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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - THIRD SESSION - 2015

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

REPORT ON THE CONSIDERATION OF BILATERAL AIR SERVICES AGREEMENTS
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE
GOVERNMENTS OF THE REPUBLICS OF GHANA AND NIGER

Presented
by Hon. Mohamed Mahamud
Vichou - DC - Transport
on Thursday June 18, 2015
[Signature]

CLERK'S CHAMBERS
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MAY, 2015

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1.0 PREFACE

Hon. Speaker,

The Committee is established pursuant to the provisions of Standing Order No. 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, access 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.

The Committee is mandated to consider matters of Transport, Roads, Public works, Construction, and 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,

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 M. Mohamed, 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 Many 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.

Hon. Speaker,

The Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Government of The Republic of Ghana and Niger were tabled in the House by the Leader of Majority on Tuesday 10th February, 2015 and were subsequently committed to the Committee on Transport, Public Works and Housing.

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 Agreement forthwith.

Committee Meetings

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

Hon. Speaker,

In considering the Agreements, 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 disagrees 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 both Houses disagree to approve the ratification of a treaty, the Speakers of the 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 disapproves the ratification of the treaty referred to in section 7, the Government shall not ratify the treaty.”

Hon. Speaker,

Bilateral Air Agreement refers to an Agreement in which two nations sign to allow international commercial air transport services between their territories. Before an airline can operate international services to another country, the Government must first negotiate a treaty level agreement with the destination country's Government.

During the consideration of the Agreements the Committee established that the Bilateral Air Services Agreements/Arrangements contains the following provisions:-

1. Traffic rights that are the routes airline can fly, including cities that can be served within, between and beyond the bilateral partners.
2. Capacity: - that is, the number of flights that can be operated or passengers that can be carried between the bilateral partners.
3. Ownership and control:- As regards this, the Agreement elaborates on the number of airlines the bilateral partners can nominate to operate services and the ownership criteria airlines must meet to be designated under the bilateral Agreement.
4. Tariffs/prices: - The Agreements require airlines to submit ticket prices to aeronautical Authorities for approval. In a nutshell, the Agreements contain Articles addressing competition policy, safety and security.

It is worth mentioning that international aviation is regulated by a complex web of over three thousand (3000) interlocking bilateral Air Service Agreements. In the

recent years, groups of countries have come together to negotiate air services agreements commonly known as plurilateral agreements. However, the majority of them are bilateral air Service agreement.

Hon. Speaker

Bilateral Air Services Agreements (BASA) is useful in that they are used by States to enable scheduled air carriers operate between two or more States. In summary, some of the benefits of BASAs include:

1. Allow scheduled air carriers to fly between territories – i.e. between Kenya and other states – hence leading to construction of required infrastructure/facilities such as airports that creates employment;
2. Facilitation of trade between States – ease of movement of persons and goods between Kenya and other States, that is more than 80% of tourists use air transport;
3. Creates cooperation arrangements between States' competition authorities hence facilitating joint assessment of alliances between Kenyan and other States' carriers – i.e. KQ/KLM;
4. Creates market access on flights between Kenya and other States thus creating a level playing field between Kenyan and other carriers;

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:-


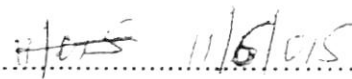
1. The Bilateral Air Services Agreement between the Government of the Republic of Kenya And the Government of the Republic of Ghana;

2. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Niger;

Hon. Speaker,

The Committee wishes to thank 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 Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republics Of Angola; Mozambique; Canada and the State of Kuwait.

Signed..........Date..........

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

2.0 COMMITTEE'S CONSIDERATION OF THE AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF GHANA

The Committee deliberated on the Agreement and the detailed analysis of the Articles is as provided below:

Article	Highlights	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>Grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the contracting parties.</p> <p>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><u>Freedoms of the Air:</u></p> <ul style="list-style-type: none"> • <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>). • <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>). • <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>).

		<ul style="list-style-type: none"> • <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>). • <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 designations 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	<p>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.</p> <p>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.</p>
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

			<p>sound economic principles.</p> <p>Each party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges.</p>
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.

3.0 COMMITTEE'S CONSIDERATION OF THE AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF NIGER

The Committee deliberated on the Agreement and the detailed analysis of the Articles is as provided below:

Article	Highlights	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 designations 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	<p>Provides for a party to recognize as valid the other party's certificates of airworthiness, competency and licenses, which are equal to the minimum standards established pursuant to the Convention.</p> <p>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.</p>
Article 7	Aviation security	<p>Reaffirms the parties' obligation to each other to protect the security of international civil aviation against acts of unlawful interference.</p> <p>In case of any threats, parties shall assist each other by facilitating communications and any other appropriate measures intended to terminate such threat.</p> <p>The parties agree to act in conformity with international conventions on aviation security.</p>
Article 8	Fair competition	<p>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.</p>
Article 9	Pricing	<p>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.</p> <p>Parties shall protect consumers from unreasonably high prices as well as airlines from artificially low prices.</p>
Article 10	Exemption from customs duty, taxes, inspection fees and other similar charges	<p>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.</p> <p>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.</p>
Article 11	User charges	<p>Provides that the user charges to be imposed by the competent charging authorities shall be just,</p>

			<p>reasonable, not unjustly discriminatory, equitably apportioned among categories of users and based on sound economic principles.</p> <p>Each party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges.</p>
Article 12	Commercial opportunities		<p>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.</p> <p>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> <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	of	<p>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.</p>
Article 14	Submission of statistics	of	<p>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.</p>
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</p>

		<p>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	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	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 20	Power of supersession	Provides that this agreement supersedes the Air Transport Agreement initiated on October 25, 1995 at Nairobi (Kenya).
Article 21	Entry into force	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.

4.0 COMMITTEE'S OBSERVATIONS

The Committee observed that;

1. The ratification of the Agreements will enable airlines to expand their existing route networks by operating directly to other markets
2. The Agreements have been negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for States within Africa and equal opportunity and reciprocity for other States
3. In order to operationalize the Agreements it is normal practice for the two Parties to sign a Memorandum of Understanding (MoU) that gives force to the Agreements as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

5.0 COMMITTEE'S RECOMMENDATIONS

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

1. The Bilateral Air Services Agreement between the Government of the Republic of Kenya And the Government of the Republic of Ghana;
2. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Niger.

THE NATIONAL ASSEMBLY


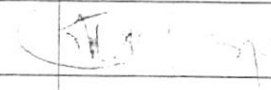
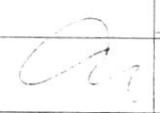
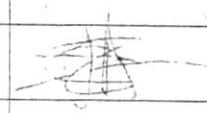

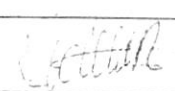
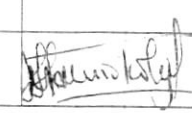


ELEVENTH PARLIAMENT – 3RD SESSION

DEPARTMENTAL COMMITTEE – L: TRANSPORT, PUBLIC WORKS AND HOUSING

Register for the adoption of the Report on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republics of Ghana and Niger – Saturday 30th May, 2015 2.00 pm

NO.	MEMBER	SIGNATURE
1.	Hon. Maina Kamanda (Chairperson), MP	
2.	Hon. (Eng.) Mohamed M. Mahamud (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 Owuor, MP	
20.	Hon. Gideon Konchella, MP	
21.	Hon. Abass Ahmed Ibrahim, MP	
22.	Hon. Ali Wario, MP	
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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	

Mr. Samuel Kalama – First Clerk Assistant

For: CLERK OF THE NATIONAL ASSEMBLY

PAPER ON RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT BETWEEN KENYA/GHANA AND KENYA/NIGER

1.0 Background Information

The Ministry of Transport and Infrastructure has been negotiating and reviewing Bilateral Air Services Agreements between Kenya and various States to facilitate designated scheduled air operators especially Kenya Airways to offer international air services and expand their existing route network, in addition to allowing foreign carriers to access the Kenyan market. The Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs and International Trade, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority (KCAA), Kenya Airports Authority (KAA), Kenya Tourism Board (KTB) and Kenya Airways (KQ).

The Agreements are negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for States within Africa and equal opportunity and reciprocity for other States.

The Agreements enable airlines to expand their existing route networks by directly operating to other markets. In addition, where airlines are unable to offer services the Agreements allow them to enter into Commercial Arrangements especially code share agreements which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations by offering passengers seamless connectivity.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licences; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize the Agreements it is normal practise for the two Parties to sign a Memorandum of Understanding (MoU) that gives force to the Agreements as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

2.0 Status of the Kenya/Ghana Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Ghana was negotiated and initialled on 31st May, 2006. In order to operationalize the Agreement the delegations signed a Memorandum of Understanding (MoU) that gave force to the Agreement while awaiting formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

2.1 The Kenya/Ghana Bilateral Air Services Agreement

The Agreement is modelled on the ICAO template Agreement and is based on the Yamoussoukro Decision. The Agreement is liberal and enables airlines to operate between the two States without any restrictions.

Currently, Kenya Airways operates 7 Weekly frequencies to Accra, Ghana and is keen on increasing to fourteen (14) frequencies. In order to meet the increased demand for service the Airline is changing the equipment used on the sector to a larger aircraft. There is no Ghanaian airline operating on the route.

3.0 Status of the Kenya/Niger Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Niger was negotiated and initialled on 9th May, 2013. In order to operationalize the Agreement the delegations signed a Memorandum of Understanding (MoU) that gave force to the Agreement while awaiting formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation on the same date.

3.1 The Kenya/Niger Bilateral Air Services Agreement

The Agreement is modelled on the ICAO template Agreement and is based on the Yamoussoukro Decision. The Agreement is liberal and enables airlines to operate between the two States without any restrictions.

Currently, there are no airlines from either State operating scheduled air services between the two countries.

Attached are matrices indicating the various Articles in the two Agreements.

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 of Rights	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 Force	Into	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.

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 designation 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.



BILATERAL AIR SERVICES AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC
OF KENYA**

AND

**THE GOVERNMENT OF THE REPUBLIC
OF GHANA**



**BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT
OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE
REPUBLIC OF GHANA**

PREAMBLE

The Government of Republic of Kenya and the Government of the Republic of Ghana (hereinafter referred to as the Parties);

Recognizing the necessity to adopt measures with the aim of establishing a liberalized intra-African aviation market concerning, among others, traffic rights, capacity, frequency and pricing;

Desiring to cooperate and facilitate the expansion of international air transport opportunities within and beyond their respective territories;

Desiring to make it possible for their Airlines to cooperate and offer the travelling public a variety of service options;

Desiring to ensure the highest degree of safety and security in international air transport; and

Being Parties to:

The Convention on International Civil Aviation opened for signature at Chicago on 7th December 1944; and

The Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Market in Africa of 14th



November, 1999 as endorsed by the OAU Heads of State and Government on 11th July 2000;

HEREBY AGREE AS FOLLOWS:

**ARTICLE I
DEFINITION**

For the purpose of this Agreement unless the context otherwise requires:

- (a) The term " Abuja Treaty" means the Treaty establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd of June 1991 and which entered into force on 12th May 1994;
- (b) the term "Aeronautical Authority" means, in the case of the Republic of Kenya the Cabinet Secretary for the time being in charge of Civil Aviation; and in the case of the Republic of Ghana any governmental authority, body corporate or organ duly authorized to perform any function to which this Agreement relates;
- (c) the terms "aircraft equipment", "aircraft stores" and "spare parts" have the meanings respectively assigned to them in Annex 9 of the Convention;



- (d) the terms “air services”, “international air services”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the Convention;
- (e) the term “Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annexes adopted under Articles 90 of that Convention made pursuant to Articles 50 and 94 thereof so far as those Annexes and Amendments have been adopted by both Parties;
- (f) the term “Decision” means the Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport in Africa of 14th November, 1999 as endorsed by the OAU Heads of State on 11th July 2000 including the Appendices and Amendments;
- (g) the term “designated airline” means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- (h) the term “Eligible Airline” means any African air transport company fulfilling the requirements set forth in article 6.9 of the Decision;
- (i) the term “ State Party” means each African State signatory to the Abuja Treaty and such other African country which, though not a



party to the said Treaty , has declared in writing its intention to be bound by this Decision;

- (j) the term "tariff" means the price to be paid for the carriage of passengers, baggage, mail and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail; and
- (k) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that State;
- (l) the term "user charges" means fees or rates levied for the use of airports, navigational facilities and other related services offered by one Party to the other.

ARTICLE II GRANT OF RIGHTS

1. Each Party shall grant to the other the free exercise of the rights of the first, second, third, fourth and fifth freedoms of the air on scheduled and non-scheduled passenger, cargo and / or mail flights performed by an Eligible Airline to/from their respective territories.
2. Notwithstanding the provision of paragraph 1 above operations of non-scheduled services shall be subject to approval by the appropriate authorities.



3. Each Party agrees to the following while exercising the rights mentioned in paragraphs 1 and 2 above. The designated airline may:
 - (a) operate flights in either or both directions;
 - (b) be permitted by the Parties to combine air services and use the same flight number;
 - (c) serve intermediate and beyond points within Africa and
 - (d) serve any one point in the territory of the other Party, omit stops at any point or points, provided that the services commenced at a point in the territory of the Party designating the Airline.
4. Without prejudice to the safety, security and environmental requirements whether national or international, no restrictions shall be imposed on the frequency, capacity and or aircraft type used on such services.
5. This Agreement shall not impose any obligation on a Party to grant cabotage rights to the other Party.

ARTICLE III

DESIGNATION AND AUTHORISATION

1. Each Party shall have the right to designate in writing to the other Party, one or more Airlines for the purpose of operating on the specified routes in accordance with this Agreement.



2. A Party may also designate an Eligible Airline from a State Party to operate air services on its behalf.
3. A Party may designate an eligible African multinational Airline in which a Party is a stakeholder to operate air services on its behalf.
4. On receipt of the notice of such designation, the other Party shall, subject to the provisions of paragraphs 1, 2 and 3 of this Article, grant to the Airline designated without delay but not later than 30 days, the appropriate authorization.
5. The Aeronautical Authority of one Party may require any Airlines designated by the other Party to satisfy it that they are qualified to fulfil the conditions prescribed under the laws and regulations which are applicable to the operation of international air services by such authorities in conformity with the provision of the Convention.
3. Each Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated Airline of the rights specified in Article II of the present Agreement, in any case where the said Party is not satisfied that the designated airline conforms with the eligibility criteria as defined in Article 6.9 of the Decision.



7. When an Airline has been designated and authorized, it may begin at any time to operate the agreed services. The proposed schedule of flights should be submitted to the appropriate authorities for approval at least 30 days before the intended date of its introduction on a seasonal basis.
8. Authorizations for the performance of non-scheduled air transport services by eligible Airlines of a Party shall be granted by the respective competent authorities, provided that an application has been submitted for approval to the appropriate authority, accompanied by the corresponding insurance policies.
9. In order to ensure continued scheduled air services on a particular route where scheduled Airlines have an obligation to operate during low and high traffic seasons, the scheduled Airlines will be given, preference over the non-scheduled Airlines on the same sector.

ARTICLE IV VALIDITY OF CERTIFICATES

1. Certificates of airworthiness, certificates of competency and licenses issued or validated by the Parties, which have not expired, shall be recognized as valid by the other Party (provided that the requirement for such certificates or licences are at least equal to the minimum standards that may be established pursuant to the Convention).



2. Each Party reserves the right to refuse to recognize as valid for the purpose of operating the said specified routes over its own territory, certificates of competency and licences issued to its own nationals by the other Party.

ARTICLE V
EXEMPTION FROM CUSTOMS DUTIES

1. Aircraft operated on international services by the designated Airlines of the Parties, as well as their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all customs duties, inspection fees and other similar charges on arriving in the territory of a Party, provided such equipment, supplies and aircraft stores remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over the territory.
2. There shall also be exemption from the same duties, fees and charges with the exception of charges corresponding to the services performed for:
 - (a) aircraft stores taken on board in the territory of a Party, within limits fixed by the authorities of the said Party, and for use on board outbound aircraft engaged in an international service by the designated airline of the other Party;



- (b) spare parts and regular equipment imported into the territory of the other Party for the maintenance or repair of aircraft used on international services by the designated Airlines of the other Party; fuel and lubricants for the supply of outbound aircraft operated on international services even when these supplies are to be used on the part of the journey performed over the territory of the other Party in which they are taken on board.
3. Materials referred to in sub-paragraph (a) and (b) above may be required to be kept under customs supervision or control.
4. The regular airborne equipment as well as the materials and supplies retained on board the aircraft operated by the designated Airline of the Parties may be unloaded in the territory of a Party only with the approval of the customs authorities of the Party. In such cases, they may be placed under the supervision of the said customs authorities up to such time that they are re-exported or otherwise disposed off in accordance with customs regulations.

ARTICLE VI

COMPLIANCE WITH LAWS AND REGULATIONS

1. The laws and regulations of each Party governing the entry into, remaining in and departure from its territory, shall also be applicable to the aircraft of the designated Airline of the other Party.



2. The laws and regulations of each Party governing entry into, remaining in and departure from its territory of passengers, crew, mail and cargo transported on board the aircraft and in particular, those regarding passports, customs and sanitary control shall be applied to passengers, crew, mail and cargo taken on board of the designated Airlines of the other Party.

ARTICLE VII

AVIATION SAFETY

1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of that request.
2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to above which are at least equal to the minimum standards established at that time pursuant to the Convention, the first Party shall notify the other Party of those findings and the steps considered necessary to conform to those minimum standards, within a specified period. Each Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline designated by the other party which does not take such appropriate corrective action.



3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the designated Airline of the Party on services to or from the territory of the other Party, may, while within the territory of the other Party, be subject to an examination by the authorized representative of the Party. The purpose of such examination shall include the verification of the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (hereinafter referred to as "ramp inspection") provided this does not lead to unreasonable delay.
4. If any such ramp inspection or series of ramp inspections give(s) rise to serious concerns that:
 - (a) An aircraft or the operation of the aircraft does not comply with the minimum standards established at the time pursuant to the Convention; or
 - (b) There is a lack of effective maintenance and administration of safety standards established at the time pursuant to the Convention.

The Party carrying out the ramp inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal

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to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the designated Airline of one Party in accordance with paragraph 3 above is denied by the representatives of that designated Airline, the other Party may infer that serious concerns of the type referred to in paragraph 4 above arise and draw conclusions referred to in that paragraph.
6. Each Party reserves the right to immediately suspend or vary the operating authorization of a designated Airline of the other Party in the event the first Party concludes, whether as a result of a ramp inspection or consultation, that immediate action is essential to the safety of airline operation.
7. Any action by one Party in accordance with paragraphs (2) and (6) above shall be discontinued upon compliance by the other Party with the safety provisions of this Article.

ARTICLE VIII

AVIATION SECURITY

Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of international civil aviation against acts of unlawful interference form an integral part of this

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Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular, act in conformity with the provisions of the Convention on Offences and Certain other Acts Committed on Board Aircraft, signed at Tokyo on 14th September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 November 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23rd September 1971 including its protocol done at Montreal on February 24, 1988 and any other convention on aviation security to which both Parties shall become members .

- (a) The Parties shall provide upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
- (b) The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties, they shall require that operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
- (c) The Parties agree that such operators of aircraft shall be required to observe the aviation security provisions referred to in paragraph (b)

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above required by the other Party for entry into, departure from, or while within the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. The Party shall also give consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

- (d) When an incident or threat of an unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, passengers, crew, airports or any navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely, such incident or threat thereof.
- (e) When the Party has reasonable ground to believe that there is a departure from the provision of this Article, the Party may request immediate consultations with the other Party. Failure to reach a satisfactory agreement within 30 days from the date of such request shall constitute grounds to withhold, revoke, limit or impose conditions on the operating authorizations and technical permissions of an Airline or Airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 30 days.



ARTICLE IX REPRESENTATION

1. The designated Airline of either Party shall be allowed to establish in the territory of the other Party, offices for the promotion of air transportation and sale of air tickets as well as other facilities required for the provision of air transportation.
2. Each designated Airline shall have a right to select among competing agents for ground handling services in the territory of the other Party. Ground handling services shall be available on an equal basis to all Airlines.
3. The Airlines shall also be allowed to bring in and maintain in the territory of either Party in accordance with the laws and regulations relating to entry, residence and employment, managerial, sales, technical operational and other specialist staff required for the provision of air transportation.

ARTICLE X COMPETITION RULES

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 XI COOPERATIVE ARRANGEMENTS

Both Parties agree that in operating the Agreed Services on the Routes Schedule, the designated airline(s) may enter into co-operative marketing arrangements such as blocked space, code-sharing with;

- a) Airlines of the same Party;
- b) The Airlines of the other Party; and/or
- c) An Airline or Airlines of a third country provided that all Airlines in such arrangements hold appropriate authorizations for such arrangements from the other Party.

ARTICLE XII TARRIFS

1. The tariffs applicable between the territories of the two Parties shall be established at reasonable levels, due regard being paid to all relevant factors, including the cost of operation, the interests of users, reasonable profit, class of service and, when it is deemed appropriate, the tariffs of other airlines operating over the routes specified in the Annex.
2. Each Party shall allow tariffs for air transport to be established by each designated airline based upon commercial consideration in the marketplace. Intervention by the Parties shall be limited to:
 - (a) Prevention of unreasonably discriminatory prices or practices;



- (b) Protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position or to concerted practice among air carriers; and
 - (c) Protection of airlines from prices that are artificially low due to direct or indirect government subsidy or support or any other reason.
3. Each Party may require notification to or filing with its Aeronautical Authorities of prices to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required not more than thirty (30) days before the proposed date of implementation. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification nor filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes.
4. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged by:
- (a) An airline of either Party for international air transport between the territories of the Parties.
 - (c) An airline of one Party for international air transport between the territory of the other Party and any other country, including in both cases transportation on an inter-line or intra-line basis.





If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 2 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Parties shall cooperate in securing information necessary for a resolution of the issue.

5. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without such agreement, the previously existing un-disputed tariff shall remain in effect.

ARTICLE XIII USER CHARGES

1. User charges that may be imposed by the competent charging authorities or bodies of each party on the Airlines of the other Party shall be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users and based upon sound economic principles as set forth in paragraph 2 of this Article. In any event, any such user charges shall be assessed on the Airlines of the other Party on terms not less favourable than the most favourable terms available to any other Airline at the time the charges are assessed.
2. User charges imposed on the Airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, environmental, air navigation,



and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the Airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the Airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (1) and (2) of this Article. Each Party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their view, and have their views taken into account, before changes are made.
4. Neither Party shall be held, in dispute resolution procedures pursuant to Article XVI, to be in breach of a provision of this Article, unless (1) it fails to undertake review of the charge of practice that is the subject of complaint by the other Party within a reasonable amount of time; or (2) following such a review it fails to take all steps within its power to remedy and charge or practice that is inconsistent with this Article.

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ARTICLE XIV TRANSFER OF EARNINGS

1. Each designated airline shall have the right to transfer in convertible currency, the excess of receipt over expenditure earned by the Airlines in its territory in connection with the carriage of passenger, baggage, mail and cargo, subject to the prevailing foreign exchange regulations in the territory of each Party.
2. Whenever the payment system between the Parties is governed by a special Agreement that Agreement shall apply in place of the provisions of this Article.

ARTICLE XV CONSULTATIONS

1. In the spirit of close co-operation, the Parties shall consult each other from time to time with a view to ensuring the effective implementation of this Agreement when necessary to provide for modification thereof.
2. The Parties shall request consultation, which may be through discussion or by correspondence and which shall begin within a period of thirty (30) days of the date of the request, unless the Parties agree to an extension of this period.



ARTICLE XVI SETTLEMENT OF DISPUTES

1. If any dispute arises between the Parties relating to the interpretation or application of this Agreement, they shall in the first place endeavour to settle such dispute by negotiation after requesting for consultations as provided in Article XV
2. If the Parties fail to reach a settlement by negotiation within 21 days, they may agree to refer the dispute to some person or body, if they do not so agree, the dispute shall, at the request of either of them, be referred for decision to an arbitral tribunal composed in accordance with Article XVII of this Agreement.
3. The Parties agree that the decision of such arbitral tribunal or other person or body and any provisional measures indicated by it pending its final decision, shall be binding on the Parties to such dispute.

ARTICLE XVII ARBITRATION

Arbitration shall be by a tribunal of three arbitrators who shall be constituted as follows:

- a. Within 30 days of the receipt of a request for arbitration, each Party shall name an arbitrator. Within 60 days of the naming of the second



arbitrator, the two arbitrators shall by Agreement appoint an arbitrator, who shall act as President of the tribunal.

- b. If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with paragraph (a) of this article, either Party may request the President of ICAO to appoint the necessary arbitrator or arbitrators within 30 days.
- c. Except as hereinafter provided or as otherwise agreed by the Parties, the tribunal shall determine the limits of its jurisdiction and shall establish its own procedural rules.
- d. The tribunal, once formed, may recommend interim relief measures pending its final determination.
- e. At the direction of the tribunal or at the request of either of the Parties, a meeting to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
- f. Except as otherwise agreed or as directed by the tribunal, each Party shall submit a memorandum within 45 days of the time the tribunal is duly constituted. Each Party may submit replies within 60 days of submission of the memorandum of the other Party. The tribunal may hold a hearing at the request of either Party or on its own initiative within 15 days after replies are due.



- g. The tribunal shall attempt to render a written decision within 30 days of completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by majority vote.
- h. The Parties concerned may submit request for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.
- i. Each Party shall meet the cost of remuneration and the expenses of its arbitrator. The remuneration and the expenses of the third arbitrator and the expenses of the tribunal, the nature and limits of which shall be agreed before hand by the Parties, shall be shared equally between and shall be met by the Parties. Any question concerning the division of costs shall be determined by the arbitral tribunal.
- j. The Award of the tribunal shall be final and shall be complied with within the period established therein.
- k. If a Party does not comply with the Award, the other Party may adopt measures restricting the operation of the Airlines of the Party in question or other measures aimed at achieving compliance.



ARTICLE XVIII
SUBMISSION OF STATISTICS

The Aeronautical Authorities of one Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the operations of the designated Airline of the first Contracting party. Such statements shall include all information required to determine the amount of traffic carried by the Airline on the agreed services and the origins and destinations of such traffic.

ARTICLE XIX
EFFECT OF MULTILATERAL AIR TRANSPORT AGREEMENTS

This 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 XX
REGISTRATION OF AGREEMENTS

This Agreement, any amendments thereto, and any Exchange of Notes relating to the Agreement shall be registered with the International Civil Aviation Organisation (ICAO) by the State where the signature of the agreement takes place.



ARTICLE XXI AMENDMENT

1. If either of the Parties considers it desirable to amend any provision of this Agreement, such amendment shall be agreed upon in accordance with the provisions of Article XV and shall be effected by an Exchange of Notes and will come into effect on a date to be determined by the Parties, which date shall be dependent upon the completion of the relevant constitutional requirements.
2. Notwithstanding the provisions of paragraph (1), amendments to the Annex to this Agreement may be agreed to directly between the Aeronautical Authorities of the Parties. Such amendments shall apply from the date they have been agreed upon and enter into force when confirmed through the diplomatic channel.

ARTICLE XXII RATIFICATION

1. This Agreement shall be subject to ratification.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organisation (ICAO).



ARTICLE XXIII TERMINATION

1. Either Party may at any time from the entry into force of this Agreement give notice in writing through the diplomatic channel to the other Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organisation (ICAO).
2. The Agreement shall terminate at the end of a period of twelve (12) months after the date of receipt of the notice, unless the Notice is withdrawn by mutual agreement before the expiry of the period.
3. In default of acknowledgement of receipt of the notice of termination by the other Party, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledged receipt thereof.

ARTICLE XXIV ENTRY INTO FORCE

1. This Agreement shall enter into force provisionally between the Parties immediately upon signature.
2. Notwithstanding paragraph (1) above, this Agreement shall enter into force on the date of the last notification by either Party in writing through diplomatic channels of the completion of constitutional requirements necessary for the implementation of this Agreement.




IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement in two originals in the English Language.

Done at NAIROBI on this 13th day of December Two Thousand and Fourteen.

FOR THE GOVERNMENT OF
THE REPUBLIC KENYA

FOR THE GOVERNMENT OF
THE REPUBLIC GHANA


.....
ENG. M. S. M. KAMAU, CBS
CABINET SECRETARY FOR TRANSPORT
AND INFRASTRUCTURE


.....
HON. DZIFA AKU ATTIVOR
MINISTER FOR TRANSPORT



ANNEX 1

ROUTE SCHEDULE TO THE BILATERAL AIR SERVICES AGREEMENT BETWEEN THE REPUBLIC OF KENYA AND THE REPUBLIC OF GHANA

1. Routes to be operated by the Designated Airlines of the Republic of Kenya

Points of Departure	Intermediate Point(s)	Point(s) in Ghana	Point(s) Beyond
Any Point	Any Point Within Africa	Any Point	Any Point Within Africa

- Aircraft Type : Any
Frequency : Unlimited
Traffic Rights : (i) 5th Freedom within Africa
(ii) Any points outside Africa subject to the approval of the Aeronautical Authorities of the other Party.

2. Routes to be operated by the Designated Airlines of the Republic of Ghana

Points of Departure	Intermediate Point(s)	Point(s) in Kenya	Point(s) Beyond
Any Point	Any Point Within Africa	Any Point	Any Point Within Africa

- Aircraft Type : Any
Frequency : Unlimited
Traffic Rights : (i) 5th Freedom within Africa
(ii) Any points outside Africa subject to the approval of the Aeronautical Authorities of the other Party.



Appendix B

BILATERAL AIR SERVICES AGREEMENT

BETWEEN

THE REPUBLIC OF KENYA

AND

THE REPUBLIC OF NIGER

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AIR SERVICES AGREEMENT BETWEEN THE REPUBLIC OF KENYA AND THE REPUBLIC OF NIGER

PREAMBLE

The Republic of and the Republic of Niger Kenya (jointly referred to as the Contracting Parties and in the singular as a Contracting Party);

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944;

Noting the Yamoussoukro Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of Access to Air Transportation Market in Africa on 14 November 1999 as endorsed by the summit of the Organization of African Unity (OAU) Heads of State in July 2000;

Acknowledging the importance of air transportation as a means of creating and preserving friendship, understanding and co-operation between the peoples of the two countries;

Desiring to contribute to the progress of international air transport opportunities;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to conclude an Agreement, for the purpose of establishing and operating air services between and beyond their respective territories;

Desiring to make it possible for Airlines to offer the traveling and shipping public a variety of service options at prices that are not discriminatory and do not represent abuse of a dominant position and wishing to encourage individual Airlines to develop and implement innovative and competitive prices.

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation and

HEREBY AGREE as follows:-

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ARTICLE 1 DEFINITIONS

For the purpose of this Agreement and any annex attached hereto, unless the context otherwise requires the terms and the expressions below have the followings meanings:

- a) **"Abuja Treaty"**: the Treaty establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June 1991 and which entered into force on 12th May 1994;
- b) **"Aeronautical Authorities"**: in the case of the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation and in the case of the Republic of Niger, the Minister in charge of Civil Aviation; in either case, any person or body authorized under its laws to perform a particular function to which this Agreement relates;
- c) **"Agreed services"**: the scheduled international air services which may be operated by virtue of this Agreement;
- d) **"Agreement"**: this agreement, the Annex thereto and any amendments to the Agreement or to the Annex;
- e) **"aircraft equipment" "aircraft stores" and "spare parts"**: as respectively assigned to them in Annex 9 of the Convention;
- f) **"air service", "international air service", "Airline(s)" and "stop for non-traffic purposes"**: as respectively assigned to them in Article 96 of the Convention;
- g) **"Annex"**: the route schedule annexed to this Agreement and any clauses or notes appearing in such Annex and any modification made thereto in accordance with the provisions of Articles 16 and 18 of this Agreement;
- h) **"Code-sharing"**: a commercial arrangement whereby passengers of two or more Airline(s) travel together on one aircraft bearing the Airline(s) flight code of two or more Airline(s);
- i) **"Countries bound by the Yamoussoukro Decision"** :
 - l) The African States signatories to the Abuja Treaty and who have not filed formal notification to withdraw from the "Yamoussoukro Decision"; and

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- II) Any other Country which though not Party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision.
- j) **“Convention”**: the Convention on International Civil Aviation, opened for signature at Chicago on 7th December 1944 and includes; (i) any amendment thereto which has entered into force under Article 94 (a) thereof and has been ratified by both Contracting Parties and (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, in so far as such amendment or annex is at any the given time effective for both Contracting parties;
- k) **“Designated Airline(s)”**: the Airline(s) which has/have been designated and authorized in accordance with Article 3 of this Agreement;
- l) **“Decision”**: the Decision relating to the implementation of the Yamoussoukro Declaration concerning the Liberalization of Access of Air Transport of 14th November 1999 as endorsed by the OAU Heads of State on 11th July 2000 including the Appendices and Amendments;
- m) **“Full cost”**: the cost of providing service plus a reasonable charge for administrative overhead;
- n) **“Scheduled services”**: those services operated regularly by a designated Airline(s) according to schedules published in advance to cover a time table period;
- o) **“Specified routes”**: the air routes as set forth in the Annex thereto on which the agreed service may be operated;
- p) **“Tariff”** : the fare or rate to be paid for the carriage of passengers and their baggage and cargo (other than mail) and the conditions governing the availability or applicability of that fare or rate, including the charges and conditions for services ancillary to the carriage;
- q) **“Territory”**: the meaning assigned to it in article 2 of the Convention;
- r) **“Traffic”**: the carriage of passengers, cargo and mail;
- s) **“User charges”**: fees or rates levied for the use of airports, navigational facilities and other related services offered by one contracting Party to the other.

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ARTICLE 2 RIGHTS AND PRIVILEGES OF DESIGNATED AIRLINE (S)

1. Each Contracting Party grants to the other Contracting Party, the rights specified in this Agreement for the purpose of establishing the agreed services on the specified routes in the annexes to this Agreement. The Airline (s) designated by each Contracting Party shall enjoy, while operating the agreed services on the specified route, the following rights:
 - a) To fly without landing across the territory of the other Contracting Party;
 - b) To make stops in the said territory for non-traffic purposes;
 - c) To make stops in the said territory at the points specified for that route in the schedules to this Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of the other Contracting Party.
2. Each Party shall enjoy in addition to the rights specified in paragraph 1 of this Article, 5th freedom traffic rights in respect of other African States in accordance with the Yamoussoukro Decision.
3. Nothing in sub-Articles (1) and (2) shall confer on a designated airline of a Contracting Party the right of taking on board in the territory of the other Contracting Party, passengers, baggage, cargo and mail, carried for remuneration or hire and destined for another point in the territory of the other Contracting Party.
4. If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of a Contracting Party is unable to operate a service on its normal routes, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of such routes, including the temporary granting of alternative rights, as mutually decided by the Contracting Parties

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ARTICLE 3 DESIGNATION AND AUTHORIZATION OF AIRLINES

1. Each Contracting party shall have the right to designate in writing to the other Contracting Party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels and shall identify whether the Airline or airlines are authorized to conduct the type of air transportation specified in the Annex.
2. On receipt of such designation, the other Contracting party shall, subject to the provisions of paragraph (3) and (4) of this Article, without delay but not later than 30 days, grant to the Airline(s) designated the appropriate operating authorization.
3. The Aeronautical Authority of a Contracting Party may require the Airlines designated by the other Contracting party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.
4. Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph (2) of this Article or to impose such conditions as it may deem necessary on the exercise by a designated Airline(s) of the rights specified in Article 2 of this Agreement.
5. The party designating the Airline(s) shall maintain and administer the standards set forth in Article 6 (Safety) and Article 7 (Aviation Security) of this Agreement.
6. When an Airline has been so designated and authorized, it may begin at any time to operate the agreed services provided that a tariff established in accordance with the provisions of Article 9 of this Agreement is in force in respect of that service.

ARTICLE 4 REVOCATION AND SUSPENSION OF OPERATING AUTHORIZATION

1. Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline(s) of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights;

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- a) Where it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or its nationals.
 - b) Where the airline fails to comply with the laws and the regulations in force in the territory of the Contracting Party granting these rights; or
 - c) Where the Airline(s) otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
 - d) The Other party is not maintaining and administering the standards as set forth in Article 6 (Safety) of this Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of the laws or the regulations of the provisions of this Agreement, such right of revocation or suspension shall be exercised only after consultation with the aeronautical authorities of the other Contracting Party.

ARTICLE 5

APPLICABILITY OF NATIONAL LAWS AND REGULATIONS

1. The laws and regulations of one Contracting party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline(s) engaged in international air navigation, or to the operation or navigation of such aircraft while within its territory shall likewise apply to the aircraft of the Designated Airline of the other Contracting Party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.
2. The laws and regulations of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, emigration, immigration, passports as well as customs and sanitary measures, shall apply to passengers, crew or cargo including mail carried by the aircraft of the designated Airline of the other Contracting Party upon entry into or departure from or while within the territory of the said Contracting Party.
3. Traffic in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purposes shall, except in respect of security measures, narcotics control or in special circumstances, be subject to no more than a simplified control.

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4. Neither Contracting Party may grant any preference to its own Airline with regard to the designated Airlines of the other Contracting Party in the application of the laws and regulations indicated in this Article.
5. Each Contracting Party shall, upon request of the other Contracting Party supply the copies of the relevant laws regulations, regulations and procedures referred to in this Agreement.

ARTICLE 6 SAFETY

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses are at least equal to the minimum standards that may be established pursuant to the Convention.
2. Each Party reserves the right, however, to refuse to recognize, for the purpose of flights undertaken pursuant to rights granted under Article 2 (Rights and Privileges of Designated Airline(s)), certificates of competency and licenses granted to its own nationals by the other Contracting Party.
3. 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. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards that may be established pursuant to the Convention, the other party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other party shall take appropriate corrective action.
4. Each Party reserves the right to withhold, revoke, or limit the operating authorization or technical permission of an Airline or Airlines designated by the other party in the event the other Party does not take such appropriate corrective action immediately.

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ARTICLE 7 AVIATION SECURITY

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on offenses and Certain Other Acts Committed on board Aircraft; signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16th December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24th February 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1st March 1991 insofar as both Contracting Parties are party to these conventions and any other Convention on Aviation Security to which the Contracting Parties shall become party.
2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation. The parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
3. Each Contracting Party agrees that such operations of aircraft may be required to observe the aviation security provisions referred to in paragraph (2) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

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4. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof with the minimum risk of life.

ARTICLE 8 FAIR COMPETITION

1. Each Party shall allow a fair and equal opportunity for the Designated Airline(s) of both Parties to compete in providing the international air transportation covered by this Agreement.
2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the Airline(s) of the other party.
3. Neither Party shall unilaterally limit the volume of traffic frequency or regularity of service, or aircraft type or types operated by the Designated Airline(s) of the other Party, in terms of this Agreement, except as may be required for customs, technical, operational or environment reasons under uniform conditions consistent with Article 15 of the Convention.
4. Either Party may require the filing of schedules or operational plans by airlines of the other Party for approval. Provided such a requirement may be on a non-discriminatory basis. If a Party requires filings it shall minimize the administrative burden of filing requirement and procedures on air transportation intermediaries and on designated airlines of the other party.
5. Any restrictions on the operations of the Designated Airline(s) of the other Contracting Party shall be in accordance with the terms of this Agreement and its Annexes or by such applicable conditions of the Convention.

ARTICLE 9 PRICING

1. Each Party shall allow prices for air transportation to be established by each Designated Airline based upon commercial considerations in the market place. Intervention by the Parties shall be limited to:-
 - a) Prevention of unreasonably discriminatory prices or practices;

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- b) Protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- c) Protection of Airlines from prices that is artificially low.
2. Each Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by Airlines of the other Party. Notification or filing by the Airline(s) of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notifications for filing may be permitted on shorter notice than normally required. If a Party permits an Airline to file a price on short notice, the price shall become effective on the proposed date for traffic originating in the territory of that Party.
3. If a Party believes that a price proposed to be charged by an Airline of the other Party for international air transportation between the territories of parties is inconsistent with considerations set forth in paragraph 1 of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible.
4. Except as otherwise provided in this Article, neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by an Airline of either Party for international Air transportation between the territories on interline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach Agreement with respect to a price for which a notice of dissatisfaction has been given, each party shall use its best efforts to put that Agreement into effect. Without such mutual Agreement, the previously existing price shall continue in effect.

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ARTICLE 10
EXEMPTION FROM CUSTOMS DUTIES, TAXES, INSPECTION FEES AND
OTHER SIMILAR CHARGES

1. Aircraft operated on international air services by the Designated Airline of either Contracting Party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided that such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.
2. There shall also be exempt from the same duties, taxes, fees and charges with the exception of charges corresponding to the service performed :
 - a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the Customs Authorities of the said territory and for use on board outbound aircraft of the other contracting Party engaged on international air services.
 - b) Spare parts introduced into the territory of either Contracting Party for maintenance or repair of aircraft used on international air services by the Designated Airlines of the other Contracting Party;
 - c) Fuel and lubricants supplied in the territory on a Contracting Party to an outbound aircraft of the Designated Airlines of the other Contracting Party, engaged on an international air service even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they will have been taken on board.
 - d) Materials referred to in sub-paragraphs a, b, and c above may be required to be kept under Customs supervision or control.
 - e) The regular airborne equipment as well as the material and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of Customs Authorities of that territory. In such cases, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

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ARTICLE 11 USER CHARGES

1. User charges that may be imposed by the competent charging authorities or bodies of each party on the Airlines of the other Party shall be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users and based upon sound economic principles as set forth in paragraph 2 of this Article. In any event, any such user charges shall be assessed on the Airlines of the other Party on terms not less favorable than the most favorable terms available to any other Airline at the time the charges are assessed.
2. User charges imposed on the Airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.
3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the Airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the Airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (1) and (2) of this Article. Each Party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their view, and have their views taken into account, before changes are made.
4. Neither Party shall be held, in dispute resolution procedures pursuant to Articles 15 and 16, to be in breach of a provision of this Article, unless (i) it fails to undertake review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (ii) following such a review it fails to take any steps within its power to remedy the charge or practice that is inconsistent with this Article.

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ARTICLE 12 COMMERCIAL OPPORTUNITIES

1. The Airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation.
2. The Designated Airline(s) of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operational, and other specialized staff required for the provision of air transport.
3. Each Designated Airline shall have a right to select among competing agents for ground handling services in the territory of the other Party. Ground handling services shall be available on equal basis to all Airlines; charges shall be based on costs of services provided.
4. Any Airline of each Party may engage in the sale of air transportation in the territory of the other Party directly and, at the Airline's discretion through its agents. Each Airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.
5. Each Designated Airline shall have the right to remit to its country receipts in excess of sums locally disbursed in due proportion to the carriage of passengers, baggage, cargo and mail. Such transfers shall be affected on the basis of the foreign exchange regulations in force. If payments between the Contracting Parties are regulated by a special Agreement, this special Agreement shall apply.
6. Both parties agree that in operating the Agreed Services on the Routes Schedule, the Designated Airline(s) may enter into co-operative marketing arrangements such as blocked space, code-sharing with;
 - a) The Airlines of the other Party; and/or
 - b) An Airline or Airlines of a third country provided that all Airlines in such arrangements hold appropriate authorizations for such arrangements from the other Contracting Party.

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ARTICLE 13 SUBMISSION OF TIME TABLE

1. The designated Airline(s) of each Contracting Party shall, not later than thirty (30) days prior to the date of operation of the agreed services on the specified routes, submit the envisaged time-table for approval to the aeronautical authority of the other Contracting Party. The same procedure shall apply to any modification thereof.
2. Such timetables shall include all relevant information necessary for the operation, including the type of service, aircraft to be used and the flight schedule.
3. For supplementary flights which the Designated Airline(s) of the one Contracting Party wishes to operate on the agreed services on the specified routes outside the approved time-table it has to request prior permission from the aeronautical authority of the other Contracting Party. Such request shall usually be submitted at least two working days before such flights.
4. Subject to the sub paragraphs (1) and (3) of this article, no schedule will come into force if it is not approved by the Aeronautical Authorities of the Contracting Party concerned.
5. The schedule approved for the season according to the terms of this article, will remain in force for the corresponding season until further approval.

ARTICLE 14 SUBMISSION OF STATISTICS

The Aeronautical Authorities of one Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statements of statistics required for the purpose of reviewing the operations of the Designated Airline of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by the Airline on the agreed services and the origins and destinations of such traffic.



ARTICLE 15 SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiations.
2. If the Contracting Parties fail to reach a settlement by negotiations, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
4. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.
5. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.

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6. If one of the Contracting Parties does not conform to the arbitral Decision, the other Contracting Party could, as long as this omission lasts, limit, suspend or revoke the rights and privileges which it would have granted on the ground of this Agreement to the Contracting Party in default.

ARTICLE 16 CONSULTATIONS

1. Exchange of views shall take place as needed between the Aeronautical Authorities of the Contracting Parties in order to achieve closer cooperation and agreement in all matters pertaining to the application of this Agreement.
2. Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.

ARTICLE 17 REGISTRATION OF AGREEMENT

This Agreement, its Annex, as well as any amendments thereto shall be registered with the International Civil Aviation Organization and African Civil Aviation Commission.

ARTICLE 18 AMENDMENTS

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, such modification, if agreed between the Contracting Parties, shall come into effect when confirmed by an Exchange of Diplomatic Notes.
2. In the event of the conclusion of any general multilateral Convention concerning air transport by which both Contracting Parties become bound, this Agreement and its Annexes shall be amended so as to conform to the provisions of such Convention.



**ARTICLE 19
TERMINATION**

Either Contracting Party may at any time give notice through diplomatic channel to the other Contracting Party of its intention to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such cases, this Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by Agreement before the expiry of this period.

In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

**ARTICLE 20
POWER OF SUPERCESSION**

This Agreement supersedes the Air Transport Agreement initialed on October 25 1995 at Nairobi (Kenya)

**ARTICLE 21
ENTRY INTO FORCE**

This agreement shall enter into force upon exchange of notes through the diplomatic channel confirming completion of all necessary internal procedures by each Contracting party.

IN WITNESS WHEREOF the undersigned being authorized thereto by their respective Governments have signed this Agreement.

DONE at this day ofin duplicate, in English and French languages, all texts being equally authentic.

**FOR THE GOVERNMENT
OF THE REPUBLIC OF KENYA**

**FOR THE GOVERNMENT
OF THE REPUBLIC OF NIGER**

.....

.....



ANNEX 1

SCHEDULED AIR TRANSPORT

SECTION 1

ROUTES AND TRAFFIC RIGHTS

Airline(s) of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled International Air Transport between points on the following routes:

ROUTE SCHEDULE AND TRAFFIC RIGHTS.

ROUTE SCHEDULE

FOR THE DESIGNATED AIRLINE (S) OF THE REPUBLIC OF NIGER.

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF KENYA	POINTS BEYOND THE REPUBLIC OF KENYA
Any Points in the Republic of Niger	Any points	NAIROBI	Any points

FOR THE DESIGNATED AIRLINE(S) OF THE REPUBLIC OF KENYA

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF NIGER	POINTS BEYOND THE REPUBLIC OF NIGER
Any Points in the Republic of Kenya	Any points	NIAMEY	Any points

NOTES ON THE ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINES

Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights that either begin or terminate in the territory of the country designating the airline.



TRAFFIC RIGHTS

SECTION 2

OPERATIONAL FLEXIBILITY

Each designated Airline(s) may, on any or all flights and at its options;

1. Operate flights in either or both directions
2. Combine different flight numbers within one aircraft operation;
3. Serve intermediate, and beyond points and points in the territories of the parties on the routes in any combination and in any order.
4. Omit stops at any point or points
5. Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes
6. Serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services. Without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services the service serves a point in the territory of the Party designating the Airline(s).

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A handwritten signature in black ink, appearing to be 'C. J.'.

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. Aduma Owuor, 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 Wambuyu, 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

<u>In Attendance</u>	-	<u>Ministry of Transport & Infrastructure</u>
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 its 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 be 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 of Rights	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 25TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON FRIDAY 28TH MAY, 2015 IN TAUSI ROOM, TRAVELERS HOTEL, MOMBASA AT 10: 00 AM.

Present

1. Hon. Maina Kamanda, M.P. – Chairperson
2. Hon. (Eng.) Mahamud M. Mohamed, M.P. – Vice Chairman
3. Hon. Aduma Owuor, M.P.
4. Hon. Mishi Juma, M.P.
5. Hon. Johnson Many Naicca, M.P.
6. Hon. Omulele Christopher, M.P.
7. Hon. Mathias Robi, M.P.
8. Hon. Grace Kipchoim, M.P.
9. Hon. Mark Lomunokol, M.P.
10. Hon. Peter Shehe, M.P.
11. Hon. Ahmed Abbas Ibrahim, M.P.
12. Hon. (Eng.) Stephen Ngare, M.P.
13. Hon. (Capt.) Clement Wambugu, M.P.
14. Hon. Edick Omondi Anyanga, M.P.
15. Hon. Omar Mwinyi, M.P.
16. Hon. Emmanuel Wangwe, M.P.

Apologies

1. Hon. Barchilei Kipruto, M.P.
2. Hon. Stephen Manoti, M.P.
3. Hon. Cecily Mbarire, M.P.
4. Hon. Gideon Konchella, M.P.
5. Hon. Ali Wario, MP.
6. Hon. (Arch.) David Kiaraho, M.P.
7. Hon. Mukwe James Lusweti, M.P.
8. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
9. Hon. Suleiman Dori, M.P.
10. Hon. Simon Nyaundi Ogari, M.P.
11. Hon. (Eng.) John Kiragu, M.P.
12. Hon. Chachu Ganya, M.P.
13. Hon. Joseph Lomwa, 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 |
| 5. Mr. Abdirahim Omar | Fiscal Analyst |

Min/DC-TPWH/2015/128

Preliminaries

The Chair called the meeting to order at 10:00 am and opened it with prayers.

The Chair informed the meeting that the Budget and Appropriation Committee accepted the Committees' recommendation to allocate an additional Kshs. 300 million to National Transport and Safety Authority (NTSA) in the financial year 2015/2016, thus making the total allocation for the NTSA kshs 736 million.

The Chair introduced the agenda as follows:-

AGENDA

1. Prayer
2. Communication from the Chairperson
3. Consideration and Adoption of the following reports:-
 - I. Report on the Bilateral Air Agreement between Kenya/Niger and Kenya/ Ghana
 - II. Report on the Petition regarding the erection of bumps and footbridge at Kangoro Bus Stop on Embu-Meru Highway
 - III. Report on the Study Visit by the Committee to Kuwait City, Kuwait
 - IV. Report on the Study Visit by the Committee to South Africa
 - V. Report on the consideration of 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
4. Any Other Business

Min/DC-TPWH/2015/129

Consideration and Adoption of the following reports:-

- I. Report on the Bilateral Air Agreement between Kenya/Niger and Kenya/Ghana
- II. Report on the Petition regarding the erection of bumps and footbridge at Kangoro Bus Stop on Embu-Meru Highway
- III. Report on the Study Visit by the Committee to Kuwait City, Kuwait
- IV. Report on the Study Visit by the Committee to South Africa
- V. Report on the consideration of 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

The Committee considered and adopted the following reports unanimously as follows:-

- I. The Report on the Bilateral Air Agreement between Kenya/Niger and Kenya/Ghana was adopted as proposed and seconded by the Hon. Stephen Ngare, MP and the Hon. Mishi Juma, Mp respectively
- II. The Report on the Petition regarding the erection of bumps and footbridge at Kangoro Bus Stop on Embu-Meru Highway was adopted as proposed and seconded by the Hon. Peter Shehe MP and the Hon. Mark Lomunokol, Mp respectively
- III. The Report on the Study Visit by the Committee to Kuwait City, Kuwait was adopted as proposed and seconded by the Hon. Mohamud Maalim, MP and the Hon. Christopher Omulele, Mp respectively.
- VI. The Report on the Study Visit by the Committee to South Africa was adopted as proposed and seconded by the Hon. Stephen Ngare, MP and the Hon. Mishi Juma, Mp respectively

However, the Committee resolved to consider the Report on the 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 to another meeting to be held on 29th May, 2015 at 2:30 pm.

The Committee observed that:-

- I. There is need to share the recommendations of the foreign trips reports undertaken by the Committee with the Ministry of Transport and Infrastructure so that the Ministry can familiarize and learn the best practices in the world.
- II. The need to develop the Railway Training Institute into a centre of excellence in rail technology, so as to enhance the human resource capacity of the country in rail development.
- III. The Committee noted with concern the high rate of brain-drain in the engineering professionals. The Committee stressed the need to come up with policy to retain or minimize the rate of brain-drain.

Min/DC-TPWH/2015/130

Any Other Business

1. The Committee resolved to closely oversight the Department of Housing and Urban Development in the Ministry of Lands, Urban Development and Housing. This will be done through frequently meetings with the officials from the said Ministry and visiting ongoing and completed projects by the Ministry.
2. The Committee noted with the concern the slow pace of road constructions across the country. Subsequently, the Committee resolved to undertake road inspection tours to assess the status of the various ongoing roads works across the country.

Min/DC-TPWH/2015/131

Adjournment

And the time being 11.00 am the meeting was adjourned to be reconvened on Friday, 29th May, 2015 at 2.30 pm.

SIGNED.....

HON MAINA KAMANDA, M.P (Chairperson)

DATE.....29/5/15