

**REPORT ON THE INQUIRY INTO THE MANDATORY INSPECTION OF  
MOTOR VEHICLES IN UGANDA BY THE PARLIAMENTARY COMMITTEE ON  
PHYSICAL INFRASTRUCTURE**

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**NOVEMBER 2017**

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## Table of Contents

<b>EXECUTIVE SUMMARY</b>	<b>5</b>
<b>1.0 INTRODUCTION</b>	<b>10</b>
<b>2.0 BACKGROUND</b>	<b>10</b>
<b>3.0 TERMS OF REFERENCE (TORS)</b>	<b>11</b>
<b>4.0 METHODOLOGY</b>	<b>12</b>
<b>5.0 FINDINGS, OBSERVATIONS AND RECOMMENDATIONS</b>	<b>12</b>
<b>5.1 TOR 1: EXAMINATION OF THE GOVERNMENT POLICY OF MOTOR VEHICLE INSPECTION</b>	<b>13</b>
5.1.1 BACKGROUND TO THE POLICY	13
5.1.2 THE IMPLICATIONS OF WAIVING ROAD LICENSE FEES	14
5.1.3 THE RE-INTRODUCTION AND PRIVATIZATION OF MANDATORY VEHICLE INSPECTION	15
5.1.4 THE ROLE OF VEHICLE INSPECTION IN IMPROVING AIR QUALITY	17
5.1.5 MOTOR VEHICLE INSPECTION IN UGANDA TODAY	19
5.1.6 THE NEED FOR A COMPREHENSIVE MOTOR VEHICLE DATABASE	20
5.1.7 THE TRANSFORMATION OF VEHICLE MECHANICS AND TECHNICIANS FROM THE INFORMAL TO A FORMAL SECTOR	21
5.1.8 INTENDED OUTCOMES OF THE MANDATORY VEHICLE INSPECTION EXERCISE	22
5.1.8.1 JOB CREATION	22
5.1.8.2 MONITORING THE VEHICLE POPULATION IN THE COUNTRY	23
5.1.8.3 VEHICLE INSPECTION AS A NATIONALLY APPROPRIATE MITIGATION ACTION (NAMA)	23
5.1.8.4 POTENTIALLY PROHIBITIVE COST OF VEHICLE INSPECTION	24
<b>5.2 TOR 2: INVESTIGATING THE PROCESS OF PROCUREMENT OF THE CONTRACTOR FOR THE MANDATORY INSPECTION OF VEHICLES</b>	<b>27</b>
5.2.1 CHRONOLOGY OF THE PROCUREMENT PROCESS	27
5.2.2 USE OF THE WRONG BIDDING DOCUMENTS FOR THE INITIAL PROCUREMENT OF 2008	27
5.2.3 UNETHICAL PRACTICES IN THE PROCUREMENT PROCESS	28
5.2.4 UNUSUAL CONGRUENCE BETWEEN THE PRICES QUOTED BY SGS AND THE MOWT RESERVE PRICE	31
5.2.5 ORGANIZATIONAL STRUCTURES OF SGS IN THE CONTRACT IMPLEMENTATION PHASE	32
<b>5.3 TOR 3: EXAMINATION OF THE TERMS AND CONDITIONS OF THE CONTRACT</b>	<b>34</b>
5.3.1 COMPLIANCE WITH ARTICLE 119 (4) (B) AND 119 (5) OF THE 1995 CONSTITUTION OF THE REPUBLIC OF UGANDA	34
5.3.2 PERFORMANCE INDICATORS OF THE CONTRACT	35
5.3.2.1 MONOPOLY CLAUSE	36
5.3.3 BREACHES OF THE CONTRACT	37
5.3.3.1 INSPECTION FEES	37
5.3.3.3 COMMENCEMENT DATE OF INSPECTION	41

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5.3.3.4	INADEQUATE INTRA-GOVERNMENTAL COORDINATION IN IMPLEMENTATION OF THE CONTRACT	43
5.3.3.5	THE ABSENCE OF A MASTER TEST CENTRE	43
5.3.5	CONSEQUENCES OF TERMINATION OF THE CONTRACT	44
5.4	<b>TOR 4: APPRAISE THE PERFORMANCE TO-DATE OF THE CONTRACT WITH SGS</b>	
5.4.1	PAYMENT OF CONCESSION FEES	46
5.4.2	REMITTANCE OF ALL APPLICABLE TAXES	46
5.4.3	AUDIT	47
5.4.4	OPERATIONAL PERFORMANCE INDICATORS	47
5.4.5	LOCATION OF PREMISES	47
5.5	<b>TOR 5: EXAMINATION OF ANY OTHER ISSUES INCIDENTAL TO AND PURSUANT TO THESE TORS</b>	49
5.5.1	LAPSES IN CORPORATE GOVERNANCE AT THE MOWT	49
5.6	<b>SUMMARY OF RECOMMENDATIONS</b>	49
5.7	<b>CONCLUSION</b>	51

## LIST OF ACRONYMS

MOWT:	Ministry of Works and Transport
UN:	United Nations
TORs:	Terms of Reference
UPF:	Uganda Police Force
EIA:	Environmental Impact Assessment
SGS:	Societe Generale de Surveillance, S.A
ESP:	Environmental System Products Holdings Inc
UNRA:	Uganda National Roads Authority
TLB:	Transport Licensing Board
NRSC:	National Road Safety Council
PPP:	Public Private Partnerships
MPS:	Ministerial Policy Statement
NBFP:	National Budget Framework Paper
NEMA:	National Environment Management Authority
URA:	Uganda Revenue Authority
PPDA:	Public Procurement and Disposal of Public Assets Authority
CPI:	Consumer Price Index

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## EXECUTIVE SUMMARY

The Parliamentary Committee on Physical Infrastructure inquired into the mandatory inspection of motor vehicles by SGS Société Générale de Surveillance SA during the period July-August 2017. This inquiry was a referral by the Speaker on 29<sup>th</sup> June 2017 on the back of 2 Ministerial statements and two matters of urgent public importance on the subject of mandatory vehicle inspection. The thrust of the Committee's inquiry was to appraise the government policy of vehicle inspection, examine the procurement of SGS Société Générale de Surveillance SA and the details of the contract as well as the advancement of recommendations for the regularization of vehicle inspection as a road safety strategy.

The re-introduction of mandatory vehicle inspection in 2015 followed a 2007 policy shift that waived off road license fees in favour of the fuel levy. Given that then, vehicle inspection was hinged on road license fees, the waiver of the latter implied waiving of the mandatory aspect of vehicle inspection. The re-introduction of mandatory vehicle inspection through a private provider, whilst intended to aid the stemming of road carnage ended up being rife with a host of public concerns namely; exorbitant pricing, inadequate coverage, unrealistic deadlines and general skepticism over the overall intention of the intervention.

The TORs of the Committee were carefully designed to cover the afore-listed public concerns.

In the execution of the inquiry, the Committee met with 15 different groups of witnesses and well over 50 individual witnesses from whom the Committee elicited significant information as a basis of its decisions.

Below is a synopsis of the Committee's findings:

- i) **Procurement of SGS:** The Committee notes the procurement of SGS as a service provider for mandatory vehicle inspection took about 3 years

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spanning the period 2007- 2015. This process was initially cancelled because of the use of the wrong bidding documents prior to 2009 and was later marred by allegations of breaches of ethics with regard to leaking competitor information and undue interference.

- ii) **Terms and conditions of the contract with SGS:** The evaluation of the contract that was signed on 15<sup>th</sup> March 2015 between the Government of Uganda and SGS revealed breaches by both SGS and MOWT with regard to commencement date, payment of concession fees and its procedure, absence of a master test centre and inept contract supervision. In response the Committee recommends renegotiation and review of the contract.
- iii) **Review of the performance of the contract:** A review of the performance of SGS since signing the contract in 2015 inter-alia reveals the failure to adhere to the contractual commencement date for vehicle inspection, inadequate national coverage, non-adherence to the timelines for payment of concession fees.
- iv) **Recommendations for the regularization of motor vehicle inspection:** The committee notes the need for the strengthening of corporate governance at the MOWT including but not limited to the bolstering of the supervision of motor vehicle inspection.

In light of the aforementioned findings, the Committee explored all possible remedial actions including termination and the costs of termination as per clause 7.8.5 of the conditions of contract which states that in the event that the contract is terminated by the Government of Uganda or the MoWT for any cause, except as provided in this contract, before the expiry of the 5 year term or any extension or renewal of such term, the MOWT shall pay to the provider at law or in equity in respect of the termination of this contract seventy five percentum (75%) of the value of total investment made by the provider or one hundred percentum (100%) of the expected income of the

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h. hui, W. h. s, J. u. e, A. u. p, A. u. s, R. o. y, 2, f. u, S. P. P.

provider from the services, whichever is greater, being the cost of demobilization.

It is noteworthy that the absence of a crash data system has impeded accident cause analysis in Uganda. While the various reports by Uganda Police on the causes of road accidents cite vehicle conditions as accounting for 2.2% of traffic accidents, it should be noted that the absence of a crash data system renders such police accident reports unreliable because of their reliance on subjective rather than scientific methods. The actual contribution of vehicle conditions may actually account for far more traffic accidents than reported.

This subjectivity often leads the Police to incriminate motorists for offences such as reckless driving in a bid to apportion responsibility for traffic accidents. It is because of this that there have been various incidents of motorists attempting to flee traffic accident scenes to avert arrest. A crash data system would scientifically establish the actual cause of traffic accidents and aid the exoneration of such motorists.

### **Recommendations**

Based on the aforementioned findings and observations, the Committee recommends as follows;

The implementation of the contract for Mandatory Inspection of motor vehicles be immediately suspended for a period of not less than 3 months to enable review and renegotiation of the contract by the MOWT. This review and renegotiation should cover the following;

- a) *Significantly slashing the cost of inspection to make it more affordable and equitable. This will enable motorists present their vehicles for inspection more regularly thereby progressively enabling*

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*the improvement of the condition of vehicles and ultimately reducing road carnage.*

- b) Constitute a multi stakeholder supervisory team that includes NEMA, UNBS and Uganda Police. This will cater for the multi-dimensional nature of vehicle inspection that incorporates aspects of air quality, standards and enforcement.*
- c) Institutionalize the role of the Auditor General in periodically auditing the vehicle inspection exercise. These audits should focus on aspects such as value for money, physical performance and financial performance.*
- d) Streamline information sharing in a manner that includes URA, UPF, NEMA and UNBS. This will ensure that the information accruing to the vehicle inspection exercise is effectively shared with other MDAs under whose mandate, related policy matters are domiciled. Specifically the synergy with URA will ease the verification of vehicle logbooks and contribute to the creation of a reliable motor vehicle database, which was one of the objectives of the policy.*
- e) Establishment of a master test centre. This is a key quality control strategy that will ensure that the vehicle inspection results are independently verified for accuracy and reliability.*
- f) Establishment of the Crash data system. This will go a long way in aiding accident cause analysis and the storage of related information, the basis of which road safety reports and policies may be derived.*
- g) Streamlining revenue payment procedure in conformity with the PFMA, 2015.*
- h) Sensitization of the public on road safety to shape and reshape the behaviour of road users.*

*The Committee fully supports motor vehicle inspection as a strategic tool for improving road safety and stemming road carnage. Vehicle*

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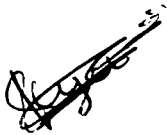


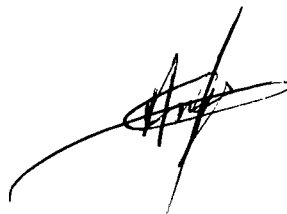
inspection as a global best practice should be embraced wholly as the country strives to reduce the incidences of traffic accidents. In spite of some challenges identified, the Committee notes that with a concerted effort towards mitigating those challenges, encouraging regular vehicle inspection and improving the condition of motor vehicles and the road network will enable the realization of the overall objective of improving road safety in Uganda.

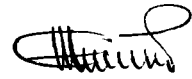
In addition, vehicle inspection should be augmented by other interventions notably public sensitization on road safety so as to mitigate the behavioral causes of road accidents such as; overloading, reckless driving, driving under the influence of toxic substances and non observance of traffic rules and regulations.

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## 1.0 INTRODUCTION


The Parliamentary Committee on Physical Infrastructure, established by Rule 175 (2) (f) of the Rules of Procedure of the Parliament of Uganda, is inter-alia mandated by Rule 177 of the same rules to examine and comment on policy matters of sectors under its purview and to initiate, evaluate and make appropriate recommendations on action programmes of those Sectors.

It is against that background that the Committee was tasked by the House on 29<sup>th</sup> June 2017 to inquire into the mandatory inspection of motor vehicles in Uganda- a function that the Traffic and Road Safety Act 1998 bestows upon the Ministry of Works and Transport who in-turn out-sourced it to a private entity- SGS Société Générale de Surveillance SA on 17<sup>th</sup> March 2015.

## 2.0 BACKGROUND

On 23<sup>rd</sup> November 2016, the Minister of Works and Transport- Hon. Azuba Ntege presented a statement to the House entitled "*Update on mandatory and Periodic Motor Vehicle Inspection Services*" (Annex 1) with the aim of updating the House on the background, status, operations and charges levied for vehicle inspection by a private contractor- SGS Société Générale de Surveillance SA whom the Government of Uganda had engaged on 17<sup>th</sup> March 2015 to conduct mandatory vehicle inspection.

This statement was a precursor to the commencement of mandatory vehicle inspection that was to begin and indeed began on 28<sup>th</sup> November 2016. While the Ministry of Works and Transport had initially towed with a March 2017 deadline,<sup>1</sup> a definitive deadline was later set at 30<sup>th</sup> June

  
<sup>1</sup> <http://www.parliament.go.ug/sites/default/files/2017-11/Update-on-mandatory-vehicle-inspection-extended> (Annex 2)

  
  
  
  
  
  
  
  
  
  
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2017, which deadline was later extinguished by the House on 29<sup>th</sup> June 2017.

On 20<sup>th</sup> June 2017, Hon. Muyanja Johnson Ssenyonga, MP Mukono South rose on a matter of urgent public importance regarding the mandatory inspection of motor vehicles. He expressed concern that while the deadline for vehicle inspection had been set at 30<sup>th</sup> June 2017, only one (Kawanda) of the then four prospective inspection sites was operating. The other non-operational ones at the time were Nabbingo, Namanve and Namulanda.

The Speaker directed the Minister of Works and Transport to present a Statement on the matter to the House.

On the 29<sup>th</sup> June 2017, the Minister of Works and Transport presented another Ministerial Statement on the mandatory inspection of motor vehicles (*Annex 3*). This statement elicited extensive debate at the end of which the Rt. Hon. Speaker referred the matter to the Parliamentary Committee on Physical Infrastructure.

In addition, the Rt. Hon. Speaker directed that the then 30<sup>th</sup> June 2017 deadline for the mandatory inspection of motor vehicles together with any related announcements in the mass media be immediately extinguished.

It is against this background that the Committee inquired into the mandatory inspection of motor vehicles by SGS and hereby reports.

### **3.0 TERMS OF REFERENCE (TORS)**

The Committee set out to:

- i) Analyze the government policy of motor vehicle inspection
- ii) Investigate the process of procuring the contractor for the mandatory inspection of motor vehicles.

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- iii) Examine the terms and conditions of the SGS contract and its implementation.
- iv) Appraise the performance contract for the mandatory inspection of motor vehicles
- v) Propose strategies for the regularization of the mandatory inspection of motor vehicles.

#### **4.0 METHODOLOGY**

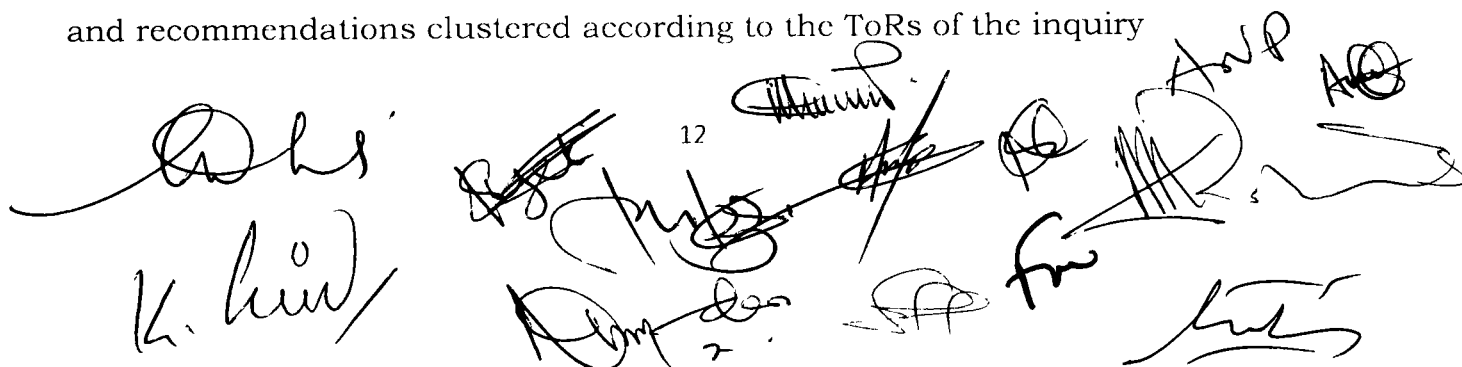
The Committee;

- i) Held meetings with various witnesses (*Annex 4*).
- ii) Received and reviewed written memoranda from the various witnesses listed in *Annex 4*.
- iii) Conducted on-spot assessments of motor vehicle inspection sites at Kawanda, Namanve, Nabbingo and Namulanda.
- iv) Reviewed relevant literature namely; the Ministerial Statements on mandatory vehicle inspection of 23<sup>rd</sup> November 2016 and 29<sup>th</sup> June 2017, the Statutory Instrument of 2016, the Traffic and Road safety Act, 1998, the Constitution of the Republic of Uganda, 1995, on-line literature on vehicle inspection in Kenya, Tanzania and Rwanda, the National Budget Framework Paper 2017/18, the Ministerial Policy Statement of the Ministry of Works and Transport 2016/17 and 2017/18, the contract for the provision of mandatory motor vehicle inspection services signed between the Government of Uganda and SGS Société Générale de Surveillance SA on 17<sup>th</sup> March 2015, the concept note for the re-introduction of compulsory periodic motor vehicle inspection, the report of the PPDA on the application for administrative review by ESP.

#### **5.0 FINDINGS, OBSERVATIONS AND RECOMMENDATIONS**

The proceeding section will enumerate the Committee's findings, observations and recommendations clustered according to the ToRs of the inquiry

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## **5.1 TOR 1: EXAMINATION OF THE GOVERNMENT POLICY OF MOTOR VEHICLE INSPECTION**

In the examination of the government policy of mandatory motor vehicle inspection, the Committee; appraised the national road safety policy of 26<sup>th</sup> November 2014, the Traffic and Road Safety Act 1998, a 2007 conceptual framework for the re-introduction of mandatory vehicle inspection authored by Eng. Sabiiti Denis, the policy shift in 2007/08 that scrapped road license fees in favour of enhancement of the fuel levy, Statutory instrument No. 51 of 2016 that sought to re-enforce the re-introduction of the fuel levy, the relevant parts of the 17<sup>th</sup> March 2015 contract between the Government of Uganda and SGS Société Générale de Surveillance SA, relevant international instruments on road safety and motor vehicle inspection and the inherent obligations that binds Uganda, and the Ministerial statements on the mandatory inspection of motor vehicles of 23<sup>rd</sup> November 2016 and 29<sup>th</sup> June 2017.

### **5.1.1 Background to the policy**

Mandatory vehicle inspection is part of governmental effort to improve road safety and stem road carnage which globally according to a 2015 report by the World Health Organization accounts for about 1.25 million deaths per year, with the highest road traffic fatality rates in low-income countries.<sup>2</sup> Uganda on its part accounts for about 3,000 fatalities and atleast 18,000-road accident related injuries annually.<sup>3</sup>

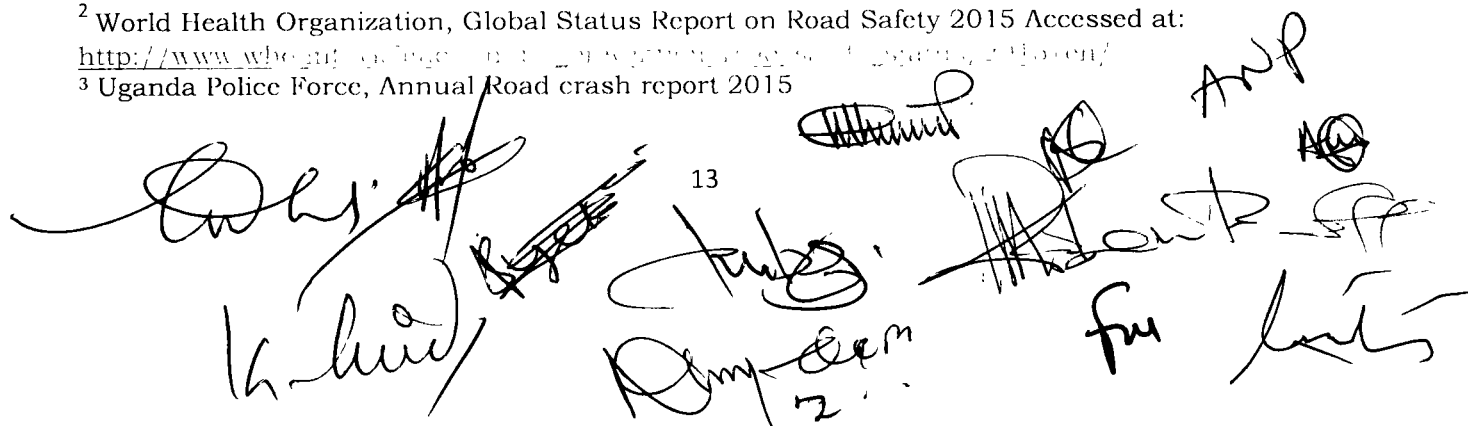
Global effort towards stemming road carnage has been exemplified by United Nations resolutions 57/309 of 22<sup>nd</sup> May 2003, 58/9 of 5<sup>th</sup> November 2003, 58/289 of 14<sup>th</sup> April 2004, 60/5 of 26<sup>th</sup> October 2005 and 62/244 of 31<sup>st</sup> March 2008 on improving global road safety. The World Health Organization for instance publishes annual reports on global road safety generated from country specific data.

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<sup>2</sup> World Health Organization, Global Status Report on Road Safety 2015 Accessed at: [http://www.who.int/gut/pib/collections/publications/201509-road-safety-report/](http://www.who.int/gut/pib/collections/publications/201509-road-safety-report)

<sup>3</sup> Uganda Police Force, Annual Road crash report 2015

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### **5.1.2 The implications of waiving of road license fees in favour of enhancing the fuel levy**

operating procedures.

### 5.1.3 The re-introduction and privatization of mandatory vehicle inspection

While this policy shift was settling in, effort was underway at the Ministry of Works and Transport to re-introduce mandatory vehicle inspection with a April 2007 report by a private consultant- Lea International on a study for the re-introduction and privatization of motor vehicle inspection services commissioned by the Ministry of Works; and a May 2007 conceptual framework for the privatization of motor vehicle inspection services authored by Eng. Sabiiti Dennis- the then Assistant Commissioner at the Ministry of Works and current MP for Rubanda West.

The Committee notes that the MOWT in a bid to justify the re-introduction of mandatory vehicle inspection cited defective vehicles as contributing 10% to the total prevalence of accidents in Uganda. Using subjective methods and narratives from its staff, the police reports that the condition of vehicles accounts for 2.1% to the total traffic accidents in Uganda.

The objectives for the re-introduction and privatization of motor vehicle inspection as stated in the conceptual framework developed by Eng. Sabiiti Denis were as follows;

- i) Improve the safety standards of vehicles and reduce the incidence of road traffic accidents caused by vehicles in dangerous mechanical conditions.
- ii) Integrate vehicle technical standards with other road traffic enforcement activities (vehicle registration, traffic police enforcement activities, mandatory third party insurance, etc)
- iii) To start on a basic vehicle exhaust emission control programme that can protect the environment
- iv) To support the government objective of privatization and divestiture of certain functions that can be better developed, managed and promoted by the private sector
- v) To provide opportunities for the transfer from informal to formal sector of vehicle mechanics and technicians

- vi) To create employment opportunities thus contributing to poverty reduction in certain areas.

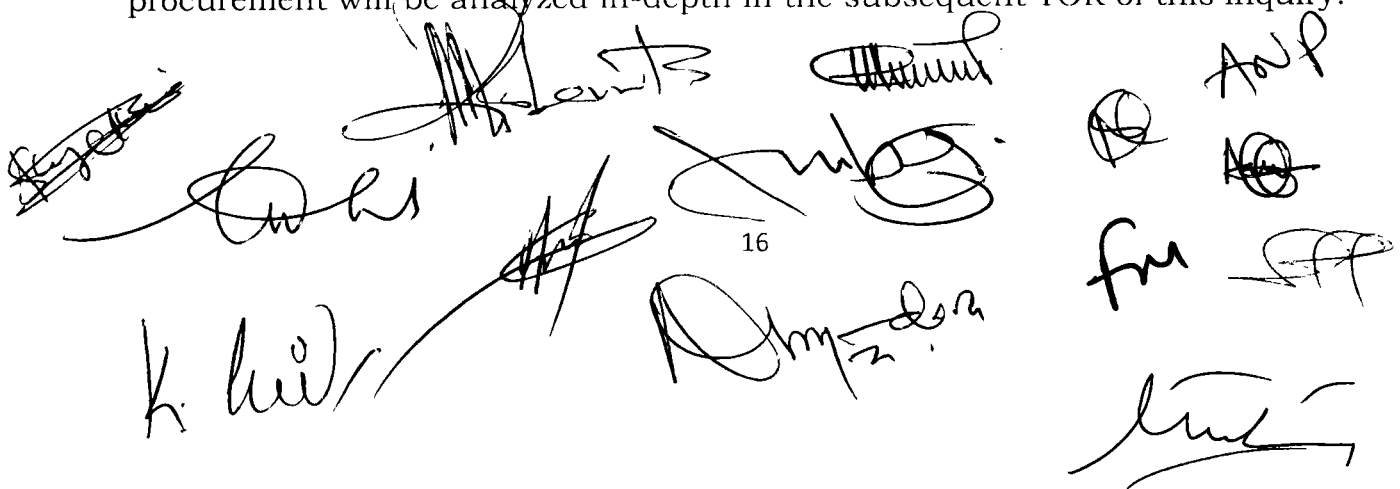
The intended outcomes of the policy were envisaged as follows;

- i) Job creation: over 99% of the vacancies to be filled by Ugandans
- ii) The project had been identified as a Nationally Appropriate Mitigation Action (NAMA) at the National Level to fight the effects of climate change partly caused by green house gases from vehicles
- iii) Monitoring the vehicle population in the country including stolen vehicles, illegal change of motor vehicle spare parts, informing motor vehicle scrappage schemes and reducing motor vehicle insurance fraud among others.

The Committee notes that the conceptual framework for the re-introduction of motor vehicle inspection rather than the Feasibility study by Lea International informed the re-introduction of motor vehicle inspection.

Whereas Eng. Sabiiti Denis in his cover letter to the conceptual framework for the re-introduction of mandatory vehicle inspection made reference to the draft report from the Lea International, a review of the conceptual framework did not indicate that the substance of the conceptual framework had been drawn from the feasibility study report.

On 7<sup>th</sup> February 2008, the Ministry of Works and Transport kick started the procurement of a service provider for the mandatory inspection of motor vehicles by issuing an expression of interest for pre-qualification of prospective services. This procurement process went on for about 8 years till 17<sup>th</sup> March 2015 when the Government of Uganda signed a contract for the inspection of motor vehicles with SGS Société Générale de Surveillance SA. This procurement will be analyzed in-depth in the subsequent TOR of this inquiry.

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In addition, one of the objectives of the National Road safety policy of 2014 is to improve the quality of the vehicle fleet through partnership with the private sector to improve vehicle inspection methods.

Further in fulfillment of the above objective, the Minister of Works and Transport gazetted Statutory Instrument No. 51 of 2016 – the traffic and road safety (motor vehicle inspection) regulations 2016 to re-introduce mandatory motor vehicle inspection and pave way for the private service provider- SGS Société Générale de Surveillance SA to inspect all motor vehicles and motor cycles in Uganda.

#### **5.1.4 The role of vehicle inspection in improving air quality**

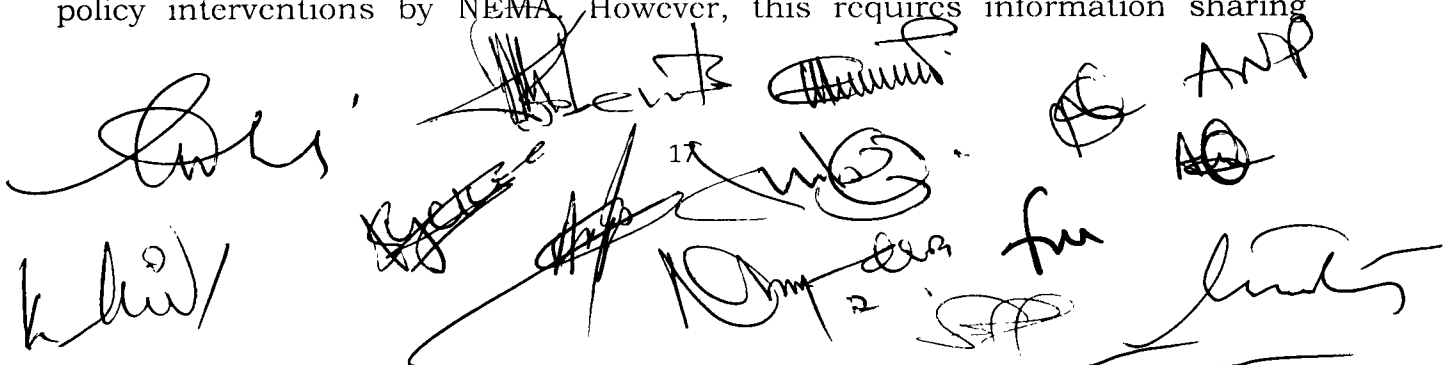
One of the objectives of the mandatory inspection of motor vehicles is the improvement of air quality through monitoring vehicle exhaust emissions..

The Committee notes that the Ministry of Works and Transport did not involve NEMA in the conceptualization, planning and implementation of the monitoring of exhaust emissions within the wider context of mandatory vehicle inspection.

While the SGS Société Générale de Surveillance SA is relying on set international standards for testing exhaust fumes for the various categories and ages of vehicles, there was no evidence that NEMA was involved in ratifying the said parameters with specific application to the realities in Uganda given unique realities such as the high prevalence of cars manufactured in the 1990s or earlier.

At its interface with the Committee during this inquiry, NEMA informed the Committee that they had only been consulted by SGS in as far as securing an Environmental Impact Assessment (EIA) certificate for the vehicle inspection site located in Kawanda.

Ordinarily, the data on exhaust emissions that SGS Société Générale de Surveillance SA is generating from vehicle inspection would have informed policy interventions by NEMA. However, this requires information sharing

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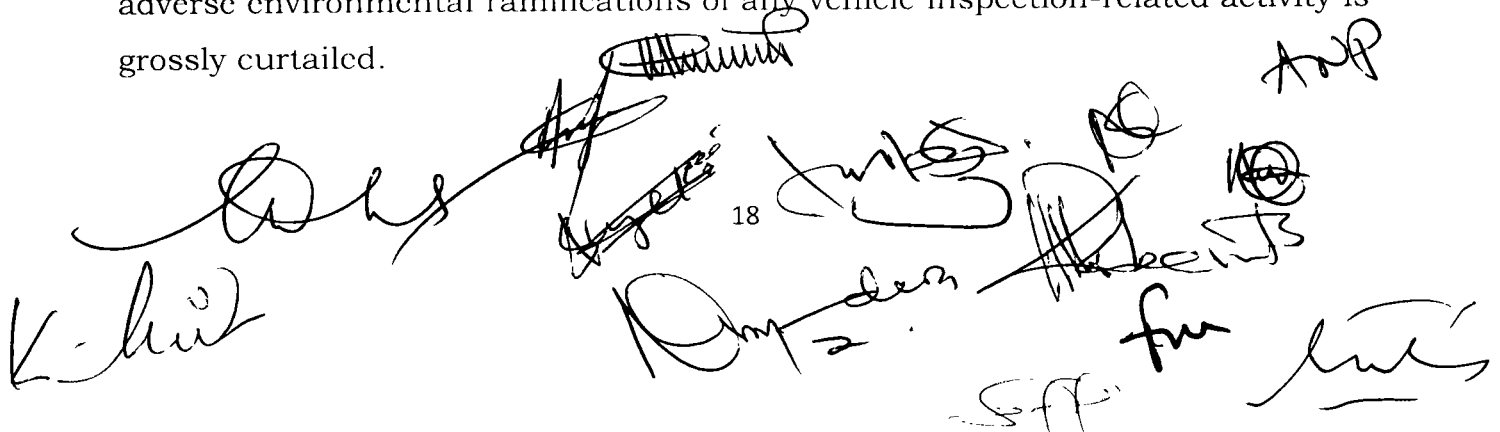
synergies with NEMA so that appropriate policy interventions can accrue to the data from vehicle inspection. Unfortunately a review of the Performance indicators related to reporting and information sharing does not include NEMA as a recipient of the vehicle inspection reports. The indicators only list MOWT, Uganda Police, URA and TLB as the beneficiaries of related data generated from the motor vehicle inspection exercise.

The Committee further notes that Uganda is party to the Eastern African Regional Framework Agreement on Air Pollution (Nairobi Agreement, 2008) that requires EAC Member States to develop actionable targets to address air pollution in the following key areas: Transport, Industry and Mining, Energy, Waste, Vegetation Fires, Indoor Air pollution, Urban Planning and Management. Currently, the EAC is working on development and harmonization of standards and regulations on pollution control and waste management. While mandatory inspection of motor vehicles theoretically ties up with this effort, the absence of functional information sharing synergies with NEMA that is involved in the aforementioned regional effort implies that the air-quality-related results of motor vehicle inspection in Uganda, cannot inform this regional harmonization effort.

The Committee notes that while an EIA certificate was issued for the Kawanda site, NEMA has been unable to regularly monitor the environmental impact of the mandatory inspection of motor vehicles.

At the time that SGS acquired the EIA Certificate for Kawanda, they had not yet acquired the land and yet ownership of land is one of the preconditions for the acquisition of an EIA certificate. Whereas the EIA certificate was issued on 11th January 2016 SGS acquired the land three months later in March 2016.

This implies that government's capacity to take timely remedial action in case of adverse environmental ramifications of any vehicle inspection-related activity is grossly curtailed.

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***The Committee is of the considered view that NEMA should be included in monitoring of air quality.***

#### **5.1.5 Motor vehicle inspection in Uganda today**

The ongoing mandatory inspection of motor vehicles is largely premised on the following parameters; brakes, wheel alignment, headlamps, suspension, steering wheel alignment, exhaust smoke, signaling lights- all of which point more to the mechanical elements of the vehicle than to human and behavioural-related aspects of road usage.

The Committee notes that while SGS Société Générale de Surveillance SA issues a “certificate of fitness” (*Annex 5*) to motor vehicles that have passed the test based on the aforementioned parameters, this does not sanitize society from the rampant accident causal variables of over-speeding, overloading and reckless driving that are more behavioural than mechanical.

Available reports from Uganda Police indicate that on average human factors such as reckless driving, over speeding, overloading, driving under the influence of alcohol and careless pedestrians accounts for about 80% of all annual traffic accidents while vehicle conditions that the mandatory inspection of vehicles seeks to check accounts for barely 2.2% with road conditions, weather conditions and other unknown causes accounting for the remaining 17%.

It is also noteworthy that during its interface with the Director Traffic and Road Safety at the Uganda Police Force- Dr. Kasiima Steven, it emerged that the official data on motor and traffic accidents in Uganda is inherently flawed due to the absence of a functional national crash data system. A crash data system is an automated and comprehensive accident information gathering, management and dissemination tool that inter-alia provides necessary information to road authorities on black spots, road traffic accidents, injuries and underlying injury mechanisms. The Committee reliably learnt that the requisite equipment for establishing the crash data system is lying idle at the

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premises of the MOWT pending installation. This implies that Uganda lacks a comprehensive data system that would have covered not only deaths and injuries from road traffic crashes, but also exposure measures, intermediate outcomes and social costs of such accidents. This is an indictment of the MOWT's commitment to road safety in Uganda.

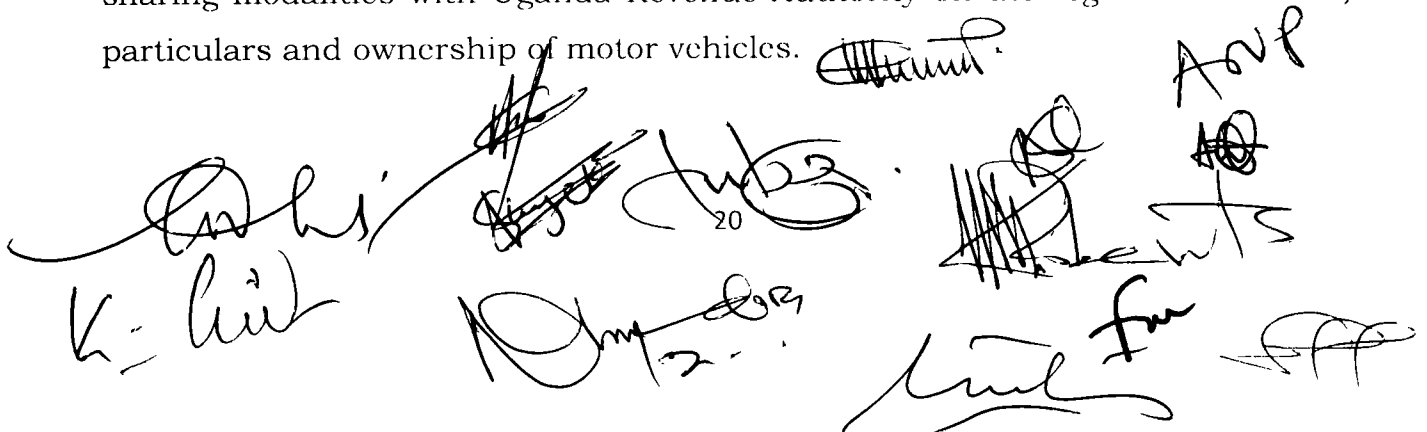
In the absence of the crash data system, the Uganda Police relies on the subjective observation and documentation by its personnel at accident scenes thereby grossly undermining the fidelity of accident statistics. It is against this background that the World Health Organization does not rely on the road accident statistics from countries like Uganda that are devoid of crash data systems.

***To streamline the capture, analysis and management of accident crash data in Uganda in a manner that will adequately inform strategic road safety interventions and stem road carnage, the Committee recommends that Permanent Secretary Ministry of Works and Transport ensures immediate installation and commissioning of the equipment for the crash data system and report to Parliament within 3 months of the adoption of this report on progress made.***

#### **5.1.6 The need for a comprehensive motor vehicle database**

The mandatory inspection of motor vehicles, seeks to create a comprehensive, accurate and up to date motor vehicle database in the country to facilitate planning in the sector and monitoring of vehicle use and transfer, as one of its policy objectives. Part II of the Traffic and Road safety Act, 1998 provides for the registration and licensing of motor vehicles and this function is being done by Uganda Revenue Authority.

The realization of this policy objective therefore requires functional information sharing modalities with Uganda Revenue Authority on the registration status, particulars and ownership of motor vehicles.



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In the absence of an information sharing interface with URA especially on motor vehicle and motor cycle registration, SGS Société Générale de Surveillance SA is unable to keep abreast with the trend in terms of numbers and specifications of imported motor vehicles and motorcycles thereby impeding their ability to forecast demand for inspection and equipment compatibility in time.

### 5.1.7 The transformation of vehicle mechanics and technicians from the informal to a formal sector

monopoly, who does not provide spare parts and repairs.

This creates a lag between the identification of defects on motor vehicles and the fixing of such defects. Currently a motorist, for the purpose of passing the inspection test, may temporarily fix tyres, brakes and other testable parts hence defeating the very intended objective of the mandatory inspection of motor vehicles as it exists at the moment.

Considering that Uganda already has established vehicle dealerships with a potentially superior vehicle testing capacity for specific vehicles such as Toyota which predominates the local Ugandan fleet, Mercedes Benz (Spear Motors) and Mitsubishi (Victoria Motors), it would have been more prudent to liberalize the inspection of vehicles in a manner that allows such established superior vehicle dealerships to offer specialized mandatory vehicle inspection services. This would help ameliorate current challenges in the vehicle inspection exercise such as the failure of the equipment deployed by SGS to competently check telescopic self adjusting head lights of some contemporary brands of Mercedes benz vehicles.

***The Committee is of the considered opinion that for mandatory vehicle inspection to serve its intended purpose of streamlining vehicle spare parts dealerships in pursuit of road safety, the service should be liberalized and be incorporative of the certification of vehicle spare parts dealerships to encourage the trade in genuine spare parts.***

#### **5.1.8 Intended outcomes of the mandatory vehicle inspection exercise**

##### **5.1.8.1 Job creation**

The intended policy outcome of job creation estimates that over 99% of the vacancies in the vehicle inspection exercise will be filled by Ugandans. At its interface with the Committee SGS stated that it currently employs 72 staff of which 70 are Ugandans. During its field verification visit to the operational vehicle inspection sites, the Committee observed that each of the inspection sites employs barely 15 staff implying that vehicle inspection exercise is not a

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labour intensive one. Even if all the 8 envisaged inspection sites are operational, the intervention may barely employ 150 Ugandans. This implies that the multiplier effect of job opportunities accruing to such machinery intensive exercise is grossly limited and yet the monopoly that the service provider is takes home their entire profit from the 90% gross revenue collected since only 10% is transferred to government.

Juxtaposed against the model of a liberalized vehicle inspection environment with various reputable and authentic garages conducting the mandatory inspection of motor vehicles in various parts and locations of the country, there would certainly be more employment opportunities created with a far wider and deeper multiplier effect than what the current arrangement by SGS provides.

#### **5.1.8.2 Monitoring the vehicle population in the country**

The intended outcome of monitoring the vehicle population in the country including stolen vehicles, illegal change of motor vehicle spare parts, informing motor vehicle scrappage schemes and reducing motor vehicle insurance fraud among others is a an overly ambitious one for the projects as it exists under the current design. The bulk of this information can be retrieved from Uganda Revenue Authority, which currently operates a computerized vehicle registration system. Already plagued by the absence of functional information sharing synergies with URA and the reliance by SGS on copies of logbooks presented by motorists without an avenue for checking their veracity grossly inhibits the attainment of this outcome.

#### **5.1.8.3 Vehicle inspection as a Nationally Appropriate Mitigation Action (NAMA)**

The Committee welcomes information that the mandatory inspection of motor vehicles has currently been identified as a NAMA at the National Level to fight the effects of climate change partly caused by green house gases from vehicles.

However without adequate involvement of and functional information sharing synergies with NEMA in setting, monitoring and evaluating of parameters for

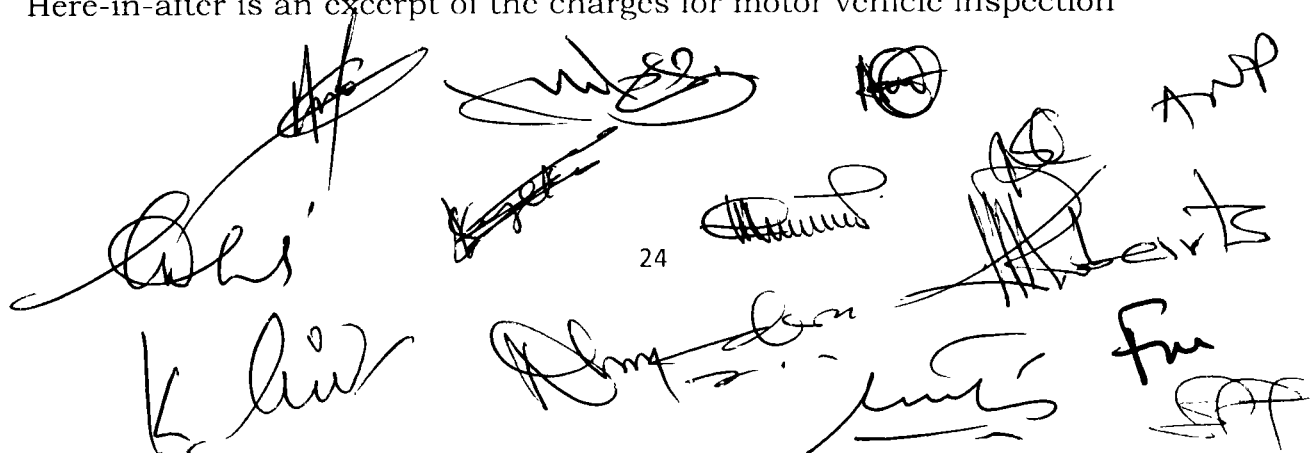
testing of exhaust emissions, the actual extent of the contribution of the mandatory inspection of motor vehicles by SGS to climate change adaptation may be a toll order to ascertain.

Considering that NEMA is in the process of setting up its own air quality monitoring station in Kampala and already has a mobile gas analyzer testing kit, it is crucial for the supervising entity- MOWT to harness the specialties of NEMA as the national environmental watchdog to evaluate the efficacy of the emissions tests that are currently being performed as part of the mandatory inspection of motor vehicles.

#### **5.1.8.4 Potentially prohibitive cost of vehicle inspection**

A key impediment to the realization of the universalization of motor vehicle inspection in Uganda is the prohibitive cost that has come with the unbridled privatization and monopolization of the process. From conceptualization in 2007 to contracting in 2015, the Ministry of Works and Transport decided to not only privatize but create a private monopoly to inspect motor vehicles and motor cycles through deploying their own private capital, charging motorists for inspection services and recouping their investment with profit. The April 2007 feasibility report by Lea International states on Page 118 that the inspection fees must be sufficient to allow commercially viable test centre operations. Paragraph 3.1.2 of the Conditions of the Contract signed between the Government of Uganda and SGS on 17<sup>th</sup> March 2015 provides one of the rights and obligations of the contractor as charging fees for each type of inspection and such fees shall be adjusted whenever the Consumer Price Index changes more than 3.0 points. While increments in consumer price indices imply a rise in the cost of living, the conditions of life of Ugandan motorists will be worsened by attendant increments in the cost of motor vehicle inspection.

Here-in-after is an excerpt of the charges for motor vehicle inspection

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Classification of Motor Vehicles	Group of Motor Vehicles	Uganda Shillings (VAT inclusive)
Motor cycles	Motor cycles	54,752
Motor cars and dual purpose vehicles excluding light goods vehicles	Car and dual purpose vehicles	110,212
Light omni buses	Passenger vehicles of more than 7 passengers not exceeding 20 passengers	122,021
Medium omnibuses	Passenger vehicles of more than 20 passengers not exceeding 60 Passengers	59,000
Heavy omnibuses	Passenger vehicles of more than 60 passengers	944
Light goods vehicles	Goods vehicles of less than 3.5 tons	110,212
Medium Goods vehicles	Goods vehicle of 3.5 tons and less than 10 tons	147,500
Heavy Goods Vehicles	Goods vehicle of more than 10 tons	59,000
Trailers and semi-trailers	Trailer of two axles	19,706
	Each extra axle on a trailer	944

**Subsequent fees payable as a percentage of initial inspection fee**

Service required	Percentage
Re-inspections within 30 days after initial failure without use of lane	Free 0%
Re-inspections within 30 days after initial failure with use of lane	50%
Re-inspections after 30 days of initial failure	100%
Payment for duplicate certificate of fitness	50%
Payment of appeal against results of inspection	150%
Inspection after accident/crash and repairs	100%
Inspection required by Police Officer for a vehicle without	50%



## **5.2 TOR 2: INVESTIGATING THE PROCESS OF PROCUREMENT OF THE CONTRACTOR FOR THE MANDATORY INSPECTION OF VEHICLES**

The Committee examined the chronology of the process of procuring a service provider for the mandatory inspection of motor vehicles, adherence to the PPDA Act and the regulations there-under, the method of procurement used, the observance of ethical standards, or the lack of it during the procurement process, the PPDA report on the administrative review process as a result of the application for administrative review by ESP-one of the bidders, submissions by PPDA, MOWT, Uganda Motor Industry Association and SGS Société Générale de Surveillance SA.

The Committee found out that between initiation of the procurement process in February 2008 and signing of the contract in March 2015, there were 4 contracts committees and this procurement lasted 8 years.

### **5.2.1 Chronology of the procurement process**

An examination of the chronology of the procurement of SGS as a service provider for the mandatory inspection of motor vehicles reveals that the procurement was initiated on 7<sup>th</sup> February 2008 and concluded on 17<sup>th</sup> March 2015 with the signing of the contract. (*Annex 7*)

### **5.2.2 Use of the wrong bidding documents for the initial procurement of 2008**

The first tendering process initiated on 7<sup>th</sup> February 2008 was terminated by the Contracts Committee on the advice of PPDA on 16<sup>th</sup> January 2009 due to the use of the wrong procurement method namely pre-qualification/short listing of providers instead of open/restricted international bidding; and the lack of proof of access to credit by some of the prequalified firms.

The termination of the initial tendering process was premised on the advice of PPDA in a letter dated 5<sup>th</sup> January 2009 which was in response to a letter from PS MOWT dated 15<sup>th</sup> December 2008 on the short listing/prequalification of motor vehicle inspection service providers.

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While this termination was a corrective intervention, the fact that for about a year the MOWT was conducting a tendering process premised on a flawed procurement method is an indictment of the then head of the contracts committee and Commissioner Quality Management, MOWT- Eng. Sebuga Kimeze and contracts committee members namely; Eng. Karuma Kagyina, Eng. Justine Ongom, Ms. Patience Kabije and Eng. Robert Rwanga.

### **5.2.3 Unethical practices in the procurement process**

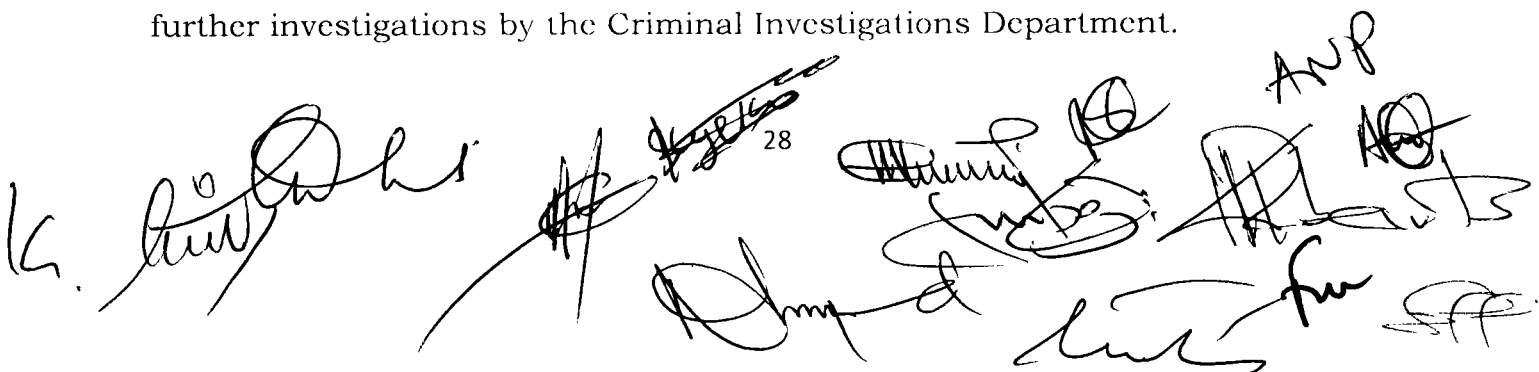
#### **Wrongful access to procurement information**

On the 1<sup>st</sup> November 2010, a hearing was convened by PPDA to consider a 7th October 2010 application by ESP for administrative review.

During this hearing, a litany of accusations of breaches of procurement ethics emerged. For instance, when ESP requested for the detailed Evaluation Report they were availed a complete procurement file, which they studied. This was a total breach of the principle of confidentiality for a Bidder to be availed detailed information (including the competitors information) on an ongoing procurement. The then HPDU- Mr. Ayo Denis, confirmed having availed ESP, the procurement file for prior perusal when the firm officially requested for it. This was done prior to contract award. The Contracts Committee of the MOWT indicated at the hearing that they were not aware that the HPDU had availed the procurement file to ESP.

The PPDA report of November 2010 on the administrative review application by ESP noted the availability of confidential information to SGS by the MOWT during the evaluation process, substituting an expired ISO 9001:2000 certificate issued by ESP with a valid one and including a document from the State of Ohio Index No: EPA017, Contract Number: CSP900010 in the bid of ESP after bid closing since this was not among the documents submitted to prove evidence of experience in the original ESP bid. These actions require further investigations by the Criminal Investigations Department.

28

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### **Possible connivance between SGS Staff and MOWT staff**

There were allegations that a one Mr. Ferdinand Bitanihirwe, a former Country Manager at SGS was in collusion with Eng. Dennis Sabiti of MOWT and that he had sent him an email proposing that for any companies to qualify, they should have operated in at least three continents and must have at least capital investments worth 12 million Euros (Shs. 38.3 billion) and operation for vehicle inspection service in three continents. A Daily Monitor Newspaper story of 1st November 2010 on the same, stated that Eng. Dennis Sabiti confirmed receipt of the email but said that the information from Mr. Ferdinand Bitanihirwe was unsolicited and was not used in the bid document. PPDA during the administrative review hearings noted that indeed a similar requirement did appear in the bidding document as contained under Appendix 3, 4.1 (vi), Management of Mandatory Motor Vehicle Inspection for Roadworthiness where the requirement for Annual sales revenue is: (minimum United States Dollar twelve million (US\$ 12,000,000).

It is noteworthy that Eng. Sabiti Denis was the Chairperson of the fourth contracts Committee that re-instated the award of the contract to SGS after the high court ruling of 22<sup>nd</sup> June 2012.

Eng. Sabiti Denis while appearing before the Committee during this inquiry admitted that indeed he received an e-mail from a one Mr. Ferdinand Bitanihirwe. He however added that this particular e-mail was the work of an unscrupulous individual who had hacked into his mailbox. He however confessed to knowing Mr. Ferdinand Bitanihirwe whom he played the game of chess with as a fellow student at St. Mary's College Kisubi and later as an alumnus of Makerere University.

The Committee notes that Hon. Eng. Sabiti's response to the Committee is in sharp contrast with his 22<sup>nd</sup> November 2010 response to the same allegations to the Permanent Secretary MOWT where in he categorically stated that he did not at all know Mr. Ferdinand Bitanihirwe.

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The Committee notes that while the PPDA based on some of these ethical considerations to recommend termination of the tendering process that had chosen SGS as the best evaluated bidder, the failure of PPDA during the administrative review hearings to grant Eng. Sabiti Denis and SGS an opportunity to be heard on the allegations leveled against him was a basis for a civil suit by SGS and Eng. Sabiti.

The Committee observed that the relationship between SGS and Eng. Sabiiti Denis culminated into his engagement by SGS as a consultant in July 2015. The contract between Eng. Sabiiti Denis and SGS was shrouded with secrecy to the extent that Article VII of the contract provides for the non-disclosure of not just the terms of the contract but the very existence of the contract too.

services (eg. Drivers' licenses, vehicle registration, second hand car imports,

vehicle homologation, axle load control) in Uganda and other technical assistance as required by SGS .

The Committee notes that the intention of concealment of the existence of a relationship between Eng. Sabiiti Denis and SGS smacks of possibility of connivance prior to contract award and the attendant promise of reward upon contract signing.

The Committee further notes that contrary to Section 93 (1) and the fifth schedule of the PPDA Act, the latter of which bars employees from any business arrangement that might prevent the effective operation of fair competition or accept business gifts from current or potential government suppliers or any business hospitality that may be viewed as influence peddling; the Committee ascertained that a one Mr. Amanyire Ronald, one employees of MOWT partook of an all expense paid trip to South Africa courtesy of Workshop Electronics Ltd-one of the bidders who is the current supplier of the mobile vehicle testing equipment for SGS .

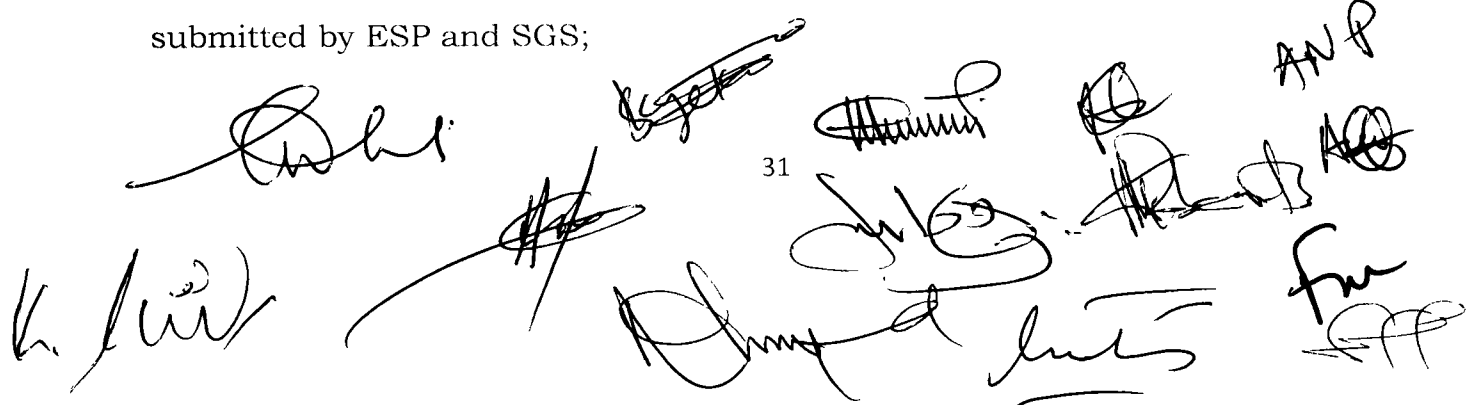
The gyst of the allegations of ethical breaches on the side of SGS and ESP and some officials of the MOWT including Eng. Sabiiti Denis remained unresolved.

#### **5.2.4 Unusual congruence between the prices quoted by SGS and the MOWT reserve price**

A review of the quotations for the cost of inspection contained in the financial proposals of the 2 main contenders for the contract for the provision of mandatory vehicle inspection services reveals an unusual congruence between the prices quoted by SGS and the reserve price of the MOWT.

Considering the allegations of unethical conduct that culminated into the applications for administrative review by both contenders at varying stages of the procurement process, the possibility of collusion cannot be ruled out.

Below is a presentation of the cost quotations for vehicle inspection as submitted by ESP and SGS;



NO.	Motor Vehicle Type	MOWT Ceiling	ESP's Price	SGS 's Price
1.	Motor Cycle	28,000=	25,200=	28,000=
2.	Car and dual purpose vehicle	56,000=	50,400=	56,000=
3.	Passenger of more than 7 passengers and not exceeding 20 passengers	62,000=	55,800=	62,000=
4.	Passenger vehicle of more than 20 passengers not exceeding 60 passengers	75,000=	67,500=	30,000=
5.	Passenger vehicle of more than 60 passengers	84,000=	75,600=	500=
6.	Goods vehicle of less than 3.5 tons	56,000=	50,400=	56,000=
7.	Good vehicle of 3.5 tons and less than 10 tons	75,000=	67,500=	75,000=
8.	Goods vehicle of more than 10 tons	84,000=	75,600=	30,000=
9.	Trailer of 2 axles	30,000=	27,000=	10,000=
10.	Each extra axle on a trailer	10,000=	9,000=	500=

It is evident from the above table that the rates for the MOWT ceiling and the cost quotations from SGS were unusually the same. This points to the possibility of unethical practices in the procurement process.

#### 5.2.5 Organizational structures of SGS in the contract implementation phase

The Committee notes that upon signing the contract with the Government of Uganda, Societe Generale de Surveillance, S.A proceeded to register 2 companies for implementation purposes. These were SGS Automotive Uganda Limited and UGMVIS Property Holdings Co. Ltd. It is noteworthy though that earlier in 1990 a company named SGS Uganda Ltd had been incorporated in Uganda.

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A review of the ownership of SGS Automotive Uganda Limited, which was incorporated on 12th August 2015 as a special purpose vehicle for vehicle inspection services, reveals that it is a 100% owned by SGS SA with the directors listed as Albert Stockel, Samuel Kojo Gyan, Stephen Rossiter and Fabrice Jean Egloff.

UGMVIS Property Holdings Co. Limited was incorporated on 5<sup>th</sup> November 2015 as a special purpose vehicle for land acquisition for the vehicle inspection services. Its listed owners are SGS SA with 49 shares and a one Swithin J. Munyantwali with 51 shares.

*[Handwritten signatures and initials]*

33

### **5.3 TOR 3: EXAMINATION OF THE TERMS AND CONDITIONS OF THE CONTRACT**

The Committee reviewed the contract between the Government of Uganda and SGS Société Générale de Surveillance SA, met with relevant officials from the Ministry of Works and Transport and other officials who were involved in the contracting process namely Eng. Sabiiti Denis and Mr. Amanyire Ronald, the Solicitor General and PPDA.

The contract was signed on 17<sup>th</sup> March 2017 between the Republic of Uganda represented by the Ministry of Works and Transport and SGS Société Générale de Surveillance SA. The signatories to the contract were the then Permanent Secretary Ministry of Works and Transport- Mr. Alex Bwangamoi Okello, Eng. Sabiiti Denis, the then Commissioner Transport Regulation at the MOWT, Mr. Thomas Klukas, Kirk Gyan and Nicolas Gregorie representing SGS Société Générale de Surveillance SA.

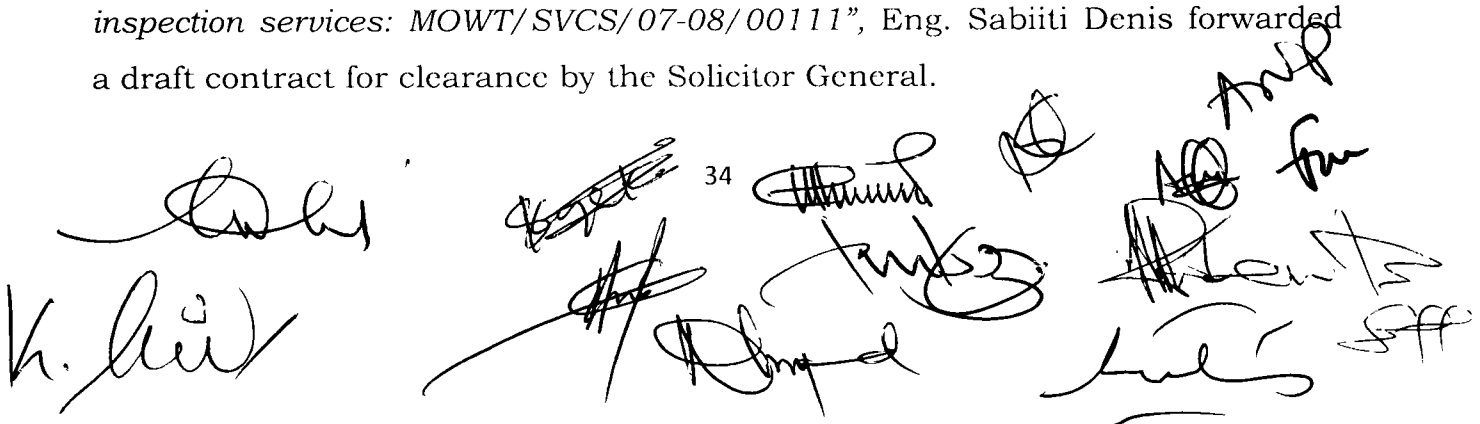
The supervising entity is the MoWT or any other government entity appointed by the MOWT for purposes of supervising the performance of the contract.

#### **5.3.1 Compliance with Article 119 (4) (b) and 119 (5) of the 1995 Constitution of the Republic of Uganda**

The Committee notes that while Article 119 (4) (b) of the constitution of the Republic of Uganda, 1995, provides one of the functions of the Attorney General as drawing and perusing agreements, contracts, treaties, conventions and documents by whatever name called, to which the Government is a party or in respect of which the Government has an interest, the Solicitor General during his interface with the Committee on 9<sup>th</sup> August 2017 stated that his office was not involved in drawing the contract between the Government of Uganda and SGS Société Générale de Surveillance SA.

A letter dated 2<sup>nd</sup> March 2015 addressed to the Solicitor General under the reference “request for approval of contract for provision of motor vehicle inspection services: MOWT/SVCS/07-08/00111”, Eng. Sabiiti Denis forwarded a draft contract for clearance by the Solicitor General.

34

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A one Bisereko Kyomuhendo responded to the aforementioned letter on 6<sup>th</sup> March 2015 clearing the draft contract with M/S SGS for provision of motor vehicle inspection services in accordance with the price schedule in Appendix 5 and the payment of the agreed concession fee to Government. In this clearance, there was no evidence that the Office of the Attorney General addressed its mind to socio-economic implications of its inherent costs and conditions. Indeed at his appearance before the Committee, the Solicitor General asserted that their clearance of the contract was only premised on its consistency with the law and not socio-economic considerations.

The failure of the Attorney General to fulfill his function as per Article 119(4) (b) of the 1995 constitution would render this contract null and void.

On the other hand, the Committee notes that by clearing the Contract, the Attorney General conformed to the subsequent Article 119 (5) which provides that subject to the provisions of this Constitution, no agreement, contract, treaty, convention or document by whatever name called, to which the Government is a party or in respect of which the Government has an interest, shall be concluded without legal advice from the Attorney General, except in such cases and subject to such conditions as Parliament may by law prescribe.

It's the Committee's opinion that by conforming to Article 119 (5), the contract remains valid.

### **5.3.2 Performance indicators of the contract**

Clause 3.4.4 of the conditions of contract provides for automatic renewal for another 5-year period upon satisfactory performance in accordance with the agreed key performance indicators.

The performance indicators for the contract are; financial, operational, test equipment, premises and customer satisfaction.

However the Committee found out that while the prudent monitoring and evaluation of the contract required the establishment of a supervisory

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committee by the Accounting Officer of the MOWT, this had not happened over 2 years into the contract. Instead the MOWT was relying on an adhoc contracts management team. A 25<sup>th</sup> July 2017 submission by the MOWT states that effort was underway by the Accounting Officer to set up a supervisory team.

The Committee observed that because of such lapses, some Members of the Contracts Management Team were informally visiting vehicle inspection sites without documentation of any attendant monitoring activity. This was corroborated by SGS during their appearance before the Committee on 25<sup>th</sup> August 2017.

This implies that as it stands, the monitoring and evaluation of the performance of the contract for mandatory inspection of motor vehicles is not only weak but potentially unable to adequately determine the level of performance of SGS Société Générale de Surveillance SA. This implies that SGS may be granted automatic renewal of contract after the 5-year duration inspite of potential performance lapses.

***This clause should be revisited with view of cancellation of the automatic renewal clause so as to guard against any potential losses to the country in the event of failure by SGS to meet the agreed upon performance targets.***

### **5.3.3 Monopoly clause**

Clause 3.4.4 of the contract requires the MOWT as the supervising entity to provide adequate and proper protection of the exclusive rights of SGS for the concession period and enlist the assistance of the traffic police and URA to enforce mandatory motor vehicle inspection regulations to support commercially viable test station operations by enforcing the mandatory presentation of motor vehicles for inspection.

The creation of a monopoly was a carefully choreographed strategy right from inception with the deliberate exclusion of local garages some of whom not only

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have the capacity and the ability to competitively and satisfactorily conduct vehicle inspection but have been doing it impressively for a considerable period of time.

While the Top Management Team (TMT) of the MOWT on Tuesday 11<sup>th</sup> September 2007 resolved that 2 Service providers be procured to operate throughout the country, this was later dropped by the time the contract for the mandatory inspection of vehicles was drawn, not by the Attorney General as required by Article 119 (4) (b) of the 1995 Constitution, but by Eng. Sabiiti Denis.

While the argument was that the requisite capital for the project required a monopoly arrangement to guarantee timely recouping of the investment, such a private monopoly often times leads to the exploitation of consumers leading to dissatisfied customers, higher prices and potential inferior goods and services.

Already the monopoly arrangement in Uganda's vehicle inspection intervention has been rife with accusations of pricy charges and accusations from some dealerships of leading vehicle brands of inferior testing equipment that is incapable of adequately testing contemporary models with advanced specifications such as self-adjusting headlamps.

A liberalized vehicle-testing environment would imply a wider spread of service providers, lesser charges due to competition and better services in a bid to win over the market share and a deeper and wider multiplier effect.

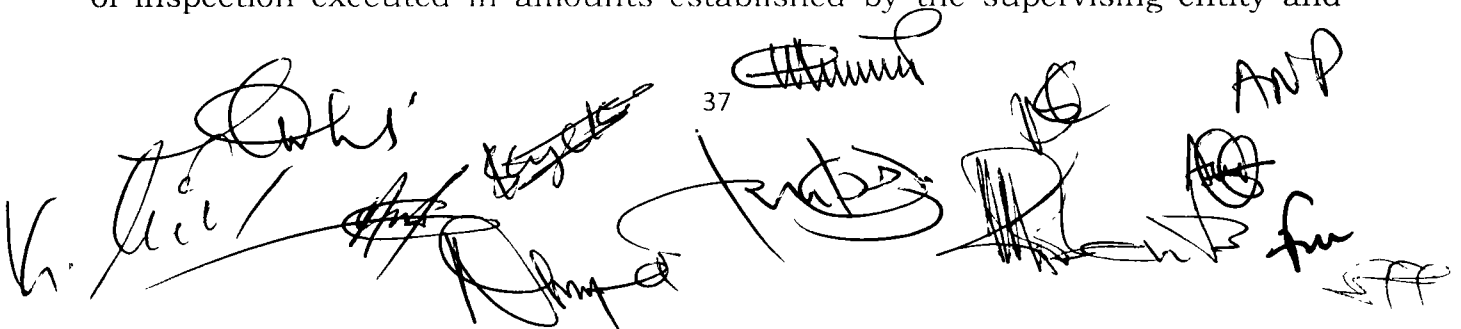
***The Committee reiterates that the inspection rates should be revised with a view of rationalizing them and making them affordable.***

#### **5.3.4 Breaches of the contract**

##### **5.3.4.1 Inspection fees**

Clause 3.1.2 of the contract on rights and obligations of the parties bestows upon the private contractor (SGS) the right to levy inspection fees for each type of inspection executed in amounts established by the supervising entity and

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specified in the price schedule of the financial proposal. The prices quoted by the bidder shall be adjusted on the date of commencement if the Consumer Price Index on the date of commencement has changed by more than 3.0 points. This implies that the current inspection costs may rise further with increases in the CPI and since CPIs are reflective of the cost of living, as the cost of living rises, so will the cost of vehicle inspection-potentially worsening the conditions of life of the masses.

The Committee notes the audible public outcry regarding the cost of inspection and its ramifications. As is common business practice, especially among public commuters, this cost will be transferred to the public and with it, people's disposable income will be eroded.

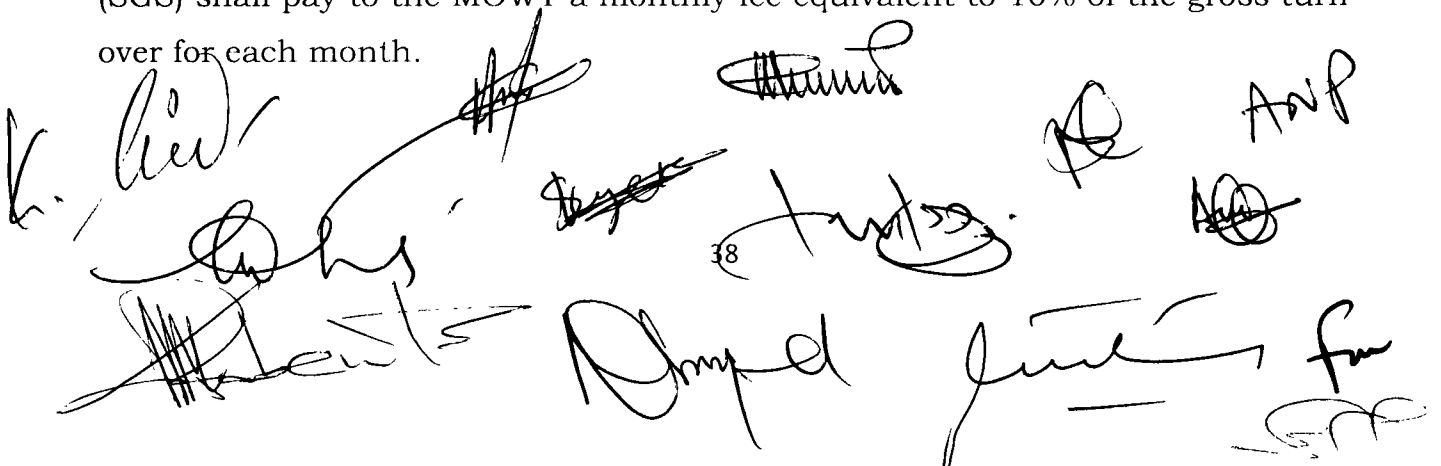
While Clause 3.1.3 of the conditions of contract on the rights and obligations of the parties provides that the variations in the cost of inspection will be a product of the ratification of the MOWT, the Committee notes that when the service provider applied for the adjustment of unit prices for the provision of motor vehicle inspection services on 12<sup>th</sup> April 2016 (*Annex 6*), the MOWT wholly embraced the unit pricing without any consideration of the effect of this pricing and to date those are the ruling charges of inspection by SGS.

In conformity to this, the MOWT gazetted the same prices in Statutory Instrument No. 51 of 2017.

***The Committee reiterates its earlier recommendation that MOWT significantly revises the pricing of mandatory vehicle inspection with a view of making it affordable and equitable.***

#### **5.3.4.2 Breach of the timelines for payment of concession fees**

Clause 4.1 of the conditions of the contract provides that the service provider (SGS) shall pay to the MOWT a monthly fee equivalent to 10% of the gross turnover for each month.

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Clause 4.6 of the contract provides that the provider shall pay to the MOWT interest per day on any part of the concession fee to the MOWT that is due but is outstanding as unpaid from time to time. The payment shall relate to the period from (and including), the date of default (being the first day after the due date of the monthly payment) until the date the payment is actually made. The rate of interest per annum shall be the 364-day Bank of Uganda Treasury Bill (discounting) rate plus 4%.

An analysis of the statement of concession fees communicated by the MOWT for the period November 2016- June 2017 reveals the following;

<b>Month</b>	<b>Concession Fee in UGX</b>	<b>VAT in UGX</b>
Nov-16	440,605	793,089
Dec-16	3,946,174	7,103,112
Jan-17	8,283,409	14,910,136
Feb-17	13,468,967	24,244,141
Mar-17	22,122,898	39,821,216
Apr-17	24,856,903	44,742,426
May-17	50,357,889	90,644,200
Jun-17	90,549,840	162,989,712
	<b>214,026,685</b>	<b>385,248,032</b>

*Source: MOWT submission to the Physical infrastructure Committee 25<sup>th</sup> July 2017*

A contrast of the figures submitted by the MOWT as concession fees paid for the same period (November 2016- May 2017) and the actual payment receipts submitted by SGS tally.

More importantly, the Committee notes that while Clause 4.2 of the conditions of the contract provides that concession fees shall be paid monthly in arrears, with or without demand, within 15 (fifteen) days next after the end of the month to which it relates, official records from SGS indicate breaches of this

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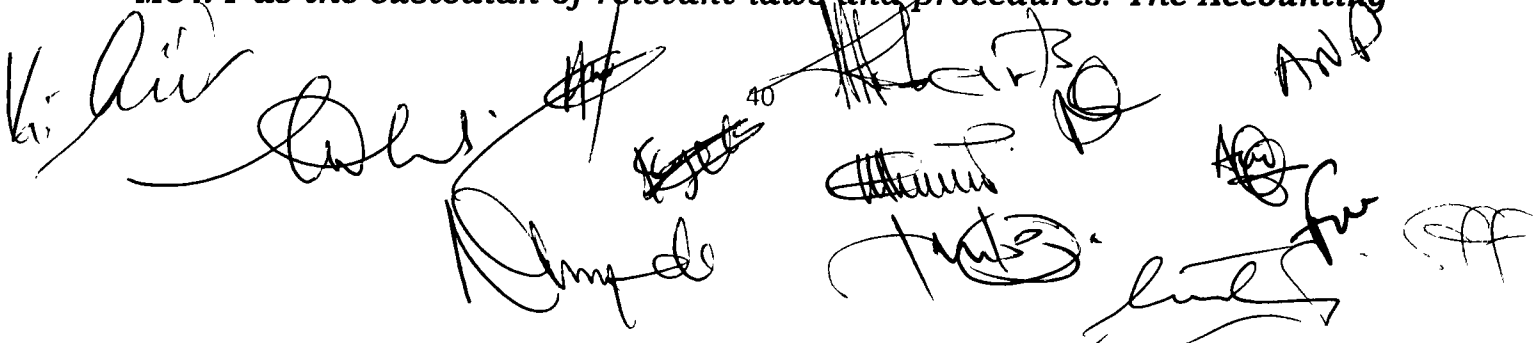
provision. As indicated on the table above, the concession fees for the period November 2016 – January 2017 was paid on the 3<sup>rd</sup> July 2017 implying an 8-months delay in paying the concession fees for the month of November alone. The delayed payment of concession fees for February, March, April and May violated Clause 4.2 of the contract too.

In relation to the late payment of concession fees as indicated above, it would have been expected that the supervising entity (MOWT) would have sanctioned SGS and pursued the payment of interest as revenue to the Government of Uganda. However this was not done.

In addition, while UGX 214,026,685 in 8 months may seem a fair figure, it is the considered view of the Committee that concession fees of 10% of the monthly gross collections is paltry especially considering the cost in terms of human, financial, logistical and time that the implementation of the contract requires of various government entities including but not limited to the Uganda Police Force, Uganda Revenue Authority, NEMA and UNBS.

In terms of payment procedure, at the time of investigation the Committee noted that then existing system of SGS paying concession fees directly to the MOWT was a contravention of section 29 (1) of the Public Finance Management Act 2015 which provides that revenue shall not be collected or received by a vote, state enterprise or public corporation, except where the vote, state enterprise or public corporation is authorized by an Act of Parliament to collect or receive revenue. A review of the Ministerial Policy Statement of the MOWT for the FY 2016/17 and 2017/18 does not disclose the monies received from SGS, which as at June 2017 stood at UGX 214,026,685.

***Considering that section 3.4.1 of the contract bestows the responsibility of harmonization of inherent procedures with existing laws to the MOWT, this violation of the Public Finance Management Act is an indictment of the compliance function of the Accounting Officer of the MOWT as the custodian of relevant laws and procedures. The Accounting***

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***Officer of the MOWT should immediately streamline the revenue payment procedure by SGS to ensure compliance to the PFMA 2015 and the contract.***

#### **5.3.4.3 Commencement date of inspection**

Clause 7.1 of the conditions of contract stipulates that the provider shall commence the provision of the motor vehicle inspection services (hereinafter called the Date of Commencement) not later than 18 (eighteen) months from the date of contract signature. Considering that the contract was signed on 17<sup>th</sup> March 2015, mandatory vehicle inspection should have commenced by the 17<sup>th</sup> September 2016. The logical preconditions for inspection being the readiness of the agreed upon 7 fixed inspection sites namely; Kawanda, Namanve, Nabbingo, Namulanda, Mbale, Gulu and Mbarara along with the three mobile testing equipment

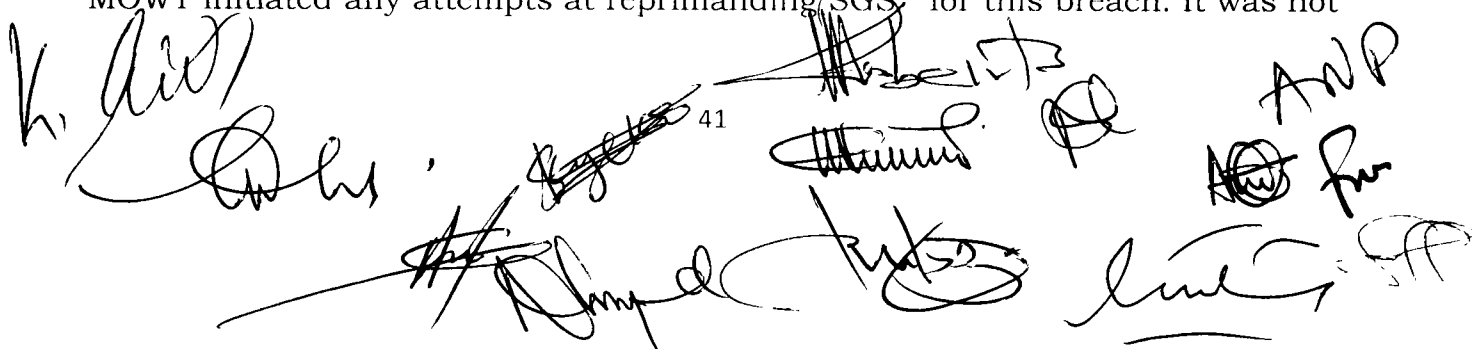
However the Committee ascertained that inspection began after 20 months on 28<sup>th</sup> November 2016 moreover at only 1 site- Kawanda.

Whereas the contractor argued that commencement of inspection was not pegged to the readiness of the agreed upon sites but rather actual beginning of inspecting vehicles and aware that indeed the contract is silent about the definition of commencement of inspection; actual commencement of inspection should have been pegged to the readiness of the agreed upon inspection sites.

Going by this therefore, with only 3 of the 7 fixed vehicle inspection sites operational, as at the time of compiling this report, SGS would still not be ready for the commencement of inspection 2 years after signing the contract. This points to significant capacity gaps on the part of SGS.

The Committee notes that the failure of SGS to commence inspection within 18 months constituted a breach of Clause 7.1 of the Contract.

In spite of this breach, there was no evidence that the supervising entity- the MOWT initiated any attempts at reprimanding SGS for this breach. It was not



until Thursday 1<sup>st</sup> December 2016 that a one Benon M. Kajuna wrote retrospectively, on behalf of the Permanent Secretary, extending the commencement date of motor vehicle inspection from 17<sup>th</sup> September 2016 to 28<sup>th</sup> November 2016. It is noteworthy that SGS had commenced inspection 2 days earlier on 28<sup>th</sup> November 2017. This letter can therefore be construed at best as a late attempt to insulate SGS from a severe breach of contract relating to commencement of inspection. The same letter asked SGS to collect its performance security and yet barely 10% of the required structures for inspection was ready, thereby predisposing the taxpayer to loss.

At this point, the MOWT should have evoked Clause 7.7 of the contract, which grants the MOWT unilateral powers to terminate the contract due to breaches of one of the conditions of the contract. But this was not done and it points to complicity in breaching the contract.

### **Discharge of Performance security**

The Committee further notes that while bid security may be returned upon completion of tendering process, performance security needed to be retained till after the completion of the contract duration. This is crucial for the insulation of the government from potential loss accruing to the failure of the contractor to meet the set performance targets of the contract. Clause 11.1 of the contract clearly spells this out.

However the aforementioned clause is contradicted by clause 11.4, which states that the performance security shall be discharged by the procuring and disposing entity, and returned to the provider upon commencement of motor vehicle inspection services.

This contradiction in the contract implies that the taxpayer is not indemnified in the event that SGS fails in meeting its contractual obligations thereby predisposing the country to loss.

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#### **5.3.4.4 Inadequate intra-governmental coordination in implementation of the contract**

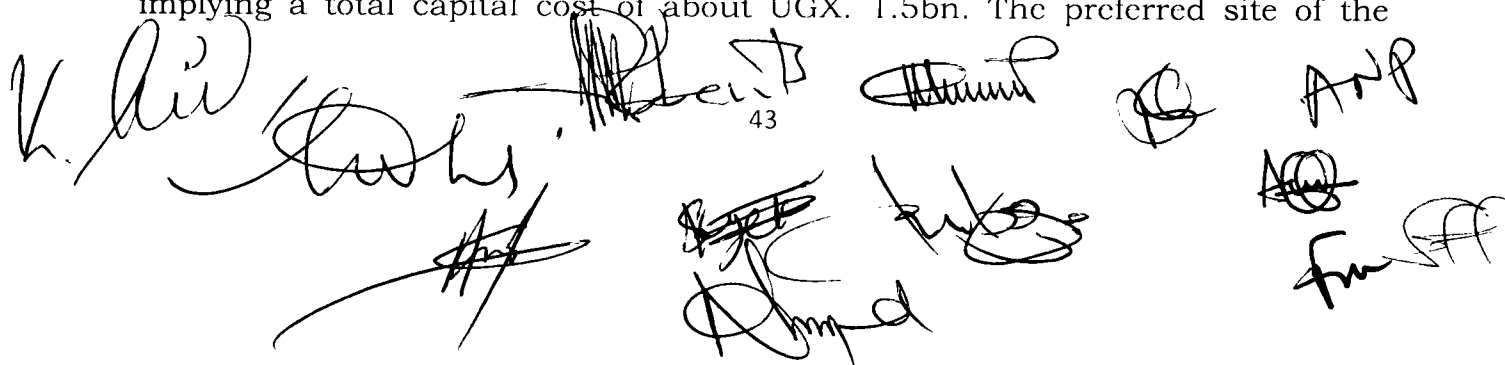
The contract establishes an operational arrangement that requires multi-stakeholder involvement. For instance reliance on the Uganda Police for enforcement, Uganda Revenue Authority for information on vehicle registration and ownership details, Uganda National Bureau of Standards (UNBS) for vehicle inspection standards and metrology related calibration and the National Environment Management Authority (NEMA) for air quality standards and exhaust emissions testing. However interfaces with the afore-listed entities revealed inadequate involvement at best. UNBS was for instance relegated to observer status in the installation and calibration of motor vehicle testing equipment while Uganda Police, inspite of it being the domicile for the inspectorate of vehicles, has not been exhaustively involved beyond some of its officials taking part in due diligence and pre-shipment inspection visits.

The Committee notes that for the case of Uganda Police, the contract places additional responsibility of enforcement that exerts an extra financial, human, technical and logistical resource strain and yet UPF has an inelastic financial resource allocation.

#### **5.3.4.5 The absence of a master test centre**

For quality assurance of the process of inspection of motor vehicles, the MoWT was expected to have a fully equipped master test centre and atleast one mobile test unit. The rationale for this facility is to provide an avenue for arbitration and adjudication in cases of disputed test or allegations of fraudulent or ineffective operation of concession test stations and also serve as a center for accident investigations.

At its interface with the MOWT, the Committee was informed that the equipment required for one fixed and one mobile test centre and each unit being capable of testing all types of vehicles is estimated to cost USD 275,000 while the cost of installation and civil works is estimated at atleast UGX 700m, implying a total capital cost of about UGX. 1.5bn. The preferred site of the



43

master test centre was initially a 0.75 hectare piece of land belonging to the MOWT located at 7<sup>th</sup> Street Industrial area in Kampala. However a combination of a lag in decision-making and budgetary constraints has impeded establishment of this master test center, which according to available information was supposed to have been established prior to the commencement of implementation of the contract.

It is noteworthy that without a master test centre, effective oversight by MOWT over the vehicle inspection exercise will remain a dream thereby exposing clients to the whims of the private contractor. For instance with lapses in calibration of vehicle testing equipment at the SGS inspection sites, test results may be flawed and the only way of determining this is through a master test centre. As it stands, there is no mechanism of verification of the fidelity of vehicle inspection by SGS. Matters are not helped by the monopoly that SGS enjoys as there isn't any other provider that would have counter-checked the results of inspection by SGS.

### **5.3.5 Consequences of termination of the contract**

Clause 7.8.5 of the conditions of contract states that in the event that the contract is terminated by the Government of Uganda or the MoWT for any cause, except as provided in this contract, before the expiry of the 5 year term or any extension or renewal of such term, the MOWT shall pay to the provider at law or in equity in respect of the termination of this contract seventy five percentum (75%) of the value of total investment made by the provider or one hundred percentum (100%) of the expected income of the provider from the services, whichever is greater, being the cost of demobilization.

The Committee notes with concern that while it may be considered prudent business to insulate private owners of capital from possible loss in doing business with government using such contractual clauses, there has emerged an unscrupulous habit among public officials of saddling the country with the

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risk of exorbitant costs even when some of the clauses of such contracts are potentially bogus.

In this particular case, available information shows that the contractor within a spell of barely 7 months had purportedly invested UGX 51.2billion- a figure that may be hard to verify considering inherent lapses in contract supervision.

The end result is that in the event of termination, the already over-burdened tax payer will have to meet a cost which may be potentially inflated.

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#### **5.4 TOR 4: APPRAISE THE PERFORMANCE TO-DATE OF THE CONTRACT WITH SGS**

In the evaluation of the performance to-date of the contract, the Committee obtained and assessed the agreed performance indicators as a benchmark to measure the extent to which current output compares with the set indicators.

The Committee also interrogated whether there was a supervisory committee in place to spearhead the monitoring and evaluation of the intervention. To this end, the committee obtained copies of the monitoring and supervision reports from the MOWT and records of supervision and evaluation meetings between SGS Automotive (U) Ltd and MOWT. The Committee, during its visit to the vehicle inspection sites also sought to establish the frequency of on-site monitoring visits by the supervisory committee if any.

A review of the performance indicators (*Annex 8*) for the contract revealed the existence of 37 key indicators the bulk of which can only be adequately measured when there is full-scale inspection of vehicles. As it exists today, only 3 of the 7 envisaged fixed sites are operational implying the intervention is immeasurably at its infant stages.

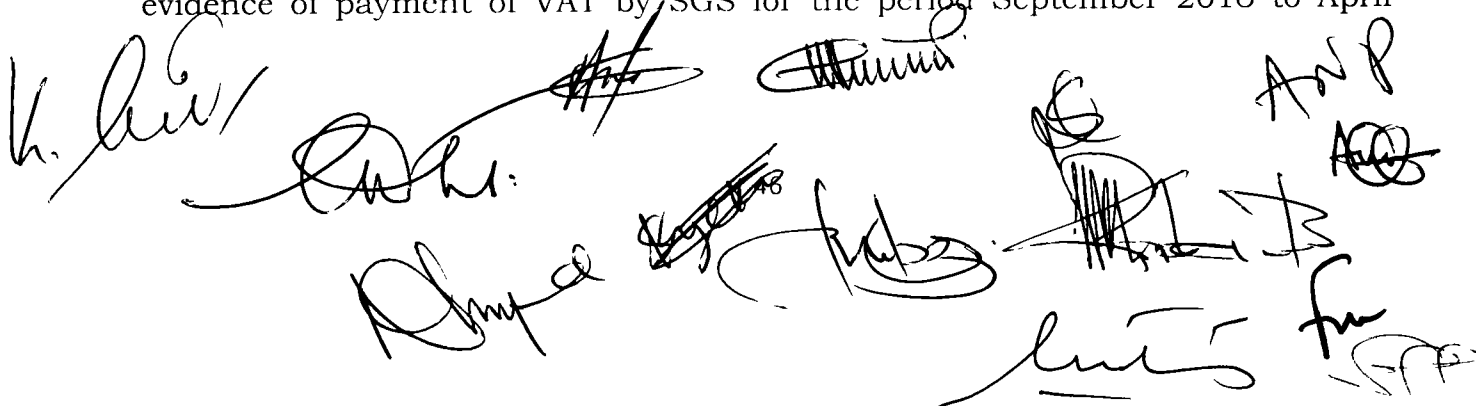
##### **5.4.1 Payment of concession fees**

While the contract stipulates that the payment of concession fees by the service provider to the MOWT shall be within 15 days after the end of the preceding month, an analysis of the payment schedule of concession fees indicates that this provision has been severely breached with as much as 8 months delays.

The Committee reiterates its earlier recommendation that the contract management committee be indicted for inaction and complicity in causing financial loss to the Government of Uganda.

##### **5.4.2 Remittance of all applicable taxes**

The Committee was presented with e-acknowledgement receipts from URA as evidence of payment of VAT by SGS for the period September 2016 to April

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2017 indicating that by then taxes worth UGX. 114,388,898 had been paid by SGS.

The Committee notes that the tax payment records submitted by SGS shows that the taxes were paid on 22<sup>nd</sup> and 25<sup>th</sup> August 2017 after the commencement of this inquiry.

#### **5.4.3 Audit**

While the performance indicators provide that Internal and unqualified external (OAG) financial and Value for Money Audit reports will be conducted, there is no evidence that the Auditor General had conducted any audit of the vehicle inspection exercise.

***The Committee recommends that the Auditor General audits the investments by SGS so far to establish the actual level of investments by SGS so as to avert the possible inflation of costs of investment by SGS. These audits should be institutionalized on a regular basis preferably annually.***

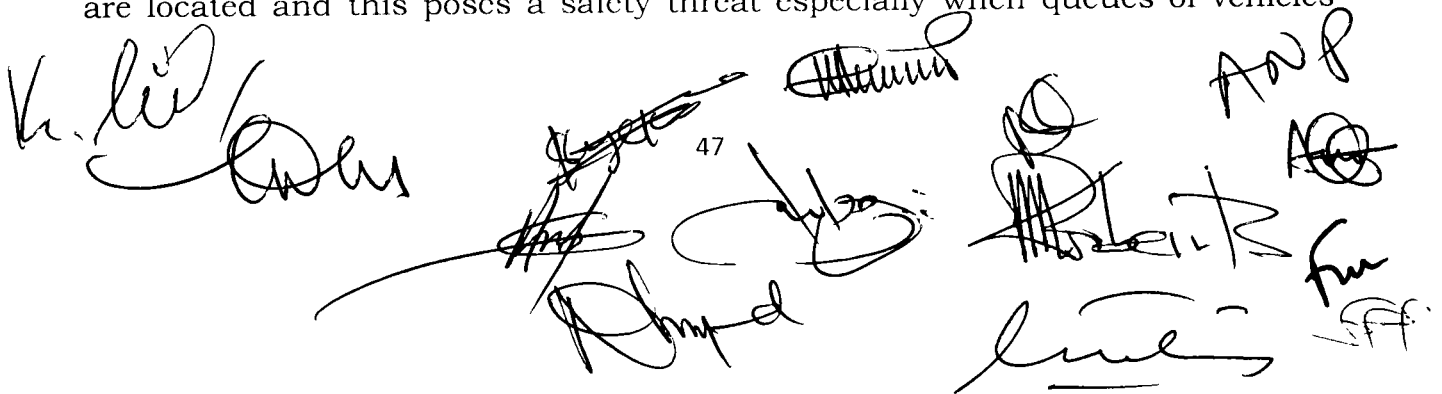
#### **5.4.4 Operational performance indicators**

A review of the operational performance indicators shows that some of them can not be exhaustively appraised at this point in time since their evaluation requires full scale implementation of vehicle inspection, which is yet to be attained. The Contractor only has 3 operational inspection sites and as at 23<sup>rd</sup> August 2017 had tested only 31,327 vehicles of the estimated 1 million vehicles in the country.

However global figures of the tests so far carried out reveals that 24,618 (79%) vehicles have passed the test while 6,709 (21%) have failed.

#### **5.4.5 Location of premises**

On the location of premises, the Committee notes that some stations such as Namanve and Namulanda are too close to the busy highways along which they are located and this poses a safety threat especially when queues of vehicles



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## **5.5 TOR 5: EXAMINATION OF ANY OTHER ISSUES INCIDENTAL TO AND PURSUANT TO THESE TORS**

### **5.5.1 Lapses in corporate governance at the MOWT**

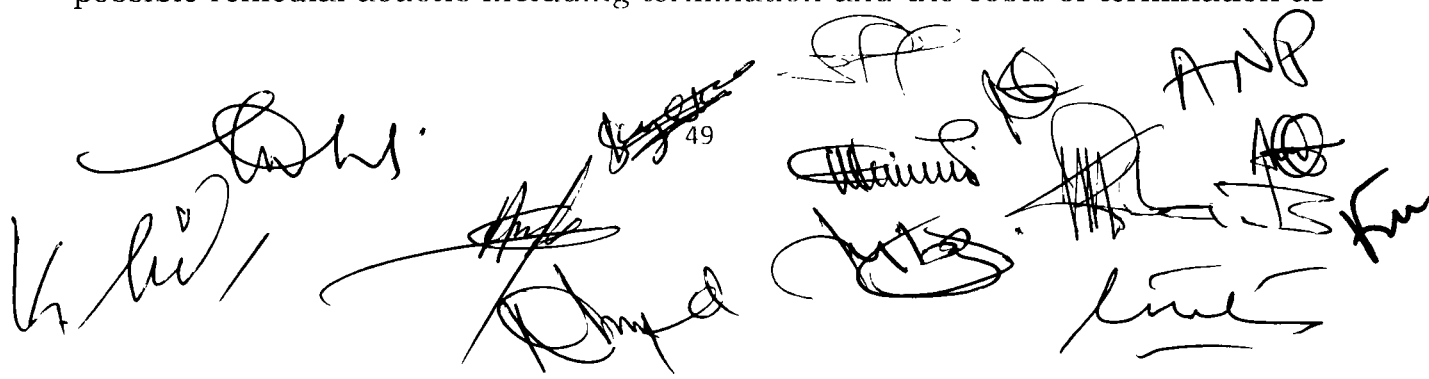
The Committee notes severe lapses in corporate governance at the MOWT characterized by ethical breaches moreover with impunity, inept records keeping especially in relation to decision-making and weak supervisory controls. The Committee for instance found out that records of proceedings of crucial meetings of the Ministry's Top Management Team (TMT) that decided for instance the re-introduction and privatization of motor vehicle inspection in 2007 and 2008 remain un-signed 9 years later. Such records cannot qualify as minutes and yet the MOWT holds onto them as a basis for decision-making.

In addition, the Committee received complaints from some officials of the MOWT about insubordination by some errant officials whose unabated unethical conduct remains un-punished. A classic case is that of officials traveling out of the country at the behest of private companies connected to the vehicle inspection exercise, as was the case of Mr. Amanyire Ronald who traveled to South Africa at the behest of Workshop Electronics Ltd- one of the suppliers of mobile vehicle testing equipment without the approval of the Accounting Officer.

There were also accusations leveled against Eng. Sabiiti Denis for concluding the contracting of SGS without recourse to the Accounting Officer especially on crucial aspects such as ratification of the terms of the contract. Though Eng. Sabiiti Denis denied any such behaviour, the very fact that such an accusation comes from his former colleagues at the MOWT is an indicator of potential indiscretions and lapses in corporate governance at the MOWT.

## **5.6 SUMMARY OF RECOMMENDATIONS**

In light of the aforementioned breaches, the Committee has explored all possible remedial actions including termination and the costs of termination as

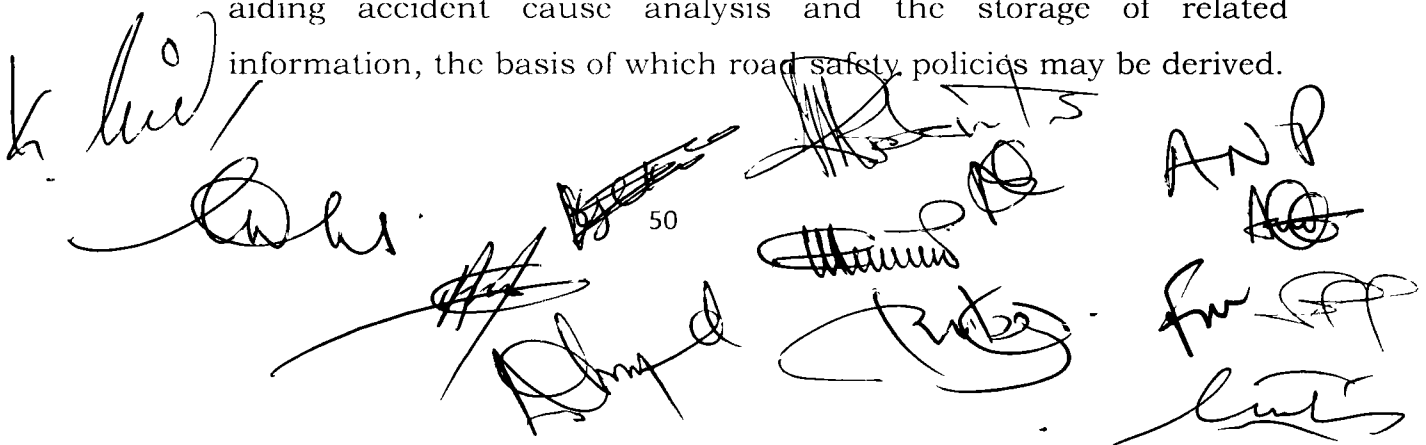


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per clause 7.8.5 of the conditions of contract and therefore recommends that the implementation of the Contract for Mandatory Inspection of motor vehicles be immediately suspended for a period of not less than 3 months to enable review and renegotiation of the contract by the MOWT.

This review and renegotiation should cover the following;

- a) Significantly slashing the cost of inspection to make it more affordable and equitable. This will enable motorists present their vehicles for inspection more regularly thereby progressively enabling the improvement of the quality of vehicles.
- b) Constitute a multi stakeholder supervisory team that includes NEMA, UNBS and Uganda Police. This will cater for the multi-dimensional nature of vehicle inspection that incorporates aspects of air quality, standards and enforcement.
- c) Institutionalize the role of the Auditor General in periodically auditing the vehicle inspection exercise. These audits should focus on aspects such as value for money, physical performance and financial performance.
- d) Streamline information sharing in a manner that includes URA, UPF, NEMA and UNBS. This will ensure that the information accruing to the vehicle inspection exercise is effectively shared with other MDAs under whose mandate, related policy matters are domiciled. This will ensure that road safety related policy actions are evidence based.
- e) Establishment of a master test centre. This will ensure that the vehicle inspection results are independently verified for accuracy and reliability.
- f) Establishment of the Crash data system. This will go a long way in aiding accident cause analysis and the storage of related information, the basis of which road safety policies may be derived.



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- g) Streamlining revenue payment procedure in conformity with the PFMA, 2015 so that the 10% concession fee is paid to the consolidated fund and not directly to the Ministry.
- h) Sensitization of the public on road safety to shape and reshape the behaviour of road users.

#### 5.7

The Committee fully supports motor vehicle inspection as a strategic tool for improving road safety and stemming road carnage. Vehicle inspection as a global best practice should be embraced wholly as the country strives to reduce the incidences of traffic accidents. In spite of some challenges identified, the Committee notes that with a concerted effort towards mitigating those challenges, encouraging regular vehicle inspection and improving the condition of motor vehicles will enable the realization of the overall objective of improving road safety in Uganda.

In addition, vehicle inspection should be augmented by other interventions notably public sensitization on road safety so as to mitigate the behavioral causes of road accidents such as; overloading, reckless driving, driving under the influence of toxic substances and non observance of traffic rules and regulations.

*K. Lwiza*

*Chs.*

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*[Signature]*

## ANNEX 4

1. Officials from the Ministry of Works and Transport
  - i) Hon. Bagiire Aggrey Henry- State Minister for Works
  - ii) Mr. Bagcya Waiswa- PS/MOWT
  - iii) Mr. Benon Kajuna- DOT/MOWT
  - iv) Mr. Katushabe Winstone- CTR& S/ MOWT
  - v) Mr. Wrukwaine Godfery- HPDU/MOWT
  - vi) Mr. Amanyire Ronald- Secretary NRSC/MOWT
  - vii) Mr. Stephen Nzogi- PIA/MOWT
  - viii) Mr. Amarni Shariff- Accountant MOWT
2. Officials from SGS Société Générale de Surveillance SA
  - i) Christophe Dubois- SGS Country Manager Uganda
  - i) Albert Stodull- SGS Kenya Managing Director
  - ii) Peter Kauma- Legal counsel SGS /K&K Advocates
3. Hon. Sabiiti Denis – Former Commissioner at the Ministry of Works and Transport and MP Rubanda West
4. Hon. Muyanja Ssenyonga Johnson- MP Mukono South and one of the Members that raised the matter in the House
5. Officials from the Uganda National Bureau of Standards
  - i) Mr. Kizito Patrick- Senior Metrologists UNBS
  - ii) Mr. Lemenga Yasin- Manager National Metrology Laboratory UNBS
  - iii) Mr. Solomon Rukundo- Metrologist National Metrology Laboratory UNBS
  - iv) Mr. Godwin Muhwezi- Principal PRO
6. Officials from the Uganda Motor Industry Association
  - i) Mr. Chris Bwanika – Kalenge Bwanika & Co. Advocates
  - ii) Mr. Joseph R. Ssemuwemba- CEO/The Motor Centre EX
  - iii) Prof. Gordon Wavamunno- Spear Motors
  - iv) Mr. Samuel John Kibuuka- Victoria Motors Ltd
  - v) Mr. Joseph Tinka- Toyota Uganda
  - vi) Mr. mahmood Omar- Toyota Uganda

- vii) Mr. Otti David- Victoria Motors
- viii) Mr. S. Kundra- Tata Uganda Ltd
- 7. Mr. Amanyire Ronald- MOWT
- 8. Officials from the National Environment Management Authority (NEMA)
  - i) Mr. Tom Okurut- ED NEMA
  - ii) Mr. Waiswa Ayazika- Director Monitoring and Compliance; NEMA
- 9. Officials from the Public Procurement and Disposal of Public Assets Authority (PPDA)
  - i) Canon Benson Turamye- PPDA/ Ag. ED
  - ii) Uthman Begara- DLI/PPDA
  - iii) Mr. Julius B. Mwesigye- PPDA
  - iv) Mr. Aloysius Byaruhanga- Ag. DPM
  - v) Mr. Moses Ojambo- DC BAS/PPDA
  - vi) Ms. Agnes Ojiambo- MIA/PPDA
  - vii) Ms. Kirabo Sylvia- SPRO/PPDA
- 10. AIGP Steven Kasiima- Director Traffic/Road Safety/Uganda Police
- 11. CP Eng. Kugonza Franklin- Inspectorate of Vehicles/Uganda Police
- 12. Officials from the Uganda National Bureau of Standards
  - i) Patricia Bagcine Ejalu- Ag. EO/DEDS
  - ii) Mr. John Paul Musimami- DED- Compliance
  - iii) Mr. Hakim Mufumbiro- Ag. MSD
  - iv) Mr. Andrew Othieno- Manager Import Inspection
- 13. Officials from the Ministry of Justice and Constitutional Affairs
  - i) Mr. Francis Atoke- SG/MOJCA
  - ii) Mr. Biscreko Kyomuhendo- CLAS/MOJCA
  - iii) Mr. Martin Mwambutsya- Ag. Director DCL/MOJCA
- 14. Mr. Andrew Karamagi- Action Aid Uganda
- 15. Mr. Charles Kizito Nsubuga- Road safety analyst

## Annex 7

- i) On 7th February 2008, Ministry of Works and Transport (MOWT) requested for Expressions of Interest (EOI) for Pre-qualification of Motor Vehicle Inspection Service Providers in the New Vision and Monitor Newspapers. The deadline for submission of bids was 20<sup>th</sup> March 2008.
- ii) On 18th March 2008, MOWT issued an addendum to all bidders in the Monitor Newspaper and the deadline for submission of bids was extended to 3<sup>rd</sup> April 2008.
- iii) On 4th April 2008, bid opening was held for the above tender and the following 17 firms submitted their bids:
  - 1. Cooper Motors Corporation (U) Ltd
  - 2. Fontana Auto Parts (U) Ltd
  - 3. Agricommodities and Finance FZE
  - 4. Motor Center E/A Ltd
  - 5. Bisons Consult International Ltd & Applus Technical Inc. & MGS Int. Limited
  - 6. BIM Auto Engineering Works
  - 7. Serefacco Consultants Ltd
  - 8. Farm Engineering Industries Ltd
  - 9. Green Boat Motor Vehicle Inspection Ltd
  - 10. Coin Limited & Dalei Group
  - 11. Tata (U) Limited
  - 12. Multiplex Limited
  - 13. Spear Motors limited & Victoria Motors Ltd
  - 14. Mamba BYGG Technical Services (U) Ltd & Scandinavian Test Lines
  - 15. Walusimbi's Garage Ltd
  - 16. City Oil (U) Ltd
  - 17. Societe Generale de Surveillance, S.A

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- iv) On 18th April 2008, M/s Great Pools E.A Limited on behalf of M/s Workshop Electronics, SA communicated to PPDA requesting for its intervention since they had submitted an electronic mail as per the Standard Bidding Document but it had not been received by MOWT.
- v) On 12<sup>th</sup> June 2008, the Contracts Committee approved the evaluation report.
- vi) On 25th June 2008, MOWT displayed the Best Evaluated Bidder Notice with a removal date of 9<sup>th</sup> July 2008. The following firms had been pre-qualified and were to submit bids:
1. Fontana Auto Parts (U) Ltd
  2. Bisons Consult International Ltd & Applus Technical Inc. & MGS Int. Limited
  3. BIM Auto Engineering Works
  4. Green Boat Motor Vehicle Inspection Ltd
  5. Coin Limited & Dalci Group
  6. Multiplex Limited
  7. Spear Motors limited & Victoria Motors Ltd
  8. Societe Generale de Surveillance, S.A
- vii) On 10<sup>th</sup> September 2008, PPDA communicated to MOWT advising the Entity to evaluate the electronic bid since this mode of submission was indicated in the Standard Bidding Document. MOWT responded to PPDA's letter on 4<sup>th</sup> December 2010.
- viii) The bid for M/s Workshop Electronics, SA was evaluated on 30<sup>th</sup> October 2008 and found to be non-responsive. The Contracts Committee considered the evaluation report on 6<sup>th</sup> November 2008.
- ix) On 10th November 2008, a capability statement on the eight firms was submitted to the Contracts Committee where it was resolved that two firms, Coin Limited & Dalci Group and Bisons Consult International Ltd & Applus Technical Inc. & MGS Int. Limited be

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removed from the pre-qualification list since they had submitted bid securities from Insurance companies and not financial institutions.

x) On 16<sup>th</sup> January 2009, the Contracts Committee in its 374<sup>th</sup> meeting approved cancellation of the above procurement process due to the following reasons:

- Use of the wrong procurement method namely pre-qualification/short listing of providers instead of open/restricted international bidding; and
- Lack of proof of access to credit by some of the prequalified firms.

xi) PPDA and the Solicitor General approved the draft Standard Bidding Document on 8<sup>th</sup> April 2009 and 21<sup>st</sup> May 2009 respectively.

xii) On 24<sup>th</sup> July 2009, a new procurement process for the tender for provision of motor vehicle inspection services was advertised in the Monitor Newspaper, 27<sup>th</sup> July 2009 in the New vision Newspaper and East African Business Week, 27<sup>th</sup> July – 2<sup>nd</sup> August 2009. The bid security required was US\$ 250,000 and a performance security of 10% of the estimated annual turnover of US\$ 1.25 million.

xiii) Solicitation documents were issued to the following 34 firms:

1. Bisons Consult Ltd
2. Techno Brain (U) Ltd
3. Societe Generale de Surveillance, S.A
4. Multiplex Limited
5. Green Boat Motor Vehicle Inspection Limited
6. Global Testing Solution Limited
7. Vehicle Inspection Services (U) Limited
8. Fontana Autoparts (U) Ltd
9. Worldwide Environmental Product (WEP)
10. Automobile Association of Uganda
11. Lindab Sverigi AB
12. Mecanique – Fal Group Holdings
13. Coin Limited
14. Achelis (U) Ltd





- xxiii) On 15th April 2010, financial evaluation was concluded and SGS scored 90.40% and ESP scored 72.79%.

58

- xxiv) On 26<sup>th</sup> April 2010, the Head, Procurement and Disposal Unit (HPDU), Mr. Denis Ayo submitted a report to the Contracts Committee disagreeing with the recommendations of the Evaluation Committee citing lack of value for money by the recommended Best Evaluated Bidder
- xxv) On 5<sup>th</sup> May 2010, the Contracts Committee rejected the HDPU's disagreement report.
- xxvi) On 5<sup>th</sup> May 2010, HPDU communicated to PPDA and requested for guidance on the interpretation of the evaluation methodology and criteria.
- xxvii) On 19<sup>th</sup> May 2010, PPDA reviewed the bidding document, noted the evaluation methodology and criteria and advised MOWT that since the Entity's Contracts Committee had the mandate to award contracts, they should therefore take the final decision on the matter.
- xxviii) On 26<sup>th</sup> May 2010, MOWT requested bidders to extend their bid validity and bid security periods for 90 working days, which was done by all bidders.
- xxix) In its 433rd Contracts Committee meeting held on 28<sup>th</sup> May 2010, a re-evaluation of the bids was recommended using the same Evaluation Committee.
- xxx) On 2<sup>nd</sup> June 2010, M/s Applus Technologies Inc communicated to MOWT withdrawing their participation in the above procurement process.
- xxxi) On 1<sup>st</sup> July 2010, the second re-evaluation report was concluded recommending M/s SGS however, two members recommended ESP citing issues of value for money.
- xxxii) On 8<sup>th</sup> July 2010, the HPDU again submitted a report to the Contracts Committee disagreeing with the recommendation of the majority of the Evaluation Committee.

Contracts Committee disagreeing with the recommendation of the majority of the Evaluation Committee.

xlii) On 7th September 2010, ESP submitted an Application for Administrative Review to the Accounting Officer, MOWT raising three grounds.

Administrative Review to the Accounting Officer, MOWT raising three grounds.

- xliv) On 13<sup>th</sup> September 2010, SGS submitted an application for Administrative Review to the Accounting Officer and made reference to its letter dated 26<sup>th</sup> January 2010 on the same matter.
- xliv) On 30<sup>th</sup> September 2010, the Accounting Officer, MOWT submitted the Administrative Review report to ESP.
- xliv) On 5<sup>th</sup> October 2010, the Accounting Officer, MOWT submitted the Administrative Review report to SGS .
- xlvi) On 7<sup>th</sup> October 2010, ESP submitted an Application for Administrative Review to the Public Procurement and Disposal of Public Assets Authority (PPDA) having been dissatisfied with the decision of the Accounting Officer.
- xlvi) On 11<sup>th</sup> October 2010, PPDA communicated to the Accounting Officer, MOWT and informed him of the application for Administrative Review, requested him to suspend the procurement process and submit the procurement action file to PPDA by 15<sup>th</sup> October 2010.
- xlvi) On 18<sup>th</sup> October 2010, MOWT submitted the procurement action file to PPDA.
- xlvi) On 23<sup>rd</sup> October 2010, ESP communicated to PPDA requesting for the rescheduling of the hearing which was scheduled for 26<sup>th</sup> October 2010 to 29<sup>th</sup> October 2010.
- l) On 25<sup>th</sup> October 2010, PPDA communicated to ESP permitting the rescheduling of the hearing to 1<sup>st</sup> November 2010.
- li) On 29<sup>th</sup> October 2010, M/s Kiwanuka and Karugire Advocates submitted a representation on the matter on behalf of their client, SGS .
- lii) During the administrative review process, other submissions were made by the Ministry of Works and Transport and lawyers representing the applicant-ESP.
- liii) On 4<sup>th</sup> November 2010, PPDA rejected the application for administrative review by ESP. In light of the unethical conduct by

- both bidders and MOWT, PPDA recommended cancellation of the tendering process ordering the retendering of the procurement.
- liv) On 22<sup>nd</sup> March 2011, SGS applied for judicial review in the High Court under Misc. Cause No. 23 of 2011. The ground of the application was that SGS had not been given a right to be heard on the allegations of influence peddling.
  - lv) On 25<sup>th</sup> March 2011, the MOWT was served with a civil suit for judicial review filed by SGS through their lawyers M/s Kiwanuka & Karugire Co. Advocates in the High Court against PPDA and the Attorney General.
  - lvi) On 22<sup>nd</sup> June 2012, the High Court, after judicial review, quashed the PPDA report and restrained the MoWT from; taking threatened disciplinary action against SGS, cancelling the procurement process and retendering it.
  - lvii) On 5<sup>th</sup> July 2012, PPDA and the Attorney General filed a Notice of Appeal with the Court of Appeal from the decision of the High Court.
  - lviii) On 9<sup>th</sup> July 2012 the MOWT was notified by the Solicitor General that a notice of appeal had been filed in the Court of Appeal
  - lix) On 11<sup>th</sup> April 2014, the Appeal was withdrawn with the Solicitor General citing failure by the MOWT to furnish it with the requisite information and documents.
  - lx) On 22<sup>nd</sup> January- 3<sup>rd</sup> February 2015, due diligence was carried out and a report was submitted to the contracts committee. This due diligence was conducted by a 3 Member team that comprised Dr. Kasiima Steven (Director Traffic and Road safety PF), Mr. Jacob Lumonya and Mr. Amanyire Ronald (MOWT) and involved traveling to Ivory Coast, Spain and Switzerland.
  - lxi) On 17<sup>th</sup> March 2015, the contract was signed between the Government of Uganda and SGS for the mandatory inspection of motor vehicles.

## Annex 8

Financial performance			
No.	Key Performance Indicator	Performance target	Remarks
1.	Payment of concession fees	Within 15 days after the end of the preceding month	Breached by delayed payment. So far UGX 123,376,845 paid as at July 2017
2.	Remittance of all applicable taxes	Tax Clearance Certificate from URA	Copies of c-acknowledgement receipts presented to the Committee. So far taxes worth UGX 114,388,898 paid. Taxes paid on 22 <sup>nd</sup> and 25 <sup>th</sup> August 2017 after the Committee demanded evidence of payment
3.	Audit	Internal and unqualified external (OAG) financial and Value for Money Audit reports	No evidence that OAG has conducted any audit yet
Operational Performance Indicator			
No.	Key Performance Indicator	Performance target	Remarks
4.	Notification to owners (reminders)	Sent 3 months to due date	Can only be done with a functional data base of vehicles and their owners, which is yet to be established

5.	Cancellation of booked tests	All tests cancelled prior to the 24 hour	Established procedure
6.	Re-test lead times	Retests offered within one week and not later than 2 weeks	Established procedure
7.	Station opening hours	Atleast 40 hours a week	For the current operational 3 inspection sites
8.	Compliance with the Traffic and Road Safety (Motor Vehicle Inspection) Regulations	100% Compliance	Mandatory
9.	Reporting	All weekly, monthly and quarterly and annual reports submitted	Contractual
10.	Vehicle waiting times (including inspection period)	Less than 1 hour	unrealistic. Queues spill over onto roads with waiting time exceeding 1 hour
11.	Vehicle inspection times for cars	Less than 30 minutes	
12.	Vehicle inspection times for heavy vehicles	Less than 45 minutes	
13.	Queues on public roads	No queue on public roads	

**Test equipment performance indicators**

No.	Key Performance Indicator	Performance target	Established Performance
-----	---------------------------	--------------------	-------------------------



14.	All test equipment as detailed in the contract available at each test station	100% percentage availability	One lane in Kawanda dysfunctional at time of committee visit and manager informed the Committee that it was prone to breakdown
15.	Accuracy and maintenance of equipment	Valid calibration certificates from UNBS	Absence of UNBS calibration certificates
16.	Automation	Atleast 6 equipment are automated	
17.	Functionality of equipment	90% availability	

**Information technology performance indicators**

No.	Key Performance Indicator	Performance target	Established Performance
18.	Percentage availability of system software and hardware	100% available	
19.	Number of reports generated from system	Minimum 4 reports for MOWT, Uganda Police, URA and TLB generated on a weekly, monthly and quarterly and annual basis	No reports to UPF and URA
20.	Accessibility of database of inspected motor vehicles	Easy verification via sms available	Not attained

21.	Number of interfaces established	Atleast 5 interfaces established including a National Security Information System	No evidence of existence of such an interface
22.	Security of system	No security breaches reported	
23.	Data integrity	No duplication of vehicle data	
24.	Network of test stations	All stations access data of all vehicles inspected or re-inspected	

**Premises, Performance indicator for the entire contract period**

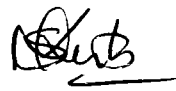
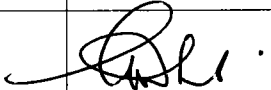
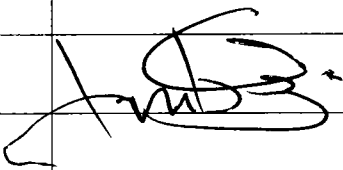
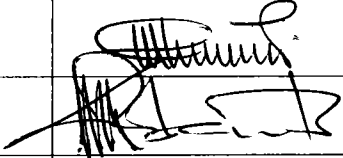
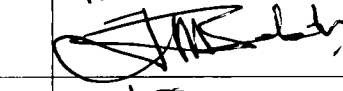


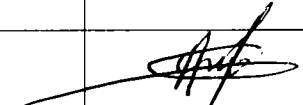
No.	Key Performance Indicator	Performance target	Established Performance
25.	Location of premises	Strategic to serve 7% of vehicles and five regions of Uganda	Some too close to the road eg. Mbale, Namulanda. Traffic challenge
26.	Size	324M <sup>2</sup> (0.0324 hectares or 0.08 Acres) for Motor cycles or 2,400M <sup>2</sup> (0.36 hectares or 0.6 Acres) for light vehicles  3,600M <sup>2</sup> (0.36 hectares or 0.9 acres) for heavy vehicle stations	
27.	Testing lanes	Atleast 22 Metres Long and 4.8 metres high	



28.	Exit and Entrance	Separate exit and entrance for test centres	Observed
29.	Waiting areas	Adequate sitting and toilet facilities	
30.	External inspection	Sufficient space for inspection without use of lane	
31.	Road Safety signage	Signage within 100m of station maintained	Observed

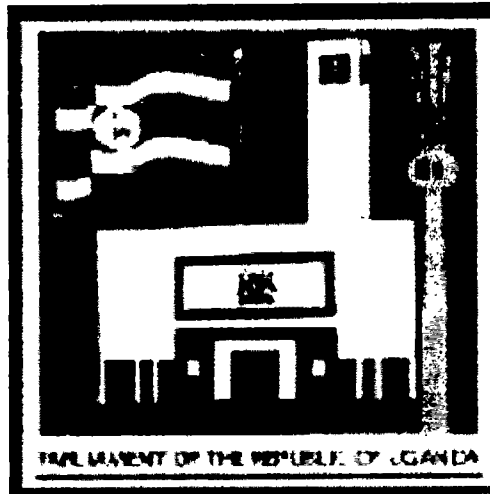
**Customer service performance indicators**

No.	Key Performance Indicator	Performance target	Established Performance
32.	Customer care centre	Open 8 hours a day Monday to Friday and 5 hours on Saturday	
33.	Answer inquiries/queries from general public online (by phone, via call centre)	Within 30 minutes to 1 hour	
34.	Answering calls and booking tests via call centre	Within 15 minutes	
35.	Handling complaints	Within 3 days of receipt	
36.	Waiting areas	Adequate sitting and toilet facilities	
37.	External inspection	Sufficient space for inspection without use of lane	

**ENDORSEMENT OF THE REPORT OF THE COMMITTEE ON PHYSICAL  
INFRASTRUCTURE ON THE MANDATORY INSPECTION OF MOTOR  
VEHICLES**

NO	NAME	CONSTITUENCY	SIGNATURE
1	<b>Hon. Eng Nakate Lillian Chair person</b>	<b>DWR Luweero</b>	
2	<b>Hon. Kumama Nsamba- George Vice Chair person</b>	<b>Bbaale County</b>	
3	Hon. Byandala Abraham James	Katikamu North	
4	Hon. Kafecero Ssekitoleko	Nakifuma County	
5	Hon. Kibalya Henry Maurice	Bugabula South	
6	Hon. Sabiti Denis	Rubanda West	
7	Hon. Burundo Musingo Alex	Bulambuli County	
8	Hon. Mbeiza Margaret	DWR Kaliro	
9	Hon. Othieno Okoth Richard	West Budama North	
10	Hon. Musoke Paul Ssebulime	Buikwe North	
11	Hon. Waluswaka James	Bunyole West	
12	Hon. Mangusho Lawrence	Kween County	
13	Hon. Kasolo Robert	Iki-Iki County	
14	Hon. Asaba N paul	Kyaka North	
15	Hon. Angundru Moses	Terego West	
16	Hon. Wamala Nambooz F	DWR Sironko	
17	Hon. Dulu Angel Mark	Adjumani East	

18	Hon. Mandera Amos	Buyamba County	
19	Hon. Nabbanja Robinah	DWR Kibaale	
20	Hon. Ninsiima Boaz Kasirabo	Kooki County	
21	Hon. Guma Gumisiriza	Ibanda County North	
22	Hon. Atim Ogwal Cecilia Barbara	DWR Dokolo	
23	Hon. William Nzoghu	Busangora North	
24	Hon. Okupa Elijah	Kasilo County	
25	Hon. Abacacon Charles Angiro Gutomoi	Erute North	
26	Hon. Jonathan Odur	Erute South	
27	Hon. Ssempala Kigozi	Makindye Sebagabo	
28	Hon. Francis mwijukye	Buhweju County	
29	Hon. Julius Ochen	Kapelebyong District	
30	Hon. Anne Mary Tumwine	Ntoroko District	
31	Hon. Mukitala Biraahwa Stehen	Muliisa County	
32	Hon. Soyekwo Kenneth Cheborion	Tingey County	
33	Hon. Okwiri Samuel	Moroto District County	
34	Hon. Takirwa Francis (Brig.)	UPDF	
35	Hon. Muhanga Margaret	Kabarole	



**MINORITY REPORT ON THE INQUIRY INTO THE MANDATORY  
INSPECTION OF MOTOR VEHICLES IN UGANDA BY THE PARLIAMENTARY  
COMMITTEE ON PHYSICAL INFRASTRUCTURE**

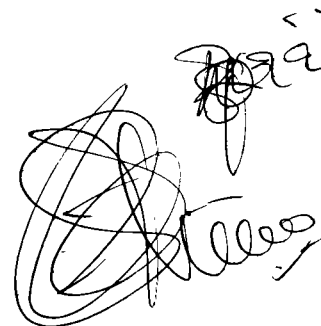


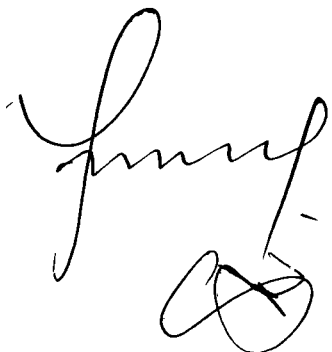
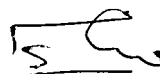
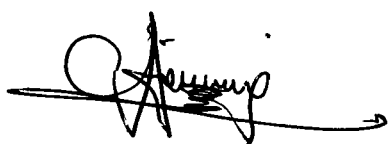
**DECEMBER 2017**

## Table of Contents

<u>1.0 INTRODUCTION</u>	<u>4</u>
<u>2.0 JUSTIFICATIONS FOR DISSENT FROM THE MAIN REPORT</u>	<u>5</u>
2.1 THE REDUNDANCY OF THE RECOMMENDATION OF THE MAIN REPORT ON THE SUSPENSION AND RENEGOTIATION OF THE CONTRACT WITH SGS	5
2.2 TOR 1: LAPSES IN THE POLICY FRAMEWORK FOR THE RE-INTRODUCTION AND PRIVATIZATION OF THE MANDATORY INSPECTION OF MOTOR VEHICLES.	6
2.2.1 BASELESS AND FLAWED STATISTICS ON THE EXTENT TO WHICH VEHICLE CONDITIONS ACCOUNT FOR ROAD CARNAGE IN UGANDA.	6
2.2.2 THE ROLE OF VEHICLE INSPECTION IN IMPROVING AIR QUALITY	7
2.2.3 THE POLICY OBJECTIVE OF CREATING A COMPREHENSIVE MOTOR VEHICLE DATABASE AND THE INABILITY OF SGS TO DO SO.	8
2.3 THE POTENTIALLY PROHIBITIVE COST OF VEHICLE INSPECTION	9
2.4 SEVERE LAPSES IN THE PROCUREMENT OF SGS	9
2.5 INFLUENCE PEDDLING BY SGS, LACK OF TRANSPARENCY AND UNFAIRNESS IN THE PROCUREMENT PROCESS.	10
2.6 GRATIFICATION TRIPS TO SOUTH AFRICA	12
2.7 NON COMPLIANCE WITH ARTICLE 119(4)(B) OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA	14
2.8 BREACHES OF THE TERMS AND CONDITIONS OF THE CONTRACT	16
2.8.1 DISMAL NUMBER OF VEHICLES INSPECTED	20
2.8.2 PAYMENT OF CONCESSION FEES	20
2.8.3 LOCATION OF PREMISES	20
2.9 SGS INVOLVEMENT IN POSSIBLE TAX EVASION THROUGH FRAUDULENT LAND TRANSACTIONS	21
2.10 CONTRAVENTION OF THE RULES OF PROCEDURE BY THE CHAIRPERSON IN RECOMMITTING THE INITIAL RECOMMENDATION OF THE COMMITTEE ON TERMINATION OF THE CONTRACT WITH SGS IN THE ABSENCE OF QUORUM INSPITE OF REMINDERS ON THIS REQUIREMENT.	23
2.11 CONCLUSION	24

## LIST OF ACRONYMS

MOWT:	Ministry of Works and Transport
UN:	United Nations
TORs:	Terms of Reference
UPF:	Uganda Police Force
EIA:	Environmental Impact Assessment
SGS:	Societe Generale de Surveillance, S.A
ESP:	Environmental System Products Holdings Inc
UNRA:	Uganda National Roads Authority
TLB:	Transport Licensing Board
NRSC:	National Road Safety Council
PPP:	Public Private Partnerships
MPS:	Ministerial Policy Statement
NBFP:	National Budget Framework Paper
NEMA:	National Environment Management Authority
URA:	Uganda Revenue Authority
PPDA:	Public Procurement and Disposal of Public Assets Authority
CPI:	Consumer Price Index




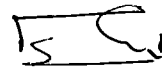
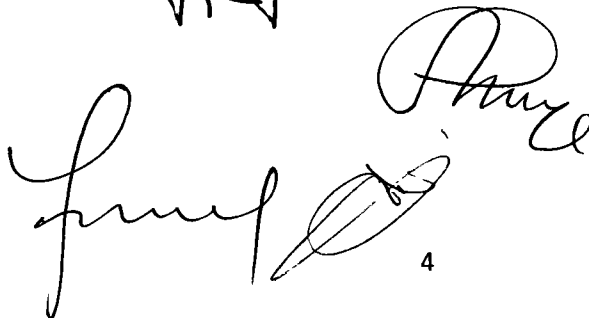


## 1.0 INTRODUCTION

Pursuant to Rule 202 of the Rules of Procedure of the Parliament of Uganda, I hereby present a dissenting opinion from the main report of the Committee.

The points of dissent are as follows;

1. The redundancy of the recommendation of the main report on the suspension and renegotiation of the contract with SGS
2. The failure of the main report to pass a verdict on the extent to which the government policy of vehicle inspection addresses road carnage especially considering that vehicle conditions which this inspection seeks to tackle only accounts for 2.1% of the cause of road accidents in Uganda as compared to behaviour of road users which contributes to 80% of road accidents in Uganda
3. The complicity of silence of the main report to apportion responsibility for lapses in procurement, breach of procurement ethics and possible collusion with some bidders
4. Fundamental breaches by SGS of contractual provisions relating to commencement date, payment of concession fees and ethics
5. Influence peddling and corrupt practices by SGS
6. Non compliance with Article 119 (4) (b) of the 1995 Constitution of the Republic of Uganda
7. Contravention of the rules of procedure by the Chairperson of the Committee on Physical Infrastructure.

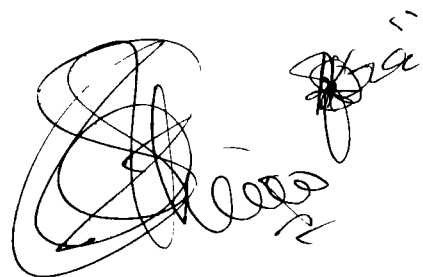
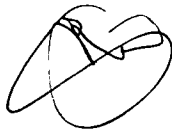
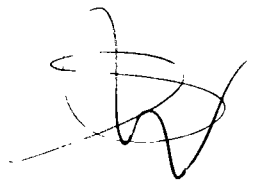
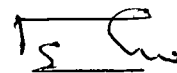
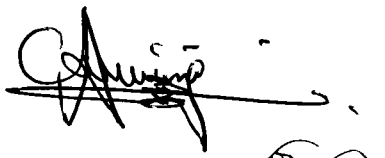


## 2.0 JUSTIFICATIONS FOR DISSENT FROM THE MAIN REPORT

### 2.1 The redundancy of the recommendation of the main report on the suspension and renegotiation of the contract with SGS

The main report recommends suspension of the implementation of the Contract for Mandatory Inspection of motor vehicles for a period of not less than 3 months to pave way for review and renegotiation. This recommendation is redundant considering that the Speaker on the 29<sup>th</sup> June 2017 effectively suspended the mandatory inspection of motor vehicles to allow a review of the contract and other matters incidental there-to by the Committee on Physical Infrastructure. In addition, section 12.5 of the contract provides that any modification to the terms of the agreement may only be made by written agreement between the parties. This implies that a resolution of Parliament which is not a party to the contract cannot be one of the grounds on which renegotiation can be premised. This renders the recommendation of the main report defectively redundant. In effect, the main report simply seeks 3 more months of engagement with the MOWT over this matter over which the Committee has already spent 4 months.

***It is the considered view of the authors of this minority report that far from suspension, the contract with SGS requires immediate termination to pave way for a total overhaul of the defective vehicle inspection environment characterized by the absence of a master test centre, inept monitoring and supervision, exorbitant pricing and the absence of functional synergies with other key actors.***



## **2.2 TOR 1: LAPSES IN THE POLICY FRAMEWORK FOR THE RE-INTRODUCTION AND PRIVATIZATION OF THE MANDATORY INSPECTION OF MOTOR VEHICLES.**

### **2.2.1 Baseless and flawed statistics on the extent to which vehicle conditions account for road carnage in Uganda.**

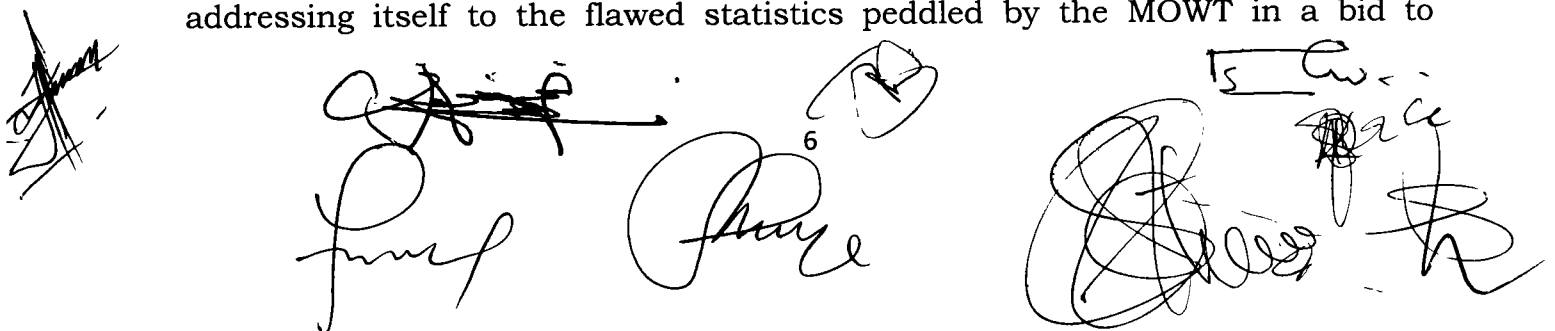
The MOWT in an attempt to justify the re-introduction of mandatory vehicle inspection as a panacea to road carnage conveniently cited defective vehicles as contributing 10% to the total prevalence of accidents in Uganda.

This statistic sharply and grossly contradicts the real official figures from the Annual Road Crash Reports of the Uganda Police Force- the government entity mandated to investigate and report on traffic accidents. The Committee obtained the annual Police reports on crime and motor accidents for the last 7 years and there-in, it is clearly stated, with precise statistics and location of accidents, that the condition of vehicles accounts for 2.1% to the total traffic accidents in Uganda.

The biggest factor causing accidents is the behavioural predisposition of drivers and other road users, which accounts for about 81% of the total traffic accidents. The other causal variables are; weather conditions and road conditions, which cumulatively account for about 17% of road accidents.

This implies that any prudent policy intervention on road safety would target the most strategic causal variable, which is the behaviour of road users. Unfortunately, because public awareness is a common good whose financial benefit to private individuals may not be so high, the MOWT opted to concentrate effort on vehicle inspection which with the current exorbitant pricing is clearly aimed at enriching the private service provider SGS at the expense of the already burdened tax paying motorists and vehicle owners.

The Committee conveniently chose to label the Police report subjective without addressing itself to the flawed statistics peddled by the MOWT in a bid to



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justify privatization of mandatory vehicle inspection and reap the commercial benefits through exorbitant pricing.

The ongoing mandatory inspection of motor vehicles under SGS is largely premised on the following parameters; brakes, wheel alignment, headlamps, suspension, steering wheel alignment, exhaust smoke, signaling lights- all of which point more to the mechanical elements of the vehicle than to human and behavioural-related aspects of road usage yet the latter is the biggest causal variable of motor accidents.

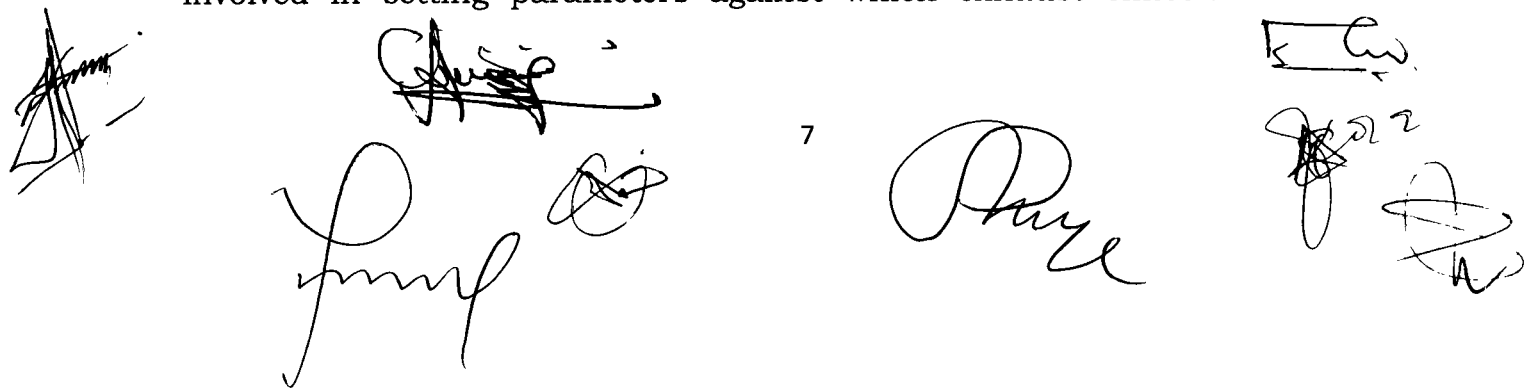
This minority report therefore recommends the re-evaluation of governmental interventions on road safety with a view of reclaiming mandatory vehicle inspection from the private monopoly that is SGS in favour of strengthening the already existent Uganda Police Inspectorate of vehicles whose nationwide reach would not only ensure that all Ugandans in the various parts of Uganda would easily access vehicle inspection services, but the Uganda Police Force would inch towards greater professionalization by diversifying the services it renders Ugandans.

### **2.2.2 The role of vehicle inspection in improving air quality**

One of the objectives of the mandatory inspection of motor vehicles is the improvement of air quality through monitoring vehicle exhaust emissions.

While the main report delves into explanations of the benefits of measuring air quality, it conveniently falls short of clearly evaluating whether in its current state, the checking of exhaust emissions by SGS has any linkages with environmental policy interventions by NEMA and the Ministry in charge of environment.

During its meeting with NEMA, the Committee was informed that NEMA was not involved in the conceptualization of the air-quality related aspects of vehicle inspection by SGS. Even after commencement of inspection, NEMA was not involved in setting parameters against which exhaust emissions would be



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measured. The involvement of NEMA was limited to issuance of EIA Certificates for a few (Kawanda and Namanve), and not all the vehicle inspection sites. The absence of linkages with NEMA implies that the data generated by SGS does not inform environmental policy interventions.

During a field verification visit to the vehicle inspection sites on 31<sup>st</sup> July 2017, it emerged that the data on exhaust emissions is kept by SGS and NEMA is not one of those with whom the information is shared. This implies that the realization of this policy objective of improving air quality remains a dream with the privatization of vehicle inspection.

### **2.2.3 The policy objective of creating a comprehensive motor vehicle database and the inability of SGS to do so.**

The realization of this policy objective is far fetched as SGS does not have any functional information sharing platforms with Uganda Revenue Authority under whose purview lies the registration and licensing of motor vehicles as envisaged by part II of the Traffic and Road Safety Act, 1998.

SGS Société Générale de Surveillance SA is instead requiring motorists to present copies of their logbooks during vehicle inspection. Motorists without logbooks are turned away from having their vehicles inspected. The Committee notes that even for the log books presented, SGS Société Générale de Surveillance SA does not have a mechanism of ascertaining their veracity.

In the absence of an information sharing interface with URA especially on motor vehicle and motor cycle registration, SGS Société Générale de Surveillance SA is unable to keep abreast with the trend interms of numbers and specifications of imported motor vehicles and motorcycles thereby impeding their ability to forecast demand for inspection and equipment compatibility in time.

Besides, the compilation of such motor vehicle data by a private entity detrimental to national information security especially considering that the profit motive is the major driving force of private capital.

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### 2.3 THE POTENTIALLY PROHIBITIVE COST OF VEHICLE INSPECTION

While the main report rightly points out the exorbitant pricing of motor vehicle inspection as a major impediment to realization of regular vehicle inspection, it falls short of recommending the exact extent of review of pricing and fails to note that indeed vehicle inspection in Uganda is comparatively, based on socio-economic and house hold economy indices, the highest in the East Africa Community region.

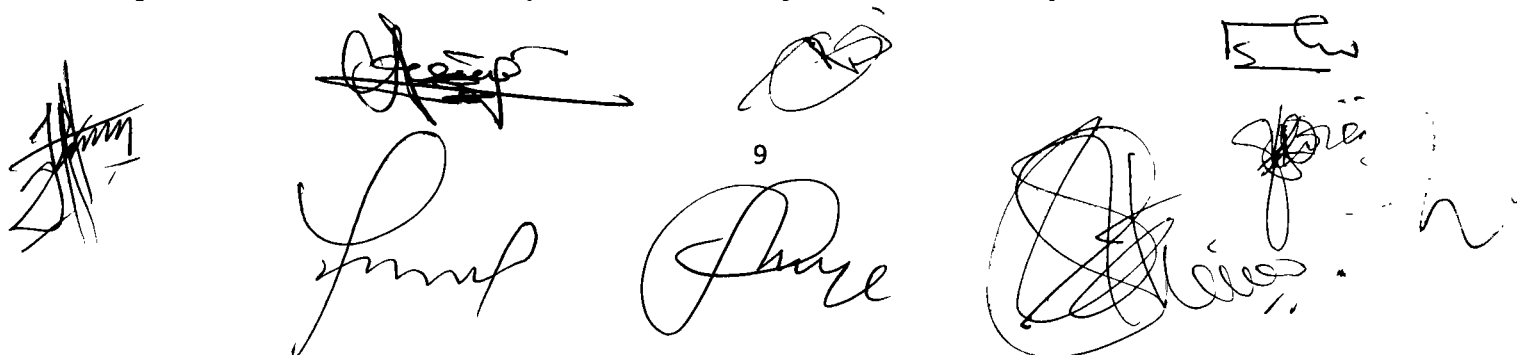
It is the considered opinion of the authors of this report that vehicle inspection should be fairly priced in manner that encourages more regular inspection and not just annual mandatory inspection as SGS and MOWT has designed the current vehicle inspection regime. It is clear that the motivation of exorbitant pricing and pegging it to annual inspection is primarily revenue generation by the private monopoly SGS.

We therefore recommend that the cost of inspection, regardless of who is conducting vehicle inspection should be slashed by 75% and the price of inspecting a motor cycle must not exceed the cost of inspecting a bus.

***We therefore recommend that the current cost of inspection, regardless of who is conducting vehicle inspection should be slashed by atleast 75% and capped to avoid arbitrary increases. Any future price changes should be pegged to tabling of the requisite statutory instrument before Parliament atleast 3 months before any such price adjustments.***

### 2.4 SEVERE LAPSES IN THE PROCUREMENT OF SGS

While the main report examines the chronology of the procurement process and the unethical practices that dogged it, the Committee fails to apportion responsibility and by so doing leaves room for the re-occurrence of similar practices which over the years have dearly cost the country.



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Some of the lapses in the procurement process included the use of the wrong bidding documents between 7<sup>th</sup> February 2008 and 5<sup>th</sup> January 2009, unethical disclosure of competitor information to the bidders and possible collusion with bidders in fixing price quotations.

While the main report of the Committee fails to make any recommendation on the irregularities that marred the procurement process, we recommend that all those individuals who were part of the bid evaluation in the procurement of SGS be excluded from any subsequent procurement and/or supervision of the mandatory vehicle inspection exercise.

## **2.5 INFLUENCE PEDDLING BY SGS, LACK OF TRANSPARENCY AND UNFAIRNESS IN THE PROCUREMENT PROCESS.**

The procurement process for the award of contract for provision of mandatory motor vehicle inspection services in Uganda was stage managed right from the beginning to the end to favour SGS, which was the preferred choice even before the process could begin.

The 15<sup>th</sup> meeting of the Top Management Team (TMT) of Ministry of Works and Transport sitting on 10<sup>th</sup> November 2008 at 10:30 AM in Kampala Boardroom inter-alia discussed the re-introduction and privatization of the motor vehicle inspection services project. Despite the fact that SGS was mainly involved in setting up Motor vehicle testing plants in Ivory Coast, the said TMT meeting noted that SGS seemed the most credible company for the mandatory motor vehicle testing services in Uganda and resolved that bid documents be carefully prepared with strict evaluation criteria so as to eliminate all the would be competitors of SGS. Eng. Sabiiti Dennis was then directed to revise the bid documents to that effect, which instruction he effectively executed. It is however noteworthy that although Eng. Sabiiti Dennis was cleared by the High Court, this clearance was in as far as his right to a fair hearing was concerned, but not on allegations of unethical practices by him during the procurement process. Court did not address itself to the merit of the accusations against him then which inter-alia included, collusion with a one Mr. Ferdinand

Bitanihirwe, Sabiiti's classmate at St. Mary's College Kisubi, a confidante at Makerere University and a former Country Manager of SGS, who sent him an email advising on how to lock out competitors of SGS by requiring bidders for the provision of mandatory motor vehicle services to have atleast worked in three continents and must have capital investments worth atleast 12 million Euros (Shs. 38.8 billion).

However, the denial of any wrong doing by Eng. Dennis Sabiiti notwithstanding, there was a similar requirement for bidders' annual sales revenue, which was, put at a minimum of US Dollars twelve million (UD\$12,000,000). Given that this was the focus of the email communication from the then SGS Country Manager, which was eventually followed, leaves no imagination on the weight of influence SGS had on the procurement process to the detriment of competitors. This unfair undertaking amounts to prohibited unethical conduct and interference in the bidding process by SGS thereby giving the firm undue advantage over other bidders.

Further more, The Minister of State for Works and Transport in Charge of Transport in a confidential dossier to the Committee, gave a chronology of how Eng. Sabiiti Dennis, then Commissioner Transport Regulation had maintained an underhand operations which not only favored SGS during procurement process but delivered the mandatory motor vehicle inspection service contract to the firm as evidenced by the following turn of events:

1. In December 2014, Eng. Sabiiti Dennis (then Commissioner Transport Regulation and chairman Contracts Committee) approved a team to do due diligence on SGS without Terms of Reference.
2. On 10<sup>th</sup> February 2015 Eng. Sabiiti as Chairman Contracts Committee approved the due diligence report.
3. On 2nd March 2015 Eng. Sabiiti perused the contract before forwarding to the Solicitor General for clearance in total disregard of the need for



negotiations as recommended by the Evaluation team and approved by the Contracts Committee.

4. On 17th March 2015 Eng. Sabiiti witnessed the signing of the Contract between the Ministry of Works and Transport and SGS.
5. In May 2015, Eng. Sabiiti resigned as Commissioner in the Ministry of Works and Transport.
6. On 17th July 2015 Eng. Sabiiti Denis joined SGS as a Consultant earning US\$3,000 per month where he was retained as the only personnel.
7. May 2016, Eng Sabiiti resigned from SGS in order to be sworn in as a Member of 10<sup>th</sup> Parliament.

Given that the output from the contract Eng. Sabiiti had with SGS was so minimal compared to the consideration of US\$3,000 a month and given the fact that the Confidentiality clause of the Contract barred Eng. Sabiiti Denis from disclosing among others the very existence of the Consultancy Contract lends credence to the secret behind the lucrative offer as a reward for delivering the mandatory motor vehicle inspection contract to SGS, in pursuit of the instruction he had received from the TMT Meeting of 10th November 2008, albeit with unfavorable terms to the Government and the people of Uganda.

## **2.6 GRATIFICATION TRIPS TO SOUTH AFRICA**

It is noteworthy that contrary to Section 93 (1) and the fifth schedule of the PPDA Act, the latter of which bars employees from any business arrangement that might prevent the effective operation of fair competition or accept business gifts from current or potential government suppliers or any business hospitality that may be viewed as influence peddling; SGS compromised a number of officers of the Ministry of Works and Transport with juicy offers. For suspect reasons, a benevolent treatment was accorded to one Mr. Ronald Amanyire, an understudy of Eng. Dennis Sabiiti at the Ministry of Works and Transport, who was granted an all expenses paid trip to South Africa by Workshop Electronics, a South African based SGS supplier of mobile testing stations, from 7th - 10th

November 2016. The purpose of the lucrative offer was to enable Mr. Amanyire inspect Workshop Electronics' mobile test stations so as to assist them with any changes which could be necessary for Ministry of Works and Transport. Whether solicited or not, the conduct of Mr. Amanyire, should be investigated further for among others; retaining clandestine operations for SGS to date, violating the requirement for observance of the highest ethical standards during the procurement and execution of the contract and non compliance with Public Service Regulations.

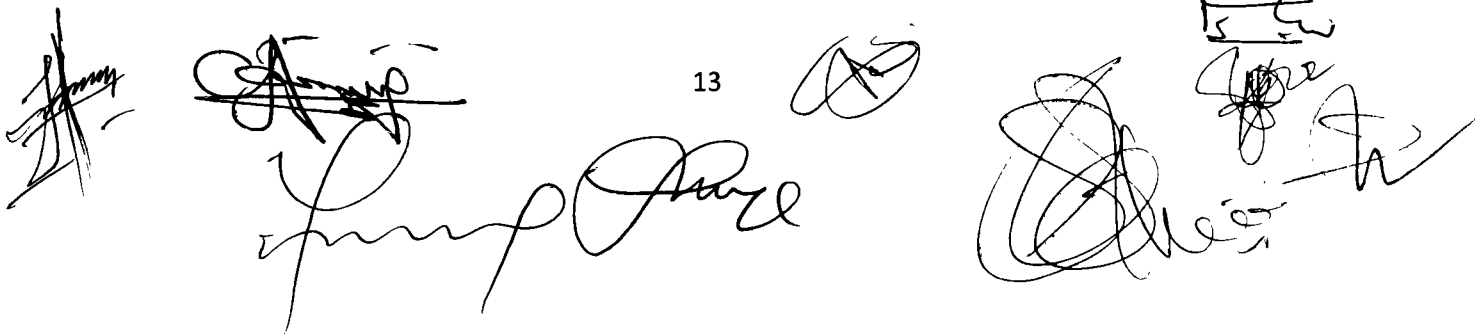
It is important to note that following Mr Amanyire's all expenses paid trip to South Africa as per the terms afore stated, another team comprising Nyamaizi Immaculate (Inspector of Vehicles) and Muwonge Anthony (Inspector of Vehicles) led by Eng. Lukoma Fredrick Basalirwa (Ag. Commissioner Mechanical Services/Chief Mechanical Engineer) visited Workshop Electronics for pre-shipment verification and inspection of the mobile motor vehicle inspection equipment. The team submitted its report to the Chief Mechanical Engineer on 3<sup>rd</sup> January 2017. As expected, the Lukoma Team gave a positive report on the mobile motor vehicle inspection equipment that SGS had procured from Workshop Electronics.

The all expenses paid trip to South Africa for Mr Amanyire as well as the generous contract for Eng. Sabiiti Dennis should be treated as gratifications for their role in helping SGS secure the mandatory motor vehicle inspection contract in Uganda. Section 7.5.3 of the contract provides that the contract is automatically terminated if the provider gives offers, promises of any loan, fee, reward, or advantage of any kind to any employee of the Supervising Entity, provided that there is reliable and invincible information about such offers or promises.

### **Recommendation**

- i) ***SGS should be found culpable of peddling corrupt practices by offering inducements, offers, promises, rewards to employees of the***

13

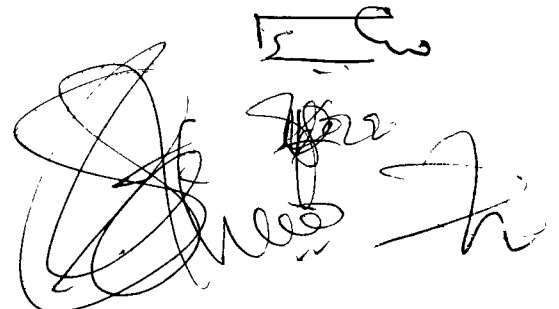
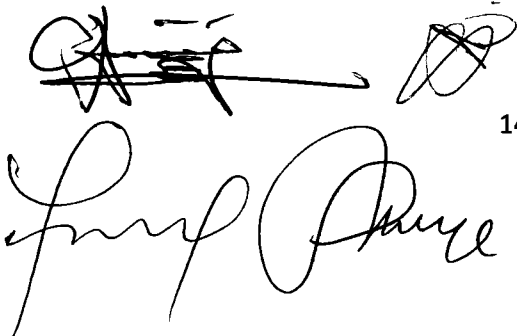
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**Ministry of Works and Transport, to influence the actions of public officials during the procurement process and execution of the contract, the consequence of which warrants automatic termination of the contract as per section 7.5.3 of the contract.**

- ii) **The Government should apply Section 1.2.2 of the Contract for the provision of mandatory motor vehicle inspection services which states that in pursuit of Clause 1.2, the Procuring and Disposing Entity may terminate a Contract for services if at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Procuring and Disposing Entity or of a Provider, during the procurement or the execution of the contract.**
- iii) **The Committee recommends further investigations by relevant Government agencies into the roles of Mr. Amanyire Ronald and Hon. Sabiiti Denis in unethical practices during the procurement, contracting and implementation of the contract with SGS.**

## **2.7 NON COMPLIANCE WITH ARTICLE 119(4)(B) OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA**

Where's the Government of Uganda represented by the Ministry of Works and Transport purportedly entered into a contract with SGS Societe Generale de Surveillance SA of Geneva on the 17th March 2015, for the provision of mandatory motor vehicle inspection services in Uganda, Section 12.1 relating to the Conditions of the contract provides that the Agreement is governed by the Laws of the Republic of Uganda. However Article 119(4) (b) of the Constitution of the Republic of Uganda compels the Attorney General to draw and peruse agreements, contracts, treaties, conventions and documents by whatever name called, to which the Government is a party or in respect of which the Government has interest. All other subsequent functions of the Attorney General are subjected to this provision of the Constitution. The Office of the Attorney General, which is made up of all the Officers who work under

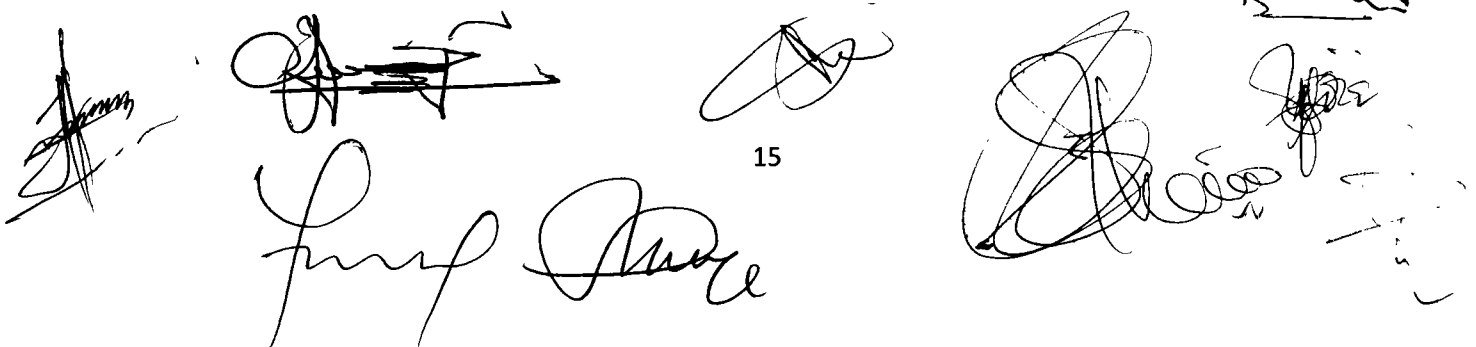


his direction, inclusive of the Solicitor General, did not draw the Agreement in question as required by the Constitution.

A confidential brief signed by the Minister of State for Transport submitted to the Committee concedes that Eng Sabiti Denis, then Assistant Commissioner Safety and Inspection, Ministry of Works and Transport, originated and forwarded the contract to the Office of the Attorney General for clearance without even the input from the Ministry of Works and Transport thereby denying the Ministry the opportunity to negotiate fairer terms with the provider. Upon admission of non compliance with Article 119 (4) (b) of the Constitution by the Solicitor General, who appeared before the Committee, it is therefore not in dispute that the Office of the Attorney General did not draw the Contract for the provision of mandatory motor vehicle inspection services. By abdicating its constitutional mandate, the Attorney General committed a serious mistake and breach of the Law. Therefore this contract was entered into my mistake. Section 18 of the Contracts Act 2010 provides that where a Contract is entered into by a mistake in respect of any Law in force in Uganda, the Contract is void.

Section 7.8 of the Contract provides that grounds for rescission of Contract under conditions specified in items 7.4 (The term shall be renewed at least once by the Ministry of Works and Transport on satisfactory performance in accordance with the agreed Key performance Indicators ) and 7.6 (The Contract can be terminated or amended based on the mutual agreement of the parties) shall not deprive the parties of the right to request termination of contract based on other conditions specified by the legislation of the Republic of Uganda.

Section 12.6 of the conditions of the contract in part provides; ".....The rights and remedies provided by this Agreement are cumulative and not exclusive of any rights or remedies provided by law."



15

Furthermore, Section 7.8.5 of the Contract indemnifies Ministry of Works and Transport against paying the Provider at Law or in equity in Respect of termination of the Contract if it is within the provisions of the Contract. As it is, non-compliance with Article 119 (4) (b) of the Constitution of the Republic of Uganda, is a grave mistake in respect of the supreme law of the land that renders the Contract Void.

***It is therefore recommended that the Ministry of Works and Transport should rescind the voidable contract and revert to Section 53(2) of the Contracts Act, which provides thus:***

*" A party who rescinds a voidable contract shall, if that party received any benefit from the other party to the contract, restore the benefit to the person from it is received"*

As it is, The Government of the Republic of Uganda has so far received from SGS only Ug. Shs. 123,476,845 as Concession fee which it shall be liable to refund to SGS as a consequence of rescission of voidable contract.

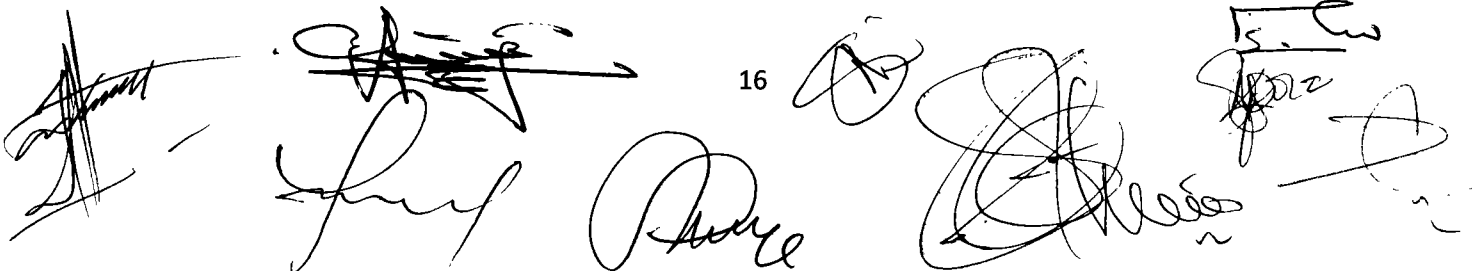
## **2.8 BREACHES OF THE TERMS AND CONDITIONS OF THE CONTRACT**

While the main report spells out the flaws, contradictory clauses and breaches of the contract with SGS, it falls short of making remedial recommendations but rather attempts to justify those lapses, contradictions and breaches.

The salient issues emerging from the contract are as follows;

- i) Failure of the Attorney General to draw the contract in contravention of Article 119 (4) (b)
- ii) Deliberate provision for an automatic renewal clause (Clause 3.4.4) which provides for automatic renewal for another 5-year period upon satisfactory performance in accordance with the agreed key performance indicators.
- iii) **Monopoly clause:** Clause 3.4.4 of the contract requires the MOWT as the supervising entity to provide adequate and proper protection of the

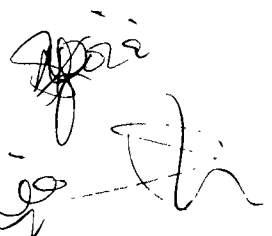
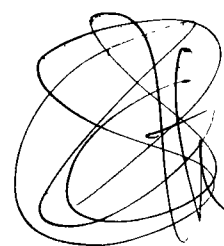
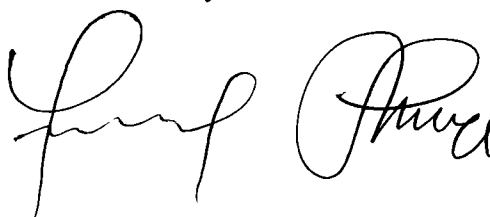
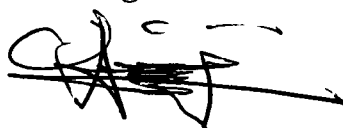
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exclusive rights of SGS for the concession period and enlist the assistance of the traffic police and URA to enforce mandatory motor vehicle inspection regulations to support commercially viable test station operations by enforcing the mandatory presentation of motor vehicles for inspection. This in contravention of the resolutions of the Top Management Team (TMT) of the MOWT on Tuesday 11<sup>th</sup> September 2007 which resolved that 2 Service providers be procured to operate throughout the country, this was later dropped by the time the contract for the mandatory inspection of vehicles was drawn, not by the Attorney General as required by Article 119 (4) (b) of the 1995 Constitution, but by Eng. Sabiiti Denis.

In addition, the monopoly clause contravenes Article 40 (2) of the 1995 Constitution, which provides that every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business. Infact SGS has stopped some local vehicle dealerships from inspecting vehicles whilst relying on the contractual monopoly clause.

- iv) **Exorbitant inspection fees:** Clause 3.1.2 of the contract on rights and obligations of the parties bestows upon the private contractor (SGS) the right to levy inspection fees for each type of inspection executed in amounts established by the supervising entity and specified in the price schedule of the financial proposal. The prices quoted by the bidder shall be adjusted on the date of commencement if the Consumer Price Index on the date of commencement has changed by more than 3.0 points. This implies that the current inspection costs may rise further with increases in the CPI and since CPIs are reflective of the cost of living, as the cost of living rises, so will the cost of vehicle inspection-potentially worsening the conditions of life of the masses.



The Committee notes the audible public outcry regarding the cost of inspection and its ramifications. As is common business practice, especially among public commuters, this cost will be transferred to the public and with it; people's disposable income will be eroded.

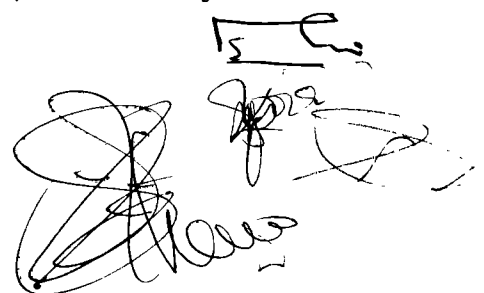
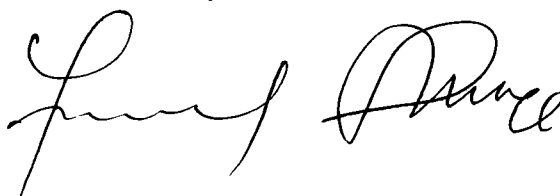
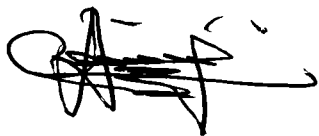
While Clause 3.1.3 of the conditions of contract on the rights and obligations of the parties provides that the variations in the cost of inspection will be a product of the ratification of the MOWT, the Committee notes that when the service provider applied for the adjustment of unit prices for the provision of motor vehicle inspection services on 12th April 2016 (Annex 6), the MOWT wholly embraced the unit pricing without any consideration of the effect of this pricing and to date those are the ruling charges of inspection by SGS.

- v) **Breach of the timelines for payment of concession fees:** SGS breached by up to 8 months Clause 4.1 of the conditions of the contract, which provides that the service provider (SGS) shall pay to the MOWT a monthly fee equivalent to 10% of the gross turn over for each month by the 15<sup>th</sup> day of the following month.

While Clause 4.6 of the contract provides a daily interest shall be charged based on the 364-day Bank of Uganda Treasury Bill (discounting) rate plus 4% on defaulting of the monthly payments, there was no attempt by MOWT to claim this interest.

- vi) **Breach of commencement date of inspection:**

Clause 7.1 of the conditions of contract stipulates that the provider shall commence the provision of the motor vehicle inspection services (hereinafter called the Date of Commencement) not later than 18 (eighteen) months from the date of contract signature. Considering that the contract was signed on 17th March 2015, mandatory vehicle



inspection should have commenced by the 17th September 2016. The logical preconditions for inspection being the readiness of the agreed upon 7 fixed inspection sites namely; Kawanda, Namanve, Nabbingo, Namulanda, Mbale, Gulu and Mbarara along with the three mobile testing equipment

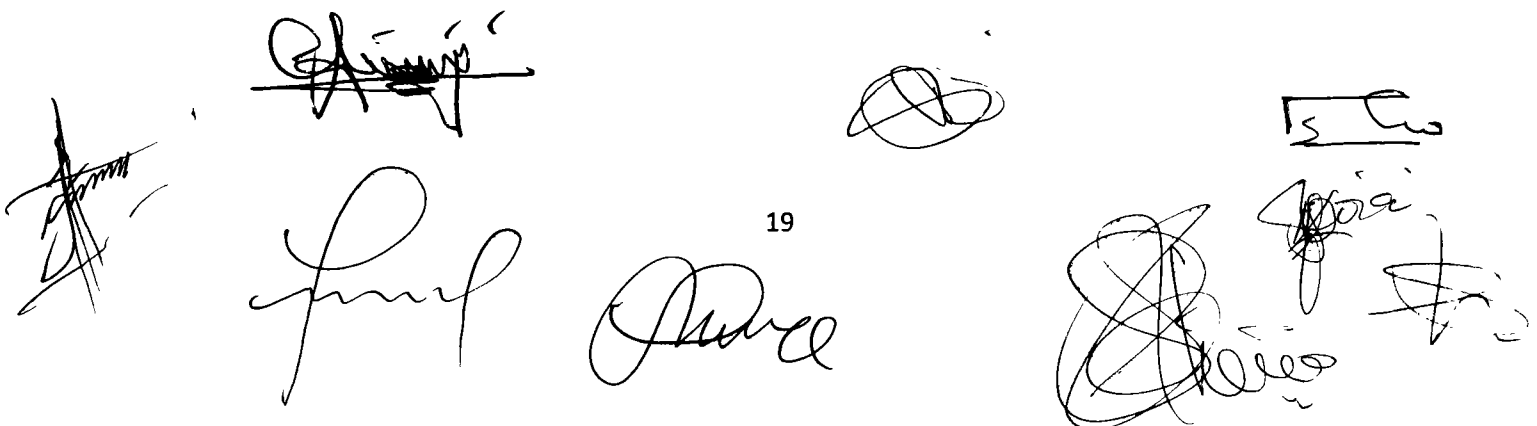
However the Committee ascertained that inspection began after 20 months on 28<sup>th</sup> November 2016 moreover at only 1 site- Kawanda.

**vii) The failure of SGS to commence inspection within 18 months constituted a breach of Clause 7.1 of the Contract.**

Inspite if this breach, there was no evidence that the supervising entity- the MOWT initiated any attempts at reprimanding SGS for this breach. It was not until Thursday 1<sup>st</sup> December 2016 that a one Benon M. Kajuna wrote retrospectively, on behalf of the Permanent Secretary, extending the commencement date of motor vehicle inspection from 17<sup>th</sup> September 2016 to 28<sup>th</sup> November 2016. It is noteworthy that SGS had commenced inspection 2 days earlier on 28<sup>th</sup> November 2017. This letter can therefore be construed at best as a late attempt to insulate SGS from a severe breach of contract relating to commencement of inspection. The same letter asked SGS to collect its performance security and yet barely 10% of the required structures for inspection was ready, thereby predisposing the taxpayer to loss.

At this point, the MOWT should have evoked Clause 7.7 of the contract, which grants the MOWT unilateral powers to terminate the contract due to breaches of one of the conditions of the contract. But this was not done and it points to complicity in breaching the contract.

**viii) Termination of the contract with SGS**

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Based on the foregoing cases of breaches, we find no merit in SGS continuing with the contract. The MOWT should initiate the immediate termination of the contract with SGS for mandatory vehicle inspection.

In the meantime, government should do a functional and manpower audit of the Uganda Police Force with a view of returning the role of vehicle inspection to the Uganda Police Inspectorate of vehicles.

The competitive advantage that UPF has over SGS is the nationwide reach, presence of staff, contribution to institutional growth and sustainability since UPF is a state apparatus and not a private business.

### **2.8.1 Dismal number of vehicles inspected**

As at 23<sup>rd</sup> August - 9 months after commencement of inspection, SGS only had 3 operational inspection sites and had tested only 31,327 vehicles of the estimated 1 million vehicles in the country. Of the tests so far carried out, 24,618 (79%) vehicles have passed while 6,709 (21%) have failed.

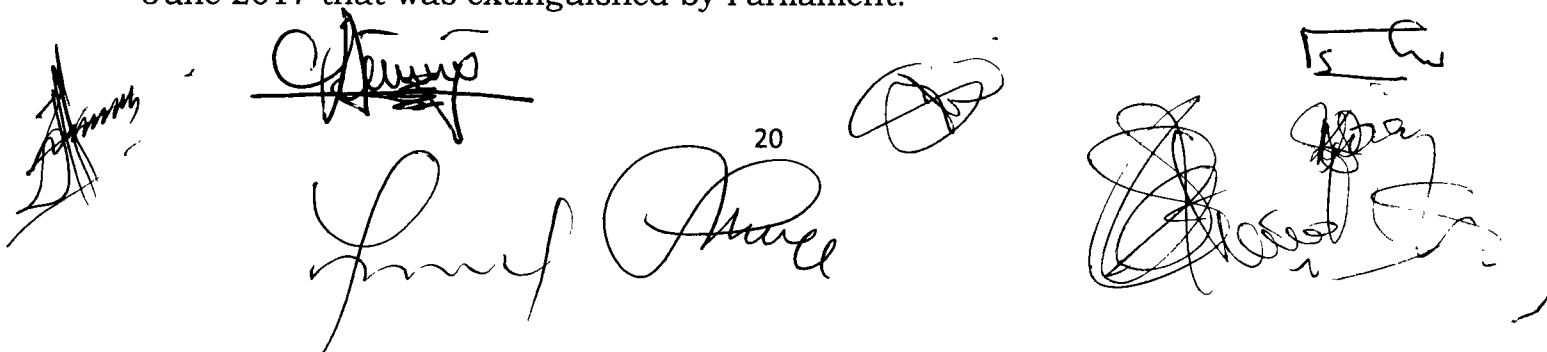
This dismal number of vehicles inspected is partially due to the limited reach of SGS and the exorbitant cost of inspection.

### **2.8.2 Payment of concession fees**

SGS has performed dismally as exemplified by failure to pay concession fees for 8 months contrary to clause 4.1 of the conditions of the contract which provides that the 10% of gross revenue shall be paid to the Government of Uganda as concession fees. And this monthly payment should be effected by the 15<sup>th</sup> day of the subsequent month.

### **2.8.3 Location of premises**

On the location of premises, the Committee notes that some stations such as Namanve and Namulanda are too close to the busy highways along which they are located and this poses a safety threat especially when queues of vehicles spill over into the road as was the case during the looming deadline of 30<sup>th</sup> June 2017 that was extinguished by Parliament.



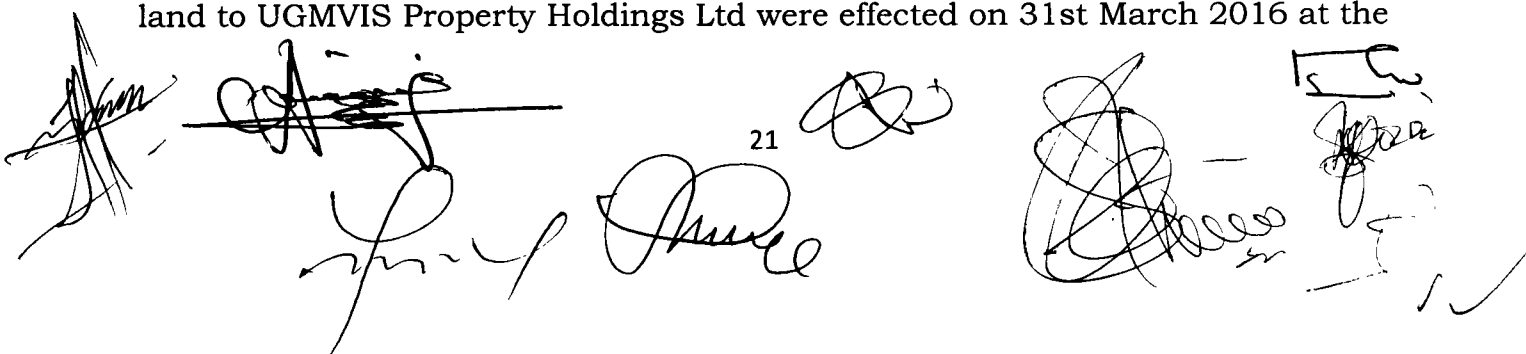
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## **2.9 SGS INVOLVEMENT IN POSSIBLE TAX EVASION THROUGH FRAUDULENT LAND TRANSACTIONS**

SGS incorporated a number of Companies for purpose of holding land and business operations but under the management of Christophe Dubois. A number of plots of land were acquired and vested in these companies. However, SGS evaded paying Stamp Duties on the transfers of Land Title Deeds into these Companies' ownership as exemplified by the cases in Kawanda and Nabbingo.

Section 54 of the Registration of Titles Act (RTA) is to the effect that only registered instruments are effectual to pass any interest in any land among others. Once an Instrument is registered upon payment of fees and/ or taxes, it is given a unique number known as Instrument Number. However, this was not the case with SGS land transactions. Kawanda Station stands on two plots of land namely Plot 580 on Block 107 Kyadondo measuring 0.037 Hectare and Plot 577 on Block 107 Kyadondo measuring 1.581 Hectare. However the ownership of both Title Deeds were transferred from Industrial Steel Masters to UGMVIS on 31st March 2016 at the same time of 10:11 am using the same Instrument Number WAK00079414. It is important to note that each Instrument Number legalizes and validates a particular transaction. Practically, two transactions cannot be conducted in one (1) second nor can one Instrument Number validate two transactions. Since in the case of Kawanda land, the Instruments were to validate transfer of ownership , which attracts a Stamp Duty payable to the Government. By using the same instrument to effect two transaction, SGS succeeded in evading payment of Stamp Duty to the Government on one of the transactions for which they should be held culpable.

Likewise, Nabbingo Station stands on two plots of land namely: Plot 705 on Block 331 Busiro measuring 0.404 Hectare and Plot 706 on Block 331 Busiro measuring 0.406 Hectare. Similarly the transfers of ownership on both plots of land to UGMVIS Property Holdings Ltd were effected on 31st March 2016 at the

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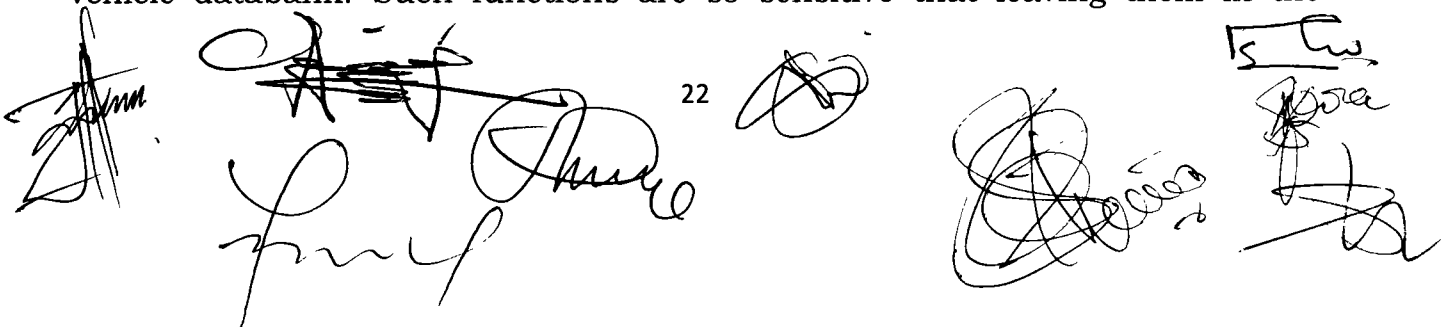
same time of 11: 32 am using the same Instrument Number WAK00079434. Again here two transactions are effected within one second i.e. 11: 32 am which is practically impossible except under fraudulent circumstances with an ulterior motive aforethought . Again Stamp Duty was evaded.

Both cases of Kawanda and Nabbingo land transactions are covered with fraud that culminated into tax evasion and loss of revenue to the Government. Tax evasion, is a serious offense over which SGS should be sanctioned, officials investigated further and whoever is found culpable be punished accordingly.

The other land transactions involving SGS are equally suspect . For instance it is not clear why the same plot of land on which Namanve Station sits has two different title deeds which are held concurrently by SGS' two different subsidiary companies namely: UGMVIS Property Holdings Company Limited and SGS Automotive Uganda Limited. Plot 1299 on Block 242 Kyadondo measuring 4.4410 Hectares with a 99 year lease effective from 1st July 2016 under Instrument WAK00093205 is under the ownership of UGMVIS Property Holdings Co. Ltd of P. O. Box 63 Kampala after transferring ownership from MMAKS NOMINEES LIMITED OF P O BOX 7166 KAMPALA on 10th April 2017 at 11:18 AM using Instrument Number WAK00122294.

However, the same Namanve Plot 1299 on Block 242 Kyadondo measuring 4.4410 Hectares with a 99 year lease effective 1st July 2016 is also under the ownership of SGS AUTOMOTIVE UGANDA LIMITED P O BOX 63 KAMPALA but this time ownership changed from SUMARIA PROPERTIES UGANDA LIMITED OF P O BOX 7166 KAMPALA on 20th Feb. 2017 at 12:48 pm using Instrument WAK00116057.

Strangely both holding companies have the same address and so do the ones leasing. All these point to one conclusion that SGS is a Fraudulent organization that should not be entrusted with a monopoly of providing a sensitive service like mandatory motor vehicle inspection and managing the national motor vehicle databank. Such functions are so sensitive that leaving them in the

 22

hands of an organization like SGS with questionable reputation exposes the country to a serious security risk.

**Recommendation:**

- 1. SGS should be investigated further on breaches of tax evasion and involvement in fraudulent activities over which serious sanctions should be preferred.***
- 2. The Contract on Mandatory motor vehicle inspection services be rescinded on criminal and unethical grounds committed by the group.***

**2.10 CONTRAVENTION OF THE RULES OF PROCEDURE BY THE CHAIRPERSON OF THE COMMITTEE ON PHYSICAL INFRASTRUCTURE**

On the 6<sup>th</sup> September 2017 at a meeting in Room 222 (East Committee Room), the Committee on Physical Infrastructure unanimously recommended termination of the contract with SGS for mandatory vehicle inspection. However on the 11<sup>th</sup> October 2017, the Chairperson convened a meeting and suspiciously moved a motion for recommittal of the report and specifically the recommendation on termination in favour of review and recommendation. While Rule 193 (1) of the Rules of Procedure stipulates that the quorum of a Committee shall be one third of its Members, at the time of this recommittal of the report there were only 8 Members actually present. Given that the Committee comprises 35 Members, quorum would be atleast 11. When the issue of quorum was raised by the Committee Clerk, the Chairperson insisted that the members' attendance register book had been signed by 11 Members. Considering that quorum is ascertained by physically present Members and not theoretical attendance signatures, the Chairperson erred in her scheme to have the report amended.

This renders the main report untenable procedurally.

## 2.11 CONCLUSION

The Committee notes that motor vehicle inspection, as a governmental intervention to improve road safety is a public good whose delivery should not be blighted by profiteering especially by the private sector.

A 2015 media report cited the prevalence rate of about 50-60 patients per day at the Mulago National Referral Hospital casualty ward, 80% of whom are boda boda related accident victims.<sup>1</sup> Juxtaposed against the earlier stated annual estimated 18,000 cases of traffic accidents in Uganda as per the 2015 UPF road crash report, it goes without saying that the cost of traffic accidents is immense and therefore the pursuit of road safety through interventions such as motor vehicle testing are effectively a public good. Implementation of road safety needs interventions that garner high levels of compliance and not costly punitive profit driven interventions that the existing vehicle inspection by SGS has become.

This partially explains why vehicle inspection by IOV prior to 1998 was free of charge, with UGX12,000 being charged if an individual was initiating the inspection.


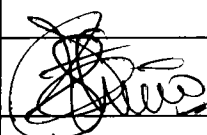
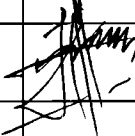
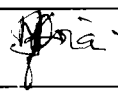
The Committee notes that in the current arrangement of a private monopoly that SGS is, motor vehicle inspection is considered a commercial venture with exorbitant costs.

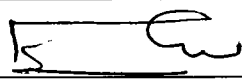
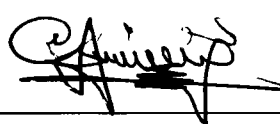
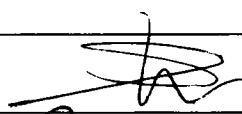
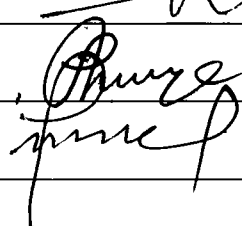
***The Committee therefore recommends the immediate disbandment of the current vehicle inspection arrangement under SGS through termination of the contract and a systematic re-establishment of motor vehicle inspection under Uganda Police Force with the requisite institutional safeguards, fair and equitable pricing, effective intra-governmental synergies and a robust public sensitization on road safety.***

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<sup>1</sup> <http://www.monitor.co.ug/SpecialReports/Counting-cost--boda-boda--accidents/688342-2624920-10pav3z/index.html>

**ENDORSEMENT OF THE MINORITY REPORT OF THE COMMITTEE ON  
PHYSICAL INFRASTRUCTURE ON THE MANDATORY INSPECTION OF  
MOTOR VEHICLES**

NO	NAME	CONSTITUENCY	SIGNATURE
1	<b>Hon. Eng Nakate Lillian Chair person</b>	<b>DWR Luweero</b>	
2	<b>Hon. Kumama Nsamba- George Vice Chair person</b>	<b>Bbaale County</b>	
3	Hon.Byandala Abraham James	Katikamu North	
4	Hon. Kafeero Ssekitoleko	Nakifuma County	
5	Hon. Kibalya Henry Maurice	Bugabula South	
6	Hon. Sabiti Denis	Rubanda West	
7	Hon. Burundo Musingo Alex	Bulambuli County	
8	Hon. Mbeiza Margaret	DWR Kaliro	
9	Hon. Othieno Okoth Richard	West Budama North	
10	Hon. Musoke Paul Ssebulime	Buikwe North	
11	Hon. Waluswaka James	Bunyole West	
12	Hon. Mangusho Lawrence	Kween County	
13	Hon. Kasolo Robert	Iki-Iki County	
14	Hon. Asaba N paul	Kyaka North	
15	Hon. Angundru Moses	Terego West	
16	Hon. Wamala Namboozo F	DWR Sironko	
17	Hon. Dulu Angel Mark	Adjumani East	

18	Hon. Manderam Amos	Buyamba County	
19	Hon. Nabbanja Robinah	DWR Kibaale	
20	Hon. Ninsiima Boaz Kasirabo	Kooki County	
21	Hon. Guma Gumisiriza	Ibanda County North	
22	Hon. Atim Ogwal Cecilia Barbara	DWR Dokolo	
23	Hon. William Nzoghu	Busangora North	
24	Hon. Okupa Elijah	Kasilo County	
25	Hon. Abacaccon Charles Angiro Gutomoi	Erute North	
26	Hon. Jonathan Odur	Erute South	
27	Hon. Ssempala Kigozi	Makindye Sebagabo	
28	Hon. Francis mwijukye	Buhweju County	
29	Hon. Julius Ochen	Kapelebyong District	
30	Hon. Anne Mary Tumwine	Ntoroko District	
31	Hon. Mukitale Biraahwa Stehen	Muliisa County	
32	Hon. Soyekwo Kenneth Cheborion	Tingey County	
33	Hon. Okwri Samuel	Moroto District	
34	Hon. Takirwa Francis (Brig.)	UPDF	
35	Hon. Muhanga Margaret	Kabarole	