility Study

i. KFSL on the 17th March 2015 submitted an application for approval for negotiation, the document attached contained the requirements as advised by the PPP Unit
   i. The Risk matrix
   ii. Feasibility study report
   iii. Proposed criteria for negotiation

ii. The PPP Unit on its seventh meeting held on the 31st March 2015, and through their letter dated 8th April 2015, highlighted a number of observations that needed to be addressed by Kenya Ferry Services Ltd.

iii. The Company addressed most of the issues raised, among them conducting a stakeholder consultative meeting on the 29th April 2015 and carryout due diligence on the two proponents, Trapos Limited and Doppelmayr

Stage 3; Negotiations

i. On 25th June 2015, KFSL wrote to PPP Unit, to seek approval to initiate negotiation on the proposed project, after fulfilment of all the requirements as requested by the PPP Unit.

ii. The PPP unit on their letter dated 3rd August 2015, indicated among other issues, submission of the technical and financial proposals pursuant to Regulation 53 (4) of the Public Private Partnership Regulations 2014. *(4) A person who submits a privately initiated investment proposal to a contracting authority shall submit a technical bid and financial bid as part of the proposal.*

iii. A copy of the feasibility report was sent on the 10th August 2015 among others with the addressed gaps noted earlier during the consultative meeting with the PPP Unit. These were forwarded to the PPP Unit on the 20th August 2015.

iv. Through a letter dated 18th September 2015, the PPP Unit approved the request to initiate negotiation with the proponents on the project's technical, financial and commercial terms. This was in accordance with section 61(2)& (3)0f the Public Private Partnerships Act 2015, and relevant provision of the PPP Regulations 2014, paying particular attention to value for money, affordability and risk allocation elements in the proposed project's contractual arrangements. 61 (2) & (3).

v. KFSL further informed the Committee that it had organized a preliminary meeting on the 12th to 14th October 2015. The agenda of the meeting was to discuss the project details and to initiate the negotiations in line with the requirements of the PPP Act 2013 and the Regulations of 2014.

Section 52 of the Act states that

> *"A contracting authority shall develop criteria for the negotiation of a privately initiated investment proposal and submit to the Unit for review and recommendation where- (a) the privately initiated investment proposal is affordable (b) provides value for money (c) provides for effective transfer of risk from the contracting authority."*

vi. 132nd Board meeting of 5th November 2015 provided guidelines on the parameters for negotiations

vii. On 15th June 2017, the PPP committee of the National Treasury gave a conditional approval of the Project and Financial Risk Assessment Report for the Likoni Cable Car project.

viii. Approval of the Project and Financial Risk Assessment Report for the Likoni Cable Car project, subject to fulfilment of the following conditions placed by the committee;
   a. Arbitration provision
   b. Non-Compete Clause
   c. political risk
   d. the requirement of performance bond
   e. time required to achieve financial close

ix. On fulfilment of the above, the draft would be submitted to the AG for normal clearance.

x. The Project Agreement was initialled on the 13th December 2017 and thereafter forwarded to the parent Ministry for further action.

xi. On the 12th March 2018, the State Department of Transport forwarded the Initialled copy of the Project Agreement to the Public Private Partnership Unit, signifying the completion of the negotiation, save for the pending issues under condition precedent

1.4 Submissions by Trapos Ltd and Doppelmayr

During the meeting held with Trapos Ltd, its Executive Director, Mr Muigai apologized for the previous failure to appear before the Committee and stated that it had been purely due to unavoidable circumstances.

He thanked the Committee for taking keen interest and for their pursuit for facts on the proposed Likoni Cable Car project and assured the Committee that the Company was ready to provide any information whenever called upon.

He laid out his presentation to the Committee as follows:

i. Trapos Ltd was founded and registered as a Company in 2013 as part of the solution to address traffic management using non-conventional solutions.

ii. A cable car was an alternative means of moving people through air besides the conventional bridges and roads and therefore the Likoni Cable Car Project was intended to alleviate traffic problems in Mombasa County ;

iii. In May 2013, the company submitted a proposal on the Likoni Cable Car to Ministry of Transport and subsequently to the Kenya Ferry Services in September of the same year.

iv. The proposal on the Likoni Cable car had been duly considered , approved and awarded;

v. Trapos Limited through its networks and partners had the required capabilities and experience on the cable cars and observed that prior to his company's proposal, there was no other party that had ever approached the Government on constructing such a project;

vi. This failure to approach the Government was attributed to costs of financing and a lack of a precedent in Africa;

vii. Since its inception, the company had used significant resources essentially on pro-bono basis and argued that the Government had not spent any money to date.

The Committee raised the following concerns;

a. The justification for awarding the Cable Car Tender to Trapos Ltd as a non-compete, Privately Initiated Investment Proposal (PIIP) under Section 61(1) and (2) of the PPP Act, 2013). The Committee questioned the nature of invention or innovation by Trapos Ltd to justify the intellectual property rights;

b. The identity and capacity of Trapos Ltd including the history of undertaking similar cable car projects, shareholding, financial foothold and value of value proposition in the project;

c. Whether the Cable Car project was well value- propositioned.

Having listened to representations from the management of Trapos Ltd, the Committee made the following observations;

i. That the idea of the Cable Car was one of the interventions on addressing congestions in the cities world over. The idea was deemed noble and welcome;

ii. Trapos Ltd could not explain who they were in respect to their capacity, experience and global foothold to effectively undertake the proposed project;

iii. The Committee could not establish the justification for the non-compete tender award process and therefore the justification, qualification, quantification and their financial foothold on their stakes in the project.

1.5 Committee Observations on the Cable Car Project by KFS

From the presentation and deliberations, the Committee made the following observations—

i. *Fees Charges:* The fees that had been prescribed to foreigners and tourists were far below international and comparable charges, which would severely compromise the projected income. Further, the fees expected to be charged from the public were high compared to the available free and modernized ferry facilities;

ii. *Project Viability & Public Participation:* The viability of the project was a concern. There was also the issue of public and stakeholders involvement in the conceptualization of the project;

iii. *Value for Money:* How the project costs were derived at whether the KFS could submit to the Committee the original proponent's budget and if the value of the project was the best deal for the public;

iv. *Tendering Process*: there was concern on why the project was non-compete and the justification for the application of Section 61 of the PPP Act, 2013;

v. *Consultations:* Whether the County Government of Mombasa had been involved in the project negotiations and what were the expected benefits to the county;

vi. *Capacity of Project Proponents*: The actual project contribution by Trapos Ltd, its identity and its partners and their capacity.

1.6 Committee Recommendations on the Proposed Likoni Cable Car by KFS

Based on the observation made during the engagements with the various entities involved with the project, the Committee made the following recommendations—

1. **THAT** there should be value for money for effective implementation and utilization of the project;

2. **THAT** the award process of the project should be open, transparent and fair within the provisions of law and in particular the Public Procurement and Asset Disposal Act, 2015 and the Public Private Partnerships Act, 2013;

3. **THAT** the KFS should provide information to the Committee and the Office of the Auditor-General on the background of project proponents including their global undertakings, financial capacity, competency and integrity;

4. **THAT** there was a lack of stakeholder involvement in the matter and in particular, public participation;

5. **THAT** the KFS should properly address safety concerns of the cable cars before embarking on the project as they did not have a competent rescue service in place to attend to ferry accidents;

6. **THAT** the project may struggle to attract sufficient customers as projected given that the Likoni Ferries which are free of charge will have more users; and

7. **THAT** there is a need to undertake a comprehensive comparative analysis in order to ensure that there is best management practice in the operation and management of the cable cars.

CHAPTER TWO

2.0 KENYA MARITIME AUTHORITY INQUIRY

2.1 Background

The Chairman welcomed Members and the delegation from the Kenya Maritime Authority and EPCO Construction to the meeting of the Committee. He stated that the meeting was outcome of the Committee's familiarization visit to the KMA during which the Committee visited the proposed Kenya Maritime Authority's headquarters at Mbaraki, Mombasa County.

The Chairperson confirmed that the Committee had received tender documents on the proposed construction of the Kenya Maritime Authority headquarters from EPCO Builders and that all the submitted documentation had been scrutinized by the Committee.

2.2 Submissions made by the Kenya Maritime Authority

The Acting Director General, Mr. Macgoye thanked the Committee for their invitation and for exhibiting interest in the proposed construction of the KMA headquarters in Mbaraki, Mombasa County.

The Director General of the KMA made the following submissions to the Committee—

i. Kenya Maritime Authority (KMA), being the maritime industry regulator, had embarked on a process to construct a state –of- art headquarters in Mbaraki, Mombasa County.

ii. This involved the identification of a competent consultant who would carry out the project designs and plans, selection of contractors, supervision of the project to completion etc.

iii. Subsequently, the Authority advertised for prequalification of the main contractors and sub-contractors for lifts, air conditioning and mechanical ventilation, electrical and plumbing, drainage and firefighting contractors via tender notice of 12th August 2016.

iv. The KMA presentation was informed by what the Committee had requested i.e; the status of the project and project cost, tendering process and the Bills of Quantities for the project.

2.3 Current Status of the Headquarters Construction Project& Project Cost

The Committee was informed on the project status and provided with the following project data;

Project Manager-	Works Secretary – State Department for Public Works

Consultants

Lead Consultant/Architect-	M/s Lins Consult
Quantity Surveyor-	M/s Quanti-Bill Consults Co. Ltd
Structural Engineer-	M/s APCA
Services Engineer-	M/s Mengi Designs Limited

Contractors

Main Contractor-	M/s EPCO Ltd
Electrical Works-	M/s Master Power Systems Ltd
Mechanical & Plumbing-	M/s Plumbing Systems Limited
Lifts -	M/s Kone (K) Limited
Air-Con & Mech. Vent.-	M/s Nyali Air-Con & Refrig. Services Ltd

Contract Details

Project Commencement Date -	3rd April 2017
Contract Period-	90Weeks
Project Completion Date-	23rd December 2018

Project Scope

- Construction of 17 storeyed office block and 4 basement levels
- 300 capacity auditorium
- Observation deck at top floor
- Air-conditioning
- Standby Generator
- Boundary wall and gate
- Road paving and parkings
- Borehole
- Underground water storage tanks (Including rain water harvesting)
- Foul water treatment

Total built-up area approx. 26,000m^2

2.4 Project Cost

The total contract Sum	-	Kshs.1,825,239,939.24

2.5 Project Works Status

Period Elapsed	-	66Weeks
% Works Completed	-	20%
Amount Paid to Date (Incl. Advance)	-	Kshs. 535,790,602.19
Advance	-	Kshs. 182,523,993.92

The construction works were at ground floor on half of the building and at 4th basement at the other half. The piling works including testing was completed on 30th June, 2018 had enabled the construction to move fast.

2.6 Challenges encountered by Kenya Maritime Authority in the construction of the Headquarters

i. Upon commencement of basement excavations it was discovered that part of the site adjacent the neighbouring Reef Apartments sat on loose unstable sand. This coupled with the heavy rains at the time made the embankment to collapse threatening the neighbouring Reef Apartments;

ii. The tenants of the subject apartments had to be relocated as a safety measure until the construction works are above ground and safe. *A detailed project structural engineer's report is attached as Appendix 03 was presented).*

iii. The relocation exercise was done in liaison with the County Government of Mombasa and National Environment Management Authority (NEMA). However, the Apartment block was not structurally compromised and has been continually monitored during this period.
Slope protection work was put in place by the main contractor with guidance of the structural engineering team. These factors caused some delays to the works progress.

iv. Upon completion of excavation up to the 4th basement, it was observed that a section of the foundation base was firm while the other was loose material. As quality assurance procedure, a second geotechnical investigation was carried out. From the findings the raft foundation was redesigned to the southern section of the building to provide for piling.
(Attached is a detailed project structural engineer report as Appendix 03).

v. The piling works were additional cost outside original scope. The entire exercise took time and resulted to delays to the project.

vi. Further, the heavy rains in May & September 2017 and recently in April & May 2018 caused some delays to the project.

2.7 Quality Assurance Procedures applied by Kenya Ferry Services Limited

The Committee was informed of the following Quality Assurance Procedures;

i. Fortnightly site inspections.
ii. Monthly site meetings.
iii. Consulting engineers & architect on call all the time for inspection and any approvals.
iv. Liaison with the Project Manager (SDPW) for guidance.
v. Materials tests in liaison with government laboratories.
vi. Regular project consultative management meetings.
vii. Project brief to the board of management.

2.8 Tendering Process

The Committee was informed on the tendering process as follows;

1.) **<u>Procurement of the Project Consultant.</u>**

The Authority advertised for tender no. KMA/06/ONT/EOI/2014-2015 for expression on interest for Kenya Maritime Authority in two newspapers i.e. The People Daily and the Nation Newspaper of 1st May, 2015. The tender closed on 15th May, 2015 and eleven (11) firms submitted applications for consideration. The firms were subjected to an evaluation, out which six (6) firms got prequalified.

The six prequalified firms were then invited to bid on 26th January, 2016 as listed below;

i. Symbion Mombasa Ltd
ii. WHINTTO Architects (K) Ltd
iii. Lins Consult.
iv. Gibb Africa Ltd
v. Gitutho Architects & Planners Ltd
vi. A. D. Design Architects.

All the six firms responded by submitting proposals for consideration subjected to an evaluation. Two firms i.e. Gitutho Architects & Planners Ltd and Lins Consult were responsive and subjected to technical and financial evaluation. The tender was awarded to the firm with the highest combined score as follows;

Bidder	**Combined Technical& Financial Score**	**Total Tender Price**	**Ranking**
Lins Consult	96.80	63,803,320.00	01
Gitutho Architects & Planners	89.53	114,600,000.00	02

Due diligence was conducted that established that Lins Consult had the necessary capacity, experience and personnel to undertake the consultancy service. The tender was awarded to Lins Consult being the bidder with highest combined score at Kshs. 63,803,320.00 only.

Request for Review

The Committee was informed that a request for review had been lodged by A.D. Design Architects on 30th March, 2016 at the Public Procurement Administrative Review Board. The board in its hearing of 19th April, 2016 dismissed the application for review by the aggrieved party and Kenya Maritime Authority was allowed to proceed with the procurement to its logical conclusion.

The contract for provision of design and supervision of the development of Kenya Maritime Authority office block in Mombasa was signed on 27th April, 2016 between KMA (the Authority) and Lins Consult.

2.) **Prequalification of Main Contractors.**

Kenya Maritime Authority (KMA) advertised for the prequalification of contractors and sub-contractors for the proposed development of multi storey office block on 12th August, 2016 in the Daily Nation and the Standard Newspaper. The tenders for prequalification closed on 30th August, 2016 at 10.00am.

The following twelve (12) firms submitted applications for prequalification as Main Contractors;

S/N	Name of Firm
1.	Dinesh Construction Limited
2.	EPCO Builders Limited
3.	Skillman Construction Limited
4.	LaljiMeghji Patel & Co. Ltd
5.	CIVICON
6.	Nanchang Foreign Eng. (K) Ltd
7.	Parbat Siyani Construction Ltd
8.	Centurion Engineering& Builders Ltd
9.	Jiangxi Water & Hydropower Construction Co. Ltd

10.	China Zhongxing Construction Co. Ltd
11.	Gateway Road Contractors Limited
12.	City Construction & General Supplies Ltd

All the firms were subjected to an evaluation on 8th – 10th September, 2016. The evaluation was based on the criteria set forth in the tender document only. From the evaluation, four (4) were prequalified under main contractors as indicated below;

S/N	Name of Firm
1.	Dinesh Construction Limited
2.	EPCO Builders Limited
3.	Parbat Siyani Construction Ltd
4.	China Zhongxing Construction Co. Ltd

Invitation to tender.

The four prequalified firms were invited on 29th November, 2016 to tender for the proposed development of office block on plot no. Block XL VIII/128 in Mombasa, tender no. KMA/RFP/001/OFFICE BLOCK/2016-2017. The tenders closed on 23rd December, 2016 at 10.00am. All the firms responded by submitting bids to the Authority as follows;

S/N	Name of Firm	Bid Bond	Total Tender Sum	Construction Period
1.	Dinesh Construction Limited	1,500,000/=	1,966,986,687.35	130 weeks
2.	EPCO Builders Limited	1,500,000/=	1,728,179,418.00	90 weeks
3.	Parbat Siyani Construction Ltd	1,500,000/=	1,828,119,427.00	120 weeks
4.	China Zhongxing Construction Co. Ltd	1,500,000/=	1,920,134,408.00	128 weeks

The evaluation process commenced on 27th December, 2017 with the due diligence ending on 10th January, 2017. The evaluation of the bids involved arithmetical check of all the BQs as submitted by all the bidders to establish if there was any modification in the tender documents. The correction of errors was carried out in accordance with issued tender documents, Appendix to instructions of contract page 48 of 529. The final re-alignment after evaluation and error correction was as follows;

S/N	Name of Firm	Submitted Tender Amount	Corrected Tender Sum	Construction Period
1.	EPCO Builders Limited	1,728,179,418.00	1,825,239,939.24	130 weeks
2.	Parbat Siyani Construction Ltd	1,828,119,427.00	1,854,518,481.86	90 weeks
3.	China Zhongxing Construction Co. Ltd	1,920,134,408.00	1,944,226,387.45	120 weeks
4.	Dinesh Construction Ltd	1,966,986,687.35	1,966,986,687.35	128 weeks

The tender was awarded to M/s. EPCO Builders Limited at a total cost of Kshs. 1,825,239,939.24 and a contract signed between KMA and EPCO Builders Limited on 30th January, 2017.

3.) **Prequalification and tendering for the sub-contractors.**

i. **Lift Installation sub-contractor.**

KMA had the following three firms prequalified and invited to tender for lift installation sub-contract on 24th August, 2017.

1. Schindler Limited.
2. East African Elevator Co. Ltd
3. Kone (Kenya) Ltd

The tender closed on 11th September, 2017 and all the three firms responded by submitting bids as summarized here in the table below;

S/N	Name of Firm	Submitted Tender Amount (Kshs.)
1.	Schindler Limited	36,660,323.00
2.	East African Elevator Co. Ltd	48,917,000.00
3.	Kone (Kenya) Ltd	29,183,369.00

The tenders were evaluated on 13th – 14th September, 2017. Due diligence was conducted on the lowest evaluated bidder M/s. Kone (Kenya) Ltd on 2nd October, 2017.

ii. Air Conditioning and mechanical ventilation Sub-contractor.

KMA had the following three firms prequalified and invited to tender for air conditioning and mechanical ventilation works on 11th July, 2017.

1. Nyali Air-conditioning & Refrigeration Services Ltd.
2. Snowpeak Refrigeration and General Contractors Ltd.
3. Hotpoint Appliances Ltd.

The tender closed on 26th July, 2017 and only two (2) firms responded by submitting bids as summarized here in the table below;

S/N	Name of Firm	Submitted Tender Amount (Kshs.)
1.	Nyali Air-conditioning & Refrigeration Services Ltd.	78,376,150.00
2.	Snowpeak Refrigeration and General Contractors Ltd.	87,614,300.00

The tenders were evaluated on 17th – 18th August, 2017. Due diligence was conducted on the lowest evaluated bidder M/s. Nyali Air-conditioning & Refrigeration Services Ltd on 26th September, 2017.

The tender was awarded on 29th September, 2017 to the lowest evaluated bidder M/s. Nyali Air-conditioning & Refrigeration Services Ltd at their total tender sum of Kshs. 78,376,150.00 only. The nominated sub-contractor entered into a contract with the main contractor.

iii. Electrical Works Sub-contractor.

KMA had the following three firms prequalified and invited to tender for electrical works sub-contract on 28th March, 2017.

1. Mehta Electricals Ltd.
2. Master Power Systems Ltd.
3. Tudor Engineering Ltd.

The tender closed on 14th April, 2017 and all the three firms responded by submitting bids as summarized here in the table below. The evaluation of the bids involved arithmetical check of all the BQs as submitted by all the bidders to establish if there was any modification in the tender documents.

The final re-alignment after evaluation and error correction was as follows;

S/N	Name of Firm	Submitted Tender Amount	Corrected Tender Sum
1.	Master Power Systems Ltd.	115,976,976.00	224,292,876.11
2.	Mehta Electricals Ltd.	279,463,907.00	279,746,749.95
3.	Tudor Engineering Ltd.	228,901,852.00	319,604,316.20

The tenders were evaluated on 10th – 13th May, 2017. Due diligence was conducted on the lowest evaluated bidder M/s. Master Power Systems Ltd on 18th May, 2017.

The tender was awarded on 22nd May, 2017 to the lowest evaluated bidder M/s. Master Power Systems Ltd at their total tender sum of Kshs. 224,292,876.11 only. The nominated sub-contractor entered into a contract with the main contractor.

iv. Plumbing, Drainage and Fire Fighting Sub-contractor.

KMA had the following three firms prequalified and invited to tender for plumbing, drainage and firefighting sub-contract on 28th March, 2017.

1. Volcanic Plumbing Works.
2. Plumbing Systems Ltd.
3. Anthopi Mechanical Engineering Works Ltd.

The tender closed on 14th April, 2017 and all the three firms responded by submitting bids as summarized here in the table below;

S/N	Name of Firm	Submitted Tender Amount	Corrected Tender Sum
1.	Volcanic Plumbing Works.	86,500,000.00	86,500,000.00
2.	Plumbing Systems Ltd.	80,625,000.00	79,841,217.00
3.	Anthopi Mechanical Engineering Works Ltd.	95,399,847.00	96,242,636.55

The tenders were evaluated on 10th – 13th May, 2017. Due diligence was conducted on the lowest evaluated bidder M/s. Plumbing Systems Ltd on 18th May, 2017.

The tender was awarded on 22nd May, 2017 to the lowest evaluated bidder M/s. Plumbing Systems Ltd at their total tender sum of Kshs.79, 841,217.00 only. The nominated sub-contractor entered into a contract with the main contractor.

2.9 Relocation of Tenants at Reef Apartment

Following cessation and relocation order by NEMA on 29th August, 2017 and subsequent advice from the Works Secretary on 3rd September, 2017 the Authority was advised to take necessary measures to avoid loss of life and damage to property to adjoin Reef Apartment. KMA immediately relocated all the six tenants to safer areas until the cessation order is lifted.

The Authority has been paying rent for the six family members since September, 2017 through the nominated agents as follows;

i. M/s Altimani Agencies – Kshs. 110,000/= only consisting of rent for three family members with two units at Kshs. 40,000/= and one unit of Kshs. 30,000/= only.

ii. M/s Fort Mansions Ltd – Kshs. 90,000/= only consisting of two units of Kshs. 45,000/= each. One tenant Mr. Allan Chege Kamau relocated to Nairobi in December, 2017.

2.10 Issues raised by the Committee

The Committee raised the following concerns—

i. The NEMA professional report on the inspections to confirm that there was no effect of the excavations and their structural effects on Reef apartments;

ii. The cost variations due to excavations on the 4th basement and the additional cost of piling works which were outside the original scope which amounted to KES. 128,732,528.00;

iii. Whether there was documentary proof on the adjusted tender completion period;

iv. The re-alignment and adjustment of all the sub contracts especially electrical works;

v. Whether the cost of relocating the tenants at the Reef Apartments of KES: 200,000 per month had been factored in the original cost of the project and from which vote it had been paid;

vi. The actual total sum of the project including the main and sub-contracts;

vii. The project completion timelines in view of the re-alignments and variation of both the main and sub-contracts and who take the burden of the delays.

2.11 Response by KMA

i. The Director General responded to some of the concerns raised by the committee and thanked the Committee for its diligence in scrutinizing the stages of the project development;

ii. He assured the Committee that the project was viable and that the logic of the project was sound;

iii. He undertook to engage with the Committee on all matter related to the Committee's mandate including information sharing.

2.12 Committee Observations on proposed KMA Headquarters Project

Following the deliberations and engagements with various stakeholders the committee made the following observations:-

vi. *Value for money:* the Committee questioned the necessity of the building with consideration to the capacity of the intended building and whether the KMA was capable of adequately utilizing the intended facility

vii. *Variation of cost:* there was variation of to the initial cost of the project as a result of adjustments and alterations;

viii. *Accountability of the project:* the Committee noted that the KMA generates its own revenue and that this revenue could be used for various projects.

ix. *Tenants affected:* the project affected the adjacent reef apartments tenants leading relocation and;

x. *Sub-contractors:* There were various subcontractors contracted to undertake various works outside the original scope.

2.13 Committee Recommendations on proposed KMA Headquarters Project

Following the deliberations and engagements with various stakeholders the committee made the following recommendations—

1. **THAT** the management or responsible entities should properly account for the adjustment of the initial cost of the project as budgeted;

2. **THAT** the Office of the Auditor-General should assess the Headquarters Project with a view to assessing the value for money for the Kenyan public and if there has been any irregularity committed in the construction of the headquarters and submit its findings to the Committee;

3. **THAT** the project implementation process and award of tender to various subcontractors should be further be investigated by the relevant investigative authorities to ascertain prudence and value for money;

4. **THAT** the KMA should incorporate risk management and feasibilities when undertaking future projects;

5. **THAT** the KMA should ensure that the structural problems surrounding the construction of the new Headquarters do not adversely affect the safety of the neighbouring structures; and

6. **THAT** the KMA should complete construction of the project in the earliest time possible in order to avoid further inconveniencing the occupants of the neighbouring Reef Apartments and ensure their safe return to their homes.

CHAPTER THREE

3.0 THE NATIONAL SOCIAL SECURITY FUND (NSSF) HAZINA TOWER PROJECT

3.1 Background

The Chairman welcomed the delegation from the National Social Security Fund (NSSF). He explained mandate of the Standing Committee on Roads and Transportation, and its composition and further stated that issues around the Hazina towers project were in public domain considering the huge budgetary allocation, expectations and interests of the beneficiaries.

3.2 Submissions made by the National Social Security Fund

Dr. Anthony A. Omerikwa, Managing Trustee and Chief Executive Officer of the NSSF informed the Committee as follows;

i. The National Social Security Fund received an invitation to appear before the Senate Standing Committee on Roads and Transportation to provide information on the status of Hazina Trade Centre construction project.

ii. In 1994, the Fund intended to construct a multi storey commercial development with parking in four basements, shops on ground and two mezzanine floors and an office tower comprising of podium and 24 floors. The plot was located within the city centre between Monrovia and Moktar Daddah streets in Nairobi County on approximately 1.121 acres. The building was christened Hazina Trade Centre.

iii. The following were the appointed project consultants:-

a. Project Architects	-Mruttu Salman & Associates
b. Project Quantity Surveyor	-Tana & Associates
c. Structural/Civil Engineers:	-Abdul Mullick & Associates
d. Electrical & Mechanical Engineers	-Kisa & Partners/Metroeng

After going through the tender process, M/S. Mavji Construction Co. Ltd was awarded to carry out the works at a contract sum of KES 3,181,468,427.10 and contract period of 160 weeks.

iv. In 1998, due to financial constraints the Fund restructured the project by omitting the tower. The contractor then proceeded and completed four basements, the ground floor, two mezzanines and one podium floor in 2003. The completed building was leased to Nakumatt Holdings Ltd for a period of 20 years with effect from 1st January 2004 and to expire in December 2023. The cost of the restructured project inclusive of the cost of the land was KES 3,252,477,290.13 as follows;

Cost of land-	**177,500,000.00**
Construction--	**3,074,977,290.00**
TOTAL-	**3,252,477,290.00**

During the 4th Operations and Investments Committee of the NSSF's Board of Trustees meeting held on 2nd October 2009, various proposals for sale or retention of properties held by the Fund were presented. This was premised on the need to comply with Retirement Benefits Authority Act Investment Guidelines of having a maximum asset allocation of 30% of the overall investments portfolio in property. The Fund had surpassed the limit.

v. HTC was recommended for retention on account of an enhanced rate of return when the tower would be completed. The Board therefore directed that HTC be retained and concepts for extension as originally designed be prepared.

vi. During the 13th Operations and Investments Committee of the Board directed management to:-
   a. Confirm that utilization of former project consultants without sourcing for the services was in line with Public Procurement Act; and
   b. Approved the commencement of the procurement process for the Contractor.

vii. On 29th October 2010, the Fund Tender Committee deliberated on the proposal to retain the original project design team for completion of the tower and approved the re-appointment of the following to prepare all the technical drawings and tender documents:-

Project Architect-	Mruttu Salmann and Associates
Quantity Surveyors-	Tana and Associate
Structural/Civil Engineers-	Abdul Mullick and Associates
M&E Consulting Engineers-	Kisa & Partners

viii. The Fund procured China Jiangxi International (K) Ltd at a contract sum of KES 6,715, 218,188.00 through an open tender process. The contract was signed on 26th February, 2013.

ix. The project commenced on 2nd January 2014 but encountered a number of challenges key among them:-

a. Withdrawal of some statutory approvals by the Nairobi City County Government;
b. Denial of access to some of the spaces by the then anchor tenant Nakumatt Holdings leading to litigation; and
c. The need to reinforce the supporting structure to carry the additional floors.

The above challenges led to a cumulative delay of 94 weeks.

x. The Board of Trustees had directed that the building be finalized at the 15th floor where it had stalled to avert further losses to the Fund;

(a) The State Department of Public Works was engaged as the Project Managers;

(b) In December 2017, the Fund repossessed the building from the previous anchor tenant, Nakumatt Holdings Limited; and

(c) The project was ongoing and was expected to be completed in June 2019.

The contractor had submitted a claim for cost escalation due to the delays. This claim has been quantified at KES 871,697,124 by the State Department of Public Works. The Fund was yet to take a final position on the claim and had not paid any amount towards the same.

The revised budget for completing the building to the 15th Floor was KES 4,095,862,434.00 inclusive of the KES 2,506,005,355.52 already paid to the contractor had been advised by State Department of Public Works. The outstanding amount is therefore KES 1,589,857,078.48

xi. The Board of Trustees and current Management team had instituted a number of interventions to ensure completion of the project at the least cost with minimal risk:-

(d) The Fund appointed the State Department of Public Works as the project managers to oversee the entire project including reviewing the advice given by project consultants;

(e) The Fund prepared a Property Strategy Document to guide investments in the Property Asset class with the overall objective of optimizing returns. As a first step in implementing the Property Strategy and in compliance with RBA guidelines, the Fund has appointed three Fund Managers through a competitive procurement process.

(i) signed Service Level Agreements which binds them to ensure agreed minimum return of 20% for new development projects;

(ii) ensure proper Feasibility Studies are carried out before recommending a project to the Board;

(iii) ensure that ALL potential risks have been mapped and mitigation plans developed; and

(iv) To shall also track ongoing projects and provide independent reports to the Board of Trustees, Investment Consultants and RBA therefore ensuring greater visibility and enhanced governance.

The Board of Trustees restructured the project and set it to be completed at the current level with a view to mitigate against further delays and losses. The Committee was informed as follows:-

(i) The project was fully back in progress with the contractor already working in the spaces formerly occupied by Nakumatt. Expected completion date is 30th June 2019;

(ii) The revised budget for completing the building to the 15th Floor was KES 4,095,862,434.00 inclusive of the KES 2,506,005,355.52 already paid to the contractor as advised by State Department of Public Works. The outstanding amount was therefore KES 1,589,857,078.48;

(iii) The contractor's claim currently stood at KES 871,697,124.10 and was being further reviewed by the Fund before a final decision;

(iv) That Nakumatt was no longer a tenant at the building and a new anchor tenant was being identified; and

(v) The Fund had put in place mechanisms and developed policies to ensure future projects stood better chance of success.

3.3 Concerns raised by the Committee

Following the presentation by the NSSF, the Committee made the following observations—

i. There were concerns on what the actual cost of the project was and if the budget variations had been agreed upon between the Fund and the Contractor and further how much was the contractor's claim;

ii. Whether the management decisions that were taken to mitigate the project risks and if they were informed by a proper feasibility study especially the reasons why the consultants were changed except the contractor;
iii. At what stage or project cycle were alterations made on the contract that had been already awarded and whether the variations were cost-effective and justified;
iv. The nature and terms of engagement between NSSF and Nakumat lease agreement and the what extent to which it had escalated into a legal tussle;
v. The claims by Nakumatt and the mode of their eviction from the premises; and
vi. The nature of the matters before the courts was of great concern to the Committee as the costs of litigation and any adverse judgments or court orders issued would negatively affect the construction project.

3.4 Responses by the NSSF on the Concerns raised by the Committee

The NSSF responded to the concerns raised by the committee and explained as follows: That;

i. The lease agreement between the Fund and Nakumatt had been deposited at the Ministry of Lands;
ii. The process and nature of eviction of Nakumatt Holdings from the building and the nature of subsequent lease agreements had been drafted by the property managers, Tysons Limited;
iii. NSSF would provide details of the breakdown of payments to the consultants and the contractor;
iv. NSSF had sought an advisory opinion from the Attorney General on the project variation order;
v. The project was viable and in the best interest of Kenyans and the stakeholders;
vi. There were plans to pursue individual culpability for past decisions through the relevant institutions.

3.5 Committee Observations on the Hazina Tower Project

Following engagement and deliberation with the relevant stakeholders, the Committee observed that:-

(i) The original project design has been changed three times from 24 floors to 21 and finally 17;

(ii) The project has not changed despite the alterations made to the proposed design of the building;

(iii) There was pending litigation between the anchor tenant (Nakumatt) and NSSF;

(iv) The consultants in the project were paid in advance despite the works not being completed;

(v) There was a need to audit the quality of materials being used as the NSSF stated that there was a need for constant structural adjustment;

(vi) There was a constant change of the design of the project over several times in the last twenty years, and;

(vii) The project timeline was not adhered to and thus there was a delay of about two decades in the completion of the project.

3.5 Committee Recommendation on the Hazina Tower Project

Following the various meetings that the Committee held with various stakeholders in the Hazina Tower Project, the Committee sets out its various recommendations as follows—

1. **THAT** the adjudication issues surrounding the project be speedily resolved in order to avoid onerous costs of litigation;

2. **THAT** the Office of the Auditor-General should undertake investigations into the Hazina Towers Project in order to ascertain the viability of the project and whether there have been any irregularities in payments to consultants in the project;

3. **THAT** the NSSF as a public body should furnish the committee with the actual costs of the project as it is being funded by public funds;

4. **THAT** the NSSF should indicate a final deadline for the completion of the Hazina Towers Project;

5. **THAT** the Office of the Attorney General should furnish the Committee with the advisory opinion that was referred to by the NSSF, and;

6. **THAT** the NSSF should pursue the persons found individually culpable for costly and illegal decisions related to the Hazina Towers project and appraise the Committee on the progress of this endeavour.

CHAPTER FOUR

4.0 FOLLOW UP VISITS TO THE KENYA FERRY SERVICES

On Thursday 31st November, 2019, the Standing Committee on Roads and Transport visited Kenya Ferry Services in Mombasa county with a view to undertake an audit of the safety and security system amidst public concerns following the ferry tragedy which occurred at the Likoni Ferry Crossing on 29th September, 2019.

In a meeting that was held at the Kenya Maritime Authority Head Office and attended by Principal Secretary, State Department for transport , Principal Secretary, State for Maritime and shipping Affairs, Kenya Maritime and Kenya Ferry Services the following issues were deliberated—

1. The Lifespan of the ferries noting that some of the ferries were launched in mid 1990s including the non- functional ramps and their state of disrepair;
2. The safety of passengers and pedestrians especially during peak hours;
3. Emergency response and preparedness including early warning systems;
4. Details on the Certification of the Coxswains;
5. the measures aimed at streamlining the operations of the Ferries and improvements of service delivery;
6. Information on the delivery of new ferries which had been paid for since 2018;
7. Updates on the implementation status of the proposed Likoni Cable Car Project;
8. Challenges by Persons Living with Disability (PLWD) at the Ferry; and
9. The role and capacity of lifesavers including their capacity and training

The Committee further requested for response on the statement that had been requested in the Senate by Sen. Mutula Kilonzo Jnr, regarding the untimely death of Miriam Kighenda and Amanda Mutheu on 29th September, 2019 at Likoni Ferry crossing.

4.1 Ferries in operation of the Kenya Ferry Services

The Kenya Ferry Services Management made their submissions to the Committee on the issues that had been raised and put to them. They began with the submission of details of the ferry vessels that were in operation with the Company as at 31st October 2019.

The capacities of the vessels and maintenance specifications which were submitted are highlighted below—

No.	Name of vessel	Year of Manufacture	Carrying Capacity		Status of Ferries
1.	MV Jambo	2017	1650	64	New Ferry
2.	MV Kilindini	1990	1440	60	Old Ferry
3.	MV Harambee	1990	1440	60	Old Ferry
4.	MV Nyayo	1990	1200	60	Old Ferry

5.	MV Kwale	2010	1550	60	New Ferry
6.	MV Likoni	2010	1550	60	New Ferry

A. MV Nyayo

The abovementioned ferry was procured in 1990. This vessel is fitted with two Caterpillar C12 main engines with an output of 347KW. She has two Perkins generators of 100 KVA and one emergency generator of 60 KVA. The vessel has a top speed of 12 knots.

Modifications carried out to the vessel are as follows—

a. Upgrading of steering system
   The steering system was upgraded in the year 2014. Previously, it had steering problems that caused many inconveniences which affected the movement of the vessel.

b. Dry-docking of the vessel.
   The KFS stated that this ferry had been dry-docked in 2017 to carry out underwater works. However, there were insufficient funds for the steel works required for the ferry, while the works were limited to underwater works at a cost of Ksh 64 million.

c. Installation of engines.
   The KFS stated that the ferry was installed with two engines in the year 2016 and the second engine in the year Ksh 18.6 million. These new engines improved the operations of MV Nyayo as she is mostly used for passengers.

d. Overhaul of engines
   The engines have undergone overhaul after operating for 8500 hours as recommended by the manufacturer at a cost of Ksh 7.5 million. The KFS did not indicate when these works were carried out.

Status of vessel

The prow lifting mechanism requires replacement, the current system is obsolete and spares are unavailable in the market. The KFS stated that the vessel will require to be decommissioned.

B. MV Kilindini

This vessel was procured in 1990. It is fitted with two Caterpillar C12 main engines with an output of 347KW. She has two Perkins generators of 100 KVA and one emergency generator of 60 KVA. The vessel has a top speed of 12 knots.

The KFS stated that this was the most reliable ferry for carrying trailers and other large vehicles as its large prows allow easy embarking and disembarking of vehicles.

a. Dry-docking of the vessel.
   The KFS stated that this ferry had been dry-docked from 12th July 2018 to 1st December 2018. At the dock, the ferry had major steel works undertaken on its underwater hull, its main deck and the superstructure at a cost of Ksh 109 million.

b. Steering and control system
   A new steering system was installed in the FY 2016/17 at a cost of Ksh 32 million. The result was that the ferry reliability and safety were increased.

c. Overhaul of engines
   The ferry had two engines overhauled in FY 2017/18 at a cost of Ksh 7.5 million

d. New engines
   The ferry was installed with new engines in FY 2019/2020 at a cost of Ksh 18.6 million. The ferry was restored to reliably ferry the trailers and the trucks

e. New generator
   The ferry was installed with a new generator (Cummins) in FY 2016 at a cost of Ksh 7 million

f. Harbour generator
   The ferry was installed with a new harbour generator in October 2018 at a cost of Ksh 2.6 million

Status of vessel

The prows of the vessel were repaired but due to a lack of spares for the overhaul of the lifting mechanism and its corresponding hydraulic mechanism, the prows could not be restored to a lifting status.

C. MV Harambee

This vessel was procured in 1990. It is fitted with two Caterpillar C12 main engines with an output of 347KW. She has two Cummins generators of 100 KVA and one emergency generator of 60 KVA. The vessel has a top speed of 12 knots.

KFS submitted to the Committee that this vessel is also very reliable for ferrying of trailers and other large vehicles due to her large prows, which allow for easy embarking and disembarking of vehicles. The works carried out on the vessel in the last five years include—

a. Dry-docking of the vessel.
   The KFS stated that this ferry had been dry-docked from July 2016 to 1st December 2016. The ferry has major rehabilitation works undertaken at a cost of Ksh 110 million. This included repairs to the underwater steel works, replacement of the reinforcement members, fabrication of a new prow, repair of the second prow and refabricating of the water tanks.

b. Steering and control system
   A new steering system was installed in the FY 2017/18 at a cost of Ksh 32 million. The result was that the ferry reliability and safety were increased.

c. New engines
   The ferry was installed with new engines in FY 2016/2017 at a cost of Ksh 9.3 million. The KFS stated that the ferry is a sister vessel to MV Kilindini.

d. New generator
   The ferry was installed with a new generator (Cummins) in FY 2016 at a cost of Ksh 17 million.

e. Overhaul of engines
   The KFS stated that the vessel had one engine overhauled in the FY 2018/19 at a cost of Ksh 3.75 million.

Status of vessel

The KFS stated that the ferry after 30 years of service required to be decommissioned soon. It was further stated to the Committee that during the rehabilitation of the ferry in 2016, the lifting system was partially rehabilitated but due to a lack of spares, the system could not be repaired to its former working condition.

The following changes were undertaken to ensure that the prows system remains in a working condition—

(i) Pulleys were changed
(ii) Pulley brackets were fabricated
(iii) Winch drum bronze bushes were replaced
(iv) Prow brackets were newly fabricated
(v) New rope fitted
(vi) Leaking hydraulic pipes were replaced with new ones.

D. MV Likoni

This vessel was procured in 2010. It is fitted with two Caterpillar C12 main engines with an output of 347KW. She has one emergency generator of 50 KVA.

The vessel has a top speed of 12 knots with a carrying capacity of 1500 passengers and 60 vehicles.

The KFS submitted to the Committee that the following changes were undertaken to the Ferry—

a. Prow modifications
The ferry prows were modified in 2019 to allow easy embarking and disembarking of vehicles. Spares for this vessel were not available in the market. The modifications included installing a longer prow with no flaps at the end and replacement of the obsolete hydraulic jacks with modern ones. This was done at a cost of Ksh 65 million.

b. Dry-docking of the vessel
The ferry was dry docked at M/S AMGECO in June 2019. The repairs included the underwater hull and fixing of the superstructure steel works at a cost of Ksh 37.8 million.

c. New Engine
While at the dry dock, the ferry was fitted with a new Caterpillar main engine at cost of Ksh 9.3 million

d. Engine overhauls
The ferry has the two engines undergoing major over in the last 5 years at a cost of Ksh 7.5 million

E. MV Kwale

This vessel was procured in 2010. It is fitted with two Caterpillar C12 main engines with an output of 347KW. She has one Perkin and one Cummins generator with an output of 100 KVA each. The vessel also has an emergency generator of 60 KVA. The vessel has a top speed of 12 knots with a carrying capacity of 1500 passengers and 60 vehicles

The KFS stated that in the last five years, the following works have been carried out on the vessel—

a. Dry-docking of the vessel
The ferry was dry docked in November 2018 for works. These works were done at a cost of Ksh 12 million. The repairs included the underwater steel work, propeller guard installation and painting of underwater steelwork. Due to unavailability of funds, the ferry could not be repaired in totality.

b. New generator
The ferry was installed with a new generator in 2017 at a cost of Ksh 17 million.

c. New Engine
   The ferry was installed with a new engine in the year 2018 at a cost of Ksh 9.3 million.

d. New propeller
   The ferry was installed with a new propeller in the year 2018 at a cost of Ksh 21 million.

Status of the Vessel

Due to the poor condition of the prows, they will require to be repaired. The hydraulic jacks are defective and their spares are not available in the market.

The prows are broken in the middle and will require new fabrication. The gradient of the prows to the landing ramp is very steep which causes problems for the vehicles to embark or disembark. The KFS informed the Committee that the ferry was scheduled to undergo prow modifications during the FY 2019/2020 however, due to the lack of budgetary allocations, the work has been rescheduled.

4.2 Ferry Service Schedule

4.2.1 General Schedule

The KFS submitted to the Committee that it employs a demand driven operations schedule where the service is provided 24/7 on three main shifts. They further stated that there are peak times when pedestrian and vehicular traffic is highest. The table below indicates the times of operation

No	Operational Period	Time Frame	No of Ferries in operation
1.	Peak-Morning	0500h--0830h	4
2.	Peak- Evening	1530h- 2030h	4
3.	Off peak	0830h- 1600h	3
4.	Early Night	2030h- 2359h	2
5.	Late Night	2359h-0400h	1

4.2.2 Abnormal and Heavy Cargo Crossing Schedule

The KFS has special crossing times for dangerous and heavy cargos across the Likoni Channel. They stated that the loaded trailers are crossed 2 hours before and after high water. For abnormal loads, these are planned separately depending on the dimensions, weight and the platform used in landing.

4.2.3 Petroleum products and hazardous cargo crossing schedule

Due to safety requirements, these categories of cargo are handled separately a the Likoni Channel as given below—

Time	Island Side	Mainland side
Morning	0930 hrs	1000 hrs
Afternoon	1300 hrs	1600 hrs
Night	2030 hrs	2300 hrs

4.3 Measures put in place to improve service

The KFS submitted to the Committee the measures that it had taken to ensure a faster throughput while ensuring customers' safety and security. These were summarized in the table below—

Number	Programme	Impact/effect on service delivery
1.	Segregation measures: Provision for separate ferries for passengers and vehicles during peak hours	▫ Improved and organized services ▫ Enhanced safety and security of ferry users ▫ Faster movement of ferries and reduced traffic queues
2.	Reviewed Operation Schedule for special cargo(fuel and other hazardous cargo)	▫ Reduce congestion in ramps and approaches by crossing cargo during off-peak hours
3.	Reviewed general operation schedule including introduction of a 4th ferry during peak periods and operating 3 ferries off peak. The KFS used to operate 3 ferries during peak time and two off peak in FY 2015/2016	▫ Reduced waiting time for ferry users at off-peak ▫ Reduced build-up spill over to peak times
4.	Expansion of landing ramps on both sides of Likoni Channel to accommodate landing of 2 ferries simultaneously	▫ Improved evacuation and high of ferry users ▫ Reduced congestion
5.	Acquisition of new ferries (MV Jambo delivered in 2017 and MV Safari excepted in January 2020)	▫ Improved ferry services ▫ Improved corporate image
6.	Development of Integrated Security Solution Master Plan(2016) whose components include: modern terminuses with wider access roads, Mtongwe landing ramps, expanded vehicular lanes etc	▫ Improved safety and security to ferry users ▫ Address gaps in emergency management ▫ Improved accessibility

4.4 Operational Challenges impacting on delivery of services efficient

The KFS Management informed the Committee that they had faced a number of challenges that affected its efficient delivery of services. These were outlined as follows

(i) Inadequate space for expansion

The KFS submitted that the increasing number of ferry users exerted pressure on the existing facilities. This was put down to various factors including cheap housing and the proximity of the housing to Mombasa.

The higher number of ferry users put pressure on the limited space available to KFS thus preventing them from making any meaningful expansion on the waiting bays, landing facilities and road expansion.

(ii) Aging ferries

The KFS submitted that three of the ferries in operation are 30 years old. This thus impacted on the efficiency of the services of the KFS and further, the cost of dry docking such vessels is high. The KFS further submitted that the maintenance time for these vessels was lengthy, and took a minimum of 5 months.

(iii) *Ship crossing the Likoni Channel*

The KFS informed the Committee that the Likoni Channel is extremely busy as it is a gateway to the Port of Mombasa. They stated that ships calling in and out of the ports affects its services particularly during rush hours as the ferries are forced to give way to allow ships access to cross the channel.

(iv) *Inadequate number of ferries*

The KFS stated that the number of operational ferries are inadequate. As such, the KFS does not have sufficient time for repairs and maintenance. Thus in the event that one of the operational ferries breaks down, there is no ready available replacement for it.

(v) *Mtongwe Landing Facility*

The Mtongwe landing jetties cannot withstand the weight of the big ferries and furthermore, the frequent banging and brushing with the said jetty weakens the ferries over time.

(vi) *Meeting the needs of people living with disability*

The KFS stated that its ferries with the exception of MV Jambo are not 100% friendly to people living with disabilities, the sick and the elderly. As such, there is a big challenge in aiding them to board the ferry and find space to wait during its crossing.

4.5 Solutions proposed to operational challenges

The KFS Management led by Mr. Bakari Gowa proposed the following solutions to the operational challenges facing the Kenya Ferry Services—

1. Land acquisition was underway in order to create more space for expansion and acquisition of administrative rights of KENHA roads. This was being carried out through a part-development plan;

2. There are plans to replace the ageing fleet as detailed in the Kenya Ferry Services Limited Strategic Plan;

3. On average, there are 15 to 20 vessels calling on the Port of Mombasa and there is need to have their entry and exit times into the Port staggered especially during the peak times of ferry use;

4. The KFS revealed plans for the acquisition of new and modern ferries;

5. Construction of landing ramp can be utilized to enable the crossing of motor vehicles; and

6. There is a need to procure specialized motorized vehicles for the disabled to facilitate their use of the ferry.

4.6 Response from the Ministry Of Transport, Infrastructure, Housing and Urban Development

The Ministry of Transport, Infrastructure, Housing, and Urban Development was represented by Principal Secretary, State Department of Transport, Ms. Esther Koimett and the Principal Secretary, State Department for Maritime and Shipping Affairs, Ms. Nancy Karigithu who made the following submissions on the state of the ferries operated by the Kenya Ferry Services Limited—

1. *The status of all the ferries that were deemed to be unseaworthy and whether they have been reconditioned or withdrawn;*

The Mini Ferries are regulated by Kenya Maritime Authority and are surveyed annually and issued with annual safety certificate. Safety certificates per vessel for the last two years as per schedule below:

No	VESSEL (MV)	2019		2020	
		ISSUE	EXPIRY	ISSUE	EXPIRY
1	Nyayo	30.07.18	29.07.19	Surveyed in August 2019	
2	Kilindini	07.02.18	06.02.19	06.02.19	05.02.20
3	Harambee	07.02.18	06.02.19	06.02.19	05.02.20

The ferries MV Nyayo, MV Kilindini and MV Harambee were surveyed in August 2019. The Ministry stated that these vessels were inspected and recommendations made for some repairs. The repairs are ongoing before issuance of safety certificate.

2. *Evidence of plans to address public complaints regarding the handling of passengers including efforts made towards partnership with the county Government of Mombasa on traffic control at the ferries;*

In addressing pertinent issues concerning public complaints, the Kenya Ferry Services is committed to the provision of effective and efficient service that meets the expectation of its customers and to that end we have an enhanced complaint handling mechanisms and an elaborate communication system in place. The company is implementing projects aimed at enhancing service delivery and promoting an enabling environment for our customers at the waiting bays. Some of these components are contained in the security master plan for both island and mainland infrastructure. These include: -

- The Island civil construction works is geared towards improving the infrastructure for the ferry pedestrians waiting sheds where works commenced in November, 2019 and is expected to be completed by April, 2020.
- The upgrading of the cyclist intersection lane on the mainland has now commenced. This will provide an extra lane for the cyclists and hand cart operators ensuring safety and security to and from the ferry.

Partnership with Mombasa County
Due to the strategic location of the ferry crossing point and it being a critical national infrastructure, the company has continually engaged the office of the Mombasa County Commissioner especially in the advent of terrorism and on safety and security matters. The company normally attends the county security and intelligence committee as coopted member where emerging issues concerning ferry service is extensively covered.

The entities that KFS has engaged to improve safety and security include:-

- The company has an established fully fledged police station (Ferry Police Station) with an Officer Commanding Station.
- KFSL Security staff headed by a senior Security officer.
- Members of the Mombasa county inspectorate.
- Contracted guarding and Security Company.
- Members of the National Youth Service who are always on call.

3. *Measures taken to address concerns on management lapses between the Board and Management at the Kenya Ferry Services.*

There are no lapses between KFS Board and Management. However, during a special Board meeting that was held on the 29th July 2019 the then Chairman of the Board tabled a report that contained the stakeholder information for enhancing performance in the various departments. During the meeting it was observed and recorded that most of the Board Members were aware of most of the issues which had already been resolved.

After deliberations, the Board resolved as follows: -

- That the recommendations that could be implemented without financial implications be implemented forthwith;
- Those with financial implication can be done in phases; immediate, short-term and long-term, since matters of finance cannot be changed overnight and necessary approval be obtained from the Board.
- The pending CBA matter to be fast-tracked and management to come up with a work plan for implementation of Chairman's report.
- Regular reports to be submitted to the Board.