

**PARLIAMENTARY STANDING COMMITTEE
ON ECONOMICS AND PUBLIC
ADMINISTRATION**

**REPORT ON THE CIVIL AVIATION BILL
OF 2015**

OCTOBER 2015

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LIST OF ABBREVIATIONS

| | | |
|-------|---|---|
| ANS | - | AIR NAVIGATION SERVICES |
| DCA | - | DIRECTORATE CIVIL AVIATION |
| ICAO | - | INTERNATIONAL CIVIL AVIATION ORGANISATION |
| NCAA | - | NAMIBIA CIVIL AVIATION AUTHORITY |
| SADC | - | SOUTHERN AFRICA DEVELOPMENT COMMUNITY |
| SARPs | - | STANDARD AND RECOMMENDED PRACTICES |

1. INTRODUCTION

Hon. Alpheus !Naruseb, the Minister of Works and Transport tabled the Civil Aviation Bill of 2015, in the National Assembly on the 10th of June 2015. After the debate in the second reading, the Bill was referred to the Parliamentary Standing Committee on Economics and Public Administration for further consultations and report back.

1.2 Members of the Committee

The Standing Committee consists of the following Members and staff: Hon. Veikko Nekundi (Chairperson), Hon. Heather Sibungo (Deputy Chairperson), Hon. Apius Auchab, Hon. Faustina Caley, Hon. Salmon Fleermuys, Hon. Hamunyera Hambyuka, Hon. Rebekka Ipinge-Nakale, Hon. Meundju Jahanika, Hon. Mike Kavekatora, Hon. Usutuaije Maamberua, Hon. Liina Ndilipo Namupala, Hon. Evelyn !Nawases-Taeyele, Hon. Madala Nauyoma, Hon. Loide Shinavene, Hon. Annakletha Sikerete, Hon. Nico Smit, Hon. McHenry Venaani. The Committee is served by the following staff members: Mr Protasius Ndaningaweni Nghileendele, Ms Annalisa Meroro, Mr Kavakuru Tjikuzu, Ms Belinda Karuaera and Ms Carol-Ann Esterhuizen.

1.3 Purpose of the Report

The purpose of the report is to inform the House about the outcome of the consultations with relevant stakeholders and recommended amendments to the Bill.

2. ACTIONS TAKEN BY THE COMMITTEE

On the 17th June 2015, the Committee deliberated on the Civil Aviation Bill and agreed to invite relevant stakeholders in the aviation industry. The first consultative meeting was on the 26th June 2015. The meeting was attended by various stakeholders in the civil aviation industry (the list of attendees is attached).

In addition to the consultative meeting, the Committee decided to place an advertisement in the local newspapers requesting written inputs on the Bill from the members of the public and stakeholders.

On the 14th July 2015, the Committee had a meeting with the ICAO Country Representative where the Director made a presentation to the Committee on the role of ICAO and how it was assisting the DCA in its operations.

3. FINDINGS

The following is the summary of the main consultations with all the relevant stakeholders:

3.1 Background to the Bill

Namibia is a signatory to the Chicago Convention of 1944 which requires compliance to Standards and Recommended Practices (SAPRs). However, the current provisions in the Aviation Act of 1962 (Act No 74 of 1962), are inadequate when measured against the standards set by the Convention. As a result, Namibia was unable to perform well during the audits conducted by the International Civil Aviation Organisation (ICAO).

The main aims of the Civil Aviation Bill of 2015 are to:

- consolidate all laws relating to civil aviation and its offences
- provide for a civil aviation regulatory and control framework
- establish an autonomous Civil Aviation Authority and Air Navigation Services for Namibia
- establish a new institutional framework for the Directorate of Aircraft Accident and Incident Investigations, including clear jurisdictional boundaries

The Civil Aviation Bill makes provisions for features such as the anti-terrorism and “unruly” passenger provisions, enforceable powers to protect public safety and security, up to date accident and incident investigation powers and procedures, and the establishment of an autonomous Namibia Civil Aviation Authority, which was not in the previous Act.

3.2 Current functions of the Directorate of Civil Aviation (DCA)

The Directorate of Civil Aviation is a regulatory body in the Ministry of Works and Transport headed by a Director. The Directorate consists of three divisions, namely: Aviation, Administration and Navigation; Flight Safety and Security and Meteorological Services.

According to the Ministry of Works and Transport, the Directorate of Civil Aviation can only perform its functions effectively, if it has highly trained personnel in the area of civil aviation, supported by modern equipment.

The critical shortage of technically trained personnel, low salary packages offered through the public service, lack of proper legislation and financial powers are some of the factors that make it difficult for the Directorate to meet its obligations as required by ICAO. Thus, it might compromise the safety of the travelling public if not restructured and equipped accordingly.

In view of the increasing responsibility of DCA and advanced technical equipment used in the civil aviation industry, it is important to have a safety regulator which is adequately empowered to carry out its functions effectively and with minimum interference.

3.3 Proposed Features and Functions of the Namibia Civil Aviation Authority (NCAA)

- a) The proposed NCAA will be headed by a Director who will be appointed by the Board in consultation with the Minister on a five-year renewable contract. The Board shall be appointed by the Minister and shall consist of the Director of NCAA, a Board Chairperson, Deputy Chairperson and two additional members with relevant qualifications as provided for in the Bill.
- b) The term of office for the chairperson will be five years and three years for the other Board members.
- c) NCAA will be an autonomous body but with full accountability to the Minister and Parliament and will be expected to provide improved control and management of the civil aviation industry.
- d) NCAA shall work as a non-profit institution. Although it will charge for its services, it is only expected to become self-reliant in future.
- e) The NCAA has a responsibility of promoting improved communication between entities on aviation security and safety.
- f) The Director will be given comprehensive and up to date powers for the regulation of the industry and issuance of aviation documents.
- g) Provision for safety decisions to be taken independently without due influence or interest.
- h) Consultations of stakeholders on relevant matters before decisions are implemented.
- i) The Bill establishes a National Aviation Security Committee chaired by the Director, to oversee the National Aviation Security Programme.
- j) Establishment of an Air Navigation Service that will separate the functional part from the regulator.

3.4 CLAUSES TO BE REVIEWED AND AMENDED

3.4.1 CLAUSE 1

Clause 1 of the Bill to be amended

- (a) (Page 14) By replacing the word “Council” with the word “Minister”

Motivation

This amendment was brought on when the Public Enterprises Governance Amendment Act was passed on 23 September 2015.

- (b) (Page 15) By replacing the word “Director” with the word “Executive Director” every time it is referred to in the Bill.

Motivation

This is to distinguish the NCAA director from Directors in the line ministry and other Institutions.

- (c) (Page 18) By insertion of the definition of the term "Public Service Act"

"Public Service Act" means Act, 1995 (Act no 13 of 1995).

Motivation

The use of the term "Public Service Act" as used in the Bill is to be defined. It must also be listed as part of the other Acts listed and must appear after the "Prevention & Combating of Terrorist and Proliferation Activities Act".

- (d) By insertion of the definition of the term "State"

3.4.2 CLAUSE 4(1) Powers of the Minister

Clause 4(1) of the Bill to be amended

- (a) By authorising the word "may" to only apply to sub clause (c) and the word "shall" to apply to sub clause (a), (b) and (d).

Motivation

The word "shall" should apply in order to mitigate any possible security threat through discretionary powers.

3.4.3 CLAUSE 6 Removal of dangerous obstructions

Clause 6 of the Bill to be amended

- (a) By the substitution of the words "by directive" with the words "on advice by the Director"

Motivation

A Subordinate cannot give directives to his Superior.

- (b) By deleting the word "erection"

Motivation

Erection is a process and you cannot remove a process.

- (c) By substituting the words "other thing" with the words "any other object"

Motivation

The word “thing” does not fit well in the Bill.

- (d) The insertion of the word “airspace” after “water”

Motivation

To make provision for the space above land and water.

Clause 6(1) is amended as per above mentioned amendments to read as:

- “6. (1) The Minister may, on advise of the Director, require the removal of any building, structure, tree or any other object whatsoever on any land, water or air space which, in the opinion of the Minister on advice of the Director, may constitute a danger to aircraft flying in accordance with normal aviation practice.”

3.4.4 CLAUSE 7 Prohibitions and restrictions on use of land

Clause 7 of the Bill to be amended

By insertion of the words “land and airspace” in the subheading

Motivation

It is referred to in section 7.

3.4.5 CLAUSE 10(2) Functions and powers of Authority

Clause 10(2) of the Bill to be amended

By the deletion of sub clause (m)

Motivation

Sub clause (m) is duplicated in subs clause (j).

3.4.6 CLAUSE 10 (2) (d): Functions and Powers of Civil Aviation Authority

(d) –“to establish and continue a service to be called the Air Navigation Service” (ANS).

According to the DCA, the ANS will be a service provider independent from the regulatory body, the NCAA, but will operate under the NCAA. It was further explained that there are plans to separate the two in the future. The Committee is however of the view that the two entities should be separated from each other from the onset, to avoid possible conflict of interest.

3.4.7 CLAUSE 12 (1) (a) and (b), Constitution of the Board

Clause 12(1) (b) of the Bill to be amended

- (a) By the substitution of the following sub clause for the sub clause (b) and the insertion of paragraph (iii)
- “(b) five Members appointed by the Minister as follows:
 - (i) two persons who hold recognised qualifications relevant to the operation, management or regulation of civil aviation together with associated experience of not less than seven years in each case; and
 - (ii) two persons who hold recognised legal or financial management qualifications with associated experience of not less than seven years in each case.
 - (iii) one person who has recognised security background with associated experience of not less than seven years.”

Motivation

Clause 12 (1) provides for the appointment of the Director of NCAA, Chairperson, Deputy Chairperson and two additional members of the Board. The Committee is of the view that the Board should consist of the Director of NCAA, Chairperson, Deputy Chairperson and three additional Members, of which one should come from the security sector.

3.4.8 CLAUSE 13(1) Terms of office of members of the Board

Clause 13(1) of the Bill to be amended

- (a) By the substitution of the following sub clause for the sub clause (1)
 - “(1) Unless a different determination has been made in terms of section 14(1)(d) of the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006) and subject to section 15, a member holds office for a term of four years, except for the chairperson whose term of office is five years.”

Motivation

Clause 13 (1) provides for the term of office of the chairperson to be five years and three years for the deputy chairperson and the two additional Members. The Committee feels that the term of office of the chairperson should be five years and

the rest of the Board members four years, as one year is sufficient for the chairperson to hand over his / her duties.

3.4.9 CLAUSE 13(1) Term of office members of Board

Clause 13(1) of the Bill to be amended

By the deletion of the words “(Act no 2 of 2006)” throughout the Bill.

Motivation

This is for the purpose of consistency; it limits the reference in this section to the State Owned Enterprises Governance Act, 2006.

3.4.10 CLAUSE 22(1) (d) Funds of Authority

Clause 22(1) (d) of the Bill to be amended

By insertion of the words “not financed by any institute the Authority regulates” to read

“(d) ... money received as loans or grants not financed by any institute the Authority regulates”

Motivation

To avoid possible conflict of interest and to ensure objectivity in its regulatory functions.

3.4.11 CLAUSE 22(2) Funds of Authority

Clause 22(2) of the Bill to be amended

By the addition of the letter “s” to the word “account”

Motivation

This clause is to be read in conjunction with clause 26 which refers to bank accounts of Authority.

3.4.12 CLAUSE 33(2) (c) Delegation and assignment of powers and functions by Director

Clause 33(2) (c) of the Bill to be amended

By the inversion of the numbers "64" and "43" to read

"(c) The power to suspend or revoke an aviation document under section 43 and 64"

Motivation

For the purpose of appropriate continuity.

3.4.13 CLAUSE 34(1) Director of Civil Aviation

Clause 34(1) of the Bill to be amended

By the substitution of the word "consultation" with the word "concurrence" to read

"(1) The Board, after concurrence with the Minister, must..."

Motivation

To ensure consistency in legislation drafting.

3.4.14 CLAUSE 34 (1) Director of Civil Aviation

Clause 34(1) of the Bill to be amended

- (a) By the substitution of the following sub clause for the sub clause (1)(a) and the renumbering of the subsequent paragraphs as "b" and "c" accordingly

"(1) (a) who is a Namibian citizen;"

- (b) By the insertion of the words "in the aviation industry" after the word "qualifications" in the amended sub clause (b), to read:-

" (a) who has qualifications in the aviation industry, knowledge and expertise directly relevant to the administration and functions of the Authority."

Motivation

On the suitability of the Director, the Committee states it should clearly require, that the person must be a Namibian citizen who has qualifications, technical knowledge and expertise in the aviation industry.

3.4.15 CLAUSE 34(2) (b) Director of Civil Aviation

Clause 34(2) (b) of the Bill to be amended

(a) By the insertion of paragraph (iii)

“(iii) After satisfying security background checks by the Namibia Central Intelligence Service

Motivation

Prior history is a good predictor of future performance. Background checks are generally used by employers to identify applicants prone to unacceptable workplace behaviour.

The Committee feels that there is no mention in the Bill about the background security check of the Director.

3.4.16 CLAUSE 37(2) Designation of inspectors and authorised officers and persons

Clause 37(2) of the Bill to be amended

By the substitution of the word “appointed” with the word “designated” to read

“(2) The Director must sign and issue to each authorised officer, inspector and authorised person designated by him or her ...”

Motivation

To ensure consistency with the heading of the section.

3.4.17 CLAUSE 42(4) Suspension of aviation documents and imposition of conditions

Clause 42(4) of the Bill to be amended

By substitution of the numbering of the sub clause (4) with sub clause (3)

Motivation

Correct numbering.

3.4.18 CLAUSE 49(5) Establishment of Air Navigation Services

Clause 49(5) of the Bill to be amended

By the distinct formation of the functions of the Air Navigation Services and not the Authority as stated in Clause 10(2)

Motivation

Refer to 3.4.6

3.4.19 CLAUSE 62(4) Fees, charges and levies

Clause 62(4) of the Bill to be amended

By the substitution of the words “an airport company” with the words “Namibia Airport Company” to read

“(4) The Minister may not prescribe fees, charges and levies in respect of the use of any aerodrome or airport operated or managed by an airport company, except with the approval of such airport company.”

Motivation

The Clause should be amended to make specific reference to the Namibia Airports Company Ltd (NAC) and not generalise it, as it could refer to any company that operates an airport.

3.4.20 CLAUSE 64(4) and (6) Payment of fees, charges and levies

Clause 64(4) and (6) of the Bill to be amended

By substituting the reference of subsection (1) and (2) to subsection (2) and (3) to read:-

“(4) Before suspending an aviation document under subsection (2), or revoking an aviation document under subsection (3), the Director must notify the holder of the document of ...”

“(6) A holder of an aviation document that is suspended under subsection (2) or revoked under subsection (3) may appeal against the decision of the Director to the High Court under section 225.

Motivation

Self-explanatory.

3.4.21 CLAUSE 73(3) Establishment of Directorate of Aircraft Accident and Incident Investigations

Clause 73(3) of the Bill to be amended

By deletion of the words “responsible for accident and incident investigations” to read:-

“(3) The persons designated in terms of this section are answerable and report directly to the Minister.”

Motivation

To ensure consistency with section 73(1).

3.4.22 CLAUSE 74(1) Power of Directorate

Clause 74(1) of the Bill to be amended

By substituting the word “state” with “State”

Motivation

The word “State” refer to Namibia as a country and therefore should be written in capital letters. The word “State” should also be defined separately in Clause 1.

3.4.23 CLAUSE 77(1) Coordination of investigations and remedial actions

Clause 77(1) of the Bill to be amended

By the deletion of the words “other than the Namibian Defence Force, Namibian Police and Namibia Central Intelligence Service” that come after the word “entity”.

“(1) Where, at any time during an investigation into an accident or incident under this Act, a Government entity...”

Motivation

The section deals with coordination of investigations and remedial actions and therefore the Namibian Defence Force, Namibian Police and Namibia Central Intelligence Service should form part of the investigations.

3.4.24 CLAUSE 80 Retention of specialized expertise

Clause 80 of the Bill to be amended

By the deletion of the Clause in its totality and creating a sub clause (h) under Clause 74 to include the second part of the Clause, to read:

- “74. (1) The Directorate may do all that is necessary or expedient to perform its functions effectively which includes the power to –
- (k) Enter into contracts for the purpose of obtaining the services of persons having technical or specialised knowledge in civil aviation or any other related field.”

Motivation

Section 74 already deals with the powers of the Directorate and there is no actual objective for this section to be isolated.

3.4.25 CLAUSE 84(6) Designation and powers and functions of investigators

Clause 84(6) of the Bill to be amended

By substituting the word “requires” with the word “required” to read:-

- “(6) Where an investigator required a person to do something under subsection...”

Motivation

Grammar correction.

3.4.26 CLAUSE 95(5) Manner of dealing with representations

Clause 95(5) of the Bill to be amended

By substituting the word “coroner” with “magistrate” to read:-

- “(5) Where a judicial inquest has been instituted in terms of the Inquests Act to inquire into any circumstances in respect of which representations have been made to the Directorate, the Director of Investigations, if requested to do so by a magistrate under the Inquests Act, must make such representations available to such inquest.

Motivation

In order to be consistent with the Namibian Law.

3.4.27 CLAUSE 134(1) Security background checks by Director

Clause 134(1) of the Bill to be amended

- (a) By substitution of the word “may” with the words “shall cause to be effected” to read:

The Director shall cause a security background check to be effected on a person who falls within a category of persons prescribed as requiring a security background check”

Motivation

The Committee is of the opinion that it is an obligatory function of the Director instead of a discretionary one.

- (b) By explicitly outline the category referred to in Clause 134(1).

Motivation

There should be a standard that is clear as to avoid arbitrary creation of categories.

3.4.28 CLAUSE 149 (5) (c) Search of passengers and baggage

Clause 149 (5) (c) of the Bill to be amended

By substituting the word “mean” with “means” to read:-

“(5) (c) ... unless the search is made by means of a mechanical or electrical or electronic or other similar device.”

Motivation

Grammar correction.

3.4.29 CLAUSE 172 Failure to notify acts committed contrary to this Act during emergency

Clause 172 of the Bill to be amended

By substituting the reference to section 73(7) with section 71(7) to read:-

“ A pilot-in-command who, without reasonable excuse, fails to comply with section 71(7) relating to the notification ...”

Motivation

Self-explanatory.

3.4.30 CLAUSE 174(1) (a) Offences relating to disclosure of privileged information

Clause 174(1) (a) of the Bill to be amended

By substitution of the reference to section 100(1) (a) with section 100(a) to read:-

“(a) knowingly communicates or permits to be communicated to any other person an on board recording in breach of section 100(a)”

Motivation

Self-explanatory.

3.4.31 CLAUSE 229 Evidence and proof

Clause 229 of the Bill to be amended

By correction of the numbering of the Clause from “229” to “228”.

Motivation

Numbering correction.

3.4.32 CLAUSE 236 Saving and transitional provisions

Clause 236 of the Bill to be amended

By correction of the numbering of the duplicated Clause 236 from “236” to “237”.

Motivation

Numbering correction.

4. RECOMMENDATIONS

The Committee strongly recommends that:

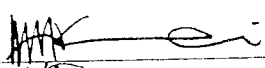
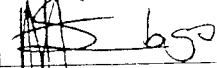
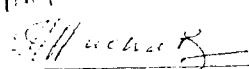


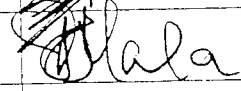
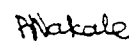

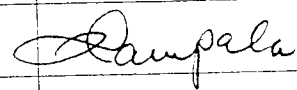
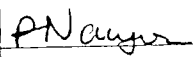
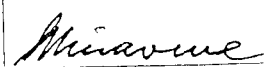
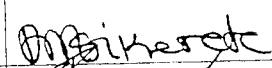
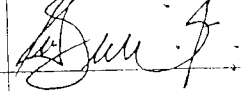
- All insertions above be incorporated in the Bill
- As a sensitive industry, it is imperative for all employees and the board members of NCAA to be subjected to security background check by the Namibia Central Intelligence Service.

5. CONCLUSION

The Committee is satisfied that proper consultations were undertaken and that comments and submissions from the public were considered in this report. It is thus the considered view of the Committee that the report reflects the views of most of the consulted stakeholders.

The recommended amendments and insertions are critical to ensure maximal aviation and the safety and security of Namibia.

6. SIGNATURES OF MEMBERS

| NO. | NAMES | SIGNATURE | DATE |
|-----|---|--|------------|
| 1. | Hon. Veikko Nekundi - Chairperson |  | 13.10.2015 |
| 2. | Hon. Heather Sibungo - Dep. Chairperson |  | 13.10.2015 |
| 3. | Hon. Apius Auchab - Member |  | 13/10/2015 |
| 4. | Hon. Faustina Caley - Member |  | 13/10/2015 |
| 5. | Hon. Salmon Fleermuys - Member |  | 13-10-2015 |
| 6. | Hon. Hamunyera Hambyuka - Member |  | 13.10.2015 |
| 7. | Hon. Rebekka Ipinge-Nakale - Member |  | 13.10.2015 |
| 8. | Hon. Meundju Jahanika - Member | | |
| 9. | Hon. Mike Kavekatora - Member |  | 13-10-15 |
| 10. | Hon. Usutuaije Maamberua - Member | | |
| 11. | Hon. Liina N. Namupala - Member |  | 13.10.2015 |
| 12. | Hon. Madala Nauyoma - Member |  | 13.10.2015 |
| 13. | Hon. Evelyn !Nawases-Taeyele - Member | | |
| 14. | Hon. Loide Shinavene - Member |  | 13-10-2015 |
| 15. | Hon. Annakletha Sikerete - Member |  | 13-10-2015 |
| 16. | Hon. Nico Smit - Member |  | 18/10/2015 |
| 17. | Hon. McHenry Venaani - Member | | |



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**RESPONSE BY HONOURABLE JERRY
EKANDJO, MP**

**MINISTER OF SPORT, YOUTH AND
NATIONAL SERVICE**

**TO: QUESTIONS POSTED BY
HONOURABLE APIUS AUCHAB
PRESIDENT OF UDF**

DATE: THURSDAY, 15TH OCTOBER 2015

VENUE: NATIONAL ASSEMBLY

