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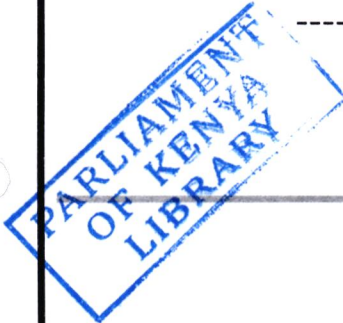
REPUBLIC OF KENYA

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TWELFTH PARLIAMENT - THIRD SESSION

THE NATIONAL ASSEMBLY

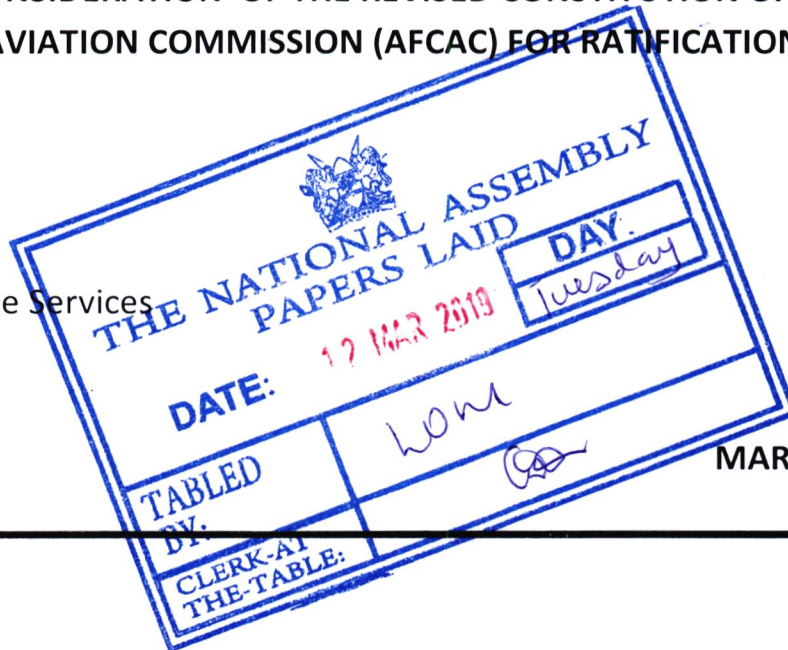


THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

ON

REPORT ON THE CONSIDERATION OF THE REVISED CONSTITUTION OF THE  
AFRICAN CIVIL AVIATION COMMISSION (AFCAC) FOR RATIFICATION

Directorate of Committee Services  
Clerk's Chambers  
Parliament Buildings  
NAIROBI



MARCH 2019

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## **A. PREFACE**

### **I. MANDATE OF THE COMMITTEE**

The Departmental Committee on Transport, Public Works and Housing is mandated, pursuant to Standing Order 216 (5), to;

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

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

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

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

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

## II. MEMBERSHIP OF THE COMMITTEE

The Departmental Committee on Transport, Public Works & Housing was constituted by the House on Thursday, 14<sup>th</sup> December, 2017 comprising of the following Members:-

- |  |                         |
|--|-------------------------|
| 1) Hon. David Pkosing, M.P.                  | <b>Chairperson</b>      |
| 2) Hon. Moses Kuria, M.P.                    | <b>Vice Chairperson</b> |
| 3) Hon. Johnson Many Naicca, M.P.            |                         |
| 4) Hon. David Njuguna Kiaraho, M.P.          |                         |
| 5) Hon. Peris Pesi Tobiko, M.P.              |                         |
| 6) Hon. Samuel Arama, M.P.                   |                         |
| 7) Hon. Savula Ayub Angatia, M.P.            |                         |
| 8) Hon. Suleiman Dori Ramadhani, M.P.        |                         |
| 9) Hon. Rigathi Gachagua, M.P.               |                         |
| 10) Hon. Ahmed Abdisalan Ibrahim, M.P.       |                         |
| 11) Hon. Ahmed Bashane Gaal, M.P.            |                         |
| 12) Hon. Dominic Kipkoech Koskei, M.P.       |                         |
| 13) Hon. Gideon Mutemi Mulyungi, M.P.        |                         |
| 14) Hon. Kulow Maalim Hassan, M.P.           |                         |
| 15) Hon. Mugambi Murwithania Rindikiri, M.P. |                         |
| 16) Hon. Rehema Dida Jaldesa, M.P.           |                         |
| 17) Hon. Shadrack John Mose, M.P.            |                         |
| 18) Hon. Tom Mboya Odege, M.P.               |                         |
| 19) Hon. Vincent Kemosi Mogaka, M.P.         |                         |

## III. COMMITTEE SECRETARIAT

- |                             |                              |
|-----------------------------|------------------------------|
| 1) Ms. Chelagat Tungo Aaron | <b>First Clerk Assistant</b> |
| 2) Mr. Ahmed Salim Abdalla  | <b>Third Clerk Assistant</b> |
| 3) Ms. Christine Odhiambo   | <b>Legal Counsel I</b>       |
| 4) Mr. James Muguna         | <b>Research Officer II</b>   |
| 5) Mr. Collins Mahamba      | <b>Audio Officer</b>         |
| 6) Mr. Abdinasir Moge Yusuf | <b>Fiscal Analyst II</b>     |
| 7) Ms. Zainabu Wario        | <b>Sergeant at Arms</b>      |

## B. CHAIRPERSON'S FOREWORD

On 14<sup>th</sup> August, 2018 the Cabinet approved a Cabinet Memorandum on the Ratification of the revised constitution of the African Civil Aviation Commission (AFCAC). The instrument was then laid before the National Assembly on 2<sup>nd</sup> October, 2018 for consideration by the House.

Pursuant to section 8 of the Treaty Making and Ratification Act, 2012 the instrument was, upon being laid on the floor of the House, committed to the Departmental Committee on Transport Public Works and Housing for consideration and report to the House.

Pursuant to Article 118 (1) (b) of the Constitution on Public Participation and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies, on the 3<sup>rd</sup> of December 2018, requesting for submissions of memoranda on the subject matter. There was no response from the Public.

Upon ratification, the Agreement shall become part of the law of Kenya as provided for in Article 2(6) of the Constitution which provides that "any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution".

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

On behalf of the Committee, it is therefore my pleasant duty and privilege, to lay this report on the consideration of the revised Constitution of the African Civil Aviation Commission (AFCAC) for ratification and request that the House considers and approves the instrument ratification, pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

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

**THE HON. DAVID PKOSING, M.P.**

**CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON TRANSPORT PUBLIC WORKS AND HOUSING**

## 1.0 SCRUTINY OF THE REVISED CONSTITUTION OF THE AFRICAN CIVIL AVIATION COMMISSION (AFCAC)

### 1.1 INTRODUCTION

The African Civil Aviation Commission (AFCAC) is the African Union's specialized Agency mandated with coordinating civil aviation matters in Africa and cooperating with the International Civil Aviation Organization (ICAO) and all other relevant organizations and other bodies which are involved in the promotion and development of civil aviation. AFCAC currently operates on a 1969 constitution which has since been revised to satisfy the continental realities.

On Tuesday 14<sup>th</sup> August, 2018, the Cabinet approved a cabinet Memorandum on the ratification of the revised Constitution of the African Civil Aviation Commission (AFCAC). On 2<sup>nd</sup> October 2018, the instrument was laid before the National Assembly for consideration by the House.

### 1.2 ANALYSIS OF THE CONSTITUTION OF THE AFRICAN CIVIL AVIATION COMMISSION

#### 1.2.1 ARTICLES OF THE REVISED CONSTITUTION OF AFCAC

1. **Definition of terms** - this article provides for the definition of terms such as AFCAC, RECS, ICAO, NEPAD etc.;
2. **Establishment of AFCAC** - provision provides that there shall continue to be the AFCAC as established by the 1969 AFCAC Constitution;
3. **Objectives** - the provision sets out the objectives of AFCAC which shall be to coordinate civil aviation matters in Africa and to cooperate with ICAO and all other relevant organizations and other bodies which are involved in the promotion and development of civil aviation in Africa, among others;
4. **Functions** - provides for the functions of AFCAC which include to undertake studies on technical regulatory and economic developments in air transport with particular focus on their implications for Africa, to encourage and support Member States to comply with ICAO Standards and recommended practices, as well as the regional navigation plans, among others;
5. **Membership** - this provides for membership which shall be open to all African States. Each Member State shall enjoy equal rights in terms of participation and representation at AFCAC meetings;
6. **Legal Capacity** - provides that AFCAC shall enjoy, in the territory of each Member State, legal capacity accorded to legal persons under the national laws of the member States as may be necessary for the fulfilment of its objectives and the exercise of its functions;

7. **Privileges and Immunities** - Provides that AFCAC, its representatives and staff shall enjoy in the territory of each Member State, the privileges and immunities stipulated in the 1964 General Convention on the Privileges and Immunities of the OAU/AU;
8. **Headquarters** - provides that the headquarters of AFCAC is established in Dakar, Senegal and the same may be transferred to another Member State by a decision of the Plenary, which shall be on the recommendation of the Bureau in accordance with the 'AU Criteria for hosting AU Organs';
9. **Organs of AFCAC** - provides for the organs of AFCAC which shall be the Plenary, the Bureau and the Secretariat;
10. **The Plenary** - it provides that the Plenary shall be the supreme organ of AFCAC and it shall be composed of duly accredited representatives of Member States responsible for Civil Aviation;
11. **Functions of the Plenary** - the provision provides for the functions of the Plenary which include to issue policy guidelines through resolutions and recommendations, to elect the President and Vice Presidents to serve as members of the Bureau, to approve the Organizational Structure of AFCAC and appoint the Secretary General upon the recommendation of the Bureau and to approve the work programme, business plan, budget, rules and regulations of AFCAC among others;
12. **The Bureau** - The provision provides for the establishment of the Bureau which shall be composed of the President and five Vice-Presidents elected by the Plenary in accordance with the AU geographical representation formula;
13. **Functions of the Bureau** - provision provides for the functions of the Bureau which shall be to convene the ordinary and extraordinary plenary sessions, subject to the relevant provisions of Article 10 and determine the provisional agenda, to ensure implementation of the AFCAC work programmes and other resolutions of AFCAC Plenary and to supervise and coordinate the activities of the Secretariat and any committee or working group;
14. **The Secretariat** - This provision provides for the Secretariat which shall be headed by a Secretary-General assisted by the necessary and competent Staff for the smooth functioning of AFCAC. The Secretary General shall be appointed by the Plenary upon the recommendation of the Bureau and shall serve for a term of three years renewable once for a further term of three years;
15. **Reports to the Sub-Committee on Air Transport** - the sub-committee on Air Transport is the Conference of Ministers responsible for air transport matters in Africa whose mandate is to consider and adopt recommendations submitted by AFCAC on all activities concerning the functions of the Executive Agency entrusted to it and other matters requiring political decisions in accordance with the African Union Procedures;
16. **Cooperation with other Organizations** - this provides that AFCAC shall work in close cooperation with different AU Organs, RECs, ICAO, United Nations Economic Commission for Africa (UN-ECA) as well as with other governmental

- and non-governmental international organizations, civil aviation service providers on civil aviation matters of mutual interest;
17. **Financial Resources** - this provides that the regular budget of AFCAC shall be funded by contributions made by Member States in accordance with the scale of assessment determined by the Plenary;
  18. **Sanctions** - Provides that any Member State that fails to honour its financial obligations to the Commission for a period of two years or more shall, as long as it is in such arrears, forfeit the right to vote in the Plenary or to present candidates for any elective or other post within AFCAC;
  19. **Signature, Ratification, Accession and Entry into Force** - provides that the Constitution shall be open to signature, ratification, acceptance and accession by African States in accordance with their respective Constitutional procedure. Further that the Constitution shall provisionally enter into force upon signature by fifteen African States and shall definitively enter into force upon ratification by fifteen African States;
  20. **Transitional arrangements** - provides that a Member State under the 1969 AFCAC Constitution shall continue to maintain its membership of AFCAC until such a time that the revised Constitution comes into force definitively;
  21. **Denunciation** - provides that any denunciation of the Constitution shall be made through appropriate notification to the Chairperson of the AU Commission, who within thirty days, shall advise AFCAC and its Member States accordingly;
  22. **Amendment and Revision** - provides that any Member State may submit proposals for the amendment or revision of the Constitution to the Chairperson of the AU Commission who shall submit to AFCAC and Member States. The Plenary shall then meet to consider the proposals and the Assembly upon the advice of the Executive Council shall examine the recommendations and the amendments or revisions shall be adopted by the Assembly and submitted for ratification by all Member States;
  23. **Settlement of Disputes** - it provides that disputes shall be resolved in the first instance through negotiations, then reference to the Bureau and if not resolved by arbitration. Further provides that the African Court of Justice and Human Rights may be seized with any dispute regarding the application or interpretation of the Constitution;
  24. **Working Languages** - provides that the working languages of AFCAC shall be those of the AU;
  25. **Registration** - provides that the Constitution shall be registered with ICAO in compliance with Article 83 of the Convention on International Civil Aviation; and
  26. **Abrogation** - provides that the Constitution shall abrogate and supersede as of the date of entry into force, the AFCAC Constitution adopted at ADDIS Ababa, Ethiopia, on the 17<sup>th</sup> January 1969.



## **1.2.2 EXPLANATORY MEMORANDUM ON THE RATIFICATION OF THE REVISED CONSTITUTION OF THE AFRICAN CIVIL AVIATION COMMISSION (AFCAC)**

### **(a) The Objects and Subject Matter of the Treaty**

The African Civil Aviation Commission (AFCAC) is the African Union's specialized Agency mandated with coordinating civil aviation matters in Africa and cooperating with the International Civil Aviation Organization (ICAO) and all other relevant organizations and other bodies which are involved in the promotion and development of civil aviation. Its main objectives are;

- i. To foster compliance with ICAO Standards and Recommended Practices for the safety, security and environmental protection in civil aviation in Africa;
- ii. Promoting understanding on policy matters between its member States and States in other parts of the world;
- iii. To enhance the efficiency and regularity of the air transport industry among African States and;
- iv. Formulating and enforcing appropriate rules and regulations that give fair and equal opportunity to all stakeholders and promote fair competition.

### **(b) Any Constitutional implications including -**

#### **(i) Any proposed amendment to the Constitution;**

There is no proposed amendment to the Constitution.

#### **(ii) That the Treaty is consistent with the Constitution and promotes constitutional values and objectives;**

The Treaty is consistent with the Constitution and promotes constitutional values and objectives.

### **(c) The National Interests which may be affected by the ratification of the Treaty**

AFCAC shall work in close cooperation with the different AU Organs, (Regional Economic Communities) RECs, ICAO and the United Nations Economic Commission for Africa (UN-ECA) as well as with other governmental and non-governmental international organizations, civil aviation service providers on civil aviation matters of mutual interest. It is therefore in the interest of the Country that it ratifies the Constitution so as to secure its interests.

### **(d) Obligations imposed on Kenya by the Treaty**

**Sanctions** - Any Member State that fails to honor its financial obligations to the Commission for a period of two (2) years or more shall, as long as it is in such arrears, forfeit the right to vote in the Plenary or to present candidates for any elective or other post within AFCAC.

**Denunciation** - Any denunciation of this Constitution shall be made through appropriate notification to the Chairperson of the AU Commission who, within thirty (30) days shall advise AFCAC and its Member States accordingly. The denunciation of any State from membership of AFCAC shall become effective one (1) year following the receipt by the Chairperson of the AU Commission of such notification.

**Settlement of Disputes** - Any dispute arising between two (2) or more Member States on the application or interpretation of this Constitution shall in the first instance be settled through negotiations.

In case the dispute(s) remains unresolved within twenty one (21) days either Party may refer the dispute to the Bureau for resolution. The Bureau shall make a decision within sixty (60) days of receipt of the referral.

In the event that the Bureau cannot resolve the dispute or should their decision fail to provide a satisfactory solution to either Party within sixty (60) days, the dispute may be settled by arbitration. The arbitration team shall consist of a panel of African arbitrators appointed by each party. An additional arbitrator shall be appointed by the other arbitrators.

The arbitration panel shall adopt its own Rules of Procedure and make an award within six (6) Months. The decision of the Panel shall be final and binding on the Parties.

Without prejudice to the above provisions, the African Court of Justice and Human Rights may be seized with any dispute regarding the application or interpretation of this Constitution.

**(e) Requirements for implementation of the Treaty**

The Constitution is open to signature, ratification, acceptance and accession by African States in accordance with their respective Constitutional procedure. The instruments of ratification shall be deposited with the Chairperson of the African Union Commission which shall give notice of the date of deposit to AFCAC and any Member States of AFCAC. The signing and ratification of the AFCAC Constitution will ensure that Kenya meets her commitments as a member State and maintains its membership to AFCAC upon definitive entry into force of the revised Constitution.

**(f) Policy and legislative considerations**

A Member State under the 1969 Constitution shall continue to maintain its membership of AFCAC until such time that the revised constitution of 2009 definitely comes into force on ratification by the 15<sup>th</sup> African State.

**(g) Financial implications**

The ratification of this Constitution will be incorporated into existing institutional frameworks, there are no budgetary changes envisaged in terms of financial implications.

**(h) Ministerial responsibility;**

The Cabinet Secretary exercises powers conferred by Section 52 (e) of the Civil Aviation Act (No. 21 of 2013).

**(i) Implications on matters relating to counties**

There are no implications on matters relating to counties.

**(j) The summary of the process leading to the adoption of the Treaty**

The revised Constitution of AFCAC was adopted and opened for signature in Dakar, Senegal on 16<sup>th</sup> December, 2009. The new AFCAC Constitution provisionally entered into force on 11<sup>th</sup> May, 2010 upon the 15<sup>th</sup> signature and will definitely enter into force upon ratification by 15 African States in accordance with Article 19(4) of the said revised Constitution. Upon definitive entry into force the revised Constitution will supersede the AFCAC Constitution adopted at Addis Ababa, Ethiopia on 17<sup>th</sup> January, 1969.

**(k) The date of signature**

The revised Constitution of AFCAC was adopted and opened for signature in Dakar, Senegal on 16<sup>th</sup> December, 2009.

**(l) The number of States that are party to the Treaty**

The African Civil Aviation Commission (AFCAC) is the African Union's specialized Agency and therefore is constituted of Members of the African Union. Membership is open to all African States and each Member State shall enjoy equal rights in terms of participation and representation at AFCAC meetings.

**(m) The views of the public on the ratification of the treaty;**

The views of the public have not been sought regarding the ratification of the Treaty.

**(n) Whether the Treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;**

The Constitution has Articles that allow for Consultations when need arises, Dispute Resolution and Denunciation.

**(o) The proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and**

The Constitution has Articles that allow for Consultations when need arises, Dispute Resolution and Denunciation.

**(p) Whether expenditure of public funds will be incurred in implementing the Treaty and an estimate, where possible, of the expenditure.**

The regular budget of AFCAC is funded through contributions made by Member States. Kenya joined AFCAC in 1969 and has since been meeting her financial obligations to the African Civil Aviation Commission. The Kenya Civil Aviation Authority has budgeted for the regular contributions. Annual Contribution allocated by KCAA for the year 2019 to AFCAC is USD. 78,873.00 The revised constitution, therefore, will not alter the existing financial arrangement, but only seek to reinforce its procedures.

### **1.2.3 COMPLIANCE WITH THE PROCEDURE FOR APPROVAL OF A TREATY AS STIPULATED UNDER THE TREATY MAKING AND RATIFICATION ACT, 2012**

1. The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as “the Act”).
2. Section 8 (1) of the Act provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
3. Section 8 (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures. Pursuant to Article 118 (1) (b) of the Constitution on Public Participation and section 8(3) of the Act, the Committee placed advertisements in two local dailies, on the 3<sup>rd</sup> December 2018, requesting for submissions of memoranda on the subject matter. There was no response.
4. Section 7 of the Act provides as follows—
  7. Where Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—
    - (a) the objects and subject matter of the treaty;
    - (b) any constitutional implications including—
      - (i) any proposed amendment to the Constitution; and
      - (ii) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
    - (c) the national interests which may be affected by the ratification of the treaty;
    - (d) obligations imposed on Kenya by the treaty;
    - (e) requirements for implementation of the treaty;
    - (f) policy and legislative considerations;
    - (g) financial implications;
    - (h) ministerial responsibility;
    - (i) implications on matters relating to counties;

- (j) the summary of the process leading to the adoption of the treaty;
- (k) the date of signature;
- (l) the number of states that are party to the treaty;
- (m) the views of the public on the ratification of the treaty;
- (n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- (o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- (p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

## **2.0 SUBMISSION FROM THE STATE DEPARTMENT FOR TRANSPORT**

In its sitting held on 7<sup>th</sup> March 2019, the Committee met representatives from the State Department for Transport, from the Kenya Civil Aviation Authority and from the Kenya Airports Authority. They were all in support of the revised constitution of the African Civil Aviation Commission. There was no objection or proposal for amendment to any Article of the instrument.


The Committee noted that 38 countries have signed the treaty but only 8 have ratified it. Members were also informed that Dakar, Senegal as the original seat of AFCAC since 1969 was the headquarters of the African Civil Aviation Commission. The Ministry officials informed the Committee that in a meeting held on December 2018 in Livingstone, Zambia, African countries were urged to expedite the ratification process of the treaty.

### 3.0 COMMITTEE OBSERVATIONS

The Revised African Civil Aviation Commission Constitution as presented is in accordance with Section 8 (1) of the Treaty Making and Ratification Act. The Committee did not receive any objection from any party on the treaty. The Committee noted that there exist a constitution for the African Civil Aviation Commission and that that the revised constitution only seek to improve the efficiency and running of the organization.

### 4.0 COMMITTEE RECOMMENDATION

The Committee recommends that the House approves the Revised African Civil Aviation Commission Constitution for ratification as presented since it is in Kenya's national interest and is in accordance with Section 8 (1) of the Treaty Making and Ratification Act, 2012.

Signed  Date 11/03/2019.

**THE HON. DAVID PKOSING, M.P. CBS**  
**CHAIRPERSON**  
**DEPARTMENTAL COMMITTEE ON TRANSPORT PUBLIC WORKS AND HOUSING**

#### 1.4 ADOPTION OF THE COMMITTEE REPORT

We, the Members of the Departmental Committee on Transport, Public Works and Housing have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Sunday 10th March, 2019:-

1. Hon. David Pkosing, M.P

**Chairperson**

2. Hon. Moses Kuria, M.P.

**Vice Chairperson**

3. Hon. Samuel Arama, M.P.

4. Hon. David Njuguna Kiaraho, M.P.

5. Hon. Johnson Many Naicca, M.P.

6. Hon. Rigathi Gachagua, M.P

7. Hon. Peris Pesi Tobiko, M.P.

8. Hon. Suleiman Dori Ramadhani, M.P.

9. Hon. Savula Ayub Angatia, M.P.

10. Hon. Ahmed Abdisalan Ibrahim, M.P.

11. Hon. Ahmed Bashane Gaal, M.P.

12. Hon. Dominic Kipkoech Koskei, M.P.

13. Hon. Gideon Mutemi Mulyungi, M.P.

14. Hon. Kulow Maalim Hassan, M.P.

15. Hon. Mugambi M. Rindikiri, M.P.

16. Hon. Rehema Dida Jaldesa, M.P.

17. Hon. Shadrack John Mose, M.P.

18. Hon. Tom Mboya Odege, M.P.

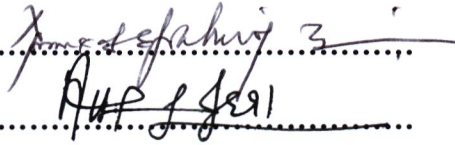
19. Hon. Vincent Kemosi Mogaka, M.P.

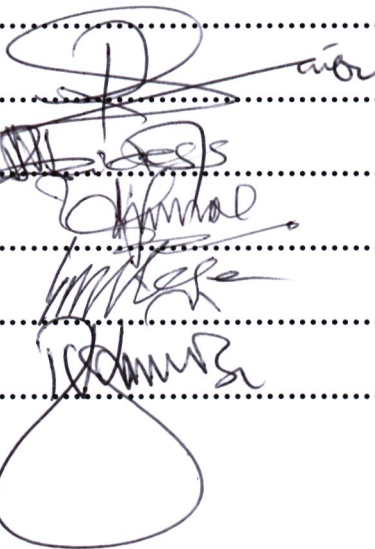
  
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**CHIEF GUEST**  
**H.E. UHURU KENYATTA, CGH**  
 President & Commander-in-Chief of the  
 Defence Forces of the Republic of Kenya

**HON. SAMUEL TUNAI**  
 GOVERNOR, NAROK COUNTY

**THE LIVESTOCK COUNTY OF CHOICE**



**IMPLEMENTATION OF THE BIG 4 AGENDA AT COUNTY LEVEL  
 THE INAUGURAL NAROK COUNTY LIVESTOCK SHOW**

(Towards Actualization of Food Security and Nutrition Agenda)  
**MONDAY 3RD - TUESDAY 4TH DECEMBER, 2018**  
**VENUE: NAROK COUNTY STADIUM**

In the distinguished presence of  
**H. E. Uhuru Kenyatta,**  
 the President of the Republic of Kenya  
 and the Commander-in-Chief of the Defence Forces.

The County Government and the residents of the Narok County have the pleasure to invite livestock farmers across the country as well as industry players and stakeholders in the livestock sector to our first ever livestock show.

The show is part of our County's efforts to implement and actualize H.E. President Uhuru Kenyatta's vision under the Big 4 Agenda as a strategic intervention for sustainable, social and economic prosperity for our country.

**Objectives of this inaugural livestock show include:**

- To showcase the County's livestock and potential;
- To share and disseminate information on advanced livestock breeding technologies;
- To introduce farmers to enhanced revenue opportunities through value addition concepts;
- To expose farmers to better markets for livestock products;
- To showcase the County's potential for external investments in the livestock sector; and
- To create synergies and partnerships amongst stakeholders in the livestock sector across Counties and at the National level.

The County Government is committed to the realization of the Big 4 Agenda and is of the view that devolution can be utilized as a strategic intervention to implement and actualize the Agenda. Narok County is playing a critical role in the Nation's food security. It has the potential for high quality livestock production and this inaugural show will go a long way in enabling the County to reach its full potential, thereby actualizing our national aspiration for food security and nutrition.

**REPUBLIC OF KENYA**



**THE NATIONAL ASSEMBLY**

**TWELFTH PARLIAMENT - SECOND SESSION**

**In the Matter of consideration by the National Assembly of  
 the Ratification of the Revised Constitution of the African Civil Aviation  
 Commission**

**SUBMISSION OF MEMORANDA**

The National Assembly is in receipt of the above-mentioned treaty for approval for ratification by the Government of the Republic of Kenya. The main purpose of this treaty is to:

- Foster compliance with International Civil Aviation Organization (ICAO) standards and recommended practices for the safety, security and environmental protection in civil aviation in Africa;
- Promoting understanding on policy matters between its member States and States in other parts of the world;
- To enhance efficiency and regularity of the air transport industry among African States;
- Formulating and enforcing appropriate rules and regulations that give fair and equal opportunity to all stakeholders and promote fair competition.

The treaty has since been committed to the Departmental Committee on Transport, Public Works and Housing for deliberation prior to consideration by the National Assembly on the proposed approval of ratification.

Pursuant to Article 118 (1) (b) of the Constitution and section 8 of the Treaty Making and Ratification Act, 2012, the Committee invites members of the public to submit any representations they may have on the said treaty.

The views, representations or written submissions may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the Office of the Clerk, **First Floor, Main Parliament Building, Nairobi**; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received **on or before Friday, 7th December, 2018 at 5:00 pm.**

**MICHAEL R. SIALAI, EBS**  
**CLERK OF THE NATIONAL ASSEMBLY**

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**Power > Lonyangapuo stormed a police roadblock on Wednesday and forcibly released a bodaboda rider**

# Are governors the new lords of impunity?

Some are accused of abusing their power to pilfer public resources and commit other crimes but don't want to be held accountable for their actions

BY KENNEDY KIMANTHI  
@KimanthiKen  
kkimanthi@ke.nationmedia.com

**T**hey are flashy and exude authority. They are the powerful guys in town — the lords of the counties.

Since 2013 when the first crop of governors were sworn into office, they have been strutting across various counties showcasing their newfound power and wealth.

However, they are now being accused of financial mismanagement, resource pilferage and poor service delivery, among other ills.

Last Friday, police officers attached to West Pokot Governor John Lonyangapuo were withdrawn after the county boss stormed a roadblock on Kapenguria-Lodwar road and forcibly released a bodaboda rider on Wednesday evening.

The rider had been arrested for flouting traffic rules.

A furious Lonyangapuo threw away the officers' metallic spikes and ordered the police to leave the place, accusing them of collecting bribes and harassing motorists.

And now the governor's lobby has demanded the immediate reinstatement of Mr Lonyangapuo's security detail, saying the withdrawal was an infringement on his rights as a State officer.

"This serves as an affirmation to the entire public that the respective individual has been given the responsibility to serve constituents



FILE | NATION

## What's alleged

### COUNTY BOSSES ON THE SPOT

Since 2013 when the first crop of governors were sworn into office, they have been strutting across various counties showcasing their newfound power and wealth.

However, they are now being accused of financial mismanagement, resource pilferage and poor service delivery, among other ills.

West Pokot Governor John Lonyangapuo on October 8. He is accused of forcibly rescuing a bodaboda operator who had flouted traffic rules.

and in the discharge of his or her duties is entitled to certain benefits. This is reiterated in Section 30 of the County Governments Act," said Council of Governors (CoG) chairman Josphat Nanok in a statement.

"In light of the above, the Salaries and Remuneration Commission, under Article 230 (4) (a) of the Constitution, set security as one of the benefits accruing to State officers serving in the county government vide the Gazette Notice No. 2888 of March 1, 2013."

But Governor Lonyangapuo's case is not exceptional.

In July, MPs and senators were up in arms against governors who wanted to be shielded from prosecution while in office.

CoG had said its members deserve similar immunity to that granted to the President in civil and criminal proceedings.

Mr Nanok had charged that the national government was orchestrating arbitrary arrests against them with the aim of embarrassing them, and not necessarily fighting corruption. It is these remarks that raised fears that the county bosses tolerate impunity even as some of

them have been prosecuted over graft and other forms of crime.

In July, the Ethics and Anti-Corruption Commission embarked on reviving stalled corruption cases involving governors.

Former Nyandarua Governor Waitthaka Mwangi was charged in a Nakuru anti-corruption court with "wilful failure to comply with the law relating to the procurement contrary to Section 48 of the Economic Crimes Act, 2003".

Busia Governor Sospeter Ojaamong is accused of engaging a company known as Madam Enterprise to conduct a feasibility study on waste management which the county had not budgeted for.

In the process, the county government lost Sh8 million. Mr Ojaamong and his co-accused allegedly committed the offence between March 15 and September 25, 2014.

Former Nairobi Governor Evans Kidero has denied three corruption-related charges leading to the loss of Sh213 million.

There were also raids at the homes of former governors Samuel Ragswa (Tharaka-Nithi) and Godan Doyo (Isiolo).

Mr Doyo had been charged with economic crimes and abuse of office before a Meru court.

Migori Governor Okoth Obado is accused of murdering university student Sharon Otieno and is also facing guns-related charges.

## REPUBLIC OF KENYA



### THE NATIONAL ASSEMBLY

#### TWELFTH PARLIAMENT - SECOND SESSION

In the Matter of consideration by the National Assembly of the Ratification of the Revised Constitution of the African Civil Aviation Commission

#### SUBMISSION OF MEMORANDA

The National Assembly is in receipt of the above-mentioned treaty for approval for ratification by the Government of the Republic of Kenya. The main purpose of this treaty is to:

- Foster compliance with International Civil Aviation Organization (ICAO) standards and recommended practices for the safety, security and environmental protection in civil aviation in Africa;
- Promoting understanding on policy matters between its member States and States in other parts of the world;
- To enhance efficiency and regularity of the air transport industry among African States;
- Formulating and enforcing appropriate rules and regulations that give fair and equal opportunity to all stakeholders and promote fair competition.

The treaty has since been committed to the Departmental Committee on Transport, Public Works and Housing for deliberation prior to consideration by the National Assembly on the proposed approval of ratification.

Pursuant to Article 118 (1) (b) of the Constitution and section 8 of the Treaty Making and Ratification Act, 2012, the Committee invites members of the public to submit any representations they may have on the said treaty.

The views, representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, First Floor, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Friday, 7<sup>th</sup> December, 2018 at 5:00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

## Juma's bid to clear name 'time-barred'

BY SAMWEL OWINO

The National Assembly Public Accounts Committee has dismissed a request by Foreign Affairs Cabinet Secretary Monica Juma (right) to have her name expunged from its report over the irregular award of a Sh1.75 billion tender for the provision of comprehensive group life insurance cover for the police and prisons services.

Committee Chairman Opiyo Wandayi said the CS's request is time-barred since the report has already been adopted by the House.

He said the committee relied on facts tabled before it by the Office of the Auditor-General.

In a letter to National Assembly Clerk Michael Sialai dated November 25, seeking to have her name expunged from the report, Ms Juma argued that by the time she took office as accounting officer at the Interior ministry, the contract had already been signed.

"I took over office of Principal Secretary in the Department of Interior on Wednesday, August 20, 2014. By the time I took office, the said contract had been signed and executed," she said.

"In the light of this, I urge



that my name be expunged from the report. This is critical because as it is, when the report was tabled in Parliament, the recommendations of the PAC were reported in the Daily Nation, generating huge public interest and damaging my person," she added.

The CS expressed fears that failure to correct the report's recommendations would damage her reputation.

But Mr Sialai responded that he had already forwarded the letter to Mr Wandayi for consideration.

And Mr Wandayi said: "The report has already been adopted and the avenues the CS has for now is to either lobby the entire House to rescind its decision, or go to court for an order to expunge the offending section(s)."

## MPs worried over execution of project

BY DAVID M WERE

Some MPs from Northern Kenya have raised concerns over the delayed implementation of the Sh1 billion World Bank-funded project to mitigate the impact of environment degradation on communities hosting refugees.

The Kenya Development Response to Displacement Impact Project (KDRDIP) was signed between Kenya and the World Bank in May last year, and was meant to benefit Turkana, Wajir and Garissa counties. It was meant to start within three months, but until now, the local communities have not benefited, Mr Abdikarim Osman (Fafi) and Ms Sadiq Abdil (Ijara) said. They also claim that the government is not keen on involving the local leadership.

"KDRDIP has been incurring expenses on boardroom meetings and seminars but none of the project has been launched," Mr Osman said. Mr Osman said excluding local communities from the project goes against the reason for which it was started.

The MPs appealed to President Uhuru Kenyatta to intervene, say their efforts to seek audience with Head of Civil Service Joseph Kimani who chairs the National Project Implementation Unit, have been fruitless.

The multibillion, five-year project was aimed at ensuring access to basic social services, expanding economic activities and addressing the environmental challenges caused by refugee camps among other issues.

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CONSTITUTION OF THE AFRICAN CIVIL AVIATION COMMISSION

## CONSTITUTION OF THE AFRICAN CIVIL AVIATION COMMISSION

**WHEREAS** civil aviation plays an important role in achieving the objectives of the African Union (AU) as enshrined in the Constitutive Act of the African Union adopted by the Heads of State and Government on 11 July 2000 in Lome, Togo;

**WHEREAS** the development of safe and orderly air transport services into, within and from Africa is to be established on the basis of equality of opportunity and operated soundly and economically as envisaged in the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944;

**WHEREAS** the African Civil Aviation Commission (AFCAC) was conceived by the Constitutive Conference convened by the International Civil Aviation Organization (ICAO) and the Organization of African Unity (OAU) in Addis Ababa, Ethiopia in 1969 and became an OAU/AU Specialized Agency on 11 May 1978;

**WHEREAS** the Abuja Treaty of 3 June 1991 adopted by the Assembly of Heads of State and Government of the Member States of the OAU established the African Economic Community with the aim of *inter alia* deriving mutual benefit, coordination and integration of policies for the social and economic development of Africa more particularly in civil aviation;

**CONSIDERING** the Decision taken in Yamoussoukro, Cote D'Ivoire on 14 November 1999, relating to the implementation of the Yamoussoukro Declaration for the liberalization of access to air transport markets in Africa which was subsequently endorsed by the Assembly of Heads of State and Government of the OAU vide Decision AHG/OAU/AEC/Dec.1 (IV), adopted in Lome, Togo, on 12 July 2000;

**RECALLING** the Ministerial Decision of the third African Union Conference of Ministers responsible for Air Transport adopted in Addis Ababa, Ethiopia on 11 May, 2007 and subsequently endorsed by the Assembly of Heads of State and Government in Accra, Ghana on 29 June 2007 entrusting AFCAC with the responsibility of being the Executing Agency for the Yamoussoukro Decision;

**CONVINCED** of the need for a common civil aviation policy capable of promoting the development of African airlines and enhancing African participation in international air transport;

**RECOGNIZING** that AFCAC should assist African States in supplementing the work of ICAO;

**THEREFORE**, We the African States **HAVE AGREED** to the following provisions:

### SECTION I - GENERAL PROVISIONS

#### Article 1 *Definitions*

*For the purpose of this Constitution the terms and expressions below shall have the following meaning :*

'Abuja Treaty' means the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on 3 June, 1991 and which entered into force on 12 May 1994;

'AFCAC' means the African Civil Aviation Commission as established in 1969 and referred to in Article 2 of this Constitution;

'AFCAC Region' shall refer to a geographical region of Africa, as defined by the African Union;

'African State' means an African State, member of the African Union or the United Nations;

'Assembly' means the Assembly of Heads of State and Government of the African Union;

'AU' means the African Union as established by the Constitutive Act of the Union;

'Bureau' means the AFCAC Bureau as described in Article 12 of this Constitution;

'Chairperson' means the Chairperson of the African Union Commission;

'Constitution' means this AFCAC Constitution as adopted by the Meeting of Plenipotentiaries held in Dakar, Senegal on the 16<sup>th</sup> of December 2009;

'Executing Agency' means the Body referred to in Article 9.4 of the Yamoussoukro Decision;

'Executive Council' means the Executive Council of Ministers of the African Union;

'ICAO' means the International Civil Aviation Organization created pursuant to the Chicago Convention, 1944 and which is the international body responsible for the regulation of civil aviation worldwide;

'Member State' means an African State which has signed or ratified/acceded to the AFCAC Constitution;

'Monitoring Body' means the Monitoring Body established by Article 9.2 of the Yamoussoukro Decision;

'NEPAD' means the AU New Partnership for African Development Programme;

'Plenary' means the Assembly of designated representatives of Member States of AFCAC whose functions are described in Article 10 of this Constitution;

'RECS' means the Regional Economic Communities as recognized by the AU;

'Secretariat' means the organ referred to in Article 14 of this Constitution;

'Secretary General' means the Secretary General of AFCAC as provided for under Article 14 of this Constitution;

'Sub-Committee on air transport established under Article 9.1 of the Yamoussoukro Decision' means the sub-sectoral Committee on air transport, the Body referred to in Article 3 of the Rules of Procedure of the Conference of Ministers of Transport, adopted by the Thirteenth Session of the Executive Council held in Sharm El Sheikh, Egypt, from 24 to 28 June 2008;

'Yamoussoukro Decision' means the Decision relating to the Implementation of the Yamoussoukro Declaration concerning the liberalization of access to air Transport markets in Africa done at Yamoussoukro on 14 November 1999.

## **Article 2** **Establishment of AFCAC**

There shall continue to be the African Civil Aviation Commission (AFCAC) as established by the 1969 AFCAC Constitution. AFCAC is the Specialized Agency of the African Union responsible for Civil Aviation matters in Africa.

## **Article 3** **Objectives**

AFCAC's objectives shall be *inter alia*:

- a) Coordinate civil aviation matters in Africa and to cooperate with ICAO and all other relevant organizations and other bodies which are involved in the promotion and development of civil aviation in Africa.
- b) Facilitating, coordinating and ensuring the successful implementation of the Yamoussoukro Decision by supervising and managing Africa's liberalized air transport industry.
- c) Formulating and enforcing appropriate rules and regulations that give fair and equal opportunity to all stakeholders and promote fair competition.
- d) Promoting understanding on policy matters between its Member States and States in other parts of the world.
- e) Fostering *inter alia* the implementation of ICAO Standards and Recommended Practices for the safety, security, environmental protection and regularity of the aviation sector.
- f) Ensuring adherence to and implementation of Decisions of the Executive Council and Assembly.

## **Article 4** **Functions**

AFCAC shall carry out the following functions:

- a) undertake studies on technical regulatory and economic developments in air transport, with particular focus on their implications for Africa;
- b) encourage and support Member States to comply with ICAO Standards and Recommended Practices, as well as the regional air navigation plans;
- c) foster and coordinate programmes for the development of training facilities in Africa and to encourage and support the training and development of personnel in all fields of civil aviation;
- d) encourage and support the creation of autonomous civil aviation entities;

- e) develop collective arrangements to secure the necessary resources for the promotion of international civil aviation, particularly those provided within the framework of bilateral and multilateral programmes for technical cooperation to Member States;
- f) ensure advocacy and defence of common positions of member States at international fora relating to civil aviation;
- g) ensure seamless and close co-operation with the various RECs as well as those of other African Organisations concerned with civil aviation matters;
- h) advise Member States on all civil aviation matters;
- i) examine specific problems which may hinder the development and operation of the African civil aviation industry and, where possible, take corrective and/or preventive actions in coordinating with Member States as required;
- j) act pursuant to provisions of the Article 9 of the Yamoussoukro Decision to discharge its duties of Executing Agency of Air Transport in Africa;
- k) develop and harmonize common rules and regulations for the safety, security, environmental protection, fair competition, dispute settlement and consumer protection, amongst others;
- l) increase and coordinate synergies in the fields of search and rescue, salvage and accident investigation;
- m) coordinate the development and implementation of plans in the field of aviation infrastructure;
- n) coordinate the election of African States into the ICAO Council and of African experts into the Air Navigation Commission after receiving the approval of AU;
- o) support and facilitate the appointment of Africans into ICAO, its organs and other international civil aviation bodies; and
- p) perform such other functions as may be conferred upon it by the Executive Council or the Assembly of the African Union to fulfil its objectives.

#### Article 5 *Membership*

Membership shall be open to all African States. Each Member State shall enjoy equal rights in terms of participation and representation at AFCAC meetings.

#### Article 6 *Legal Capacity*

AFCAC shall enjoy, in the territory of each Member State, legal capacity accorded to legal persons under the national laws of the Member States as may be necessary for the fulfilment of its objectives and the exercise of its functions.

**Article 7**  
*Privileges and Immunities*

AFCAC, its Representatives and Staff shall enjoy in the territory of each Member State, the privileges and immunities stipulated in the 1964 General Convention on the Privileges and Immunities of the OAU/AU.

**Article 8**  
*Headquarters*

1. The Headquarters of AFCAC is established in Dakar, Senegal. The Headquarters may be transferred to another Member State by a decision of the Plenary, which shall be on the recommendation of the Bureau in accordance with the 'AU Criteria for hosting AU Organs'.

2. The Headquarters shall be governed by a Host Agreement negotiated between the Secretariat and the Host Country and approved by the Plenary, which shall be reviewed periodically to ensure strict compliance and facilitate the smooth functioning of AFCAC.

**SECTION II - AFCAC STRUCTURES**

**Article 9**  
*Organs of AFCAC*

The Organs of AFCAC shall be:

- a) The Plenary;
- b) The Bureau; and
- c) The Secretariat.

**Article 10**  
*The Plenary*

1. The Plenary shall be the supreme organ of AFCAC.
2. The Plenary shall be composed of duly accredited representatives of Member States responsible for Civil Aviation.
3. The Plenary shall meet in:
  - a) Ordinary session: once every three (3) years; and
  - b) Extraordinary session: at the initiative of the Bureau or at the request addressed to the Bureau by a Member State and upon the approval of two-thirds of all Member States.
4. The quorum for the Plenary shall be two-thirds majority of Member States.
5. Without prejudice to the provisions of Article 21, decisions of the Plenary shall be adopted by consensus failing which by two-thirds majority of Member States present and having the right to vote.
6. The Plenary shall take place at the Headquarters unless a Member State invites the Plenary to hold a session in its territory.

Article 11  
*Functions of the Plenary*

The functions of the Plenary shall be to:

- a) issue policy guidelines through resolutions and recommendations;
- b) elect the President and Vice-Presidents to serve as members of the Bureau;
- c) approve the Organizational Structure of AFCAC and appoint the Secretary General upon the recommendation of the Bureau;
- d) approve the work programme, business plan, budget, rules and regulations of AFCAC;
- e) establish committees and working groups, as necessary, to undertake special assignments or tasks on civil aviation in Africa, with such functions as may be specified, and appoint their members;
- f) approve such other activities, rules and procedures as deemed appropriate, to meet the objectives of AFCAC;
- g) appoint External Auditors of AFCAC;
- h) consider and take appropriate action on the External Auditors report;
- i) ensure the effective implementation of the Yamoussoukro Decision, principally the liberalization of air transport services;
- j) adopt the financial rules and regulations, accounting and auditing rules and regulations for AFCAC;
- k) submit its tri-annual report on the state of implementation of the Yamoussoukro Decision to the Assembly of Heads of State and Government through the Executive Council;
- l) adopt its rules of procedure, including the establishment of committees as deemed appropriate as well as the Rules of Procedures of the Bureau; and
- m) undertake such other functions as may be requested or conferred upon it by the relevant Organs of the AU, the Monitoring Body and the Sub-Committee of Air Transport.

Article 12  
*The Bureau*

1. The Bureau shall be composed of the President and five (5) Vice-Presidents elected by the Plenary in accordance with the AU geographical representation formula.
2. The Coordinator of the African Group at ICAO Council shall attend meetings of the Bureau in an ex-officio capacity.
3. The Presidency of AFCAC shall be on rotational basis, each region serving one (1) term of three (3) years.



4. The Vice-Presidents shall each represent one AU region.
5. Each Vice-President shall serve a term of three (3) years at a time and may be re-elected only once.
6. Members of the Bureau shall possess relevant professional experience in the field of civil aviation and participate actively in carrying out AFCAC activities.
7. Members of the Bureau shall attend all meetings of the Bureau and perform their responsibilities as assigned by the Bureau, in the interests of AFCAC.
8. Decisions of the Bureau shall be taken in accordance with its Rules of Procedure.
9. The quorum required for the Bureau meetings shall be fixed by the Rules of Procedures of the Bureau.
10. Any Member State may participate, without a vote, in the consideration by the Bureau of any question which especially affects its interests. No member of the Bureau shall vote in the consideration by the Bureau of a dispute to which that Member State is a party.
11. The Bureau may determine its own internal organization, arrangements and procedures, including the establishment of committees as may be deemed appropriate.

**Article 13**  
*Functions of the Bureau*

The functions of the Bureau shall be to:

- a) convene the ordinary and extraordinary plenary sessions, subject to the relevant provisions of Article 10, and determine the provisional agenda;
- b) ensure the implementation of the AFCAC work programmes and other resolutions of the AFCAC Plenary;
- c) supervise and coordinate the activities of the Secretariat and any committee or working group;
- d) prepare its own rules of procedures and submit them to the Plenary for approval;
- e) implement the resolutions, directives and decisions of the Plenary and discharge the duties and obligations which are conferred upon it in the Constitution;
- f) select and recommend from a short-list to the Plenary, candidates for the position of Secretary General;
- g) supervise the administrative and financial management of the Secretariat;
- h) submit periodic reports on its activities to the Plenary; and
- i) carry out any other functions that may be assigned to it by the Plenary.

Article 14  
*The Secretariat*

1. The Secretariat shall be headed by a Secretary-General assisted by the necessary and competent Staff for the smooth functioning of AFCAC.

2. The Secretary General shall be appointed by the Plenary upon the recommendation of the Bureau.

3. In the appointment of the Secretary General and other Staff, consideration shall be made to ensure competence, qualification, experience, high integrity and geographical distribution of posts.

4. The Secretary General shall serve in office for a term of three (3) years renewable once only for a further term of three (3) years.

5. The Secretary-General shall:

- a) follow up and ensure the implementation of the resolutions, directives and decisions of the Plenary, Bureau and Monitoring Body, in accordance with the rules and regulations of AFCAC;
- b) represent AFCAC and defend its interests under the guidance and approval of the Plenary and the Bureau;
- c) promote the development of the programmes, projects and initiatives of AFCAC;
- d) prepare and submit proposals concerning the work programmes, business plans, strategic objectives, projects, activities and budgets of AFCAC and ensure their implementation;
- e) oversee the administrative and financial management of AFCAC by appropriately managing the budgetary and financial resources including collecting the approved revenue from various sources;
- f) prepare financial reports including reports for the past triennial and a budget for the forthcoming triennial to be submitted by the Bureau to the Plenary for approval in accordance with AFCAC rules and regulations;
- g) submit reports on the activities of AFCAC to the Plenary, Bureau and Monitoring Body;
- h) appoint staff and terminate contracts of appointment in accordance with AFCAC Staff Rules and Regulations;
- i) prepare and service meetings of the Plenary, Bureau and Committees of AFCAC;
- j) organize meetings and undertake studies as necessary and maintain relevant records in relation thereto;
- k) submit to the Bureau and the Monitoring Body annual reports on the operations of AFCAC;
- l) keep in custody the seal, documents, files and other data relating or relevant to the work of AFCAC; and
- m) make recommendations to improve AFCAC's operational efficiency.

#### **Article 15**

##### *Reports to the Sub-Committee on Air Transport*

The Sub-Committee on Air Transport is the Conference of Ministers responsible for air transport matters in Africa, whose mandate shall be to, *inter alia*, consider and adopt recommendations submitted by AFCAC on all activities concerning the functions of the Executing Agency entrusted to it and other matters requiring political Decisions in accordance with the African Union procedures.

### **SECTION III - INTERNATIONAL RELATIONS**

#### **Article 16**

##### *Cooperation with other Organizations*

AFCAC shall work in close cooperation with the different AU Organs, RECs, ICAO, United Nations Economic Commission for Africa (UN-ECA) as well as with other governmental and non-governmental international organizations, civil aviation service providers on civil aviation matters of mutual interest.

### **SECTION IV - FINANCIAL MATTERS**

#### **Article 17**

##### *Financial Resources*

- a) The regular budget of AFCAC shall be funded by contributions made by Member States in accordance with the scale of assessment determined by the Plenary;
- b) Supplemental budgets of AFCAC shall be made available, where necessary to meet the extra and/ or special budgetary expenditure of AFCAC. The Plenary shall determine the contributions of Member States to the Special budgets of AFCAC; and
- c) In addition AFCAC may receive Grants, Donations and proceeds for its activities as approved by the Bureau.

#### **Article 18**

##### *Sanctions*

1. Any Member State that fails to honour its financial obligations to the Commission for a period of two (2) years or more shall, as long as it is in such arrears, forfeit the right to vote in the Plenary or to present candidates for any elective or other post within AFCAC.
2. Any Member State that remains in sanctions for a period of three (3) years or more shall, in addition to the sanctions referred to in the preceding paragraph, have its nationals deprived of the rights, privileges, benefits and advantages usually accorded to Member States.
3. Any violation of any provision of this constitution by a Member State shall result in sanctions as maybe determined by the Plenary.

## SECTION V - TRANSITIONAL AND FINAL PROVISIONS

### Article 19

#### *Signature, Ratification, Accession and Entry into Force*

1. This Constitution shall be open to signature, ratification, acceptance and accession by African States in accordance with their respective Constitutional procedure.
2. The instrument of ratification shall be deposited with the Chairperson of the African Union Commission.
3. Any African State acceding to this Constitution after its entry into force shall deposit the instrument of accession with the Chairperson of the Commission.
4. This Constitution shall provisionally enter into force upon signature by fifteen African States and shall definitively enter into force upon ratification by fifteen (15) African States.
5. The Depositary shall give notice to AFCAC and any Member State, of the date on which this Constitution enters into force provisionally and definitively.

### Article 20

#### *Transitional Arrangements*

Without prejudice to Article 26, a Member State under the 1969 AFCAC Constitution shall continue to maintain its membership of AFCAC until such a time that this Constitution comes into force definitively.

### Article 21

#### *Denunciation*

Any denunciation of this Constitution shall be made through appropriate notification to the Chairperson of the AU Commission who, within thirty (30) days, shall advise AFCAC and its Member States accordingly. The denunciation of any State from membership of AFCAC shall become effective one (1) year following the receipt by the Chairperson of the AU Commission of such notification.

### Article 22

#### *Amendment and Revision*

1. Any Member State may submit proposals for the amendment or revision of this Constitution.
2. Proposals for amendments or revision shall be submitted to the Chairperson of the AU Commission who shall transmit the same to AFCAC and the Member States within thirty (30) days of receipt thereof.
3. The Plenary shall meet to consider the proposals for amendments or revisions and submit their recommendations to the Executive Council.
4. The Assembly, upon the advice of the Executive Council, shall examine the recommendations within a period of one year following notification of Member States in accordance with the provisions of paragraph 2 of this Article.
5. Amendments or revisions shall be adopted by the Assembly and submitted for ratification by all Member States in accordance with their respective constitutional procedure. The amendments shall enter into force in accordance with the provisions of Article (19).

**Article 23**  
*Settlement of Disputes*

1. Any dispute arising between two (2) or more Member States on the application or interpretation of this Constitution shall in the first instance be settled through negotiations.
2. In case the dispute(s) remains unresolved within twenty one (21) days, either Party may refer the dispute to the Bureau for resolution. The Bureau shall make a decision within sixty (60) days of receipt of the referral.
3. In the event that the Bureau cannot resolve the dispute or should their decision fail to provide a satisfactory solution to either Party within sixty (60) days, the dispute may be settled by arbitration. The arbitration team shall consist of a panel of African arbitrators appointed by each party. An additional arbitrator shall be appointed by the other arbitrators.
4. The arbitration panel shall adopt its own Rules of Procedure and make an award within six (6) Months. The decision of the Panel shall be final and binding on the Parties.
5. Without prejudice to the above provisions, the African Court of Justice and Human Rights may be seized with any dispute regarding the application or interpretation of this Constitution.

**Article 24**  
*Working Languages*

The working languages of AFCAC shall be those of the AU.

**Article 25**  
*Registration*

This Constitution shall be registered with ICAO in compliance with Article 83 of the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944.

**Article 26**  
*Abrogation*

This Constitution shall abrogate and supersede, as of the date of its entry into force, the AFCAC Constitution adopted at Addis Ababa, Ethiopia, on 17 January 1969.

IN WITNESS, WHEREOF WE, the Plenipotentiaries, having been duly authorized, have adopted this Constitution.

DONE at Dakar, Senegal on the 16<sup>th</sup> day of December 2009, in Arabic, English, French and Portuguese, all the texts being equally authentic.



President of AFCAC/Chairperson  
of the Meeting of Plenipotentiaries

12 OCT 2018



MAJORITY PARTY UNIT  
1702 BENJAMIN WASHIAH  
EBI MY 4N TUESDAY  
2ND OCTOBER 2018

MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,  
URBAN DEVELOPMENT AND PUBLIC WORKS  
STATE DEPARTMENT OF TRANSPORT  
OFFICE OF THE PRINCIPAL SECRETARY

Telephone: +254-20-2729200  
Fax: +254-20-2726362  
E-mail: [ps@transport.go.ke](mailto:ps@transport.go.ke)

TRANSCOM HOUSE  
NGONG ROAD  
P.O. Box 52692 - 00200  
NAIROBI

When replying please quote Ref.

MOT&I/AT/014 VOL.II (75)

3<sup>th</sup> September, 2018

① DLSP  
S/2/18

Micheal R. Sialai, EBS  
The Clerk of the National Assembly  
Parliament Building  
NAIROBI

Dear Sir

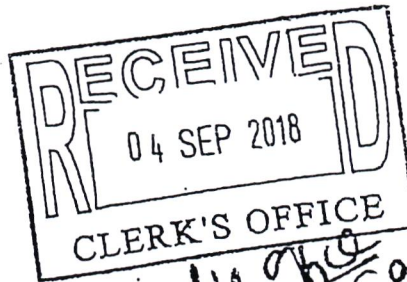
RATIFICATION OF THE REVISED CONSTITUTION OF THE AFRICAN  
CIVIL AVIATION COMMISSION

The Cabinet during the 3<sup>rd</sup> Cabinet Meeting 2018 held on 14<sup>th</sup> August, 2018 approved the ratification of the revised constitution of the African Civil Aviation Commission (AFCAC).

Attached is a copy of the revised Constitution of the African Civil Aviation Commission (AFCAC) and an Explanatory Memorandum for consideration by the Committee on Transport, Housing and Public Works.

Yours faithfully

*Booko*



For Esther Koimett, CBS  
PRINCIPAL SECRETARY

Attach.

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**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN  
DEVELOPMENT AND PUBLIC WORKS**

**EXPLANATORY MEMORANDUM ON THE RATIFICATION OF THE  
REVISED CONSTITUTION OF THE AFRICAN CIVIL AVIATION  
COMMISSION (AFCAC)**

**(a) The Objects and Subject Matter of the Treaty;**

The African Civil Aviation Commission (AFCAC) is the African Union's specialized Agency mandated with coordinating civil aviation matters in Africa and cooperating with the International Civil Aviation Organization (ICAO) and all other relevant organizations and other bodies which are involved in the promotion and development of civil aviation. Its main objectives are;

- To foster compliance with ICAO Standards and Recommended Practices for the safety, security and environmental protection in civil aviation in Africa;
- Promoting understanding on policy matters between its member States and States in other parts of the world;
- To enhance the efficiency and regularity of the air transport industry among African States and;
- Formulating and enforcing appropriate rules and regulations that give fair and equal opportunity to all stakeholders and promote fair competition.

**(b) Any Constitutional implications including –**

**(i) Any proposed amendment to the Constitution;**

There is no proposed amendment to the Constitution.

**(ii) That the Treaty is consistent with the Constitution and promotes constitutional values and objectives;**

The Treaty is consistent with the Constitution and promotes constitutional values and objectives.

**(c) The National Interests which may be affected by the ratification of the Treaty;**

AFCAC shall work in close cooperation with the different AU Organs, (Regional Economic Communities) RECs, ICAO and the United Nations Economic Commission for Africa (UN-ECA) as well as with other governmental and non-governmental international organizations, civil aviation service providers on civil aviation matters of mutual interest. It is therefore in the interest of the Country that it ratifies the Constitution so as to secure its interests.

**(d) Obligations imposed on Kenya by the Treaty;**

**Sanctions** - Any Member State that fails to honor its financial obligations to the Commission for a period of two (2) years or more shall, as long as it is in such arrears, forfeit the right to vote in the Plenary or to present candidates for any elective or other post within AFCAC.

**Denunciation** - Any denunciation of this Constitution shall be made through appropriate notification to the Chairperson of the AU Commission who, within thirty (30) days shall advise AFCAC and its Member States accordingly. The denunciation of any State from membership of AFCAC shall become effective one (1) year following the receipt by the Chairperson of the AU Commission of such notification.

**Settlement of Disputes** - Any dispute arising between two (2) or more Member States on the application or interpretation of this Constitution shall in the first instance be settled through negotiations.

In case the dispute(s) remains unresolved within twenty one (21) days either Party may refer the dispute to the Bureau for resolution. The Bureau shall make a decision within sixty (60) days of receipt of the referral.

In the event that the Bureau cannot resolve the dispute or should their decision fail to provide a satisfactory solution to either Party within sixty (60) days, the dispute may be settled by arbitration. The arbitration team shall consist of a panel of African arbitrators appointed by each party. An additional arbitrator shall be appointed by the other arbitrators.

The arbitration panel shall adopt its own Rules of Procedure and make an award within six (6) Months. The decision of the Panel shall be final and binding on the



Without prejudice to the above provisions, the African Court of Justice and Human Rights may be seized with any dispute regarding the application or interpretation of this Constitution.

**(e) Requirements for implementation of the Treaty;**

The Constitution is open to signature, ratification, acceptance and accession by African States in accordance with their respective Constitutional procedure. The instruments of ratification shall be deposited with the Chairperson of the African Union Commission which shall give notice of the date of deposit to AFCAC and any Member States of AFCAC. The signing and ratification of the AFCAC Constitution will ensure that Kenya meets her commitments as a member State and maintains its membership to AFCAC upon definitive entry into force of the revised Constitution.

**(f) Policy and legislative considerations;**

A Member State under the 1969 Constitution shall continue to maintain its membership of AFCAC until such time that the revised constitution of 2009 definitely comes into force on ratification by the 15<sup>th</sup> African State.

**(g) Financial implications;**

The ratification of this Constitution will be incorporated into existing institutional frameworks, there are no budgetary changes envisaged in terms of financial implications.

**(h) Ministerial responsibility;**

The Cabinet Secretary exercises powers conferred by Section 52 (e) of the Civil Aviation Act (No. 21 of 2013).

**(i) Implications on matters relating to counties;**

There are no implications on matters relating to counties.

**(j) The summary of the process leading to the adoption of the Treaty;**

The revised Constitution of AFCAC was adopted and opened for signature in Dakar, Senegal on 16<sup>th</sup> December, 2009. The new AFCAC Constitution provisionally entered into force on 11<sup>th</sup> May, 2010 upon the 15<sup>th</sup> signature and will definitely enter into force upon ratification by 15 African States in accordance with

Article 19(4) of the said revised Constitution. Upon definitive entry into force the revised Constitution will supersede the AFCAC Constitution adopted at Addis Ababa, Ethiopia on 17<sup>th</sup> January, 1969.

**(k) The date of signature;**

The revised Constitution of AFCAC was adopted and opened for signature in Dakar, Senegal on 16<sup>th</sup> December, 2009.

**(l) The number of States that are party to the Treaty;**

The African Civil Aviation Commission (AFCAC) is the African Union's specialized Agency and therefore is constituted of Members of the African Union. Membership is open to all African States and each Member State shall enjoy equal rights in terms of participation and representation at AFCAC meetings.

**(m) the views of the public on the ratification of the treaty;**

The views of the public have not been sought regarding the ratification of the Treaty.

**(n) Whether the Treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;**


The Constitution has Articles that allow for Consultations when need arises, Dispute Resolution and Denunciation.

**(o) The proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and**

The Constitution has Articles that allow for Consultations when need arises, Dispute Resolution and Denunciation.

**(p) Whether expenditure of public funds will be incurred in implementing the Treaties and an estimate, where possible, of the expenditure.**

Public funds will be incurred in implementing the Treaties. The Kenya Civil Aviation Authority has budgeted for the regular contributions. The regular budget of AFCAC is funded through contributions made by Member States. Kenya joined AFCAC in 1969.



ESTHER KOIMETT, CBS  
PRINCIPAL SECRETARY

**MINUTES OF THE SEVENTEETH (17<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON SUNDAY, 11<sup>TH</sup> MARCH 2019 AT 3.00 P.M. AT HILTON GARDEN INN NAIROBI AIRPORT, MACHAKOS COUNTY**

**MEMBERS PRESENT**

1. Hon. David Pkosing - Chairperson
2. Hon. Moses Kuria - Vice Chairperson
3. Hon. Samuel Arama
4. Hon. David Njuguna Kiaraho
5. Hon. Ahmed Abdisalan Ibrahim
6. Hon. Ahmed Bashane Gaal
7. Hon. Dominic Kipkoech Koskei
8. Hon. Gideon Mutemi Mulyungi
9. Hon. Kulow Maalim Hassan
10. Hon. Mugambi Murwithania Rindikiri
11. Hon. Peris Pesi Tobiko
12. Hon. Rehema Dida Jaldesa
13. Hon. Shadrack John Mose
14. Hon. Tom Mboya Odege
15. Hon. Vincent Kemosi Mogaka

**MEMBERS ABSENT WITH APOLOGY**

1. Hon. Suleiman Dori Ramadhani
2. Hon. Johnson Many Naicca
3. Hon. Rigathi Gachagua
4. Hon. Savula Ayub Angatia

**SECRETARIAT**

- |                             |   |                      |
|-----------------------------|---|----------------------|
| 1. Ms. Chelagat Aaron Tungo | - | Clerk Assistant I    |
| 2. Mr. Ahmed Salim          | - | Clerk Assistant III  |
| 3. Ms. Christine Odhiambo   | - | Legal Counsel I      |
| 4. Mr. James Muguna         | - | Research Officer III |
| 5. Mr. Collins Mahambe      | - | Audio Officer        |
| 6. Mr. Moses Kariuki        | - | Sergeant at arm      |
| 7. Ms. Alice Kitur          | - | Executive Assistant  |

**MIN No. TPWH 067/2019:**                      **PRELIMINARIES**

The meeting was called to order at three o'clock, with a word of prayer from the chairperson. Members confirmed the agenda as consideration of the Consideration and Adoption of the Report on the Ratification of the Revised Constitution of the African Civil Aviation Commission.

**MIN No. TPWH 068/2019:**                      **CONSIDERATION AND ADOPTION OF THE  
REPORT ON THE RATIFICATION OF THE  
REVISED CONSTITUTION OF THE AFRICAN  
CIVIL AVIATION COMMISSION**

Members of the Committee went through the draft report on consideration for Ratification of the Revised Constitution of the African Civil Aviation Commission. Members adopted the report, the proposer being Hon. Vincent Kemosi and the seconder being Hon. Gideon Mulyungi.

**MIN No. TPWH 069/2019:**                      **ADJOURNMENT**

There being no other business, the sitting was adjourned at four o'clock. The next meeting to be held on Tuesday, 12<sup>th</sup> March 2019.

**Signed**.....  
**(Chairperson)**

**Date**.....