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REPUBLIC OF KENYA



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10/9/2020

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FOURTH SESSION

REPORT OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT,
PUBLIC WORKS AND HOUSING

ON THE CONSIDERATION OF THE NATIONAL AVIATION MANAGEMENT
BILL, 2020 (NATIONAL ASSEMBLY BILL NO. 18 OF 2020)

VOLUME I

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

SEPTEMBER 2020

TABLE OF CONTENTS

FOREWORD	v
1.0 PREFACE	vi
1.1 Mandate of the Committee	vi
1.2 Members of the Committee	viii
Committee Secretariat	vii
1.3 ADOPTION OF THE COMMITTEE REPORT	0
2.0 BACKGROUND	1
3.0 SITTINGS	1
3.1 SUMMARY OF THE NATIONAL AVIATION MANAGEMENT BILL, 2020	1
4.0 CONSIDERATION OF THE NATIONAL AVIATION MANAGEMENT BILL, 2020	6
4.1 KENYA AIRWAYS PLC (KQ)	6
4.2 KENYA AIRPORTS AUTHORITY (KAA)	8
4.3 KENYA CIVIL AVIATION AUTHORITY (KCAA)	9
4.4 STATE DEPARTMENT OF INTERIOR AND CITIZEN SERVICES	10
4.5 KENYA ASSOCIATION OF AIR OPERATORS (KAAO)	10
4.6 KENYA AIRLINE PILOTS ASSOCIATION (KALPA)	11
4.7 R.MOBISA & ASSOCIATES	12
4.8 WALTER MOCHA ONGERI	13
4.9 MWANGI, MWANGI & ASSOCIATES	14
5.0 OKAO & COMPANY ADVOCATES	14
5.1 SESLaw ADVOCATES	15
5.2 LAW SOCIETY OF KENYA (LSK)	15
6.0 COMMITTEE’S GENERAL OBSERVATIONS	17
7.0 COMMITTEE RECOMMENDATIONS	20

LIST OF ABBEVIATIONS

KQ - Kenya Airways PLC
KAA - Kenya Airports Authority
KCAA - Kenya Civil Aviation
KALPA- Kenya Airline Pilots Association
KAAO- Kenya Association of Air Operators

ANNEXURES

VOLUME I

- I**— Adoption List
- II**— Correspondence by the Committee
- III**— Advertisement inviting submission of Memoranda
- IV**— Minutes of the meetings of the Committee
- V** — List of Airstrips

VOLUME II

- VI**—Written Submissions received by the Committee:
 - i. Memoranda by the State Department for Transport
 - ii. Memoranda by the State Department for Interior and Citizen Services
 - iii. Memoranda by the Kenya Airport Authority (KAA)
 - iv. Memoranda by the Kenya Airways PLC (KQ)
 - v. Memoranda by the Kenya Civil Aviation (KCAA)
 - vi. Memoranda by the SESLaw Advocates LLP
 - vii. Memoranda by the Law Society of Kenya
 - viii. Memoranda by the Kenya Airline Pilots Association (KALPA)
 - ix. Memoranda by the Kenya Association of Air Operators (KAAO)
 - x. Memoranda by the OKAO and Company Advocates
 - xi. Memoranda by Mr. Walter Mocha Onger
 - xii. Memoranda by the R. Mobisa & Associates Advocates
 - xiii. Memoranda by Mwangi, Mwangi & Associates

FOREWORD

The Bill was read for the first time on **30th June, 2020** and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1); it is on the basis of this that the Committee makes this Report. The Committee held eight (8) meetings both in-house and with the stakeholders where submissions were received and considered before the adoption of this report.

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations of the submissions by different stakeholders on the National Aviation Management Bill, 2020. The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability, transparency and ensuring the participation of the public. Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee on Transport, Public Works and Housing, it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the National Aviation Management Bill, 2020.

HON. DAVID PKOSING, CBS, M.P

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;

- a. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b. study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c. study and review all legislation referred to it;
- d. study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e. investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f. to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);
- g. examine treaties, agreements and conventions;
- h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- j. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- k. examine any questions raised by Members on a matter within its mandate.

Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-

- a) Transport;
- b) Roads;
- c) Public works;
- d) Construction and maintenance of roads, rails and buildings;
- e) Air and seaports; and
- f) Housing.

In executing this mandate, the Committee oversees various State Departments, namely:

- i. The State Department of Transport;
- ii. The State Department of Infrastructure;
- iii. The State Department of Housing and Urban Development;
- iv. The State Department of Public Works; and
- v. The State Department of Shipping and Maritime Affairs.

1.2 Members of the Committee

The Departmental Committee on Transport, Public Works & Housing was re constituted by the House on 15th July 2020 and comprises of the following Members:-

Chairperson

Hon. David Pkosing, M.P.
Member for Pokot South Constituency

Jubilee Party

Vice-Chairperson

Hon. Gathoni Wamuchomba, M.P.
Member for Kiambu County

Jubilee Party

Members

Hon. Dominic Kipkoech Koskei, M.P.
Member for Soitik Constituency

Jubilee Party

Hon. Peris Tobiko, M.P.
Member for Kajiado East Constituency

Jubilee Party

Hon. Kulow Maalim Hassan, M.P.
Member for Banisa Constituency

Economic Freedom Party (EFP)

Hon. Abdul Rahim Dawood, M.P.
Member for North Imenti Constituency

Jubilee Party

Hon. Samuel Arama, M.P.
Member for Nakuru Town West

Jubilee Party

Hon. Shadrack John Mose M.P.
Member for Kitutu Masaba Constituency

Jubilee Party

Hon. Ali Wario Guyo M.P.
Member for Garsen Constituency
Orange Democratic Movement Party

Hon. Rehema Dida Jaldesa M.P.
Member for Isiolo County

Jubilee Party

Hon. Ahmed Bashane Gaal M.P.
Member for Tarbaj Constituency
Peoples Democratic Party

Hon. David Njuguna Kiaraho M.P.
Member for Ol Kalou Constituency

Jubilee Party

Hon. Johnson Many Naicca M.P.
Member for Mumias West Constituency
Orange Democratic Movement Party

Hon. Omar Mwinyi Shimbwa M.P.
Member for Changamwe Constituency
Orange Democratic Movement Party

Hon. Tom Mboya Odege M.P.
Member for Nyatike Constituency
Orange Democratic Movement Party

Hon. Ahmed Abdisalan Ibrahim M.P.
Member for Wajir North Constituency
Orange Democratic Movement Party

Hon. Gideon Mutemi Mulyungi M.P.
Member for Mwingi Central Constituency
Wiper Democratic Party

Hon. George Aladwa Omwere M.P.
Member for Makadara Constituency
Orange Democratic Movement Party

Hon. Mercy Wanjiku Gakuya M.P.
Member for Kasarani Constituency
Jubilee Party

1.2.1 Committee Secretariat

Ms. Chelagat Tungo Aaron

First Clerk Assistant

Head of Secretariat

Mr. Ahmed Salim Abdalla

Second Clerk Assistant

Ms. Mercy Wanyonyi

Legal Counsel I

Mr. Abdinasir Moge Yusuf

Fiscal Analyst

Ms. Winnie Kulei

Research Officer III

Mr. Brian Ngetich

Audio Recording Officer

Ms. Zainabu Wario

Sergeant at Arms

1.3 ADOPTION OF THE COMMITTEE REPORT

We, the Members of the Departmental Committee on Transport, Public Works and Housing have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached list (Annexure I)

2.0 BACKGROUND

The National Aviation Management Bill, 2020 was read for the first time on **30th June, 2020** and subsequently committed to the Departmental Committee on Transport, Public Works and Housing for consideration pursuant to the provisions of Standing Order 127 (1), and report to the House. The principal object of this Bill is to provide for the establishment of the National Aviation Council, Kenya Aviation Corporation and its Operating Entities; to provide for their powers, functions and management and for connected purposes.

3.0 SITTINGS

The Committee considered the National Aviation Management Bill, 2020 in its sittings held on **Thursday 6th, Thursday 13th, Tuesday 18th and Thursday 20th August, Tuesday 1st, and Wednesday 2nd September, 2020; and adopted its report on Thursday 3rd September 2020;** where submissions from stakeholders were received and considered before the adoption of this report. The Minutes of the meetings of the Committee are annexed as **Annex IV**.

3.1 SUMMARY OF THE NATIONAL AVIATION MANAGEMENT BILL, 2020

PART 1-PRELIMINARY

Part I of the Bill (**Clauses 1-4**) contains preliminary provisions which include the short title of the Bill, interpretation of terms as used in the Bill and sets out the objects and purposes of the Bill which include the establishment of the Kenya Aviation Corporation and the Operating Entities and providing for their operations, powers, functions and responsibilities.

PART II—ESTABLISHMENT OF THE NATIONAL CIVIL AVIATION COUNCIL

Part II (Clause 5) of the Bill establishes the National Aviation Council and whose functions shall be to integrate policies relating to aviation sector and the other sectors of the economy to enable all the national organs and the sectors of the economy requiring access and support of the civil aviation sector to cooperate and work with the sector to ensure the effective performance of its mandate; and to assess the objectives, commitment and the risks to the country in respect of actual and potential civil aviation capabilities.

The membership of the Council comprises of the President as the Chairperson, the Cabinet Secretary responsible for matters relating to Transport, Internal Security, the National Treasury, the Attorney-General and the Kenya Air force Commander.

PART III—THE ESTABLISHMENT OF THE KENYA AVIATION CORPORATION

Part III of the Bill (**Clauses 6-7**) establishes the Kenya Aviation Corporation and provides for the functions and powers of the same including: holding the shares in the Operating Entities (KQ,KAA and the Aviation Investment Corporation);managing, overseeing and where applicable managing the operations of the Group (Corporation and the operating entities i.e KQ,KAA and the Aviation Investment Corporation) including establishing centralised functions to be shared by the Group; promoting the development of the Kenyan aviation sector; and advising the Government on matters relating to the development of the Kenyan aviation sector.

PART IV—MANAGEMENT OF THE CORPORATION

Part IV of the Bill (**Clauses 8-22**) provides for the management of the Corporation including the creation of the Board of Directors which shall be the governing body of the Corporation. The membership of the Board consists of a Chairperson to be appointed by the President, the Attorney General, the Cabinet Secretary for the time being responsible for matters relating to the National Treasury and Planning or their representative, the Principal Secretary of the Ministry for the time being responsible for matters relating to Transport or their representative, the Chief Executive Officer, the Managing Directors of Kenya Airways and the Kenya Airports Authority and four independent non-executive Board members appointed by the Cabinet Secretary.

PART V— ESTABLISHMENT OF THE OPERATING ENTITIES

PART V (**Clauses 23-38**) of the Bill provides for the establishment of the three Operating Entities and their functions. The Operating entities are-

- (a) **Kenya Airways** whose functions include to carry on business as carriers of air passengers, cargo, mail and goods in Kenya and elsewhere and to provide other transport related services and to undertake other businesses related to air transport and ancillary businesses.The initial share capital of Kenya Airways shall be seven billion four hundred

and eighty two million three hundred and forty five thousand, one hundred and seventy four (7,482,345,174) shillings divided into seventy four million, eight hundred and twenty three thousand, four hundred and fifty two (74,823,452) ordinary shares as may be varied from time to time in accordance with the provisions of the Companies Act, 2015.

(b) **Kenya Airports Authority** whose functions include to own, operate and maintain Aerodromes and to construct, operate and maintain Aerodromes and other related facilities. The initial share capital of the Kenya Airports Authority shall be sixty-six billion (66,000,000,000) shillings divided into sixty-six million (66,000,000) ordinary shares as may be varied from time to time in accordance with the provisions of the Companies Act, 2015.

(c) **Aviation Investment Corporation** whose functions include to carry on businesses in relation to aviation activities and any other business related to the aviation sector as may be determined by the Board; to undertake all necessary activities necessary to construct, operate and manage such businesses; to carry on businesses in relation to aviation training schools, maintenance and repair organisation, aircraft handling, flight catering, aviation medical services, tour and holiday management services and any other business related to the aviation sector as may be determined by the Board and to undertake all necessary activities necessary to construct, operate and manage such businesses.

PART VI—MANAGEMENT OF THE OPERATING ENTITIES

PART VI (Clauses 39-45) of the Bill contains provisions on the management of the Operating Entities including the appointment of Managing Directors and qualifications for their appointment. The Managing Director shall have control over all personnel and other activities of the Operating Entity and is to report to the Chief Executive Officer. The qualifications for appointment as a Managing Director include a master's degree from a university recognised in Kenya or its equivalent in a relevant field and at least ten years work experience in the relevant industry.

PART VII—OPERATING ENTITY SUBSIDIARIES

PART VII (**Clauses 46-48**) of the Bill provides for the management of the Operating Entity Subsidiaries. The provisions require each Operating Entity to appoint persons nominated by the Corporation to act as director(s) of the Operating Entity Subsidiaries. The Board is required to appoint such persons as are nominated by the Chief Executive Officer to act as managing director(s) of each of its Operating Entity Subsidiaries and to carry out such functions as may be determined by the relevant Operating Entity Subsidiary's board.

PART VIII—TRANSFER OF UNDERTAKINGS TO THE OPERATING ENTITIES

PART VIII (**Clauses 49-53**) of the Bill contains provisions on the transfer of undertakings to the Operating Entities. The undertakings includes all businesses, assets, liabilities and contracts of the former Kenya Airports Authority to the Kenya Airports Authority; and of Kenya Airways PLC, including the equity interests held by Kenya Airways PLC in its subsidiaries, to Kenya Airways.

The Cabinet Secretary is required, with the approval of the Cabinet Secretary to the National Treasury, immediately upon the Government acquiring one hundred percent of the equity interest (the shares, convertible debt instruments, shareholder loans, shareholder debt instruments, rights to invest, voting rights, equity or other forms of ownership interests or rights of any class) in Kenya Airways PLC, by notice in the Gazette, issue one or more Vesting Orders effecting the creation of the Operating Entities and transferring the relevant undertaking to the relevant Operating Entity.

PART IX— THE ESTABLISHMENT AND MANAGEMENT OF THE FUND

PART IX (**Clauses 54-55**) of the Bill contains provisions establishing the Kenya Aviation Corporation Fund to be administered by the Board and managed by the Chief Executive Officer of the Corporation. Payments are to be paid out of the Fund for the purposes of expenditure of the Operating Entities as appropriated by the Board.

The sources of the Fund include apportioned proceeds from the passenger service charge as provided for under the Air Passengers Service Charge Act, such monies as may be appropriated by Parliament for the purposes of the Fund, grants and loans from the Government, grants, donations and loans from any other person or body, surplus income accruing to the Operating

Entities in the discharge of their functions at the end of the Financial Year, interest on savings accruing on moneys held in the Fund and monies from any other lawful source.

PART X—FINANCIAL PROVISIONS

PART X (**Clauses 56-63**) of the Bill provides for financial provisions, reporting mechanism, and management of funds by the established entities. The Board is required, within ninety days of the end of each Financial Year to prepare a report of the operation of the Corporation during that year and transmit the report to the Cabinet Secretary who shall cause it to be presented to the National Assembly together with the report of the Auditor-General.

PART XI—OFFENCES RELATING TO AERODROMES

PART XI (**Clauses 64-71**) of the Bill contains provisions for offences and penalties relating to aerodromes including any act which obstructs or is likely to obstruct the working of any equipment or vehicle of the Kenya Airports Authority used in the operation of an aerodrome and which endangers or is likely to endanger the life of any person therein.

PART XII—MISCELLANEOUS PROVISIONS

PART XII (**Clauses 72-74**) of the Bill contains miscellaneous provisions relating to the power of the Cabinet Secretary to make Regulations and the repeal of the Kenya Airports Authority Act Cap 395.

FIRST SCHEDULE -THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

The First Schedule to the Bill contains provisions relating to the conduct of business and the affairs of the Board.

SECOND SCHEDULE- WRITTEN LAWS TO BE AMENDED

The Second Schedule to the Bill contains provisions relating to consequential amendments to various Acts of Parliament, including to State Corporations Act, Cap 446 to ensure that the Kenya Aviation Corporation and Operating Entities established under the National Aviation

Management Act and the Operating Entity Subsidiaries are not state corporations; the Public Procurement and Asset Disposal Act, 2015 to allow the Cabinet Secretary, from time to time, with approval of Cabinet and the National Assembly, by notice, to exempt a state organ or public entity from the application of the Act based on procurement guidelines developed by that state organ or public entity and approved by the National Treasury; and the Companies Act, 2015 to provide for the registration of a state owned entity i.e it must be created pursuant to the provisions of an Act of Parliament, it must have a share capital that is wholly owned by Government, the liability of its members is limited pursuant to the provisions of its establishing Act of Parliament and its certificate of registration states that it is a state owned entity.

4.0 CONSIDERATION OF THE NATIONAL AVIATION MANAGEMENT BILL, 2020

The Committee considered the National Aviation Management Bill, 2020 in its sitting held on Thursday 13th August, 2020. Pursuant to Standing Order 127(3)(a), the Committee invited the public through the Daily Nation and Standard newspapers on **Thursday, 2nd July 2020** to make representations on the Bill. The advertisement is annexed as **Annex III**.

The Committee received thirteen (13) memoranda with various proposals on the Bill. The written submissions are annexed as **Annex V**

The Committee, pursuant to Standing Order 127(3) (c), further engaged different stakeholders in the aviation sector by holding meetings with the Ministry and various agencies and organizations. The Committee, through the Office of the Clerk of the National Assembly formally invited the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, The Attorney General's Office, The National Treasury, State Agencies, and Private Sector Stakeholders, to give their written views on the Bill. The letters are annexed as **Annex II**.

In this regard, views were sought and memoranda submitted from the following stakeholders:

4.1 KENYA AIRWAYS PLC (KQ)

Kenya Airways PLC was represented by the Managing Director, Mr. Allan Kilavuka, when they met the Committee on 13th August, 2020, morning session and on Tuesday 1st

September, 2020 at 2.00 p.m. in the Mini Chamber, County Hall, at Parliament Building.

They submitted that-

1. Clause 2 of the Bill should be amended in the definition of “user charges” in order to specify the scope and provide clarity on the nature of regulated user charges that will be referred to the Cabinet Secretary for publication and give the Board latitude in determining applicable rates for non-aeronautical user charges that are commercially driven.
2. Clause 3 of the Bill should be amended in order to provide for the establishment of the Council which is a key aspect of the Bill.
3. Clause 5 of the Bill should be amended in order to include the chairperson of the Corporation in the Council so as to ensure that the Council’s role is aligned to the group structure.
4. Clause 13 of the Bill should be amended to provide for a minimum qualification of a bachelor’s degree for qualification for appointment as a Chief Executive Officer with possession of a Master’s degree as an added advantage rather than a minimum qualification.
5. Clause 19 of the Bill should be amended by deleting the requirement of imprisonment for a term exceeding six months since imprisonment notwithstanding the period of conviction reflects on the character of the Board Member, in breach of chapter six of the Constitution. Further that the Chairperson of the Board should give permission to a Board member and not the Board for failure to attend the meetings of the Board.
6. Clause 22 of the Bill should be amended to remove the requirement to have a Board member also authenticate the common seal of the Corporation; and to provide that the seal of the Corporation shall be authenticated by the signature of the Chief Executive Officer and the Corporation Secretary.
7. Clause 27(3) of the Bill should be amended to give the Board (and not the MD) powers to approve the erection or modification of any building which may be deemed to interfere with the operation of any service provided by KAA.
8. Clause 30 of the Bill should be amended to expressly provide for aircraft overhaul as one of the functions of the Aviation Investment Corporation.
9. Clause 37(2) of the Bill should be deleted for want of repetition with sub-clause (3).

10. Clause 40 of the Bill should be amended in order to specify a minimum qualification of a bachelor's degree for appointment as a Managing Director.
11. Clause 44 of the Bill should be amended by deleting the requirement of imprisonment for a term exceeding six months since imprisonment notwithstanding the period of conviction reflects on the character of the Managing Director, in breach of chapter six of the Constitution.
12. Clause 56 of the Bill should be amended in order to ensure the opening of bank accounts is approved by the Board and the Cabinet Secretary of the National Treasury for transparency.
13. The Second Schedule should be amended in order to clarify that the scope of powers and duties of a state owned entity are circumscribed by the statute establishing the entity.

4.2 KENYA AIRPORTS AUTHORITY (KAA)

KAA was represented by its Managing Director, Mr. Alex Gitari when they met the Committee on 13th August, 2020, morning session and on Tuesday 1st September, 2020 at 2.00 p.m. in the Mini Chamber, County Hall, Parliament Building.

They submitted that-

1. Clause 2 of the Bill should be amended in the definition of “user charges” in order to specify the scope and provide clarity on the nature of regulated user charges that will be referred to the Cabinet Secretary for publication and give the Board latitude in determining applicable rates for non-aeronautical user charges that are commercially driven.
2. Clause 3 of the Bill should be amended in order to provide for the establishment of the Council which is a key aspect of the Bill.
3. Clause 5 of the Bill should be amended in order to include the chairperson of the Corporation in the Council so as to ensure that the Council's role is aligned to the group structure.
4. Clause 8 of the Bill should be amended in order to include the Principal Secretary Ministry of Interior and Coordination of National Government as Airports being border points and key security installations, there is need for articulation of security matters at Board level.

5. Clause 19 of the Bill should be amended by deleting the requirement of imprisonment for a term exceeding six months since imprisonment notwithstanding the period of conviction reflects on the character of the Board Member, in breach of chapter six of the Constitution. Further that the Chairperson of the Board should give permission to a Board member and not the Board for failure to attend the meetings of the Board.
6. Clause 22 of the Bill should be amended to remove the requirement to have a Board member also authenticate the common seal of the Corporation; and to provide that the seal of the Corporation shall be authenticated by the signature of the Chief Executive Officer and the Corporation Secretary.
7. Clause 27(3) of the Bill should be amended to give the Board (and not the MD) powers to approve the erection or modification of any building which may be deemed to interfere with the operation of any service provided by KAA.
8. Clause 30 of the Bill should be amended to expressly provide for aircraft overhaul as one of the functions of the Aviation Investment Corporation.
9. Clause 40 of the Bill should be amended in order to specify a minimum qualification of a bachelor's degree for appointment as a Managing Director.
10. Clause 41 of the Bill should be amended in order to correct a typographical error.
11. Clause 44 of the Bill should be amended by deleting the requirement of imprisonment for a term exceeding six months since imprisonment notwithstanding the period of conviction reflects on the character of the Managing Director, in breach of chapter six of the Constitution.
12. Clause 56 of the Bill should be amended in order to ensure the opening of bank accounts is approved by the Board and the Cabinet Secretary of the National Treasury for transparency.

4.3 KENYA CIVIL AVIATION AUTHORITY (KCAA)

KCAA was represented by the Director General, Capt. Gilbert Kibe, when they met the Committee on 13th August, 2020, morning session and on Tuesday 1st September, 2020 at 2.00 p.m. in the Mini Chamber, County Hall, Parliament Buildings.

They submitted that-

1. Clause 4(2) and 4(3) of the Bill should be amended in order to ensure KCAA's oversight mandate is recognized as under International Standards and recommended Practices, the

Civil Aviation Authority has mandate to ensure effective oversight of the entire aviation sector.

2. Clause 7(1)(c) and(d) should be amended as they are in conflict with section15(2) of the Civil Aviation Act,2013 which requires the KCAA Board of Directors to advise the Cabinet Secretary on the development and maintenance of civil aviation policy framework and the objectives of the Authority.
3. Clause 24 of the Bill should be amended in order to recognize in aviation the common and acceptable items moved by air i.e passengers, cargo and mail.
4. Clause 27 of the Bill should be amended in order to ensure that KCAA and not KAA regulates the use of facilities provided by KAA as KCAA is mandated to regulate the entire aviation industry in line with ICAO's Standards and Recommended Practices.

4.4 STATE DEPARTMENT OF INTERIOR AND CITIZEN SERVICES

The State Department, presented their written response through the State Department of Transport where they submitted that clause 8 of the Bill should be amended in order to include the Principal Secretary Ministry of Interior and Coordination of National Government as Airports being border points and key security installations, there is need for articulation of security matters at Board level.

4.5 KENYA ASSOCIATION OF AIR OPERATORS (KAAO)

KAAO was represented by the Vice Chairman; Mr. Fredrick Opot and other officials when they met the Committee on **20th August 2020**.They submitted that-

1. The title of this Bill and Section 1 (1) of the Bill is misleading as Kenya Aviation is comprised of diverse organizations some of which are in private ownership.
2. Clause 4 of the Bill should be amended as the guiding principles should include the enhancement and/or development of JKIA as an international Hub as this has always been one of the key strategies to enable Kenya capture the aviation market in the region.

3. Clause 9 of the Bill should be amended in order to ensure that the function of the Board to approve the user charges is not subjective especially as seen by other players, some being competitors.
4. Clause 10 of the Bill should be amended in order to remove the restriction for the Chairman to have knowledge and experience of similar business as it will be subjective.
5. Clause 13 of the Bill should be amended to provide for a longer period of experience for qualification for appointment as a Chief Executive Officer.
6. Clause 14 of the Bill should be amended to provide for the tenure of the Chief Executive Officer as three years renewable once.
7. Clause 15 of the Bill should be amended to provide for matters relating to integrity, Corruption, Performance and Fraud as grounds for removal of the Chief Executive Officer.
8. Clause 22 of the Bill should be amended in order to align it with the Business Laws (Amendment) Act, 2020 that abolished the use of Common Seals by Companies.
9. Stakeholder consultation by the Operating Entities in setting user charges though intended to protect other users, has by experience been found to be misused at the detriment of the users. It will result in subjective application due to direct conflict of interest.
10. Clause 43 of the Bill should be amended in order to ensure that the tenure of office of a Managing Director is four years and not five.

4.6 KENYA AIRLINE PILOTS ASSOCIATION (KALPA)

KALPA was represented by the **General** Secretary; Mr. Murithi Nyaga among other officials, when they met the Committee **on 20th August 2020**. They submitted that-

1. Clause 5 of the Bill should be amended to include a representative from the Kenya Civil Aviation Authority in the Council to offer expert advice
2. Clause 7 of the Bill should be amended to ensure that measures aimed at developing the Kenya aviation sector are ratified through a consultative approach.
3. Clause 8 of the Bill should be amended to provide for inclusion of a representative of the Kenya Airline Pilots Association in the Board Membership.

4. Clause 10 of the Bill should be amended to provide for the qualification of an ATPL with an executive MBA/MSC or ten years commercial airline experience and experience relevant to aviation.
5. Clause 14 of the Bill should be amended to provide that the tenure of the CEO should be three years.
6. Clause 40 of the Bill should be amended in order to specify a qualification of knowledge and experience in the aviation sector for appointment as a Managing Director.
7. Clause 43 of the Bill should be amended in order to ensure that the tenure of office of a Managing Director is four years and not five.
8. Clause 53 of the Bill should be amended to provide for consultation between the Board and representative associations of employees of the Group in the review of the terms of service of employees of the Operating Entities.
9. Part XI of the Bill on the provisions regarding employees endangering safety should be deleted as it goes against Annex 13 of ICAO (accident investigations).

4.7 R.MOBISA & ASSOCIATES

R. Mobisa & Associates in their written memorandum dated 13th July, 2020 submitted that-

1. Clause 2 of the Bill should be amended to provide for a definite date/time on which the Bill will come into force once passed and to exhaustively define what constitutes “user charges” and to delete the general power given to the Cabinet Secretary to define what the user charges are.
2. Clause 5 of the Bill should be amended to include a representative from the Kenya Civil Aviation Authority in the Council and to remove the President, the Cabinet Secretaries for the National Treasury and Interior and the Kenya Air force commander from the Council
3. Clause 8 of the Bill should be amended to clarify the capacity in which the Chief Executive Officer and the Managing Directors of Kenya Airways and KAA sit on the Board; clarify the reporting relationship between the Chief Executive Officer and the two managing Directors; clarify whether the Managing Director of the Aviation Investment Company also sits on the Board; replace the Cabinet Secretary of the National Treasury

with the Principal Secretary; and require the Cabinet Secretary to appoint the four independent directors subject to their nomination by entities not related to the government.

4. Clause 8 of the Bill should be amended to harmonize the term of office of the Chief Executive Officer and the Managing Directors.
5. Clause 24 of the Bill should be amended by deleting the general power given to the Board to assign undefined functions to Kenya Airways.
6. Clauses 25 and 28 of the Bill should be amended to reflect the true valuation of KQ and KAA.
7. Clause 27 of the Bill should be amended by removing any references to the grant of regulatory powers to KAA with regard to access to, operation and construction of aerodromes and by deleting the general function of providing other transport related services and undertaking other businesses related to air transport and ancillary businesses.
8. Clause 30 of the Bill should be amended by deleting the general power given to the Board to assign the Aviation Investment Corporation undefined functions.
9. Clause 43 of the Bill should be amended to harmonize the term of office of the Managing Directors to the term of the Chief Executive Officer
10. Clause 43 of the Bill should be amended in order to require the Cabinet Secretary to seek the approval of Parliament before excluding any asset or liability of KQ and KAA from any vesting order.
11. Clause 67 of the Bill should be amended in order to harmonize the penalties prescribed with the gravity of the various offences.
12. Clause 72 of the Bill should be amended in order to provide for the objects and purpose for and limitations on the power granted to the Cabinet Secretary for Transport to make regulations.

4.8 WALTER MOCHA ONGERI

Mr. Walter Mocha Onger met the committee on 20th August, 2020 and in his submissions dated 8th July, 2020 and submitted that-

1. Clause 5 of the Bill should be amended to include a representative from the Kenya Civil Aviation Authority in the Council.

2. Clause 9 of the Bill should be amended in order to ensure that the Board when considering and approving any variations in salaries, wages or other terms and conditions of service of employees of the Group does so in consideration of the existing Collective Bargaining Agreements executed at the time with any labour union.
3. Clause 49 of the Bill should be amended in order to transfer the entire contractual obligations including the Collective Bargaining Agreements, Recognition Agreements with Kenya Airways PLC and Kenya Airports Authority held with the labour unions to the new operating entities.
4. Clause 53 of the Bill should be amended in order to provide for consultation between the Board and representative associations of employees of the Group.

4.9 MWANGI, MWANGI & ASSOCIATES

Mwangi & Mwangi in their written memorandum dated 7th July, 2020 submitted that-

1. A general amendment should be made to subject the entities created under the Bill to the provisions of the Civil Aviation Act, 2013 and the supervision of the Civil Aviation Authority in regulatory and policy matters.
2. Clause 5 of the Bill should be amended to include a representative from the Kenya Civil Aviation Authority in the Council.

5.0 OKAO & COMPANY ADVOCATES

OKAO & Company Advocates in their written memorandum dated 8th July, 2020 submitted that they opposed the consolidation of Kenya Airways and Kenya Airports Authority into one entity under the National Aviation Bill, 2020 because-

1. The assets of KAA should be protected from the losses and debts of KQ;
2. No feasibility study has been done to show that the creation of a Kenya Aviation Corporation to consolidate aviation assets is viable, sustainable and will result in value for tax payers money;
3. The airlines business is historically an unprofitable undertaking. It's a business that should not be gambled with taxpayers money especially in the current pandemic of COVID -19 pandemic; and

4. The government engaging in business has previously gone very badly leading to additional and unnecessary burdens on taxpayers e.g National Bank, Kenya Co-operative Creameries, all the sugar companies and Pan-paper Mills

5.1 SESLaw ADVOCATES

SESLaw Advocates in their written memorandum dated 8th July, 2020, submitted that the Bill should be rejected in its entirety for-

1. failure to follow the due process of making a Bill including lack of a policy paper informing nationalization;
2. lack of adequate information/transparency on the nationalization and the proposed merger;
3. failure to meet the constitutional threshold of public participation in law making;
4. failure to adhere to established principals of public finance management; failure to conduct a comprehensive feasibility study on the financial viability of nationalization of KQ and its merger with KAA; and
5. failure to adhere to competition law and policy; potential for infringement on international obligations; and illegalities arising from unlawful/irregular amendment of other laws.

5.2 LAW SOCIETY OF KENYA (LSK)

The Law Society of Kenya in their written memorandum dated 20th August, 2020 submitted that the Bill should be withdrawn as-

1. The creation of the Council materializes to nothing as it replicates functional Cabinet Committees that the President can create without legislation.
2. The establishment of the Kenya Aviation Corporation is the primary goal of the Bill and other operating entities hence irregular and unconstitutional as it does not conform to the spirit of the rule of law. A standalone law for every state corporation called Operating Entities should be enacted separately in consonance with the State Corporations Act.
3. Kenya Airways is among the new entities being created yet the Bill is silent on private commercial interests under KQ currently and nothing on redress issues of assets and liabilities under the succession scheme.

4. The Bill purports to amend other statutes like the Public Procurement and Asset Disposal Act that are not related to it in a manner that unduly expands the subject matter of the Bill contrary to law.
5. The constitutional right of aviation workers should be fortified in the Bill after pragmatic consultation with the aviation stakeholders as there are ongoing court matters on the same.
6. Amend to reflect county government's as they are big stakeholders in the management of local aerodromes as they are transport leeway into the counties and their positioning directly affects the county development plans.

6.0 COMMITTEE'S GENERAL OBSERVATIONS

The committee made the following observations and comments on the Bill:

- (1) The Bill gives effect to the recommendations of the Parliamentary report approved by the House on 17th June, 2019, on the inquiry into the Kenya Airways' Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority prepared by the Departmental Committee on Transport, Public Works and Housing proposing, among other recommendations.
- (2) There is need to amend clause 2 of the Bill in the definition of 'user charges'. This should be amended to specify the user charges to be levied under the Act. Further, there's need to provide clarity in the use of titles for the Chief Executive Officer of the Group and the Managing Directors of the operating entities and operating entity subsidiaries.
- (3) There is need to amend clause 3 of the Bill to include the establishment of the Council as one of the objects and purpose of the Bill as the same had been omitted in the Bill.
- (4) Clause 4 of the Bill should be amended to ensure KCAA's oversight mandate is recognized and to further provide that where any provisions of the National Aviation Management Act contradict the provisions of the Civil Aviation Act on safety and security, the Civil Aviation Act shall prevail.
- (5) That clause 5 of the Bill should be amended so as to include the chairperson of the Corporation and the Director General of KCAA since under section 9 of the Bill relating to the functions of the Board, they are required to prescribe conditions or restrictions in relation to the powers and functions of the Operating Entities provided that such prescription is not inconsistent with the provisions of this Act, The Board is required to advise the Cabinet Secretary on the development and maintenance of Civil Aviation policy and since restrictions may include issues of security and safety which is sole mandate of KCAA, then KCAA should sit at the Board.
- (6) That clause 7 of the Bill should be amended in order to ensure that the Corporation does not perform the functions of KCAA as prescribed by section 15(2) of the Civil Aviation Act, 2013 which requires the KCAA Board of Directors to advise the Cabinet Secretary on the development and maintenance of civil aviation policy framework and the objectives of the Authority.

- (7) That clause 8 of the Bill should be amended in order to ensure that the Principal Secretary Ministry of Interior and Coordination of National Government, the Managing Director of the Aviation Investment Company and a representative of the private air operators representing the interests of the private sector in the aviation industry is included in the Board. Further, that the Cabinet Secretary should nominate the four independent non-executive Board members taking into consideration regional and ethnic diversity of the people of Kenya. Additionally, that the group Managing Directors should be executive members of the Board with no powers to vote.
- (8) That clause 13 of the Bill should be amended to provide for a minimum qualification of a Bachelor's degree for appointment as a Chief Executive Officer.
- (9) That clause 14 of the Bill should be amended to provide that the Chief Executive Officer shall hold office for a period of five years and shall be eligible for re-appointment for one further term of five years.
- (10) That clause 15 of the Bill should be amended to provide for further detailed grounds for the removal of a Chief Executive Officer from office.
- (11) That clause 19 of the Bill should be amended to provide for incapacity by a Board member to perform his or her functions by reason of physical and mental infirmity as a ground for removal of a Board member and vacation from office.
- (12) That clause 22 of the Bill should be amended by removing the requirement for a common seal and substituting with the new requirement under section 37 of the Companies Act which provides that a document, contract or deed will be considered to be validly executed by a company if it is signed on behalf of the company by two authorized signatories or by a director of the company in the presence of a witness who attests the signature.
- (13) That clause 27 of the Bill should be amended in order to ensure that KCAA and not KAA regulates the use of facilities provided by KAA and to recognize animals apart from birds as being hazardous to aircraft operations. Further, that clause 27(3) should be amended to give the Board (and not the MD) powers to approve the erection or modification of any building which may be deemed to interfere with the operation of any service provided by KAA.
- (14) That clause 30 of the Bill should be amended in order to include "aircraft overhaul" as one of the functions of the Aviation investment Corporation.

- (15) That clause 40 of the Bill should be amended to specify a minimum qualification of a bachelor's degree for appointment as Managing Director.
- (16) That clause 56 of the Bill should be amended in order to ensure that the Corporation opens bank accounts upon approval by the National Treasury and the Board as opposed to only the National Treasury.
- (17) Clause 72 of the Bill should be amended so as to ensure that the powers of the Cabinet Secretary to make regulations are in line with Article 94(6) of the Constitution i.e prescribe the purpose and objectives for which the authority is conferred, the limits of the authority, the nature and scope of the law that may be made and the principles and standards applicable to the law being made.
- (18) That the Second Schedule to the Bill should be amended in the proposed amendment to the Companies Act, in the proposed new section 10D by providing that the scope of powers and duties of a state owned entity are circumscribed by the statute establishing the entity.
- (19) That the Second Schedule should be amended in section 3(3) of the Air Passenger Service Charge Act, Cap 475 in order to provide that twenty five percent of the apportioned proceeds from the passenger service charge to the Kenya Airports Authority is used for the purposes of the development and management of airstrips. The committee further observed that very few County Head Quarters are served with airstrips having runways made of bitumen and tarmac, while most County Head Quarters (*e.g. Tana River, Marsabit, Makueni, Kirinyaga, Muranga, Nakuru, Meru, West Pokot, Samburu, Elgeyo Marakwet, Narok, Kajiado, Kericho, Busia, Siaya and Migori; ANNEX V*) have airstrips made up of murrum and grass making them impossible to land even light aircrafts, hence the necessity for specific allocation of funds ring-fenced for their development and management in order to enhance connectivity and opening up the country.

7.0 COMMITTEE RECOMMENDATIONS

The Committee, having considered the National Aviation Management Bill, 2020, and submissions from stakeholders will be proposing amendments to **clauses 2,3,4,5 7, 8, 13, 14, 15, 19, 22, 24, 27, 30, 40, 56, 72 and the Second Schedule** of the Bill as follows-

CLAUSE 2

THAT Clause 2 of the Bill be amended -

(a) by deleting the definition of the term “user charges” and substituting therefor the following new definition-

"user charges" means, aircraft landing charges, aircraft parking & hangar charges, security charges, noise related charges, aircraft emissions related charges, aircraft fuel concession fees, cargo concession fees and other aeronautical charges as specified by the Cabinet Secretary by notice in the *Gazette* and levied under this Act;

Justification: To specify the scope and provide clarity on the nature of regulated user charges that will be referred to the Cabinet Secretary for publication.

CLAUSE 3

THAT Clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)-

(ba) the establishment of the Council

Justification: To provide for the establishment of the Council which is a key aspect of the Bill.

CLAUSE 4

THAT Clause 4 of the Bill be amended by-

(a) by renumbering the existing clause as sub-clause (1);

(b) by inserting the following new sub-clauses immediately after sub clause (1)-

(2) The Kenya Aviation Enterprises Corporation and Operating entities shall in the conduct of their operations, comply with the Kenya Civil Aviation Regulations promulgated by Kenya Civil Aviation Authority from time to time.

(3) Where any provisions of the National Aviation Management Act contradict the provisions of the Civil Aviation Act, the Civil Aviation Act shall prevail.

Justification: To ensure KCAA’s oversight mandate is recognized as under International Standards and recommended Practices, the Civil Aviation Authority has mandate to ensure effective oversight of the entire aviation sector.

CLAUSE 5

THAT Clause 5 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (d)-

(da) the chairperson of the Corporation; and

(db) the Director General of the Kenya Civil Aviation Authority

Justification: To ensure that the Council’s role is aligned to the group structure and that the Civil Aviation Authority offers effective oversight of the entire aviation sector.

CLAUSE 7

THAT Clause 7 of the Bill be amended in sub-clause (1) by-

(a) inserting the words “save for the Civil Regulations and oversight” at the beginning of paragraph (c);

(b) inserting the words “save for the Civil Regulations and oversight” at the beginning of paragraph (c);

Justification: To ensure civil aviation matters remain within the purview of KCAA and not KAA.

CLAUSE 8

THAT Clause 8 of the Bill be amended in sub-clause (1) by-

(a) inserting the following new paragraph immediately after paragraph (d)-

(da) Principal Secretary of the Ministry for the time being responsible for matters relating to internal security;

(b) inserting the words “the Managing Director of the Aviation Investment Corporation” immediately after the words “Kenya Airways”;

(c) inserting the words “out of which one shall be a private air operator” immediately after the words “Cabinet Secretary”; and

(d) inserting the following new sub-clauses immediately after sub-clause (1)-

(1A) The Board members under section 8(1)(f) shall be Executive Board Members with no right to vote.

(1B) In appointing the Board members under section 8(1)(g), the Cabinet Secretary shall take into consideration the regional and ethnic diversity of the people of Kenya”.

Justification: To provide for inclusion of the Principal Secretary of the Ministry for the time being responsible for matters relating to internal security, the Managing Director of the Aviation Investment Corporation and a private air operator representing the interests of the private sector in the Board. To further ensure that the Managing Directors of the operating entities have no right to vote.

CLAUSE 13

THAT Clause 13 of the Bill be amended in paragraph (a) by deleting the word “masters” and substituting therefor the word “Bachelor’s”.

Justification: Common practice requires a bachelor’s degree, with possession of a Master’s degree as an added advantage rather than a minimum qualification.

CLAUSE 14

THAT Clause 14 of the Bill be amended in sub clause (1) by deleting the word “four” wherever it appears and substituting therefor the word “five”.

Justification: To provide for the tenure of the Chief Executive Officer.

CLAUSE 15

THAT Clause 15 of the Bill be amended by-

- (a) renumbering the existing clause as sub-clause (2); and
- (b) inserting the following new sub-clause-
 - (1) The office of the Chief Executive Officer shall become vacant if the Chief Executive Officer —
 - (a) dies;
 - (b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (c) is convicted of a criminal offence involving corruption, fraud or dishonesty;
 - (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (e) resigns by giving a notice in writing to the Board;

- (f) assumes a political office; or
- (g) is otherwise unable or unfit to continue serving as a Managing Director.

Justification: To include other grounds for vacation from office that have not been provided for.

CLAUSE 19

THAT Clause 19 of the Bill be amended in sub clause (1) by inserting the following new paragraph immediately after paragraph (e)-

(ea) is unable to perform his or her functions by reason of physical and mental infirmity

Justification: To include other grounds for vacation from office that have not been provided for.

CLAUSE 22

THAT Clause 22 of the Bill be amended by-

- (a) deleting sub-clause (1);
- (b) deleting sub-clause (2) and substituting therefore the following new sub-clause-
(2)Every document of the Corporation shall be validly executed by the signature of the Group Chief Executive Officer and the Corporation Secretary”;
- (c) deleting sub clause (3) and substituting therefore the following new sub clause-
(3) Every document purporting to be an instrument issued by the Corporation and authenticated in the manner provided by subsection (2) shall be deemed to be such an instrument and shall be received in evidence without further proof.

Justification: To align the provision with section 37 of the Companies Act which provides that a document, contract or deed will be considered to be validly executed by a company if it is signed on behalf of the company by two authorized signatories or by a director of the company in the presence of a witness who attests the signature.

CLAUSE 24

THAT Clause 24 of the Bill be amended in sub clause (1) by deleting the words “and goods” appearing in paragraph (a).

Justification: In aviation, the common and acceptable items moved by air are passengers, cargo and mail.

CLAUSE 27

THAT Clause 27 of the Bill be amended-

- (a) in sub-clause (1)(a) by deleting the words “or regulate” appearing immediately after the word “control”;
- (b) in sub-clause (1)(f) by deleting the words “or regulate” appearing immediately after the word “control”;
- (c) in sub-clause (1)(j) by inserting the words “and animals” immediately after the word “bird”; and
- (d) by deleting sub-clause (3) and substituting therefor the following new sub-clause-
(3) Where any person erects any building which in any way interferes with the operation of any service provided by the Kenya Airports Authority under this Act, the Authority shall apply to the High Court for an order for demolition of such building.

Justification: To ensure that KCAA and not KAA regulate the use of facilities provided by KAA and to recognize animals apart from birds as being hazardous to aircraft operations. Further, that clause 27(3) should be amended to give the Board (and not the MD) powers to approve the erection or modification of any building which may be deemed to interfere with the operation of any service provided by KAA.

CLAUSE 30

THAT Clause 30 of the Bill be amended in paragraph (b) by inserting the words “aircraft overhaul” immediately after the word “organization”.

Justification: To expressly provide for the functions of the Aviation Investment including “aircraft overhaul” which should be part of the functions of such an entity.

CLAUSE 40

THAT Clause 40 of the Bill be amended in paragraph (a) by deleting the word “masters” and substituting therefor the word “Bachelor’s”.

Justification: Common practice requires a bachelor’s degree, with possession of a Master’s degree as an added advantage rather than a minimum qualification.

CLAUSE 56

THAT Clause 56 of the Bill be amended-

- (a) in sub-clause (3) by inserting the words “of the Board and” immediately after the words “approval of”;
- (b) in sub-clause (4) by inserting the words “of the Board and” immediately after the words “approval of”.

Justification: To ensure the Corporation opens bank accounts upon approval by the National Treasury and the Board as opposed to only the National Treasury.

CLAUSE 72

THAT Clause 72 of the Bill be amended-

- (a) by renumbering the existing clause as sub-clause(1);
- (b) by inserting the following new sub-clauses immediately after sub-clause (1)-
 - (2) For the purposes of Article 94 (6) of the Constitution—
 - (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act; and
 - (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section
 - (3) The principles and standards applicable to the delegated power referred to under this Act are those found in—
 - (a) the Statutory Instruments Act, 2013;
 - (b) the Interpretation and General Provisions Act,
 - (c) the general rules of international law as specified under Article 2(5) of the Constitution; and
 - (d) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

Justification: In order to comply with the requirements of Article 94(6) of the Constitution i.e prescribe the purpose and objectives for which the authority is conferred, the limits of the authority, the nature and scope of the law that may be made and the principles and standards applicable to the law being made.

SECOND SCHEDULE

THAT the Second Schedule to the Bill be amended by inserting the following new item immediately after the proposed amendment to the Public Procurement and Asset Disposal Act, 2015

Air Passenger Service Charge (Cap 485) Insert the following new subsection immediately after subsection (3)-
(4) All proceeds of the charge apportioned to the Kenya Airports Authority under subsection (3) shall be used for the development and management of airstrips.

Justification: To ensure that the proceeds of the air passenger service charge apportioned to the Kenya Airports Authority are used for the development and management of airstrips.



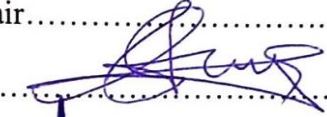

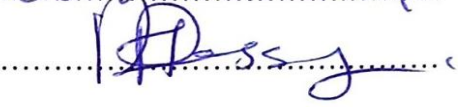
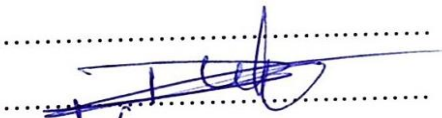


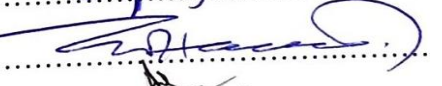
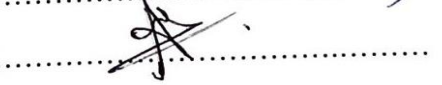



SIGNED 

CHAIRPERSON
(HON. DAVID PKOSING, CBS, M.P)

DATE..... 09/09/2020

Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing have today 2nd September, 2020 adopted this Report on the Consideration of the National Aviation Management Bill, 2020.

1. Hon. David Pkosing, M.P. -Chairperson 
2. Hon. Gathoni Wamuchomba, M.P. -Vice Chair..... 
3. Hon. Samuel Arama, M.P. 
4. Hon. Johnson Many Naicca, M.P. 
5. Hon. Peris Pesi Tobiko, M.P. 
6. Hon. Omar Mwinyi, M.P.
7. Hon. Ali Wario Guyo, M.P.
8. Hon. Ahmed Abdisalan Ibrahim, M.P.
9. Hon. Ahmed Bashane Gaal, M.P.
10. Hon. David Njuguna Kiaraho, M.P. 
11. Hon. Dominic Kipkoech Koskei, M.P. 
12. Hon. Gideon Mutemi Mulyungi, M.P. 
13. Hon. Kulow Maalim Hassan, M.P. 
14. Hon. Abdul Rahim Dawood, M.P. 
15. Hon. Rehema Dida Jaldesa, M.P.
16. Hon. George Aladwa Omwera, M.P. 
17. Hon. Shadrack John Mose, M.P. 
18. Hon. Tom Mboya Odege, M.P. 
19. Hon. Mercy Wanjiku Gakuya, M.P. 