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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION- 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

REPORT ON THE EAST AFRICAN COMMUNITY (EAC) MULTILATERAL AGREEMENT
ON AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS

 THE NATIONAL ASSEMBLY PAPER LAIN	
DATE:	17 AUG 2023
	DAY: Thurs
TABLED BY:	Hon George Karuki, MP Chairperson, Transport & Infrastructure
CLERK-AT THE TABLE:	Anne Shubuki

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST, 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

AAID - Air Accident Investigation Department

EAC- East African Community

ICAO- International Civil Aviation Organization

KCAA - Kenya Civil Aviation Authority

USOAP - Universal Safety Audit Program

ANNEXURES

- Annexure 1: Report adoption list
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- Annexure 4: Submissions by the Ministries
- Annexure 5: The East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigation

CHAIRPERSON'S FOREWORD

The East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations was tabled in the House on 20th April, 2023 and committed to the Departmental Committee on Transport and Infrastructure for consideration and reporting to the House.

The Agreement was adopted at the 16th Meeting of the Sectoral Council on Transport, Communication and Meteorology which was held on 24th -28th June 2019 in Kampala, Uganda to actualize the requirements of the East African Community Treaty and Convention International Civil Aviation (Chicago Convention), which requires cooperation in matters pertaining Aircraft Accident and Incident Investigations.

The main aim of the Agreement is to harmonize and coordinate the Civil Aviation rules as far as Aircraft Accident and Incident Investigation are concerned in order to promote safety, reliability and efficiency of air transport in accordance with article 92 of EAC treaty. Consequently, the Agreement reiterates and recognizes the importance of adopting common policies in the development of civil transport in the EAC and the need to co-operate in Aircraft Accident and Incident Investigation services.

Pursuant to the provisions of Article 118(1)(b) of the Constitution on public participation and section 8(3) of the Treaty Making and ratification Act of 2012, the Clerk of the National Assembly placed advertisements in two local dailies with nationwide circulation, on Tuesday 2nd May, 2023 requesting for submissions of memoranda on the Agreement. The Committee did not receive any memorandum on the Agreement in response to the Advertisements by close of business on Wednesday 17th May 2023.

The Committee held meetings with the Ministries of, Roads and Transport and Foreign and Diaspora Affairs to deliberate on the Agreement. The Committee also received written submissions from the Ministry of East African Community, ASALs and Regional Development.

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

Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199, it is my pleasant duty to present the **Report of the Departmental Committee on Transport and Infrastructure on its consideration of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations.**

Hon. George Kariuki GK, MP
Chairperson, Departmental Committee on Transport and Infrastructure

CHAPTER ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

1. The Departmental Committee on Transport and Infrastructure is one of the twenty (20) Departmental Committees of the National Assembly established under **Standing Order 216** whose functions pursuant to the **Standing Order 216 (5)** are as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. *To study and review all legislation referred to it;*
 - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - viii. ***To examine treaties, agreements and conventions;***
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Subjects under the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, the following Subject: Transport, including non- motorized transport and maintenance of Roads, rails, air and marine transport, seaports and national integrated infrastructure policies and programmes and transport safety.

3. In executing its mandate, the Committee oversights the Ministry of Roads and Transport which has two state departments namely:
 - i. State department for Roads
 - ii. State department for Transport

4. Further, Committee oversights the State Department for Shipping and Maritime Affairs which is under the Ministry of Mining, Blue Economy, and Maritime Affairs.

1.3 Committee Membership

5. The Committee comprises the following Members:

The Hon. G.K George Kariuki, M.P - **Chairperson**
M.P for Ndia Constituency
United Democratic Alliance Party

The Hon. Mutua Didmus Wekesa Barasa, M.P- **Vice- Chairperson**
M.P. for Kimilili Constituency
United Democratic Alliance Party

The Hon. Arama Samuel. M.P
Nakuru Town West Constituency
Jubilee Party

The Hon. Abdul Rahim Dawood, M.P.
North Imenti Constituency
Independent

The Hon. Naicca, Johnson Many, M.P
Mumias East Constituency
Orange Democratic Movement Party

The Hon. Elsie Muhanda, M.P.
Kakamega County
Orange Democratic Movement Party

The Hon. Francis, Kajwang' Tom Joseph,
M.P.
Ruaraka Constituency
Orange Democratic Movement Party

The Hon. Chege John Kiragu, M.P.
Limuru Constituency
United Democratic Alliance Party

The Hon. Kiaraho, David Njuguna, M.P.
Ol Kalao Constituency
Jubilee Party

The Hon. Kiunjuri Festus Mwangi, M.P.
Laikipia East Constituency
The Service Party

The Hon. Bady, Bady Twalib, M.P.
M.P for Jomvu Constituency
Orange Democratic Movement Party

The Hon. Abdirahman, Husseinweytan
Mohamed, M.P.
Mandera East Constituency
Orange Democratic Movement Party

The Hon. Komingoi Kibet Kirui, M.P.
Bureti Constituency
United Democratic Alliance Party

The Hon. Saney Ibrahim Abdi, M.P
Wajir North Constituency
United Democratic Alliance Party

The Hon. Jhanda Zaheer, M.P
Nyaribari Cache Constituency
United Democratic Alliance

1.4 Secretariat

6. The Committee is serviced by the following Members of Staff:

Ms. Tracy Chebet Koskei
Senior Clerk Assistant

Lead Clerk

Mr. Mohamednur Mohamud Abdullahi
Clerk Assistant III

Ms. Clare Choper Doye
Clerk Assistant III

Mr. Mabuti Mutua
Legal Counsel II

Ms. Ivy Maritim
Media Relation Officer

Mr. Abdinasir Moge
Fiscal Analyst

Mr. Eugene Luteshi
Audio Officer

Mr. Eric Kariuki
Research Officer

Mr. Josphat Bundotich
Serjeant at-Arms

CHAPTER TWO: BACKGROUND INFORMATION

2.1 ANALYSIS OF THE AGREEMENT

7. The East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigation Agreement was adopted at the 16th Meeting of the Sectoral Council on Transport, Communication and Meteorology which was held from 24th to 28th June 2019 in Kampala, Uganda. The Agreement Aircraft Accident and Incident Investigations.
8. The Agreement is meant to actualize the requirements of the East African Community Treaty and the Convention International Civil Aviation (Chicago Convention) which requires cooperation in matters pertaining to both the Chicago Convention and the East African Treaty. The Chicago Convention requires that all civil aircraft operations are carried out in accordance with minimum operating standards, procedures and practices. Additionally, the EAC treaty, particularly in Article 92 provides that Partner states should implement measures to ensure that air transport services are safe; effective, and profitable; states should adopt common policies for the growth of civil air transport in the area; harmonize civil aviation rules and regulations and coordinate efforts and cooperate in order to maintain high security.
9. In this regard, this multilateral agreement on Aircraft Accident and Incident Investigations was adopted in compliance with both the Chicago Convention and the EAC treaty and it seeks to establish a legal framework for collaboration between partner states in managing investigations into aircraft accidents and incidents.
10. The main aim of the Agreement is to harmonize and coordinate the Civil Aviation rules (as far Aircraft Accident and Incident Investigations are concerned in order to promote safety, reliability and efficiency of air transport in accordance with article 92 of the EAC Treaty. Consequently, the agreement reiterates and recognizes the importance of adopting common policies in the development of civil transport in the EAC and the need to co-operate in Aircraft Accident and Incident Investigation services.
11. The Agreement recognizes the International Civil Aviation Organization (ICAO) missions which have revealed that many contracting states have not established and/or managed effective accident and incident investigation organizations, mainly because sufficient resources have not been allocated to meet States' obligations under the Convention.

Specific Obligation under the Agreement

12. Member States that ratify the agreement shall undertake specific obligations, including but not limited to:
- i. Establishing an independent accident investigation authority responsible for conducting investigations in accordance with international standards and practices.
 - ii. Ensuring the timely notification of accidents and incidents to the relevant authorities.
 - iii. Cooperating and sharing information with other member states involved in the investigation of accidents and incidents.
 - iv. Facilitating the access to relevant sites, records, and evidence for the purpose of investigation.
 - v. Implementing the recommendations derived from accident and incident investigations to improve aviation safety.

Implication of the EAC Agreement upon Ratification

13. Upon ratification, the Cabinet Secretary submitted that Kenya will be required to:
- i. Establish, in accordance with ICAO Global Aviation Safety plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies.
 - ii. Provide assistance in aircraft accident and incident investigation by availing experts and any other required logistics to the Partner States as appropriate:
 - iii. Ensure all investigations into aircraft accident and incidents that are carried out in Partner States are independent from political or other interference or pressure:
 - iv. Provide adequate resources, including funding and qualified personnel, for carrying out investigations;
 - v. Promote the use of common set of regulations in compliance with provisions of ICAO Annex 13;
 - vi. Promote the use of common guidance materials, accident investigation annuals or handbooks;
 - vii. Promote the application of the best practices in the area of aircraft accident and incident prevention;
 - viii. Enhance the qualification and experiences of aircraft accident and incident investigators in Partner States;
 - ix. Enhance cooperation and collaboration with Partner States relating to sharing safety information;
 - x. Enhance development of regional institution capacity in training, research, research findings, related aircraft accident and incident investigation;
 - xi. Invite the other Partner States investigators to attend general and specialized investigation courses which they conduct;

- xii. Facilitate the attachment of other Partner States' investigators to their aircraft accident and incident investigation, with a view to enhancing their understanding of investigation requirements and procedures:
- xiii. Share with the other Partner State relevant information about an ongoing investigation in which the other Partner State has expressed an interest in consistency with ICAO Annex 13 to the Chicago Convention:
- xiv. Consult partner states in the organization of an investigation, drafting of the report, crisis management and communication, as deemed necessary:
- xv. Identify their investment needs in the area of Aircraft Accident and Incident Investigation and prioritize relevant sources of funding for that investment;
- xvi. Promote the sharing of specialized equipment and facilities in the view of cutting the cost and avoiding duplication.

Relevance of the Agreement to Kenya

- 14. Kenya's aviation sector is experiencing rapid growth, and it is crucial to ensure the highest levels of safety to protect passengers, crew, and the public. By ratifying the agreement, Kenya can benefit from enhanced cooperation with other member states, leading to improved accident and incident investigation capabilities. This will contribute to identifying safety risks, implementing preventive measures, and fostering a culture of continuous improvement in aviation safety.

Justification for Kenya Ratifying the Agreement

- 15. Ratifying the EAC Multilateral Agreement on air accidents would bring several benefits to Kenya. Which include that upon ratification, Kenya and other Partner States would experience enhanced cooperation and collaboration in the investigation of aircraft accidents and incidents. This would include sharing resources among Partner States, utilizing common guidance materials, accident investigation manuals, and handbooks. The sharing of safety information would contribute to a more comprehensive understanding of accident causes and prevention strategies.

Legal Implications

- 16. The Agreement does not propose any amendment to the Constitution of Kenya 2010 and is consistent with the constitutional provisions.
- 17. The ratification of the Multilateral Agreement on Aircraft Accident and Incident Investigations presents no new policy implications for Kenya as the provisions of the Agreement are already embedded in the Civil Aviation Act (2013) and the Civil Aviation (Aircraft Accident and Incident Investigations) Regulations 2010.

Financial Implications

18. The Memorandum is aligned with the EAC Treaty and there are no immediate financial implications arising from the signing of the Agreement.

Ministerial Responsibility

19. Responsibility for the implementation of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations will fall under the Ministry of Roads and Transport and the Ministry of East African Community, the Arid and Semi-Arid Lands (ASALs) and Regional Development.
20. The Office of the Attorney General, Department of Justice and the Ministry of Foreign and Diaspora Affairs will coordinate the reporting process on state obligations under the Treaty Making Ratification Act No. 45 of 2012.

Settlement of Disputes

21. The Agreement provides for the settlement of disputes arising between Member States through diplomatic channels and negotiations. In case of unresolved disputes, the agreement allows for referral of the matter to the East African Court of Justice for resolution

Reservations

22. East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations does not expressly provide for reservations.

Withdrawal

23. Member states have the right to withdraw from the agreement by giving written notice to the depository. The withdrawal shall take effect one year after the receipt of the notice. However, such withdrawal should not affect ongoing investigations or obligations arising from previous accidents or incidents.

Depository

24. The Secretary-General of the East Africa Community shall be the Depository of the Agreement.

2.1 Legal Framework

25. Article 2(5) of the Constitution provides that general rules and international law shall form part of our law, article 2(6) on the other hand provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya.
26. Section 7 of the Treaty Making and Ratification Act, 2012 provides that where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—
- a) the objects and subject matter of the treaty;
 - b) any constitutional implications including—
 - (i) any proposed amendment to the Constitution; and
 - (ii) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
 - c) the national interests which may be affected by the ratification of the treaty;
 - d) obligations imposed on Kenya by the treaty;
 - e) requirements for implementation of the treaty;
 - f) policy and legislative considerations;
 - g) financial implications;
 - h) ministerial responsibility;
 - i) implications on matters relating to counties;
 - j) the summary of the process leading to the adoption of the treaty;
 - k) the date of signature;
 - l) the number of states that are party to the treaty; and
 - m) the views of the public on the ratification of the treaty, among other requirements.
27. Section 8 of the Act further provides that:
- (a) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.
 - (b) National Assembly may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.
 - (c) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.
 - (d) Where the National Assembly refuses to approve the ratification of a treaty, the Clerk of the National Assembly shall submit the resolution of the House to the relevant Cabinet Secretary within fourteen days of the resolution.
 - (e) The National Assembly shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.

28. Standing Order 170A further provides as follows on the procedure for the consideration of a Treaty:

(1) A treaty submitted to the National Assembly for ratification shall be laid on the Table of the House and stand committed to the relevant Committee for consideration.

(2) The committee shall undertake public participation before submitting its report to the House.

(3) In addition to the information required to be submitted to the National Assembly under written law, the committee may require the relevant Cabinet Secretary to submit further information, including—

(a) the social and environmental impact of the treaty in the short-term, medium-term, and long-term; and,

(b) the nature and evidence of any public participation conducted on the treaty.

(4) The report of the committee to the House shall include—

a) information on the views of the people on the ratification of the treaty emanating from public participation conducted by the committee;

b) the findings of the committee on the treaty and any other information the committee may deem necessary; and

c) a recommendation that the House—

(i) approves the ratification of the treaty, or

(ii) approves the ratification of the treaty with reservations, or

(iii) rejects the ratification of the treaty.

(5) In approving ratification of a treaty with reservations, the House shall specify the affected provisions of the treaty and the proposed text of each reservation, which may include prescription of timelines within which an obligation is to be fulfilled before implementation of the Treaty.

(6) Upon decision of the House on a treaty the Clerk shall, within seven days, notify the relevant Cabinet Secretary and enter the information in the register of treaties.

2.2 Request for submission of Memoranda

29. Pursuant to the provisions of Article 118(1)(b) of the Constitution on public participation and section 8(3) of the Treaty Making and ratification Act of 2012, the Clerk of the National Assembly placed advertisements in two local dailies with nationwide circulation (Nation and the Standard Newspaper), on Tuesday 2nd May, 2023 requesting for submissions of memoranda on the Agreement.

30. The Committee did not receive any memorandum on the Agreement in response to the Advertisements by close of business on Wednesday 17th May 2023.

CHAPTER THREE

3.0 SUBMISSIONS BY STAKEHOLDERS

In considering the Protocols amending Articles 50 (a) and 56 of the Convention on International Civil Aviation, the Committee held meetings with the Ministry of Foreign Affairs and Diaspora Affairs and the Ministry of Roads and Transport on Thursday 26th June, 2023 and 27th July, 2023, respectively. The Committee also received written submissions from the Ministry of East African Community, the Arid and Semi-Arid Lands (ASALS) and Regional Development. The submissions are outlined below:

3.1 SUBMISSION BY THE MINISTRY OF ROADS AND TRANSPORT

31. Hon. Kipchumba Murkomen, the Cabinet Secretary for Roads and Transport, accompanied by other officials of the Ministry officials appeared before the Committee on Thursday, 29th July, 2023 to give submissions on the Agreement.
32. The Cabinet Secretary informed the Committee that Kenya is a signatory to the Convention on International Civil Aviation (Chicago Convention) having signed the Convention on 7th December 1944. Kenya has also ratified the East Africa Community Treaty.
33. The Convention requires that all civil aviation operations be conducted under internationally accepted minimum operating standards, procedures and practices.
34. To actualize the requirements under the Convention on International Civil Aviation (Chicago Convention) and the EAC Treaty with respect to Aircraft Accident and Incident Investigations the 16th Meeting of the Sectoral Council on Transport, Communications and Meteorology held on 24th - 28th June 2019 in Kampala, Uganda, adopted a Multilateral Agreement on Aircraft Accident and Incident Investigations.
35. The Multilateral Agreement provides a legal framework for partner states' cooperation in handling Aircraft Accident and Incident investigations. The Multilateral Agreement was necessitated by the need to cooperate in Aircraft Accident and Incident Investigation to provide expeditious and effective Aircraft Accident and Incident Investigation services in accordance with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS).
36. The Cabinet Secretary informed the Committee that International Civil Aviation Organization (ICAO) Universal Safety Audit Program (USOAP) findings indicate that many States have not been able to implement an effective accident and incident investigation system mainly because sufficient resources have not been allocated to meet States' obligations under the Convention.

37. This can be mitigated through enhanced cooperation. In this connection, pursuant to Article 26 of the Chicago Convention, when an accident occurs in their territory, States can seek regional support if the required capabilities or resources are not available. The Convention also allows States of occurrence to delegate the whole or any part of the conducting of an investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent.

38. In order to cooperate efficiently in accident and incident investigation; training and sharing of Information, resources and expertise; Partner States are required to:

- i. Establish, in accordance with ICAO Global Aviation Safety Plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies;
- ii. Provide assistance in aircraft accident and incident investigation by availing experts, facilities and equipment to the other Partner States as it deems appropriate;
- iii. Ensure that all investigations into aircraft accidents and incidents that are carried out in Partner States are independent from political or other interference or pressure;
- iv. Provide adequate resources, including funding and qualified personnel for carrying out investigations;
- v. Promote the use of common set of regulations in compliance with provisions of ICAO Annex
- vi. Promote the use of common guidance materials, accident investigation manuals or handbooks
- vii. Promote the application of the best practices in the area of accidents and incidents prevention;
- viii. Enhance the qualifications and experience of aircraft accidents and incidents investigators in Partner States;
- ix. Enhance cooperation and collaboration within Partner States in respect to sharing of safety information;
- x. Enhance development of regional institutional capacity in training, research and research findings related to Aircraft Accidents and Incidents Investigation;

- xi. Invite the other Partner States' investigators to attend general and specialized investigation courses which they conduct,
- xii. Facilitate the attachment of the other Partner States investigators to their aircraft accidents and incidents investigations, with a view to enhancing their understanding of Investigation requirements and procedures;
- xiii. Share with the other Partner States relevant information about an ongoing investigation in which the other Partner State has expressed an interest in, consistent with ICAO Annex 13 to the Chicago Convention.
- xiv. Consult Partner States in the Organization of an investigation, drafting of the report, crisis management and Communications, as deemed necessary,
- xv. Identify their investments needs in the area of Aircraft Accidents and prioritize relevant sources of funding for that investment; and
- xvi. Promote the sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication.

Benefits from the Treaty

- 39. Upon signing of the Treaty, Kenya and the other partner States will benefit from enhanced cooperation and collaboration in the aircraft accident and incident investigation; Partner State resources; common guidance materials; accident investigation manuals and handbooks; sharing of safety information; enhanced capacity in training and research; consultations; crisis management and communication during investigations; and sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication.
- 40. In his concluding remarks, the Cabinet Secretary noted that following approval by Parliament, Kenya as a member of the Multilateral Agreement on Aircraft Accident and Incident Investigations will sign the Memorandum with other states within the EAC to give effect to the Agreement.

3.2 SUBMISSION BY THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

Dr. Alfred Mutua, The Cabinet Secretary for Foreign and Diaspora Affairs appeared before the Committee together with the registrar of treaties on Thursday, 29th June, 2023. He submitted that;

41. The main goal of the Agreement is to bring uniformity and coordination to civil aviation among the involved parties, with the aim of promoting safe, reliable, and efficient air travel as outlined in Article 92 of the Treaty for the establishment of the East African Community (EAC).
42. The Cabinet Secretary noted that the Agreement emphasizes the importance of adopting common policies for the development of civil transportation within the EAC. It recognizes the need for cooperation in Aircraft Accident and Incident Investigations, as well as the provision of prompt and effective services in line with international standards and procedures.
43. The Agreement takes into consideration the recommendations of the Accident Investigation and Prevention (AIP) Divisional Meeting (AIG/08) held in Montreal, Canada in 2008. It particularly highlights Recommendation (6/3a), which urges states to conduct safety investigations according to the Chicago Convention and Annex 13. In cases where the required capabilities or resources are unavailable, states are encouraged to seek regional support.
44. In Kenya, the Air Accident Investigation Department (AAID) under the Ministry of Transport and infrastructure is responsible for investigating aviation accidents. The department was separated from the Kenya Civil Aviation Authority (KCAA) to enhance its independence and impartiality in conducting investigations. Despite the KCAA's efforts to improve safety oversight through recruitment, training, the development of safety procedures, and enforcement, the number of aircraft accidents has continued to rise, according to the Ministry of Transport (2013). Kenya has faced numerous air accidents, especially involving light aircraft and helicopters, making accident prevention a significant challenge.
45. To address these issues, the Agreement proposes enhanced cooperation among the involved parties. It suggests that, according to Article 26 of the Chicago Convention, states should seek regional support when an accident occurs in their territory and the necessary capabilities or resources are unavailable. The Convention also allows states to delegate the entire investigation or parts of it to another state or a regional accident and incident investigation organization through mutual arrangement and consent.

Convention Objectives

46. The EAC Multilateral Agreement on Aircraft Accident and Incident Investigation aims to establish a regional framework for cooperation and coordination among member states in the investigation of aircraft accidents and incidents. The key objectives of this agreement are:
- i. Enhancing the exchange of information, expertise, and resources related to accident and incident investigation.
 - ii. Promoting harmonized standards and practices for investigation procedures.
 - iii. Strengthening the capabilities of member states in accident and incident investigation through training and capacity-building initiatives.
 - iv. Facilitating the sharing of investigation reports and recommendations to improve aviation safety within the region.

Justification for Kenya Ratifying the Agreement

47. Ratifying the EAC Multilateral Agreement on air accidents would bring several benefits to Kenya. Firstly, upon ratification, Kenya and other Partner States would experience enhanced cooperation and collaboration in the investigation of aircraft accidents and incidents. This would include sharing resources among Partner States, utilizing common guidance materials, accident investigation manuals, and handbooks. The sharing of safety information would contribute to a more comprehensive understanding of accident causes and prevention strategies.
48. Additionally, the Agreement would facilitate the development of enhanced capacity in training and research, allowing Kenya to stay updated with the latest advancements in accident investigation practices. Consultations, crisis management and communication during investigations would be improved, ensuring a more efficient and effective response to aviation incidents. Sharing specialized equipment and facilities among the Partner States would help reduce costs and avoid unnecessary duplication of resources.
49. By ratifying the Agreement, Kenya would also enhance its reputation and credibility in the international aviation community. Adherence to internationally recognized standards in aircraft accident and incident investigation would demonstrate Kenya's commitment to maintaining a safe and efficient civil aviation environment. This, in turn, would increase the potential for attracting foreign investment in the aviation sector, as investors would have confidence in the robust safety framework in place.
50. Furthermore, ratification of the Agreement would align Kenya with global trends and international obligations concerning aviation safety. This would contribute to the country's overall compliance with international standards, ensuring that Kenya remains up to date with the evolving landscape of aviation safety practices.

3.3 SUBMISSION FROM THE MINISTRY OF EAST AFRICAN COMMUNITY, THE ARID AND SEMI-ARID LANDS (ASALS) AND REGIONAL DEVELOPMENT

51. The Ministry of East African Community, The Arid and Semi-Arid Lands (ASALs) and Regional Development submitted a written submission vide a letter dated 20th June, 2023. The contents of the submissions are as follows;
52. The 16th Meeting of the Sectoral Council of Ministers for Transport, Communications and Meteorology held on 24th – 28th June 2019 in Kampala, Uganda, adopted a multilateral Agreement on Aircraft Accident and Incident Investigations. The Agreement is inconsistent to the commitments made in the EAC Treaty Convention on International Civil Aviation (Chicago Convention), both of which Kenya is a signatory.
53. Article 92 of the EAC Treaty, requires Partner States to undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security. The Chicago Convention requires that all civil aviation operations be conducted under internationally accepted minimum operating standards, procedures, and practices.
54. The Multilateral Agreement provides for:
 - I. a legal framework for Partner States' cooperation in handling Aircraft Accident and Incident investigations;
 - II. cooperation in Aircraft Accident and Incident Investigation for expeditious and effective Aircraft Accident and Incident Investigation services in accordance with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS);
 - III. a framework for transparency in incident and accident investigations,
 - IV. States to seek regional support if the required capabilities or resources are not available.
 - V. States of occurrence to delegate the whole or any part of the conducting of an investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent.

Areas of Cooperation:

55. The Partner States undertake to cooperate in aircraft and incident investigation, training, sharing of information, resources, and expertise, Consistent with EAC harmonized Civil Aviation (**Aircraft Accident and Incident Investigation**) Regulations, related Technical Guidance Materials and the ICAO Standards and Recommended Practices as contained in Annex 13 to the Chicago Convention on Civil Aviation.
56. Specifically, the Partner States shall:

- (a) establish, in accordance with ICAO Global Aviation Safety Plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies;
- (b) provide assistance in aircraft accident and incident investigation by availing experts, and any other required logistics to the other Partner States as appropriate;
- (c) ensure that all investigations into aircraft accident and incidents that are carried out in Partner States are independent from political or other Interference or pressure;
- (d) provide adequate resources, including funding and qualified personnel, for carrying out investigations;
- (e) promote the use of common set or regulations in compliance with the provisions of ICAO Annex 13;
- (f) promote the use of common guidance materials, accident investigation manuals or handbooks;
- (g) promote the application of the practices in the area of aircraft accident and incident prevention;
- (h) enhance the qualifications and experience of aircraft accident and incident investigators in Partner States;
- (i) enhance cooperation and collaboration within Partner States relating to sharing of safety information;
- (j) enhance development of regional institutional capacity in training, research, research findings, related to aircraft accident and incident investigation;
- (k) invite the other Partner States investigators to attend general and specialized investigation courses which they conduct;
- (l) facilitate the attachment of the other Partner States investigators to their aircraft accident and incident investigations, with a view to enhancing their understanding of investigation requirements and procedures;
- (m) share with the other Partner State relevant information about an ongoing investigation in which the other Partner State has expressed an interest in consistence with ICAO Annex 13 to the Chicago Convention;
- (n) consult Partner States in the organization of an investigation, drafting of the report, crisis management and communications, as deemed necessary
- (o) Identify their investment needs in the area of Aircraft Accident and Incident Investigation and prioritize relevant sources of funding for the investment;
- (p) Promote the sharing of specialized equipment and facilities in the view of cutting the cost and avoiding duplication.

57. It is important to note that the EAC Partner States undertook to liberalize granting of air traffic rights for passengers and the cargo operations with a view to increasing efficiency (Art 92 (3)C.

58. There will be benefits from enhanced cooperation and collaboration in the aircraft accident and incident investigation; Partner States resources; common guidance materials; accident investigation manuals and handbooks; sharing of safety information; enhanced capacity in training

and research; consultations; crisis management and communication during investigations; and sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication.

59. In line with the Treaty making and ratification Act 2012, a Cabinet memorandum was jointly submitted by the Cabinet Secretaries for:
 - i. Transport, Infrastructure, Housing, Urban Development and Public Works;
 - ii. National Treasury and Planning;
 - iii. East African Community and Regional Development; and the
 - iv. Honourable Attorney General
60. Cabinet granted approval for the adoption of the Multilateral Agreement on Aircraft Incident and Accident Investigations on 25th February 2021.
61. There is no additional cost of implementing the Agreement since each of the EAC Partner States will continue performing the tasks through the existing Institutional structures.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

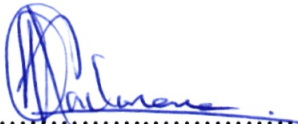
62. The Committee having considered the Agreement observed the following, That:

- 1) Ratifying the Agreement would boost Kenya's standing in the global aviation community, showcasing its reputation and credibility. By adhering to international standards for aircraft accident and incident investigation, Kenya would highlight its dedication to ensuring a secure and effective civil aviation environment. This commitment would enhance the country's prospects for attracting foreign investment in the aviation sector, as investors would have trust in the strong safety measures implemented.
- 2) The responsibility for implementing the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations will be shared between two ministries: the Ministry of Roads and Transport as well as the Ministry of East African Community, the Arid and Semi-Arid Lands (ASALs) and Regional Development.
- 3) The Agreement is aligned to the East Africa Community Treaty and there are no immediate direct financial implications arising from ratification of the Agreement.
- 4) Member States have the right to withdraw from the Agreement by giving written notice to the depository. The withdrawal shall take effect one year after the receipt of the notice. However, such withdrawal should not affect ongoing investigations or obligations arising from previous accidents or incidents.
- 5) The Agreement provides for the settlement of disputes arising between Member States through diplomatic channels and negotiations. In case of unresolved disputes, the agreement allows for referral of the matter to the East African Court of Justice for resolution.
- 6) The Agreement does not propose any amendment to the Constitution of Kenya 2010 and is consistent with the constitutional provisions.
- 7) The ratification of the Multilateral Agreement on Aircraft Accident and Incident Investigations presents no new policy implications for Kenya as the provisions of the Agreement are already embedded in the Civil Aviation Act (2013) and the Civil Aviation (Aircraft Accident and Incident Investigations) Regulations 2010.
- 8) There are no implications on matters relating to counties.

CHAPTER FIVE

5.0 RECOMMENDATION

63. Having considered the submissions, and analyzed documents presented, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the Committee recommends that the House Approves the Ratification of the East African Community (EAC) Multilateral Agreement on Aircrafts Accident and Incident Investigations.

SIGNED.......... DATE.....16/8/2023.....
HON. GK GEORGE KARIUKI, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

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Report Adoption list



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT- SECOND SESSION -2022
DEPARTMENTAL COMMITTEE ON TRANSPORT & INFRASTRUCTURE

REPORT ADOPTION LIST

Adoption list for the Report on the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigation

	NAMES	SIGNATURE
1.	The Hon. GK George Kariuki, M.P - Chairperson	
2.	The Hon. Mutua Didmus Wekesa Barasa, M.P- Vice-Chairperson	
3.	The Hon. Kiunjuri, Festus Mwangi, M.P.	
4.	The Hon. Abdul Rahim Dawood, M.P.	
5.	The Hon. Arama Samuel, M.P.	
6.	The Hon. Bady, Bady Twalib, M.P.	
7.	The Hon. Francis, Kajwang' Tom Joseph M.P.	
8.	The Hon. Kiaraho, David Njuguna, M.P.	
9.	The Hon. Naicca, Johnson Many, M.P.	
10.	The Hon. Chege, John Kiragu, M.P.	
11.	The Hon. Elsie Muhanda, M.P.	
12.	The Hon. Saney, Ibrahim Abdi, M.P.	
13.	The Hon. Hussein Weytan, Mohamed, M.P.	
14.	The Hon. Jhanda Zaheer, M.P	
15.	The Hon. Komingoi, Kibet Kirui, M.P.	

Minutes

**MINUTES OF THIRTY-THIRD SITTING OF THE DEPARTMENTAL COMMITTEE
ON TRASPORT AND INFRASTRUCTURE HELD ON TUESDAY, 16TH AUGUST 2023
IN 4TH FLOOR, COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT
BUILDING AT 12.00 PM**

MEMBERS PRESENT

1. The Hon. GK George Kariuki, M.P - Chairperson
2. The Hon. Mutua Didmus Wekesa Barasa, M.P- Vice-Chairperson
3. The Hon. Kiunjuri, Festus Mwangi, M.P.
4. The Hon. Samuel Arama, M.P
5. The Hon. Bady, Bady Twalib, M.P.
6. The Hon. Francis, Kajwang' Tom Joseph M.P.
7. The Hon. Kiaraho, David Njuguna, M.P.
8. The Hon. Chege, John Kiragu, M.P.
9. The Hon. Elsie Muhanda, M.P.
10. The Hon. Komingoi, Kibet Kirui, M.P.

APOLOGIES

1. The Hon. Abdul Rahim Dawood, M.P.
2. The Hon. Naicca, Johnson Many, M.P
3. The Hon. Saney, Ibrahim Abdi, MP
4. The Hon. Hussein Weytan, MP
5. The Hon. Jhanda Zaheer, M.P

COMMITTEE SECRETARIAT

- | | |
|-------------------------------------|--------------------------|
| 1. Ms. Tracy Chebet Koskei | - Senior Clerk Assistant |
| 2. Mr. Mohamednur Mohamud Abdullahi | - Clerk Assistant III |
| 3. Ms. Clare Choper Doye | - Clerk Assistant III |
| 4. Mr. Mabuti Mutua | - Legal Counsel |
| 5. Mr. Meldrick Sakani | - Audio Officer |

MIN./NO./TI/2023/171: PRELIMINARIES

The Chairperson called the meeting to order at twelve past ten O'clock (12.10 pm) and said a prayer. The agenda of the meeting was adopted after being proposed by the Hon. Chege, John Kiargu and seconded by the Komingoi, Kibet Kirui, M.P, respectively.

MIN./NO./TI/2023/172: CONFIRMATION OF THE PREVIOUS MEETING

Minutes of the twenty seventh Sitting were confirmed as a true record of the proceedings after being proposed and seconded by Hon. Samuel Arama, MP and Hon. Chege Kiragu, MP respectively

**MIN./NO./TI/2023/173: ADOPTION OF THE REPORT ON THE EAST AFRICAN
COMMUNITY (EAC) MULTILATERAL AGREEMENT ON
AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS**

The Committee considered the report on the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigation as per the Standing Order 170A and adopted the report after being proposed and seconded by the Hon. Mutua Didmus Wekesa Barasa, M.P and the Hon. Samuel Arama, M.P. The Committee following Observations and Recommendations:

COMMITTEE OBSERVATIONS

The Committee having considered the Agreement observed the following, That:

- 1) Ratifying the Agreement would boost Kenya's standing in the global aviation community, showcasing its reputation and credibility. By adhering to international standards for aircraft accident and incident investigation, Kenya would highlight its dedication to ensuring a secure and effective civil aviation environment. This commitment would enhance the country's prospects for attracting foreign investment in the aviation sector, as investors would have trust in the strong safety measures implemented
- 2) The responsibility for implementing the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations will be shared between two

ministries: the Ministry of Roads and Transport as well as the Ministry of East African Community, the Arid and Semi-Arid Lands (ASALs) and Regional Development.

- 3) The Agreement is aligned to the East Africa Community Treaty and there are no immediate direct financial implications arising from ratification of the Agreement.
- 4) Member States have the right to withdraw from the Agreement by giving written notice to the depository. The withdrawal shall take effect one year after the receipt of the notice. However, such withdrawal should not affect ongoing investigations or obligations arising from previous accidents or incidents.
- 5) The Agreement provides for the settlement of disputes arising between Member States through diplomatic channels and negotiations. In case of unresolved disputes, the agreement allows for referral of the matter to the East African Court of Justice for resolution.
- 6) The Agreement does not propose any amendment to the Constitution of Kenya 2010 and is consistent with the constitutional provisions.
- 7) The ratification of the Multilateral Agreement on Aircraft Accident and Incident Investigations presents no new policy implications for Kenya as the provisions of the Agreement are already embedded in the Civil Aviation Act (2013) and the Civil Aviation (Aircraft Accident and Incident Investigations) Regulations 2010.
- 8) There are no implications on matters relating to counties.

COMMITTEE RECOMMENDATION

The Committee Having considered the submissions, and analyzed documents presented, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the Committee recommends that the House **Approves the Ratification of the East African Community (EAC) Multilateral Agreement on Aircrafts Accident and Incident Investigations.**

MIN./NO./TI/2023/174: REPORT ON THE PROTOCOLS RELATING TO AMENDMENTS OF ARTICLE 50(a) AND 56 TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION 1944 (CHICAGO CONVENTION)

The Committee considered and adopted the report on the Protocols Relating to Amendments of Article 50 (a) and 56 to the Convention on International Civil Aviation 1944 (Chicago Convention)

as per the Standing Order 170A. The adoption was proposed and seconded by the Hon. Chege, John Kiragu, M.P and the Hon. Komingoi, Kibet Kirui, M.P.

COMMITTEE OBSERVATIONS

The Committee having considered the Protocols observed the following, That:

- 1) The increase of membership in the Council provides an opportunity for Kenya to lobby for Part II membership which is a Permanent Council Member seat, upon ratification and entry into force of the amendments.
- 2) The Amendment to the Convention is consistent with the Constitution and promotes constitutional values and objectives.
- 3) There are no additional obligations imposed by the Protocols relating to the amendments of the Convention other than those in the initial Convention.
- 4) The ratification of the amendment to the Convention will be incorporated into existing institutional frameworks that the Kenya Civil Aviation Authority (KCAA) has made provision for and therefore there's no budgetary changes envisaged in terms of financial implications if Kenya does not secure one of the additional Council Seats proposed.
- 5) The responsibility for the implementation and activity in regard to the amendment of the Chicago Convention falls under the Ministry of Roads and Transport. The Ministry of Foreign and Diaspora Affairs and the Office of the Attorney General and Department of Justice will coordinate the reporting process on state obligation pursuant to Treaty Making and Ratification Act of 2012
- 6) There are no implications on matters relating to counties.

COMMITTEE RECOMMENDATIONS

The Committee having considered the submissions, and analyzed documents presented, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the Committee recommends that the House **Ratifies the Protocols relating to Amendments of article 50(a) and 56 to the Convention on International Civil Aviation 1944 (Chicago Convention).**

MIN./NO./TI/2023/175:

ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business the meeting was adjourned at 12:50 pm. The next meeting will be held on notice.

SIGNED.....DATE.....

HON. GK GEORGE KARIUKI, MP

CHAIRPERSON

MINUTES OF THE TWENTY EIGHTH SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE HELD ON THURSDAY, 27TH JULY 2023 AT THE COMMITTEE ROOM 12, MAIN PARLIAMENT BUILDINGS AT 12.00 P.M.

MEMBERS PRESENT

1. The Hon. GK George Kariuki, M.P. – **Chairperson**
2. The Hon. Mutua Didmus Wekesa Barasa, M.P. – **Vice-Chairperson**
3. The Hon. Abdul Rahim Dawood, M.P.
4. The Hon. David Njuguna Kiaraho, M.P.
5. The Hon. Johnson Many Naicca, M.P.
6. The Hon. Samuel Arama, M.P.
7. The Hon. Saney Ibrahim Abdi, M.P.
8. The Hon. Kiunjuri Festus Mwangi, M.P.
9. The Hon. Chege John Kiragu, M.P.
10. The Hon. Hussein Weytan Mohamed Abdirahman, M.P.
11. The Hon. Komingoi Kibet Kirui, M.P.
12. The Hon. Muhanda Elsie Busihile, M.P.

APOLOGIES

1. The Hon. Bady, Bady Twalib, M.P.
2. The Hon. Francis, Kajwang' Tom Joseph, M.P.
3. The Hon. Jhanda Zaheer, M.P.

IN-ATTENDANCE

MINISTRY OF STATE ROADS AND TRANSPORT

1. Hon. Kipchumba Murkomen - Cabinet Secretary for Roads and Transport
2. Ms. Emily Nguzo Arao - Director General, KCAA
3. Mr. Nicholas Muhoya - Director, Aviation Safety, Security and Regulation
4. Mr. George O. Mogaka - Corporation Secretary, KAA
5. Ms. Chelagat Tungo - Parliamentary Liaison Officer, CS Office
6. Mr. Benjamin Wafula - Head of Communication, Office of the Cabinet Secretary

SECRETARIAT

1. Ms. Choper Clare Doye - Clerk Assistant III
2. Mr. Ahmed Salim Abdalla - Clerk Assistant I
3. Mr. Mabuti Mutua - Legal Counsel
4. Mr. Eugene Luteshi - Audio officer
5. Mr. Eric Kariuki - Research Officer
6. Ms. Ivy Maritim - Media Relations Officer

MIN./NO./TI/2023/137: PRELIMINARIES

The meeting was called to order at twenty minutes past noon (12.20 am) with a word of prayer from the Hon. John Kiragu Chege MP. The agenda was adopted having been proposed by the Hon. Johnson Many Naicca M.P. and seconded by Hon. Samuel Arama M.P. This was followed by introduction from the Members of the Committee, Secretariat and officials from the Ministry of Transport and Infrastructure.

MIN./NO./TI/2023/138: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Confirmation of minutes of the previous sitting was deferred.

MIN./NO./TI/2023/139: CONSIDERATION AND ADOPTION OF THE COMMITTEE WORK PLAN FOR THE PERIOD OF JULY TO DECEMBER

The agenda on the consideration and adoption of the Committee Work Plan for the period from July to December was deferred and it was proposed that the work plan be adopted in Mombasa during the Committee retreat with the Ministry of Roads and Transport.

MIN./NO./TI/2023/140: SUBMISSION FROM THE CABINET SECRETARY FOR THE MINISTRY OF ROADS AND TRANSPORT ON THE E.A.C. MULTILATERAL AGREEMENT AND THE CHICAGO CONVENTION PROTOCOL

The Cabinet Secretary submitted that the International Civil Aviation Organization is a specialized agency of the United Nations created on 7th December 1944, with the signing in Chicago, of the Convention on International Civil Aviation, and is charged with the administration of the principles laid out in the Convention. The Convention requires that all civil aviation operations be conducted under internationally accepted minimum operating standards, procedures and practices.

He further stated that, Article 92 of the East African Community (EAC) Treaty, which Kenya is a signatory, requires that Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.

The Cabinet Secretary emphasized that, to actualize the requirements under the Convention on International Civil Aviation (Chicago Convention) and the EAC Treaty with respect to Aircraft Accident and Incident Investigations, the 16th Meeting of the Sectoral Council on Transport, Communications and Meteorology held from 24th to 28th June 2019 in Kampala, Uganda, adopted a Multilateral Agreement on Aircraft Accident and Incident Investigations, which provides a legal framework for Partner States cooperation in handling Aircraft Accident and Incident investigations. The Multilateral Agreement was necessitated by the need to cooperate in Aircraft Accident and Incident Investigation to provide expeditious and effective Aircraft Accident and Incident Investigation services in accordance with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS).

The Cabinet Secretary further submitted that, during a Cabinet Meeting held on 25th February 2021, the Cabinet approved the Memorandum on the Ratification of the East African Community Multilateral Agreement on Aircraft Accident and Incident Investigation, and therefore there was no proposed amendment to the Constitution and if anything, it is consistent with the Constitution and promotes constitutional values and objectives.

He further informed the Committee that the ratification was in the National Interest. He explained that the International Civil Aviation Organization (ICAO) Universal Safety Audit Program (USOAP) findings indicate that many States have not been able to implement an effective accident and incident investigation system mainly because sufficient resources have not been allocated to meet States obligations under the Convention. This can be mitigated through enhanced cooperation. In this connection, pursuant to Article 26 of the Chicago Convention, when an accident occurs in their

territory, States can seek regional support if the required capabilities or resources are not available. The Convention also allows States of occurrence to delegate the whole or any part of the conducting of an investigation to another State or a Regional Accident and Incident Investigation Organization by mutual arrangement and consent. It is in the interest of the country to ratify the Agreement in order to implement an effective accident and incident investigation system.

He further submitted that, in order to cooperate efficiently in accident and incident investigation, training and sharing of information, resources and expertise, Partner States are required to:

- i. Establish, in accordance with ICAO Global Aviation Safety Plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies;
- ii. Provide assistance in aircraft accident and incident investigation by availing experts, facilities and equipment to the other Partner States as it deems appropriate;
- iii. (iii) Ensure that all investigations into aircraft accidents and incidents that are carried out in Partner States are independent from political or other interference or pressure;
- iv. Provide adequate resources, including funding and qualified personnel for carrying out investigations;
- v. Promote the use of common set of regulations in compliance with provisions of ICAO
- vi. Promote the use of common guidance materials, accident investigation manuals or handbooks;
- vii. Promote the application of the best practices in the area of accidents and incidents prevention;
- viii. Enhance the qualifications and experience of aircraft accidents and incidents investigators in Partner States;
- ix. Enhance cooperation and collaboration within Partner States in respect to sharing of safety information;
- x. Enhance development of regional institutional capacity in training, research and research findings related to Aircraft Accidents and Incidents Investigation;
- xi. Invite the other Partner States' investigators to attend general and specialized investigation courses which they conduct;
- xii. Facilitate the attachment of the other Partner States' investigators to their aircraft accidents and incidents investigations, with a view to enhancing their understanding of investigation requirements and procedures;
- xiii. Share with the other Partner State relevant information about an ongoing investigation in which the other Partner State has expressed an interest in, consistent with ICAO to the Chicago Convention.
- xiv. Consult Partner State in the Organization of an investigation, drafting of the report, crisis management and Communications, as deemed necessary;
- xv. Identify their investments needs in the area of aircraft accidents and prioritize relevant sources of funding for that investment; and
- xvi. Promote the sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication.

Regarding the implementation of the Agreement, the Cabinet Secretary stated that the instruments of ratification of the Agreements are handled by the East African Community Secretariat.

On Policy and legislative considerations, he emphasized that the Ratification of the Agreement will enable Kenya and the other Partner States to benefit from enhanced cooperation and collaboration in the aircraft accident and incident investigation; Partner State resources; common guidance materials; accident investigation manuals and handbooks; sharing of safety information; enhanced capacity in

training and research; consultations; crisis management and communication during investigations; and sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication.

He further finally stated that the ratification of the Agreement will be incorporated into existing institutional frameworks that the State Department for Transport has made provision for, hence no immediate budgetary changes are envisaged in terms of financial implications.

Committee concerns

The Committee agreed with the Cabinet Secretary that this was a milestone for Kenya in the aviation industry. They urged the Cabinet Secretary to ratify the treaty if the treaty will give Kenya a lead in the accident investigations.

In response, the Cabinet Secretary noted that Kenya has placed itself strategically in the Aviation Industry and through this treaty, Kenya will be leading regionally since they have the best equipment. The Committee agreed to fast track the process for the treaty to be ratified since its ratification does not have financial implications and is free from constitutional implications.

MIN./NO./TI/2023/141: CONSIDERATION OF THE KENYA ROADS (AMENDMENT) BILL, 2023

On 15th June, 2023, Hon Naisula Lesuuda appeared before the Committee to submit her views concerning the Kenya Roads (Amendment) Bill, 2023. The Bill seeks to amend the Kenya Roads Act, 2007 to require all public roads to have lanes or tracks reserved for exclusive use by pedestrian and non-motorized vehicles. The Bill further proposes to amend section 2 of the Kenya Roads Act, 2007 to introduce new definitions of the following terms; non-motorized transport, bicycle, non-motorized vehicle, pedestrian, cycling lanes, cycling track, pedestrian walkway and universal access.

The Bill also seeks to introduce a new clause immediately after section 47 of the Kenya Roads Act on non-motorized transport providing that all roads shall be designed with lanes and tracks reserved exclusively for non-motorized transport. The clause further stipulates that each public road shall have clearly marked pedestrian walkways for exclusive use by pedestrians and that all existing roads must comply accordingly.

The Hon. Naisula emphasized on the importance of the project as she had seen the same work in other countries that implemented the same such as the United Kingdom. Kenya being a country that fronts infrastructure, she found it wise to implement the same on Kenyan roads.

Committee recommendations

Following the prepublication scrutiny of the Bill, the Committee acknowledged that the Bill is constitutional despite being considered a money Bill. The Committee recommended that the Kenya Roads (Amendment) Bill, 2023 be processed for publication.

MIN./NO./TI/2023/142: ANY OTHER BUSINESS

The Committee requested the secretariat to invite the Cabinet Secretary to a meeting, in company of the Aviation Safety and Security Regulation team, to take the Committee through the procedures undertaken in accident investigations.

The Committee also requested for a summary of all air accidents that have occurred from 1992 to date, action taken, the status of the recommendations concerning such accidents and status of the implementation of the recommendations, if any.

The Chairperson informed the Committee on the upcoming trip to Canada through an invitation by the Kenya Civil Aviation Authority that invited the Committee to participate in the International Civil Aviation Organization (ICAO) Air Navigation World, 2023 in Montreal Canada, from 28th to 31st August 2023. The Chairperson further proposed 3 Committee Members to participate in the conference;

- i. Hon. Didimus Barasa Wekesa MP
- ii. Hon. Husein Weytan MP
- iii. Hon. Elsie Muhanda MP

MIN./NO./TI/2023/143: ADJOURNMENT / DATE OF THE NEXT MEETING

The meeting was adjourned at one o'clock. The next meeting to be held on notice.

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

HON. GK GEORGE KARIUKI, MP – CHAIRPERSON

MINUTES OF THE TWENTY-SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE HELD ON THURSDAY 29TH JUNE 2023 AT MEDIA CENTER, PARLIAMENT BUILDINGS AT 12:00 PM

MEMBERS PRESENT

1. The Hon. GK George Kariuki, M.P – **Chairperson**
2. The Hon. Mutua Didmus Wekesa Barasa, M.P- **Vice- Chairperson**
3. The Hon. Arama Samuel, M.P.
4. The Hon. Kiaraho, David Njuguna, M.P.
5. The Hon. Naicca, Johnson Many, M.P.
6. The Hon. Chege, John Kiragu, MP
7. The Hon. Elsie Muhanda, M.P
8. The Hon. Hussein Weytan, M.P
9. The Hon. Jhanda Zaheer, M.P.

APOLOGIES

1. The Hon. Kiunjuri, Festus Mwangi, M.P.
2. The Hon. Abdul Rahim Dawood, M.P
3. The Hon. Bady, Bady Twalib, M.P
4. The Hon. Francis, Kajwang' Tom Joseph M.P.
5. Hon. Saney, Ibrahim Abdi, MP
6. The Hon. Komingoi, Kibet Kirui, M.P

IN-ATTENDANCE

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

- | | |
|---------------------------------|--|
| 1. Hon. Dr. Alfred Mutua, E.G.H | - Cabinet Secretary for Foreign and Diaspora Affairs |
| 2. Amb. James Waweru | - Registrar of Treaties |
| 3. Mr. Kevin Thuo | - Office of the Cabinet Secretary |
| 4. Mr. Ahmed Muktar | - Third Secretary |
| 5. Ms. Purity C. Koech | - Assistant, Treaties |
| 6. Ms. Jackline Chepngeno | - Assistant, Treaties |

SECRETARIAT

- | | |
|--------------------------------|--------------------------|
| 1. Ms. Tracy Chebet Koskei | - Senior Clerk Assistant |
| 2. Mr. Mohamednur M. Abdullahi | - Clerk Assistant III |
| 3. Ms. Choper Clare Doye | - Clerk Assistant III |
| 4. Mr. Mabuti Mutua | - Legal Counsel |

5. Ms. Rahab Chepkilim - Audio Officer
6. Ms. Eva Kaare - Serjeant at Arms

MIN./NO./TI/2023/131: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past twelve O'clock (12.20 pm) with a word of prayer. The Agenda of the meeting was adopted having been proposed by the Hon. Elsie Muhanda, M.P and seconded by the Hon. Chege, John Kiragu, M.P respectively.

This was followed by a round of introductions by the Members of the Committee and thereafter the Cabinet Secretary for Foreign and Diaspora Affairs, along with officials from the Ministry of Foreign and Diaspora Affairs introduced themselves.

The Chairperson afterwards welcomed the Cabinet Secretary for the Ministry of Foreign and Diaspora Affairs and other officials of the Ministry who were present for the meeting.

MIN./NO./TI/2023/132: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the twenty-sixth Sitting were confirmed as a true record of the proceedings after being proposed and seconded by the and the Hon. Arama Samuel, M.P and the Chege, John Kiragu, M.P, respectively.

MIN./NO./TI/2023/133: MATTERS ARISING

Under Min. MIN./NO./TI/2023/128 (b): on the retreat with the Ministry of Roads and Transport

The Chairperson informed the Committee that the retreat with the Ministry of Roads and Transport that had been scheduled to take place of 30th June, 2023, had been rescheduled and will take place from Thursday, 27th to 30th July, 2023 in Mombasa County. This change was necessitated due to exchequer issues at the end of the financial year.

The Secretariat was tasked to make the necessary arrangements for the retreat.

MIN./NO./TI/2023/134: SUBMISSIONS FROM THE CABINET SECRETARY FOR FOREIGN AND DIASPORA AFFAIRS ON THE AGREEMENT AND PROTOCOLS

The Cabinet Secretary for the Ministry of Foreign and Diaspora Affairs, appeared before the Committee accompanied by Registrar of Treaties and other Officials of the Ministry.

In his remarks, the Cabinet Secretary stated that the objectives of the International Civil Aviation Organization are to develop the principles and techniques of International Air Navigation and to

foster the planning and development of international air transport so as to insure the safe and orderly growth of international civil aviation throughout the world.

The Cabinet Secretary submitted the Ministry's comments on the Agreement and Protocols that were committed to the Committee by the Speaker as follows;

I. East African Community (EAC) Multilateral Agreement on Aircraft Accident And Incident Investigation

The Cabinet Secretary provided a briefing to the Committee regarding the EAC Multilateral Agreement on Aircraft Accident and Incident Investigation. The Agreement aim is to achieve uniformity and coordination in civil aviation among the involved parties in the East African Community (EAC). The goal of the Agreement is to promote safe, reliable, and efficient air travel, as stated in Article 92 of the EAC Treaty. It emphasizes the importance of adopting common policies for the development of civil transportation within the EAC.

The Cabinet Secretary informed Committee the Convention objectives that EAC Agreement aims to establish a regional framework for cooperation and coordination among member states in the investigation of aircraft accidents and incidents. The key objectives of the agreement are:

- a. Enhancing the exchange of information, expertise, and resources related to accident and incident investigation.
- b. Promoting harmonized standards and practices for investigation procedures.
- c. Strengthening the capabilities of member states in accident and incident investigation through training and capacity-building initiatives.
- d. Facilitating the sharing of investigation reports and recommendations to improve aviation safety within the region.

The Cabinet Secretary in his submission noted that Kenya's aviation sector is experiencing rapid growth, and it is crucial to ensure the highest levels of safety to protect passengers, crew, and the public. By ratifying the agreement, Kenya can benefit from enhanced cooperation with other member states, leading to improved accident and incident investigation capabilities. This will contribute to identifying safety risks, implementing preventive measures, and fostering a culture of continuous improvement in aviation safety.

The Cabinet Secretary also noted that ratifying the EAC Multilateral Agreement on air accidents would bring several benefits to Kenya. Firstly, upon ratification, Kenya and other Partner States would experience enhanced cooperation and collaboration in the investigation of aircraft accidents and incidents. This would include sharing resources among Partner States, utilizing common guidance materials, accident investigation manuals, and handbooks.

The Cabinet Secretary further informed the Committee that the Agreement does not propose any amendment to the Constitution of Kenya 2010 and is consistent with the constitutional provisions, ratification of the Multilateral Agreement on Aircraft Accident and Incident Investigations presents no new policy implications for Kenya and that the provisions of the Agreement are already embedded in the Civil Aviation Act (2013) and the Civil Aviation (Aircraft Accident and Incident Investigations) Regulations 2010.

Members were also informed that the Memorandum is aligned with the EAC Treaty and there are no immediate direct financial implications arising from the signing of the Agreement.

II. Protocols relating to the Amendment of Article 50(a) and 56 of the Convention on International Civil Aviation, 1944 (Chicago Convention)

The Cabinet Secretary also briefed the Committee on the Chicago Convention. He stated that the Convention was signed on 7th December, 1944, by 52 States. Kenya adhered to it on 1st May, 1964. There are currently 193 contracting States to the Convention. The Convention's objective is to regulate international air transport and establishes the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations.

Members were informed the Protocols relating to the amendment of Articles 50(a) and 56 to the Convention on International Civil Aviation, 1944 (Chicago convention) were adopted in the 39th Session at Montreal on 1st October, 2016, in order to increase the membership of the Council and the Air Navigation Commission.

The Cabinet Secretary noted that the proposed amendment to the Convention shall come into force after the 128th Member State deposits their Instrument of Ratification as outlined by article 94(a) of the Convention and that currently 12 Members have ratified the amendments.

The Cabinet Secretary also informed the Committee the objectives of the Convention and its amendments, that the Convention under article 44(a) states that the aims and objectives the Organization are to develop the principles and techniques International air navigation and to foster the planning and development of international air transport so as to insure the safe and orderly growth, international civil aviation throughout the world.

Members were informed that the Protocol relating to an amendment to Article 50(a) of the Convention on International Civil Aviation, 1944 (Chicago Convention) was adopted with the aim of increasing the membership of the Council from thirty-six (36) to forty (40). The adoption was done alongside the Protocol relating to an amendment to Article 56 of the Convention which aims to increase the membership of the Air Navigation Commission from nineteen (19) to twenty-one (21).

The Cabinet Secretary further informed the Committee that Kenya was elected as a Part III member to the Council on 4th October, 2013 for a three-year term from 2013 to 2016. Kenya was

subsequently chosen to serve from October 7, 2016, until October 6, 2019, for a second term, and that the increase of membership in the Council provides an opportunity for Kenya to lobby for Part II membership which is a Permanent Council Member seat, upon ratification and entry into force of the amendments.

The Cabinet Secretary in his concluding remarks noted that the financial implications of the Convention that the Council submits to the Assembly annual budgets, annual statement of accounts, and estimates of all receipts and expenditures. The Assembly, votes the budgets with whatever modification it sees fit to prescribe, and with the exception of assessments under Chapter XV to States consenting thereto, shall apportion the expenses of the Organization among the contracting States on the basis which it shall from time to time determine.

MIN./NO./TI/2023/135: COMMITTEE CONCERNS

Members expressed concerns regarding the financial implications associated with the EAC Multilateral Agreement on Aircraft Accident and Incident Investigation. The Cabinet Secretary, in his submission, asserted that the agreement would not have any immediate direct financial implications. However, the Committee noted that Agreement mandates that upon ratification, Kenya would be obligated to allocate adequate resources, including funding and qualified personnel, for conducting investigations. This raised concerns about the potential financial burden that Kenya may have to bear in fulfilling its obligations under the agreement.

Members raised also concerns whether other regional bodies in Africa such as members of the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC) have same the Agreement and whether they have to adhere to the same policies outlined in the protocols and agreement. However, the Cabinet Secretary provided assurance that they have the same policies and undertook to give more information on the matter should the Committee require the Ministry to.

Members raised concern on the existing classification of member states in the Chicago Convention, given that Kenya is classified as a *part III* member state and was currently not part of the ICAO Council. The Cabinet Secretary submitted that by ratifying the Agreement, Kenya stands a chance to be part of the Council in the upcoming elections scheduled for 2024.

MIN./NO./TI/2023/136: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at one O'clock (1.00 pm). The next meeting will be held on notice.

Signed..........Date.....15/8/2023.....

HON. GK GEORGE KARIUKI, MP – CHAIRPERSON

**MINUTES OF THE TWENTY-FIFTH SITTING OF THE DEPARTMENTAL
COMMITTEE ON TRANSPORT AND INFRASTRUCTURE HELD ON THURSDAY
14TH JUNE 2023 AT COMMITTEE ROOM 5TH FLOOR, CONTINENTAL HOUSE
PARLIAMENT BUILDINGS AT 11:00AM**

MEMBERS PRESENT

1. The Hon. Mutua Didmus Wekesa Barasa, M.P- **Vice- Chairperson**
2. The Hon. Abdul Rahim Dawood, M.P
3. The Hon. Bady, Bady Twalib, M.P
4. The Hon. Francis, Kajwang' Tom Joseph M.P.
5. The Hon. Kiaraho, David Njuguna, M.P.
6. The Hon. Hussein Weytan, M.P
7. The Hon. Jhanda Zaheer, M.P.
8. The Hon. Komingoi, Kibet Kirui, M.P

APOLOGIES

1. The Hon. GK George Kariuki, M.P – **Chairperson**
2. The Hon. Kiunjuri, Festus Mwangi, M.P.
3. The Hon. Arama Samuel, M.P.
4. The Hon. Naicca, Johnson Manya, M.P.
5. The Hon. Chege, John Kiragu, MP
6. The Hon. Elsie Muhanda, M.P
7. Hon. Saney, Ibrahim Abdi, MP

SECRETARIAT

- | | |
|--------------------------------|--------------------------|
| 1. Ms. Tracy Chebet Koskei | - Senior Clerk Assistant |
| 2. Mr. Mohamednur M. Abdullahi | - Clerk Assistant III |
| 3. Ms. Choper Clare Doye | - Clerk Assistant III |
| 4. Mr. Mabuti Mutua | - Legal Counsel |
| 5. Mr. Abdinasir Moge | - Fiscal Analyst |
| 6. Ms. Rehema Koech | - Audio officer |
| 7. Ms. Eva Kaare | - Serjeant at Arms |

MIN./NO./TI/2023/119:

PRELIMINARIES

The Vice-Chairperson called the meeting to order at twenty minutes past eleven O'clock (11.20 am) with a word of prayer. The Agenda of the meeting was adopted having been proposed by the Hon. Abdul Rahim Dawood, M.P and seconded by the Hon. Komingoi, Kibet Kirui, M.P. respectively.

The Vice-Chairperson informed the Committee that the main Agenda was a briefing by the Legal Counsel on the process of the consideration of conventions as provided for in the Treaty Making and Ratification Act, 2012 and the National Assembly Standing orders

The Vice-Chairperson further informed the Committee that the following protocols and Agreement were forwarded to the Committee on 24th April, 2023 for consideration and reporting to the House;

- i. The East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations
- ii. Protocols relating to Amendments to Articles 50 and 56 of the Convention on International Civil Aviation (Chicago Convention)

MIN./NO./TI/2023/120:

**CONFIRMATION OF MINUTES OF THE
PREVIOUS SITTING**

The Minutes of the previous were confirmed as follows:

- i. Minutes of the Nineteenth Sitting were confirmed as a true record of the proceedings after being proposed and seconded by the Hon. Komingoi, Kibet Kirui, M.P and the Hon. Abdul Rahim Dawood, M.P, respectively.
- ii. Minutes of the Twentieth Sitting were confirmed as a true record of the proceedings after being proposed and seconded by The Hon. Bady Bady Twalib, M.P, and the Hon. Francis, Kajwang' Tom Joseph M.P respectively;
- iii. Minutes of the Twenty-first sitting were confirmed as a true record of the proceedings after being proposed and seconded by the Hon. Abdul Rahim Dawood, M.P and the Hon. Komingoi, Kibet Kirui, M.P, respectively.
- iv. Minutes of the Twenty-Second sitting were confirmed as a true record of the proceedings after being proposed and seconded by the Bady Bady Twalib, M.P and the Hon. Komingoi, Kibet Kirui, M.P, respectively.
- v. Minutes of the Twenty-Third sitting were confirmed as a true record of the proceedings after being proposed and seconded by the Hon. Abdul Rahim Dawood, M.P and the Hon. Bady Bady Twalib, M.P, respectively.
- vi. Minutes of the Twenty-fourth sitting were confirmed as a true record of the proceedings after being proposed and seconded by the Hon. Bady Bady Twalib, M.P and the Hon. Komingoi, Kibet Kirui, M.P, respectively.

PN./NO./TI/2023/121: BRIEFING ON THE PROCESS OF THE CONSIDERATION OF CONVENTIONS AS PROVIDED FOR IN THE TREATY MAKING AND RATIFICATION ACT, 2012 BY THE LEGAL COUNSEL

The Legal Counsel informed the Committee that the Honourable Speaker committed the following international agreements for consideration by the Committee in accordance with the Treaty Making and Ratification Act, 2012 and standing order 170.

- i. East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations and
- ii. Protocols relating to the Amendment of Articles 50(A) and 56 to the Convention on International Civil Aviation (Chicago Convention)

The Legal Counsel also informed Members the objects of the Agreement are as follows-

i. East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations

That this Agreement was adopted at the 16th Meeting of the Sectorial Council on Transport, Communication and Meteorology which was held on 24th - 28th June 2019 in Kampala, Uganda to actualize the requirements of the East African Community Treaty and the Convention International Civil Aviation (Chicago Convention) which requires cooperation in matters pertaining Aircraft Accident and Incident Investigations.

That Kenya is signatory to both the Chicago Convention and the East African Treaty. The Chicago Convention requires that all civil aircraft operations are carried out in accordance with minimum operating standards, procedures and practices.

The Legal Counsel highlighted the EAC treaty, specifically Article 92, which mandates partner states to implement measures ensuring safe, effective and profitable air transport services. The treaty also requires the adoption of common policies for the growth of civil air transport, harmonization of civil aviation rules and regulations and coordination for maintaining high security. To comply with both the Chicago Convention and the EAC treaty, a multilateral agreement on Aircraft and incident investigation was adopted. This agreement aims to establish a legal framework for partner states to collaboration in managing investigations related to aircraft accidents and incidents

The Legal Counsel further informed the Committee that the main aim of the Agreement is to harmonize and coordinate the Civil Aviation rules (as far Aircraft Accident and Incident Investigations are concerned in order to promote safety, reliability and efficiency of air transport in accordance with article 92 of the EAC Treaty. Consequently, the agreement reiterates and

recognizes the importance of adopting common policies in the development of civil transport in the EAC and the need to cooperate in Aircraft Accident and Incident Investigation services.

Members were also informed that the agreement recognizes the International Civil Aviation Organization (ICAO) missions which have revealed that many contracting states have not established and/or managed effective accident and incident investigation organizations, mainly because sufficient resources have not been allocated to meet States' obligations under the Convention.

MIN./NO./TI/2023/122: COMMITTEE CONCERNS

The Committee observed that the signed Agreements and instruments were not submitted to the Committee

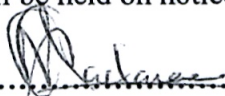
In this regard the Committee requested the following documents to be provided by the Cabinet Secretary for Foreign and Diaspora Affairs

- i. Correspondence to and from the diplomatic agencies responsible for implementation of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations Agreement and any other instruments of ratification that the Committee should be seized of during the consideration of these agreements;
- ii. Correspondence to and from the diplomatic agencies responsible for the implementation of Chicago Convention and the Protocols and any other instruments of ratification that the Committee should be seized of during the consideration of these agreements; and
- iii. Signed Agreements and Protocols.

The Committee resolved that the above information be submitted to the Committee for consideration before the Committee meets the Cabinet Secretaries for Roads and Transport, and for Foreign and Diaspora Affairs.

MIN./NO./TI/2023/123: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at Twelve noon (12.00 p.m). The next meeting will be held on notice.

Signed..........Date.....15/6/2023.....

HON. GK GEORGE KARIUKI, MP – CHAIRPERSON



Newspaper Advertisement on Public Participation

Why workers failed to get any pay hike during Labour Day

Businesses argued any wage increment would add to the many challenges firms are facing and hinder job creation.

Employees had hoped not just for a minimum wage increase but a general increase that would cover all workers.

MACHARIA KAMAU, NAIROBI

Kenyan workers will have to do without a pay hike this year after the government opted to give businesses a breather.

This has left employees to their own devices despite the high cost of living that has been exacerbated by an increase in statutory contributions.

The employees had hoped not just for a minimum wage increase but a general increase that would cover all workers.

The Central Organisation of Trade Unions (Cotu) Secretary General Francis Atwoli had in his Labour Day speech asked President William Ruto to consider giving Kenyan workers a general wage increase.

Atwoli had noted that the challenges being witnessed globally had hit workers hard and they would need to do with some cushioning.

Businesses operating locally had presented a different argument to the wage increment debate noting that it would add to the challenges firms are facing and hinder them from creating more employment opportunities.

President William Ruto said his administration was alive to the challenges that the Kenyan worker has to contend with and it was against this that it was developing a wage policy.

He said the country would adopt a remuneration policy that would be responsive to the cost of living. His new plans would also ensure that the minimum wages will also be guided by sustainability and productivity.

The new plan will also address disparities between public and private sector wages. In his Labour Day speech, President noted that one of the items earmarked for reform "to enhance worker welfare and labour interests in general, is the Wages and Remuneration Policy, which is before the Cabinet".

"We will expedite its adoption in order to reconfigure the national wage determination framework and ensure that it is responsive to the sustainability, productivity and cost of living in prescribing the national minimum

wage. It will also rationalise the public and private sector wage differentials," said President Ruto.

Among the factors that the Head of State may have considered in not giving workers a raise include last year's 12 per cent increase. Key organs in advising the government on labour issues - the National Labour Board and the General Wage Council - are not in place after the previous boards lapsed and are yet to be reconstituted.

Aside from Atwoli who had pitched for the workers, Nairobi Governor Johnson Sakaja highlighted the difficult conditions that security guards and digital ride-hailing taxi drivers go through but with meagre returns.

"The public sector is quick to comply (with new directives on labour) but in the private sector, there is a problem. One of these sectors is the private security industry... many of these private security companies charge their clients Sh30,000 to Sh50,000 per guard but they pay the guards Sh6,000 per month, which in this economy is something that is not right," said Sakaja.

The governor also said there is a need to regulate digital taxi companies, which he noted have been charged rock bottom rates due to competition and in turn hurting the drivers who have to work long hours to make money.

"Other workers, another group that is hurting is the drivers of the digital ride-hailing companies. Because of competition, these companies have raced to the bottom... and drivers have to drive for 22 hours a day to make money," he said.

Challenging environment

During yesterday's celebrations held at Uhuru Gardens, the private sector noted that it has experienced a challenging environment that has resulted in a slowdown in the number of jobs that the businesses operating locally are creating.

The economy, for instance, created 333,502 jobs in the fourth quarter of 2022 compared to 444,046 jobs created in the third quarter of last year.

Federation of Kenya Employers (FKE) Executive Director Jacqueline Mugo noted this has been due to a mix of factors that include drought that the country experienced over the last three years as well as global factors such as the Russia-Ukraine war.

"Households are struggling to put food on the table and enterprises are struggling to remain in operations," she said.

"Kenya continues to witness a shrink in the formal wage employment opportunities... many businesses especially



President William Ruto having a word with Cotu Secretary General Francis Atwoli during Labour Day celebrations at Uhuru Gardens in Nairobi, yesterday. [Courtesy]

Wage increase

12%
MINIMUM WAGE

AMONG the factors that the Head of State may have considered in not giving workers a raise include last year's 12 per cent increase.

MSMEs cannot afford the cost associated with operating in the formal sector and this has led to increased unemployed Kenyans as employers struggle to manage their costs."

Mugo had on behalf of the business community made a request for the retention of the minimum wage at the current levels.

She had argued that businesses need to have more time to implement last year's 12 per cent hike as well as cope with the difficulties they have been experiencing.

She also noted that the government should make the policy and taxation predictable, to avoid throwing businesses into shocks frequently through abrupt changes that have in the past hurt employment creation. Atwoli had appealed for not just an increase in the minimum wage but a general wage increase, noting that this would incentivise Kenyan workers and enable them to effectively play a role in turning around the economy.

emacharia@standardmedia.co.ke



MORE STORIES
NSE investors lose Sh200 billion in three months
PAGE 29



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION
DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE**

IN THE MATTER OF ARTICLES 2(5) & (6) AND 118 (1)(b) OF THE CONSTITUTION AND SECTION 8 OF THE TREATY MAKING AND RATIFICATION ACT, 2012

AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:-
THE EAST AFRICAN COMMUNITY (EAC) MULTILATERAL AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS; AND
PROTOCOLS RELATING TO AMENDMENTS TO ARTICLE 50 (a) AND 56 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION (CHICAGO CONVENTION)

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees

AND WHEREAS, the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations, and the Protocols relating to Amendment of Article 50 (a) and 56 to the Convention on International Civil Aviation, 1944 (Chicago Convention) were tabled in the House on 20th April, 2023 and committed to the Departmental Committee on Transport and Infrastructure for consideration and reporting to the House;

FURTHER WHEREAS, the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations seeks to actualize requirements under the Chicago Convention on International Civil Aviation (Chicago Convention) and the EAC Treaty concerning Aircraft Accident and Incident Investigations, while the Protocols relating to Amendment of Article 50(a) and 56 to the Convention on International Civil Aviation, 1944 (Chicago Convention) seeks to increase the membership of the International Civil Aviation Organization Council and the Air Navigation Commission.

NOW THEREFORE, in compliance with Articles 118(1)(b) and 2(5) & (6) of the Constitution as well as section 8 of the Treaty Making and Ratification Act, 2012, the Departmental Committee on Transport and Infrastructure hereby invites members of the public and stakeholders to submit memoranda on the Agreement and Protocols.

The full texts of the Agreement and Protocols and the accompanying Memoranda to Parliament may be accessed at www.parliament.go.ke/the-national-assembly/house-business/paper-laid.

The memoranda should be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke; to be received on or before Wednesday, 17th May, 2023 at 5.00 p.m.

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
Tuesday, 2nd May 2023

"For the Welfare of Society and the just Government of the People"

Submissions by the Ministries





MINISTRY OF FOREIGN AND DIASPORA AFFAIRS AND OFFICE OF THE
ATTORNEY GENERAL & DEPARTMENT OF JUSTICE

BRIEF ON THE EAST AFRICAN COMMUNITY (EAC) MULTILATERAL
AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS.

1.0. BACKGROUND AND PROBLEM STATEMENT

- 1.1 The main goal of the Agreement is to bring uniformity and coordination to civil aviation among the involved parties, with the aim of promoting safe, reliable, and efficient air travel as outlined in Article 92 of the Treaty for the establishment of the East African Community (EAC).
- 1.2 The Agreement emphasizes the importance of adopting common policies for the development of civil transportation within the EAC. It recognizes the need for cooperation in Aircraft Accident and Incident Investigations, as well as the provision of prompt and effective services in line with international standards and procedures.
- 1.3 It acknowledges that various audits and missions conducted by the ICAO Universal Safety Oversight Audit Program (USOAP) have revealed that many participating states have not established or managed effective accident and incident investigation organizations due to inadequate allocation of resources, hindering their compliance with the Convention and Annex 13.
- 1.4 The Agreement takes into consideration the recommendations of the Accident Investigation and Prevention (AIP) Divisional Meeting (AIG/08) held in Montreal, Canada in 2008. It particularly highlights Recommendation (6/3a), which urges states to conduct safety investigations according to the Chicago Convention and Annex 13. In

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cases where the required capabilities or resources are unavailable, states are encouraged to seek regional support.

- 1.5 The Agreement also acknowledges Chapter 5 Article 1 of Annex 13, which states that the State where an accident occurs can delegate the entire investigation or parts of it to another State or a regional accident and incident investigation organization through mutual arrangement and consent.
- 1.6 According to the findings of the International Civil Aviation Organization's Universal Safety Audit Program (USOAP), many states have been unable to establish an efficient accident and incident investigation system due to insufficient allocation of resources required by the Convention.
- 1.7 In Kenya, the Air Accident Investigation Department (AAID) under the Ministry of Transport and Infrastructure is responsible for investigating aviation accidents. The department was separated from the Kenya Civil Aviation Authority (KCAA) to enhance its independence and impartiality in conducting investigations. Despite the KCAA's efforts to improve safety oversight through recruitment, training, the development of safety procedures, and enforcement, the number of aircraft accidents has continued to rise, according to the Ministry of Transport (2013). Kenya has faced numerous air accidents, especially involving light aircraft and helicopters, making accident prevention a significant challenge.
- 1.8 To address these issues, the Agreement proposes enhanced cooperation among the involved parties. It suggests that, according to Article 26 of the Chicago Convention, states should seek regional support when an accident occurs in their territory and the necessary capabilities or resources are unavailable. The Convention also allows states to delegate the entire investigation or parts of it to another state or a regional accident and incident investigation organization through mutual arrangement and consent.



2.0. CONVENTION OBJECTIVES.

2.1 The EAC Multilateral Agreement on Aircraft Accident and Incident Investigation aims to establish a regional framework for cooperation and coordination among member states in the investigation of aircraft accidents and incidents. The key objectives of this agreement are:

- a. Enhancing the exchange of information, expertise, and resources related to accident and incident investigation.
- b. Promoting harmonized standards and practices for investigation procedures.
- c. Strengthening the capabilities of member states in accident and incident investigation through training and capacity-building initiatives.
- d. Facilitating the sharing of investigation reports and recommendations to improve aviation safety within the region.

3.0. SPECIFIC OBLIGATIONS UNDER THE AGREEMENT

3.1 Member states that ratify the agreement shall undertake specific obligations, including but not limited to:

- a. Establishing an independent accident investigation authority responsible for conducting investigations in accordance with international standards and practices.
- b. Ensuring the timely notification of accidents and incidents to the relevant authorities.
- c. Cooperating and sharing information with other member states involved in the investigation of accidents and incidents.
- d. Facilitating the access to relevant sites, records, and evidence for the purpose of investigation.
- e. Implementing the recommendations derived from accident and incident investigations to improve aviation safety.



4.0. IMPLEMENTATION OF THE EAC AGREEMENT UPON RATIFICATION

4.1 Upon ratification, Kenya will be required to:

- a. Establish, in accordance with ICAO Global Aviation Safety plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies.
- b. Provide assistance in aircraft accident and incident investigation by availing experts, and any other required logistics to the Partner States as appropriate;
- c. Ensure all investigations into aircraft accident and incidents that are carried out in Partner States are independent from political or other interference or pressure;
- d. Provide adequate resources, including funding and qualified personnel, for carrying out investigations;
- e. Promote the use of common set of regulations in compliance with provisions of ICAO Annex 13;
- f. Promote the use of common guidance materials, accident investigation annuals or handbooks;
- g. Promote the application of the best practices in the area of aircraft accident and incident prevention;
- h. Enhance the qualification and experiences of aircraft accident and incident investigators in Partner States;
- i. Enhance cooperation and collaboration with Partner States relating to sharing safety information;
- j. Enhance development of regional institution capacity in training, research, research findings, related aircraft accident and incident investigation;
- k. Invite the other Partner States' investigators to attend general and specialized investigation courses which they conduct;
- l. Facilitate the attachment of other Partner States' investigators to their aircraft accident and incident investigation, with a view to



enhancing their understanding of investigation requirements and procedures;

- m. Share with the other Partner State relevant information about an ongoing investigation in which the other Partner State has expressed an interest in consistency with ICAO Annex 13 to the Chicago Convention;
- n. Consult partner states in the organization of an investigation, drafting of the report, crisis management and communication, as deemed necessary;
- o. Identify their investment needs in the area of Aircraft Accident and Incident Investigation and prioritize relevant sources of funding for that investment;
- p. Promote the sharing of specialized equipment and facilities in the view of cutting the cost and avoiding duplication.

5.0. RELEVANCE OF THE AGREEMENT TO KENYA

- 5.1 Kenya's aviation sector is experiencing rapid growth, and it is crucial to ensure the highest levels of safety to protect passengers, crew, and the public. By ratifying the agreement, Kenya can benefit from enhanced cooperation with other member states, leading to improved accident and incident investigation capabilities. This will contribute to identifying safety risks, implementing preventive measures, and fostering a culture of continuous improvement in aviation safety.

6.0. JUSTIFICATION FOR KENYA RATIFYING THE EAC AGREEMENT

- 6.1 Ratifying the EAC Multilateral Agreement on air accidents would bring several benefits to Kenya. Firstly, upon ratification, Kenya and other Partner States would experience enhanced cooperation and collaboration in the investigation of aircraft accidents and incidents. This would include sharing resources among Partner States, utilizing common guidance materials, accident investigation manuals, and handbooks. The



sharing of safety information would contribute to a more comprehensive understanding of accident causes and prevention strategies.

- 6.2 Additionally, the Agreement would facilitate the development of enhanced capacity in training and research, allowing Kenya to stay updated with the latest advancements in accident investigation practices. Consultations, crisis management, and communication during investigations would be improved, ensuring a more efficient and effective response to aviation incidents. Sharing specialized equipment and facilities among the Partner States would help reduce costs and avoid unnecessary duplication of resources.
- 6.3 By ratifying the Agreement, Kenya would also enhance its reputation and credibility in the international aviation community. Adherence to internationally recognized standards in aircraft accident and incident investigation would demonstrate Kenya's commitment to maintaining a safe and efficient civil aviation environment. This, in turn, would increase the potential for attracting foreign investment in the aviation sector, as investors would have confidence in the robust safety framework in place.
- 6.4 Furthermore, ratification of the Agreement would align Kenya with global trends and international obligations concerning aviation safety. This would contribute to the country's overall compliance with international standards, ensuring that Kenya remains up to date with the evolving landscape of aviation safety practices.

7.0. LEGAL IMPLICATIONS

- 7.1 The Agreement does not propose any amendment to the Constitution of Kenya 2010 and is consistent with the constitutional provisions.
- 7.2 The ratification of the Multilateral Agreement on Aircraft Accident and Incident Investigations presents no new policy implications for Kenya as



the provisions of the Agreement are already embedded in the Civil Aviation Act (2013) and the Civil Aviation (Aircraft Accident and Incident Investigations) Regulations 2010.

8.0. FINANCIAL IMPLICATIONS

8.1 The Memorandum is aligned with the EAC Treaty and there are no immediate direct financial implications arising from the signing of the Agreement.

9.0 MINISTERIAL RESPONSIBILITY

9.1 Responsibility for the implementation of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations will fall under the Ministry of Roads, Transport and Public Works and the Ministry of East African Community and Regional Development.

9.2 The Office of the Attorney General, Department of Justice and the Ministry of Foreign and Diaspora Affairs will coordinate the reporting process on State obligations under the Treaty Making and Ratification Act No. 45 of 2012.

10.0. SETTLEMENT OF DISPUTES

10.1 The agreement provides for the settlement of disputes arising between member states through diplomatic channels and negotiation. In case of unresolved disputes, the agreement allows for the referral of the matter to the East African Court of Justice for resolution.

11.0. RESERVATIONS

11.1 East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations does not expressly provide for reservations.



12.0. WITHDRAWAL

12.1 Member states have the right to withdraw from the agreement by giving written notice to the depository. The withdrawal shall take effect one year after the receipt of the notice. However, such withdrawal should not affect ongoing investigations or obligations arising from previous accidents or incidents.

13.0 DEPOSITORY

13.1 The Secretary General of EAC shall be the Depository of the Agreement.

June 26th 2023

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MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

BRIEF ON THE PROTOCOLS RELATING TO AMENDMENTS OF ARTICLE 50(A) AND 56 TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, 1944 (CHICAGO CONVENTION)

1.0. BACKGROUND AND PROBLEM STATEMENT

- 1.1. The Chicago Convention was signed on 7th December, 1944, by 52 States. Kenya adhered to it on 1st May, 1964. There are currently 193 contracting States to the Convention. The Convention's objective is to regulate international air transport and establishes the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations.
- 1.2. Protocols relating to the amendment of Articles 50(a) and 56 to the Convention on International Civil Aviation, 1944 (Chicago convention) were adopted in the 39th Session at Montreal on 1st October, 2016, in order to increase the membership of the Council and the Air Navigation Commission.
- 1.3. The proposed amendment to the Convention shall come into force after the 128th Member State deposits their Instrument of Ratification as outlined by article 94(a) of the Convention. Currently 84 members have ratified the amendments.

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- 1.4. Kenya is Party to the Convention and its protocols but is yet to ratify the Protocols relating to the amendment of the Convention.
- 1.5. The Convention observes that while misuse of International Civil Aviation can endanger overall security, it can also significantly contribute to the development and maintenance of friendship and understanding among the countries and people of the world.
- 1.6. The Protocol pertaining to the Amendment makes note of the desire of a significant number of contracting nations to enhance the council's membership in order to ensure greater representation of the contracting parties and a better sense of balance.
- 1.7. Additionally, it makes note in the preamble of the contracting parties' overall desire to increase the size of the Air Navigation Commission.

2.0 OBJECTIVES OF THE CONVENTION AND ITS AMENDMENTS.

- 2.1. The Convention under article 44(a) states that the aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to insure the safe and orderly growth of international civil aviation throughout the world.
- 2.2. The Protocol relating to an amendment to Article 50(a) of the Convention on International Civil Aviation, 1944 (Chicago Convention) was adopted with the aim of increasing the membership of the Council from thirty-six (36) to forty (40).

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2.3 The adoption was done alongside the Protocol relating to an amendment to Article 56 of the Convention which aims to increase the membership of the Air Navigation Commission from nineteen (19) to twenty-one (21).

2.4 The ever increasing number of Contracting Parties joining the ICAO and the growth of international air traffic movement and air navigation services through the creation of sub regions that lack representation from ICAO, has necessitated the amendments to the Convention.

3.0 SPECIFIC OBLIGATIONS UNDER THE CONVENTION

3.1 There are no additional obligations imposed by the Protocols relating to the amendments of the Convention other than those in the initial Convention.

4.0 JUSTIFICATION FOR KENYA RATIFYING THE AMENDMENTS TO THE ICAO CONVENTION

4.1 Kenya was elected as a Part III member to the Council on 4th October, 2013 for a three-year term from 2013 to 2016. Kenya was subsequently chosen to serve from October 7, 2016, until October 6, 2019, for a second term.

4.2 The increase of membership in the Council provides an opportunity for Kenya to lobby for Part II membership which is a Permanent Council Member seat, upon ratification and entry into force of the amendments.



5.0 LEGISLATIVE IMPLICATIONS

5.1 The amendments of the Convention are consistent with the Constitution and promote constitutional values and objectives, it does not allude to an amendment of the Constitution or any other existing relevant legislation

6.0 FINANCIAL IMPLICATIONS

6.1 The Council submits to the Assembly annual budgets, annual statements of accounts, and estimates of all receipts and expenditures. The Assembly votes the budgets with whatever modification it sees fit to prescribe, and, with the exception of assessments under Chapter XV to States consenting thereto, shall apportion the expenses of the Organization among the contracting States on the basis which it shall from time to time determine.

7.0 MINISTERIAL RESPONSIBILITY

7.1 The Ministry responsible for the implementation and activity in regard to the amendment of the Chicago Convention falls under the Ministry of Roads, Transport and Public works.

7.2 The Ministry of Foreign Affairs and the Office of the Attorney General and Department of Justice will coordinate the reporting process on state obligation pursuant to Treaty Making and Ratification Act of 2012.

8.0 RATIFICATION, ACCEPTANCE AND APPROVAL AND AMMENDMENTS

8.1 The Convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited in the archives of the



Government of the United States of America, which shall give notice of the date of the deposit to each of the signatory and adhering State.

8.2 Amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.

9.0 SETTLEMENT OF DISPUTES

9.1 If a disagreement arises between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council.

10.0 RESERVATIONS

10.1 The Convention provides that the States members of the International Civil Aviation Organization may become parties to this Protocol either by:

- a) signature without reservation as to acceptance, or
- b) signature with reservation as to acceptance followed by acceptance

11.0 WITHDRAWAL

11.1 Any contracting State may give notice of denunciation of the Convention three years after its coming into effect by notification addressed to the



Government of the United States of America, which shall at once inform
each of the contracting States.

**CABINET SECRETARY'S TALKING POINTS FOR THE JOINT MEETING
WITH THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND
INFRASTRUCTURE**

1. **Chairperson of the Departmental Committee on Transport and Infrastructure;**
Distinguished members of the Committee;
Ladies and Gentlemen;

It is an honour and privilege to appear before this Committee this afternoon to discuss key issues relating to:

- The Protocols Relating to Amendment of Article 50 (a) And 56 to The Convention On International Civil Aviation, 1944 (Chicago Convention)
- The East African Community (EAC) Multilateral Agreement On Aircraft Accident and Incident Investigations

2. As I have previously pointed out, the National Assembly through its various Committees, is a vital stakeholder in the execution of Kenya's Foreign and Diaspora Policy mandates. Therefore, our presence here today is consistent with this philosophy and with H.E. the President's inclusive approach to governance.
3. Before we proceed, **Honourable Chairperson**, allow me to introduce the team that has accompanied me here this afternoon from Ministry. With your concurrence, I will let my team members to introduce themselves. **(ROUND OF INTRODUCTIONS)**



4. Honourable Chair, Distinguished members, let me begin by stating that the Ministry of Foreign and Diaspora Affairs is the custodian and repository of all of Kenya's Treaties and International Obligations including the ones that we are discussing today.

5. The International Civil Aviation Organization (ICAO) is a United Nations agency that benefits Kenya and other member states through the creation of an orderly, safe and rule-based international civil aviation. ICAO is a strategic organization to Kenya's civil aviation interests. Since 1964, when Kenya acceded to the Chicago Convention, we have benefited from sharing best practices, safety standards and been able to draw from rich reservoirs of the latest aviation technology. Before I allow my team to elaborate further, I would like to make three observations:
 - i. Since 1944, the number of Contracting Parties joining the ICAO has increased exponentially. This has necessitated the amendments to the Chicago Convention including the need to expand the Membership of the **ICAO Council** from 36 to 40.

 - ii. **Distinguished Members**, a key strategic concern for this Committee is that an expanded Council provides an opportunity for our country to lobby for a **Permanent Council Member seat**, upon ratification and entry into force of the amendments.

 - iii. I ask this distinguished committee to remain seized of this fact.



6. **On the East African Community (EAC) Multilateral Agreement On Aircraft Accident and Incident Investigations, I would like to make the following points:**

i. This is an important Agreement that will bring uniformity and coordination, through adoption of common policies, to the East Africa Civil aviation sector including safety, reliability, cooperation in Aircraft Accident and Incident Investigations, and efficient air travel within our region.

ii. Ratification of the EAC Multilateral Agreement on Air Accidents is strategically important for Kenya's rapidly developing aviation sector. Kenya will gain from expanded collaboration with other member states as a result of ratifying the agreement, which will lead to improved accident and incident investigation capacities. This will help identify safety hazards, put preventive measures in place, and build a culture of continuous improvement in aviation safety.

7. **Honourable Chairperson and Distinguished Members,** I am requesting your approval to ratify the Protocols amending Articles 50(a) and 56 of the 1944 Convention on International Civil Aviation. Similarly, I would like your approval to ratify the East African Community (EAC) Multilateral Agreement On Aircraft Accident and Incident Investigations.

8. **Thank you for your kind attention.**



REPUBLIC OF KENYA



MINISTRY OF ROADS AND TRANSPORT
STATE DEPARTMENT FOR TRANSPORT
Office of the Principal Secretary

Telegram: "TRANSCOMS".Nairobi
Telephone: (020) 2729200
Email: ps@transport.go.ke
Website: www.transport.go.ke
When replying please quote

TRANSCOM BUILDING
NGONG ROAD
P.O. Box 52692 - 00100
NAIROBI

MOT&I/C/ADM/034/5 VOL.I

20th June, 2023

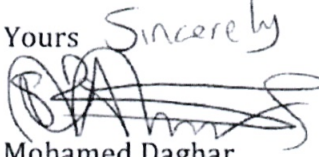
Mr. Samuel Njoroge
The Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear Sir

MEETING WITH THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

Reference is made to your letter Ref: NA/DDC/TI/2023/049 dated 9th June, 2023 on the above subject matter.

Please find forwarded herewith the signed response by the Cabinet Secretary, Ministry of Roads and Transport on the information requested by the Departmental Committee on Transport and Infrastructure regarding the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations; and the Protocols relating to Amendment of Article 50(a) and 56 to the Convention on the International Civil Aviation, 1944 (Chicago Convention).

Yours Sincerely

Mohamed Daghar
PRINCIPAL SECRETARY
Encl.

Hon. Chairman, I am pleased to appear before this Honorable Committee on the Ministry's views and comments regarding the below-mentioned Agreement and Protocols as requested vide letter of Ref: No NA/DDC/TI/2023/ (049) dated 9th June, 2023 and as tabled before the House on 20th April, 2023;

- I. The East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations ; and**
- II. The protocols relating to amendment of article 50(a) and 56 to the Convention on International Civil Aviation, 1994 (Chicago convention)**

Hon. Chairman, the Committee requested for the following information;

- i. Correspondence to and from the diplomatic agencies responsible for implementation of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations and any other instruments of ratification that the committee should be seized of during the consideration of this agreements;*
- ii. Correspondence to and from the diplomatic agencies responsible for implementation of the Chicago Convention and the Protocols and any other instruments of ratification that the committee should be seized of during the consideration of this agreements;*
- iii. Signed agreement and protocols; and*
- iv. Views and Comments of the Ministry on the Agreement and Protocols, more so any additional legal obligation that will result from ratification.*

Hon. Chairman, I beg to reply;

- i. Correspondence to and from the diplomatic agencies responsible for implementation of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations and any other instruments of ratification that the committee should be seized of during the consideration of this agreements**

Hon. Chairman, Article 92 of the EAC Treaty, which Kenya is a signatory, requires that Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.

To actualize the requirements under the Convention on International Civil Aviation (Chicago Convention) and the EAC Treaty with respect to Aircraft Accident and Incident Investigations the 16th Meeting of the Sectorial Council on Transport, Communications and Meteorology held on 24th -28th June, 2019 in Kampala, Uganda, adopted a Multilateral Agreement on Aircraft Accident and Incident Investigations.

The Multilateral Agreement provides a legal framework for Partner States cooperation in handling Aircraft Accident and Incident investigations. The Multilateral Agreement was necessitated by the need to cooperate in Aircraft Accident and Incident Investigation to provide expeditious and effective Aircraft Accident and Incident Investigation services in accordance with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS).

Following the communication from the Ministry of EAC and Regional Development on the above (Copy attached-Appendix 1), the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works prepared a Cabinet Memorandum for the purposes of approval by the Cabinet. The Cabinet, at their meeting on 25th February 2021, approved the ratification of the Agreement (Cabinet Memo Attached- Appendix 2) and communication on the same from the Head of Public Service (Copy attached- Appendix 3) was dispatched to the Ministry of Foreign Affairs to proceed to the subsequent steps of ratification in line with the Treaty Making and Ratification Act, 2012 (Revised 2018).

Hon. Chairman, communication was then received by the MoT from the MFA transmitted through the State Department of EAC requesting for the Cabinet Memo and Country position paper (copy attached-Appendix 4). The MoT responded to State Department of EAC by attaching copies of the requested documents (copy of the response attached-Appendix 5).

- ii. **Correspondence to and from the diplomatic agencies responsible for implementation of the Chicago Convention and the Protocols and any other instruments of ratification that the committee should be seized of during the consideration of this agreements**

Hon. Chairman, the 39th Session of the ICAO Assembly held at Montreal from 27th September to 6th October 2016 adopted two protocols amending, respectively,

Articles 50 (a) and 56 of the *Convention on International Civil Aviation*. The Protocol relating to the amendment of Article 50 (a) of the Convention provides for an increase in the size of the Council from thirty-six members to forty; the Protocol relating to the amendment of Article 56 of the Convention calls for an increase in the membership of the Air Navigation Commission from nineteen to twenty-one. The reasoning behind the need of increasing membership is because of the growing traffic in certain regions of the world and the emergence of new sub-regions that are not represented in the Council. (Correspondence from the Secretary General of ICAO to Contracting states to ratify the Protocols is hereby attached - Appendix 6)

iii. Signed agreements and protocols

Hon. Chairman, the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations is yet to be signed by Council of Ministers of East African Community pursuant to the provisions of the Treaty as per Article 16. (Copy of the agreement already in possession of the Committee)

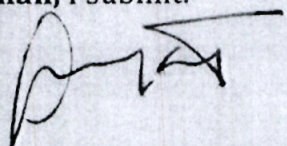
The protocols relating to amendment of article 50(a) and 56 to the Convention on International Civil Aviation, 1944 (Chicago convention) were signed at Montreal on 6th October 2016 (copies attached-Appendices 7 &8).

iv. Views and Comments of the Ministry on the Agreement and Protocols, more so any additional legal obligation that will result from ratification.

Hon. Chairman, a signed copy of the views and comments of the Ministry was sent to the Committee vide letter of reference number *MOT&I/C/ADM/034/7/2 VOL.1 (24)* dated 7th June 2023. (Copy attached for reference- Appendix 9)

Hon. Chairman, as for the legal obligation that will result from the ratification of the Agreements and Protocols, I wish to underscore that there are no legal obligation to the government of Kenya since the agreement and protocols are consistent with the Constitution of Kenya.

Hon. Chairman, I submit.



HON. KIPCHUMBA MURKOMEN, E.G.H
CABINET SECRETARY

REPUBLIC OF KENYA



CABINET MEMORANDUM ON THE RATIFICATION OF
THE EAST AFRICAN COMMUNITY MULTILATERAL
AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT
INVESTIGATIONS

BY

THE CABINET SECRETARY FOR TRANSPORT,
INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT
AND PUBLIC WORKS

THE CABINET SECRETARY
THE NATIONAL TREASURY AND PLANNING

AND
THE ATTORNEY GENERAL

JUNE 2020

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Appendix Q.

SECRET

I. OBJECTIVE OF THE MEMORANDUM

1. The purpose of this memorandum is to seek Cabinet approval for the adoption of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations.

II. BACKGROUND

2. Kenya is a signatory to the Convention on International Civil Aviation (Chicago Convention) signed on 7th December 1944. The Convention requires that all civil aviation operations be conducted under internationally accepted minimum operating standards, procedures and practices.
3. Article 92 of the EAC Treaty, which Kenya is a signatory, requires that Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.
4. To actualize the requirements under the Convention on International Civil Aviation (Chicago Convention) and the EAC Treaty with respect to Aircraft Accident and Incident Investigations the 16th Meeting of the Sectoral Council on Transport, Communications and Meteorology held on 24th - 28th June 2019 in Kampala, Uganda, adopted a Multilateral Agreement on Aircraft Accident and Incident Investigations, attached as Appendix I.



5. The Multilateral Agreement provides a legal framework for Partner States' cooperation in handling Aircraft Accident and Incident investigations. The Multilateral Agreement was necessitated by the need to cooperate in Aircraft Accident and Incident Investigation to provide expeditious and effective Aircraft Accident and Incident Investigation services in accordance with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS).

III. ANALYSIS OF THE ISSUE

6. The International Civil Aviation Organization (ICAO) Universal Safety Audit Program (USOAP) findings indicate that many States have not been able to implement an effective accident and incident investigation system mainly because sufficient resources have not been allocated to meet States' obligations under the Convention.
7. This can be mitigated through enhanced cooperation. In this connection, pursuant to Article 26 of the Chicago Convention, when an accident occurs in their territory, States can seek regional support if the required capabilities or resources are not available. The Convention also allows States of occurrence to delegate the whole or any part of the conducting of an investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent.

IV. KEY REQUIREMENTS OF THE TREATY

8. In order to cooperate efficiently in accident and incident investigation, training and sharing of information, resources and expertise; Partner States are required to:

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- (i) Establish, in accordance with ICAO Global Aviation Safety Plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies;
- (ii) provide assistance in aircraft accident and incident investigation by availing experts, facilities and equipment to the other Partner States as it deems appropriate;
- (iii) ensure that all investigations into aircraft accidents and incidents that are carried out in Partner States are independent from political or other interference or pressure;
- (iv) provide adequate resources, including funding and qualified personnel for carrying out investigations;
- (v) promote the use of common set of regulations in compliance with provisions of ICAO Annex 13;
- (vi) promote the use of common guidance materials, accident investigation manuals or handbooks;
- (vii) promote the application of the best practices in the area of accidents and incidents prevention;
- (viii) enhance the qualifications and experience of aircraft accidents and incidents investigators in Partner States;
- (ix) enhance cooperation and collaboration within Partner States in respect to sharing of safety information;
- (x) enhance development of regional institutional capacity in training, research and research findings related to Aircraft Accidents and Incidents Investigation;
- (xi) invite the other Partner States' investigators to attend general and specialized investigation courses which they conduct;

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- (xii) facilitate the attachment of the other Partner States' investigators to their aircraft accidents and incidents investigations, with a view to enhancing their understanding of investigation requirements and procedures;
- (xiii) Share with the other Partner States relevant information about an ongoing investigation in which the other Partner State has expressed an interest in, consistent with ICAO Annex 13 to the Chicago Convention.
- (xiv) consult Partner States in the Organization of an investigation, drafting of the report, crisis management and Communications, as deemed necessary;
- (xv) Identify their investments needs in the area of Aircraft Accidents and prioritize relevant sources of funding for that investment; and
- (xvi) Promote the sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication

V. BENEFITS FROM THE TREATY

9. Upon signing of the Treaty, Kenya and the other Partner States will benefit from enhanced cooperation and collaboration in the aircraft accident and incident investigation; Partner State resources; common guidance materials; accident investigation manuals and handbooks; sharing of safety information; enhanced capacity in training and research; consultations; crisis management and communication during investigations; and sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication.



VI. WAY FORWARD

10. Following approval, Kenya as a member of the Multilateral agreement on Aircraft Accident and Incident Investigation will sign the Memorandum with other states within the EAC to give force to the Agreement.

VII. FINANCIAL IMPLICATIONS

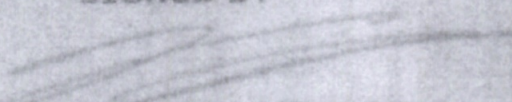
11. The Memorandum is aligned to the EAC Treaty and there are no immediate direct financial implications arising from the signing of the Agreement.

VIII. REQUEST TO THE CABINET

12. The Cabinet is requested to note the contents of this Memorandum and to:
 - (i) Approve the adoption of the East African Community Multilateral Agreement on Aircraft Accident and Incident investigations; and
 - (ii) Direct the Cabinet Secretary responsible for Transport, Infrastructure, Housing, Urban Development and Public Works, the National Treasury and Planning and the Attorney General to take necessary action.

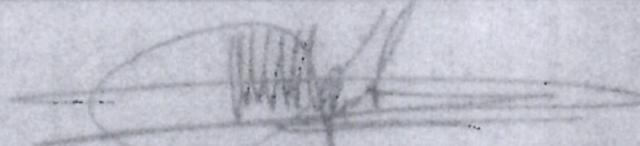
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SIGNED BY


JAMES W. MACHARIA, EGH
CABINET SECRETARY

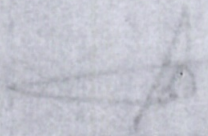
MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLICS WORKS

DATE: 16.06.2020


HON. (AMB) UKUR YATANI, EGH
CABINET SECRETARY

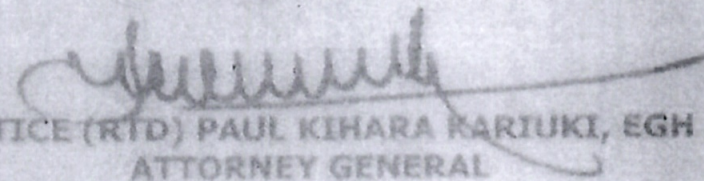
THE NATIONAL TREASURY AND PLANNING

DATE: 2th November, 2020

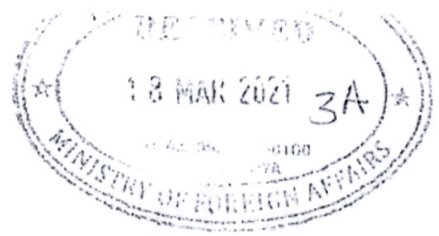
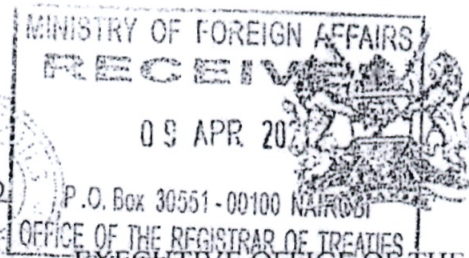

ADAN A. MOHAMED, EGH
CABINET SECRETARY

MINISTRY OF EAST AFRICAN COMMUNITY AND
REGIONAL DEVELOPMENT

DATE: 6th November 2020


JUSTICE (RTD) PAUL KIHARA KARIUKI, EGH
ATTORNEY GENERAL

DATE: 25th November 2020



EXECUTIVE OFFICE OF THE PRESIDENT
HEAD OF THE PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

SECRET

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya

Ref. No. **CAB/GEN.3/1/1/VOL.XVII/(43)**
and date

2nd March, 2021
20.....

Mr. Mr. Solomon Kitungu, CBS
Principal Secretary/Transport
Ministry of Transport, Infrastructure, Housing
Urban Development & Public Works
NAIROBI

Prof. Arch. Paul Mwangi Maringa, (PhD), Corp. Arch. Maak, Mkip. CBS
Principal Secretary/Infrastructure
Ministry of Transport, Infrastructure, Housing
Urban Development & Public Works
NAIROBI

Dr. Kevit Desai, PhD CBS
Principal Secretary/East African Community
Ministry of East African Community & Regional Northern Development
NAIROBI

Dr. Richard Belio Kipsang, PhD, CBS
Principal Secretary/Regional & Northern Corridor Development
Ministry of East African Community & Regional Northern Development
NAIROBI

Dr. Julius M. Muia, PhD, CBS
Principal Secretary/National Treasury
National Treasury & Planning
NAIROBI

Mr. Saitoti Torome, CBS
Principal Secretary/Planning
National Treasury & Planning
NAIROBI

Appendix 3.

SECRET

Amb. Macharia Kamau, CBS ✓
Principal Secretary
Ministry of Foreign Affairs
NAIROBI

Mr. Kennedy N. Ogeto, CBS
Solicitor General
State Law Office & Department of Justice
NAIROBI

Dear *Amb. Kamau*

**THE RATIFICATION OF THE EAST AFRICA MULTILATERAL AGREEMENT
ON AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS**

I refer to the 1st Cabinet Meeting - 2021 held on 25th February, 2021 during which the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development & Public Works presented Cabinet Memorandum CAB(20)104 jointly submitted by the Cabinet Secretary for East African Community & Regional Development; the Cabinet Secretary for National Treasury & Planning; and the Attorney General.

The Memorandum sought to apprise and seek Cabinet approval for the adoption of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations.

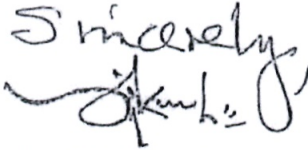
I wish to inform you that Cabinet **considered** the Memorandum and:

- (i) **Noted** the contents of the Memorandum.
- (ii) **Approved** the adoption of the East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations.
- (iii) **Directed** the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development & Public Works; the Cabinet Secretary for East African Community & Regional Development; the Cabinet Secretary for National Treasury & Planning; the Cabinet Secretary for Foreign Affairs; and the Attorney General to take appropriate action.

SECRET

Please proceed and take action as directed by Cabinet.

Yours



JOSEPH K. KINYUA, EGH
HEAD OF THE PUBLIC SERVICE

Copy to: Mr. James W. Macharia, EGH
Cabinet Secretary
Ministry of Transport, Infrastructure, Housing, Urban
Development & Public Works
NAIROBI

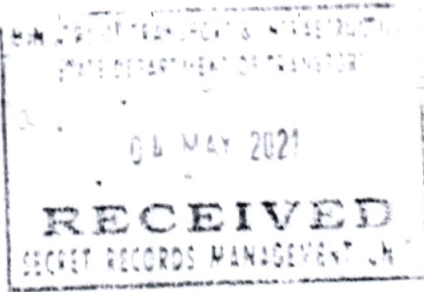
Mr. Adan Mohamed, EGH
Cabinet Secretary
Ministry of East African Community & Regional Development
NAIROBI

Hon. (Amb.) Ukur Yatani, EGH
Cabinet Secretary
National Treasury & Planning
NAIROBI

Amb. Raychelle Omamo, EGH
Cabinet Secretary
Ministry of Foreign Affairs
NAIROBI

Justice (Rtd.) Paul K. Kihara, EGH
Attorney-General
State Law Office & Department of Justice
NAIROBI

SECRET



35



REPUBLIC OF KENYA
MINISTRY OF EAST AFRICAN COMMUNITY (EAC)
AND REGIONAL DEVELOPMENT
STATE DEPARTMENT OF EAST AFRICAN COMMUNITY

Telephone: +254-20-2245741/2211614/2245752
Fax No: +254-20-2229650
Mobile: 0729111108/0733208888
Wireless: +254-20 2603599 20 2603733
e-mail: ps@meac.go.ke
Website: www.meac.go.ke
When replying please quote:

Co-op Bank House Building
Haile Selassie Avenue
P.O. Box 8846-00200 City Square
NAIROBI, KENYA

EAC/5/11/Vol. 43(156)

23rd April, 2021

Principal Secretary
State Department of Transport
Ministry of Transport, Infrastructure, Housing and Urban Development
NAIROBI

CABINET MEMORANDUM AND COUNTRY POSITION PAPER ON THE RATIFICATIONS OF THE EAST AFRICAN COMMUNITY MULTILATERAL AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS

The Cabinet at their meeting of 25th February, 2021 approved the ratification of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations.

The Ministry of Foreign Affairs upon receipt of a letter from the Head of Public Service requesting them to proceed to the subsequent steps for the rectification of the Agreement in line with the Treaty Making and Rectification Act, 2012 (Rev. 2018), has requested us to provide them with the Cabinet Memorandum and the Country Position Paper vide a letter hereby attached.



Vision:
Deepen and widen East African Integration for Sustainable Development and improved livelihoods of all Kenyans



The purpose of this letter, therefore, is to request you to furnish us with a copy of final signed Cabinet Memorandum and the Country Position Paper for the aforementioned Agreement for onward transmission to the Ministry of Foreign Affairs.



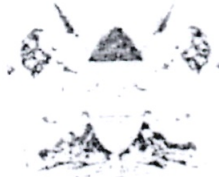
S. Ikua

For: PRINCIPAL SECRETARY

20

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Telephone: 254 20 271 2345
Fax: 254 20 271 2345
E-mail: communications@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref No. in the title



MINISTRY OF FOREIGN AFFAIRS

MFA/RT/CAB/VOL.1

16th April, 2021

Ref No.

The Principal Secretary
Ministry of East African Community
and Regional Development
NAIROBI
Attn. Ms. Susan Lutta

RE: CABINET MEMORANDUM AND COUNTRY POSITION PAPER ON THE RATIFICATION OF THE EAST AFRICAN COMMUNITY MULTILATERAL AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS


Reference is hereby made to the above subject matter.

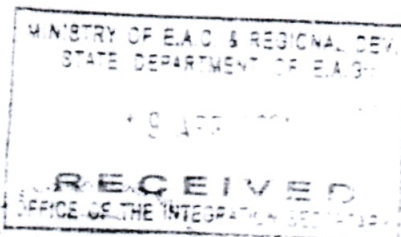
The Cabinet at their meeting of 25th February 2021 approved the ratification of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations.

The Ministry of Foreign Affairs is consequently in receipt of a letter from the Head of Public Service requesting the Ministry to proceed to the subsequent steps for the ratification of the Agreement in line with the Treaty Making and Ratification Act, 2012 (Rev. 2013).

The purpose of this letter is to request you to furnish the Ministry with the Cabinet Memorandum and the Country Position Paper for the aforementioned Agreement as submitted to Cabinet by your Ministry. This is for our records as the relevant Treaty Depository pursuant to the Treaty Making and Ratification Act.

I would further take this opportunity to request the future involvement of the Office of the Registrar of Treaties, Ministry of Foreign Affairs from the initial stages of ratification to enable the office obtain the relevant documents related to treaties.


AMB. JAMES N. WAWERU, OGW
REGISTRAR OF TREATIES
FOR: PRINCIPAL SECRETARY



KENYA



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

Telegrams: "TRANSCOMS". Nairobi
Telephone: 2729200
Email: info@transport.go.ke
Website: www.transport.go.ke

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

MOT&I/AAID/EAC/9/Vol.I(35)

12th May, 2021

The Principal Secretary
State Department of East African Community
P O Box 8846 00200
NAIROBI

(Attn. Mr. S. Ikua)

**CABINET MEMORANDUM AND COUNTRY POSITION PAPER ON THE
RATIFICATIONS OF THE EAST AFRICAN COMMUNITY MULTILATERAL
AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS**

Following the Cabinet approval of the ratification of the East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations at the meeting of 25th February 2021, the Ministry of Transport, Infrastructure, Housing, Public Works and Urban Development forwarded the Ratification Memorandum to the National Assembly.

Attached is a copy of the signed Cabinet Memorandum on the ratification of the East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations.


I. M. Abdi
FOR: PRINCIPAL SECRETARY

Encl.

Appendix 5



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

**EXPLANATORY MEMORANDUM ON THE RATIFICATION OF THE
EAST AFRICAN COMMUNITY MULTILATERAL AGREEMENT ON
AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS**

a) The Objects and Subject Matter of the Agreement

The International Civil Aviation Organization is a specialized agency of the United Nations created with the signing in Chicago, on 7th December 1944, of the Convention on International Civil Aviation and is charged with the administration of the principles laid out in the Convention. The Convention requires that all civil aviation operations be conducted under internationally accepted minimum operating standards, procedures and practices.

Related to this, Article 92 of the EAC Treaty, which Kenya is a signatory, requires that Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.

To actualize the requirements under the Convention on International Civil Aviation (Chicago Convention) and the EAC Treaty with respect to Aircraft Accident and Incident Investigations the 16th Meeting of the Sectoral Council on Transport, Communications and Meteorology held on 24th -28th June, 2019 in Kampala, Uganda, adopted a Multilateral Agreement on Aircraft Accident and Incident Investigations, attached as Appendix I.

The Multilateral Agreement provides a legal framework for Partner States cooperation in handling Aircraft Accident and Incident investigations. The Multilateral Agreement was necessitated by the need to cooperate in Aircraft Accident and Incident Investigation to provide expeditious and effective Aircraft Accident and Incident Investigation services in accordance with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS).

The Cabinet during its Meeting held on 25th February 2021 approved the Memorandum on the Ratification of the East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations.

b) Any Constitutional Implications

i. Proposed amendment to the Constitution

There is no proposed amendment to the Constitution.

ii. Consistence with the Constitution and promotion of constitutional values and objectives

The Ratification of the East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations is consistent with the Constitution and promotes constitutional values and objectives.

c) The National Interests which may be affected by the ratification of the Agreement

The International Civil Aviation Organization (ICAO) Universal Safety Audit Program (USOAP) findings indicate that many States have not been able to implement an effective accident and incident investigation system mainly because sufficient resources have not been allocated to meet States obligation under the Convention.

This can be mitigated through enhanced cooperation. In this connection, pursuant to Article 26 of the Chicago Convention, when an accident occurs in their territory, States can seek regional support if the required capabilities or resources are not available. The Convention also allows States of occurrence to delegate the whole or any part of the conducting of an investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent.

It is in the interest of the Country to ratify the Agreement in order to implement an effective accident and incident investigation system.

d) Obligations imposed on Kenya by the Ratification of the Agreement

8. In order to cooperate efficiently in accident and incident investigation; training and sharing of information, resources and expertise, Partner States

are required to:

- (i) Establish, in accordance with ICAO Global Aviation Safety Plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies;
- (ii) provide assistance in aircraft accident and incident investigation by availing experts, facilities and equipment to the other Partner States as it deems appropriate;
- (iii) ensure that all investigations into aircraft accidents and incidents that are carried out in Partner States are independent from political or other interference or pressure;
- (iv) provide adequate resources, including funding and qualified personnel for carrying out investigations;
- (v) promote the use of common set of regulations in compliance with provisions of ICAO Annex 13;
- (vi) promote the use of common guidance materials, accident investigation manuals or handbooks;
- (vii) promote the application of the best practices in the area of accidents and incidents prevention;
- (viii) enhance the qualifications and experience of aircraft accidents and incidents investigators in Partner States;
- (ix) enhance cooperation and collaboration within Partner States in respect to sharing of safety information;
- (x) enhance development of regional institutional capacity in training, research and research findings related to Aircraft Accidents and Incidents Investigation;
- (xi) invite the other Partner States' investigators to attend general and specialized investigation courses which they conduct;
- (xii) facilitate the attachment of the other Partner States' investigators to their aircraft accidents and incidents investigations, with a view to enhancing their understanding of investigation requirements and procedures;

(xiii) Share with the other Partner State relevant information about an ongoing investigation in which the other Partner State has expressed an interest in, consistent with ICAO Annex 13 to the Chicago Convention.

(xiv) consult Partner State in the Organization of an investigation, drafting of the report, crisis management and Communications, as deemed necessary;

(xv) Identify their investments needs in the area of aircraft accidents and prioritize relevant sources of funding for that investment; and

(xvi) Promote the sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication

e) Requirements for implementation of the Agreement

The instruments of ratification of the Agreements are handled by the East African Community Secretariat.

f) Policy and legislative considerations

Ratification of the Agreement will enable Kenya and the other Partner States benefit from enhanced cooperation and collaboration in the aircraft accident and incident investigation; Partner State resources; common guidance materials; accident investigation manuals and handbooks; sharing of safety information; enhanced capacity in training and research; consultations; crisis management and communication during investigations; and sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication.

g) Financial implications

The ratification of the Agreement will be incorporated into existing institutional frameworks that the State Department for Transport has made provision for.

There are no immediate budgetary changes envisaged in terms of financial implications.

h) Ministerial responsibility

The Cabinet Secretary exercises powers conferred by Section 52 of the Civil Aviation Act No. 21 of 2013 as well as the Executive Order No. 1 of 2020.

i) Implications on matters relating to counties

Civil Aviation falls under the National Government functions as provided for in Section 18 of the Fourth schedule of the Constitution which deals with

the distribution of functions between the National and County Government therefore it's not a matter concerning counties.

j) The number of States that are party to the Agreement

The Agreement is for the East African Community member States: Burundi, Kenya, Rwanda, South Sudan, Uganda and Tanzania.

k) The views of the public on the ratification of the Agreement

The Agreement was as a result of various meetings organized by the EAC Secretariat, attended by a team comprising representatives from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works; Ministry of East African Community; Kenya Civil Aviation Authority and representatives from the other countries.

l) Whether the Agreement sought to be ratified permit reservations and any recommendations on reservations and declarations

The Agreement does not allow for reservations. However, it can be amended through mutual agreement by the Contracting Parties.

There are no recommendations for reservation of the Agreement.

m) The proposed text of any reservations that should be entered when ratifying the Agreements in order to protect or advance national interests or ensure conformity with the Constitution

The Agreement does not require any reservation.

n) Whether expenditure of public funds will be incurred in implementing the Agreement and an estimate, where possible, of the expenditure

The implementation of the Agreement has no immediate implication on Public funds as accident investigations will continue under national institutions mandated to undertake investigations. In the long term as reforms are initiated sharing of facilities and resources will lower related costs.



James W. Macharia, EGH
CABINET SECRETARY

Date 5.5.2021

ICAO/01/01

CS 5



International
Civil Aviation
Organization

Organisation
de l'aviation civile
internationale

Organización
de Aviación Civil
Internacional

Международная
организация
гражданской
авиации

منظمة الطيران
المدني الدولي

国际民用
航空组织

Tel.: +1 514-954-6090

Ref.: LE 3/1.20, LE 3/1.21 – 17/2

20 January 2017

Subject: Protocols Amending Articles 50 (a) and 56 of the *Convention on International Civil Aviation*, signed at Montréal on 6 October 2016

Action required: Ratification of the Protocols

Sir/Madam,

The 39th Session of the ICAO Assembly held at Montréal from 27 September to 6 October 2016 adopted two Protocols amending, respectively, Articles 50 (a) and 56 of the *Convention on International Civil Aviation*. The Protocol relating to an amendment of Article 50 (a) of the Convention provides for an increase in the size of the Council from thirty-six members to forty; the Protocol relating to an amendment of Article 56 of the Convention calls for an increase in the membership of the Air Navigation Commission from nineteen to twenty-one. Certified true copies of the authentic texts of these Protocols are enclosed for action as appropriate.

In its Resolutions A39-5 and A39-7, the ICAO Assembly recommended to all Contracting States that they ratify most urgently the amendments to Articles 50 (a) and 56, respectively, of the Convention. These Resolutions are re-produced in **Attachments A and B**.

Administrative packages to assist States in the process of ratification are provided in **Attachments C and D**. These packages can also be found on the ICAO website at www.icao.int – Treaty Collection.

Accept, Sir/Madam, the assurances of my highest consideration.

Fang Liu
Secretary General

Attachments:

- A — Resolution A39-5: Ratification of the Protocol amending Article 50 (a) of the *Convention on International Civil Aviation*
- B — Resolution A39-7: Ratification of the Protocol amending Article 56 of the *Convention on International Civil Aviation*
- C — Administrative package for ratification of the Protocol amending Article 50 (a) of the *Convention on International Civil Aviation*
- D — Administrative package for ratification of the Protocol amending Article 56 of the *Convention on International Civil Aviation*

Enclosures:

- *Protocol relating to an amendment to the Convention on International Civil Aviation [Article 50 (a)]* (Doc 10077)
- *Protocol relating to an amendment to the Convention on International Civil Aviation [Article 56]* (Doc 10076)

ATTACHMENT A to State letter LE 3/1.20, LE 3/1.21 – 17/002

**RESOLUTION A39-5: RATIFICATION OF THE PROTOCOL AMENDING ARTICLE 50 (A)
OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION**

Whereas the Assembly has decided to amend Article 50 (a) of the Convention to provide for an increase in the size of the Council; and

Whereas the Assembly is of the opinion that it is highly desirable that the aforesaid amendment should come into force as soon as possible;

The Assembly:

1. *Recommends* to all Contracting States that they ratify most urgently the amendment to Article 50 (a) of the Convention; and
 2. *Directs* the Secretary General to bring this resolution to the attention of Contracting States as soon as possible.
-

ATTACHMENT B to State letter LE 3/1.20, LE 3/1.21 – 17/002

**RESOLUTION A39-7: RATIFICATION OF THE PROTOCOL AMENDING ARTICLE 56 OF
THE CONVENTION ON INTERNATIONAL CIVIL AVIATION**

Whereas the Assembly has decided to amend Article 56 of the *Convention on International Civil Aviation* to provide for an increase in the size of the ANC; and

Whereas the Assembly is of the opinion that it is highly desirable that the aforesaid amendment should come into force as soon as possible;

The Assembly:

1. *Recommends* to all Contracting States that they ratify most urgently the amendment to Article 56 of the *Convention on International Civil Aviation*; and
 2. *Directs* the Secretary General to bring this resolution to the attention of Contracting States as soon as possible.
-

ATTACHMENT C to State letter LE 3/1.20, LE 3/1.21 – 17/002
**ADMINISTRATIVE PACKAGE FOR RATIFICATION OF THE
PROTOCOL AMENDING ARTICLE 50 (A)
OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION (2016)**

1) **Full Name of Instrument:**

Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)], signed at Montréal on 6 October 2016. (Doc 10077)

2) **History:**

Assembly – 39th Session, Montréal, 27 September to 6 October 2016

3) **Summary:**

This fifth amendment to Article 50 (a) provides for an increase in the size of the Council from thirty-six members to forty members. The original Convention called for a Council composed of twenty-one members. This was subsequently amended, in 1961, to provide for twenty-seven members, in 1971, for thirty members, in 1974, for thirty-three members, and in 1990, for thirty-six members.

4) **Main reasons for ratification:**

In view of the increase in the membership of the International Civil Aviation Organization (ICAO) and the expansion and increasing importance of international air transport for the national economies in many countries, an enlarged membership of the Council ensures a better balance by means of an increased representation of Contracting States.

Moreover, pursuant to ICAO Assembly Resolution A39-5, Contracting States are recommended to ratify most urgently this amendment to Article 50 (a) of the Convention.

5) **Entry into force:**

The Protocol shall come into force in respect of the States which have ratified it on the date on which the one hundred and twenty-eighth instrument of ratification is so deposited. With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with ICAO.

6) **Information on Instrument of Ratification**

An instrument of ratification in original form is required for deposit, in any of the ICAO working languages (English, Arabic, Chinese, French, Russian or Spanish). Photocopies, scanned copies, electronic signatures or facsimiles will not be accepted.

7) **Depositary:**

The Secretary General
International Civil Aviation Organization (ICAO)
Attention: Legal Affairs and External Relations Bureau
999 Robert-Bourassa Boulevard
Montréal, Canada
H3C 5H7

Attachment

Model Instrument of Ratification

**MODEL INSTRUMENT OF RATIFICATION
BY THE
(NAME OF STATE)**

WHEREAS the (name of State) is a party to the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944 (hereinafter "the Convention"), having adhered thereto on (date of adherence);

WHEREAS the aforesaid Convention has been amended by the Protocol hereinunder mentioned:

Protocol Relating to an Amendment to the *Convention on International Civil Aviation* [Article 50(a)], signed at Montréal on 6 October 2016;

AND CONSIDERING it desirable that the (name of State) should become party to this Protocol of Amendment to the Convention on International Civil Aviation;

NOW THEREFORE, the (name of State), having examined the said Protocol of Amendment, hereby *RATIFIES* the same, and confirms that the (name of State) shall abide by all of the provisions therein contained.

IN WITNESS THEREOF, I have signed this Instrument of Ratification and affixed hereunto the Seal of the (name of State).

Date

(Original signature by Head of State,
Head of Government or
Minister for External Affairs)

Original Seal

ATTACHMENT D to State letter LE 3/1.20, LE 3/1.21 – 17/002

**ADMINISTRATIVE PACKAGE FOR RATIFICATION OF THE
PROTOCOL AMENDING ARTICLE 56
OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION (2016)**

1) Full Name of Instrument:

Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 56], signed at Montréal on 6 October 2016. (Doc 10076)

2) History:

Assembly – 39th Session, Montréal, 27 September to 6 October 2016

3) Summary:

This third amendment to Article 56 calls for an increase in the membership of the Air Navigation Commission from nineteen members to twenty-one members. The original Convention called for an Air Navigation Commission composed of twelve members. This was subsequently amended, in 1971, to provide for fifteen members, and in 1989, for nineteen members.

4) Main reason for ratification:

In view of the increase in the membership of the International Civil Aviation Organization (ICAO), an enlarged membership of the Air Navigation Commission ensures that the Commission can draw on the expertise and experience from diverse operational skills and knowledge from the Contracting States.

Moreover, pursuant to ICAO Assembly Resolution A39-7, Contracting States are recommended to ratify most urgently this amendment to Article 56 of the Convention.

5) Entry into force:

The Protocol shall come into force in respect of the States that have ratified it on the date on which the one hundred and twenty-eighth instrument of ratification is so deposited. With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with ICAO.

6) Information on Instrument of Ratification

An instrument of ratification in original form is required for deposit, in any of the ICAO working languages (English, Arabic, Chinese, French, Russian or Spanish). Photocopies, scanned copies, electronic signatures or facsimiles will not be accepted.

7) Depositary:

The Secretary General
International Civil Aviation Organization (ICAO)
Attention: Legal Affairs and External Relations Bureau
999 Robert-Bourassa Boulevard
Montréal, Canada
H3C 5H7

Attachment

Model Instrument of Ratification

D-2

**MODEL
INSTRUMENT OF RATIFICATION
BY (NAME OF STATE)**

WHEREAS the (name of State) is a party to the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944 (hereinafter "the Convention"), having adhered thereto on (date of adherence);

WHEREAS the aforesaid Convention has been amended by the Protocol hereinunder mentioned:

Protocol Relating to an Amendment to the *Convention on International Civil Aviation* [Article 56], signed at Montréal on 6 October 2016;

AND CONSIDERING it desirable that the (name of State) should become party to this Protocol of Amendment to the *Convention on International Civil Aviation*;

NOW THEREFORE, the (name of State), having examined the said Protocol of Amendment, hereby *RATIFIES* the same, and confirms that the (name of State) shall abide by all of the provisions therein contained.

IN WITNESS THEREOF, I have signed this Instrument of Ratification and affixed hereunto the Seal of the (name of State).

Date

(Original signature by Head of State,
Head of Government or
Minister for External Affairs)

Original Seal

— END —

PROTOCOL

RELATING TO AN AMENDMENT TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION
[Article 50(a)]

Signed at Montréal on 6 October 2016

PROTOCOLE

PORTANT AMENDEMENT DE LA CONVENTION RELATIVE À L'AVIATION CIVILE INTERNATIONALE
[Article 50 a)]

Signé à Montréal le 6 octobre 2016

PROTOCOLO

RELATIVO A UNA ENMIENDA DEL CONVENIO SOBRE AVIACIÓN CIVIL INTERNACIONAL
[Artículo 50 a)]

Firmado en Montreal el 6 de octubre de 2016

ПРОТОКОЛ,

КАСАЮЩИЙСЯ ИЗМЕНЕНИЯ КОНВЕНЦИИ О МЕЖДУНАРОДНОЙ ГРАЖДАНСКОЙ АВИАЦИИ
[статья 50 а)]

Подписан в Монреале 6 октября 2016 года

修订《国际民用航空公约》
[第五十条第一款]

议定书

2016年10月6日订于蒙特利尔

بروتوكول

بشأن تعديل اتفاقية الطيران المدني الدولي

[[المادة ٥٠ (أ)]]

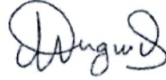
الموقع في مونتريال في ٦ أكتوبر/تشرين الأول ٢٠١٦



2016

INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ
国际民用航空组织
منظمة الطيران المدني الدولي

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Директор Управления по правовым вопросам и внешним сношениям
法律事务和对外关系局局长
مدير إدارة الشؤون القانونية والعلاقات الخارجية

ICAO OACI ИКАО 国际民航组织 الايكاو

**Protocol Relating to an Amendment to the Convention on
International Civil Aviation [Article 50(a)], signed at Montréal on
6 October 2016**

Appendix 7

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88

PROTOCOL
RELATING TO AN AMENDMENT TO THE
CONVENTION ON INTERNATIONAL CIVIL AVIATION
[Article 50(a)]

Signed at Montréal on 6 October 2016

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**Doc 10077, *Protocol Relating to an Amendment to the Convention
on International Civil Aviation [Article 50(a)]***

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PROTOCOL
RELATING TO AN AMENDMENT TO THE
CONVENTION ON INTERNATIONAL CIVIL AVIATION
[Article 50(a)]

Signed at Montréal on 6 October 2016

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PROTOCOL

RELATING TO AN AMENDMENT TO ARTICLE 50(a) OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

Signed at Montréal on 6 October 2016

THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

HAVING MET in its Thirty-ninth Session at Montréal on 1 October 2016,

HAVING NOTED that it is the desire of a large number of Contracting States to enlarge the membership of the Council in order to ensure better balance by means of an increased representation of Contracting States,

HAVING CONSIDERED it appropriate to increase the membership of that body from thirty-six to forty,

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. APPROVES, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

“In Article 50(a) of the Convention the second sentence shall be amended by replacing ‘thirty-six’ by ‘forty’.”;

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, one hundred and twenty-eight as the number of Contracting States upon whose ratification the proposed amendment aforesaid shall come into force;
3. RESOLVES that the Secretary General of the International Civil Aviation Organization draw up a Protocol, in the English, Arabic, Chinese, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the amendment above-mentioned and the matter hereinafter appearing:
 - a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
 - b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.

- c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.
- d) The Protocol shall come into force in respect of the States which have ratified it on the date on which the one hundred and twenty-eighth instrument of ratification is so deposited.
- e) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.
- f) The Secretary General shall immediately notify all Contracting States to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

CONSEQUENTLY, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Thirty-ninth Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Montréal on the sixth day of October of the year two thousand and sixteen, in a single document in the English, Arabic, Chinese, French, Russian and Spanish languages, each text being equally authentic. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all Contracting States to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

A. Abdul Rahman
*President of the Thirty-ninth Session
of the Assembly*

F. Liu
Secretary General

Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 56], signed at Montréal on 6 October 2016.



PROTOCOL
RELATING TO AN AMENDMENT TO THE
CONVENTION ON INTERNATIONAL CIVIL AVIATION
[Article 56]

Signed at Montréal on 6 October 2016

Published by ICAO under the authority of the Secretary General of the
INTERNATIONAL CIVIL AVIATION ORGANIZATION
999 Robert-Bourassa Boulevard, Montréal, Quebec, Canada H3C 5H7

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PROTOCOL

RELATING TO AN AMENDMENT TO ARTICLE 56 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

Signed at Montréal on 6 October 2016

THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

HAVING MET in its Thirty-ninth Session at Montréal on 1 October 2016,

HAVING NOTED that it is the general desire of Contracting States to enlarge the membership of the Air Navigation Commission,

HAVING CONSIDERED it proper to increase the membership of that body from nineteen to twenty-one, and

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. APPROVES, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

“In Article 56 of the Convention the expression ‘nineteen members’ shall be replaced by ‘twenty-one members’.”;

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, one hundred and twenty-eight as the number of Contracting States upon whose ratification the aforesaid amendment shall come into force; and
3. RESOLVES that the Secretary General of the International Civil Aviation Organization shall draw up a Protocol, in the English, Arabic, Chinese, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the amendment above-mentioned and the matters hereinafter appearing:
 - a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
 - b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.
 - c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.

- d) The Protocol shall come into force in respect of the States that have ratified it on the date on which the one hundred and twenty-eighth instrument of ratification is so deposited.
- e) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.
- f) The Secretary General shall immediately notify all Contracting States to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

CONSEQUENTLY, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Thirty-ninth Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Montréal on the sixth day of October of the year two thousand and sixteen, in a single document in the English, Arabic, Chinese, French, Russian and Spanish languages, each text being equally authentic. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all Contracting States to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

A. Abdul Rahman
*President of the Thirty-ninth Session
of the Assembly*

F. Liu
Secretary General



REPUBLIC OF KENYA
MINISTRY OF ROADS AND TRANSPORT
STATE DEPARTMENT FOR TRANSPORT
Office of the Principal Secretary

Telegram: "TRANSCOMS" Nairobi
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NGONG ROAD
P.O. Box 52692 - 00100
NAIROBI

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7th June 2023

The Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear Clerk of the National Assembly

MEETING WITH THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

Reference is made to your letter Ref: NA/DDC/TI/2023/ (046) dated 29th May 2023 on the above subject matter.

We wish to regrettably inform the Committee that both the CS and the undersigned will be away on official duties on the proposed date and therefore humbly request that the meeting be postponed to a date the Committee is comfortable with. We hereby attach the response in advance in readiness for the appearance as shall be communicated by the Committee.

Yours Sincerely

Mohamed Daghar
PRINCIPAL SECRETARY



REPUBLIC OF KENYA
MINISTRY OF ROADS AND TRANSPORT

**PRESENTATION OF THE REPORT ON THE MINISTRY'S VIEWS AND
COMMENTS REGARDING THE EAST AFRICAN COMMUNITY (EAC)
MULTILATERAL AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT
INVESTIGATIONS; AND THE PROTOCOLS RELATING TO AMENDMENT
OF ARTICLE 50(A) AND 56 TO THE CONVENTION ON INTERNATIONAL
CIVIL AVIATION, 1994 (CHICAGO CONVENTION).**

TO
**THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND
INFRASTRUCTURE**

BY
HON. KIPCHUMBA MURKOMEN

CABINET SECRETARY

Hon. Chairman, I am pleased to report to this Honorable Committee on the Ministry's views and comments regarding the below-mentioned Agreement and Protocols as requested vide letter of Ref: No *NA/DDC/TI/2023/ (046)* dated 29th May, 2023 and as tabled before the House on 20th April, 2023;

- I. **The East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations ; and**
- II. **The protocols relating to amendment of article 50(a) and 56 to the Convention on International Civil Aviation,1994 (Chicago convention)**

Hon. Chairman,

I wish to begin by giving the explanatory memorandum on Ratification of the East African Community Multilateral Agreement on Aircraft Accident and Incident investigations as follows;

a) The Objects and Subject Matter of the Agreement

The International Civil Aviation Organization is a specialized agency of the United Nations created with the signing in Chicago, on 7th December 1944, of the Convention on International Civil Aviation and is charged with the administration of the principles laid out in the Convention. The Convention requires that all civil aviation operations be conducted under internationally accepted minimum operating standards, procedures and practices.

Article 92 of the EAC Treaty, which Kenya is a signatory, requires that Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.

To actualize the requirements under the Convention on International Civil Aviation (Chicago Convention) and the EAC Treaty with respect to Aircraft Accident and Incident Investigations the 16th Meeting of the Sectoral Council on Transport, Communications and Meteorology held on 24th -28th June, 2019 in Kampala, Uganda, adopted a Multilateral Agreement on Aircraft Accident and Incident Investigations, attached as Appendix I.

The Multilateral Agreement provides a legal framework for Partner States cooperation in handling Aircraft Accident and Incident investigations. The Multilateral Agreement was necessitated by the need to cooperate in

Aircraft Accident and Incident Investigation to provide expeditious and effective Aircraft Accident and Incident Investigation services in accordance with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS).

The Cabinet during its Meeting held on 25th February 2021 approved the Memorandum on the Ratification of the East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations.

b) Any Constitutional Implications

i. Proposed amendment to the Constitution

There is no proposed amendment to the Constitution.

ii. Consistence with the Constitution and promotion of constitutional values and objectives

The Ratification of the East African Community Multilateral Agreement on Aircraft Accident and Incident Investigations is consistent with the Constitution and promotes constitutional values and objectives.

c) The National Interests which may be affected by the ratification of the Agreement

The International Civil Aviation Organization (ICAO) Universal Safety Audit Program (USOAP) findings indicate that many States have not been able to implement an effective accident and incident investigation system mainly because sufficient resources have not been allocated to meet States obligation under the Convention.

This can be mitigated through enhanced cooperation. In this connection, pursuant to Article 26 of the Chicago Convention, when an accident occurs in their territory, States can seek regional support if the required capabilities or resources are not available. The Convention also allows States of occurrence to delegate the whole or any part of the conducting of an investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent.

It is in the interest of the Country to ratify the Agreement in order to implement an effective accident and incident investigation system.

d) Obligations imposed on Kenya by the Ratification of the Agreement

In order to cooperate efficiently in accident and incident investigation; training and sharing of information, resources and expertise, Partner States are required to:

- (i) Establish, in accordance with ICAO Global Aviation Safety Plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies;
- (ii) Provide assistance in aircraft accident and incident investigation by availing experts, facilities and equipment to the other Partner States as it deems appropriate;
- (iii) Ensure that all investigations into aircraft accidents and incidents that are carried out in Partner States are independent from political or other interference or pressure;
- (iv) Provide adequate resources, including funding and qualified personnel for carrying out investigations;
- (v) Promote the use of common set of regulations in compliance with provisions of ICAO Annex 13;
- (vi) Promote the use of common guidance materials, accident investigation manuals or handbooks;
- (vii) Promote the application of the best practices in the area of accidents and incidents prevention;
- (viii) Enhance the qualifications and experience of aircraft accidents and incidents investigators in Partner States;
- (ix) Enhance cooperation and collaboration within Partner States in respect to sharing of safety information;
- (x) Enhance development of regional institutional capacity in training, research and research findings related to Aircraft Accidents and Incidents Investigation;
- (xi) Invite the other Partner States' investigators to attend general and specialized investigation courses which they conduct;
- (xii) Facilitate the attachment of the other Partner States' investigators to their aircraft accidents and incidents investigations, with a view to

enhancing their understanding of investigation requirements and procedures;

(xiii) Share with the other Partner State relevant information about an ongoing investigation in which the other Partner State has expressed an interest in, consistent with ICAO Annex 13 to the Chicago Convention.

(xiv) Consult Partner State in the Organization of an investigation, drafting of the report, crisis management and Communications, as deemed necessary;

(xv) Identify their investments needs in the area of aircraft accidents and prioritize relevant sources of funding for that investment; and

(xvi) Promote the sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication

e) Requirements for implementation of the Agreement

The instruments of ratification of the Agreements are handled by the East African Community Secretariat.

f) Policy and legislative considerations

Ratification of the Agreement will enable Kenya and the other Partner States benefit from enhanced cooperation and collaboration in the aircraft accident and incident investigation; Partner State resources; common guidance materials; accident investigation manuals and handbooks; sharing of safety information; enhanced capacity in training and research; consultations; crisis management and communication during investigations; and sharing of specialized equipment and facilities with a view to cutting costs and avoiding duplication.

g) Financial implications

The ratification of the Agreement will be incorporated into existing institutional frameworks that the State Department for Transport has made provision for.

There are no immediate budgetary changes envisaged in terms of financial implications.

h) Ministerial responsibility

The Cabinet Secretary exercises powers conferred by Section 52 of the Civil Aviation Act No. 21 of 2013 as well as the Executive Order No. 1 of 2023.

i) Implications on matters relating to counties

Civil Aviation falls under the National Government functions as provided for in Section 18 of the Fourth schedule of the Constitution which deals with the distribution of functions between the National and County Government therefore it's not a matter concerning counties.

j) The number of States that are party to the Agreement

The Agreement is for the East African Community member States: Burundi, Kenya, Rwanda, South Sudan, Uganda and Tanzania.

k) The views of the public on the ratification of the Agreement

The Agreement was as a result of various meetings organized by the EAC Secretariat, attended by a team comprising representatives from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works; Ministry of East African Community; Kenya Civil Aviation Authority.

l) Whether the Agreement sought to be ratified permit reservations and any recommendations on reservations and declarations

The Agreement does not allow for reservations. However, it can be amended through mutual agreement by the Contracting Parties.

There are no recommendations for reservation of the Agreement.

m) The proposed text of any reservations that should be entered when ratifying the Agreements in order to protect or advance national interests or ensure conformity with the Constitution

The Agreement does not require any reservation.

n) Whether expenditure of public funds will be incurred in implementing the Agreement and an estimate, where possible, of the expenditure

The implementation of the Agreement has minimal implication on Public funds as it is limited to approval and enforcement of the airline schedules.

Hon. Chairman, on the Protocols relating to the Amendment of article 50(a) and 56 to the Convention on International Civil Aviation, 1994 (Chicago Convention). I beg to respond as follows;

The International Civil Aviation Organization is a specialized agency of the United Nations created with the signing in Chicago, on 7 December 1944, of the *Convention on International Civil Aviation*. ICAO a specialised agency of the United Nations charged with the administration of the principles laid out in the Convention.

The 96 articles of the Chicago Convention establish the privileges and restrictions of all Contracting States. The Convention accepts the principle that every State has complete and exclusive sovereignty over the airspace above its territory and provides that no scheduled international air service may operate over or into the territory of a Contracting State without its previous consent.

The aims and objectives of ICAO; as contained in Article 44 of the Chicago Convention; are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to insure the safe and orderly growth of international civil aviation throughout the world.

ICAO has a sovereign body, the Assembly, and a governing body, the Council. The Assembly meets once every three years and is convened by the Council. Each Contracting State is entitled to one vote, and decisions of the Assembly are taken by a majority of the votes cast except when otherwise provided for in the Convention. At these sessions, the complete work of the Organization in the technical, economic, legal and technical cooperation fields is reviewed in detail, and guidance is given to the other bodies of ICAO for their future work.

The Council is a permanent body responsible to the Assembly and is composed of representatives from 36 Contracting States elected by the Assembly for a three-year term. Election to the Council is divided into three parts:

Part I - Eleven States: States of chief importance in air transport;

Australia, Brazil, Canada, China, France, Germany, Italy, Japan, Russian Federation, United Kingdom and the United States.

Part II - Twelve States: States not already elected in the first part but which make the largest contribution to the provision of facilities for international civil air navigation; and

Argentina, Colombia, Egypt, Finland, India, Mexico, Netherlands, Nigeria, Saudi Arabia, Singapore, South Africa, and Spain.

Part III – Thirteen States: States not elected in either the first or the second part, and whether or not they were candidates in either of those parts, and whose designation will ensure that all the major geographical areas of the world are represented on the Council.

Costa Rica, Côte d'Ivoire, Dominican Republic, Equatorial Guinea, Greece, Malaysia, Paraguay, Peru, Republic of Korea, Sudan, Tunisia, United Arab Emirates, Zambia.

In view of the growing traffic in certain regions of the world and the emergence of new sub-regions that are not represented in the Council, ICAO has passed Resolution A39-4 signed at Montreal on 6th October, 2016 that Amends Article 50 of the Chicago Convention by increasing the number of ICAO Council Members from 36 to 40.

The Air Navigation Commission considers and recommends Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS) for adoption or approval by the ICAO Council.

The Commission is composed of representatives from 19 Contracting States. Although ANC Commissioners are nominated by specific ICAO Member States, and appointed by the Council, they do not represent the interest of any particular State or Region. Rather they act independently and utilize their expertise in the interest of the entire international civil aviation community.

Similarly, ICAO through Resolution A39-4 signed at Montreal on 6th October, 2016 has Amended Article 56 of the Chicago Convention by increasing the number of Air Navigation Commission composition from 19 to 21.

(a) Summary of Amendments

1. The ICAO Council composition

The original text of the Chicago Convention provided for 21 members of the ICAO Council. The text was subsequently amended by the 13th (Extraordinary) Session of the Assembly on 21 June 1961; this amendment entered into force on 17 July 1962 and provided for 27 members of the Council.

A second amendment was adopted by the 17th (A) (Extraordinary) Session of the Assembly on 12 March 1971; the amendment entered into force on 16 January 1973 bringing the number of members of the Council to 30.

A third amendment was adopted by the 21st Session of the Assembly on 16 October 1974; this amendment entered into force on 15 February 1980 and provided for 33 members of the Council.

The 28th Session (Extraordinary) of the Assembly, on 25 October 1990, adopted Resolution A28-1, increasing the membership of the Council from 33 to 36; this amendment came into force on 28 November 2002.

The 39th Session of the Assembly, on 1st October, 2016 adopted Resolution A39-6, increasing the membership of the Council from 36 to 40: this amendment is awaiting for ratification by the 128th contracting member state for it to come into force.

2. ICAO Air Navigation Commission Composition

The original text of the Chicago Convention provided for 12 members of the ANC. The text was subsequently amended by the 18th Session of the Assembly on 7th July, 1971 signed in Vienna; this amendment entered into force on 19th December, 1974 and provided for 15 members of the ANC.

A second amendment was adopted by the 27th Session of the Assembly on 6th October, 1989; the amendment entered into force on 18th April, 2005 bringing the number of members of the ANC to 19.

The third amendment was adopted by the 39th Session of the Assembly on 1st October, 2016; this amendment is awaiting ratification by the 128th contracting Member State for it to enter into force. The amendment seeks to increase membership of ANC from 19 to 21.

3. The Objects and Subject Matter of the Amendment:

ICAO has always been active in keeping abreast with the new developments in the field of International Civil Aviation, including the emergence of new regional and sub-regional groups in the world, the increasing number of Contracting States joining ICAO, and the growth of International Air Traffic movement and air navigation services requirements.

ICAO has responded in many ways, including the expansion of its activities to cover more parts of the world and opening the door for more States to represent their regions on the ICAO Council.

In view of the growing traffic in certain regions of the world and the emergence of new sub-regions that are not represented in the Council, ICAO has resolved (ICAO (A39-4) to increase the number of the members of the Council from 36 to 40 and ANC from 19 to 21.

4. Any Constitutional implications including -

(i) Any proposed amendment to the Constitution;

There is no proposed amendment to the Constitution.

(ii) That the Amendment to the Convention is consistent with the Constitution and promotes constitutional values and objectives;

The Amendment to the Chicago Convention is consistent with the Constitution and promotes constitutional values and objectives.

5. The National Interests which may be affected by the Amendment of the Convention;

Hon. Chairman, Kenya was elected to the Council as a Part III Member on 4th October, 2013 for a term of three (3) years from 2013 to 2016. Subsequently, Kenya was re-elected to the Council for the second term from 7th October, 2016 to 6th October, 2019.

The Amendment proposed is for the 4 additional seats under Part II Members (Permanent Council Members).

It is therefore in the interest of the Country that it ratifies the Amendment to the Convention so as to ensure that an opportunity is created to facilitate adequate campaign to Part II Membership.

It is also in the interest of the Country to ratify the Amendment to the Convention on the ANC to increase the number of commissioners from 19 to 21 to ensure increased representation of countries at ICAO.

6. Obligations imposed on Kenya by the Amendment of the Convention;

There is no additional obligation that will be imposed on Kenya by the Amendment to the Convention. However, Kenya is encouraged to lobby and secure nomination to one of the Permanent Seats that will be created after the Amendment enters into force.

7. Requirements for implementation of the Amendment to the Convention;

The instruments of ratification of the Amendment shall be deposited with ICAO which will thereafter notify all Contracting States of the coming into force of the amendment.

8. Financial implications;

The ratification of the amendment to the Convention will be incorporated into existing institutional frameworks that KCAA has made provision for.

There are no budgetary changes envisaged in terms of financial implications if Kenya does not secure one of the additional Council Seats proposed.

9. Ministerial responsibility;

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

10. Implications on matters relating to counties;

There are no implications on matters relating to counties.

11. The date of signature;

The Protocol relating to the Amendment to Article 50 and 56 was signed on 1st October, 2016 and will be effective upon ratification by 128 members' states.

12. The number of States that are party to the Convention;

The Chicago Convention has a total on 193 Member States including Kenya.

13. The views of the public on the ratification of the Amendment to the Convention;

The views of the public have not been sought regarding the ratification of the Amendment to the Convention.

14. Whether the Convention sought to be ratified permits reservations and any recommendations on reservations and declarations;

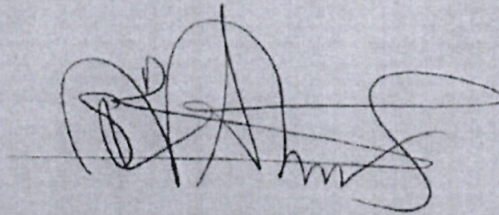
The Convention allow for reservations and recommendations. There are no reservations and recommendations for the Amendment.

15. The proposed text of any reservations that should be entered when ratifying the Convention in order to protect or advance national interests or ensure conformity with the Constitution; and
The Amendment does not require any Reservation.

16. Whether expenditure of public funds will be incurred in implementing the Amendment to the Convention and an estimate, where possible, of the expenditure.

The Amendment to the Convention has no implication on Public funds

Hon. Chairman, I submit.

A handwritten signature in dark ink, appearing to be 'Kipchumba Murkomen', written over a horizontal line.

FOR: HON. KIPCHUMBA MURKOMEN, E.G.H
CABINET SECRETARY