



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

YOUR REF: CAJ/ATI/AG/001/11/20 - SNK
OUR REF: AG/CONF/4/70 Vol. II (240)

28th August, 2020

Ms. Lucy Ndungu, EBS
Commissioner, Access to Information
Commission on Administrative Justice
West End Towers, 2nd Floor
Waiyaki Way - Westlands
NAIROBI



RE: REQUEST FOR INFORMATION BY KHELEF KHALIFA FROM YOUR OFFICE

We make reference to your letter dated 26th June, 2020 requesting for information.

We comment as follows:

1. We note that Mr. Khelef Khalifa requests for the following documents:

Agreements entered between the Government of Kenya (GOK) or any Kenyan State or public agency with all service providers and or third parties (including foreign government/state) in regard to the Standard Gauge Railway (SGR), including;

- a) *All contracts for the carrying out of feasibility studies relating the construction, operation and servicing of the SGR;*
- b) *Any and all documents relating to expression of interest for the financing, construction, management, operation and servicing of SGR prepared by the GOK or state/public agency or a third party on behalf of the GOK;*
- c) *Contracts and or Memorandum of Understanding (MOU) between GOK and any third party relating to the financing, construction, management, provision of operating stock, operation and maintenance/servicing of SGR;*

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DEPARTMENT OF JUSTICE

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d) All agreements and contracts entered into including loan agreements, concession agreements, guarantees and/or collateral for financing, construction, management, operation and maintenance/servicing of the SGR;

2. Further, the letter from Kenya Railways dated 17th April, 2020 under Ref. KRC/CS/MD/3/207 indicates as follows:

"Kindly note that the projects to which information is being requested in clauses 1a – 1d are projects between the Government of the People's Republic of China and the Government of Kenya with Kenya Railway's mandate solely being as an implementing agency of the said contracts. The custody of the said contracts is with the Office of the Hon. Attorney General."

3. Kindly be advised that this Office is not the custodian of Project documents such as the ones listed above. We further advise that the role of this Office is to render legal advice to the Government as stipulated under Article 156 of the Constitution.
4. We note that Kenya Railways in its letter has stated that the Contracts have non-disclosure clauses. Therefore, the requested documents cannot be availed as the same would be in breach of the Agreements and might have serious legal and financial repercussions.

Kindly be guided accordingly.



Njeri Wachira, MBS
Deputy Solicitor General
FOR: SOLICITOR GENERAL

Copy to: Hon. P. Kihara Kariuki, EGH
ATTORNEY GENERAL

Mr. Kennedy Ogeto CBS
SOLICITOR GENERAL