

paper paid by the chair, D.C. on transport,
Public works & housing on Tuesday,
25/5/2015 (pm) RW2

Approved
AHS
26/5/15

REPUBLIC OF KENYA



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25 MAY 2015

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION - 2015

THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON THE CONSIDERATION OF THE PROTOCOL ON DEVELOPMENT AND
OPERATION OF THE STANDARD GAUGE RAILWAY WITHIN THE FRAMEWORK OF
THE NORTHERN CORRIDOR INTEGRATION PROJECTS

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

MAY, 2015

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1.0 PREFACE

Hon. Speaker,

The Departmental Committee on Transport, Public Works and Housing is established pursuant to the provisions of Standing Order 216, with the following terms of reference:

- a. to 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. to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c. to study and review all legislation referred to it;
- d. to 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. to 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 or a Minister;
- 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); and
- g. to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

Hon. Speaker,

The Committee is mandated to consider matters of Transport, Roads, Public works, Construction, Maintenance of roads, rails and buildings, air, seaports and housing and oversees the following Government Ministry and State Department, namely: -

- (a) Ministry of Transport and Infrastructure;

(b) State Department for Housing

(c) Directorate of Public Works and Urban Development

Hon. Speaker,

1.1 Committee Membership

The Committee was constituted on May 20th 2013 and its membership is as follows:-

1. The Hon. Maina Kamanda, M.P. – (**Chairperson**)
2. The Hon. Eng. Mahamud Maalim, M.P. – (**Vice Chairperson**)
3. The Hon. Eng. Stephen Ngare, M.P.
4. The Hon. Ali Wario, M.P.
5. The Hon. Arch. David Kiaraho, M.P.
6. The Hon. Cecily Mbarire, M.P.
7. The Hon. Capt. Clement Wambugu, M.P.
8. The Hon. Eng. John Kiragu, M.P.
9. The Hon. Gideon Konchella, M.P.
10. The Hon. Barchilei Kipruto, M.P.
11. The Hon. Mark Lomunokol, M.P.
12. The Hon. Grace Kipchoim, M.P.
13. The Hon. Mathias Robi, M.P.
14. The Hon. Joseph Lomwa, M.P.
15. The Hon. Peter Shehe, M.P.
16. The Hon. Stephen Manoti, M.P.
17. The Hon. Emmanuel Wangwe, M.P.
18. The Hon. K.K. Stephen Kinyanjui Mburu, M.P.
19. The Hon. Suleiman Dori, M.P.
20. The Hon. Edick Omondi Anyanga, M.P.
21. The Hon. Simon Nyaundi Ogari, M.P.

22. The Hon. Johnson Manya Naicca, M.P.
23. The Hon. Mishi Juma, M.P.
24. The Hon. Aduma Owuor, M.P.
25. The Hon. Chachu Ganya, M.P.
26. The Hon. Omar Mwinyi, M.P.
27. The Hon. Ahmed Abbas Ibrahim, M.P.
28. The Hon. Omulele Christopher, M.P.
29. The Hon. Mukwe James Lusweti, M.P.

1.2 Presentation of the protocol in parliament

Hon. Speaker,

The Protocol on Development and Operation of the Standard Gauge Railway (SGR) within the framework of the Northern Corridor integration projects was tabled in the House by the Majority Leader on Tuesday 10th February, 2015 and was subsequently committed to the Committee on Transport, Public Works and Housing.

Pursuant to Article 118 (1) (b) of the Constitution, Standing Order 127 (3) and section 8 of the Treaty Making and Ratification Act, the Committee placed an advertisement in the local dailies on 4th March 2015 calling for any memoranda from the public to submit any representations they may have on the Protocol.

Pursuant to Section 8 of the Treaty Making and Ratification Act, No. 45 of 2012 which provides for consideration of treaties by Parliament, the committee considered the Protocol forthwith.

1.3 Committee Meetings

The Committee held three Sittings during which the representatives of the Ministry of Transport and infrastructure appeared before it and the considerations of the Protocol were conducted in accordance with the Treaty Making and Ratification Act, No. 45 of 2012.

1.4 Consideration of the Protocol

Hon. Speaker,

In considering the Protocol, the Committee was guided by the following provisions of the Treaty Making and Ratification Act, No. 45 of 2012:-

- (1) Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
- (2) A treaty approved for ratification by the Cabinet under section 7 of the Act shall, depending on its subject matter, be considered by both or the relevant House of Parliament paying due regard to Part 1 and Part 2 of Chapter Eight of the Constitution.
- (3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.
- (4) Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.
- (5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.
- (6) Where one House approves the ratification of a treaty and the other House refuses to approve the ratification of a treaty, the treaty shall be referred to the mediation committee in accordance with Article 112 of the Constitution.
- (7) Where the both Houses refuse to approve the ratification of a treaty, the Speakers of the two Houses shall submit their decision to the relevant Cabinet Secretary within fourteen days of the decision.
- (8) Nothing in this Act precludes the resubmission of a treaty to National Assembly and where applicable the Senate, where approval for the ratification of the treaty had been refused.
- (9) Parliament shall not approve the ratification of a treaty or part of it if its provisions are contrary to the Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.
- (10) Approval for ratification
 - (1) Where the ratification of a treaty referred to in section 7 of the Act is approved by Parliament without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of

the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

- (2) Where a treaty referred to in section 7 is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.
- (3) Where Parliament refuses to approve the ratification of the treaty referred to in section 7, the Government shall not ratify the treaty.”

1.5 The Tripartite Agreement

Hon. Speaker,

The Government of Kenya entered into agreement with the governments of Uganda, Rwanda and South Sudan to build a Standard Gauge Railway connecting the port of Mombasa to Malaba (with a branch line to Kisumu) onward to Kampala, Kigali (with branch line to Kasese) and Juba (with a branch line to Pakwach) and this will be implemented through the operationalization of the signed a protocol.

The Railway line will have a uniform design specification which will permit seamless operation across the borders and in turn reduce costs.

Hon. Speaker

The objective of developing the Standard Gauge Railway is to reduce the cost of doing business in the region and make the region competitive to investment through:-

- I. Reduced freight transportation tariff charges on average by 41.5% per tone-kilometer
- II. Reduced Transit time by freight trains on average by 26.6%
- III. Increased rail transport share in the Northern Corridor
- IV. Reduced damage to the roads on the Northern Corridor

Section 8(1) of the Treaty Making and Ratification Act provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

The SGR Protocol deals with a national function as provided in the Fourth Schedule to the Constitution. It does not have any implication on matters relating to the counties, therefore the duty to ratify the treaty lies with the National Assembly only.

1.6 Committee observations

Hon. Speaker,

The Committee observed that:-

1. The Standard Gauge Railway protocol does not propose any amendment to the Constitution of Kenya. The protocol is in line with the principles of the Constitution of Kenya. It recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness, interdependence, non-aggression and non-interference in the internal affairs of each contracting state.
2. The implementation of the protocol will promote constitutional values and objectives through expediting economic growth and development of the country by reducing the cost of doing business and increasing the country competitiveness which will result in improved welfare of the people republic of Kenya.

1.7 Committee recommendation

Hon. Speaker,

The Committee therefore recommends that:-

Pursuant to Section 8 of the Treaty Making and Ratification Act No. 45 of 2012, the House Approves the ratification of:-

The Protocol on Development and Operation of the Standard Gauge Railway within the Framework of the Northern Corridor Integration Projects.


1.8 Acknowledgements

Hon. Speaker,

May I acknowledge that,

The Committee is grateful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

On behalf of the Committee, and pursuant to Standing Order 199(5), it is now my pleasant duty to table in the House the **REPORT** of the Departmental Committee on Transport, Public Works and Housing on the consideration of the Protocol on Development and Operation of the Standard Gauge Railway within the Framework of the Northern Corridor Integration Projects.

Signed..........Date.....*21/3/05*.....

Hon. Maina Kamanda, EGH, MP,
Chairperson of the Departmental Committee on Transport, Public Works and Housing

THE NATIONAL ASSEMBLY

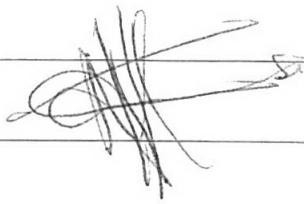

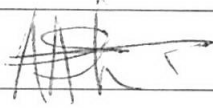
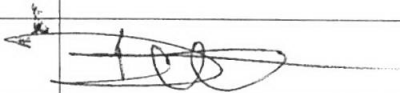
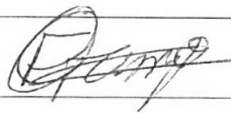



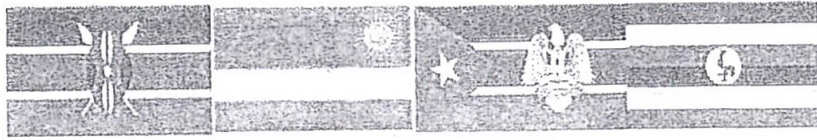
ELEVENTH PARLIAMENT – 3RD SESSION

DEPARTMENTAL COMMITTEE – L: TRANSPORT, PUBLIC WORKS AND HOUSING

Register for the Adoption of the Report on the consideration of the Protocol on Development and Operation of the Standard Gauge Railway within the Framework of the Northern Corridor Integration Projects – Thursday, 21st May 2015 at 10.00 am

NO.	MEMBER	SIGNATURE
1.	Hon. Maina Kamanda (Chairperson), MP	
2.	Hon. (Eng.) Mohamed Maalim (Vice Chairperson), MP	
3.	Hon. KK Stephen Kinyanjui Mburu, MP	
4.	Hon. Christopher Omulele, MP	
5.	Hon. (Eng.) Stephen Ngare, MP	
6.	Hon. Johnson M. Naicca, MP	
7.	Hon. (Eng.) John Kiragu, MP	
8.	Hon. Stephen K. Manoti, MP	
9.	Hon. Joseph Lomwa, MP	
10.	Hon. (Capt.) Clement M. Wambugu, MP	
11.	Hon. Emmanuel Wangwe, MP	
12.	Hon. Grace J. Kipchoim, MP	

13.	Hon. Cecily M. Mbarire, MP	
14.	Hon. Mishi Juma Khamis, MP	
15.	Hon. Peter Shehe, MP	
16.	Hon. Omar Mwinyi,MP	
17.	Hon. Suleiman Dori,MP	
18.	Hon. Edick O. Anyanga,MP	
19.	Hon. Aduma Owuo,MPr	
20.	Hon. Gideon Konchella,MP	
21.	Hon. Abass Ahmed Ibrahim,MP	
22.	Hon. Ali Wario,MP	
23.	Hon. David Kiaraho, MP	
24.	Hon. Barchilei Kipruto,MP	
25.	Hon. Simon Nyaundi Ogari,MP	
26.	Hon. Chachu Ganya , MP	
27.	Hon. Mathias N. Robi ,MP	
28.	Hon. Mukwe James Lusweti,MP	
29.	Hon. Mark Lomunokol, MP	



NORTHERN CORRIDOR INTEGRATION PROJECTS

Standard Gauge Railway Protocol

17 FEB 2013

Nairobi, Kenya

May 2014

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STANDARD GAUGE RAILWAY PROTOCOL

A PROTOCOL ON DEVELOPMENT AND OPERATION OF THE
STANDARD GAUGE RAILWAY WITHIN THE FRAMEWORK OF THE
NORTHERN CORRIDOR INTERGRATION PROJECTS

PREAMBLE

WHEREAS the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan and the Republic of Uganda (hereinafter referred to as "the Parties");

HAVING REGARD to the Tripartite Agreement on the creation of the Standard Gauge Railway to address infrastructure development, energy, trade facilitation and regional integration within their countries;

AND WHEREAS the Parties undertook to conclude such protocols as may be necessary in such areas of cooperation, to expedite and facilitate effective implementation;

RECALLING the decision of the 1st Joint Communiqué to undertake the development of the Standard Gauge Railway as a regional project;

RECALLING the decision of the 3rd Joint Communiqué to develop a Standard Gauge Railway Protocol;

CONSIDERING that the objective of development of the Standard Gauge Railway network is to enhance transport infrastructure, trade and regional integration;

NOTING the advantages of cooperation and coordination in the joint development of infrastructure projects to ensure social economic development;

AWARE of their individual obligations and commitments under other regional and international agreements;

The Parties hereby agree as follows:



PART A

INTERPRETATION

Article 1: Interpretation

In this Protocol, except where the context otherwise requires:

- a) "Agreement" means the Tripartite Agreement for the development and operation of the Standard Gauge Railway and any annexes thereto.
- b) "Cooperation" includes the undertaking by the Parties in common, jointly or in concert, of activities undertaken in furtherance of the objectives of the Standard Gauge Railway as provided under the Tripartite Agreement.
- c) "Parties" means the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan and the Republic of Uganda.
- d) "Protocol" means this Protocol.
- e) "SGR" means Standard Gauge Railway.
- f) "Summit" means the meeting of the Heads of State of the Northern Corridor Integration Projects.
- g) "Northern Corridor" means the transport corridor linking the Great Lakes countries of Burundi, the Democratic Republic of Congo, Rwanda, South Sudan and Uganda to the Kenyan seaports

PART B

DEVELOPMENT OF THE STANDARD GAUGE RAILWAY

Article 2: Objective of the Protocol

(1) The overall objective of the SGR is to jointly develop and operate a modern, fast, reliable, efficient and high capacity railway transport system as a seamless single railway operation among the Parties with the specific objectives of the SGR project as follows:

- a) Expedite economic growth and development of the Parties by reducing the cost of doing business and increase the region's competitiveness.
- b) Enhance spatial development along the SGR corridor.
- c) Enhance efficient and cost effective movement of freight and passengers in the region to accelerate trade and services.
- d) Sustain development of other transport infrastructure and adopt new technologies to enhance economic development.

Article 3: Scope of the Protocol

(1) The provisions of this Protocol shall apply to any activity undertaken in cooperation by the Parties to achieve the objectives in Article 2.

For purposes of paragraph (1) above, the Parties agree to:

- a) Ensure the harmonisation of the policy, legal and institutional framework for SGR.
- b) Adopt a common logical framework of project management.
- c) Adopt agreed common SGR standards.
- d) Cooperate and coordinate human resource capacity building strategies.
- e) Cooperate and coordinate in joint mobilisation of financial resources.
- f) Ensure sufficient budgetary allocations and funding mechanisms including exploring the establishment of a Railway Development Fund.
- g) Undertake joint implementation of any other matter related to SGR inter-parties.
- h) Undertake joint monitoring and evaluation of projects.
- i) Develop and adopt a common communication strategy.
- j) Cooperate and coordinate Research and Development and transfer of technology.



- k) Develop and adopt mechanisms to ensure seamless operations.

PART C

INSTITUTIONAL FRAMEWORK

The decision making organs of this Protocol shall be the Joint Ministerial Committee, the SGR Commission and the Joint Technical Committee.

Article 4: Joint Ministerial Committee

(1) Membership

The Joint Ministerial Committee shall be composed of Ministers responsible for Transport/infrastructure of the Parties.

(2) Functions of the Committee

- a) The Committee shall be the policy organ of the SGR project.
- b) The Committee shall promote, monitor, review, and implement all programmes and projects for the development and operation of SGR.
- c) Consider progress reports of the Commission and prepare reports for the Summit.
- d) Implement the decisions and directives of the Summit as may be addressed to it.
- e) Exercise such other powers and perform such other functions as are vested in or conferred on it by the Tripartite Agreement.

(3) Meetings of the Committee

- a) The Committee shall meet at least once every two months preceding meetings of the Summit.
- b) The Committee may hold extraordinary meetings as and when necessary or at the request of a Party or the Chairperson of the Committee.



- c) The Committee shall determine its own rules of procedure for convening and conduct of meetings.

Article 5: Standard Gauge Railway Commission

(1) Composition

The SGR Commission shall be composed of the Permanent/Principal Secretaries responsible for Transport and/or Infrastructure, the Secretaries to the Treasury and the Solicitors General or their equivalent.

(2) Functions of the Commission

- a) Shall prepare and submit progress reports and recommendations to the Joint Ministerial Committee on the implementation of the SGR project.
- b) Shall receive and consider reports of the Joint Technical Committee and coordinate its activities.
- c) Shall perform any other functions conferred upon it by the Joint Ministerial Committee.

(3) Meetings of the Commission

- a) Subject to the directives that may be given by the Joint Ministerial Committee, the Commission shall meet at least once every two months before the meetings of the Summit.
- b) The Commission may hold extraordinary meetings at the request of the Chairperson.
- c) The Commission shall determine its own rules of procedure for convening meetings and conduct of business.
- d) The Chief Executives of the railway authorities shall be the secretariat.

Article 6: Joint Technical Committee

(1) Composition

The Joint Technical Committee shall be composed of at least three representatives from each Party.*(2) The Delegation*



The delegation of each party may co-opt other technical staff to participate in the meetings as may be necessary.

(3) Functions

Subject to the directives of the Joint Ministerial Committee, the Joint Technical Committee shall:

- a) Be the technical arm of the Commission and be responsible for the preparation of the SGR project implementation programme.
- b) Submit progress reports and recommendations to the Commission on implementation of the SGR project.
- c) Prepare budget and proposals for mobilisation of funds to implement the SGR project.
- d) Develop strategic plans, monitoring and evaluation framework of the SGR project.
- e) Implement the decisions of the Summit and of the Joint Ministerial Committee.
- f) Do such other matters that may be provided for by the Tripartite Agreement and or the Commission.

(4) Meetings

- a) Subject to any directives that may be given by the Joint Ministerial Committee, the Joint Technical Committee shall meet as often as necessary at least twice before the Summit for the proper discharge of its functions.
- b) The Committee shall determine its own rules of procedure including the convening of meetings and conduct of business.

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PART D

GENERAL PROVISIONS

Article 7: Implementation of this Protocol

(1) The Parties undertake to approximate and/or harmonize their national laws, policies and systems to facilitate implementation of this Protocol.

(2) The provisions of this Protocol shall not affect the rights and obligations of the Parties relating to other international agreements.

(3) The Joint Ministerial Committee shall establish a monitoring and evaluation framework for this Protocol. For purposes of this Article, the Joint Ministerial Committee shall:

- a) ensure regular evaluation of implementation of this Protocol;
- b) regularly assess progress and causes of delays and take appropriate remedial measures; and
- c) give progress reports to the Summit.

(4) The Joint Ministerial Committee shall from time to time make regulations, issue directives and make decisions as may be necessary for the effective implementation of the provisions of this Protocol.

(5) The Joint Ministerial Committee shall issue directives for purposes of implementing this Article.

Article 8: Amendments of the Protocol

This Protocol may be amended by the Parties on approval by the Summit.

Article 9: Dispute Settlement

(1) Any dispute between the Parties on interpretation or application of this Protocol shall be resolved amicably by the Parties.

(2) The Parties guarantee that:



- a) The competent judicial, administrative or legislative authority or any other competent authority, shall rule on the rights of a person who is seeking redress.
- b) The Parties agree that where a third party is aggrieved as result of the application of this Protocol, the party will have recourse to the existing national laws.

Article 10: Accession

- (1) Any party interested in joining this Protocol shall apply to the Summit and, on approval, will deposit an instrument of accession with the Parties.

Article 11: Entry into Force

- (1) This Protocol shall come into force after execution and ratification/accession by the Parties.
- (2) Any Party which ratifies or accedes to this Protocol shall be deemed to be party to the Protocol.

Article 12: Denunciation of the Protocol

- (1) Any Party may denounce this Protocol by notification addressed to the Joint Ministerial Committee.
- (2) Denunciation shall take effect six months after receipt of the said notification by the Joint Ministerial Committee.

Article 13: Signature of the Protocol


The Protocol shall be signed in multiple copies and shall be deposited with the Parties.

DONE at Nairobi, Kenya on the day of 20 14.


Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a smaller one in the middle, and a circular stamp on the right.

IN WITNESS WHEREOF the undersigned have appended their signatures
hereto:


FOR THE REPUBLIC OF KENYA


ENG. MICHAEL M. KAMAU, EBS
CABINET SECRETARY, MINISTRY OF
TRANSPORT AND INFRASTRUCTURE

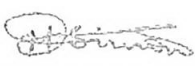
FOR THE REPUBLIC OF RWANDA


HON. PROF. SILAS LWAKAKAMBA,
MINISTER OF INFRASTRUCTURE

FOR THE REPUBLIC OF UGANDA


HON. ENG. JOHN BYABAGAMBI
MINISTER OF STATE FOR WORKS AND
TRANSPORT (WORKS) UGANDA

FOR THE REPUBLIC OF SOUTH SUDAN


HON. KOUG DANHIER GATLUAK
MINISTER FOR TRANSPORT ROADS &
BRIDGES

MINUTES OF THE 8TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING
COMMITTEE HELD ON MONDAY 2ND MARCH, 2015 IN THE BOARD ROOM ON 2ND
FLOOR PROTECTION HOUSE, AT 3:00 PM.

PRESENT

1. Hon. (Eng.) MahamudMaalim, M.P. –Vice Chairman- Chairing
2. Hon. Maina Kamanda, M.P. – Chairperson
3. Hon. Grace Kipchoim, M.P.
4. Hon. (Capt.) Clement Wambugu, M.P.
5. Hon. Gideon Konchella, M.P.
6. Hon. Aduma Owuor, M.P
7. Hon. Chachu Ganya, M.P.
8. Hon. Mark Lomunokol, M.P.
9. Hon. Joseph Lomwa, M.P.
10. Hon. Mathias Robi, M.P,
11. Hon. Mukwe James Lusweti, M.P.
12. Hon. Johnson Many Naicca, M.P.
13. Hon. Omar Mwinyi, M.P.

ABSENT WITH APOLOGY

1. Hon. Stephen Manoti, M.P.
2. Hon. Simon Nyaundi Ogari, M.P.
3. Hon. (Arch.) David Kiaraho, M.P.
4. Hon. Mishi Juma, M.P.
5. Hon. Cecily Mbarire, M.P.
6. Hon. Suleiman Dori, M.P.
7. Hon. Peter Shehe, M.P.
8. Hon. Barchilei Kipruto, M.P.
9. Hon. Ahmed Abbas Ibrahim, M.P.
10. Hon. Ali Wario, M.P.
11. Hon. Emmanuel Wangwe, M.P.
12. Hon. Omulele Christopher, M.P.
13. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
14. Hon. (Eng.) Stephen Ngare, M.P.
15. Hon. Edick Omondi Anyanga, M.P.
16. Hon. Eng. John Kiragu, M.P.

IN ATTENDANCE

1. Mr. Samuel Kalama
2. Mr. Abdifatah M. Bule
3. Ms. Nuri K. Nataan
4. Ms. Christine Odiambo

NATIONAL ASSEMBLY

- First Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Legal Counsel

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Consideration of Bilateral Air Agreement between Kenya/Niger and Kenya/ Ghana
4. Consideration of the Protocol on Development and Operation of the Standard Gauge Railway within the frame work of the Northern Corridor Integrations projects.
5. Setting of Terms of Reference (TORs) for the investigations into the suspension of the Managing Director of Kenya Airports Authority (KAA)
6. Any Other Business

MIN/DC-L/2015/035

PRELIMINARIES

The Chair called the meeting to order at 3:00 pm and followed by a word of prayer from Hon. Gideon Konchela, MP.

MIN/DC-L/2015/036 Consideration of Bilateral Air Agreement between Kenya/Niger and Kenya/ Ghana

The chair invited the legal Counsel attached to the Committee to brief the Members on the Bilateral Air Agreement between Kenya/Niger and Kenya/ Ghana. She briefed the Committee on the contents and comments on each Article as in annex 1.

Bilateral Air Services Agreement between Kenya and Ghana

She presented an analysis of the Agreement to the Committee as in **annex 2**.

MIN/DC-L/2015/037 Consideration of the Protocol on Development and Operation of the Standard Gauge Railway within the frame work of the Northern Corridor Integrations projects.

The Committee also invited the legal Counsel to brief the Members on the Protocol of Development and Operation of the Standard Gauge Railway within the frame work of the Northern Corridor Integrations projects. She presented an analysis of the Protocol as follows:-

That:-

1. Legal Obligations imposed by the Protocol on Partner States

The partner states to the Protocol agree to –

- a) Ensure the harmonisation of the policy, legal and institutional framework for SGR;
- b) Adopt a common logical framework of project management;
- c) Adopt agreed common SGR standards;
- d) Cooperate and coordinate human resource capacity building strategies;
- e) Cooperate and coordinate in joint mobilisation of financial resources;
- f) Ensure efficient budgetary allocations and funding mechanisms including exploring the establishment of a Railway Development Fund;
- g) Undertake joint monitoring and evaluation of projects;
- h) Develop and adopt a common communication strategy;
- i) Cooperate and coordinate Research and Development and transfer of technology; and
- j) Develop and adopt mechanisms to ensure seamless operations.

2. Process of ratification by Parliament

Section 8(1) of the Treaty Making and Ratification Act provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

She informed the Committee that the SGR Protocol deals with a national function as provided in the Fourth Schedule to the Constitution and hence it does not have any implication on matters relating to the counties, therefore the duty to ratify the treaty lies with the National Assembly only.

In considering the treaty, the Committee on Transport, Public Works and Housing has a duty to ensure public participation in accordance with Article 118 of the Constitution and Standing Order 127.

As to whether reservations can be entered on the protocol; she informed the Committee that the SGR Protocol does not expressly provide for the making of a reservation, and it however also does not prohibit the making of reservations. It is thus silent on the issue of reservations.

Section 8 (4) of the Treaty Making and Ratification Act provides that Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty. Subsection 5 further provides that a proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.

Subsection 9 further provides that Parliament shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.

Committee observations

Pursuant to Article 118 (1) (b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, the Committee agreed to put advertisement on the Newspapers inviting members of the public to submit memoranda on any reservation they may have on the Bilateral Air Service Agreements and the SGR protocol.

Consequently, the Committee directed the secretariat to ensure the said advert appears on the print media to invite submission of memoranda.

MIN/DC-L/2015/038

ADJOURNMENT

And there being no other business, the Chair adjourned the meeting at 5.30 pm.

SIGNED.....

HON. MAINA KAMANDA, M.P

(Chairperson)

DATE.....

Annex 1

Article	Title	Comments
Article 1	Definition	Definition section. It defines the technical terminologies used in the Bilateral Air Services Agreement (BASA).
Article 2	Rights and privileges of designated airlines	Grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the contracting parties.
Article 3	Designation and authorization of airlines	Provides for multiple designation of airlines, which should be done within 30 days of the receipt of the notice.
Article 4	Revocation and suspension of operating authorization	Provides that each party has the right to revoke or suspend an operating authorization granted to the other party, or impose such conditions as it may deem necessary.
Article 5	Applicability of national laws and regulations	Reaffirms the applicability of the national laws and regulations governing entry into, remaining and departure from the parties' territory. The laws and regulations apply to the designated airlines of the other party, passengers, crew, mail and cargo. Each contracting party shall upon request by the other party, supply copies of the relevant laws, regulations and procedures referred to in this agreement.
Article 6	Safety	Provides for a party to recognize as valid the other party's certificates of airworthiness, competency and licenses that are equal to the minimum standards established pursuant to the Convention. Either party may request consultation concerning the safety standards maintained by the other party relating to aeronautical facilities, air crews, aircraft and operation of the designated airlines.
Article 7	Aviation security	Reaffirms the parties' obligation to each other to protect the security of international civil aviation against acts of unlawful interference. In case of any threats, parties shall assist each other by facilitating communications and any other appropriate measures intended to terminate such threat. The parties agree to act in conformity with

		international conventions on aviation security.
Article 8	Fair competition	Provides that each party shall allow a fair and equal opportunity for the designated airlines of both parties to compete fairly in providing the international air transportation covered by this agreement, and to eliminate all forms of discrimination or unfair competitive practices.
Article 9	Pricing	Provides that each party shall allow for prices for air transportation to be established by each designated airline based upon commercial considerations in the market place. Parties shall protect consumers from unreasonably high prices as well as airlines from artificially low prices.
Article 10	Exemption from customs duty, taxes, inspection fees and other similar charges	Grants on reciprocal basis, exemption from paying customs duty to the other party for regular equipment, spare parts, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on the flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services. Such equipment and materials may be unloaded only with the approval of the customs authority, and must be placed under the supervision of the customs authorities.
Article 11	User charges	Provides that the user charges to be imposed by the competent charging authorities shall be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users and based on sound economic principles. Each party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges.
Article 12	Commercial opportunities	Provides that each party shall have the right to establish offices in the territory of the other party for the promotion and sale of air transportation. The article also provides for the right to transfer airline revenues earned from the air transportation services in convertible currency from the territory of the other party to their home country.

			<p>The article further provides for designated airlines to enter into co-operative marketing arrangements such as blocked space or code-share, with airlines of the same party, airlines of the other party or airlines of a third country.</p> <p>Blocked-space/code-share agreement-an agreement where two or more airlines share the same flight, that is where each airline publishes and markets the flight under its own airline and flight number as part of its published time-table or schedule.</p>
Article 13	Submission of time table		Provides for the need for designated airlines to submit flight schedules within a stipulated period to the aeronautical authorities of either party for approval prior to commencement of operations.
Article 14	Submission of statistics	of	Provides that the parties shall supply on request to the other party's aeronautical authorities, periodic or other statements of statistics for the purpose of reviewing operations of designated airlines.
Article 15	Settlement of disputes	of	<p>Provides that in case of disputes, the parties shall first try to settle the dispute through consultations. In the event of failure to agree after consultations, the matter shall be referred to an arbitration tribunal.</p> <p>The article further provides for the procedure to be followed when a dispute is referred to the arbitration tribunal. The award by the arbitration tribunal shall be final and shall be complied with within the specified period.</p>
Article 16	Consultations		<p>Provides that either party may at any time request for consultations on any matter relating to this agreement, and such consultations must be held within 60 days of receipt of the request.</p> <p>Further, the aeronautical authorities of the parties may exchange views in all matters relating to the application of the agreement.</p>
Article 17	Registration of agreement	of	Provides that this agreement, its annex, as well as any amendments made to it shall be registered with the International Civil Aviation Organization, and the African Civil Aviation Commission.

Article 18	Amendments	<p>Provides that any amendments to this agreement shall be made if either of the parties considers it desirable. Such amendment shall come into force when confirmed by an exchange of diplomatic notes.</p> <p>The article further provides that in the event of the conclusion of any general multilateral convention concerning air transport by which both contracting parties become bound, the agreement and its Annexes shall be amended so as to conform to the provisions of the Convention.</p>
Article 19	Termination	<p>Provides for the termination of the agreement by either party in writing, both to the other party and to the ICAO. The agreement shall terminate 12 months after the date of receipt of the termination notice.</p>
Article 20	Power of supersession	<p>Provides that this agreement supersedes the Air Transport Agreement initiated on October 25, 1995 at Nairobi (Kenya).</p>
Article 21	Entry into force	<p>Provides that the agreement shall enter into force upon exchange of notes through the diplomatic channel confirming completion of all necessary internal procedures by each contracting party.</p>

Article	Title	Comments
Article 1	Definition	Definition section. It defines the technical terminologies used in the Bilateral Air Services Agreement (BASA).
Article 2	Grant of rights	<p data-bbox="581 242 1409 353">Grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the contracting parties.</p> <p data-bbox="581 395 1409 549">The agreement however does not impose an obligation on a party to grant cabotage rights to the other party (the right to operate in two different points within the same country)</p> <p data-bbox="581 591 879 629"><u>Freedom of the Air:</u></p> <ul data-bbox="639 661 1436 1825" style="list-style-type: none"> <li data-bbox="639 661 1436 863">• <i>First Freedom of the Air</i> - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (also known as a <i>First Freedom Right</i>). <li data-bbox="639 906 1436 1108">• <i>Second Freedom of the Air</i> - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes (also known as a <i>Second Freedom Right</i>). <li data-bbox="639 1151 1436 1374">• <i>Third Freedom of The Air</i> - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier (also known as a <i>Third Freedom Right</i>). <li data-bbox="639 1417 1436 1661">• <i>Fourth Freedom of The Air</i> - the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier (also known as a <i>Fourth Freedom Right</i>). <li data-bbox="639 1704 1436 1825">• <i>Fifth Freedom of The Air</i> - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put

		down and to take on, in the territory of the first State, traffic coming from or destined to a third State (also known as a <i>Fifth Freedom Right</i>).
Article 3	Designation and authorization	Provides for multiple designation of airlines including multinational African carriers. Each party has the right to designate one or more airlines to operate on the specified routes. The grant of authorization should be done within 30 days of receipt of the notice.
Article 4	Validity of certificates	Reaffirms the parties' obligations to recognize the validity of certificates of airworthiness, competency and licenses issued by the other party, so long as they meet the minimum standards.
Article 5	Exemption from customs duty	Grants on reciprocal basis, exemption from paying customs duty to the other party for regular equipment, spare parts, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on the flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services. Such equipment and materials may be unloaded only with the approval of the customs authority, and must be placed under the supervision of the customs authorities.
Article 6	Compliance with laws and regulations	Reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the parties' territory. The laws and regulations apply to the designated airlines of the other party, passengers, crew, mail and cargo.
Article 7	Aviation safety	Provides for the procedure to be followed when safety standards being maintained by the other party relating to aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The consultations concerning the safety standards should take place within 30 days of request.
Article 8	Aviation security	Reaffirms the parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. In case of any threats, parties shall assist each other by facilitating communications and any other appropriate measures intended to terminate such threat. The parties agree to act in conformity with international

		conventions on aviation security.
Article 9	Representation	Provides for the designated carriers to establish offices in the territory of the other party for promotion of air transport and sale of air tickets and other facilities necessary for the provision of air transportation.
Article 10	Competition rules	Provides that each party shall ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete, in providing air transport services within their respective territories.
Article 11	Cooperative arrangements	Provides for designated airlines to enter into co-operative marketing arrangements such as blocked space or code-share, with airlines of the same party, airlines of the other party or airlines of a third country. Blocked-space/code-share agreement-an agreement where two or more airlines share the same flight, that is where each airline publishes and markets the flight under its own airline and flight number as part of its published time-table or schedule.
Article 12	Tariffs	Provides that the applicable tariffs between the territories shall be at reasonable levels. In establishing the tariffs regard shall be had to the cost of operation, interests of users, reasonable profit and class of service.
Article 13	User charges	Provides that the user charges to be imposed by the competent charging authorities shall be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users and based on sound economic principles. Each party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges.
Article 14	Transfer earnings of	Provides for the right to transfer airline revenues earned from the air transportation services in convertible currency from the territory of the other party to their home country.
Article 15	Consultations	Provides that parties shall consult from time to time to ensure the effective implementation of this agreement and when necessary to modify the agreement. The consultations shall be held within 30 days from the date of request.

Article 16	Settlement disputes	of	Provides that in case of disputes, the parties shall first try to settle the dispute through consultations. In the event of failure to agree after consultations, the matter shall be referred to an arbitration tribunal.
Article 17	Arbitration		Provides for the procedure to be followed when a dispute is referred to the arbitration tribunal. The award by the arbitration tribunal shall be final and shall be complied with within the specified period.
Article 18	Submission statistics	of	Provides that the parties shall supply on request to the other party's aeronautical authorities, periodic or other statements of statistics for the purpose of reviewing operations of designated airlines.
Article 19	Effect multilateral transport agreements	of air	Provides that the agreement shall be deemed to have been amended by the provisions of any multilateral air transport agreement which may become binding on both parties.
Article 20	Registration agreements	of	Provides that this agreement shall be registered with the International Civil Aviation Organization by the state from where the signing of the agreement takes place.
Article 21	Amendment		Provides that any amendments to this agreement shall be made after consultations by both parties.
Article 22	Ratification		Provides that this agreement shall be subject to ratification, and the instruments of ratification shall be deposited with the International Civil Aviation Organization.
Article 23	Termination		Provides for the termination of the agreement by either party in writing, both to the other party and to the ICAO. The agreement shall terminate 12 months after the date of receipt of the termination notice.
Article 24	Entry into force		Provides that the agreement shall enter into force between the parties immediately upon signature.

MINUTES OF THE 14TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON THURSDAY 19TH MARCH, 2015 IN THE MEMBERS LOUNGE, MAIN PARLIAMENT BUILDING, AT 10: 30 AM.

Present

1. Hon. Emmanuel Wangwe, M.P.–Acting Chairman
2. Hon. (Eng.) Mahamud M. Mohamed, M.P. –Vice Chairman
3. Hon. Simon Nyaundi Ogari, M.P.
4. Hon. AdumaOwuor, M.P.
5. Hon. Ali Wario, MP.
6. Hon. Mishi Juma, M.P.
7. Hon. Johnson Manya Naicca, M.P.
8. Hon. Suleiman Dori, M.P.
9. Hon. Omulele Christopher, M.P.
10. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
11. Hon. Mathias Robi, M.P.
12. Hon. Grace Kipchoim, M.P.
13. Hon. Mark Lomunokol, M.P.
14. Hon. Peter Shehe, M.P.
15. Hon. (Arch.) David Kiaraho, M.P.
16. Hon. Mukwe James Lusweti, M.P.
17. Hon. Ahmed Abbas Ibrahim, M.P.
18. Hon. Chachu Ganya, M.P.
19. Hon. (Eng.) Stephen Ngare, M.P.
20. Hon. (Capt.) Clement Wambugu, M.P.
21. Hon. (Eng.) John Kiragu, M.P.
22. Hon. Edick Omondi Anyanga, M.P.
23. Hon. Joseph Lomwa, M.P.
24. Hon. Omar Mwinyi, M.P.

Apologies

1. Hon. Maina Kamanda, M.P. – Chairperson
2. Hon. Barchilei Kipruto, M.P.
3. Hon. Stephen Manoti, M.P.
4. Hon. Cecily Mbarire, M.P.
5. Hon. Gideon Konchella, M.P.

In Attendance**- National Assembly**

1. Mr. Samuel Kalama
First Clerk Assistant
2. Ms. Nuri K. Nataan
Third Clerk Assistant
3. Mr. Abdifatah M. Bule
Third Clerk Assistant
4. Mr. James Muguna
Research Officer

In Attendance**- Ministry of Transport & Infrastructure**

- | | |
|----------------------|---|
| Mr. Nicholas Bodo | Ag. Director Air Transport |
| Mr. Protas N. Makini | Chief Air Transport Officer |
| Mr. Duncan Hunda | Senior Economist |
| Ms. Hellen Mungama | Corporate Secretary- Kenya Railways Authority |

Min/DC-TPWH/2015/063**Preliminaries**

The Chair called the meeting to order at 10:30 am and the Hon. Peter Shehe proceeded to say the opening prayer. The Committee raised concerns on the frequently representation of the Cabinet Secretary (CS) for Transport and Infrastructure by junior officers in the Committee meetings. It therefore, resolved not to engage any further with the junior officers.

Min/DC-TPWH/2015/064**Adoption of the Agenda**

The Chair presented the agenda as follows;

1. Prayer
2. Adoption of the Agenda
3. Consideration of the Bilateral Air Agreement between Kenya/Niger and Kenya/ Ghana
4. Consideration of the Protocol on Development and Operation of the Standard Gauge Railway within the frame work of the Northern Corridor Integration Projects
5. Consideration of the following Conventions:-
 - i. Convention on the suppression of unlawful acts relating to International civil aviation and the protocol supplementary to the convention for the suppression of unlawful seizure of aircraft
 - ii. The International Convention on the Control of Harmful Anti-Fouling Systems on Ships,2001;
 - iii. The International Convention on Load Lines,1966 and Protocol of 1988,as amended in 2003;

- iv. The International Convention for the Safety of Life at Sea,1974 and it's Protocol of 1988;
 - v. Protocol of 1996 to amend the 1976 Convention on Limitation of Liability for Maritime Claims;
 - vi. The Nairobi International Convention on the Removal of Wrecks,2007;and
 - vii. The International Convention on Civil Liability for Bunker Oil Pollution Damage,2001
6. Any Other Business
 7. Adjournment.

The agenda was proposed by Hon. Peter Shehe, MP and seconded by Hon. Suleiman Dori, MP.

Min/DC-TPWH/2015/065 Consideration of the Bilateral Air Agreement between Kenya/Niger and Kenya/ Ghana

The Chair invited the representative of the Principal Secretary from the Ministry of Transport and Infrastructure, Mr. Nicholas Bodo to brief the Committee on the Bilateral Air Service Agreement.

Mr. Bodo informed the Committee that Sessional Paper 2 requires of 1999 requires the ministry to liberalize transport and allow airlines operate in a competitive environment. He provided a clause by clause analysis of the Bilateral Air Agreement between Kenya/Niger and Kenya/ Ghana as per attached **Annex 1**.

Committee observations

- i. The Committee observed that the provision on transfer of earning in Article 12 as captured under the agreement between Kenya and Niger is not well addressed. However, in the agreement between Kenya and Ghana the issue was clear addressed.
- ii. The Committee also noted that there have been some problems in terms of transfer of earnings between Kenya and Ethiopia. The Committee was informed that the problem arose since Ethiopia has regulations on the percentage of transfer of earnings while Kenya does not.
- iii. It was noted by Members of the Committee that, the Committee needs to learn more and understand the process of Bilateral Agreements for them to be able to participate fully when it's committed to the Committee.



- iv. Bilateral Air Service agreements should include operations of foreign airlines to operate local flights in order to compete with Kenya Airways and also reduce fare prices for local flights. However, the Committee was informed that it would not be possible since there are some international regulations which govern local flights for airlines. The Committee was advised to seek intervention through the Competition Authority since Kenya Civil Aviation Authority does not deal with fare pricing anymore. It was further suggested that Kenyan investors be encouraged to invest in the aviation industry to enhance competition.
- v. Air transport defines the position of a country and thus Bilateral Agreements should not be done in order to protect Kenya Airways but they should endeavor to open the air industry for competition. It was agreed that moving forward the aviation industry need to be safeguarded instead of protecting Kenya Airways since it has been designated as a national carrier.

Committee Resolutions

- ✓ The Committee expressed no reservations as far as the Bilateral Air Service Agreements are concerned.
- ✓ Following the high prices for domestic flights charged by Kenya Airways, the committee resolved to hold a meeting with the Kenya Civil Aviation and the competition Authority with a view to address the matter.

Min/DC-TPWH /2015/ 066 Consideration of the Protocol on Development and Operation of the Standard Gauge Railway within the frame work of the Northern Corridor Integration Projects

The Chair invited the representative of the principal Secretary of the Ministry of Transport and Infrastructure, Mr. Duncan Hunda to brief the Committee on the Protocol on Development and Operation of the Standard Gauge Railway within the frame work of the Northern Corridor Integration Projects.

Mr. Hunda pointed out the numerous benefits of the standard Gauge Railway Kenyans will enjoy. He took through the Committee through the Protocol on Development and Operation of the Standard Gauge Railway within the frame work of the Northern Corridor Integration Projects as per the attached **Annex II**.



Committee observations

- i. Committee Members observed that the Rift Valley Railway (RVR) is investing heavily in the Meter Gauge railway and whereas the government will is investing in the standard Gauge Railway project. The Committee was not clear whether RVR will operate after the Standard Gauge Railway (SGR) starts operating. The Committee was informed by ministry officials that RVR will still operate since this will provide competition for the SGR and help in regulating fare prices.
- ii. The Committee also noted that there was no distributor network in the Standard Gauge Railway (SGR) plan; however the Committee was informed that there is a plan to connect the SGR with the Lamu Port South Sudan Ethiopia Transport (LAPSSET) and eventually County connections through workings with the Ministry of Lands, Housing and Urban Development.
- iii. It was noted by Members of the Committee that there are no plans regarding the electrification of the SGR. The Committee was informed that, a team from the Ministry was outside the Country to learn the best practice in regards to electrification and also that there are some talks were held with the Ministry of Energy to find out if it's possible to channel 5,000 Mega Watts of electricity towards the SGR.
- iv. It was also noted that Kenya has made headway in terms of construction of the SGR; the Committee wanted to know if the same was the case with the partnering Countries, the Committee was informed that yes the partnering Countries are also making progress.
- v. The committee sought clarification on the route/corridor of the SGR phase II. Members were concerned on the point at which the SGR phase II will terminate. Members noted that if the SGR will not pass through Webuye, Bungoma, Eldoret, the project will have much impact as envisaged.
- vi. The Committee was not clear on the standards being used in the construction of the SGR; it was informed that, the standards used are of the United States of America but using Chinese designs as indicated by the Cabinet Secretary in a previous meeting with the Committee. Additionally the Committee sought a clarification as to whether the current design of the SGR makes provision for a double track. The ministry confirmed SGR is a single track but all bridges and tunnels provides for a double track.

Committee Resolutions

- a) The Committee expressed no reservations on the Protocol on Development and Operation of the Standard Gauge Railway within the frame work.
- b) The Committee resolved to have a meeting with the Cabinet Secretary for Transport and Infrastructure over the development of the SGR- Phase II.
- c) It was also resolved that the Committee be furnished with the following:-
 - i) Concession agreement between the Rift Valley Railway (RVR) and the Kenya Railway Corporation (KRC).
 - ii) Master plan of the Standard Gauge Railway (SGR).
 - iii) Report on the labour component in the construction of SGR indicating whether the 30/70 % for local and foreign component negotiated agreement on employment in the Standard Gauge Railway (SGR) has been complied with.
 - iv) The Committee be briefed regularly on the status of the SGR for them to be aware of issues as they arise to help react faster.

Min/DC-TPWH/2015/ 067

Adjournment and date of next meeting

There being no other business the meeting was adjourned at 12.50 pm to be reconvened on Monday, 23rd March, 2015 at 2.00 pm.

SIGNED.....



HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....

31/3/2015

KENYA/NIGER BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definition	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Rights and Privileges of Designated Airlines	The Article grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the Contracting Parties. The Article is based on Yamoussoukro Decision (YD) and is liberal.
Article 3	Designation and Authorization	Provides for multiple designations of airlines. The Article is based on YD and is liberal.
Article 4	Revocation and Suspension of Operating Authorization	The Article stipulates the circumstances under which operating authorization may be revoked or suspended by either of the Contracting Parties.
Article 5	Applicability of National Laws and regulations	The Article reaffirms the applicability of the national laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, concerning passengers, crew, mail and cargo.
Article 6	Safety	The Article provides for procedure to be followed when safety standards being maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The Article is based ICAO Annex 19.
Article 7	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.
Article 8	Fair Competition	Parties reaffirm to ensure fair and equal opportunity on a non-discriminatory basis for the designated airlines to effectively compete in providing air transport services in their respective territories.

Article 9	Pricing	Article provides for prices for air transportation to be set by designated airlines based on the market forces of demand and supply. Parties shall protect consumers from unreasonably high prices as well as airlines from artificially low prices.
Article 10	Exemption From Customs Duties, Taxes, Inspection Fees, and Other Similar Charges	Article grants on reciprocal basis exemption from paying customs duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services.
Article 11	User Charges	The Article provides for User charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 12	Commercial Opportunities	The Article provides for the right of designated airlines to establish offices in the territory of the other Party, transfers earnings, and entrance into cooperative arrangements such as code share and blocked space.
Article 13	Submission of Time Table	The Article provides for the need for designated airlines to submit flight schedules within stipulated period to the aeronautical authorities of either party for approval prior to commencement of operations.
Article 14	Submission of Statistics	The Parties reaffirm to supply at the request to the other Party's aeronautical authorities, periodic or statements of statistics for purpose of reviewing operations of designated airlines.
Article 15	Settlement of Disputes	The Article provides for procedure for dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.

Article 16	Consultations	Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. Consultation may be made through discussions or correspondence.
Article 17	Registration of Agreements	The Article provides for registration of the Agreement, its amendments and any exchange of notes relating to the Agreement, with the International Civil Aviation Organization (ICAO) as the repository.
Article 18	Amendments	The Article provides for amendments to be made on Provisions of the Agreement. It describes the procedure of amendment and gives the aeronautical authorities of the Parties the right to agree directly on any amendment to the Annex of the Agreement.
Article 19	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period it takes to be effective.
Article 20	Power of Supersession	The Article provides for supersession of the previous Air Services Agreement
Article 21	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.

KENYA/GHANA BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definition	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Grant Rights of	The Article grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the Contracting Parties. The Article is based on YD and is liberal.
Article 3	Designation and Authorization	Provides for multiple designation of airlines including multinational African Carriers. The Article is based on YD and is liberal.
Article 4	Validity of Certificates	The Article reaffirms the Parties obligation to recognize the validity of certificates of airworthiness, competency and licenses issued by the other Party, so long as they meet the minimum standards.
Article 5	Exemption From Customs Duty	The Article grants on reciprocity basis exemption from paying customs duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services.
Article 6	Compliance With Laws and Regulations	The Article reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, passengers, crew, mail and cargo.
Article 7	Aviation Safety	The Article provides for procedure to be followed when safety standards being maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The Article is based ICAO Annex 19.
Article 8	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.

Article 9	Representation	The Article provides for designated carriers to establish offices in the territory of the other Party for promotion of air transportation and sale of air tickets and other facilities necessary for the provision of air transportation. The Article is liberal in the Agreement.
Article 10	Competition Rules	Parties reaffirm to ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete in providing air transport services in their respective territories.
Article 11	Cooperative arrangements	The Article provides for designated airlines to enter into co-operative marketing arrangements such as blocked space and code-share. The airlines may be from one Party or the other Party or third country airlines.
Article 12	Tariffs	The Article stipulates that tariffs applicable between the two Parties shall be established at reasonable levels. Regard shall be paid to the cost of operation, interest of users, reasonable profit, class of service and when deemed necessary the tariffs of other airlines operating on the routes indicated in the Annex.
Article 13	User Charges	The Articles Provides for User charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 14	Transfer of Earnings	The Article provides for transfer of airlines revenues earned from the air transportation services in convertible currency from the territory of the other Party to their home country.
Article 15	Consultation	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. Consultation may be made through discussions or correspondence. Amendments to the Agreement may be made as and when necessary by the two Parties.

Article 16	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.
Article 17	Arbitration	Article provides for process of arbitration and the nature as well as the period within which specific actions are to be taken. They reaffirm to comply with the Award of the tribunal. Retaliatory measures shall to be taken against airlines of a Party if it does not comply with the Award.
Article 18	Submission of Statistics	The Parties reaffirm to supply at the request to the other Party's aeronautical authorities, periodic or statements of statistics for purpose of reviewing operations of designated airlines.
Article 19	Effects of Multilateral Air Transport Agreements	The Parties reaffirm that the Agreement shall be deemed to have been amended by Provisions of any multilateral air transport agreement, which may become binding on both Parties.
Article 20	Registration of Agreements	The Article provides for registration of the Agreement, its amendments and any exchange of notes relating to the Agreement, with the International Civil Aviation Organization (ICAO) as the repository.
Article 21	Amendment	The Article provides for amendments to be made on Provisions of the Agreement. It describes the procedure of amendment and gives the aeronautical authorities of the Parties the right to agree directly on any amendment to the Annex of the Agreement.
Article 22	Ratification	The Article provides for ratification and deposition of the Agreement and other instruments of ratification with the International Civil Aviation Organization (ICAO).

Article 23	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period it takes to be effective.
Article 24	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.

MINUTES OF THE 24TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON THURSDAY 21ST MAY, 2015 IN THE BOARDROOM, ON 2ND FLOOR PROTECTION HOUSE AT 10:40 AM.

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Mahamud Maalim, M.P. – **Vice Chairman**
3. Hon. Grace Kipchoim, M.P.
4. Hon. Aduma Owuor, M.P.
5. Hon. Mishi Juma, M.P.
6. Hon. Chachu Ganya, M.P.
7. Hon. Joseph Lomwa, M.P.
8. Hon. Mukwe James Lusweti, M.P.
9. Hon. (Eng.) Stephen Ngare, M.P.
10. Hon. Omulele Christopher, M.P.
11. Hon. (Capt.) Clement Wambugu, M.P.
12. Hon. Ahmed Abbas Ibrahim, M.P.
13. Hon. (Arch.) David Kiaraho, M.P.
14. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
15. Hon. Eng. John Kiragu, M.P.

ABSENT WITH APOLOGY

1. Hon. Cecily Mbarire, M.P.
2. Hon. Stephen Manoti, M.P.
3. Hon. Mark Lomunokol, M.P.
4. Hon. Gideon Konchella, M.P.
5. Hon. Edick Omondi Anyanga, M.P.
6. Hon. Suleiman Dori, M.P.
7. Hon. Mathias Robi, M.P.,
8. Hon. Johnson Manya Naicca, M.P.
9. Hon. Peter Shehe, M.P.
10. Hon. Omar Mwinyi, M.P.
11. Hon. Emmanuel Wangwe, M.P.
12. Hon. Simon NyaundiOgari, M.P.
13. Hon. Barchilei Kipruto, M.P.

14. Hon. Ali Wario, M.P.

IN ATTENDANCE

Hon. Ciclia Ngetich,

- NATIONAL ASSEMBLY

MP

IN ATTENDANCE

1. Mr. Samuel Kalama
2. Mr. Abdifatah M. Bule
3. Ms. Nuri K. Nataan
4. Ms. Mercy Wanyonyi
5. Mr. James muguna

- NATIONAL ASSEMBLY

First Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Legal Counsel
Research officer

IN ATTENDANCE

MEETING WITH THE STAKEHOLDERS ON THE TECHNOLOGIST &
TECHNICIANS BILL, 2015

- | | |
|-------------------------|---|
| 1. Mr. Mwangi Muli | Lecturer, |
| 2. Dr. Wanjii | Senior Lecturer |
| 3. Dr. kipkirui Langat | director General |
| 4. C.T Akumu Owuor | Director, |
| 5. Ms. Alice mutai | Assist. Registrar, Technical University of Kenya (TUK) |
| 6. Prof. George Thumbi | Chairperson, Institution of Engineering |
| 7. Dr. Charles M.Onderi | Senior Lecturer, technical and vocational education and training (TVET) |

MIN/DC-TPWH/2015/122

Preliminaries

The Chair called the meeting to order at 10:30 am and opened it with word of prayer. He invited in attendance to introduce themselves.

The Chairperson presented the agenda as follows:-

AGENDA

1. Prayer
2. Preliminaries/Introduction
3. Confirmation of Minutes
4. Matter Arising

5. Consideration and adoption of the following reports:-

- I. Report on the examination of the Budget Estimates for 2015/2016 financial year
- II. Report on the consideration of the Protocol on Development and Operation of the Standard Gauge Railway within the Framework of the Northern Corridor Integration Projects

6. Meeting with the stakeholders on the Technologists & Technicians Bill, 2015

7. Any Other Business

MIN/DC-TPWH/2015/123

Confirmation of Minutes

The minutes of the previous sittings were confirmed as the true records of the proceedings and signed by the Hon. Maina Kamanda, MP as follows:-

- I. The minutes of the 21st sitting were proposed and seconded by Hon. Ahmed Abbas Ibrahim, M.P. and Hon. Mukwe James Lusweti, M.P respectively.
- II. The minutes of the 22nd sitting were proposed and seconded by Hon. Omulele Christopher, M.P. and Hon. Chachu Ganya, MP respectively.
- III. The minutes of the 23rd sitting were proposed and seconded by Hon. Mohamud Maalim, MP and Hon. Omulele Christopher, MP respectively.

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Matters Arising

There were no matters arising.

Min/DC-L/2014/125 Consideration and adoption of the following reports:-

- I. Report on the examination of the Budget Estimates for 2015/2016 financial year
- II. Report on the consideration of the Protocol on Development and Operation of the Standard Gauge Railway within the Framework of the Northern Corridor Integration Projects

The Committee considered the above reports and adopted them unanimously for tabling by the Chairperson.

The Chairperson invited the Chairperson for the Institution of engineering, to make his presentation on the Bill.

The Chairperson briefed the Committee as follows:-

That:-

1. The pioneer universities in the region have been producing engineers and scientists with Bachelor of Science or Bachelor of Engineering Degrees which focus on conceptualization and design but not on production of goods and provision of services. The professionals who translate the designs and concepts into practical products and services, known as technologists, have largely been lacking in our education and training system.
2. The desired ratio of engineers to technologists is one to three, i.e. for every one engineer, two technologists are required. In Kenya, the few technologists available were trained to the Higher Diploma qualification level mainly from Kenya Polytechnic (now Technical University of Kenya, TUK) and Mombasa Polytechnic (now Technical University of Mombasa). The number of technicians and technologists are too small to impact on technological transformation and hence the low level of Kenya's industrial development. However the cadre of professionals faces challenges of professional recognition with negative consequences on their upward mobility.
3. The Technical University of Kenya and other Technical universities will work in partnership with other technical and vocational education and training (TVET) institutions which share the vision of training for technological innovation required for the achievement of Kenya's Vision 2030 goals. However, TUK and other technical Universities have encountered numerous challenges in trying to achieve its mandate of training Technologists and Technicians largely due to lack of a professional body to recognize, register and regulate them like other professionals. Most of the students who are admitted for Bachelor of Technology end up opting to pursue Bachelor Engineering because the latter is recognized, registered and regulated by Engineers Board of Kenya (EBK). It is therefore equally important to have a professional body for Engineering Technologists and Technicians.
4. The Regulation of any Profession that touches on the Safety and Health, and Welfare of the public is mandatory worldwide. The most notable ones are the Engineering and Medical Professions. The Engineering Team has five cadres (Engineering Scientists, Engineers,

Engineering Technologists, Engineering Technicians and craft persons/artisans), but only one cadre (Engineer) is being registered and recognized in Kenya by EBK; the Medical team also has five cadres (Medical scientists, Doctors/Dentists, Medical Clinical Officers, Medical Nurses and Lab. Technologists) but unlike the Engineering Team all the cadres in the Medical Team are regulated by Acts of Parliament and all the personnel are registered and therefore accountable for their actions.

5. The Government of Kenya has increased the number of Technical Universities to ten (10) in number to train the much needed Technologists and also planning to have a Technical Training Institute (TTI) in every constituency to train Technicians and Craft persons, the absent of professional body to recognize, register and regulate these cadres may render this initiative a pipe dream as the programs may experience low enrolment. It is therefore necessary to have a professional body for Engineering Technologists and Technicians just like in Medical profession.
6. The object of the Bill is to provide a legal framework for the Regulation, Practice and Standards of Engineering Technology Personnel (Technologists, Technicians, Vocational Technicians/Engineering Crafts Persons and Engineering Artisans) in Kenya. This will make these cadres of the Engineering profession (who do more than 98% of the engineering activities) to be accountable for the work they do in the engineering profession; the incidences of houses collapsing will reduce drastically. The Bill will also create a body that will also assist in the approval and implementation of engineering technology courses in all TVET institutions in Kenya and make all TVET Graduates have international recognition in line with the International Accords and the spirit of the TVET Act, 2013, section 45(d).
7. The Government is building more Technical Training Institutions all over the country with an aim of having at least one Technical Training Institution in every Constituency and one Vocational Training Centre (VTC) in every County ward by 2017. To fully implement the TVET Act, 2013 the enactment of this Bill is, therefore, crucial.
8. The intention of this Bill is to make it possible for every qualified engineering professional to register, and bring into perspective all the other levels of Engineering practice to international recognition as is the spirit of the TVET Act, 2013 Section 38 (a-d), Section 45 (1)(d) and the International Accords earlier mentioned. It is also to support the TVET graduates in a number of Technical Training Institutions in the country to acquire national and international recognition, thereby increasing the employability of the graduates nationally, regionally and internationally.

The Chairperson further highlighted the following as the key reasons why their institution supports the Engineering Technologists and Technician Bill, 2015:-

1. The Engineering technologists, engineering technicians and Crafts persons are not presently registered and therefore are not accountable for the work they do concerning engineering activities. Almost all engineering activities in Kenya are carried out by these people.
2. Any engineering activity is likely to affect the safety and/or health and/or wellbeing of humanity. All engineering activities require the input of the roles of all the engineering team members (the scientist, the engineer, the technologists, the technician and the crafts person), they all have a role to play and therefore each must be accountable through an act of parliament.
3. Part VI of the Engineers Act, 2011 section 48(1) prohibits any unlicensed person from engaging in the practice of engineering activities. Since the Engineering Technology Cadres are not catered for in the Engineers Act, they are not allowed to do any engineering work in Kenya. But the fact remains that almost all engineering activities in Kenya are carried out by the Engineering Technology Personnel, non-recognition by EBK notwithstanding. In fact the Engineers Act is not in line with other international Engineering professional bodies.
4. TVET Act, 2013 Section 45 (1) (d): one of the functions of the Certification Council in charge of Curriculum Development, Assessment and Certification are to "promote recognition of qualifications in foreign systems". This is only possible when the holders of the qualifications are registered and regulated by an Act of Parliament whereby the body regulating them is affiliated to the three international educational accords for international membership recognition; these accords are Washington Accord for Engineers, Sydney Accord for Engineering Technologists and Dublin Accord for Engineering Technicians.
5. The Registration of all the Engineering Technology Personnel will deter them from engaging in the construction of buildings that are not approved and/or deter them in doing shoddy jobs; this will result in a reduction of the number of buildings that keep on collapsing in Kenya. Moreover, registered personnel are normally required to attend for Continuous Development Programmes that keep enlightening them on new laws and regulations of practice; currently only registered engineers enjoy this.
6. The enactment of the Bill will encourage students to opt to join the technical education line i.e. the TVET direction will cease to be an alternative route for most secondary schools.

- graduates, but a route of choice. Even parents will encourage their children to go for the technical courses. The Bachelor of Technology students will no longer want to change to Bachelor of Science (Engineering) courses as it is presently noticed at TUK.

Committee observations

The Committee observed that:-

- The Technologists/Technicians and Engineers are inseparable professionals, hence the need for them to work closely.
- The Bill lacks the qualifications for one to be qualified as technologist/technician.

MIN/DC-TPWH/2015/127 ADJOURNMENT

And there being no other business, the Chair adjourned the meeting at 12.30 pm.

SIGNED.....

HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....