



REPUBLIC OF NAMIBIA

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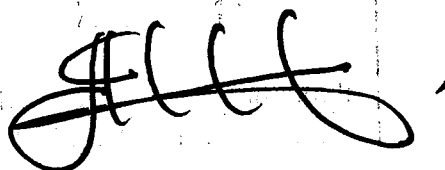
Your Ref.:.....

RESPONSES BY JOHN MUTORWA, MP (SWAPO PARTY) AND MINISTER OF WORKS AND TRANSPORT (MWT); TO PARLIAMENTARY (NATIONAL ASSEMBLY) QUESTIONS; RAISED BY THE HONOURABLE L.N. IIPUMBU, OF THE NAMIBIAN ECONOMIC FREEDOM FIGHTERS (NEFF) WITH REGARD TO: "THE REHABILITATION, SINCE 2013, OF THE RAILWAY LINE FROM KRANZBERG TO TSUMEB;" 11 MARCH 2021, NATIONAL ASSEMBLY, NAMIBIA.

1. **CONTEXTUAL HISTORICAL BACKGROUND AND INTRODUCTION:**

- 1.1 Between 17 November 2011 and 11 December 2011, at least **(FIVE (5) ROLLING STOCK**, that is: locomotives with Wagons' **derailments**, were recorded on the Railway Line Section, between Tsumeb and Kranzberg.

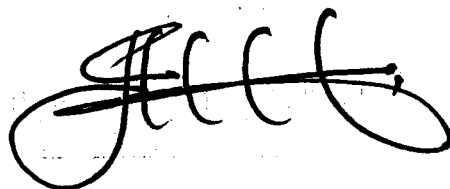
- 1.2 Those aforementioned derailments, were particularly caused by aged, depreciated and failing railway line infrastructure components; combined with factors, such as: heat, lack of clamping force, between the T-bolts and the Sleepers, failing Sleeper Seats, Lateral Buckling, Joint Spacing and Broken Rails.
- 1.3 Due to the nature of the said emergencies, that is: the frequent derailments; the matter was brought to the Cabinet, through a Cabinet Submission, by the Minister of Works and Transport on 15 December 2011.
- 1.4 Subsequently, and in support of the said MWT's 15 December 2011 Submission, the Cabinet, amongst others, resolved to:
- (a) Take note of the frequent derailments of the Rolling Stock on the Railway Line;
 - (b) Authorize the use of N\$45 Million available, on the Railway Network Upgrading Project;
 - (c) Authorize the sourcing of N\$105 Million, for urgent repair work, on the Tsumeb-Kranzberg Railway Line, through the Government of the Republic of Namibia's (GRN) own Contingency Fund;

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- (d) Authorize the moving of Rails at Aus Depot Railway Line Project, to be used for repairing of the Tsumeb-Kranzberg Railway Line; and the moving of surplus Sleepers, from the Northern Railway Project, to be used, for repairing the Tsumeb-Kranzberg Railway Line, in case, the available Sleepers, for the Tsumeb-Kranzberg Railway Line Project, would practically proved to be insufficient;
- (e) Finally, direct the Minister of Works and Transport, to seek urgent Tender Board Authorization, in appointing a Company, to carry out the Scope of Work, for repairing the Tsumeb-Kranzberg Railway Section.

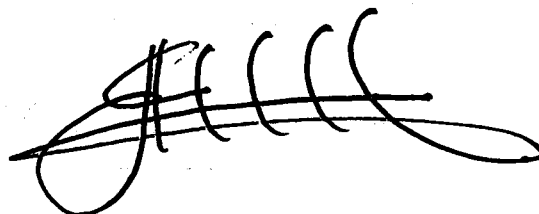
1.5 Through a Submission, dated the 15th December 2011, addressed to the Secretary of the Tender Board of Namibia, the urgent Tender Board Authorization was accordingly sought.

1.6 The Tender Board approved and granted the requested Authorization to appoint a Company. The MWT was directed by the Tender Board, to first obtain, at least THREE (3) quotations; and thereafter, accordingly select and appoint the successful bidder or successful Company.

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2. SUMMARY OF UNFOLDING ACTIVITIES AND EVENTS, AFTER THE APPOINTMENT OF THE SUCCESSFUL BIDDER OR COMPANY.

- 2.1 A Contract or Agreement was indeed concluded and signed, between TransNamib Holdings Limited and D and M Rail Construction (Pty) Limited. Available information reveals and indicates that: two Agreements were concluded, between the aforementioned Parties, concerning the upgrading and Rehabilitation of the Tsumeb-Kranzberg Railway Line.
- 2.2 The initial or first Agreement, expressly indicated that: the Contract Period, would commence on 17 December 2012 and end on 31 March 2013!
- 2.3 Available information further indicates that: a subsequent second Agreement, was concluded between the Parties, in May 2014; in terms of which: D and M, was appointed as a Contractor, to undertake rail maintenance, heavy repair, rehabilitation and upgrading of the Railway Line, between Kranzberg and Tsumeb, for an indefinite period commencing on the same date as the 17 December 2012, stipulated: in the initial Agreement, notwithstanding the date of execution. In this regard, specific reference is made to clause 12, of the May 2014 signed Upgrading and Rehabilitation Agreement.

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3. ACTIONS TAKEN BY THE MWT, TO CONFIRM THE LEGAL VALIDITY OF THE MAY 2014 SIGNED AGREEMENT: THE UPGRADING AND REHABILITATION AGREEMENT.

3.1 Through its then Permanent Secretary (now Executive Director), the MWT transmitted, a letter, dated 25 January 2016, to Namibia's Attorney General (AG), requesting Legal Advice, on the validity and duration of the Contract, concluded between D and M Rail Construction (Pty) Limited and TransNamib Holdings?

3.2 The proffered or offered Attorney General's Legal Advice, of 5 February 2016, could in brief, be summarized, as follows:

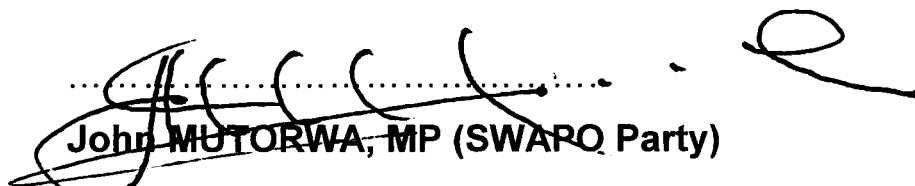
(a) There exists a valid Agreement, covering the maintenance, heavy works, upgrading and rehabilitation of the Kranzberg to Tsumeb Railway Line.

(b) That the 2014 Agreement, does not specify its termination date, was deliberately intended; and is not a bar to termination provided that: Valid grounds and reasonable notice are tendered, should TransNamib wants to terminate the 2014 Agreement, as such.

(c) The definitions of the terms maintenance, heavy works, re-investment, upgrading and rehabilitation, are contained in the May 2014 Agreement and the Railway Management Agreement.

(d) It is further advisable that: caution should be taken, in seeking to terminate the Agreement, without due justification, as such, would necessarily attach sanction from our Courts.

4. Thank you, Honourable lipumbu, thank you, Honourable Speaker of the National Assembly and thank you; Honourable Members of the National Assembly.



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~~John MUTORWA, MP (SWAPO Party)~~
MINISTER

Thursday, 11 March 2021, National Assembly, Namibia.

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