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THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - FOURTH SESSION

THE DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

ADDENDUM

ON PUBLIC PARTICIPATION TO THE REPORT TABLED ON 10TH
SEPTEMBER 2020
ON THE CONSIDERATION OF THE NATIONAL AVIATION
MANAGEMENT BILL, 2020
(NATIONAL ASSEMBLY BILL NO. 18 OF 2020)

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2020

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LIST OF ABBEVIATIONS

CAK	- Competition Authority of Kenya
KAA	- Kenya Airports Authority
KA AO	- Kenya Association of Air Operators
KALPA	- Kenya Airline Pilots Association
KATA	- Kenya Association of Travel Agents
KAWU	- Kenya Aviation Workers Union
KCAA	- Kenya Civil Aviation
KCA	- Kenya Camel Association
KLMC	- Kenya Livestock Marketing Council
KEMLEIC	- Meat and Livestock Exporters Industry Council of Kenya
KQ	- Kenya Airways PLC
LLP	- Limited Liability Partnership
PLC	- Public Limited Company

ANNEXURES

- A. Adoption List for the Addendum
- B. Advertisement dated 14th September 2020 inviting submission of Memoranda
- C. Minutes of the meetings of the Committee
- D. Written Submissions received by the Committee vide the second advert:
 1. KMK Africa Law Advocates
 2. GERIVIA Advocates LLP
 3. Kenya Association of Air Operators
 4. Kenya Airline Pilots Association
 5. Kenya Aviation Workers Union
 6. Kenya Association of Travel Agents
 7. Mr. Fredrick A. Opot
 8. Meat and Livestock Exporters Industry Council of Kenya (KEMLEIC), Kenya Livestock Marketing Council (KLMC) and Kenya Camel Association (KCA)
 9. Kenya Meteorological Department
 10. SESLaw Advocates LLP
 11. Kakai Mugalo Advocates
 12. The Law Society of Kenya*
 13. Mwangi, Mwangi & Associates*
 14. R. Mobisa & Associates Advocates*
 15. OKAO and Company Advocates *
 16. Mr. David Njuguna Njathi

**Submissions sent earlier were used during oral submissions*

1.0 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 Committee then held eight meetings both in-house and with different stakeholders where submissions were received and considered before the adoption of the Report. The Report was ultimately tabled before the National Assembly on **10th September 2020**.

After deliberations on the Floor of the House on 10th September 2020, the Honorable Speaker directed the Committee to conduct a second round of public participation with a view of affording members of the public and other stakeholders more time to submit their views and recommendations, if any, on the said Bill. The Speaker directed that an addendum to the Report be tabled upon the conclusion of that process.

Consequently, the National Assembly advertised for the second time on the local dailies on **14th September 2020**, requesting the general public to submit their views on the National Aviation Management Bill, 2020.

2.0 SITTINGS TO CONSIDER MEMORANDA RECEIVED

In its sitting held on **23rd September 2020**, the Committee confirmed that pursuant to the directive of the Speaker made on 10th September 2020 and the subsequent advert of 14th September 2020, a total of eleven parties/stakeholders responded to the National Assembly's further request for submission of memoranda on the Bill. The Committee resolved to invite all the eleven to a physical meeting with the Committee on Tuesday, **28th September 2020** and on Wednesday, **29th September 2020**. These were:

1. KMK Africa Law Advocates
2. GERIVIA Advocates LLP
3. Kenya Association of Air Operators (KAAO)
4. Kenya Airline Pilots Association (KALPA)
5. Kenya Aviation Workers Union (KAWU)
6. Kenya Association of Travel Agents (KATA)
7. Mr. Fredrick A. Opot
8. Meat and Livestock Exporters Industry Council of Kenya (KEMLEIC), Kenya Livestock Marketing Council (KLMC) and Kenya Camel Association (KCA)
9. Kenya Meteorological Department
10. SESLaw Advocates LLP
11. Kakai Mugalo Advocates

The Committee further noted that in response to the initial advertisement and prior to tabling its report on 10th September 2020, there were other stakeholders who had submitted their written memoranda but never appeared before the Committee. Despite their views being captured well in the tabled Committee Report, the Committee was of the view that it was

important that they be given audience together with the eleven parties. In this regard the following were also invited to appear:

1. The Law Society of Kenya
2. Mwangi, Mwangi & Associates
3. R. Mobisa & Associates Advocates
4. OKAO and Company Advocates

The Committee observed that issues which may require further clarification from the Ministry may arise during the Committee interactions with stakeholders. It was the Committee's considered view that all the relevant government agencies be invited on **30th September 2020** so that the Committee may seek any further clarifications before retreating to prepare this addendum. In this regard, the following agencies were represented:

1. Ministry of Transport
2. The National Treasury
3. The Attorney General
4. Kenya Airways PLC
5. Kenya Airport Authority
6. Kenya Civil Aviation Authority
7. Ministry of Environment & Forestry
8. Competition Authority of Kenya

The Committee held another sitting on Tuesday, **6th October 2020** to consider the recommendations received from the stakeholders, made its observations and recommendations, and to adopt this addendum.

In that session of **6th October 2020**, the Committee noted that it was in receipt of an extra memorandum from one Mr. David Njuguna Njathi, after the Committee had met all the other stakeholders on **30th September 2020**. The Committee resolved to fully consider and incorporate the views, his late submission notwithstanding.

3.0 FURTHER SUBMISSIONS ON THE NATIONAL AVIATION MANAGEMENT BILL, 2020

The Committee extended its public participation period to consider all submissions received from **2nd July 2020** to **6th October 2020**. This addendum covers the extra submissions made pursuant to the second advertisement made on **14th September 2020**. Stakeholders were given an opportunity to submit both in written memoranda and through oral submissions. Below is the summary of the submissions received from the public and various stakeholders.

3.1 KMK AFRICA LAW ADVOCATES

KMK appeared before Committee on **28th September 2020**. They referred to their written memorandum dated **21st September 2020**. In their submissions, they submitted that-

1. Clause 5 be amended because the institutional structure was a bit heavy and therefore proposed that the President and the Air force Commander be removed from the council.
2. Deletion of clause 6 of the Bill to the extent that it creates an Aviation Holding Corporation. In its place, a clause specifying that each of the operating entities will

operate independently and as standalone entities should be inserted. They explained that the clause was an indirect way of reintroducing the now rejected plan of acquisition of the national airport JKIA by KQ and KAA. They submitted that the regulator (KAA) and the regulated (KQ) cannot be merged because there will be a potential conflict of interest. The Chairman of the Committee explained that whereas the stakeholders had all the right to their views, it was important to note that it was not really a merger but a common purpose arrangement.

3. The functions of the Board in clause 9 to be aligned and a new clause on evaluation and approval of an internal system of control and ensure it is maintained. They also submitted that it was paramount to ensure that shareholders' interests were protected.
4. Clause 27 be amended so that KAA's proposed status as an Operating Entity alongside KQ and the AIC be reconsidered in order to provide for effective and independent regulation and to promote fair competition.
5. Clause 52(g) and clause 53 be deleted. There must be an assurance or a securing of the interests of workers which the Bill did not appear to address. They further stated that any restructuring process usually has casualties in the form of retrenched employees.
6. Deletion of the Second Schedule. In particular, they proposed deletion of the provision in the Second Schedule which amends the Companies Act by inserting the words "...none of the other provisions of this Act or the regulations under this Act, or any amendment thereof, or any other law relating to companies, shall apply to the state owned entities." They further proposed deletion of the proposed amendments to the Public Procurement and Asset Disposal Act, 2015.

Committee observations:

1. The Bill does not seek to merge Kenya Airways and Kenya Airports Authority within the meaning of the Competition Act, but to consolidate the aviation assets so as to effectively compete in the international market.
2. Pursuant to Article 132(4)(a) of the Constitution, the President has power to perform any executive function provided for in the Constitution or in national legislation e.g the National Climate Change Council established pursuant to the Climate Change Act, 2016 is chaired by the President. Further, the functions of the Council as an unincorporated body are not of an operational nature but to give policy direction considering the strategic nature of civil aviation.
3. The proposed consequential amendments, as contained in the Second Schedule of the Bill to the State Corporations Act, Cap 446, the Public Finance Management Act, 2015 and the Companies Act, 2015 were informed by the House recommendations contained in Committee's report on the Inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority. The House approved that, upon nationalization of KQ, amendments be made to include exemptions in the State Corporations Act, the Public Finance Management Act, the Public Procurement and Asset Disposal Act and the Public Service Commission Act. (*Recommendation No.5*) As such, the proposed amendments do not expand the subject matter of the Bill.
4. The Bill has provisions for review of terms of service in accordance with the Constitution and other laws and further provides that the employment terms of service should be at the same level or improved.

3.2 GERIVIA ADVOCATES LLP

Gerivia Advocates appeared before Committee on 28th September 2020. They referred to their written memorandum dated 21st September 2020. In their submissions, they proposed-

1. An amendment to clause 4 to include the aspect of financial accountability and profitability as one of the guiding principles.
2. Amendment to clause 5 to remove the President and the Air force Commander from the council.
3. Amendment to clause 9 for functions of the Board to be aligned and a new clause on evaluation and approval of an internal system of control and ensure it is maintained.
4. Amendment to clause 10(b) to provide for the minimum experience of 15 years for the Chairperson and a Master's degree in a relevant field, and 10years for the Board Members.
5. Amendment to clause 12(3)(c) to provide that the CEO should, in addition to communicating the Board's policies and guidelines, ensure that they are implemented by the Operating Entities.
6. Amendment to clause 21(4) to provide that in the absence of the Corporation Secretary, the person who the Board appoints to replace the Corporation Secretary should also be a member of the Institute of Certified Secretaries and in good standing or an Advocate of the High Court.
7. Amendment to clause 27 to provide for the powers of KAA to approve the establishment of private airstrips and control their operations as is currently the case.
8. Amendment to the First Schedule to provide that the Board shall develop a Board Charter to guide its operations
9. The regulatory role of KCAA over the Corporation should be clear and that the provisions of the Public Finance Management Act should apply.

Committee observations:

1. That currently, under section 8(1)(a) of the Kenya Airports Authority Act, Cap 395, KAA has power to approve the establishment of private airstrips and control their operations.
2. Pursuant to Article 132(4)(a) of the Constitution, the President has power to perform any executive function provided for in the Constitution or in national legislation e.g the National Climate Change Council established pursuant to the Climate Change Act, 2016 is chaired by the President. Further, the functions of the Council as an unincorporated body are not of an operational nature but to give policy direction considering the strategic nature of civil aviation.

3.3 MWANGI, MWANGI & ASSOCIATES

Mwangi, Mwangi Associates appeared before Committee on 28th September 2020 and they referred to their written memorandum dated 7th July, 2020. They 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.
3. 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.

4. The entire Bill needed to be thoroughly thought-out. They stated that the Bill needed more study before it could be implemented.

Committee observations:

1. The Committee in its Report had recommended the inclusion of KCAA in the Kenya Civil Aviation Council and further proposed amendments to ensure that the regulatory role of KCAA is not in any way taken up by the Corporation.

3.4 R. MOBISA & ASSOCIATES

R. Mobisa & Associates appeared before the Committee on 28th September 2020 and they referred to their written memorandum dated 13th July, 2020. They 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.

Committee observations:

1. The Committee in its Report had recommended the inclusion of KCAA in the Kenya Civil Aviation Council 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. The Committee in its Report had proposed amendments to harmonize the term of office of the Managing Directors of the Operating Entities and that of the Chief Executive Officer of the Corporation.
3. The Committee in its Report had proposed amendments to ensure that the powers granted to the Cabinet Secretary to make regulations are in line with Article 94(5) of the Constitution. However, there was need to specify the specific areas of law that may be made.

3.5 KENYA ASSOCIATION OF AIR OPERATORS (KAAO)

KAAO appeared before the Committee on 20th August 2020 and on 28th September 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.

Committee observations:

1. The Committee in its Report had proposed amendments to the provisions of the Bill making reference to use of the common seal to align the provisions 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.

2. The Committee in its Report had proposed amendments to harmonize the term of office of the Managing Directors of the Operating Entities and that of the Chief Executive Officer of the Corporation.
3. The Committee in its Report had proposed amendments to provide for matters relating to integrity, Corruption, Performance and Fraud as grounds for removal of the Chief Executive Officer which had not been provided for in the Bill.

3.6 KENYA AIRLINE PILOTS ASSOCIATION (KALPA)

KALPA appeared before the Committee on 20th August 2020 and on 28th September 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.
They further proposed deletion of clause 8(1)(g) and substitute with nine independent non-executive Board members each with the following specific aviation expertise and nominated by the relevant stakeholder bodies. These are the Kenya Airline Pilots Association with over ten years of international flying experience; Aviation maintenance science expert or a licensed aircraft engineering expert; Aircraft acquisition, lease agreement and maintenance reserves expert; A nominee of the Hotels and Restaurants Association of Kenya; A nominee of the Horticulture, Floriculture and Agriculture associations; A nominee of the meat and livestock exports associations; An air cargo management expert; A nominee of the Kenya Aviation Medical Association; and an Aviation audit expert.
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).

Committee observations:

1. The Committee in its Report had recommended the inclusion of KCAA in the Kenya Civil Aviation Council 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. There is need to have penal provisions in the Bill regarding employees endangering safety as there are instances where an employee, knowingly or intentionally endangers the safety of any person ,aircraft or vehicle.
3. The Bill has provisions for review of terms of service in accordance with the Constitution and other laws and further provides that the employment terms of service should be at the same level or improved.

3.7 KENYA AVIATION WORKERS UNION (KAWU)

KAWU appeared before the Committee on 28th September 2020. They referred to their written memorandum dated 8th July 2020 and an additional one dated 27th September 2020. In their submissions, they proposed-

1. The terms “union” and “CBA” should be included in clause 2 and clearly defined.
2. The council was not necessary at all and proposed its deletion. It was their submission that the aviation practice worldwide was that the Minister (Cabinet Secretary) on aviation was the ultimate boss.
3. Clause 49 be amended for additional specific instruments to be included in the Vesting Order to both Kenya Airways and Kenya Airports Authority. These are the respective Recognition Agreements; the existing Bargaining Agreements (CBA’s); the existing Memorandum of Agreements (MOA’s); the existing Memorandum of Understanding (MOU’s); all Rulings, Judgements and Awards of the Court in favour KAWU with the respective Transferring Entities that have not be honoured; all existing court cases filed by KAWU against the respective Transferring Entities; all existing trade disputes filed by KAWU against the respective Transferring Entities; all individual employee contracts entered between the unionizable employees and the respective Transferring Entities; and all other Industrial Relations instruments.
4. Clause 51 be amended to provide that the review and amendment of salaries shall be subject to negotiation and agreement with the Union.

Committee observations:

1. The Council is the apex body established so as to give policy direction relating to the aviation sector.
2. The term “**collective agreement**” has been defined in the Employment Act, No.11 of 2007 to mean a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employers’ organization. Further the term “**trade union**” has been defined in the Employment Act, No.11 of 2007 to mean an association of employees whose principal purpose is to regulate relations between employees and employers and includes an employers’ organization.
3. The Bill has provisions for review of terms of service in accordance with the Constitution and other laws and further provides that the employment terms of service should be at the same level or improved.

3.8 KENYA ASSOCIATION OF TRAVEL AGENTS (KATA)

KATA appeared before the Committee on 28th September 2020 and they referred to their written memorandum dated 18th September 2020. They submitted that-

1. Clause 8 be amended for KATA to have a standing Board position because Kenya Aviation Sector is dependent on travel agents who contribute 75% of the passenger number bookings on KQ.

2. Clause 18 be amended to provide that the standing KATA Board position will be represented by the Chief Executive Officer for KATA for the avoidance of conflict of interest.
3. Clause 58(2) be amended to provide that the Board will allocate 3% monthly of the total Passenger Service Charge as provided for under the Air Passengers Service Charge Act to the Kenya Association of Travel Agents for use in marketing promotion activities and educational forum for KATA members such as IATA accredited courses.

Committee observations:

1. KATA is a private entity and an essential stakeholder in the promotion and development of the Kenya Aviation Sector as the sector is dependent on travel agents who contribute 75% of the passenger number bookings on KQ.

3.9 MR. FREDRICK A. OPOT

Mr. Fredrick A. Opot appeared before the Committee on 28th September 2020 and he referred to his written memorandum which was received at the National Assembly on 27th August 2020. He submitted that-

1. We need a policy first because the Bill only focuses on the Kenya Airways and the Kenya Airports Authority alone as opposed to the entire aviation sector in totality.
2. Exemption of Kenya Airways from certain provisions of taxation was tantamount to unfair competition.

Committee observations:

1. The Bill does not seek to merge Kenya Airways and Kenya Airports Authority within the meaning of the Competition Act, No.12 of 2010 but to consolidate the aviation assets so as to effectively compete in the international market.
2. The policy framework of the National Aviation Management Bill, 2020 is derived from the recommendations of the National Assembly after an extensive inquiry and public participation that culminated to a report tabled on 18th June 2019 and adopted by the House on 23rd July 2019 on the Inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority.

3.10 MEAT AND LIVESTOCK EXPORTERS INDUSTRY COUNCIL OF KENYA (KEMLEIC), KENYA LIVESTOCK MARKETING COUNCIL (KLMC) AND KENYA CAMEL ASSOCIATION (KCA)

KEMLEIC appeared before the Committee on 28th September 2020 and they referred to their written memorandum dated 21st September 2020. They proposed-

1. Inclusion of the KCAA into the National Civil Aviation Council.
2. Clause 7(1)(c) be amended to provide for the consultation with relevant stakeholders including KALPA, the tourism sector, agriculture sector, horticultural sector, Meat Exporters Council, general aviation operators and the Ministry of Trade and Industry.
3. Amend clause 8 for the nine independent Board members to be nominated by their own bodies independently. These are the Kenya Airline Pilots Association with over ten years of international flying experience; Aviation maintenance science expert or a licensed aircraft engineering expert; Aircraft acquisition, lease agreement and maintenance reserves expert; A nominee of the Hotels and Restaurants Association of Kenya; A nominee of the Horticulture, Floriculture and Agriculture associations; A nominee of the meat and livestock exports associations; An air cargo

- management expert; A nominee of the Kenya Aviation Medical Association; and an Aviation audit expert.
4. Amend clause 40 to enhance the qualification requirements of a Managing Director.
 5. Amend clause 43 to provide for re-appointment based on the profitability and growth achieved.

Committee observations:

1. The Committee in its Report had recommended the inclusion of KCAA in the Kenya Civil Aviation Council 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.

3.11 KENYA METEOROLOGICAL DEPARTMENT

The Meteorological Department appeared before the Committee on 28th and 30th September 2020. They referred to their written memorandum dated 8th September 2020. In their submissions, they proposed-

1. Clause 5 be amended so that the Cabinet Secretary in charge be given a seat in the National Civil Aviation Council considering how critical their services are to the aviation sector.
2. Amendment to clause 58(1)(a) to provide for 30% of Air Passenger Service Charge as apportioned proceeds for recovery of costs and charges for meteorological services provided for in aviation.
3. Amendment to clause 58(1)(g) to include recovery of costs and services for meteorological services provided for Air Navigation Service.

Committee observations:

1. There is need to include the Cabinet Secretary for the time being responsible for the environment in the Council as meteorological services are critical in the aviation sector.
2. Meteorological services are key, critical and essential to the safety, regularity and operation of aircrafts during take-off, cruise, approach, and landing phases of both civil and military aircrafts.
3. The Ministry of Transport and the Ministry of Environment need to consult further on the sharing of the proceeds from the passenger service charge as provided for under the Air Passenger Services Charge Act, Cap.475.

3.12 THE LAW SOCIETY OF KENYA

The Law Society of Kenya appeared before the Committee on 29th September 2020 and referred to their written memorandum dated 18th August, 2020. They submitted that the Bill should be withdrawn for the following reasons-

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.

Committee observations:

1. Pursuant to Article 132(4)(a) of the Constitution, the President has power to perform any executive function provided for in the Constitution or in national legislation e.g the National Climate Change Council established pursuant to the Climate Change Act, 2016 is chaired by the President. Further, the functions of the Council as an unincorporated body are not of an operational nature but to give policy direction considering the strategic nature of civil aviation.
2. The proposed consequential amendments, as contained in the Second Schedule of the Bill to the State Corporations Act, Cap 446, the Public Finance Management Act, 2015 and the Companies Act, 2015 were informed by the House recommendations contained in Committee's report on the Inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority. The House approved that, upon nationalization of KQ, amendments be made to include exemptions in the State Corporations Act, the Public Finance Management Act, the Public Procurement and Asset Disposal Act and the Public Service Commission Act. (*Recommendation No.5*) As such, the proposed amendments do not expand the subject matter of the Bill.
3. Pursuant to Paragraph 18(g) of Part 1 of the Fourth Schedule to the Constitution, civil aviation is a function of the National Government.
4. The Bill does not seek to merge Kenya Airways and Kenya Airports Authority within the meaning of the Competition Act, No.12 of 2010 but to consolidate the aviation assets so as to effectively compete in the international market.
5. The Bill has provisions for review of terms of service in accordance with the Constitution and other laws and further provides that the employment terms of service should be at the same level or improved.

3.13 OKAO & COMPANY ADVOCATES

OKAO & Company Advocates appeared before the Committee on 29th September 2020 and referred to their written memorandum dated 8th July, 2020. They 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; 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.

Committee observations:

1. The Bill does not seek to merge Kenya Airways and Kenya Airports Authority within the meaning of the Competition Act, No.12 of 2010 but to consolidate the aviation assets so as to effectively compete in the international market.

3.14 SESLAW ADVOCATES

SESLaw Advocates appeared before the Committee on 29th September 2020 and referred to their written memorandum dated 8th July 2020. They 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 and failure to conduct a comprehensive feasibility study on the financial viability of nationalization of KQ and its merger with KAA.
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.

Committee observations:

1. The policy framework of the National Aviation Management Bill, 2020 is derived from the recommendations of the National Assembly after an extensive inquiry and public participation that culminated to a report tabled on 18th June 2019 and adopted by the House on 23rd July 2019 on the Inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority.
2. The proposed consequential amendments, as contained in the Second Schedule of the Bill to the State Corporations Act, Cap 446, the Public Finance Management Act, 2015 and the Companies Act, 2015 were informed by the House recommendations contained in Committee's report on the Inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority. The House approved that, upon nationalization of KQ, amendments be made to include exemptions in the State Corporations Act, the Public Finance Management Act, the Public Procurement and Asset Disposal Act and the Public Service Commission Act. (*Recommendation No.5*) As such, the proposed amendments do not expand the subject matter of the Bill.
3. The Bill was drafted by the Attorney General and approved by Cabinet before transmission to the National Assembly for consideration as provided for by the National Assembly Standing Orders.
4. The Bill does not seek to merge Kenya Airways and Kenya Airports Authority within the meaning of the Competition Act, No.12 of 2010 but to consolidate the aviation assets so as to effectively compete in the international market.

3.15 KAKAI MUGALO ADVOCATES

Kakai Mugalo Advocates were invited to appear before the Committee on 29th September 2020 but did not make it. The Committee however considered their written memorandum dated 8th July 2020 in which they submitted that the Bill should be rejected in its entirety for the following reasons-

1. Lack of independent oversight of the Board due to conflict of interest in members of the operating entities.
2. Conflict of interest as KQ will be in competition with local and international air operators yet KQ CEO is a Board member in a Board that wields immense regulatory powers over the aviation sector.
3. Risk of CEOs of the operating entities to remove the Corporation CEO by conspiracy.
4. Possibility of KAAs fairly-earned and publicly owned revenues from being absorbed to pay KQs privately acquired debts as a result of poor management.
5. Apparent monopoly and anti-competitive practices which serve to suppress competition.
6. Need to amend the definition of "state corporations" as it is vague and open to abuse

Committee observations:

1. The Committee in its Report had proposed amendments on provisions regarding the composition of the Board to ensure that there is no conflict of interest as the Managing Directors of the Operating Entities, who report to the CEO are all Board members.

3.16 MR. DAVID NJUGUNA NJATHI

Mr. David Njuguna Njathi's memorandum was received on 30th September 2020. The Committee considered his views on 6th October 2020. He submitted that-

1. The return on investment from pooling so many diverse state resources may turn out to be poor.
2. The model proposed in the Bill may work in other jurisdictions where the industry is not comprised of many vibrant players as the case is uniquely so in Kenya.
3. Preferential tax breaks is against the spirit of the Kenyan Competition Rules.
4. We should not shackle the KAA to a financially struggling airline.
5. JKIA can expand to be an attractive hub if managed efficiently.
6. The nationalization of Kenya Airways is a hasty move which takes us back and there is need to carefully consider the reasons for the recent bad financial performance.
7. Support should be given to the entire aviation industry by reviewing the heavy taxation regime.
8. Waiver of duty and VAT on aircraft and aircraft parts would make JKIA and Wilson Airport affordable hubs for aircraft maintenance.
9. The proposed Aviation Council is not necessary in Kenya.

Committee observations:

1. The Council is the apex body established so as to give policy direction relating to the aviation sector.
2. The Second Schedule to the Bill contains provisions relating to consequential amendments to various Acts of Parliament, including 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, to enable the operating entities to effectively function.

4.0 COMMITTEE'S GENERAL OBSERVATIONS

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

- (1) The policy framework of the National Aviation Management Bill, 2020 is derived from the recommendations of the National Assembly after an extensive inquiry and public participation that culminated into a report tabled on 18th June 2019 and adopted by the House on 23rd July 2019 on the Inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority.
- (2) The proposed consequential amendments, as contained in the Second Schedule of the Bill to the State Corporations Act, Cap 446, the Public Finance Management Act, 2015 and the Companies Act, 2015 were informed by the House recommendations contained in Committee's report on the Inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority. The House approved that, upon nationalization of KQ, amendments be made to include exemptions in the State Corporations Act, the Public Finance Management Act, the Public Procurement and Asset Disposal Act and the Public Service Commission Act (*Recommendation No.5 of the Report as adopted on 23rd July 2019*). As such, the proposed amendments do not expand the subject matter of the Bill.
- (3) The assertion made by the Law Society of Kenya during its meeting with the Committee on 29th September 2020 that the Bill was not drafted within the realm of government procedural processes was unsubstantiated and the same was denied by the Office of the Attorney General and the Ministry of Transport during a Committee meeting held on 30th September 2020. The Office of the Attorney General confirmed taking all the instructions on the Bill from the Government and not from any other parties.
- (4) Meteorological services are key, critical and essential to the safety, regularity and operation of aircrafts during take-off, cruise, approach, and landing phases of both of both civil and military aircrafts.
- (5) The Bill does not seek to merge Kenya Airways and Kenya Airports Authority within the meaning of the Competition Act, No.12 of 2010 but to consolidate the aviation assets so as to effectively compete in the international market.
- (6) Pursuant to Article 132(4)(a) of the Constitution, the President has power to perform any executive function provided for in the Constitution or in national legislation e.g the National Climate Change Council established pursuant to the Climate Change Act, 2016 is chaired by the President. Further, the functions of the Council as an unincorporated body are not of an operational nature but to give policy direction considering the strategic nature of civil aviation.

- (7) There is need to amend clause 5 of the Bill to expressly provide that the Council is an unincorporated body and to include the Cabinet Secretary for the time being responsible for the environment in the Council as meteorological services are critical in the aviation sector.
- (8) There is need to amend clauses 11,12 and 13 of the Bill to remove ambiguity and provide clarity on the qualifications for appointment as the Chairperson of the Board, member of the Board and the Chief Executive Officer of the Corporation.
- (9) There is need to amend clause 16 and 42 of the Bill to ensure that the remuneration of the members of the Board and the Managing Directors is determined upon the advice of the Salaries and Remuneration Commission in line with Article 230 of the Constitution.
- (10) There is need to amend clause 44 of the Bill by inserting the word “or” after the first paragraph to connect the two paragraphs and construe them disjunctively.
- (11) There is need to amend clause 45 of the Bill to align it with the provisions of section 37 of the Companies Act,2015 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.
- (12) There is need to amend clause 72 of the Bill to specify the specific areas of law that the Cabinet Secretary is required to make regulations for in line with Article 94(5) of the Constitution.

5.0 COMMITTEE RECOMMENDATIONS

The Committee, having considered the National Aviation Management Bill, 2020, and submissions from stakeholders will be proposing amendments to **clauses 3, 5, 10, 11, 13, 16, 42, 44, 45 and 72.**

This is in addition to amendments already proposed in the main Report on **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.

CLAUSE 3

THAT, Clause 3 of the Bill be amended by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) good governance, integrity, transparency, accountability in management, financing and operation of the Group.

Justification: To provide clarity on the objects and purpose of the Bill as regards to matters relating to leadership and integrity.

CLAUSE 5

THAT Clause 5 of the Bill be amended in sub-clause (1) by

- (a) deleting the words “ a council” appearing immediately after the word “established” and substituting therefor the words “an unincorporated body”; and

- (b) inserting the following new paragraphs immediately after paragraph (d)—
 (da) the Cabinet Secretary for the time being responsible for matters relating to environment

Justification: Meteorological services are key, critical and essential to the safety, regularity and operation of aircrafts during take-off, cruise, approach, and landing phases of both of both civil and military aircrafts.

CLAUSE 10

THAT Clause 10 of the Bill be amended in paragraph (a) by deleting the words “or other related field” appearing immediately after the word “engineering”.

Justification: To remove ambiguity and provide for clarity on the qualifications for appointment as the Chairperson

CLAUSE 11

THAT Clause 11 of the Bill be amended in paragraph (a) by deleting the words “or other related field” appearing immediately after the word “engineering”.

Justification: To remove ambiguity and provide for clarity on the qualifications for appointment as a Board member.

CLAUSE 13

THAT Clause 13 of the Bill be amended in paragraph (a) by deleting the words “or other related field” appearing immediately after the word “engineering”.

Justification: To remove ambiguity and provide for clarity on the qualifications for appointment as the Chief Executive Officer of the Corporation.

CLAUSE 16

THAT Clause 16 of the Bill be amended by inserting the words “upon the advice of the Salaries and Remuneration Commission” immediately after the word “shall”.

Justification: Pursuant to Article 230 (4)(b) of the Constitution, the Salaries and Remuneration Commission is mandated to advise the National and county governments on the remuneration and benefits of all public officers.

CLAUSE 42

THAT Clause 42 of the Bill be amended by inserting the words “upon the advice of the Salaries and Remuneration Commission” immediately after the word “Board”.

Justification: Pursuant to Article 230 (4)(b) of the Constitution, the Salaries and Remuneration Commission is mandated to advise the National and county governments on the remuneration and benefits of all public officers.

CLAUSE 44

THAT Clause 44 of the Bill be amended
 (a) in sub-clause (1) by deleting paragraph (c); and

- (b) in sub-clause (2) by inserting the word “or” immediately after the word “appointment” appearing in paragraph (a).

Justification: To avoid repetition and to connect the two paragraphs and construe them disjunctively

CLAUSE 45

THAT Clause 45 of the Bill be amended by—

- (a) deleting sub-clause (1);
- (b) deleting sub-clause (2);
- (c) deleting sub-clause (3) and substituting therefore the following new sub-clause—
 - (1) Every document of each Operating Entity shall be validly executed by the signature of the relevant Managing Director”;
- (d) deleting sub clause (4) and substituting therefore the following new sub-clause—
 - (4) Every document purporting to be an instrument issued by an Operating Entity and authenticated in the manner provided by subsection (3) 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,2015 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 72

THAT the Bill be amended by deleting Clause 72 and substituting therefor the following new clause—

72. (1) The Cabinet Secretary may make Regulations for, or with respect to, any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary may make Regulations for—

- (a) allotment, usage and reallocation of airline slots within airports;
- (b) prescribing measures that enhance stakeholder or public participation in matters touching on the Corporation and its Operating Entities;
- (c) the conduct of aeronautical studies and risk assessment;
- (d) the safety of aircraft, vehicles and persons using any such aerodromes and preventing danger to the public arising from the use and operation of aerodromes;
- (e) preventing or minimizing obstruction within and around aerodromes;
- (f) the preservation of order within aerodromes and preventing damage to property therein;
- (g) the regulation or restriction of advertising within aerodromes;
- (h) the regulation, promotion or restriction of movement of persons entering or leaving aerodromes;
- (i) the prohibition or regulation, in relation to the whole or any part of an aerodrome, of the presence of persons or classes of persons, animals or

classes of animals, the use of vehicles of any class or description and the doing of acts which might endanger any property or person;

- (j) the regulation of vehicular traffic within an aerodrome including the imposition of speed limits on vehicles therein;
- (k) the appointment and regulation of the conditions for use of parking places for motor vehicles and aircraft in an aerodrome;
- (l) the prescription and regulation of the conditions for use of an aerodrome and its facilities;
- (m) the disposition of unclaimed property in the custody of the Authority;
- (n) security arrangements; and
- (o) the disposal of abandoned aircraft at an aerodrome.

(3) For the purposes of Article 94 (6) of the Constitution—

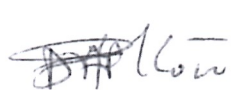
(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act; and

(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

(c) 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.

SIGNED 

CHAIRPERSON
(HON. DAVID PKOSING, CBS, MP)

DATE 08/10/2020

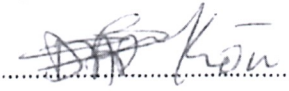





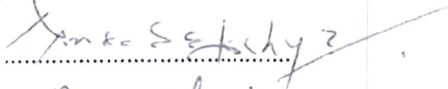
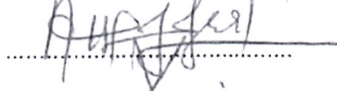

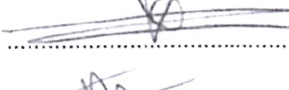
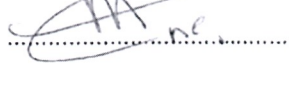
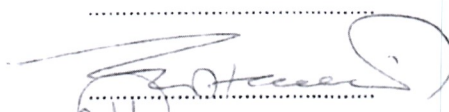

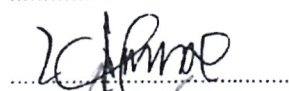
ANNEXTURE "A"

Adoption List

for the Addendum

Adoption of the Addendum on Public Participation to the Report Tabled on 10th September 2020 on the Consideration of the National Aviation Management Bill, 2020 (National Assembly Bill No. 18 of 2020)

We, the Members of the Departmental Committee on Transport, Public Works and Housing, have, pursuant to Standing Order 199, adopted this Addendum and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

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