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REPUBLIC OF KENYA



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6/6/19

TWELFTH PARLIAMENT - THIRD SESSION

THE NATIONAL ASSEMBLY



REPORT OF

THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

ON

THE RATIFICATION OF THE PROTOCOL TO AMEND THE CONVENTION ON OFFENCES AND CERTAIN ACTS COMMITTED ON BOARD AIRCRAFT (MONTREAL, 2014)

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Directorate of Committee Services
Clerk's Chambers
Parliament Buildings
NAIROBI

June 2019

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PREFACE

A. Mandate of the Committee

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

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

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

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

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

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

Membership of the Committee

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

	Names	Party	Constituency
1.	Hon. David Pkosing (Chairman)	Jubilee	Pokot South
2.	Hon. Moses Kuria (Vice Chair)	Jubilee	Gatundu South
3.	Hon. Dominic Kipkoech Koskei	Jubilee	Sotik
4.	Hon. Peris Pesi Tobiko	Jubilee	Kajiado East
5.	Hon. Kulow Maalim Hassan	EFP	Banissa
6.	Hon. Mugambi Murwithania Rindikiri	Jubilee	Buuri
7.	Hon. Samuel Arama	Jubilee	Nakuru Town West
8.	Hon. Shadrack John Mose	Jubilee	Kitutu Masaba
9.	Hon. Rigathi Gachagua	Jubilee	Mathira
10.	Hon. Rehema Dida Jaldesa	Jubilee	Isiolo
11.	Hon. Ahmed Bashane Gaal	PDP	Tarbaj
12.	Hon. David Njuguna Kiaraho	Jubilee	Oi Kalou
13.	Hon. Johnson Many Naicca	ODM	Mumias West
14.	Hon. Tom Mboya Odege	ODM	Nyatike
15.	Hon. Suleiman Dori Ramadhani	ODM	Msambweni
16.	Hon. Ahmed Abdisalan Ibrahim	ODM	Wajir North
17.	Hon. Gideon Mutemi Mulyungi	WDP	Mwingi Central
18.	Hon. Savula Ayub Angatia	ANC	Lugari
19.	Hon. Vincent Kemosi Mogaka	Ford K	West Mugirango

B. Committee Secretariat:

- | | | |
|----|--------------------------|-----------------------|
| 1. | Ms. Chelagat Tungo Aaron | First Clerk Assistant |
| 2. | Mr. Ahmed Salim Abdalla | Third Clerk Assistant |
| 3. | Ms. Mercy Wanyonyi | Legal Counsel |
| 4. | Mr. James Muguna | Research Officer |
| 5. | Mr. Abdinasir Moge Yusuf | Fiscal Analyst |
| 7. | Mr. Collins Mahamba | Audio Officer |
| 8. | Ms. Zainab Wario | Sergeant-at-Arms |

C. EXECUTIVE SUMMARY

On 22nd November, 2018 the Cabinet Secretary approved a Cabinet Memorandum on the Ratification of the Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft (Montreal, 2014)

Pursuant to section 8 of the Treaty Making and Ratification Act, 2012 they were committed to the Departmental Committee on Transport Public Works and Housing for consideration and reporting to the House. Once ratified, the Agreement shall become part of our Kenyan laws as provided for in Article 2(6) of the Constitution which provides that *“any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution”*.

The purpose of the Protocol is to empower States to deal with unruly passengers, while preserving prosecutorial discretion. This will enhance civil aviation safety and security by extending jurisdiction to the State of landing and State of Operator; clarifying certain behaviors which should be considered, at a minimum, as an offense and encourages States to take appropriate criminal or other legal proceedings.; recognizing that airlines have a right to and may seek compensation from unruly passengers for costs incurred as a result of their unruly behavior where this involves diversions to disembark an unruly passenger; and recognizing that States may establish an in-flight security officer programme on a bilateral or multilateral basis.

The Committee received a comprehensive brief from the Ministry of Transport Public Works and Housing.

Pursuant to Article 118 (1) (b) of the Constitution on Public Participation and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies, on the 24th of March 2019, (see Annex) requesting for submissions of memoranda on the subject matter. There was no response.

The report concludes that the National Assembly approves the ratification of the Protocol as it is in Kenya’s national interest.

F. Acknowledgement

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.

On behalf of the Committee, it is therefore my pleasant duty and privilege, to lay this report on the Ratification of the Montreal Protocol, 2014 for consideration and approval by the House pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.



SIGNED

HON. DAVID PKOSING, CBS, M.P

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

DATE.....

1.0 INTRODUCTION

Kenya is a Contracting State to the International Civil Aviation Organization (ICAO) having formally given notice of its adherence to the Convention on International Civil Aviation on May 1, 1964.

The International Civil Aviation Organization (ICAO) Diplomatic Conference held in Montréal, Canada from 26th March to 4th April, 2014 adopted the Montreal Protocol, 2014. The Protocol amends the Convention on Offences and Certain Acts Committed on Board Aircraft (Tokyo Convention, 1963) which Kenya ratified on 22nd June 1970. Kenya ratified the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963), on 22nd June, 1970.

The Tokyo Convention, 1963 applies in respect of offences against penal law and acts which, whether or not are offences, may jeopardize the safety of aircraft. The Tokyo Convention, 1963 limits jurisdiction over offences and other acts committed on board aircraft to the State of registration of the aircraft in question. This causes a jurisdictional gap when the aircraft commander delivers or disembarks an unruly passenger to competent authorities in another State other than the State of registration. Such State of landing would often determine that they did not have jurisdiction, as the aircraft is registered in another State. Likewise, authorities in the State of registration may have little connection with an incident taking place on board an aircraft operated in another State. As a result, unruly passengers get released to continue their journey without facing punishment for their misconduct, which may jeopardize safety of the aircraft or persons therein.

I. Outline of the Protocol

a. Articles of the Montreal Protocol

1. This article amends the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (the Convention) ;
2. This Article replaces Article 1, paragraph 2 of the Convention to provide that an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when such door is opened for disembarking;
3. This Article replaces Article 2 of the Convention to provide that no provision of the Convention shall be interpreted as authorizing any action in respect of offences against penal laws of a political nature or those based on discrimination on any ground such as race, religion, nationality, ethnic origin, political opinion or gender;

4. Replaces Article 3 of the Convention to provide that the State of registration of an aircraft is competent to exercise jurisdiction over offences and acts committed on board;
5. This Article provides that a contracting party shall consult with other contracting States with a view of coordinating any investigations, prosecution or judicial proceedings with respect to offences committed on board;
6. This Article deletes Article 5, paragraph 2 of the Convention;
7. This Article replaces Article 6 of the Convention to provide that an aircraft commander may impose upon a person such reasonable measures including restraint when he has reasonable grounds to believe that s person has committed or is about to commit on board an aircraft an offence.
8. This Article replaces Article 9 of the Convention to provide that an aircraft commander may deliver to the competent authorities of any Contracting State of which the aircraft lands any person he has reasonable grounds to believe has committed on board the aircraft an offence.
9. This Article replaces Article 10 of the Convention to provide that neither the aircraft commander or any member of the crew, any passenger, any in-flight security officer or the owner of the aircraft shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken;
10. This Article provides that each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal, administrative or any other forms of legal proceedings against any person who commits on board an aircraft an offence.
11. This Article replaces Article 16, paragraph 1 of the Convention to provide that offences committed on board aircraft shall be treated for purposes of extradition between contracting parties, as if they had been committed not only in the place which they occurred but also in the territories of the Contracting States;
12. This Article replaces Article 17 of the Convention to provide that in taking any measures for investigation or arrest in connection with an offence committed on board an aircraft, the Contracting State shall pay due regard to the safety and other interests of air navigation and shall so act to avoid unnecessary delay of the aircraft, passengers ,crew or cargo;
13. Amends Article 18 of the Convention to provide that nothing in the Convention shall preclude any right to seek the recovery, under national law, of damages incurred, from a person disembarked;
14. Provides that the texts of the Convention in the Arabic, Chinese and Russian shall together with the texts of the Convention in the English, French and Spanish languages constitute texts equally authentic in the six languages;

15. Provides that as between the contracting parties to the Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Tokyo Convention as amended by the Montreal Protocol, 2014;
16. Provides that the Protocol shall be open for signature in Montreal on 4 April 2014 by the States participating in the International Air Law Conference held at Montreal from 26 March to 4 April 2014;
17. Provides that the Protocol is subject to ratification, acceptance or approval by the signatory States and the instruments of ratification shall be deposited with the Secretary General of ICAO;
18. Provides that the Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession;
19. Provides that any contracting State may denounce the Protocol by written notification to the Depository and shall take effect one year following the date the notification is received;
20. Provides that the Depository shall promptly notify all signatory and Contracting States to the Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of the Protocol and other relevant information;

II. **Compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012**

1. The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as “the Act”).
2. Section 8 (1) provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
3. Subsection (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures.
4. Section 7 of the Act provides as follows—
 7. *Where Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—*
 - (a) *the objects and subject matter of the treaty;*
 - (b) *any constitutional implications including—*
 - (i) *any proposed amendment to the Constitution; and*

- (ii) *that the treaty is consistent with the Constitution and promotes constitutional values and objectives;*
- (c) *the national interests which may be affected by the ratification of the treaty;*
- (d) *obligations imposed on Kenya by the treaty;*
- (e) *requirements for implementation of the treaty;*
- (f) *policy and legislative considerations;*
- (g) *financial implications;*
- (h) *ministerial responsibility;*
- (i) *implications on matters relating to counties;*
- (j) *the summary of the process leading to the adoption of the treaty;*
- (k) *the date of signature;*
- (l) *the number of states that are party to the treaty;*
- (m) *the views of the public on the ratification of the treaty;*
- (n) *whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;*
- (o) *the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and*
- (p) *whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.*

a. Purpose of the Protocol

The main object of the Montreal Protocol, 2014 is to empower States to deal with unruly passengers, while preserving prosecutorial discretion. The Montreal Protocol, 2014 will enhance civil aviation safety and security by:

- a) Extending jurisdiction to the State of landing and State of Operator;
- b) Clarifying certain behaviours which should be considered, at a minimum, as an offense and encourages States to take appropriate criminal or other legal proceedings. These include physical assault or a threat to commit such assault against a crew member and refusal to follow a lawful instruction given by or on behalf of the aircraft commander (for safety purposes);
- c) Recognizing that airlines have a right to and may seek compensation from unruly passengers for costs incurred as a result of their unruly behaviour where this involves diversions to disembark an unruly passenger; and
- d) Recognizing that States may establish an in-flight security officer programme on a bilateral or multilateral basis.

The Montreal Protocol was necessitated by the fact that there has been an increase in incidents of unruly passengers on aircraft. Unruly or disruptive passengers refers to passengers who fail to respect the rules of conduct on board an aircraft or to follow instructions by crew thereby disrupting good order and discipline on board aircraft. Such cases have threatened the safety of aircraft in flight. Among the issues addressed by the Protocol include the State of landing and State of operator as additional jurisdictions to the one conferred on the State of registration, recognition of in-flight security officers as currently provided for under the provisions of Annex 17 and extending immunity to in-flight security officers.

b. Constitutional Implications

In accordance with the Constitution of Kenya and the Treaty Making and Ratification Act, once the Protocol is signed and ratified it shall form part of the Laws of Kenya.

c. National Interest (advancement of economic prosperity of Kenya and her people)

Among the issues addressed by the Protocol include the State of landing and State of operator as additional jurisdictions to the one conferred on the State of registration to deal with unruly passengers, recognition of in-flight security officers as currently provided for under the provisions of Annex 17 and extending immunity to in-flight security officers.

d. Obligations imposed by the Protocol

The Protocol makes provision for the right to seek recovery for damages by any party from any person who commits an offence or act on board aircraft under national laws. Kenya participated in the ICAO Diplomatic Conference that adopted the Montreal Protocol, 2014 and signed the Final Act but not the Protocol which was opened for signature on 4th April, 2014 due to the requirements of the Treaty Making and Ratification Act, 2012.

e. Policy and legislative considerations

Kenya is a Contracting State to the International Civil Aviation Organization (ICAO) having formally given notice of its adherence to the Convention on International Civil Aviation on May 1, 1964.

The International Civil Aviation Organization (ICAO) Diplomatic Conference held in Montréal, Canada from 26th March to 4th April, 2014 adopted the Montreal Protocol, 2014. The Protocol amends the Convention on Offences and Certain Acts Committed on Board Aircraft (Tokyo Convention, 1963) which Kenya ratified on 22nd June 1970.

f. Implications on matters relating to Counties

Civil aviation falls under National Government functions as provided for in section 18 of the Forth 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..

g. The Summary of the process leading to the Adoption of the Agreement

Kenya participated in the ICAO Diplomatic Conference that adopted the Montreal Protocol, 2014 and signed the Final Act but not the Protocol which was opened for signature on 4th April, 2014 due to the requirements of the Treaty Making and Ratification Act, 2012.

h. The date of Signature

The Protocol was opened for signature on 4th April, 2014

i. Proposed text of any reservation

Reservations are not contemplated in the Protocol.

3.0 MEETING BETWEEN THE COMMITTEE AND THE MINISTRY

On Tuesday 23rd April, 2019, the Departmental Committee held a meeting with officials from the Ministry. The Ministry officials were directed to submit written submissions to enable the Committee members have a better understanding of the Agreements and their benefit toward the country. The Ministry submitted that-

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have jurisdiction, as the aircraft is registered in another State. Likewise, authorities in the State of registration may have little connection with an incident taking place on board an aircraft operated in another State. As a result, unruly passengers get released to continue their journey without facing punishment for their misconduct, which may jeopardize safety of the aircraft or persons therein.

The main object of the Montreal Protocol, 2014 is to empower States to deal with unruly passengers, while preserving prosecutorial discretion. The Montreal Protocol, 2014 will enhance civil aviation safety and security by:

- a) Extending jurisdiction to the State of landing and State of Operator;
- b) Clarifying certain behaviours which should be considered, at a minimum, as an offense and encourages States to take appropriate criminal or other legal proceedings. These include physical assault or a threat to commit such assault against a crew member and refusal to follow a lawful instruction given by or on behalf of the aircraft commander (for safety purposes);
- c) Recognizing that airlines have a right to and may seek compensation from unruly passengers for costs incurred as a result of their unruly behaviour where this involves diversions to disembark an unruly passenger; and
- d) Recognizing that States may establish an in-flight security officer programme on a bilateral or multilateral basis.

The Montreal Protocol was necessitated by the fact that there has been an increase in incidents of unruly passengers on aircraft. Unruly or disruptive passengers refers to passengers who fail to respect the rules of conduct on board an aircraft or to follow instructions by crew thereby disrupting good order and discipline on board aircraft. Such cases have threatened the safety of aircraft in flight. Among the issues addressed by the Protocol include the State of landing and State of operator as additional jurisdictions to the one conferred on the State of registration, recognition of in-flight security officers as currently provided for under the provisions of Annex 17 and extending immunity to in-flight security officers.


The Protocol also makes provision for the right to seek recovery for damages by any party from any person who commits an offence or act on board aircraft under national laws. Kenya participated in the ICAO Diplomatic Conference that adopted the Montreal Protocol, 2014 and signed the Final Act but not the Protocol which was opened for signature on 4th April, 2014 due to the requirements of the Treaty Making and Ratification Act, 2012.

4.0 COMMITTEE OBSERVATIONS

1. The Constitution in Article 2 (6) provides for the entrenchment of this Protocol into the laws of Kenya.
2. The Protocol seeks to empower States to deal with unruly passengers, while preserving prosecutorial discretion and was necessitated by the fact that there has been an increase in incidents of unruly passengers on aircraft
3. The Protocol also makes provision for the right to seek recovery for damages by any party from any person who commits an offence or act on board aircraft under national laws. Kenya participated in the ICAO Diplomatic Conference that adopted the Montreal Protocol, 2014 and signed the Final Act but not the Protocol which was opened for signature on 4th April, 2014 due to the requirements of the Treaty Making and Ratification Act, 2012

5.0 COMMITTEE RECOMMENDATION


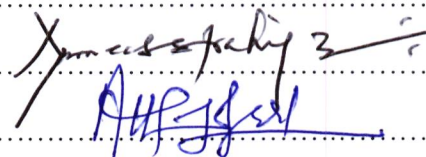
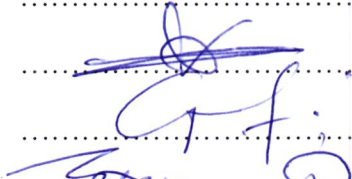

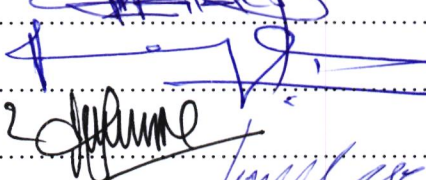

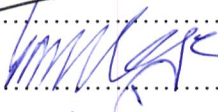
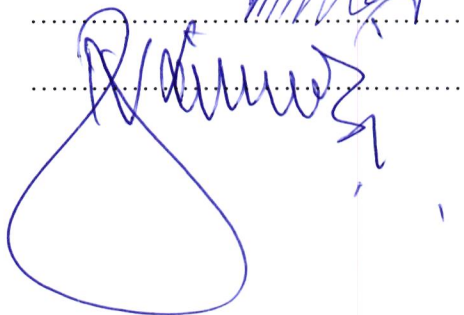
The Committee recommends that the House approves the ratification of the Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft (Montreal, 2014) as the approval is in Kenya's national interest.

SIGNED

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

DATE.....


Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing have today 4th June 2019 adopted this Report on the Ratification of the Protocol to amend the convention on offences and certain acts committed on board aircraft (Montreal, 2014) for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

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

Annexure 1:
Minutes of Committee sittings

MINUTES OF THE TWENTY NINTH (29TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 23RD APRIL 2019 AT 10.00 A.M. IN COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. David Njuguna Kiaraho, M.P.
4. Hon. Suleiman Dori Ramadhani, M.P.
5. Hon. Ahmed Abdisalan Ibrahim, M.P.
6. Hon. Ahmed Bashane Gaal, M.P.
7. Hon. Peris Pesi Tobiko, M.P.
8. Hon. Rehema Dida Jaldesa, M.P.
9. Hon. Shadrack John Mose, M.P.
10. Hon. Tom Mboya Odege, M.P.
11. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Savula Ayub Angatia, M.P.
3. Hon. Mugambi Murwithania Rindikiri, M.P.
4. Hon. Kulow Maalim Hassan, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Johnson Many Naicca, M.P.
7. Hon. Gideon Mutemi Mulyungi, M.P.
8. Hon. Rigathi Gachagua, M.P.

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant III
2. Ms. Mercy Wanyonyi - Legal Counsel I

- | | | |
|------------------------|---|------------------|
| 3. Mr. Abdinasir Moge | - | Fiscal Analyst I |
| 4. Mr. Collins Mahambe | - | Audio Officer |
| 5. Mr. Moses Kariuki | - | Sergeant-at-arm |

IN ATTENDANCE

- | | | |
|---------------------------|---|--|
| 1. Mr. Nicholas Bodo | - | Ag. Director, Air Transport, MTIHUD&PW |
| 2. Mr. Denis Kimani | - | Ag. Manager, Legal Services, KCAA |
| 3. Ms. Catherine N. Kwala | - | Corporation Secretary, KAA |
| 4. Ms. Margaret Munene | - | Legal Counsel (KAA) |

MIN No. TPWH 129/2019: PRELIMINARIES

The meeting was called to order at twenty five minutes past ten o'clock, with a word of prayer from Hon. Rehema Jaldesa. Members confirmed the agenda as one, meeting with the Ministry on the ratification of the Montreal Protocol, 2014 and ratification of the Bilateral Air Service Agreements between Kenya and Cambodia; Kenya and Burkina Faso; Kenya and Finland; Kenya and Seychelles; and Kenya and the Hellenic Republic and two, briefing from the Legal Counsel on the Statute Law (Miscellaneous Amendments) Bill, 2019.

MIN No. TPWH 130/2019: CONSIDERATION OF STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2019

Members noted that there was only one amendment in the Statute Law (Miscellaneous Amendments) Bill, 2019 that was under the purview of the Committee. This was on the proposal to amend Section 4 of the Merchant Shipping Act, 2009 which provides that "The Minister shall, in addition to any other power conferred on him by any other provisions of this Act, be responsible for the administration and implementation of this Act." The Bill seek to insert a new clause 4A immediately after Section 4 which shall read "Notwithstanding any other provision of this Act, the Cabinet Secretary may, on the recommendation of the Authority, by notice in the Gazette and subject to such conditions as may be appropriate, exempt any Government entity or enterprise from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy."

The Committee noted that the mischief that the new provision was trying to cure was not clear since the conditions under which such an exemption ought to be given need to be specified. The Committee was concerned that the provision may also be subject to abuse. The Committee further noted that the provision may have far reaching ramifications and therefore it was also important to first determine whether the proposed amendment was rightly placed in the Statute Law (Miscellaneous Amendment) Bill, 2019 or whether it ought to have been introduced as a stand-alone substantive amendment.

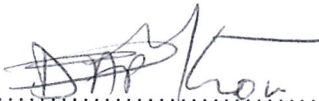
The Committee resolved to reject the proposed amendment to the Merchant Shipping Act, No.4 of 2009.

MIN No. TPWH 131/2019: **SUBMISSION FROM THE MINISTRY ON THE MONTREAL PROTOCOL, 2014 AND OTHER AIR SERVICE AGREEMENTS**

The Committee noted that the Principal Secretary for Transport was absent without apology despite being expressly invited vide a letter NA/DCS/TPWH/CORR/2019/037. The Ministry officials, the KCAA and the KAA officials submitted that they had no objection to the ratification of the Montreal Protocol, 2014 and to the ratification of the Bilateral Air Service Agreements between Kenya and Cambodia; Kenya and Burkina Faso; Kenya and Finland; Kenya and Seychelles; and Kenya and the Hellenic Republic in the form as presented to Parliament and that they supported them in totality. The Committee directed that they submit their written memorandum through the Clerk's office confirming their position on the agreements.

MIN No. TPWH 132/2019: **ADJOURNMENT**

There being no other business, the sitting was adjourned at noon. The next meeting to be held on Thursday, 25th April 2019.

Signed.....
(Chairperson)
Date.....23/5/19.....

Annexure 2:

Newspaper advertisement inviting the public
to submit memoranda

Projects. Government given tough conditions and strict timelines

World Bank raises graft worries in Sh120b works

Officials also cite slow pace of projects as reason for concern.

By Moses Michira
newsdesk@standardmedia.co.ke

The World Bank is considering scrapping funding for several water projects across the country over integrity concerns.

At risk includes Sh120 billion in friendly loans for developing arid counties in northern Kenya.

Projects on the chopping block are the Sh4.8 billion Mwache Dam in Kwale, flood mitigation in Budalang'i and hundreds of small water works scattered across Mandera, Wajir, Isiolo and Marsabit.

Scuttling of the projects would come with huge implications down the road for the country, which is even today grappling with famine linked to drought and deaths.

Among the issues that could derail the ambitious water projects are abnormal cost variations of past projects, according to a confidential letter addressed to top officials, including National Treasury Cabinet Secretary Henry Rotich.

Other concerns raised in the March 1 letter, also copied to Water and Sanitation CS Simon Chelugui, relate to the slow implementation of projects due to unwarranted delays despite the release of budgeted funds.

Conditions laid out by the lender to guarantee retention of financial support extend to immediate commitment to address sexual offences allegations against workers at the Northern Collector Tunnel project in Murang'a.

This harsh verdict was returned by top officials of Water Global Practice, the World Bank arm that funds development of water, led by

director Ayat Soliman and manager Catherine Tovey, after their inspection tour of Kenya in the last week of February.

"While the water sector remains an important priority for World Bank support, we are concerned by the slow pace of

Sh120b

Amount to be lent to arid counties that are at risk

implementation of the water portfolio coupled with significant social and governance risks," wrote WB regional director Carlos Felipe Jaramillo.

The officials' visit came in the midst of an ongoing investigation into the development of three mega dams in the Rift Valley by an Italian contractor, CMC di Ravenna, over alleged payment of kickbacks to Kenyan officials as reward for con-

tract award.

Mr Jaramillo's letter spelt out tough conditions and gave strict timelines that have since elapsed.

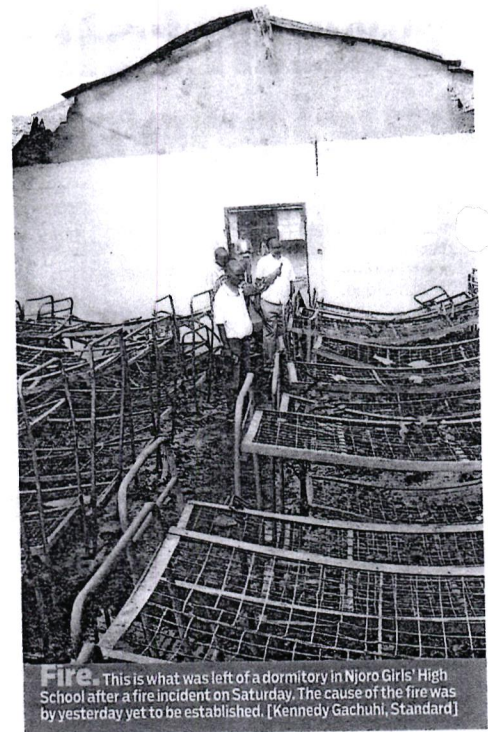
He directed Mr Rotich to immediately release Sh2.5 billion to fund public participation and other priority activities in the North and North Eastern Development Initiative, which encompasses tens of water projects.

"If the County Participation Agreements are not signed by March 11, 2019, we should need to revisit the viability of the current scope and design of the project and assess options for restructuring and cancellation of funds," Jaramillo wrote.

Further, Rotich was told to find Sh600 million this year to resettle people displaced by the Mwache Dam project.

It was not possible to immediately establish whether the tough conditions given were met as yesterday was not an official working day.

Nakuru. A school's loss



Fire. This is what was left of a dormitory in Njoro Girls' High School after a fire incident on Saturday. The cause of the fire was by yesterday yet to be established. [Kennedy Gachuhi, Standard]

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the Matters of consideration by the National Assembly:-

1. Ratification of the Bilateral Air Service Agreements between Kenya and Cambodia; Kenya and Burkina Faso; Kenya and Finland; Kenya and Seychelles; and
2. Ratification of the Montreal Protocol, 2014

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, Section 8 of the Treaty Making and Ratification Act, 2012 provides for the consideration and Ratification of Treaties by Parliament and subsection(3) states that, "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".

The National Assembly is in receipt of the above mentioned Agreements and Protocol for approval for ratification by the Government of the Republic of Kenya. The main purpose of the Agreements is to approve Bilateral Air Services Agreements between Kenya and various countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers to access the Kenyan market while the Protocol is to amend the Convention on offences and certain other acts committed on board aircrafts (Tokyo Convention, 1963). The protocol will give Kenya jurisdictional power to deal with unruly passengers, while preserving its prosecutorial discretion.

The above Agreements and Protocol have been committed to the Departmental Committee on Transport, Public Works and Housing pursuant to Standing Order 216(5)(fa) for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and section 8 of the Treaty Making and Ratification Act, 2012, the Committee invites members of the public to submit any representations they may have on the said Agreements and Protocol. The Agreements can be accessed from the parliamentary website at www.parliament.go.ke. The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, First Floor, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Monday, 1st April, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

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With local leaders appealing for close to Sh2 billion

Vocal > Leaders tell State to stop intimidating chiefs

Graft to blame for food crisis, Rift MPs claim

They rebuked leaders who are denying people are starving to death

BY FLORAH KOECH
flokoech@gmail.com

A section of MPs from the North Rift have expressed their anger at some government officials who are denying that there is a food crisis in the country.

Led by Nandi Hills MP Alfred Keter and his Moiben counterpart Silas Tiren, the legislators said the government should put in place measures to ensure more Kenyans do not die of hunger instead of denying the obvious.

Speaking on Sunday when they donated food at Chepilat in Tiaty Sub-County, the leaders said the massive corruption and looting from public coffers has contributed to food insecurity experienced in most counties.

"It's really unfortunate that 56 years after independence, people in some areas cannot access food, water and medication. As leaders we must call a spade a spade; we will not keep quiet

as people starve to death," Mr Keter said.

"How can someone loot money meant for construction of dams as locals walk for over 10km to access water, which is not even clean in the first place?"

Mr Keter posed.

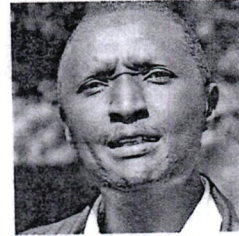
He raised concern that there are farmers in the North Rift region whose maize is rotting in stores because the government failed to buy from them as their counterparts in neighbour counties starve.

"Some people wanted to spoil the maize market and were agitating for diversification and growing of avocados. They can now take the avocados they were campaigning for to the starving Kenyans," Mr Keter said.

On his part, Mr Tiren said the government should stop intimidating chiefs who exposed the plight of their people suffering from hunger.

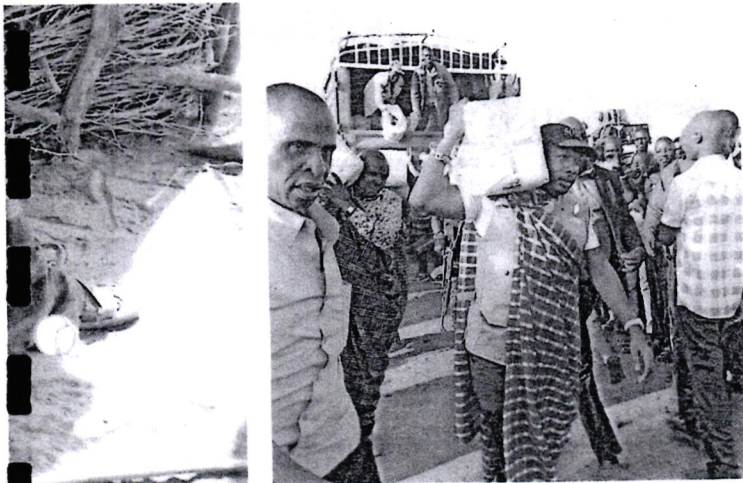
"Why intimidate chiefs and local leaders who were reporting how people are suffering ... The government should verify facts instead of being in denial. People are starving to death — that is a fact," Mr Tiren said.

He called on the government to implement long-term development projects in the arid and semi arid areas to end perennial food shortages. "It is sad that when we allocate funds to dams, some people see it as a chance to loot and get kickbacks at the expense of suffering Kenyans."



It is sad that when we allocate funds to dams, some people see it as a chance to loot and get kickbacks at the expense of suffering Kenyans."

Moiben MP Silas Tiren



CHEBOITE KIGEN & OSCAR KAKAI | NATION

hunger-stricken elderly man at Cheptunayo in Tiaty, Baringo County, when some Rift Valley leaders paid him a visit yesterday. Above: Nairobi Governor Mike Sonko helps offload foodstuff he donated to the starving residents of West Pokot County on Saturday.



FILE | NATION

...emuu inside her hut at Kamekwi village of Turkana Central on March 17. A week after the 'Nation' published her story of painful want and desolation, she has not received any help.

The starving Baringo residents



Some 1,000 bags of maize at a store in Chemolingot in Tiaty, Baringo County, yesterday. Government officials say they have no money to fuel lorries to take the food to far-flung villages in Tiaty.

CHEBOITE KIGEN | NATION

the headteacher, said he has been borrowing food from the neighbouring Korelach Primary School to feed his pupils, but the 50kg bag of rice he got a week ago is now depleted. "We cooked the last meal (boiled rice) on Friday," he said.

A family in Tugum village risks starving to death. Their three-year-old son can no longer walk due to the biting hunger. His mother, Cheparwada Nguriatada, said she doesn't

have enough food to feed her four young children. "This boy was well until two weeks ago, but he is now too weak to even talk or cry," Nguriatada said as her five-month-old cried after sucking an empty breast.

Chepilat residents are praying that relief food reaches them before they starve to death.

"We saw several lorries heading to Chemolingot with bags of maize some days ago, but we are yet to receive any," said

Solomon Lochokee whose wife died of hunger three weeks ago.

However, Tiaty Deputy County Commissioner Jacob Awuor said food is now available, but they have no funds to fuel vehicles to transport the food to the far-flung areas.

"We have plenty of food at our stores in Chemolingot, but we are yet to get funding from the government to fuel lorries that will distribute the food," Mr Awuor said.

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

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MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY





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

STATE DEPARTMENT OF TRANSPORT

**PROTOCOL TO AMEND THE CONVENTION ON OFFENCES AND
CERTAIN ACTS COMMITTED ON BOARD AIRCRAFT (MONTREAL,
2014)**

Kenya is a Contracting State to the International Civil Aviation Organization (ICAO) having formally given notice of its adherence to the Convention on International Civil Aviation on May 1, 1964.

The International Civil Aviation Organization (ICAO) Diplomatic Conference held in Montréal, Canada from 26th March to 4th April, 2014 adopted the Montreal Protocol, 2014. The Protocol amends the Convention on Offences and Certain Acts Committed on Board Aircraft (Tokyo Convention, 1963) which Kenya ratified on 22nd June 1970.

Kenya ratified the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963), on 22nd June, 1970. The Tokyo Convention, 1963 applies in respect of offences against penal law and acts which, whether or not are offences, may jeopardize the safety of aircraft. The Tokyo Convention, 1963 limits jurisdiction over offences and other acts committed on board aircraft to the State of registration of the aircraft in question. This causes a jurisdictional gap when the aircraft commander delivers or disembarks an unruly passenger to competent authorities in another State other than the State of registration. Such State of landing would often determine that they did not have jurisdiction, as the aircraft is registered in another State. Likewise, authorities in the State of registration may have little connection with an incident taking place on

board an aircraft operated in another State. As a result, unruly passengers get released to continue their journey without facing punishment for their misconduct, which may jeopardize safety of the aircraft or persons therein.

The main object of the Montreal Protocol, 2014 is to empower States to deal with unruly passengers, while preserving prosecutorial discretion. The Montreal Protocol, 2014 will enhance civil aviation safety and security by:

- a) Extending jurisdiction to the State of landing and State of Operator;
- b) Clarifying certain behaviors which should be considered, at a minimum, as an offense and encourages States to take appropriate criminal or other legal proceedings. These include physical assault or a threat to commit such assault against a crew member and refusal to follow a lawful instruction given by or on behalf of the aircraft commander (for safety purposes);
- c) Recognizing that airlines have a right to and may seek compensation from unruly passengers for costs incurred as a result of their unruly behavior where this involves diversions to disembark an unruly passenger; and
- d) Recognizing that States may establish an in-flight security officer programme on a bilateral or multilateral basis.

The Montreal Protocol was necessitated by the fact that there has been an increase in incidents of unruly passengers on aircraft. Unruly or disruptive passengers refers to passengers who fail to respect the rules of conduct on board an aircraft or to follow instructions by crew thereby disrupting good order and discipline on board aircraft. Such cases have threatened the safety of aircraft in flight. Among the issues addressed by the Protocol include the State of landing and State of operator as additional jurisdictions to the one conferred on the State of registration, recognition of in-flight security officers as currently provided for under the provisions of Annex 17 and extending immunity to in-flight security officers.

The Protocol also makes provision for the right to seek recovery for damages by any party from any person who commits an offence or act on board aircraft under national laws.

Kenya participated in the ICAO Diplomatic Conference that adopted the Montreal Protocol, 2014 and signed the Final Act but not the Protocol which was opened for signature on 4th April, 2014 due to the requirements of the Treaty Making and Ratification Act, 2012.


Esther Koimett, CBS

PRINCIPAL SECRETARY, STATE DEPARTMENT OF TRANSPORT

②
Mrs Wanjohi
for Table
SM
25/12



REPUBLIC OF KENYA

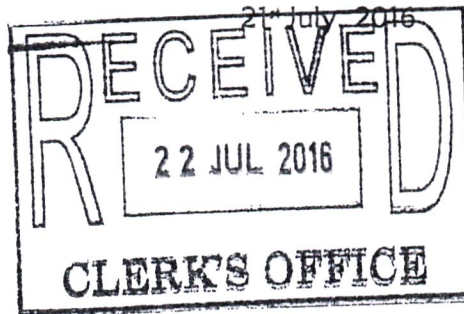
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

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JMA
22/7/16

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Our Ref: AG/CONF/21/6/7/7/Vol. 1

Mr. Justin Bundi, CBS
Clerk of the National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI



RE: RATIFICATION OF THE MONTREAL PROTOCOL, 2014.

Reference is made to the above matter.

Kenya ratified the Convention on Offences and Certain Other Acts Committed on Board an Aircraft (Tokyo Convention, 1963) on 22nd June, 1970. This Convention applies to offences that may jeopardize the safety of the Aircraft. Due to increase in unruly passengers, the Tokyo Convention was reviewed culminating to a Diplomatic Conference held on 4th April, 2014. The Conference adapted the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board an Aircraft (Montreal Protocol, 2014) and was attended by 88 member States including Kenya.

The Montreal Protocol was opened for Signature on 4th April, 2014 and shall come into force on the 1st Day of the second Month following the deposit of the 22nd Instrument of ratification, acceptance, approval or accession with the Depository.

Kenya has not yet ratified the Protocol. The need to ratify the Protocol cannot be overemphasized as it gives Kenya jurisdictional power to deal with unruly passengers, while preserving its prosecutorial discretion.

During the Fifth Cabinet meeting held on 8th June, 2016 CAB(16) 31 jointly with the Attorney- General and the Ministry of Transport, Infrastructure, Housing and Urban Development presented a Cabinet Memorandum and:-

- a) Approved the ratification of the Protocol to amend the Convention on Offences and Certain Other Acts, Committed on Board Aircraft.

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 08 DEC 2018 DAY:

TABLED BY: Leader of Majority Party
Kales Temuna

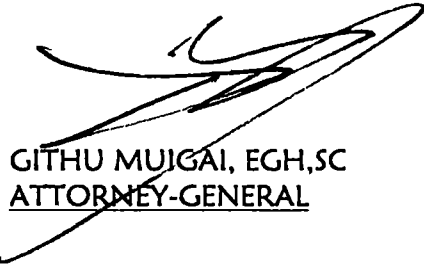
CLERK-AT-THE-TABLE:

SHERIA HOUSE, HARAMBEE AVENUE
P.O Box 40112-00100, NAIROBI, KENYA TEL:+254 20 2227461/2251355/0700072929/0732529995
EMAIL: info@ag.go.ke WEBSITE: info@attorney-general.go.ke
DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILE SELASSIE AVENUE, P.O. Box 56057 - 00200, Nairobi - Kenya TEL: Nairobi 224029/2240337
EMAIL: info@justice.go.ke

b) Directed the Attorney- General to submit the Protocol to the National Assembly for consideration and ratification.

By virtue of Section 8 of the Treaty Making and Ratification Act, this Office is required to seek approval of the National Assembly to ratify the Treaty.

In light of the above please find enclosed 3 copies of the Montreal Protocol and the Memorandum of the Protocol for consideration and approval by the National Assembly.



GITHU MUIGAI, EGH, SC
ATTORNEY-GENERAL



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

114

Our Ref: AG/CONF/21/6/7/7/Vol. I

21st July, 2016

Mr. Justin Bundi, CBS
Clerk of the National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI

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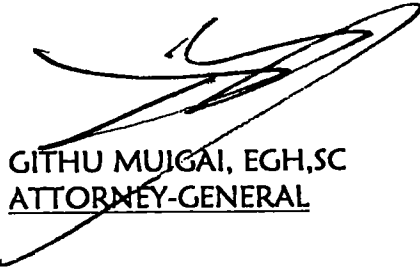
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GITHU MUIGAI, EGH,SC
ATTORNEY-GENERAL

SECRET

REPUBLIC OF KENYA



MINISTRY OF TRANSPORT AND INFRASTRUCTURE

**CABINET MEMORANDUM ON RATIFICATION OF
THE PROTOCOL TO AMEND THE CONVENTION
ON OFFENCES AND CERTAIN OTHER ACTS
COMMITTED ON BOARD AIRCRAFT
(MONTREAL PROTOCOL, 2014)**

BY

**AG. CABINET SECRETARY
MINISTRY OF TRANSPORT AND INFRASTRUCTURE**

AND

**ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL AND
DEPARTMENT OF JUSTICE**

OCTOBER, 2015

SECRET

**CABINET MEMORANDUM ON THE RATIFICATION OF THE
PROTOCOL TO AMEND THE CONVENTION ON OFFENCES
AND CERTAIN OTHER ACTS COMMITTED ON BOARD
AIRCRAFT (MONTREAL PROTOCOL, 2014)**

1.0 OBJECTIVE OF THE MEMORANDUM

The objective of the Memorandum is to appraise the Cabinet on the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montreal Protocol, 2014) and to request the Cabinet to approve its ratification.

2.0 BACKGROUND OF THE SUBJECT MATTER

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

Kenya ratified the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963), on 22nd June, 1970. The Tokyo Convention, 1963 applies in respect of offences against penal law and acts which, whether or not are offences, may jeopardize the safety of aircraft.

Ensuring the safe, secure and efficient operation of commercial flights is the shared goal of governments, airlines and the wider aviation industry. However, incidents of unruly passengers on board aircraft threaten the safety and security of the flight and have become a significant issue faced by airlines and cabin crew. In addition, the behavior of unruly passengers also adversely affects the travel experience of other passengers, causes operational disruption and leads to significant costs for airlines.

A significant number of unruly passengers rarely face prosecution or other legal sanctions. This is because of jurisdictional and other gaps in the Tokyo Convention, 1963.

Due to the increase in unruly passenger incidents, the International Air Transport Association (IATA) made a formal request to ICAO in 2009 to review and enhance the Tokyo Convention, 1963 to allow law enforcement authorities adequate means to pursue offenders. The review process culminated in a Diplomatic Conference held from 26th March to 4th April 2014 in Montreal, Canada. The Conference adopted the Protocol and was attended by 88 Member States including Kenya. The Montreal Protocol, 2014 was opened for signature and ratification on 4th April, 2014.

3.0 ANALYSIS OF THE PROBLEM

The Tokyo Convention, 1963 limits jurisdiction over offences and other acts committed on board aircraft to the State of registration of the aircraft in question. This causes a jurisdictional gap when the aircraft commander delivers or disembarks an unruly passenger to competent authorities in another State other than the State of registration. Such State of landing would often determine that they did not have jurisdiction, as the aircraft is registered in another State. Likewise, authorities in the State of registration may have little connection with an incident taking place on board an aircraft operated in another State. As a result, unruly passengers get released to continue their journey without facing punishment for their misconduct, which may jeopardize safety of the aircraft or persons therein.

The main object of the Montreal Protocol, 2014 is to empower States to deal with unruly passengers, while preserving prosecutorial discretion.

The Montreal Protocol, 2014 will enhance civil aviation safety and security by:

SECRET

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- c) Recognizing that airlines have a right to and may seek compensation from unruly passengers for costs incurred as a result of their unruly behavior where this involves diversions to disembark an unruly passenger; and
- d) Recognizing that States may establish an in-flight security officer programme on a bilateral or multilateral basis.

4.0 OPTIONS ON THE WAY FORWARD

The Montreal Protocol, 2014 was opened for signature on 4th April, 2014 and will enter into force on the 1st day of the second month following the deposit of the 22nd instrument of ratification, acceptance, approval or accession with the Depositary. The ratification of the Protocol would ensure that Kenya meets her obligations under ICAO.

5.0 FINANCIAL IMPLICATIONS

Since the implementation of this Protocol will be incorporated into existing institutional frameworks, there are no budgetary changes envisaged in terms of financial implications.

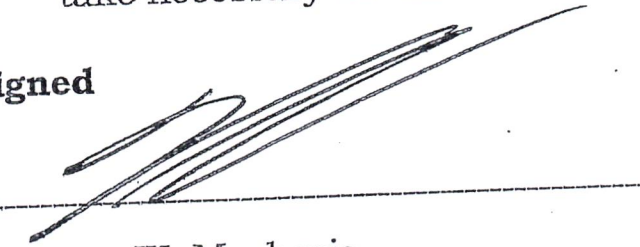
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6.0 RECOMMENDATIONS TO THE CABINET

The Cabinet is requested to:-

- (i) take note of the contents of this Cabinet Memorandum;
- (ii) approve ratification of the Protocol to amend the Convention on Offences and Certain other Acts Committed on board Aircraft (Montreal Protocol, 2014); and
- (iii) direct the Cabinet Secretary for Foreign Affairs and International Trade to submit the Protocol to the Speaker of the National Assembly for consideration and ratification; and
- (iv) direct the Cabinet Secretary, Ministry of Foreign Affairs and International Trade and the Acting Cabinet Secretary, Ministry of Transport and Infrastructure to take necessary action.

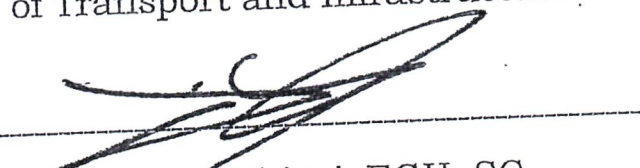
Signed



James W. Macharia
 Acting Cabinet Secretary, Ministry
 of Transport and Infrastructure

22.10.15

Date



Prof. Githu Muigai, EGH, SC
 Attorney General
 Office of the Attorney General and
 Department of Justice

25.11.15

Date



MEMORANDUM TO THE SPEAKER ON THE RATIFICATION OF THE PROTOCOL TO AMEND THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT (MONTREAL PROTOCOL, 2014)

(Submitted by the Attorney General)

1.0 PURPOSE

The purpose of this Memorandum is to seek the approval of the National Assembly to ratify the Protocol to Amend the Convention on Offences and Certain Other Acts Committed On board Aircraft (Montreal Protocol, 2014).

2.0 BACKGROUND

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

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Ensuring the safe, secure and efficient operation of commercial flights is the shared goal of governments, airlines and the wider aviation industry. However, incidents of unruly passengers on board aircraft threaten the safety and security of the flight and have become a significant issue faced by airlines and cabin crew. In addition, the behavior of

unruly passengers also adversely affects the travel experience of other passengers, causes operational disruption and leads to significant costs for airlines

A significant number of unruly passengers rarely face prosecution or other legal sanctions. This is because of jurisdictional and other gaps in the Tokyo Convention, 1963. Due to the increase in unruly passenger incidents, the International Air Transport Association (IATA) made a formal request to ICAO in 2009 to review and enhance the Tokyo Convention, 1963 to allow law enforcement authorities adequate means to pursue offenders. The review process culminated in a Diplomatic Conference held from 26th March to 4th April 2014 in Montreal, Canada. The Conference adopted the Protocol and was attended by 88 Member States including Kenya. The Montreal Protocol, 2014 was opened for signature and ratification on 4th April, 2014.

3.0 THE OBJECT AND SUBJECT MATTER OF THE PROTOCOL

The Tokyo Convention, 1963 limits jurisdiction over offences and other acts committed on board aircraft to the State of registration of the aircraft in question. This causes a jurisdictional gap when the aircraft commander delivers or disembarks an unruly passenger to competent authorities in another State other than the State of registration. Such State of landing would often determine that they did not have jurisdiction, as the aircraft is registered in another State. Likewise, authorities in the State of registration may have little connection with an incident taking place on board an aircraft operated in another State. As a result, unruly passengers get released to continue their journey without facing punishment for their misconduct, which may jeopardize safety of the aircraft or persons therein.

The main object of the Montreal Protocol, 2014 is to empower States to deal with unruly passengers, while preserving prosecutorial discretion.

The Montreal Protocol, 2014 will enhance civil aviation safety and security by:

- a) Extending jurisdiction to the State of landing and State of Operator;
- b) Clarifying certain behaviors which should be considered, at a minimum, as an offense and encourages States to take appropriate criminal or other legal proceedings. These include physical assault or a threat to commit such assault against a crew member and refusal to follow a lawful instruction given by or on behalf of the aircraft commander (for safety purposes);
- c) Recognizing that airlines have a right to and may seek compensation from unruly passengers for costs incurred as a result of their unruly behavior where this involves diversions to disembark an unruly passenger; and

- d) Recognizing that States may establish an in-flight security officer programme on a bilateral or multilateral basis.

The Montreal Protocol, 2014 was opened for signature on 4th April, 2014 and will enter into force on the 1st day of the second month following the deposit of the 22nd instrument of ratification, acceptance, approval or accession with the Depositary. The ratification of the Protocol would ensure that Kenya meets her obligations under ICAO.

4.0 CONSTITUTIONAL IMPLICATION OF THE PROTOCOL

4.1 The Protocol does not propose any amendments to the Constitution of Kenya 2010.

4.2 .The Protocol is consistent with the Constitution and promote constitutional values and objectives. It specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness, interdependence, non-aggression and non –interference in the internal affairs of each contracting state.

4.3 The Impact of the Protocol on National Interest inter alia to enhance safety and security in civil aviation, promote passenger and freight air transportation, increase trade and tourism and facilitate regional and global integration.

5.0 OBLIGATIONS IMPOSED ON KENYA BY THE PROTOCOL

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

6.0 FINANCIAL IMPLICATIONS

Since the implementation of this Protocol will be incorporated into existing institutional frameworks, there are no budgetary changes envisaged in terms of financial implications.

7.0 MINISTERIAL RESPONSIBILITY

7.1. The Cabinet during its fifth meeting held on 8th June, 2016 approved the ratification of the Protocol.

7.2 The Ministerial responsibility on implementation of the Treaty will be on the Cabinet Secretary of the Ministry of Transport, Infrastructure, Housing and Urbanization.

8.0 IMPLICATIONS ON MATTERS RELATING TO COUNTIES

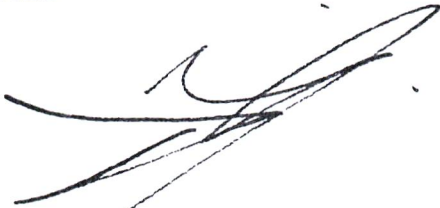
As per the Kenya Constitution of Kenya 2010, the areas of civil aviation and international relations covered by the Convention and Protocol fall under the functions of the National Government. The National Government shall whenever necessary coordinate with the County Governments.

9.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to:

- a) Consider the contents of this Memorandum, and
- b) To authorize the ratification of the Protocol.

SIGNED



.....
GITHU MUIGAI EGH, SC
ATTORNEY GENERAL

DATE

21st July 2016.
.....



.....
JAMES W. MACHARIA, EGH
CABINET SECRETARY
MINISTRY OF TRANSPORT INFRASTRUCTURE, HOUSING & URBAN DEVELOPMENT

DATE

13TH JULY, 2016
.....



MEMORANDUM TO THE SPEAKER ON THE RATIFICATION OF THE PROTOCOL TO AMEND THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT (MONTREAL PROTOCOL, 2014)

(Submitted by the Attorney General)

1.0 PURPOSE

The purpose of this Memorandum is to seek the approval of the National Assembly to ratify the Protocol to Amend the Convention on Offences and Certain Other Acts Committed On board Aircraft (Montreal Protocol, 2014).

2.0 BACKGROUND

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

Kenya ratified the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963), on 22nd June, 1970. The Tokyo Convention, 1963 applies in respect of offences against penal law and acts which, whether or not are offences, may jeopardize the safety of aircraft.

Ensuring the safe, secure and efficient operation of commercial flights is the shared goal of governments, airlines and the wider aviation industry. However, incidents of unruly passengers on board aircraft threaten the safety and security of the flight and have become a significant issue faced by airlines and cabin crew. In addition, the behavior of

unruly passengers also adversely affects the travel experience of other passengers, causes operational disruption and leads to significant costs for airlines

A significant number of unruly passengers rarely face prosecution or other legal sanctions. This is because of jurisdictional and other gaps in the Tokyo Convention, 1963. Due to the increase in unruly passenger incidents, the International Air Transport Association (IATA) made a formal request to ICAO in 2009 to review and enhance the Tokyo Convention, 1963 to allow law enforcement authorities adequate means to pursue offenders. The review process culminated in a Diplomatic Conference held from 26th March to 4th April 2014 in Montreal, Canada. The Conference adopted the Protocol and was attended by 88 Member States including Kenya. The Montreal Protocol, 2014 was opened for signature and ratification on 4th April, 2014.

3.0 THE OBJECT AND SUBJECT MATTER OF THE PROTOCOL

The Tokyo Convention, 1963 limits jurisdiction over offences and other acts committed on board aircraft to the State of registration of the aircraft in question. This causes a jurisdictional gap when the aircraft commander delivers or disembarks an unruly passenger to competent authorities in another State other than the State of registration. Such State of landing would often determine that they did not have jurisdiction, as the aircraft is registered in another State. Likewise, authorities in the State of registration may have little connection with an incident taking place on board an aircraft operated in another State. As a result, unruly passengers get released to continue their journey without facing punishment for their misconduct, which may jeopardize safety of the aircraft or persons therein.

The main object of the Montreal Protocol, 2014 is to empower States to deal with unruly passengers, while preserving prosecutorial discretion.

The Montreal Protocol, 2014 will enhance civil aviation safety and security by:

- a) Extending jurisdiction to the State of landing and State of Operator;
- b) Clarifying certain behaviors which should be considered, at a minimum, as an offense and encourages States to take appropriate criminal or other legal proceedings. These include physical assault or a threat to commit such assault against a crew member and refusal to follow a lawful instruction given by or on behalf of the aircraft commander (for safety purposes);
- c) Recognizing that airlines have a right to and may seek compensation from unruly passengers for costs incurred as a result of their unruly behavior where this involves diversions to disembark an unruly passenger; and

- d) Recognizing that States may establish an in-flight security officer programme on a bilateral or multilateral basis.

The Montreal Protocol, 2014 was opened for signature on 4th April, 2014 and will enter into force on the 1st day of the second month following the deposit of the 22nd instrument of ratification, acceptance, approval or accession with the Depositary. The ratification of the Protocol would ensure that Kenya meets her obligations under ICAO.

4.0 CONSTITUTIONAL IMPLICATION OF THE PROTOCOL

4.1 The Protocol does not propose any amendments to the Constitution of Kenya 2010.

4.2 .The Protocol is consistent with the Constitution and promote constitutional values and objectives. It specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness, interdependence, non-aggression and non –interference in the internal affairs of each contracting state.

4.3 The Impact of the Protocol on National Interest inter alia to enhance safety and security in civil aviation, promote passenger and freight air transportation, increase trade and tourism and facilitate regional and global integration.

5.0 OBLIGATIONS IMPOSED ON KENYA BY THE PROTOCOL

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

6.0 FINANCIAL IMPLICATIONS

Since the implementation of this Protocol will be incorporated into existing institutional frameworks, there are no budgetary changes envisaged in terms of financial implications.

7.0 MINISTERIAL RESPONSIBILITY

7.1. The Cabinet during its fifth meeting held on 8th June, 2016 approved the ratification of the Protocol.

7.2 The Ministerial responsibility on implementation of the Treaty will be on the Cabinet Secretary of the Ministry of Transport, Infrastructure, Housing and Urbanization.

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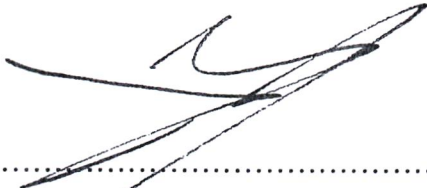
As per the Kenya Constitution of Kenya 2010 ,the areas of civil aviation and international relations covered by the Convention and Protocol fall under the functions of the National Government. The National Government shall whenever necessary coordinate with the County Governments.

9.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to:

- a) Consider the contents of this Memorandum, and
- b) To authorize the ratification of the Protocol.

SIGNED



.....
GITHU MUIGAI EGH, SC
ATTORNEY GENERAL

DATE

21st July 2016
.....



.....
JAMES W. MACHARIA, EGH
CABINET SECRETARY
MINISTRY OF TRANSPORT INFRASTRUCTURE, HOUSING & URBAN DEVELOPMENT

DATE

13TH JULY, 2016
.....

PROTOCOL

To Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft

Done at Montréal on 4 April 2014

PROTOCOLE

portant amendement de la Convention relative aux infractions et à certains autres actes survenant à bord des aéronefs

Fait à Montréal le 4 avril 2014

PROTOCOLO

que modifica el Convenio sobre las infracciones y ciertos otros actos cometidos a bordo de las aeronaves

Hecho en Montreal el 4 de abril de 2014

ПРОТОКОЛ,

изменяющий Конвенцию о преступлениях и некоторых других актах, совершаемых на борту воздушных судов

Совершено в Монреале 4 апреля 2014 года

关于修订《关于在航空器内的犯罪和犯有某些其它行为的公约》的议定书

2014年4月4日订于蒙特利尔

بروتوكول

تعديل الاتفاقية بشأن الجرائم وبعض الأفعال الأخرى التي تُرتكب على متن الطائرات

حُرر في مونتريال في ٤ أبريل/نيسان ٢٠١٤



MONTREAL
4 APRIL 2014

МОНРЕАЛЬ
4 АПРЕЛЯ 2014 ГОДА

MONTREAL
4 AVRIL 2014

蒙特利尔
2014年4月4日

MONTREAL
4 DE ABRIL DE 2014

مونتريال
٤ أبريل ٢٠١٤

PROTOCOL

TO AMEND THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT

THE CONTRACTING STATES TO THIS PROTOCOL,

NOTING that States have expressed their concern about the escalation of the severity and frequency of unruly behaviour on board aircraft that may jeopardize the safety of the aircraft or of persons or property therein or jeopardize good order and discipline on board;

RECOGNIZING the desire of many States to assist each other in curbing unruly behaviour and restoring good order and discipline on board aircraft;

BELIEVING that in order to address these concerns, it is necessary to adopt provisions to amend those of the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* signed at Tokyo on 14 September 1963;

HAVE AGREED AS FOLLOWS:

Article I

This Protocol amends the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963 (hereinafter referred to as "the Convention").

Article II

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

"Article 1

3. For the purposes of this Convention:
 - a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board; and
 - b) when the State of the operator is not the same as the State of registration, the term "the State of registration", as used in Articles 4, 5 and 13 of the Convention shall be deemed to be the State of the operator."

Article III

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

"Article 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on discrimination on any ground such as race, religion, nationality, ethnic origin, political opinion or gender."

Article IV

Article 3 of the Convention shall be replaced by the following:

"Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.
- 1 *bis.* A State is also competent to exercise jurisdiction over offences and acts committed on board:
 - a) as the State of landing, when the aircraft on board which the offence or act is committed lands in its territory with the alleged offender still on board; and
 - b) as the State of the operator, when the offence or act is committed on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in that State.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.
- 2 *bis.* Each Contracting State shall also take such measures as may be necessary to establish its jurisdiction over offences committed on board aircraft in the following cases:
 - a) as the State of landing, when:
 - i) the aircraft on board which the offence is committed has its last point of take-off or next point of intended landing within its territory, and the aircraft subsequently lands in its territory with the alleged offender still on board; and

- ii) the safety of the aircraft or of persons or property therein, or good order and discipline on board, is jeopardized;
 - b) as the State of the operator, when the offence is committed on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in that State.
- 2 *ter.* In exercising its jurisdiction as the State of landing, a State shall consider whether the offence in question is an offence in the State of the operator.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law."

Article V

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

"Article 3 *bis*

If a Contracting State, exercising its jurisdiction under Article 3, has been notified or has otherwise learned that one or more other Contracting States are conducting an investigation, prosecution or judicial proceeding in respect of the same offences or acts, that Contracting State shall, as appropriate, consult those other Contracting States with a view to coordinating their actions. The obligations in this Article are without prejudice to the obligations of a Contracting State under Article 13."

Article VI

Article 5, paragraph 2, of the Convention shall be deleted.

Article VII

Article 6 of the Convention shall be replaced by the following:

"Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:
 - a) to protect the safety of the aircraft, or of persons or property therein; or
 - b) to maintain good order and discipline on board; or

- c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.
2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of in-flight security officers or passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.
3. An in-flight security officer deployed pursuant to a bilateral or multilateral agreement or arrangement between the relevant Contracting States may take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft or persons therein from an act of unlawful interference, and, if the agreement or arrangement so allows, from the commission of serious offences.
4. Nothing in this Convention shall be deemed to create an obligation for a Contracting State to establish an in-flight security officer programme or to agree to a bilateral or multilateral agreement or arrangement authorizing foreign in-flight security officers to operate in its territory."

Article VIII

Article 9 of the Convention shall be replaced by the following:

"Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence.
2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.
3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which are lawfully in his possession."

Article IX

Article 10 of the Convention shall be replaced by the following:

"Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, any in-flight security officer, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken."

Article X

The following shall be added as Article 15 *bis* of the Convention:

"Article 15 *bis*

1. Each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal, administrative or any other forms of legal proceedings against any person who commits on board an aircraft an offence or act referred to in Article 1, paragraph 1, in particular:
 - a) physical assault or a threat to commit such assault against a crew member; or
 - b) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of protecting the safety of the aircraft or of persons or property therein.
2. Nothing in this Convention shall affect the right of each Contracting State to introduce or maintain in its national legislation appropriate measures in order to punish unruly and disruptive acts committed on board."

Article XI

Article 16, paragraph 1, of the Convention shall be replaced by the following:

"Article 16

1. Offences committed on board aircraft shall be treated, for the purpose of extradition between the Contracting States, as if they had been committed not only in the place in which they occurred but also in the territories of the Contracting States required to establish their jurisdiction in accordance with paragraphs 2 and 2 *bis* of Article 3."

Article XII

Article 17 of the Convention shall be replaced by the following:

“Article 17

1. In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft, the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.
2. Each Contracting State, when fulfilling its obligations, or exercising a permitted discretion under this Convention, shall act in accordance with the obligations and responsibilities of States under international law. In this respect, each Contracting State shall have regard for the principles of due process and fair treatment.”

Article XIII

The following shall be added as Article 18 *bis* of the Convention:

“Article 18 *bis*

Nothing in this Convention shall preclude any right to seek the recovery, under national law, of damages incurred, from a person disembarked or delivered pursuant to Article 8 or 9 respectively.”

Article XIV

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

Article XV

As between the Contracting States to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the Tokyo Convention as amended by the Montréal Protocol, 2014.

Article XVI

This Protocol shall be open for signature in Montréal on 4 April 2014 by States participating in the International Air Law Conference held at Montréal from 26 March to 4 April 2014. After 4 April 2014, this Protocol shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article XVIII.

Article XVII

1. This Protocol is subject to ratification, acceptance or approval by the signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.

2. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.

3. Ratification, acceptance, approval or accession to this Protocol by any State which is not a Contracting State to the Convention shall have the effect of ratification, acceptance, approval or accession to the Tokyo Convention as amended by the Montréal Protocol, 2014.

Article XVIII

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

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

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

Article XIX

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

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

Article XX

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

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

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