



REPUBLIC OF KENYA

BRIEF

ON

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

BY

MINISTRY OF TRANSPORT AND INFRASTRUCTURE

FEBRUARY 2015

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By the Leader
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1.0 BACKGROUND

- 1.1 The existing metre gauge railway is on concession to Rift Valley Railways (RVR) for a period of 25 years for freight operations due to come to an end on 30th June, 2031. The railway design and its current state limit its capacity and delivery speed and it cannot therefore meet the future demand for rail transport in the country and the region.
- 1.2 The Government therefore decided to build a new, modern, high capacity Standard Gauge Railway Line between Mombasa and Malaba with a branch line to Kisumu. The railway will be extended to Kampala (Uganda) and Kigali (Rwanda) as pronounced by the three Heads of State for the Republic of Rwanda, Uganda and Kenya on 28th August 2013 and in line with the signed Protocol and Tripartite Agreement. The line will also be extended to Juba following South Sudan accession to the Tripartite Agreement.
- 1.3 The objectives of developing the Standard Gauge Railway is to reduce the cost of doing business in the region and make the region competitive to investment through:
 - i) Reduced freight transportation tariff charges on average by 41.5% per tonne-kilometre;
 - ii) Reduced Transit time by freight trains on average by 26.6%;
 - iii) Increased rail transport share in the Northern corridor;
 - iv) Reduced damage to the roads on the Northern Corridor.
- 1.4 On 3rd August 2012, the Cabinet approved the development of Mombasa-Kampala Standard Gauge Railway with a branch to Kisumu through a Government -to- Government arrangement.
- 1.5 So far, Kenya Railways and China Road & Bridge Corporation (CRBC) have undertaken the Feasibility Study and Preliminary design of Phase 1 (Mombasa to Nairobi section – 485 km) defining the technical parameters

of the civil works, signaling and communication, operating plan as well as operating equipment requirement (locomotives and rolling stock).

- 1.6 Kenya Railways Corporation and China Road & Bridge Corporation (CRBC) signed Commercial Contracts for undertaking Civil Works and for providing Facilities, Locomotives and Rolling Stock on 11th July, 2012 and 4th October, 2012 respectively for Mombasa – Nairobi Section.
- 1.7 As a result, Government of Kenya and EXIM Bank of the Government of the Peoples Republic of China signed Memorandum of Understanding (MOU) on 19th August 2013 and Loan Agreement on 11th May 2014. The construction work has since commenced with a target completion date of October 2017.
- 1.8 The Government has also created a Railway Development Fund supported by a 1.5% levy on the cost of all imports to support the railway development.
- 1.9 To enable development and operationalisation of a Seamless Railway network from Mombasa to Kigali and Juba, the Summit of the Northern Corridor Integration Projects vide the 3rd Joint Communiqué directed the Partner States to develop a Standard Gauge Railway Protocol for the development and operations of the Standard Gauge Railways. The Protocol was signed by Kenya, Uganda, South Sudan and Rwanda in May 2014 and is expected to be ratified before next Summit in February/March 2015.
- 1.10 In order to comply with the Treaty Making and Ratification Act, on public consultations, the Corporation uploaded a copy of the protocol on its website and further caused an advert in the print media in form of a Public Notice to appear on Friday 19th September 2014 and by the expiry of the notice period on 26th September 2014, the Corporation received eleven emails but none of the emails objected to the protocol.

1.11 As a result, the Cabinet during its meeting of 15th January 2015 approved the ratification of the Protocol on Development and Operation of the Standard Gauge Railway. The Ministry of Transport and Infrastructure was therefore directed to submit the Protocol to Parliament for ratification.

2.0 OBJECTS AND SUBJECT MATTER OF THE PROTOCOL

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

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

3.0 CONSTITUTIONAL IMPLICATIONS

3.1 The Standard Gauge Railway Protocol does not propose any amendment to the Constitution of Kenya 2010. The Protocol is in line with the principles of the Constitution of Kenya, 2010 and specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness (cooperation), interdependence, non-aggression and non-interference in the internal affairs of each Contracting State.

3.2 The implementation of the Protocol will promote constitutional values and objectives through expediting economic growth and development of the country by reducing the cost of doing business and increasing the country's competitiveness which will result in improved welfare of the people of the Republic of Kenya.

4.0 IMPACT OF THE RATIFICATION OF THE PROTOCOL

Harmonisation of the policy, legal and institutional framework for SGR will enhance seamless flow of freight in the region. National trade facilitation and regional interests in this regard are also in effect safeguarded.

5.0 OBLIGATIONS IMPOSED ON KENYA/ REQUIREMENTS FOR THE IMPLEMENTATION OF THE PROTOCOL AND POLICY AND LEGISLATIVE CONSIDERATIONS

- 5.1 The Government of Kenya entered into an agreement with the Governments of Rwanda, South Sudan and Uganda to build a Standard Gauge Railway connecting the Port of Mombasa to Kampala in Uganda and Kigali in Rwanda and Juba in South Sudan and this will be implemented through the operationalisation of the signed Protocol.
- 5.2 Following ratification by the Cabinet, the Parliament will therefore need to ratify the Protocol before the next Summit to enable its implementation and facilitate mobilization of resources and development of the remaining railway sections in a manner that will create seamless network.
- 5.3 To develop the Seamless Railway network as envisaged through the Protocol for the development and Operation of the Standard Gauge Railway, the Kenya will be expected to:
- a) Ensure the harmonisation of the policy, legal and institutional framework for SGR;

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

6.0 FINANCIAL IMPLICATIONS

- 6.1 The major financial implications relate to the cost of borrowing, construction, purchase of rolling stock/equipment and compulsory land acquisition for the development of the Nairobi-Malaba/Kisumu Section which will be determined through the engineering studies.
- 6.2 The operating costs for operationalisation of the Protocol are minimal and will be met through the day to day budgetary allocation.

- (c) ensure that a person driving a long distance night time passenger service takes a break of a minimum of eight hours before the next night shift;
- (d) plan the journey in a manner that allows for a thirty minute refreshment break for both the driver and passengers at an appropriate location or facility every three to four hours in the course of the journey; and
- (e) employ two drivers for each vehicle.

13. A person shall take out an insurance cover for a public service vehicles, where the Insurance company—

Insurance.

- (a) is licensed by the Insurance Regulatory Authority under the Insurance Act to provide that category of insurance;
- (b) submits to the Authority a report on claims made in respect to accidents involving public service vehicles it has insured and compensation paid in the immediately preceding year; and
- (c) submits to the Authority its customer service charter and claims payment policy.

14. A person aggrieved by the decision of the Authority taken under these Regulations may within fourteen days of receiving the decision appeal to the Appeals Board.

Appeals

15. (1) A person who—

Offences
penalties.

and

- (a) operates a public transport vehicle without a valid licence issued by the Authority in respect to that vehicle;
- (b) drives a public service vehicle in breach of any provision of these regulations; or
- (c) provides false information to the Authority;

commits an offence and is liable on conviction to a fine not exceeding Fifty Thousand Shillings or to imprisonment for a term not exceeding one year or, both.

(2) The Authority may in addition to any other penalty prescribed under these Regulations—

- (a) cancel or withdraw the licence of a public service vehicle operated by an operator who has been convicted of an offence under these Regulations;
- (b) cancel or revoke the license or certificate of a driver who has been convicted of an offence under these Regulations;

- (c) where it deems necessary order that all vehicles belonging to the SACCO or Company involved be subjected to inspection.

16. Regulation 11 shall come into operation on the Fifteenth day of April, 2014.

17. Legal Notice No. 219 of 2013 is revoked.

Dated the 10th March, 2014.

MICHAEL KAMAU,
Cabinet Secretary for Transport and Infrastructure.

6.3 Public funds will be utilized in the implementation of the Protocol as relating to the development of the entire seamless railway network from Mombasa to Malaba/Kisumu.

7.0 MINISTERIAL RESPONSIBILITY

The responsibility for the implementation of the Protocol shall be by the Cabinet Secretary, Ministry of Transport and Infrastructure

8.0 IMPLICATIONS ON MATTERS RELATING TO COUNTIES

The SGR protocol does not have any implication on matters relating to the counties.

9.0 REQUEST TO THE MEMBERS OF PARLIAMENT

The Members of Parliament are requested to consider and ratify the Protocol for the Development and Management of the Mombasa-Malaba/Kisumu- Kampala/Juba/Kigali Standard Gauge Railway to enable its implementation.

Signed by

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**ENG. M. S. M. KAMAU, CBS
CABINET SECRETARY
MINISTRY OF TRANSPORT AND INFRASTRUCTURE**

Date.....

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 Into Force	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.



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