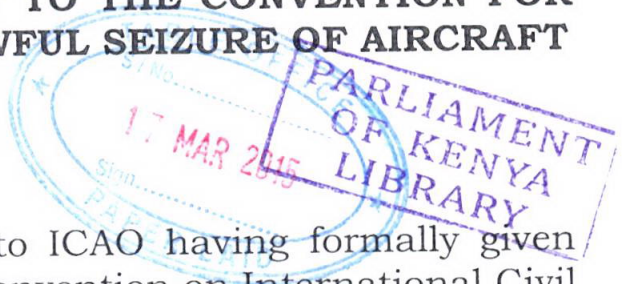


PARLIAMENTARY PAPER ON RATIFICATION OF THE CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION AND THE PROTOCOL SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT



1.0 Background

Kenya is a Contracting State to ICAO having formally given notice of its adherence to the Convention on International Civil Aviation on May 1, 1964. As a Contracting State of ICAO, Kenya has ratified thirty (30) instruments comprising of eleven (11) Conventions and nineteen (19) Protocols relating to civil aviation since it joined the Organization.

Kenya is a signatory to the Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation (Montreal Convention 1971) as amended by the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal Protocol 1988). Further, Kenya is also a signatory to the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention, 1970).

Emerging threats including the use of aircraft as weapons and the use of technological means necessitated ICAO to convene a diplomatic conference in Beijing, China in 2010 for purposes of modernizing the Hague Convention of 1970 and the Montreal Convention of 1971 as amended by the Montreal Protocol of 1988 to address these emerging threats to civil aviation security.

The Beijing Convention and the Beijing Protocol 2010 are the result of collective efforts of the international community to modernize the legal framework for aviation security. By criminalizing a number of acts constituting emerging threats against civil aviation, including certain preparatory acts of the offences, it will strengthen the capacity of Kenya to prevent the commission of these offences and to prosecute and punish

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those who commit such offences. The Convention and the Protocol will also contribute to the implementation of the United Nations Global Counter-Terrorism Strategy adopted on 8th September 2006 by enhancing the global treaty regime on counter-terrorism.

The Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (Beijing Convention 2010) and the Protocol Supplementary to the Convention on the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol 2010) were opened for signature and ratification on 10th September, 2010.

2.0 Analysis of the Issue

2.1 Objects and Subject Matter of the Convention and the Protocol.

The main object of the Convention and Protocol is to promote aviation security by addressing unlawful acts against civil aviation that may jeopardize the safety and security of persons and property, seriously affect the operations of air services, airports and air navigation facilities. The Convention and Protocol obligates the Contracting States to inter alia undertake to:

- a) Strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;
- b) Enhance the confidence of people in the use of aviation as a means of transport;
- c) To criminalize the use of civil aircraft for purposes of causing death, serious bodily injury or serious damage; of using civil aircraft to release or discharge any biological, chemical or nuclear (BCN) weapon or similar substances to cause death, serious bodily injury or serious damage;

- d) To criminalize the unlawful transport of BCN weapons, related materials or other dangerous materials; and
- e) Provide criminal liability of directors, organizers and financiers of an offence as well as the liability of those who knowingly assist an offender to evade investigation, prosecution or punishment.

2.2 Constitutional implications

- (i) The Convention and Protocol do not propose any amendment to the Constitution of Kenya 2010.
- (ii) The Convention and Protocol are 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, interdependence, non-aggression and non-interference in the internal affairs of each Contracting State.

2.3 Impact of the ratification of the Convention and Protocol on national interest, inter alia:-

- a) Enhance safety and security in civil aviation;
- b) Promote passenger and freight air transportation;
- c) Increase trade and tourism; and
- d) Facilitate regional and global integration.

2.4 Obligations imposed on Kenya by the Convention and Protocol

The Convention and Protocol requires the amendment of the Protection of the Aircraft Act, Cap 68 of the Laws of Kenya to align it with the provision of the Convention and Protocol.

2.5. Requirements for implementation of the Convention and Protocol

An amendment of the Protection of the Aircraft Act, Cap 68, of the Laws of Kenya to align it with the provision of the Convention and Protocol is required.

2.6 Policy and legislative considerations

- a) There are no foreseeable policy changes expected from the ratification of the Convention and Protocol.
- b) A review of the Protection of the Aircraft Act, Cap 68 of the Laws of Kenya to align it with the provision of the Convention and Protocol is required.

2.7 Financial Implications

There will be no financial implications of the ratification of the Convention and the Protocol.

2.8 Ministerial Responsibility

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

2.9 Implications on matters relating to Counties

As per the Kenya Constitution 2010, the areas of civil aviation and international relations covered by the Convention and Protocol fall under the functions of the National Government. The National Government shall whenever necessary coordinate with the County Governments.

3.0 The summary of the process leading to the adaption of the Convention and Protocol

- 3.1 Following the events of September 11, 2001, Member States and jurisdictions underlined the links between

terrorism, transnational organized crime, the international drug trade and money-laundering, and called on Countries that had not done so to become parties to the relevant international conventions.

- 3.2 On September 8, 2006, the UN General Assembly adopted United Nations Global Counter-Terrorism Strategy under resolution A/RES/60/288 as an instrument that would enhance national, regional and international efforts to counter terrorism. The adoption of the Convention and Protocol is one of the efforts by the civil aviation community of implementing the UN General Assembly's resolution.
- 3.3 The Diplomatic Conference to conclude the Convention and Protocol on aviation security was convened by ICAO and hosted by the Peoples' Republic of China, in Beijing from 30th August, 2010 to 10th September, 2010.
- 3.4 The Diplomatic Conference was convened after several rounds of consultations among the Contracting States under the ICAO Legal Committee on the modernization of ICAO legal instruments related to aviation security.
- 3.5 After two weeks of negotiations the Convention and Protocol were signed on Friday 10th September, 2010 and will enter into force after they have been ratified by 22 States that agree to be bound by their provisions, Nine (9) Contracting States have already signed both the Convention and Protocol.

4.0 The date of signature.

The Convention and Protocol were signed on 10th September, 2010 in Beijing, China.

5.0 The number of States that are party to the Convention and Protocol.

There are nine (9) States that are party to both the Convention and Protocol as of September, 2014. These are: - Cuba, Czech Republic, Dominican Republic, Guyana, Kuwait, Mali, Myanmar, Saint Lucia and Switzerland. Angola is only party to the Convention while Congo is only party to the Protocol.

6.0 The views of the public on the ratification of the Convention and Protocol.

Consultations were held at the East African School of Aviation on 21st May, 2014 and there was general concurrence on the need to ratify the Convention and Protocol.

7.0 Reservation of the Convention and Protocol.

Article 20(3) of the Beijing Convention, 2010 and Article 12 of the Hague Convention, 1970 permits Contracting States to enter reservations relating to dispute resolution by arbitration at the time of signature, ratification, acceptance, approval or accession.

8.0 Proposed text of Reservation to protect or advance national interest and/or conformity with the Constitution.

No proposed reservation.

9.0 Expenditure of public funds to be incurred in the implementation of the Convention and Protocol.

No expenditure is anticipated beyond the normal budgetary provisions.

PROTOCOL

SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT



THE STATES PARTIES TO THIS PROTOCOL,

DEEPLY CONCERNED about the worldwide escalation of unlawful acts against civil aviation;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BELIEVING that in order to better address these threats, it is necessary to adopt provisions supplementary to those of the *Convention for the Suppression of Unlawful Seizure of Aircraft* signed at The Hague on 16 December 1970, to suppress unlawful acts of seizure or exercise of control of aircraft and to improve its effectiveness;

HAVE AGREED AS FOLLOWS:

Article I

This Protocol supplements the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 (hereinafter referred to as "the Convention").

Article II

Article 1 of the Convention shall be replaced by the following:

"Article 1

1. Any person commits an offence if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means.
2. Any person also commits an offence if that person:
 - (a) makes a threat to commit the offence set forth in paragraph 1 of this Article;
or
 - (b) unlawfully and intentionally causes any person to receive such a threat,

under circumstances which indicate that the threat is credible.

3. Any person also commits an offence if that person:
 - (a) attempts to commit the offence set forth in paragraph 1 of this Article; or
 - (b) organizes or directs others to commit an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
 - (c) participates as an accomplice in an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
 - (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3 (a), 3 (b) or 3 (c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

4. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1 or 2 of this Article is actually committed or attempted, either or both of the following:
 - (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1 or 2 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
 - (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1 or 2 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
 - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1 or 2 of this Article; or
 - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1 or 2 of this Article.”

Article III

Article 2 of the Convention shall be replaced by the following:

“Article 2

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.”

Article IV

The following shall be added as Article 2 *bis* of the Convention:

“Article 2 *bis*

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.”

Article V

1. Article 3, paragraph 1, of the Convention shall be replaced by the following:

“Article 3

1. For the purposes of this Convention, an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.”
2. In Article 3, paragraph 3, of the Convention, “registration” shall be replaced by “registry”.
3. In Article 3, paragraph 4, of the Convention, “mentioned” shall be replaced by “set forth”.
4. Article 3, paragraph 5, of the Convention shall be replaced by the following:

“5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 7 *bis*, 8, 8 *bis*, 8 *ter* and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registry of that aircraft.”

Article VI

The following shall be added as Article 3 *bis* of the Convention:

“Article 3 *bis*”

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.”

Article VII

Article 4 of the Convention shall be replaced by the following:

“Article 4”

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 and any other act of violence against passengers or crew committed by the alleged offender in connection with the offences, in the following cases:
 - (a) when the offence is committed in the territory of that State;
 - (b) when the offence is committed against or on board an aircraft registered in that State;
 - (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
 - (d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;
 - (e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

- (a) when the offence is committed against a national of that State;
- (b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 8 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

Article VIII

Article 5 of the Convention shall be replaced by the following:

“Article 5

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.”

Article IX

Article 6, paragraph 4, of the Convention shall be replaced by the following:

“Article 6

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 4, and established jurisdiction and notified the Depositary under paragraph 2 of Article 4 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person’s detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.”

Article X

The following shall be added as Article 7 *bis* of the Convention:

“Article 7 *bis*

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.”

Article XI

Article 8 of the Convention shall be replaced by the following:

“Article 8

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 4 and who have established jurisdiction in accordance with paragraph 2 of Article 4.
5. The offences set forth in subparagraphs (a) and (b) of paragraph 4 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.”

Article XII

The following shall be added as Article 8 *bis* of the Convention:

“Article 8 bis

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.”

Article XIII

The following shall be added as Article 8 *ter* of the Convention:

“Article 8 ter

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person’s position for any of these reasons.”

Article XIV

Article 9, paragraph 1, of the Convention shall be replaced by the following:

“Article 9

1. When any of the acts set forth in paragraph 1 of Article 1 has occurred or is about to occur, States Parties shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve the commander’s control of the aircraft.”

Article XV

Article 10, paragraph 1, of the Convention shall be replaced by the following:

“Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1 and other acts set forth in Article 4. The law of the State requested shall apply in all cases.”

Article XVI

The following shall be added as Article 10 *bis* of the Convention:

“Article 10 *bis*

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 4.”

Article XVII

1. All references in the Convention to “Contracting State” and “Contracting States” shall be replaced by “State Party” and “States Parties” respectively.
2. All references in the Convention to “him” and “his” shall be replaced by “that person” and “that person’s” respectively.

Article XVIII

The texts of the Convention in the Arabic and Chinese languages annexed to this Protocol shall, together with the texts of the Convention in the English, French, Russian and Spanish languages, constitute texts equally authentic in the six languages.

Article XIX

As between the States Parties to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as The Hague Convention as amended by the Beijing Protocol, 2010.

Article XX

This Protocol shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Protocol shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article XXIII.

Article XXI

1. This Protocol is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.
2. Ratification, acceptance or approval of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification, acceptance or approval of The Hague Convention as amended by the Beijing Protocol, 2010.
3. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.

Article XXII

Upon ratifying, accepting, approving or acceding to this Protocol, each State Party:

- (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 4 of The Hague Convention as amended by the Beijing Protocol, 2010, and immediately notify the Depositary of any change; and
- (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 3 of Article 1 of The Hague Convention as amended by the Beijing Protocol, 2010 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article XXIII

1. This Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Depositary.
2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.
3. As soon as this Protocol enters into force, it shall be registered with the United Nations by the Depositary.

Article XXIV

1. Any State Party may denounce this Protocol by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article XXV

The Depositary shall promptly inform all States Parties to this Protocol and all signatory or acceding States to this Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of this Protocol, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Protocol.

CONVENTION

on the Suppression of Unlawful Acts Relating to International Civil Aviation

Done at Beijing on 10 September 2010

CONVENTION

sur la répression des actes illicites dirigés contre l'aviation civile internationale

Faite à Beijing le 10 septembre 2010

CONVENIO

para la represión de actos ilícitos relacionados con la aviación civil internacional

Hecho en Beijing el 10 de septiembre de 2010

КОНВЕНЦИЯ

о борьбе с незаконными актами в отношении международной гражданской авиации

Совершена в Пекине 10 сентября 2010 года

制止与国际民用航空有关的非法行为的公约

2010年9月10日订于北京

اتفاقية

قمع الأفعال غير المشروعة المتعلقة بالطيران المدني الدولي

حررت في بيجين في ١٠ سبتمبر/أيلول ٢٠١٠



BEIJING
10 SEPTEMBER 2010

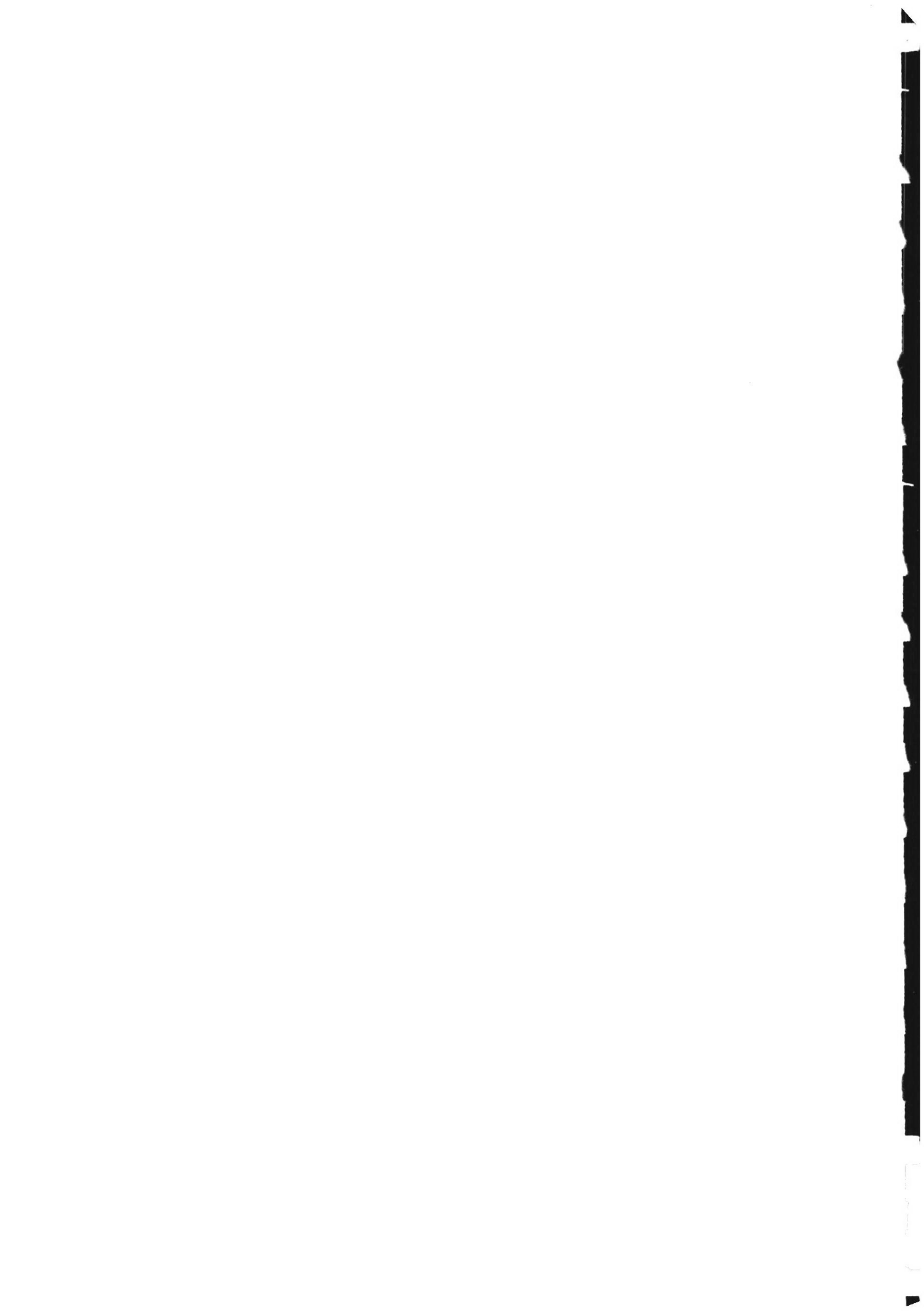
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BEIJING
10 SEPTEMBRE 2010

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بيجين
١٠ سبتمبر/أيلول ٢٠١٠





CONVENTION
ON THE SUPPRESSION OF UNLAWFUL ACTS
RELATING TO INTERNATIONAL CIVIL AVIATION

THE STATES PARTIES TO THIS CONVENTION,

DEEPLY CONCERNED that unlawful acts against civil aviation jeopardize the safety and security of persons and property, seriously affect the operation of air services, airports and air navigation, and undermine the confidence of the peoples of the world in the safe and orderly conduct of civil aviation for all States;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BEING CONVINCED that in order to better address these threats, there is an urgent need to strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;

HAVE AGREED AS FOLLOWS:

Article 1

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
 - (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
 - (e) communicates information which that person knows to be false, thereby endangering the safety of an aircraft in flight; or

- (f) uses an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or
- (g) releases or discharges from an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (h) uses against or on board an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (i) transports, causes to be transported, or facilitates the transport of, on board an aircraft:
 - (1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or
 - (2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or
 - (3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or
 - (4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose;

provided that for activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, it shall not be an offence under subparagraphs (3) and (4) if the transport of such items or materials is consistent with or is for a use or activity that is consistent with its rights, responsibilities and obligations under the applicable multilateral non-proliferation treaty to which it is a party including those referred to in Article 7.

2. Any person commits an offence if that person unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.

3. Any person also commits an offence if that person:

- (a) makes a threat to commit any of the offences in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 or in paragraph 2 of this Article; or
- (b) unlawfully and intentionally causes any person to receive such a threat,

under circumstances which indicate that the threat is credible.

4. Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1 or 2 of this Article; or
- (b) organizes or directs others to commit an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or
- (c) participates as an accomplice in an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or
- (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3, 4(a), 4(b) or 4(c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

5. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1, 2 or 3 of this Article is actually committed or attempted, either or both of the following:

- (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1, 2 or 3 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
- (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1, 2 or 3 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
 - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1, 2 or 3 of this Article; or
 - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1, 2 or 3 of this Article.

Article 2

For the purposes of this Convention:

- (a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;
- (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article;
- (c) "Air navigation facilities" include signals, data, information or systems necessary for the navigation of the aircraft;
- (d) "Toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;
- (e) "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;
- (f) "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;
- (g) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (h) "BCN weapon" means:
 - (a) "biological weapons", which are:
 - (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

- (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
- (b) “chemical weapons”, which are, together or separately:
 - (i) toxic chemicals and their precursors, except where intended for:
 - (A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
 - (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
 - (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
 - (D) law enforcement including domestic riot control purposes,
as long as the types and quantities are consistent with such purposes;
 - (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;
 - (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).
- (c) nuclear weapons and other nuclear explosive devices.
 - (i) “Precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;
 - (j) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956.

Article 3

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.

Article 4

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable

when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.

Article 5

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall apply irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

- (a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registry of that aircraft; or
- (b) the offence is committed in the territory of a State other than the State of registry of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registry of the aircraft.

4. With respect to the States Parties mentioned in Article 15 and in the cases set forth in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 15, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 4 of Article 1.

Article 6

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 7

Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, signed at London, Moscow and Washington on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993, of States Parties to such treaties.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the following cases:

- (a) when the offence is committed in the territory of that State;
- (b) when the offence is committed against or on board an aircraft registered in that State;
- (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;
- (e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

- (a) when the offence is committed against a national of that State;
- (b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1, in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 12 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 9

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present, shall take that person into custody or take other measures to ensure that person's presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which that person is a national.

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 8 and established jurisdiction and notified the Depositary under subparagraph (a) of paragraph 4 of Article 21 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

Article 10

The State Party in the territory of which the alleged offender is found shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 11

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 12

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 8, and who have established jurisdiction in accordance with paragraph 2 of Article 8.
5. The offences set forth in subparagraphs (a) and (b) of paragraph 5 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

Article 13

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 14

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by

appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.

Article 16

1. States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in Article 1.
2. When, due to the commission of one of the offences set forth in Article 1, a flight has been delayed or interrupted, any State Party in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 17

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 18

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 8.

Article 19

Each State Party shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to paragraph 2 of Article 16;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article 21

1. This Convention shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 22.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.
3. Any State which does not ratify, accept or approve this Convention in accordance with paragraph 2 of this Article may accede to it at any time. The instrument of accession shall be deposited with the Depositary.
4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party:
 - (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 8, and immediately notify the Depositary of any change; and
 - (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 4 of Article 1 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article 22

1. This Convention shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Convention enters into force, it shall be registered with the United Nations by the Depositary.

Article 23

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article 24

As between the States Parties, this Convention shall prevail over the following instruments:

- (a) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971; and
- (b) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, Signed at Montreal on 24 February 1988.

Article 25

The Depositary shall promptly inform all States Parties to this Convention and all signatory or acceding States to this Convention of the date of each signature, the date of deposit of each instrument of ratification, approval, acceptance or accession, the date of coming into force of this Convention, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention.

LEGAL NOTICE NO. 11

THE TRAFFIC ACT

(Cap. 403)

IN EXERCISE of the powers conferred by section 119 (1) (e) of the Traffic Act, the Cabinet Secretary for Transport and Infrastructure makes the following Rules—

THE TRAFFIC (AMENDMENT) RULES, 2015

1. These Rules may be cited as the Traffic (Amendment) Rules, 2015.

2. The Traffic Rules are amended by inserting the following new rule immediately after rule 86 —

Licensing of public service vehicles carrying both seating and standing passengers.

86A. (1) The Authority shall licence public service vehicles which shall carry both sitting and standing passengers.

- (2) Public service vehicles licensed to carry both sitting and standing passengers shall only operate on commuter service routes determined by the Authority.
- (3) The Authority shall not issue a licence to a public service vehicle to carry sitting and standing passengers unless the public service vehicle conforms to the prescribed construction standard of KS 372:2014.
- (4) The licence issued by the Authority to a public service vehicle to carry both sitting and standing passengers shall indicate the maximum number of standing passengers.
- (5) The public service vehicle licence issued under this rule shall have a system that will reconcile the total number of passengers on board at all times while in operation.
- (6) The number of passengers on board shall be displayed on a real time basis on an electronic screen on the front and rear of the vehicle.



Caption

Subject

7.5

Kenya Subsidiary Legislation, 2015

- (7) Public service vehicles licensed to carry sitting and standing passengers shall have all its doors closed at all times when the vehicle is in motion.
- (8) Standing passengers in a public service vehicle licensed under this rule shall not be subject to the provisions of rule 22 A.
- (9) An operator of a public service vehicle licensed under this rule shall not cause or permit that public service vehicle to carry more persons than it is licensed to carry, whether seated or standing.
- (10) An operator who contravenes the provisions of paragraph (9) commits an offence and shall be liable upon conviction—
- (a) for a first offence, to a fine of five thousand shillings for each passenger in excess of the licensed capacity;
 - (b) for a second and subsequent offence, to revocation or suspension of the licence by the Authority.
- (11) An operator of a public service vehicle licensed to carry sitting and standing passengers who contravenes or fails to comply with any other prescribed conditions under this rule relating to the licence shall be liable, upon conviction—
- (a) for a first time offence, to a fine of twenty thousand shillings;
 - (b) for a second and subsequent offence, to revocation or suspension of the licence by the Authority.
- (12) For the purposes of this rule an "operator" means the owner, driver or the conductor of the licensed public service vehicle under this rule.

Dated the 19th January, 2015.

M. S. M. KAMAU,
Cabinet Secretary for Transport and Infrastructure.

(Legislative Supplement No. 11)

LEGAL NOTICE NO. 19

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT

(No. 33 of 2012)

IN EXERCISE of the powers conferred by section 54 of the National Transport and Safety Authority Act, the Cabinet Secretary for Transport and Infrastructure in consultation with the Board makes the following Regulations:—

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY
(OPERATION OF MOTORCYCLES) REGULATIONS, 2015

1. (1) These Regulations may be cited as the National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015 and shall come into force upon publication in the Gazette. Citation and commencement

(2) Notwithstanding the provisions of paragraph (1), regulations 5 (b) and 9 shall come into force on the 1st January, 2016.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the National Transport and Safety Authority Act, 2012;

“Authority” means the National Transport and Safety Authority established under section 3 of the Act;

“Cabinet Secretary” has the meaning assigned to it under the Act;

“corporate body” means a limited liability company registered under the Companies Act and includes a cooperative society registered under the Cooperative Societies Act and a society registered under the Societies Act; Cap 486.

“licence” means a driving licence issued by the Authority under the Act; Cap 490.

“two wheeled motorcycle” means any mechanically propelled vehicle with two wheels the weight of which unladen does not exceed eight hundred kilograms;

“three wheeled motorcycle” means any mechanically propelled vehicle with three wheels the weight of which unladen does not exceed eight hundred kilograms;

“two wheeled motorcycle Taxi” means a two wheeled motorcycle used for the purpose of carrying or ferrying of a passenger for reward or hire;

“three wheeled motorcycle Taxi” means a three wheeled motorcycle used for the purpose of carrying or ferrying of a passenger for reward or hire;

"motorcycle" means any mechanically propelled vehicle with less than four wheels the weight of which un laden does not exceed eight hundred kilograms:

"owner" means the registered owner of a motorcycle:

"ride" means to operate, manage or to be in control of a motor cycle:

"rider" means the person operating or person in control of a motorcycle":

"Third Party Motor Vehicle Insurance" means an insurance policy by that name issued in respect to a motorcycle pursuant to the provisions of the Insurance (Motor Vehicles Third Party Risks) Act:

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"Third Party Public Service Vehicle Insurance" means an insurance policy by that name issued in respect to a motorcycle pursuant to the provisions of the Insurance (Motor Vehicles Third Party Risks) Act.

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3. These Regulations shall apply to all motorcycles operating on a public road in Kenya.

Application of the Regulation-

4. (1) No motorcycle shall be sold or transferred by any person without the following protective gear—

Protective Gear

(a) two helmets which comply with the standards established by the Kenya Bureau of Standards and which shall have the registration number indelibly printed in letters not less than three inches in height on both sides of the helmet;

(b) two reflective jackets which shall have the registration number of the motorcycle indelibly printed in letters not less than four inches in height on the back of the jacket.

(2) A person desirous of transferring a motorcycle must present physical proof of compliance with regulation 4 (1) to the Authority.

(3) No supplier, distributor or person involved in the business of selling motorcycles in Kenya shall sell, distribute or otherwise convey a motorcycle without the protective gear described in regulation 4.

(4) For Purposes of this regulation the term "reflective jacket" shall also mean a reflective vest.

5. Every owner of a two wheeled motorcycle shall—

Responsibilities of Owners

(a) provide the rider and passenger with the protective gear stipulated in regulation 4 (1):

(b) ensure that the helmets provided under (a) are yellow if the two wheeled motorcycle is a taxi:

(c) not cause or permit any person to ride their motorcycle unless such person is the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motorcycle:

(d) for private motorcycles, ensure that the motorcycle is at the very minimum insured against third party risks in accordance with the Insurance (Motor Vehicles Third Party Risks) Act:

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- (e) for two wheeled motorcycle taxi, ensure that motorcycle has a Third Party Public Service Vehicle Insurance;
- (f) ensure that no structural modifications to the motorcycle are undertaken that may affect the safe operation of the motorcycle;
- (g) ensure that no structural modifications to the motorcycle are undertaken that may obstruct the visibility of the rear number plates;
- (h) ensure that no modifications to the exhaust system or any other noise abatement device of a motorcycle are done so as to cause the noise emitted by the motorcycle to be above that emitted by the motorcycle as originally manufactured.

6. Every rider of a motorcycle shall—

Responsibilities of a Rider

- (a) have a valid driving license issued by the Authority;
- (b) ensure that they shall not ride or carry a person on a motor cycle without the prescribed protective gear properly fastened;
- (c) not carry more than one person at a time;
- (d) ensure that passengers are carried on a proper seat with foot rests securely fixed to the motor cycle behind the rider's seat;
- (e) ensure that a passenger sits astride the motor cycle;
- (f) ensure that the headlights of the motorcycle are on at all times when riding;
- (g) ensure that loads and passengers are not carried at the same time;
- (h) keep the protective gear in a clean, dry and generally wearable condition;
- (i) ensure that the rear number plates are visible at all times;
- (j) overtake on the right hand side and not to overtake in the same lane occupied by vehicle being overtaken;
- (k) observe traffic lights;
- (l) observe all traffic rules;
- (m) not park in undesignated areas.

7. (1) Every passenger in a motorcycle shall—

Responsibilities of a Passenger.

- (a) properly wear a helmet and reflective jacket whenever being carried on a motorcycle;
- (b) not board or be carried on a motorcycle that already has a passenger except as provided by Regulation 7 (2) (a);
- (c) not board or be carried on a motorcycle that is carrying any load;

(d) sit astride in the seat fixed behind the rider's seat.

(2) For the purposes of these Regulations—

- (a) a child who is less than thirteen years old may be carried together with an adult provided the child is seated between the rider and the adult and wears a helmet designed for children;
- (b) persons with disabilities will be exempted from the requirement to sit astride while being carried on a motorcycle.

Carriage of Loads

8. (1) A motorcycle rider shall not carry a load—

- (a) whose width projects more than fifteen centimeters beyond the outside end of the handle bars;
- (b) whose height is more than two metres from the ground;
- (c) whose weight is more than thirty kilograms for a motorcycle whose carrying capacity does not exceed fifty cc and kilograms for a motorcycle whose carrying capacity does not exceed four hundred cc;
- (d) which projects to the rear beyond the maximum overall length of the motorcycle by more than sixty centimeters. The rear extremity of the load must be plainly indicated by a conspicuous red marker during the day and by a red light at night.

(2) The rider of a motorcycle carrying loads shall ensure that no part of the load carried drags on the road.

(3) For the purpose of this regulation the term "load" excludes luggage carried by a passenger provided such luggage does not exceed ten kilograms in weight and does not project more than fifteen centimeters beyond the outside end of the handle bars.

(4) The luggage in sub-regulation (3) may be carried together with the passenger provided the luggage is properly secured between the rider and the passenger.

9. (1) Any person engaging in business of motorcycle taxis services shall be a member of a body corporate which shall have a minimum of one hundred motorcycle taxis.

Membership in a body corporate.

(2) For two wheeler motorcycle taxis, the name of the group or sacco which they are members of must be indelibly printed in letters not less than four inches in height on the back of both jackets.

10. Every three wheeled motorcycle taxi shall—

- (a) be fitted with a seat belt for the rider and a seat belt per seating position for passengers;
- (b) have a covered body;
- (c) have painted on both sides and on the rear, a broken horizontal yellow band having a width of one hundred and fifty millimeters and of a consistency sufficient to enable

Requirements for operation of three wheeled motorcycle taxi.

such band to be clearly visible by day at a distance of two hundred and seventy five meters;

- (d) no part of the motorcycle, whether unladen or laden, other than the driving mirror or direction indicators, shall project more than fifteen centimeters, beyond the outside wall of the outmost rear tyre;
- (e) have at the minimum a motor commercial public service vehicle insurance cover.

11. Every owner of a three wheeled motorcycle taxi shall—

Responsibility of owners.

- (a) not cause or permit any person to ride their motorcycle unless such person is the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motorcycle;
- (b) ensure that all three wheeled motorcycle taxi owned have at the minimum a Third Party Public Service Vehicle Insurance.

12. Every rider of a three wheeled motorcycle shall—

Responsibilities of a Rider.

- (a) not ride a motorcycle unless that person has a valid driving licence issued by the Authority;
- (b) not ride a motor cycle without properly wearing a seat belt or carry passengers who have not properly worn their seat belts;
- (c) not carry more than passengers in excess of the seating positions provided;
- (d) ensure that the headlights of the motorcycle are on at all times when riding;
- (e) overtake on the right hand side and not to overtake in the same lane occupied by vehicle being overtaken;
- (f) observe traffic lights;
- (g) not ride or operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles;
- (h) keep the seat belts in a clean, dry and generally wearable condition;
- (i) observe all traffic rules.

13. Every passenger in a three wheeled motorcycle shall—

Responsibilities of a Passenger.

- (a) wear seatbelt whenever being carried on a motorcycle;
- (b) not board or be carried on a motorcycle that already has the maximum number of passengers allowed.

14. The Authority in consultation with the relevant county government shall designate—

Areas of operation.

- (a) the areas of operation of motorcycle taxis;

(b) the hours of operation of motorcycle taxis.

15. A person who contravenes any provision of these Regulations and whose penalty is not provided for in the Traffic Act, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or, both.

Offences and penalties.
Cap 403.

16. Regulation 25A of Legal Notice 173 is revoked.

Repeal.

Made on the 5th February, 2015.

MICHAEL S.M. KAMAU,
Cabinet Secretary for Transport and infrastructure.

LEGAL NOTICE NO. 20

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT
(No. 33 of 2012)

IN EXERCISE of the powers conferred by section 54 of the National Transport and Safety Authority Act, the Cabinet Secretary for Transport and Infrastructure in consultation with the Board makes the following Regulations —

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY
(OPERATION OF TOURIST SERVICE VEHICLES)
REGULATIONS, 2015

1. These Regulations may be cited as the National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 and shall come into force upon publication in the Gazette.

Citation.

2. In these Regulations, unless the context otherwise requires —

Interpretation.

“Act” means the National Transport and Safety Authority Act, 2012;

“Appeals Board” means the Transport Licensing Appeal Board established under section 39 of the Act;

“Authority” means the National Transport and Safety Authority established under section 3 of the Act;

“Cabinet Secretary” has the meaning assigned to it under the Act;

“corporate body” means a limited liability company registered under the Companies Act, and includes a cooperative society registered under the Cooperative Societies Act and a society registered under the Societies Act;

Cap 486.

Cap 490.

“licence” means a tourist service licence issued by the Authority;

“licensee” means a person to whom a license is issued under the Act;

“owner” means the registered owner of the tourist service vehicle;

“private car hire” has the same meaning as assigned to it in the Traffic Act; Cap 403.

“tourist service vehicle” means any vehicle (including private hire vehicles) operated by a licensed tour operator and used exclusively for the carriage of tourists;

“Third Party Motor Vehicle Insurance” means an insurance policy by that name issued in respect to a tourist service vehicle pursuant to the provisions of the Insurance (Motor Vehicle Third Party Risks) Act; Cap 405.

“tour operator” means the corporate body with operational responsibility over the tourist service vehicle on a day to day basis either as the registered owner of the vehicle or pursuant to the terms of a contract or franchise agreement with the registered owner of the vehicle.

3. These Regulations shall apply to all tourist service vehicles operating on a public road in Kenya. Application of the Regulations

4. (1) A person shall not operate a tourist service vehicle without a valid license issued by the Authority. Tourist Service Vehicles to be Licensed.

(2) A person desirous of operating a tourist service vehicle shall make an application to the Authority and shall be accompanied with the fee prescribed in the First Schedule.

5. (1) A person desirous of operating tourist service vehicles shall — Conditions to be met by applicants.

- (a) have a valid tour operators license issued by the Tourism Regulatory Authority;
- (b) have in place a code of conduct approved by the Authority governing its employees, agents and sub-contractors;
- (c) have in place a documented management system, safety management system based on ISO 39001:2012 "Road Traffic Safety Management Systems" or equivalent and customer complaints handling system;
- (d) comply with labour laws and regulations including those relating to statutory deductions, health and safety of the workplace, Work Injuries Benefits Act, . insurance, statutory leave days and written contracts of employment for staff;
- (e) subscribe to an accident and emergency mutual aid system.

(2) The Authority may — No. 13 of 2007

- (a) refuse to issue a tourist service vehicle license to an applicant who fails to fulfill any of the stipulated conditions; or
- (b) at its discretion issue a license conditional on the requirement that the applicant demonstrates compliance within a stipulated period failing which the license shall be withdrawn upon the expiry of the stipulated period.

6. A person applying for a license shall submit to the Authority certified copies of --

- (a) a valid tour operators license issued by the Tourism Regulatory Authority;
- (b) certificate of registration as a company under the Companies Act, or a cooperative society under the Cooperative Societies Act;
- (c) a list of its directors;
- (d) a lease or certificate of ownership of the head office from which it is operating or intends to operate the tourist service vehicle business;
- (e) tax compliance certificate issued by the Kenya Revenue Authority;
- (f) a description of the operator's management system, safety management system and customer complaints handling system;
- (g) valid driving license, identity card, and certificate of good conduct of each person who shall drive the tourist service vehicles in respect to which the application for the license is being made;
- (h) valid inspection certificate issued by the Authority of each vehicle in respect to which an application is being made;
- (i) the certificate of ownership or other evidence of ownership in the name of the owner of the vehicle or a contract or franchise agreement between the applicant and the operator or intended operator of the vehicle; and
- (j) the current third party insurance.

Documents to be submitted with the application

Cap 486.

Cap 490.

7. (1) Every operator of licensed tourist service vehicles shall--
- (a) have in place or outsource a fleet management system capable of recording speed and location of the vehicle at any one time;
 - (b) subscribe to a data storage system capable of storing data on vehicle speed, location and operation for a period of thirty days;
 - (c) provide the data stored in (b) to the Authority before the expiry of the prescribed storage period;
 - (d) in case of any accident resulting in a fatality, submit an investigation report to the Authority within fourteen days containing details of the driver, passengers, time of accident, probable cause and corrective measures undertaken;
 - (e) boldly display at a conspicuous place on the vehicle an identification mark approved by the Authority;
 - (f) except for private car hire, boldly display on the vehicle the name of the company under which the vehicle operates;

Operation of Tourist Service Vehicles

(g) maintain a passenger manifest.

(2) Tourist service vehicles shall conform to the construction and design specifications for tourist service vehicles that shall be approved by the Authority.

8. (1) Every driver of a tourist service vehicle shall —

Driver of Tourist
Service Vehicle

(a) have a valid driver's license for that category of vehicle;

(b) have a valid Public Service Vehicle License;

(c) have a valid tourism driver-guide license issued by the Tourism Regulatory Authority.

(2) Notwithstanding subsection 8(1), persons who hire tourist service vehicle for self-drive shall only be required to have a valid driver license for that category of vehicle.

9. A person shall take out an insurance cover for a tourist 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;

Cap 487.

(b) submits to the Authority a report on claims made in respect to accidents involving tourist 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.

10. 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.

11. (1) A person who —

Offences and
penalties.

(a) operates a tourist service vehicle without a valid license issued by the Authority in respect to that vehicle;

(b) drives a tourist 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 twenty thousand shillings or to imprisonment for a term not exceeding six months or, both.

(2) The Authority may —

(a) suspend, cancel or withdraw the license of a tourist service vehicle operated by an operator who contravenes any provision under these Regulations;

(b) suspend, cancel or revoke the license of a driver who contravenes any provisions of these Regulations or the Traffic Act;

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(c) where it deems necessary order that all vehicles belonging a Company be subjected to inspection.

12. Legal Notice 217 of 2013 on speed governors shall apply to Tourist Service Vehicles.

Application of Legal Notice 217 of 2013.

Made on the 5th February, 2015.

MICHAEL S.M. KAMAU,
Cabinet Secretary for Transport and infrastructure.

LEGAL NOTICE NO. 21

THE EXPORT PROCESSING ZONES ACT

(Cap. 517)

DECLARATION OF EXPORT PROCESSING ZONE

IN EXERCISE of the powers conferred by section 15 (1) of the Export Processing Zones Act, the Cabinet Secretary for Industrialization and Enterprise Development declares the land parcel specified in the Schedule hereto to be an Export Processing Zone.

SCHEDULE

All that piece of land being subdivision No. MN/IV/1365 measuring approximately 1.429 hectares or thereabouts situated North of Mtwapa Creek in Kilifi County.

Dated the 10th February, 2015.

ADAN MOHAMED,
Cabinet Secretary for Industrialization and Enterprise Development.

LEGAL NOTICE No. 22

THE LABOUR RELATIONS ACT

(No. 14 of 2007)

IN EXERCISE of the powers conferred by section 49 (1) of the Labour Relations Act, 2007, the Cabinet Secretary for Labour, Social Security and Services makes the following Order:—

THE UNION OF KENYA CIVIL SERVANTS (DEDUCTION OF AGENCY FEES) ORDER, 2015

1. This Order may be cited as the Union of Kenya Civil Servants (Deduction of Agency Fees) Order, 2015.
2. Every employer shall—
 - (a) deduct on a monthly basis, the sum specified in the Schedule in respect of each unionsable employee who is not a member of the Union of Kenya Civil Servants but is benefiting from the Collective Bargaining Agreement signed between the Government of Kenya and the Union of Kenya Civil Servants;
 - (b) remit within ten days of the date of deduction, the total sums deducted under item (a) by crossed cheque made payable to the Union of Kenya Civil Servants' account number

0112012099/3000 at the Co-operative Bank of Kenya, Moi Avenue Branch, Nairobi;

- (c) notify the Union of Kenya Civil Servants in writing within one month of all payments together with a full schedule of the paid up members; and
- (d) make written returns to the Registrar of Trade Unions at P.O. Box 47606, Nairobi within one month of making all the payments to the Union of Kenya Civil Servants.

SCHEDULE

A sum equal to 1.5 per centum from each employee's salary per month.

Made on the 10th February, 2015

SAMUEL K. O. OCHIAI
Minister Secretary for Labour, Social Security and Service

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF MOTORCYCLES) REGULATIONS, 2014

PART I

Name of the Statutory Instrument: The National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2014.

Name of the Parent Act: The National Transport and Safety Authority Act.

Enacted Pursuant to: Section 54 of the National Transport and Safety Authority Act.

Name of the Ministry/ Department: Ministry of Transport and Infrastructure and the National Transport and Safety Authority.

Gazetted on 6th March 2015

Tabled on 10th March 2015

PART II

1. Purpose of the Statutory instrument

To regulate the motorcycle transport sector and in particular motorcycle taxis popularly known as boda boda and three wheeled motorcycles popularly known as tuk tuks.

2. Legislative Context

The statutory instrument in question is an amendment of the National Transport and Safety Authority (Operation of Motorcycles) Regulations to provide a legal framework in which two wheeled and three wheeled motorcycle taxis will operate in public roads to promote road safety. The amendment provides for the registration and areas of operation of motorcycle taxis. It also provides for the protective gear required for riders and passengers and the responsibilities of riders, passengers and owners of motorcycle taxis. In addition, it provides the requirement of a person engaging in motorcycle taxis services to be a member of a body corporate which will promote self-regulation in the industry.

3. Policy Background

• What is being done and why

3.1 The key policy objective of the NTSA Act is to ensure road safety and a sustainable and well organized road transport system. This will entail the formulation and enforcement of regulations covering the different modes of road transport including motorcycles. This instrument promotes road safety by providing guidelines on how motorcycles shall operate including the safe transportation of passengers. The instrument also seeks to promote the creation of employment at the same time by clearly providing the qualifications and requirements of riders.

Currently the operation of motorcycles is unregulated which has led to an increase in the number of fatalities involving motorcycle riders and their passengers. Also a number of criminal activities have been associated with them. In order to address this challenge there is need to have a legal instrument that regulates this sector hence this regulation.

The regulations also encourage self regulation by formation of Saccos or companies through which the motorcycle operators will exercise control over their members.

4. Consultation outcome

4.1 The Ministry and the National Transport and Safety Authority held various consultations with the stakeholders including but not limited to motorcycle associations, motorcycle assemblers, the parliamentary committee on transport, public works and housing, manufacturers and the general public over a period of 2 -3 months.

From these consultations, majority of the respondents, at least 80% were concerned with the restriction of motorcycle taxis from the central business districts and towns of Kenya. Following these responses, the Ministry and Authority responded to these opinions by amending the regulations to empower the Authority and relevant County governments to agree on the areas and hours of operation of the motorcycle taxis.

5. Guidance

5.1 The Ministry and National Transport and Safety Authority intends to embark on awareness campaigns throughout the country targeting motorcycle operators

and their users in order to explain and promote the regulations. This will be done through engagement in the media and holding of forums. Further the Ministry and Authority have partnered with the motorcycle assemblers and manufacturers to produce a pictorial handbook explaining the regulations.

6. Impact

6.1 The amendment shall have no fundamental effect to the rights and freedoms.

6.2 The amendment will lead to creation of informal employment

7. Monitoring and review

7.1 The success criteria of this amendment will be a reduction in fatalities arising from motorcycles by at least 20% in the course of the next three years.

8. Contact

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EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF TOURIST SERVICE VEHICLES) REGULATIONS, 2015

PART I

Name of the Statutory Instrument: The National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015.

Name of the Parent Act: The National Transport and Safety Authority Act.

Enacted Pursuant to: Section 54 of the National Transport and Safety Authority Act.

Name of the Ministry/ Department: Ministry of Transport and Infrastructure and the National Transport and Safety Authority.

Gazetted on 6th March 2015

Tabled on 9th March 2015

PART II

1. Purpose of the statutory instrument

To regulate the operations of vehicles involved in the carriage of both local and international tourists by setting out minimum standards for their operations.

2. Legislative Context

The Tourism sector plays a major role in Kenya's economic growth, contributing approximately 11% of GDP. The Sector is highly labour intensive and also has several backward and forward linkages, with extensive multiple ripple effects, in various economic activities including transportation of passenger. While the National Transport and Safety Authority Act currently provides for a "Tourist License" this should be extended to gazetting of a new category of vehicle namely the Tourist Service Vehicle (TSV) as envisaged under the Tourism Act 2011.

3. Policy Background

- What is being done and why

3.1 The Tourism Industry requires to remain competitive with respect to key competing destinations both regionally and beyond. Tourist transportation is one key area where there is dire need for intervention in terms of the regulatory framework and standards of the product. Introducing a dedicated Tourist Service Vehicle category will be the first major step towards addressing existing concerns in the sector.

In earlier attempts to address the problem of "illegal" tour operations, the Ministry of Tourism gazetted a "Tourist Vehicle Sticker" designed to easily identify registered and licensed tour operators. This followed concerns raised that "matatus" were being used to ferry tourist into National Parks and Reserves which in addition to violating the Tourism Industry Licensing Act also served to lower tour guiding standards. This ended up giving Kenya a bad image internationally. While this sticker partly succeeded in reducing the incidence of illegal operations, there is need to go a step further and develop measures that create an enabling environment for growth in this important sector.

Introducing a TSV category would have the following benefits: -

1. Easier detection of illegal operators especially to the Parks and Reserves and Airports.
2. Development and maintenance of high standards in the tour industry
3. Easier administration of the various laws and regulations by allowing clear distinction between mainstream PSV and tourist vehicles.

4. Consultation outcome

4.1 The Ministry and the National Transport and Safety Authority held various consultations with the stakeholders including but not limited to tourist associations, operators, the national parliamentary committee on transport and the general public over a period of 2 -3 months.

From these consultants, a vast majority of the respondents, at least 98% supported the introduction of these regulations.

5. Guidance

5.1 The Ministry and National Transport and Safety Authority intend to embark on engage tourist operators through educative forums. Further the Authority has being in engagement with the Kenya Association of Tourist Operators (KATO) who have being educating their members on the regulation.

6. Impact

6.1 The amendment shall have no fundamental effect to the rights and freedoms.

6.2 The amendment will uplift the standards of tourist service operators.

7. Monitoring and review

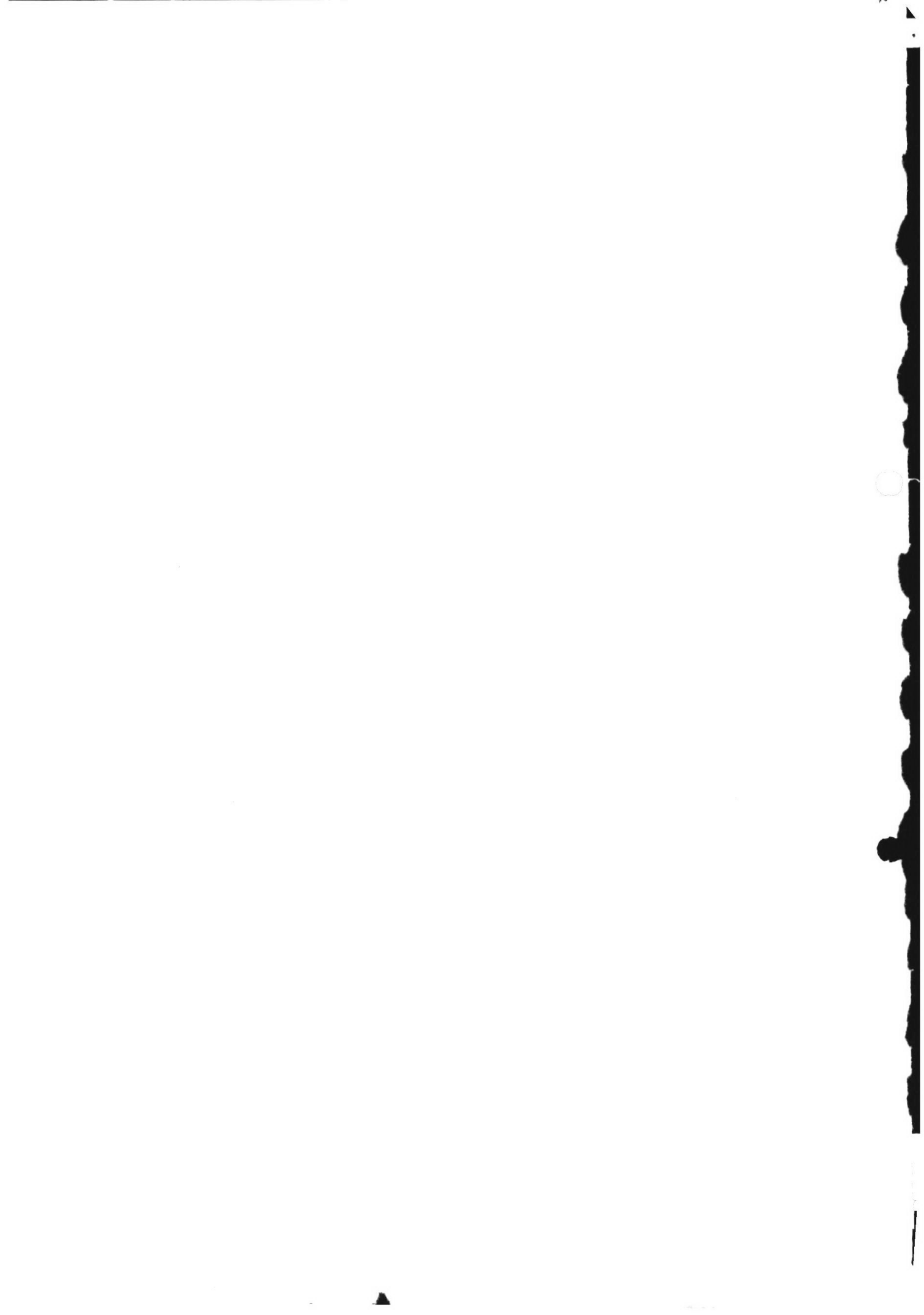
7.1 The success criteria of this regulation will be measured by the increased detection of "illegal" operators and especially those going to the Parks and Reserves as well as the Airports.

8. Contact

8.1 Francis Meja, Director General NTSA.

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EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE TRAFFIC (AMENDMENT) RULES 2014

Name of the Statutory Instrument: The Traffic (Amendment) Rules 2014

Name of the Parent Act: The Traffic Act

Enacted Pursuant to: Section 119 (1) (c) of The Traffic Act.

Name of the Ministry/ Department: Ministry of Transport and Infrastructure/ State Department of Transport.

Gazetted on 30th January 2015

Tabled on

PART II

1. Purpose of the Statutory instrument

To permit and create provisions for standing passengers in high capacity public service vehicles in major towns.

2. Legislative Context

The statutory instrument in question is an amendment of the Traffic Rules to give provisions for standing of passengers in high capacity public service vehicles. The Traffic Rules currently give provisions for seating passengers in Public Service Vehicles and thus the need to include a provision for standing passengers in high capacity public service vehicles which can carry up to 100 passengers.

3. Policy Background

3.1 The Integrated National Transport Policy advocates for the use of high capacity public service vehicles in major towns to help reduce congestion on roads.

3.2 The department intends to consolidate the relevant legislation before the end of the year to accommodate for subsequent amendments if any.

4. Consultation outcome

4.1 Stakeholders from the Public Service Vehicles Industry have severally petitioned the Ministry of Transport to allow standing passengers in high capacity public service vehicles. This resulted in several consultative forums to chart the way forward to address the issue of standing passengers in high capacity public service vehicles. Moreover these consultations led to the development of Passenger Body Vehicle Construction Specification Standards KS.372.2014.

5.1 The Ministry of Transport and Infrastructure intends to sensitize stakeholders on the importance of high capacity vehicles with provision for standing passengers in major towns to reduce congestions.

6. Impact

6.1 The amendment shall have no fundamental effect to the rights and freedoms.

6.2 The amendment will lead to the reduction of the operational costs for public service vehicles in major towns where there are traffic jams as the high capacity service vehicles will carry many passengers and as a result less vehicles on the road.

7. Monitoring and review

7.1 The success criteria of this amendment will be an increase in business opportunities and revenue for Public Service Vehicle operators as the cost in operations will reduce because the high capacity public service vehicles will carry many passengers and there will be no need of operating several smaller vehicles to carry many passengers. The congestion on the roads will also reduce significantly when the number of smaller Public Service Vehicles reduce on the roads.

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