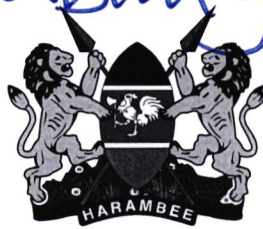


REPUBLIC OF KENYA

Approved for tabling.



But SNA 5/12/18

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - SECOND SESSION




REPORT OF

THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

ON

THE RATIFICATION OF THE BILATERAL AIR SERVICES AGREEMENT BETWEEN KENYA AND JORDAN; KENYA AND JAMAICA; KENYA AND BAHAMAS; AND THE PROTOCOL AMENDING AIR SERVICES AGREEMENT BETWEEN KENYA AND TURKEY

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2018	DAY: Wednesday PM
TABLED BY:	Hon. David Pkosing, M.P. Chairperson, DC on Transport, Public Works & Housing
CLERK-AT THE TABLE:	Rachek Kain - Principal Clerk Assistant

Directorate of Committee Services
Clerk's Chambers
Parliament Buildings
NAIROBI

NOVEMBER 2018

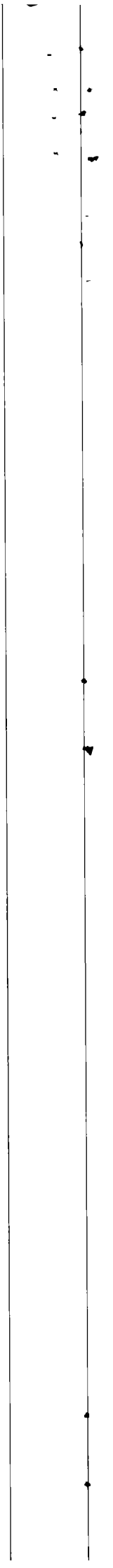


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PREFACE

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:-

1. Hon. David Pkosing, M.P. Chairperson
2. Hon. Moses Kuria, M.P. Vice Chairperson
3. Hon. Johnson Many Naicca, M.P.
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Samuel Arama, 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 Murwithania 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.

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. Eugene Luteshi Audio Officer

C. Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing have today **30th November, 2018** adopted this Report on the Ratification of the bilateral air services agreement between Kenya and Jordan; Kenya and Jamaica; Kenya and Bahamas; and the agreement between Kenya and Turkey 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.
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- 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.

The image shows handwritten signatures in blue and black ink, corresponding to the list of members. The signatures are written on dotted lines next to each name. Some signatures are very stylized and difficult to read, but they appear to be the names of the members listed on the left.

D. EXECUTIVE SUMMARY

On 15th May, 2018 the Cabinet Secretary approved a Cabinet Memorandum on The Ratification of the following bilateral air service agreement:

- a) Kenya and Jordan (signed on 23 April 2008);
- b) Kenya and Jamaica (signed on 20th November, 2014);
- c) Kenya and Bahamas (signed on 8th December, 2016); and
- d) The Protocol amending the Bilateral Air Service Agreement between Kenya and Turkey (signed on 21st October, 2015).

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 report 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 instrument 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 access the Kenyan market.

Such bilateral agreements and their related understandings and arrangements, generally regulate the rules for airline ownership and the routes, frequency and capacity of flights by national carriers between the States Parties (and sometimes beyond those states). They may also include issues such as the provision of ground handling services, the procedure for approving tariffs, the designation of national carriers, and aviation security and safety. This bilateral system has its basis under the Chicago Convention which was signed in December 1944 and has regulated international air services since then.

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 19th of March 2018, (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 Agreements as it is in Kenya’s national interest.

F. Acknowledgement

The Committee wishes to 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 bilateral air services agreement between Kenya and Jordan; Kenya and Jamaica; Kenya and Bahamas; and the agreement between Kenya and Turkey 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. MOSES KURIA, M.P

VICE CHAIRPERSON

DATE..... 30 / 11 / 20 18

1.0 INTRODUCTION

An air service agreement also known as an air transport agreement is an agreement which two States sign to allow for international commercial air transport services between their territories. These Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.

The Bilateral Air Services Agreements between Kenya and Jordan was negotiated and initialled on 23rd April, 2008, Kenya and Jamaica negotiated and initialled on 20th November, 2014 and Kenya and the Bahamas negotiated and initialled on 8th December, 2016. In order to operationalize the Agreements the delegations signed Memoranda of Understanding (MoU) that gave force to the Agreements while waiting formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. The Protocol amending the Air Services Agreement between Kenya and Turkey was initialled on 21st October, 2015.

The three Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories without any restrictions.

I. Legislative Context

The Agreements are negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for Countries within Africa and on the basis of fair and equal opportunity and reciprocity for other Countries.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is the practice for the delegations representing the concerned States to sign a Memorandum of Understanding (MoU) that gives force to the Agreement as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require the signing of the Agreement prior to entry into force.

II. Outline of the three agreements and the Protocol

a. Bilateral Air Services Agreement common Articles

1. **Definition of terms** - this article provides for the definition of terms such as “aeronautical authorities” which depends on the prevailing administrative structures and arrangements in place in each Party;
2. **Grant of rights** - provision sets out both the traffic and non-traffic rights the Parties grant to each other and is to be read in conjunction with a schedule or annex that sets out the routes, rights and any applicable conditions. E.g the right to make a stop on a route;
3. **Designation and authorization** - the provision gives a party state the right to designate in writing to another party airline to operate the agreed services in accordance with the agreement and fulfil conditions as prescribed by law;
4. **Withholding, revocation and limitation of authorization** - gives a party state the right to withhold , revoke and limit an authorisation granted due to failure to have “substantial ownership and effective control” or “principal place of business”;
5. **Application of laws** - this provides for compliance with the State Party’s laws on operation and navigation of aircraft and the admission, transit and departure of passengers, crew, cargo and mail. It also provides for compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party;
6. **Fair Competition** - refers to every contracting State having, “a fair opportunity to operate international air services. It also provides that there be fair and equal opportunity to the routes specified in the annex to the agreement for all designated airlines;
7. **Customs duties, taxes and charges** - The purpose of the provision is to exempt international aviation operations from various customs duties and other taxes on fuel, spare parts, supplies and equipment, that would normally be applied to a foreign aircraft when operating in another jurisdiction;
8. **User charges** - provides the non-discrimination principle governing user charges which provides that charges on a foreign aircraft shall be no higher than those that would be imposed on its own aircraft in similar international operations;

9. **Recognition of certificates** - here the Parties exchange mutual recognition of currently valid certificates of airworthiness and competency and licenses issued by the other Party. The provision also reserves the right to refuse to recognize any certificates or licenses issued by the other Party to the first Party's nationals;
10. **Tariffs (pricing)** - tariffs for air transportation are to established by each designated airline based on commercial consideration in the market place and other relevant factors including cost of operation;
11. **Direct transit** - it provides for a standard facilitation measure for simplified transit found in most air services agreements;
12. **Safety** - the provision is intended to ensure that aircraft operated by, or on behalf of, designated airlines in the other Party's territory are operated and maintained in accordance with ICAO Standards and Recommended Practices. The provision takes a wide view of an aircraft operation by including aeronautical facilities, which implies the provision of facilities such as air traffic control, airport and navigational aids, in addition to the aircraft and its crew. However, nothing prevents the Parties from inserting additional or more restrictive criteria that they feel may be necessary for assessing the safety of an aircraft operation;
13. **Aviation Security** - The provision emphasizes mutual assistance in the prevention of unlawful seizure or other such acts, requests for special security measures and whenever there is an unlawful act or the threat of one. The clause does not limit the contractual freedom of Parties to expand or limit its scope or to use a different approach;
14. **Currency conversion and remittance of earnings**-provision to facilitate currency conversion and remittance;
15. **Ground handling** - This provision allows a designated airline to choose from among competing providers of ground handling services. This can provide some improvement in services and cost depending on the degree of competition among the providers. This approach is commonly found at airports with a large number of airlines and physical limitations on the number of ground handlers that can be accommodated;
16. **Cooperative arrangements** - provides for cooperative marketing arrangements such as joint venture with any airline of a third country provided that parties shall ensure that consumers are informed and protected with respect or code-shared flights operating to

and from their territory. Further, aeronautical authorities are to verify that all airlines have the appropriate authority and meet requirements applied to such arrangements;

17. **Environmental protection** - this provides that States take into account the impact of air transport industry on the environment;
18. **Statistics** - in this case, statistics are to be furnished by the aeronautical authority, or alternatively, also to be provided by designated airlines. This is done usually when the purpose is to review the capacity on the agreed routes, whereby the origin and destination statistics would be required;
19. **Approval of schedules** - This is a requirement for the designated airlines to submit to the aeronautical authorities, prior to the operation of the services, the agreed flight schedules including timetables, the frequency of the services and the types of aircraft to be used, as well as any modifications or supplementary flights;
20. **Consultations**-The scope of the provision is on some issues, such as aviation security and safety, capacity and tariffs, as well as amendment of the agreement, may be subject to separate and specific consultation processes as regards purpose, time-frames and methods (e.g. exchange of documents). The consultation process can be triggered by a request from either Party to address a specific issue;
21. **Settlement of disputes** - In this case, the initial and most successful step in approaching to the settlement of disputes is consultations or negotiations. Where that process fails to produce an agreement, or the Parties fail to reach a settlement of the dispute, then the following alternatives are provided which include settlement through diplomatic channels and arbitration(tribunal composed of three individuals);
22. **Amendments (Modifications)** - The amendment or modification provision in an agreement may be in the context of a consultation provision since the negotiation of an amendment may be seen as merely another matter for consultation. The amendments shall come into force once contracting parties confirm an exchange of diplomatic notes;
23. **Multilateral agreements** - here parties are allowed to decide after consultations, whether the bilateral treaty should be revised to take into account the multilateral agreement;
24. **Termination**- it provides for a situation where the Party receiving the notice of termination does not acknowledge receipt. In that case receipt is deemed to have taken place 14 days after receipt of the notice by ICAO;

25. **Registration with ICAO** - Articles 81 and 83 of the Convention obligate States to register their aeronautical agreements and the above provision formalizes this requirement at the bilateral level;

26. **Entry into force** - an entry into force provision provides an anticipated ratification process in which parties allow for constitutional formalities thus enabling the agreement to enter into force.

b. Protocol amending Air Services Agreement between Kenya and Turkey

The aim of the protocol is to amend Article 13 which provides for the “Establishment of Tariffs. The tariffs are to be established by the designated airlines at reasonable levels due regard being paid to all relevant factors, including cost of operation, reasonable profit and the tariffs of other airlines.

c. Object and subject matter of the Agreement

The key objective of the instrument 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 access the Kenyan market.

d. Constitutional Implications

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

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

The Bilateral Air Services Agreements between Kenya and the various States enable Kenyan air operators such as Kenya Airways and others to provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market.

III. Obligations imposed by the Agreement

Grant of Rights - Each Contracting Party grants to the other Contracting Party the following rights in respect of international air services:

- i. the right to fly across its territory without landing;
- ii. the right to make stops in its territory for non-traffic purposes;

Designation and Authorization - Each Contracting Party shall have the right to designate an airline or airlines for the purpose of operating the agreed services and to withdraw or alter such designations.

Revocation of Authorization - Either Contracting Party may revoke, suspend or limit the operating authorization or technical permissions of an airline designated by the other Contracting Party where:

Application of Laws and Regulations

National Laws - The laws and regulations of one Contracting Party governing entry into, or departure from its territory of aircraft engaged in international air services or to the operation and navigation of such aircraft while within the said territory shall apply to the designated airline(s) of the other Contracting Party.

Exemption from Taxes, Customs Duties and other Charges - Aircraft operated on international air services by a designated airline of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuel and lubricants, aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all taxes, customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment, spare parts, supplies and stores remain on board the aircraft up to such time as they are re-exported or are used or consumed by such aircraft on flights over that territory.

Airline Representation and Sales - The designated airline(s) of each Contracting Party shall have the right to freely establish and maintain in the territory of the other Contracting Party, within the scope of the laws and regulations in force therein, such offices and facilities, as well as administrative, commercial, technical, operational, and other specialist personnel as may be necessary for the requirements of the designated airline concerned.

Aviation Security - Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

IV. Requirements for implementation of the Treaty

The Bilateral Air Services Agreements between Kenya and Jordan was negotiated and initialled on 23rd April, 2008, Kenya and Jamaica negotiated and initialled on 20th November, 2014 and Kenya and the Bahamas negotiated and initialled on 8th December, 2016. In order to operationalize the Agreements the delegations signed Memoranda of Understanding (MoU) that gave force to the Agreements while waiting formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. The Protocol amending the Air Services Agreement between Kenya and Turkey was initialled on 21st October, 2015.

The three Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories without any restrictions.

V. Policy and legislative considerations

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is the practice for the delegations representing the concerned States to sign a Memorandum of Understanding (MoU) that gives force to the Agreement as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require the signing of the Agreement prior to entry into force.

VI. 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.

2.0 THE SUMMARY OF THE PROCESS LEADING TO THE ADOPTION OF THE AGREEMENTS

a. The Kenya/Jordan Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Jordan was negotiated and initialled on 23rd April, 2008 in Amman, Jordan. It was operationalized by the signing of a Memorandum of Understanding.

The Agreement provides for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Hashemite Kingdom of Jordan. Similarly, there is no airline from Jordan operating scheduled air services between the two States. However, the Jordanian authorities have on several occasions requested through diplomatic channels for the Agreement to be formally signed.

b. The Kenya/Jamaica Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Jamaica was negotiated and initialled on 20th November, 2014 in Bali, Indonesia.

¹ TPWHC;

The Agreement provides for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Jamaican authorities have requested for the Agreement to be formally signed.

c. Kenya/the Bahamas Bilateral Air Services Agreement

The Kenya/Bahamas Bilateral Air Services Agreement was negotiated and initialled on 8th December, 2016 in Nassau, the Bahamas. The Agreement has not been operationalized. The Memorandum of Understanding signed administratively allowed for application of the principles of the Agreement within the scope of the national regulations pending the formal signing of the Agreement after the completion of internal procedures by both parties to enable it enter into force.

The Agreement provides for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no carrier from either party operates scheduled air services on the route between the two States. However, the Bahamas has completed their internal constitutional/legal procedures and are ready to formally sign the Agreement to enable it enter into force.

d. Protocol Amending the Kenya/Turkey Air Services Agreement

The existing Air Services Agreement between Kenya and Turkey was formally signed on 20th February, 2009 in Nairobi. The Protocol amending the Agreement was negotiated and initialled on 21st October, 2015 in Antalya, Turkey. The amendment was to replace Article 13 “*Establishment of Tariffs*” of the Agreement by a new text outlined in Article 1 of the Protocol. This was done to make it more liberal.

The Turkish authorities have requested for the Protocol to be formally signed to enable it enter into force.

e. The date of Signature

The Bilateral Air Services Agreements between Kenya and Jordan was initialled on 23rd April, 2008; Kenya and Jamaica was initialled on 20th November, 2014; and Kenya and the Bahamas were initialled on 8th December, 2016. The Agreements have not been formally signed.

The existing Air Services Agreement between Kenya and Turkey was formally signed on 20th February, 2009 in Nairobi. The Protocol amending the Bilateral Air Services Agreement between Kenya and Turkey initialled on 21st October, 2015.

f. The number of States that are party to the Treaty;

In each case there are only two parties.

The views of the public on the ratification of the treaty;

These Agreements were negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways and other local airlines. Stakeholders are consulted including the Kenya Association of Air Operators.

Whether the Treaties sought to be ratified permits reservations and any recommendations on reservations and declarations;

The Bilateral Air Services Agreements all have Articles that allow for Consultations when need arises, Dispute Resolution and Termination.

The proposed text of any reservations that should be entered when ratifying the treaties in order to protect or advance national interests or ensure conformity with the Constitution; and The Bilateral Air Services Agreements all have Articles that allow for Consultations when need arises, Dispute Resolution and Termination.

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

Public funds will be incurred in implementing the Treaties. The Kenya Civil Aviation Authority has the mandate to carry out inspections on equipment (aircraft) from the States operating into Kenya. In addition, Kenya Airports Authority will incur public expenditure on a cost recovery basis in providing services to any of the airlines from these States that utilize our airports.

g. Proposed text of any reservation

Reservations are not contemplated in this Agreement.

3.0 MEETING BETWEEN THE COMMITTEE AND THE MINISTRY

On Thursday, 16th August, 2018, the Departmental Committee held a meeting with the Permanent Secretary State Department of Transport and other officials from the Ministry.

The meeting was interactive with the Committee members having a better understanding of the Agreement and their benefit toward the country.

Presentation by the Ministry of Transport Public Work and Housing

i. The Kenya/Jordan Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Jordan was negotiated and initialled on 23rd April, 2008 in Amman, Jordan. It was operationalized by the signing of a Memorandum of Understanding.

The Agreement provides for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Hashemite Kingdom of Jordan. Similarly, there is no airline from Jordan operating scheduled air services between the two States. However, the Jordanian authorities have on several occasions requested through diplomatic channels for the Agreement to be formally signed.

ii. The Kenya/Jamaica Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Jamaica was negotiated and initialled on 20th November, 2014 in Bali, Indonesia.

The Agreement provides for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Jamaican authorities have requested for the Agreement to be formally signed.

iii. Kenya/the Bahamas Bilateral Air Services Agreement

The Kenya/Bahamas Bilateral Air Services Agreement was negotiated and initialled on 8th December, 2016 in Nassau, the Bahamas. The Agreement has not been operationalized. The Memorandum of Understanding signed administratively allowed for application of the principles of the Agreement within the scope of the national regulations pending the formal

signing of the Agreement after the completion of internal procedures by both parties to enable it enter into force.

The Agreement provides for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no carrier from either party operates scheduled air services on the route between the two States. However, the Bahamas has completed their internal constitutional/legal procedures and are ready to formally sign the Agreement to enable it enter into force.

iv. Protocol Amending the Kenya/Turkey Air Services Agreement

The existing Air Services Agreement between Kenya and Turkey was formally signed on 20th February, 2009 in Nairobi. The Protocol amending the Agreement was negotiated and initialled on 21st October, 2015 in Antalya, Turkey. The amendment was to replace Article 13 "*Establishment of Tariffs*" of the Agreement by a new text outlined in Article 1 of the Protocol. This was done to make it more liberal.

The Turkish authorities have requested for the Protocol to be formally signed to enable it enter into force.

4.0 COMMITTEE OBSERVATIONS

The Constitution in Article 2 (6) provides for the entrenchment of this Agreement into the laws of Kenya.

The Agreement provides for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Hashemite Kingdom of Jordan. Similarly, there is no airline from Jordan operating scheduled air services between the two States. However, the Jordanian authorities have on several occasions requested through diplomatic channels for the Agreement to be formally signed.

The three Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories without any restrictions.

¹ TPWHC;

5.0 COMMITTEE RECOMMENDATION

The Committee recommends that the House approves the ratification of the Bilateral Air Services Agreement between Kenya and Jordan; Kenya and Jamaica; Kenya and Bahamas; and the Agreement between Kenya and Turkey as the approvals are in Kenya's national interest.



SIGNED

HON. MOSES KURIA, M.P

(VICE CHAIRPERSON) ✓

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLICS WORKS AND HOUSING

DATE THIS 30th DAY OF November 2018

ANNEXURE 1

COPIES OF AGREEMENTS

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THE NATIONAL ASSEMBLY
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DIRECTOR COMMITTEE SERVICES
Time:.....



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12/6/18

MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT

TUNAO
pls deaf
FA 12/7/18

OFFICE OF THE PRINCIPAL SECRETARY

STATE DEPARTMENT OF TRANSPORT

Telephone: (+254 20) 2729200
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Website: www.transport.go.ke

Hand, Tabu Olu
for reference to
18/6/18

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

MOT&I/S/ADM/086 VOL.XVIII/(52)

8th June, 2018

Mr. Michael Sialai, EBS
Clerk to the National Assembly
Parliament Building
NAIROBI

NATIONAL ASSEMBLY
RECEIVED
CLERKS OFFICE
P. O. Box 41842, NAIROBI

Dear Sir

RATIFICATION OF BILATERAL AIR SERVICES AGREEMENTS BETWEEN AND JORDAN; KENYA AND JAMAICA; KENYA AND THE BAHAMAS; AND THE PROTOCOL AMENDING THE BILATERAL AIR SERVICES AGREEMENT BETWEEN KENYA AND TURKEY

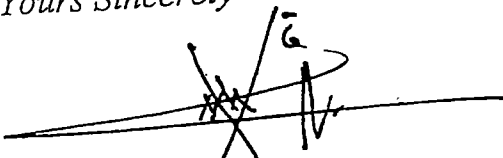
The Cabinet during its second Meeting held on Tuesday 15th May, 2018 approved a Cabinet Memorandum on the ratification of the Bilateral Air Services Agreements between Kenya and Jordan initialled on 23rd April, 2008; Kenya and Jamaica initialled on 20th November, 2014; Kenya and the Bahamas initialled on 8th December, 2016; and the Protocol amending the Bilateral Air Services Agreement between Kenya and Turkey initialled on 21st October, 2015.

The Treaty Making and Ratification Act, 2012 Section 8 requires that the Agreement be considered and approved by Parliament for ratification.

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Accordingly, I forward Ten (10) copies of the Agreements for submission to the House Committee on Transport, Housing and Public Works.

Yours Sincerely


Prof. Arch. Paul M. Maringa (PhD), CBS, Corp. Arch, Maak, Mkip
PRINCIPAL SECRETARY

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MEMORANDUM OF UNDERSTANDING
ON THE BILATERAL AIR SERVICES AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF KENYA AND
THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN

The Delegations representing the Aeronautical Authorities of the Government of the Republic of Kenya and the Government of the Hashemite Kingdom of Jordan whose names appear in attachments "A" and "B" met in Amman on 23rd of April 2008 to discuss matters relating to Air Services Agreement between the two countries. As a result of these discussions which were held in a very cordial and friendly atmosphere, the following understandings have been reached:

1- Text of the Agreement

1.1 The two Delegations agreed to recommend to their respective Governments the attached "ad referendum" initialed by the leaders of the two delegations, draft of Air Services Agreement between the two Governments in the English language; as attachment "C" for further consideration and approval.

1.2 Following the approval by the respective national authorities, the arrangements for preparation of the authentic texts in Arabic and in the English language, for signature will be done through diplomatic channels.

1.3 The two Delegations agreed to apply the provisions of the initialed agreement from the date of signature of this Memorandum of Understanding.

2- In connection with the agreed draft of the Air Services Agreement, both Delegations stated that the following airlines may operate between the territories of both Contracting Parties;

- On behalf of the Republic of Kenya.
Any designated Kenyan Airlines.
- On behalf of the Hashemite Kingdom of Jordan
Any designated Jordanian Airlines.

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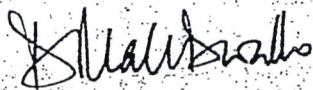


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- 3- The designated airlines of the Republic of Kenya and the Hashemite Kingdom of Jordan shall be entitled to operate based on 3rd and 4th Freedom traffic rights with unlimited number of weekly frequencies and capacity with any type of aircraft, for both passenger and cargo.
- 4- The Jordanian delegation indicated that it has declared open sky policy at King Hussein International Airport in Aqaba. Therefore any designated airline of the Republic of Kenya is entitled to operate 5th Freedom traffic rights to/from King Hussein international Airport. Similarly, the Kenyan Delegation indicated that it has exchanged 5th Freedom traffic rights to Moi International Airport in Mombasa for any designated airline of the Hashemite Kingdom of Jordan.
- 5- Both delegations have agreed to recommend to their respective financial authorities to enter into avoidance of double taxation Agreement between the two countries.

Both Delegations agreed that this Memorandum of Understanding will enter into force from the date of its signature.

Done at Amman, in two originals, on the 23rd of April 2008 in English language.



Mr. Daniel O. Makdwallo
Head of Delegation of the
Government of the Republic
of Kenya



Capt. Suleiman Obeidat
Head of Delegation of the
Government of the Hashemite
Kingdom of Jordan

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Attachment (A)

Delegation of the Hashemite Kingdom of Jordan

1. **Capt. Suleiman Obeidat** **Head of Delegation**
Chief Commissioner
Civil Aviation Regulatory Commission.
2. **Mr. Ateyeh Akleh** **Member**
Acting Director of Air Transport.
Civil Aviation Regulatory Commission
3. **Eng. Osama Mazahreh** **Member**
Chief Economic Regulations
Civil Aviation Regulatory Commission
4. **Mrs. Bayan Tarawneh** **Member**
Supervisor International Relations
Royal Jordanian

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Attachment (B)

Delegation of the Republic of Kenya

1. H.E. Mr. Daniel Ochieng Makdwallo
Ambassador of Kenya to Jordan. Head of Delegation
2. Mr. Benjamin Enyenze
Ministry of transport. Member/Alternate Head
3. Mr. Amgad Musa
Kenya's honorary consul to Jordan. Member
4. Mr. Seth Masese
State law office. Member
5. Mr. David Machio
Kenya Civil Aviation Authority. Member
6. Mr. Anthony Mwangi
Kenya Airways. Member
7. Mr. Martin Owuor
Ministry of Foreign Affairs. Member
8. Ms. Betty Cherwon
Kenya Embassy, Egypt. Member

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Attachment (C)

**AIR SERVICES AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF KENYA
AND
THE GOVERNMENT OF THE HASHEMITE KINGDOM OF
JORDAN**

Preamble

The Government of the Republic of Kenya and the Government of the Hashemite Kingdom of Jordan (hereinafter referred to as the "Contracting Parties").

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the Seventh day of December 1944, and

Desiring to conclude an agreement, supplementary to the said convention, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:-

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ARTICLE 1
Definitions

For the purpose of this Agreement, unless the context otherwise requires:-

- a) the term **the Convention** means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, and includes any Annex or its amendments adopted under Article 90 of that Convention and any amendment of the Convention under Article 94 thereof so far as those have been ratified by both Contracting Parties;
- b) the term "**Aeronautical Authorities**" means, in the case of the Government of the Hashemite Kingdom of Jordan, Ministry of Transport/ Civil Aviation Regulatory commission and in the case of the Government of the Republic of Kenya Minister in charge of Civil Aviation and or any other authority legally empowered to perform the functions exercised now by the said Authorities .
- c) the term **Agreement** means this Agreement, the Annex attached thereto, and any modifications to the Agreement or to the Annex;
- d) the term **designated airline** means an airline that has been designated and authorized in accordance with Article 4 of this Agreement;
- e) the term **territory** in relation to a State has the meaning assigned to it in Article 2 of the Convention;
- f) the terms **airline, air service, international air service and stop for non-traffic purposes** have the meanings assigned to them in Article 96 of the Convention;
- g) the term **specified routes** means the routes established or to be established in the Annex to this Agreement;
- h) the term **agreed services** means the international scheduled air services which can be operated, according to the provisions of this Agreement, on the specified routes;
- i) the term **tariff** means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary service, but excluding remuneration and conditions for the carriage of mail;

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j) the term **capacity** means:

- (i) in relation to an aircraft, the availability of seats and/or cargo of the said aircraft on a route or section of a route;
- (ii) in relation to the agreed services, the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period on a route or a section of a route;

k) the term **user charges** means a charge made to airlines by the competent authorities or permitted by those authorities to be made for the provision of airport property or facilities or of air navigation facilities, or related services and facilities, for aircraft, their crews, passengers and cargo.

ARTICLE 2

Applicability of Chicago Convention

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention on International Civil Aviation, in so far as these provisions are applicable to international air services.

ARTICLE 3

Grant of rights

- (1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement, for the purpose of establishing scheduled international air services on the routes specified in the Annex hereto.
- (2) The airlines designated by each Contracting Party, shall enjoy, while operating an agreed service on a specified route, the following rights:
 - a) to fly over the territory of the other Contracting Party without landing;
 - b) to make stops in the said territory for non-traffic purposes;
 - c) to make stops in the said territory at points specified in the Route Schedule in the Annex to this Agreement for the purpose of taking on board or putting down international traffic in passengers, cargo and mail, separately or in combination, in accordance with the provisions of the Annex to this Agreement.
- (3) The airlines of each Contracting Party, other than those designated under Article 4 of this Agreement, shall also enjoy the rights specified in paragraph 2(a) and (b) of this Article.
- (4) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board, at one point in the territory of the other Contracting Party, passengers and cargo, including mail, carried for hire or reward and destined for another point in the territory of the other Contracting Party.

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- (5) If due to armed conflict, natural disasters, or political disturbances a designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangement of routes.

ARTICLE 4

Designation of airlines and operating authorization

- (1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purposes of operation of the agreed services on the specified routes, as well as to alter or withdraw such designations.
- (2) On receipt of such a designation the Aeronautical Authorities of the other Contracting Party shall, without delay grant to a designated airline the appropriate operating authorizations.
- (3) The Aeronautical Authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.
- (4) Each Contracting Party may refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in paragraph (2) of Article 3, in any case where the said Contracting Party is not satisfied that:
- a) the majority of ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; and
 - b) the airline holds a current air operator certificate issued by the Aeronautical Authorities of the other Contracting Party.
- (5) When an airline has been designated and authorized in accordance with the provisions of this Article, it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

ARTICLE 5

Revocation or suspension of operating authorisations

- (1) The Aeronautical Authorities of each Contracting Party have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 2 of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary for the exercise of these rights.

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- a) in any case where it is not satisfied that:
- (i) the majority of ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; and
 - (ii) the airline holds a current air operator certificate issued by the Aeronautical Authorities of the other Contracting Party; or
- b) in the case of failure by that airline to comply with the laws and regulations of the Contracting Party granting those rights; or
- c) if the airline otherwise fails to operate the agreed services in accordance with the conditions prescribed under this Agreement; or
- d) in the case of failure by the other Contracting Party to comply with or apply the security and safety standards in accordance with Articles 15 and 16 of this Agreement.
- (2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws and regulations, such right shall be exercised only after consultations with the Aeronautical Authorities of the other Contracting Party.

ARTICLE 6

Application of laws and regulations

- (1) The laws and regulations of one Contracting Party relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air transport or to the operation and navigation of such aircraft shall be complied with by the designated airlines of the other Contracting Party upon entrance into, departure from and while within the said territory.
- (2) The laws and regulations of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs, currency, sanitary requirements and quarantine shall be complied with by the designated airlines of the other Contracting Party and by or on behalf of their aircraft engaged in international air transport, crews, passengers, baggage, cargo and mail upon transit of, admission to, departure from and while within the territory of such Contracting Party.
- (3) Neither of the Contracting Parties shall give preference to its own or any other airline over the airlines engaged in similar international air services of the other Contracting Party in the application of its regulations specified in paragraphs (1) and (2) of this Article or in the use of airports, airways, air traffic services and associated facilities under its control.
- (4) Each Contracting Party shall, at the request of the other Contracting Party, provide copies of relevant laws and regulations that are in accordance with this Article.

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ARTICLE 7

Fair and equal opportunity

- (1) There shall be a fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the routes specified in this Agreement.
- (2) The agreed services on any of the routes specified in the Annex to this Agreement shall have as their primary objective the provision of capacity adequate for transportation of passengers, cargo and mail between the territories of the Contracting Parties.
- (3) Provision for the carriage of passengers, cargo and mail both taken up and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principle that capacity shall be related to:
 - a- traffic demand to and from the territory of the Contracting Party which has designated the airline;
 - b- traffic demand of the area through which the airline passes after taking account of other transport services established by airlines of the States comprising the area;
 - c- the requirements of long-haul airline operation.
- (4) In the operation of air services on the routes specified in the Annex to this Agreement, the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to severely weaken the latter airlines or to exclude them from the specified routes.
- (5) Neither Contracting Party shall unilaterally restrict the operations of the designated airlines of the other, except according to the terms of this Agreement or by such uniform conditions as may be contemplated by the Convention.
- (6) Neither Contracting Party shall allow its designated airline or airlines, either in conjunction with any other airline or airlines or separately, to abuse market power in a way which has or is likely or is intended to have the effect of severely weakening a designated airline or excluding a designated airline from a route.
- (7) The Aeronautical Authorities shall require the filing for approval of schedules not less than thirty (30) days, or such shorter period as those authorities may require, before the introduction of the agreed services. Approval shall not be withheld, provided that the schedule is in conformity with the Annex to this Agreement.

ARTICLE 8

Customs duties, taxes and charges

- (1) Aircraft operated in international air services by the designated airlines of either Contracting Party shall be exempted from customs duties, inspection fees and any other taxes and charges, as shall:
 - (a) The following items introduced by a designated airline of one Contracting Party into the territory of the other Contracting Party:
 - (i) Repair, maintenance and servicing equipment and component parts;
 - (ii) Passenger handling equipment and component parts;

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- (iii) cargo-loading equipment and component parts;
- (iv) Security equipment including component parts for incorporation into security equipment;
- (v) instructional material and training aids;
- (vi) airline and operators' documents;
- (vii) printed ticket stock, airway bills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed without charge by the designated airlines; and

(b) the following items introduced by a designated airline of one Contracting Party into the territory of the other Contracting Party or supplied to a designated airline of one Contracting Party in the territory of the other Contracting Party:

- (i) aircraft stores (including but not limited to such items as food, beverages and tobacco) whether introduced into or taken on board in the territory of the other Contracting Party;
- (ii) fuel, lubricants (including hydraulic fluids) and consumable technical supplies;
- (iii) spare parts including engines; and

(c) computer equipment and component parts introduced by a designated airline of one Contracting Party into the territory of the other Contracting Party to assist in one or more of the following matters:

- (i) the repair, maintenance or servicing of aircraft;
- (ii) the handling of passengers at the airport or on board aircraft;
- (iii) the loading of cargo onto or the unloading of cargo from aircraft;
- (iv) the carrying out of security checks on passengers or cargo;

provided in each case that they are for use on board an aircraft or within the limits of an international airport in connection with the establishment or maintenance of an international air service by the designated airline concerned.

- (2) The exemption from customs duties, inspection fees and any other taxes and charges shall not extend to charges based on the cost of services provided to the designated airline or airlines of a Contracting Party in the territory of the other Contracting Party.
- (3) Equipment and supplies referred to in paragraph (1) of this Article may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities. Equipment and supplies covered by this paragraph may be required to be kept under the supervision or control of the Customs authorities up to such time as they are re-exported or otherwise disposed of in accordance with the relevant customs regulations.
- (4) The exemptions provided for by this Article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the

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items specified in paragraph (1) of this Article, provided such other airline or airlines similarly enjoy such relief from such other Contracting Party.

- (5) Passengers, baggage and cargo in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in relation to measures dealing with aviation security, be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties, taxes, fees and charges.

ARTICLE 9
User charges

- (1) Neither Contracting Party shall impose or permit to be imposed on the designated airline or airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.
- (2) Each Contracting Party shall encourage consultation on user charges between their competent charging authorities or bodies and airlines using the services and facilities provided by those charging authorities or bodies, where practicable through those airlines' representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities or bodies and such users to exchange appropriate information concerning user charges.


ARTICLE 10
Recognition of certificates and licenses

- (1) Certificates of airworthiness, air operator certificates, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force, shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services on the specified routes in the Annex to this Agreement, provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.
- (2) Each Contracting Party reserves the right, however, to refuse to recognise the validity of the certificates of competency and the licenses granted to its own nationals by the other Contracting Party, for the purpose of overlying and/or landing in its own territory.

ARTICLE 11
Tariffs

- (1) The Contracting Parties agree to the application of a country of origin tariff approval regime as set forth in the provisions of this Article.
- (2) Each Contracting Party shall allow tariffs for air transportation to be established by each designated airline based upon commercial consideration in the marketplace and other relevant factors, including cost of operation and tariffs of other airlines for any part of the specified route.

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- (3) Aeronautical Authorities of both Contracting Parties shall disapprove tariffs for air transportation originating in their respective territories which are:
- unreasonably discriminatory in fares and/or conditions;
 - unreasonably high or restrictive due to the abuse of a dominant position and therefore harm the interest of consumers;
 - artificially low due to inter alia direct or indirect governmental subsidy or support which aims at protection of the airline in question.
- (4) If the Aeronautical Authorities of a Contracting Party, where the air transportation originates, believe that a tariff is not in compliance with the principles set out in paragraph (2) and warrants intervention, they shall notify the Aeronautical Authorities of the other Contracting Party immediately. The Aeronautical Authorities of the Contracting Party in which the air transportation originates may take unilateral action to prevent inauguration of the said tariff.
- (5) When operating a route under fifth freedom traffic rights a designated airline shall not be allowed to charge tariffs for comparable categories which are lower than the tariffs applied by any other airline operating on that route under third and/or fourth freedom traffic rights. However, when operating a route under fifth freedom traffic rights a designated airline shall have the right to match the tariffs of any other airline operating that particular route, operating under third, fourth or fifth freedom traffic rights.
- (6) Each Contracting Party may require filing with its Aeronautical Authorities of tariffs charged or proposed to be charged to or from its territory.
- (7) If filing is required, the tariffs shall be submitted by the designated airlines no more than thirty (30) days before the proposed date of effectiveness, except where the said authorities agree to reduce this period in special cases.
- (8) Approval of tariffs may be given expressly, or if the Aeronautical Authorities in question have not expressed disapproval within fifteen (15) days from the date of submission, in accordance with paragraph (7) of this Article, the tariffs shall be considered approved. In the event of the period for submission being reduced, as provided for in paragraph (7) of this Article, the period within which any disapproval must be notified shall be reduced accordingly.
- (9) Tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established.
- (10) The designated airlines of both Contracting Parties may not charge tariffs different from those, which have been established in conformity with the provision of this Article.
- (11) Aeronautical Authorities shall, whenever necessary or required by either side, consult on the application of this Article and/or the tariffs applied by designated airlines.

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ARTICLE 12

Commercial activities

- (1) The designated airlines of each Contracting Party shall be allowed, on the basis of reciprocity, to maintain in the territory of the other Contracting Party, their offices and representatives, as well as their commercial, operational and technical staff as required in connection with the operation of the agreed services.
- (2) The request for staff may, at the option of the designated airlines of each Contracting Party, be satisfied either by their own personnel or by using the services of any other organisation, company or airlines operating in the territory of the other Contracting Party, and authorised to perform such services in the territory of that Contracting Party.
- (3) The representatives and staff shall be subject to the laws and regulations in force of the other Contracting Party, and, consistent with such laws and regulations:
 - a) each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph (1) of this Article; and
 - b) Both Contracting Parties shall facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties.
- (4) Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion through its agents. Each designated airline shall have the right to sell transportation and any person shall be free to purchase such transportation in local and any freely convertible currency subject to national laws and regulations.

Article 13

Transfer of earnings

Each Contracting Party grants to each designated airline of the other Contracting Party the right of free transfer in any freely convertible currency, of the excess of receipts over expenditures earned by the designated airline in its territory. Such transfers shall be effected on the basis of the official exchange rates for current payments applicable on the day of the introduction of the request for transfer by the airline designated by the other Contracting Party and shall not be subject to any charges except normal service charges collected by banks for such transactions.

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ARTICLE 14
Data provision

- (1) The Aeronautical Authorities of a Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statement of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airline or airlines of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services, including origins and destinations of such traffic.
- (2) Any supplementary statistical data regarding air services, that may be requested from Aeronautical Authorities of one Contracting Party, shall be discussed and agreed between both Contracting Parties.

ARTICLE 15
Aviation security

- (1) Consistent with their rights and obligations under international law, the Contracting Parties reaffirm their obligation to protect the security of Civil Aviation against acts of unlawful interference. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed in Montreal on 24 January 1988 as well as any other multilateral convention governing aviation security that Contracting Parties adhere to.
- (2) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
- (3) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties. They shall require that operator of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

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- (4) Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (3) of this Article, for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall also act favourably upon any request from the other Contracting Party for reasonable special security measures to meet a particular threat. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, hand - baggage, cargo and aircraft stores prior to and during boarding or loading and that those measures are adjusted to meet increases in the threat.
- (5) When an incident or threat of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.
- (6) When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, that Contracting Party may request consultations with the other Contracting Party. Such consultation shall take place within seven (7) days of that request.

ARTICLE 16
Aviation safety

- (1) Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request.
- (2) If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed shall be grounds for the application of Article 4 of this Agreement (Revocation or suspension of operating authorisations).
- (3) Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the airline or airlines of one Contracting Party on services to or from the territory of another Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.

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- (4) If any such ramp inspection or series of ramp inspections gives rise to:
- a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or
 - b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,
- the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.
- (5) In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline or airlines of one Contracting Party in accordance with paragraph (3) above is denied by the representative of that airline or airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph (4) above arise and draw the conclusions referred to in that paragraph.
- (6) Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.
- (7) Any action by one Contracting Party in accordance with paragraphs (2) or (6) above shall be discontinued once the basis for the taking of that action ceases to exist.
- (8) The designated airlines of each Contracting party shall be a non-listed in any Banning List (or equivalent) published by recognized Safety Agency or Airworthiness Authority.

ARTICLE 17
Consultation

- (1) In a spirit of close co-operation, the Aeronautical Authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the Agreement.
- (2) Such consultations shall begin within a period of sixty (60) days of the date of receipt of a written request, unless otherwise agreed by the Contracting Parties.

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Article 18
Modifications

- (1) If either Contracting Party considers it desirable to modify any of the provisions of this Agreement, it may request consultation with the other Contracting Party. Such consultation may be between the Aeronautical Authorities and may be conducted by discussion or correspondence and shall begin within a period of sixty (60) days from the date of the request. Any modifications so agreed shall come into force when they have been confirmed by an Exchange of Notes between the Contracting Parties.
- (2) Modifications to the Annex to this Agreement may be agreed between the Aeronautical Authorities of the Contracting Parties. Such modifications may be applied provisionally from a date mutually determined by the Aeronautical Authorities and shall come into force when confirmed by an Exchange of Notes between the Contracting Parties.

Article 19
Settlement of disputes

- (1) If any dispute arises between the Contracting Party relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle it by negotiation.
- (2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:
 - (a) within thirty (30) days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a third State, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within sixty (60) days of the appointment of the second;
 - (b) if within the time limits specified above any appointment has not been made, either Contracting Party may request the President of the Council of the International Civil Aviation Organisation to make the necessary appointment within thirty (30) days. If the President has the nationality of one of the Contracting Parties, the most senior Vice-President who is not disqualified on that ground, shall be requested to make the appointment.

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- (3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal, or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than thirty (30) days after the tribunal is fully constituted.
- (4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within forty-five (45) days after the tribunal is fully constituted. Each Contracting Party may submit a reply within sixty (60) days of submission of the other Contracting Party's memorandum. The tribunal shall hold a hearing at the request of either Contracting Party, or at its discretion, within thirty (30) days after replies are due.
- (5) The tribunal shall attempt to give a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, thirty (30) days after the date both replies are submitted. The decision shall be taken by a majority vote.
- (6) The Contracting Parties may submit requests for clarification of the decision within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.
- (7) The decision of the tribunal shall be binding on the Contracting Parties.
- (8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President or Vice-President of the Council of the International Civil Aviation Organisation in implementing the procedures in paragraph (2) (b) of this Article.

Article 20 Termination

- (1) Each Contracting Party may at any time give written notice through the diplomatic channel to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization.
- (2) The Agreement shall terminate twelve (12) months after the date of receipt of the notice, unless the notice of termination is withdrawn by agreement before the end of this period.
- (3) In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

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Article 21

Registration

This Agreement and any subsequent modification to it shall be registered with the International Civil Aviation Organization.

Article 22

Multilateral conventions

If a general multilateral aviation convention comes into force in respect of both Contracting Parties, the provisions of such convention shall prevail over the terms of this Agreement where there is a contradiction between the two. Consultations may be held, in accordance with Article 17 of this Agreement, with a view to determining the extent to which this Agreement is affected by the provisions of the multilateral convention.

Article 23

ENTRY INTO FORCE

- 1- This Agreement and its Annexes shall be provisionally applicable from the date of signature.
- 2- This Agreement shall enter into force definitively on the day of the exchange of notes through diplomatic channels confirming that it had been approved in accordance with the constitutional and or internal legal procedures of Contracting Parties.

Done at this day of in two originals in the Arabic and in the English language, each text being equally authentic.

In case of any divergence of interpretation of this Agreement, the English text shall prevail.

For The Government of the
Republic of Kenya

For The Government of the
Hashemite Kingdom of
Jordan

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ROUTE SCHEDULE

A. The designated airline or airlines of the Hashemite Kingdom of Jordan shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points in Jordan	Intermediate points	Points in Kenya	Points beyond
any points	any points	any points	any points

B. The designated airline or airlines of The Republic of Kenya shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points in Kenya	Intermediate points	Points in Jordan	Points beyond
any points	any points	any points	any points

NOTES

1. Any point or points on the specified routes may be omitted by the designated airlines of either Contracting Party on one or all flights, providing that the point of origin or arrival is in the territory of that Contracting Party.
2. Intermediate points and points beyond shall be specified by the Aeronautical Authorities of each Contracting Party and notified to the Aeronautical Authorities of the other Contracting Party prior to the start of the operations.
3. Intermediate points or points beyond may be served by the designated airlines of each Contracting Party without exercising the fifth freedom traffic rights.
4. In operating or holding out air services on the specified routes any designated airline of one Contracting Party may enter into code-sharing and blocked-space arrangement with:

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- a) an airline or airlines of the same Contracting Party
- b) an airline or airlines of the other Contracting Party
- c) an airline or airlines of a third Party. Should such a third Party not authorise or allow comparable arrangements between the airlines of the other Contracting Party and other airlines on services to, from and via such third country, the aeronautical authorities of the concerned Contracting Party have the right not to accept such arrangements.

5. The above provisions on third-party code-share are, however, subject to the conditions that all airlines in such arrangements:

- a) have received approval from and meet the requirements applied to such arrangements by the Aeronautical Authorities of the Contracting Parties,
- b) hold the underlying traffic rights and meet the principles of this Agreement,
- c) provide the consumers with the proper information concerning such code-sharing and blocked-space arrangements.

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AGREED MINUTES

**Between the Government of Jamaica and the Government of the Republic
of Kenya**

The delegations representing Jamaica and the Republic of Kenya (hereinafter referred to as "Jamaica" and "Kenya" respectively or "Contracting Party" and collectively as the "Delegations" or "Contracting Parties") met in Bali, Indonesia during the ICAO Air Services Negotiation Conference (ICAN) on 20th November, 2014 for consultations with a view to negotiating an Air Service Agreement (ASA) and related arrangements which would be applicable in respect of the operations of air transportation between and beyond their respective countries.

Discussions were held in a very friendly atmosphere. The composition of the two Delegations are attached as "Attachment A" and "Attachment B" respectively.

As a result of these discussions, the Delegations have reached the following agreements and conclusions:

1. Kenya confirmed that it had considered and accepted the changes to the ASA that was initiated in Durban, South Africa during ICAN 2013;
2. Kenya proposed changes to the draft Air Services Agreement as follows:
 - a) deleting all references to Caribbean Community (CARICOM);
 - b) change of designation criteria to substantial ownership and effective control in Article 4 "Designation" and inclusion of the same clause in Article 5 "Revocation or Suspension of Operating Authorization";
 - c) inclusion of the phrase "for the purpose of operating international air services" for all items exempted from custom duties and other charges in Article 13 "Exemption from Customs Duties and Other Charges".
 - d) Change reference of "Jamaica" in Article 24 "Registration with the International Civil Aviation Organisation (ICAO)" to "either Contracting Party".



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3. The Jamaican delegation accepted the changes proposed by the Kenyan delegation and the Contracting Parties agreed to initial the amended draft ASA.
4. Both Contracting Parties agreed to endeavor towards the formal signing of the ASA in early course.

Signed in Bali, Indonesia on 20th November, 2014

For the Government of Jamaica



H. E Ricardo Allicock
Ambassador of Jamaica to Japan

For the Government of Kenya



Benjamin Kiguhi Enyenze
Senior Officer, Air Transport Department
Ministry of Transport and Infrastructure

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"ATTACHMENT A"

Delegation of Jamaica

1. His Excellency Ricardo Allicock
Ambassador of Jamaica to Japan
(Head of Delegation)
2. Hon. Michael Hylton
Chairman, Jamaica Civil Aviation Authority
(Deputy Head of Delegation)
3. Ms. Valerie Simpson
Director of Transport Policy
Ministry of Transport, Works and Housing
4. Mrs. Jodi Munn-Barrow
Senior Policy Officer – Marine and Aviation
Ministry of Transport, Works and Housing
5. Ms. Melanie Gilchrist
Attorney-at-Law
Attorney General's Chambers
6. Ms. Karen Thompson
Manager, Research & Development
Jamaica Civil Aviation Authority
7. Ms. Jacqueline Fairclough
Consultant
Jamaica Civil Aviation Authority

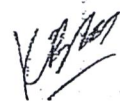
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"ATTACHMENT B"

Delegation of the Republic of Kenya

1. Mr. Benjamin K. Enyenze
Senior Air Transport Officer
Ministry of Transport and
Infrastructure
Head of Delegation
2. Mr. Joram Kimemia
Senior Principal State Counsel
Ministry of Foreign Affairs and
International Trade
3. Ms. Joan Chesoni
State Counsel
Office of the Attorney General and
Department of Justice
4. Ms. Rachel Mbugua
State Counsel
Office of the Attorney General and
Department of Justice
5. Mr. Samuel Karanja
Air Transport Officer
Ministry of Transport and
Infrastructure
6. Ms. Angela Rugut
Air Transport Officer
Ministry of Transport and
Infrastructure
7. Ms. Katherine Kisila
Corporation Secretary
Kenya Airports Authority
8. Mr. George Kamau
Legal Counsel
Kenya Airports Authority
9. Mr. Joseph Koech
Air Transport Officer
Kenya Civil Aviation Authority
10. Ms. Mary Luseka
Manager, Strategy and Development
Kenya Tourism Board
11. Ms. Idah Asin
Manager, Government and Industry
Affairs
Kenya Airways
12. Mr. William Yagomba
Director
Safari Express Cargo



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AGREEMENT BETWEEN THE
GOVERNMENT OF JAMAICA AND
THE GOVERNMENT OF
THE REPUBLIC OF KENYA

CONCERNING
AIR SERVICES

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Articles	Sections
Preamble	
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Article 2	Applicability of Chicago Convention
Article 3	Grant of Rights
Article 4	Designation and Authorization of Airlines
Article 5	Revocation or Suspension of Operating Authorizations
Article 6	Applicable Laws
Article 7	Recognition of Certificates and Licences
Article 8	Safety
Article 9	Aviation Security
Article 10	Fair Competition
Article 11	Tariffs
Article 12	User Charges
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Article 17	Cooperative Arrangements
Article 18	Ground Handling Provisions
Article 19	Consultations
Article 20	Settlement of Disputes
Article 21	Multilateral Agreement
Article 22	Amendment
Article 23	Termination
Article 24	Registration with ICAO
Article 25	Entry into Force
Annex I	Route Schedules

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PREAMBLE

The Government of Jamaica and the Government the Republic of Kenya of hereinafter referred to as the "Contracting Parties";

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944;

Desiring to conclude an Agreement supplementary to the said Convention for the purpose of establishing Air Services between their respective territories;

Desiring to promote an international aviation system based on competition among Airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air service opportunities;

Recognising that efficient and competitive International Air Services enhance trade, the welfare of consumers and economic growth;

Recognizing the disparity in the stages of development and competitive strength of air carriers; and

Desiring to ensure the highest degree of safety and security in International Air Services and reaffirming their grave concern about acts or threats against the security of aircraft which jeopardise the safety of persons or property, adversely affect the operation of Air Services and undermine public confidence in the safety of civil aviation.

have agreed as follows:

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ARTICLE 1
Definitions

- (1) For the purpose of this Agreement, unless otherwise stated, the term(s) -
- (a) "Aeronautical Authorities" means, in the case of Jamaica, the Minister responsible for Civil Aviation or the Jamaica Civil Aviation Authority, and, in the case of the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation or, in both cases, any person or agency authorised to perform the functions exercisable by those authorities;
- (b) "Agreed Services" means a schedule of International Air Services on the routes specified in the Annex to this Agreement;
- (c) "this Agreement" includes the Annex hereto and any amendments to it or to this Agreement;
- (d) "Air Service", "International Air Service", "Airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Chicago Convention;
- (e) "the Convention" and "Chicago Convention" mean the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have become effective for or been ratified by both Contracting Parties;
- (f) "Designated Airline" means an Airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (g) "Specified Routes" means a route specified in the Annex to this Agreement;
- (h) "Tariff" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail.
- (i) "Territory" in relation to a State has the meaning assigned to it in Article 2 of the Chicago Convention;
- (j) "User Charges" means a charge imposed on Airlines by any competent authority or permitted by that authority to be made for the provision of airport property or facilities or of air navigation

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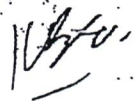
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facilities (including facilities for overflight), or related services and facilities, for aircraft, their crews, passengers and cargo.

(2) All references to the words in singular shall be construed to include the plural and all reference to the plural shall be construed to include the singular as the context requires.



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ARTICLE 2

Applicability of the Chicago Convention

The provisions of this Agreement shall be subject to the provisions of the Chicago Convention insofar as those provisions are applicable to International Air Services.

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ARTICLE 3

Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the following rights for the conduct of International Air Services by the Designated Airlines of the other Contracting Party:

- (a) to fly without landing across the Territory of the other Contracting Party;
- (b) to make stops in the said Territory for non-traffic purposes; and
- (c) the rights otherwise specified in this Agreement.

(2) Each Contracting Party also grants the rights specified in subparagraphs (1)(a) and (b) to the other Contracting Party for Airlines not designated under Article 4 (Designation and Authorisation of Airlines).

Nothing in paragraph (1) of this Article shall be deemed to confer on the Designated Airlines of either Contracting Party the privilege of taking up, in the Territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the Territory of the other Contracting Party.

(4) If, because of armed conflict, political disturbances or developments, or special and unusual circumstances, a Designated Airline of one Contracting Party is unable to operate an agreed service on its specified route, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

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ARTICLE 4

Designation and Authorisation of Airlines

- (1) Each Contracting Party shall have the right to designate an Airline or Airlines for the purpose of operating the Agreed Services in accordance with this Agreement and may withdraw or alter such designations. Such designation or alterations shall be transmitted in writing to the other Contracting Party through diplomatic channels.
- (2) On receipt of such a designation and of applications from the Designated Airline in the form and manner prescribed for operating authorisations and technical permissions, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without undue delay grant to the Airline or Airlines designated, the appropriate operating authorisations.
- (3) The Aeronautical Authorities of one Contracting Party may require an Airline Designated by the other Contracting Party to satisfy those authorities that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of International Air Services by those authorities, and in conformity with the provisions of the Chicago Convention.
- (4) Each Contracting Party may refuse to grant the operating authorisations referred to in paragraph (2) of this Article or impose such conditions as it may deem necessary on the exercise by a Designated Airline of the rights specified in paragraph 3 (1) (c) of Article 3 (Grant of Rights) of this Agreement, in any case where the said Contracting Party is not satisfied that:
- (i) substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party;
 - (ii) the Party designating the airline complies with the provisions set forth in Article 8 "Safety" and Article 9 "Aviation Security"; and
 - (iii) the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.
- (5) When an Airline has been so Designated and authorised, it may begin to operate the Agreed Services, provided that the Airline complies with the applicable provisions of this Agreement.

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Revocation or Suspension of Operating Authorisations

(1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 3 (Grant of Rights) of this Agreement by an Airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) in any case where it is not satisfied that:
- i. substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party;
 - ii. the Party designating the airline complies with the provisions set forth in Article 8 "Safety" and Article 9 "Aviation Security"

(b) in the case of failure by that Airline to comply with the laws or regulations in force in the Territory of the Contracting Party granting these rights; or

(c) in case the Airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the Aeronautical Authorities of the other Contracting Party in accordance with Article 19 (Consultations).

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ARTICLE 6

Applicable Laws

(1) The laws and regulations of one Contracting Party relating to the admission to or departure from its Territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its Territory, shall be applied to the aircraft of the Airline or Airlines designated by the other Contracting Party as they are applied to its own and shall be complied with by such aircraft upon entrance into or departure from and while within the Territory of the first Contracting Party.

(2) The laws and regulations of one Contracting Party relating to the admission to or departure from its Territory of passengers, crew, mail or cargo on aircraft, including laws and regulations relating to entry, clearance, immigration, emigration, transit, aviation security, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew, mail or cargo of the Designated Airline or Airlines of the other Contracting Party upon entrance into, transit of or departure from and while within the Territory of the first Contracting Party.



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ARTICLE 7

Recognition of Certificates and Licences

Each Contracting Party shall recognise as valid, for the purpose of operating the Agreed Services provided for in the present Agreement, certificates of airworthiness, certificates of competency, and licences issued or validated by the other Contracting Party and still in force, provided that the requirements for such certificates or licences at least equal the minimum standards that may be established pursuant to the Convention. Each Contracting Party may, however, refuse to recognise as valid for the purpose of flights above or landing within its own Territory, certificates of competency and licences granted to or validated for its own nationals by the other Contracting Party or by a third country.

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ARTICLE 8

Safety

- (1) Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrews, aircraft or their operation adopted by the other contracting party. Such consultations shall take place within thirty (30) days of receipt of that request.
- (2) If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Chicago Convention, the first Contracting Party shall notify the other contracting party of those findings and the steps considered necessary to conform with those minimum standards, and the other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 5 (Revocation or Suspension of Operating Authorisations) of this Agreement.
- (3) Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention it is agreed that any aircraft operated by or, under a lease arrangement, on behalf of the Designated Airline or Airlines of one Contracting Party on services to or from the Territory of the other Contracting Party may, while within the Territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.
- (4) If any such ramp inspection or series of ramp inspections gives rise to:
- (a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention; or
 - (b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention;

the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid or that the requirements under which that aircraft is operated are not equal to or above the minimum standards established pursuant to the Chicago Convention.

- (5) In the event that access for the purpose of undertaking a ramp inspection of an aircraft

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operated by the Designated Airline or Airlines of one Contracting Party in accordance with paragraph (3) of this Article is denied by a representative of that Airline or Airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article arise and draw the conclusions referred in that paragraph.

(6) Each Contracting Party reserves the right to suspend or vary the operating authorisation of an Airline or Airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an Airline operation.

(7) Any action by one Contracting Party in accordance with paragraphs (2) or (6) of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

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ARTICLE 9

Aviation Security

- (1) The assurance of safety for civil aircraft, their passengers and crew being a fundamental pre-condition for the operation of International Air Services, the Contracting Parties reaffirm that their obligations to each other to provide for the security of civil aviation against acts of unlawful interference (and in particular their obligations under the Chicago Convention, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 and the Convention on the Marking of Plastic Explosives for the Purpose of Detection signed at Montreal on 1 March 1991 and any other agreement governing civil aviation security binding upon both Contracting Parties) form an integral part of this Agreement.
- (2) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other acts of unlawful interference against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
- (3) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their Territory and the operators of airports in their Territory act in conformity with such aviation security provisions.
- (4) Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (3) of this Article required by the other Contracting Party for entry into, departure from or while within, the Territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its Territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo, mail and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic and prompt consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

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(5) When an incident or threat of an incident of unlawful seizure of civil aircraft or other acts of unlawful interference against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

(6) When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the Aeronautical Authorities of that Contracting Party may request immediate consultations with the Aeronautical Authorities of the other Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorisation and technical permissions of the Airlines of that Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of fifteen (15) days.

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ARTICLE 10
Fair Competition

- (1) There shall be fair and equal opportunity for the Designated Airlines of both Contracting Parties to compete in operating the Agreed Services.
- (2) In operating the Agreed Services, the Designated Airline or Airlines of each Contracting Party shall take into account the interests of the Designated Airline or Airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.
- (3) Each Contracting Party shall allow each Designated Airline to determine the frequency and capacity of the international air transport it offers, according to commercial and market-based considerations.
- (4) Neither Contracting Party shall unilaterally restrict the operations of the Designated Airlines of the other, except according to the terms of this Agreement or as may be required for customs, technical, operational or environmental reasons, under uniform conditions consistent with Article 15 of the Convention.
- (5) Neither Contracting Party shall allow its Designated Airline or Airlines, neither in conjunction with any other Airline or Airlines or separately, to abuse market power in a way which has or is likely or intended to have the effect of severely weakening a competitor or excluding a competitor from a route.
- (6) Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the Airlines of the other Contracting Party.

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ARTICLE 11

Tariffs

(1) Each Contracting Party shall allow Tariffs for Air Services to be established by each Designated Airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations. Neither Contracting Party shall require their Designated Airlines to consult other Airlines about the Tariffs they charge or propose to charge for services covered by these arrangements.

(2) Each Contracting Party may require notification to or filing with its Aeronautical Authorities of Tariffs to be charged to or from its Territory by the Designated Airlines of the other Contracting Party. Such notification or filing by the Designated Airlines of both Contracting Parties may be required to be made no later than the initial offering of a price, regardless of the form, electronic or other, in which the price is offered.

(3) Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a Tariff proposed to be charged or charged by a Designated Airline of the other Contracting Party in connection with the International Air Services provided for under this Agreement. Intervention, as described in paragraph (4) below, by the Contracting Parties shall be limited to:

- a) prevention of unreasonably discriminatory prices or practices;
- b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position;
- c) protection of Airlines from prices that are artificially low due to direct or indirect Government subsidy or support;
- d) protection of Airlines from prices that are artificially low, where evidence exists as to an intent to eliminate competition.

(4) Without prejudice to the provisions of paragraph (3) of this Article, the Aeronautical Authorities of either Contracting Party may expressly disapprove a Tariff submitted by the Designated Airlines of the other Contracting Party, where such Aeronautical Authorities find that a Tariff proposed to be charged by such Airlines falls within the categories set forth in paragraphs (3) (a), (b), (c) or (d). In such event, the concerned Aeronautical Authority (i) shall send notification of its dissatisfaction to the Aeronautical Authorities of the other Contracting Party, and to the Designated Airline(s) involved, as soon as possible, and in any event no later than thirty (30) days after the date of notification or filing of the Tariff in question; and (ii) may request consultations in accordance with the procedures established under paragraph (5) of this Article. Unless both Aeronautical Authorities have agreed to disapprove the

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Tariff in question in writing, the Tariff shall be treated as having been approved.

(5) The Aeronautical Authorities of each Contracting Party may request consultations with the Aeronautical Authorities of the other Contracting Party on any Tariff charged or proposed to be charged by any Designated Airline(s) of the other Contracting Party for International Air Services to or from the Territory of the first Contracting Party, including Tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The Aeronautical Authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a Tariff for which a notice of dissatisfaction has been given, the Aeronautical Authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the Tariff shall go into effect or continue in effect.

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ARTICLE 12

User Charges

(1) Neither Contracting Party shall impose or permit to be imposed by its competent charging authorities on the Designated Airline or Airlines of the other Contracting Party User Charges higher than those imposed on its own Airlines operating similar International Air Services.

(2) Each Contracting Party shall encourage consultation on User Charges between their competent charging authorities and Airlines using the services and facilities provided by those charging authorities, where practicable, through those Airlines' representative organisations. Reasonable notice of any proposals for changes in User Charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities and such users to exchange appropriate information concerning User Charges.

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ARTICLE 13

Exemption from Customs Duties and Other Charges

(1) Aircraft operated in International Air Services by the Designated Airline or Airlines of either Contracting Party shall be relieved from all customs duties, national excise taxes and similar national fees, on the following items set out below for the purpose of operating international air services.

(a) the following items introduced by a Designated Airline of one Contracting Party into the Territory of the other Contracting Party:

- (i) repair, maintenance and servicing equipment and component parts;
- (ii) passenger handling equipment and component parts;
- (iii) cargo-loading equipment and component parts;
- (iv) security equipment including component parts for incorporation into security equipment;
- (v) instructional material and training aids;
- (vi) Airline and operators' documents; and

(b) the following items introduced by a Designated Airline of one Contracting Party into the Territory of the other Contracting Party or supplied to a Designated Airline of one Contracting Party in the Territory of the other Contracting Party:

- (i) aircraft stores (including but not limited to such items as food, beverages and tobacco) whether introduced into or taken on board in the Territory of the other Contracting Party;
- (ii) fuel, lubricants and consumable technical supplies;
- (iii) spare parts including engines; and

(c) computer equipment and component parts introduced by a Designated Airline of one Contracting Party into the Territory of the other Contracting Party to assist in one or more of the following matters:

- (i) the repair, maintenance or servicing of aircraft;
- (ii) the handling of passengers at the airport or on board aircraft;
- (iii) the loading of cargo onto or the unloading of cargo from aircraft;
- (iv) the carrying out of security checks on passengers or cargo;

provided in each case that they are for use on board an aircraft or within the limits of an international airport in connection with the establishment or maintenance of an International Air Service by the Designated Airline concerned.

(2) The relief from customs duties, national excise taxes and similar national fees shall not extend to

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charges based on the cost of services provided to the Designated Airline or Airlines of a Contracting Party in the Territory of the other Contracting Party.

(3) Equipment and supplies referred to in paragraphs (1) and (4) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The reliefs provided for by this Article shall also be available in situations where the Designated Airline or Airlines of one Contracting Party have entered into arrangements with another Airline or Airlines for the loan in the Territory of the other Contracting Party of the items specified in paragraph (1) of this Article, provided such other Airline or Airlines similarly enjoy such reliefs from such other Contracting Party.

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ARTICLE 14

Transfer of Earnings

(1) Subject to the applicable laws and regulations, each Designated Airline may on demand, convert and remit to its country, or any other country, local revenues in excess of those sums locally disbursed in connection with the carriage of passengers, mail and cargo. Prompt conversion and remittance shall be permitted, without restriction, at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance, and shall not be subject to any charges, except those normally made by banks or other financial institutions for carrying out such conversion and remittance.

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ARTICLE 15

Provision of Statistics

The Aeronautical Authorities of a Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party, at their request, such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the Agreed Services by the Designated Airlines of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by those Airlines on the Agreed Services and the origins and destinations of such traffic.

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ARTICLE 16

Commercial Opportunities

- (1) On the basis of reciprocity, the Designated Airline or Airlines of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the Territory of the other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services.
- (2) The Designated Airlines of each Contracting Party shall have the right to engage in the sale of air transportation in the area of the other Contracting Party, either directly or through agents appointed by the Designated Airline. The Designated Airlines of each Contracting Party shall have the right to sell and any person shall be free to purchase, such transportation in freely convertible currency or in local currency.
- (3) The Designated Airlines of each Contracting Party shall have the right to enter into arrangements to use the services and personnel of any other organisation, company or Airline operating in the Territory of the other Contracting Party.
- (4) The Designated Airline or Airlines of each Contracting Party shall have the right to establish offices in the Territory of the other Contracting Party for the promotion and sale of International Air Services.

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ARTICLE 17

Cooperative Arrangements

(1) In operating or holding out the Agreed Services, the Designated Airline or Airlines of one Contracting Party may enter into cooperative marketing arrangements such as joint venture, blocked-space or code-sharing arrangements with:

- (a) any Airline or Airlines of either Party;
- (b) an Airline or Airlines of a third country; and
- (c) a surface transportation provider of any country,

provided that all Airlines in such arrangements

- (i) hold the appropriate authority; and
- (ii) meet the requirements normally applied to such arrangements.

(2) The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to code-shared flights operating to or from their Territory and that, as a minimum, passengers are informed at the point of sale, or in any case before boarding which, transport providers will operate each sector of the service and also be provided with the necessary information in the following ways:

- (a) Orally and, if possible, in writing at the time of booking;
- (b) In written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which Airline is responsible in case of damage or accident; and
- (c) Orally again, by the Airline's ground staff at all stages of the journey.

(3) The Airlines are required to file for approval any proposed with the Aeronautical Authorities of h Parties before its proposed introduction.

(4) Notwithstanding any other provision of this Agreement, Airlines and indirect providers of cargo transportation of both Contracting Parties shall be permitted, without restriction, to employ in connection with international air transportation for cargo to or from any points in the territories of the Contracting Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other Airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered

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at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

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ARTICLE 18
Ground Handling Provisions

Subject to the laws and regulations of each Contracting Party, each Designated Airline shall have in the Territory of the other Contracting Party, the right to perform its own ground handling ("self-handling") or, at its option, the right to select among competing suppliers that provide ground handling services in whole or in part. Where such laws and regulations limit or preclude self-handling and where there is no effective competition between suppliers that provide ground handling services, each Designated Airline shall be treated on a non-discriminatory basis as regards their access to self-handling and ground handling services provided by a supplier or suppliers. For each Designated Airline, the right to perform self-handling shall be subject, on a non-discriminatory basis, to physical constraints resulting from limitations of airport space and considerations of safety and security.

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ARTICLE 19
Consultations

(1) In a spirit of close cooperation, the Aeronautical Authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and shall consult when necessary to provide for modification thereof.

(2) Either Contracting Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than thirty (30) days from the date the other Contracting Party receives the request unless otherwise agreed.

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ARTICLE 20

Settlement of Disputes

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle that dispute through consultations.

(2) If the Contracting Parties fail to reach a settlement of the dispute by consultations, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

(a) Within thirty (30) days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a third State, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within sixty (60) days of the appointment of the second;

(b) If within the time limits specified above any appointment has not been made, either Contracting Party may request the President of the Council of the International Civil Aviation Organisation to make the necessary appointment within thirty (30) days. If the President has the nationality of one of the Contracting Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

(3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal, or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than thirty (30) days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within forty-five (45) days after the tribunal is fully constituted. Each Contracting Party may submit a reply within sixty (60) days of submission of the other Contracting Party's memorandum. The tribunal shall hold a hearing at the request of either Contracting Party, or at its discretion, within thirty (30) days after replies are due.

(5) The tribunal shall attempt to give a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, thirty (30) days after the date both replies are submitted. The decision shall be taken by a majority vote.

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(6) The Contracting Parties may submit requests for clarification of the decision within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.

(7) The costs of the arbitration and the allocation of costs to the relevant parties shall be determined by the tribunal.

(8) The decision of the tribunal shall be final and binding on the Contracting Parties unless they agree otherwise.

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ARTICLE 21
Multilateral Agreements

If both Contracting Parties become parties to a multilateral agreement that addresses matters covered by this Agreement, they shall consult, in accordance with Article 19 (Consultations) to determine whether this Agreement should be revised to take into account the multilateral agreement.

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ARTICLE 22
Amendment

Any amendment to this Agreement mutually determined as a result of consultations under Article 19 (Consultations) shall come into force on the date of the last written notification, through diplomatic channels, by which the Contracting Parties shall have notified each other that all necessary internal procedures for entry into force of the amendment have been completed.

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ARTICLE 23

Termination

(1) Either Contracting Party may at any time notify the other Contracting Party in writing through diplomatic channels of the decision to terminate this Agreement. A copy of the notice of termination shall be sent simultaneously to the Secretary General of the International Civil Aviation Organization.

(2) If such notice is given, this Agreement shall terminate twelve (12) months after the date of receipt by the other Contracting Party of the notice of termination, unless by agreement between the Contracting Parties the notice under reference is withdrawn under mutual consent before the expiry of that period. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen (14) days after the date of the receipt by the Secretary General of the International Civil Aviation Organization.

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ARTICLE 24

Registration with the International Civil Aviation Organisation (ICAO)

This Agreement and any amendments thereto shall be registered upon entry into force with the International Civil Aviation Organisation by either of the Contracting Parties.

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ARTICLE 25
Entry into Force

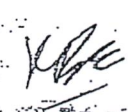

This Agreement shall enter into force on the date of the latter note upon an exchange of diplomatic notes between the Contracting Parties confirming that all the internal procedures necessary for the entry into force of the Agreement have been completed.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at [] the [] day of [], 20[].

.....
For the Government of Jamaica

.....
For the Government of the
Republic of Kenya



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ANNEX I
ROUTE SCHEDULES

Section 1:

Routes to be operated by the Designated Airline(s) of Jamaica.

BEHIND POINTS	FROM	INTERMEDIATE POINTS	TO	BEYOND POINTS
Any Point	Any Point in Jamaica	Any Point	Any Point in The Republic of Kenya	Any Point

Section 2:

Routes to be operated by the Designated Airline(s) of the Republic of Kenya.

BEHIND POINTS	FROM	INTERMEDIATE POINTS	TO	BEYOND POINTS
Any Point	Any Point in The Republic of Kenya	Any Point	Any Point in Jamaica	Any Point

Notes:

Each Designated Airline of either Contracting Party may, on any or all flights and at its option:

- (1) Operate flights in either or both directions;
- (2) Combine different flight numbers within one aircraft operation;
- (3) Serve behind, intermediate and beyond points and points in the territories of the Contracting Parties on the routes in any combination and in any order;
- (4) Omit stops at any point or points;
- (5) Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and

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- (6) Serve points behind any point in its Territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;
- (7) Make stop-overs at any point whether within or outside the Territory of either Contracting Party;
- (8) Carry transit traffic through the Territory of the other Contracting Party;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under the present Agreement; provided that the service serves a point in the Territory of the Contracting Party designating the Airlines.

Section 3

All Cargo Services

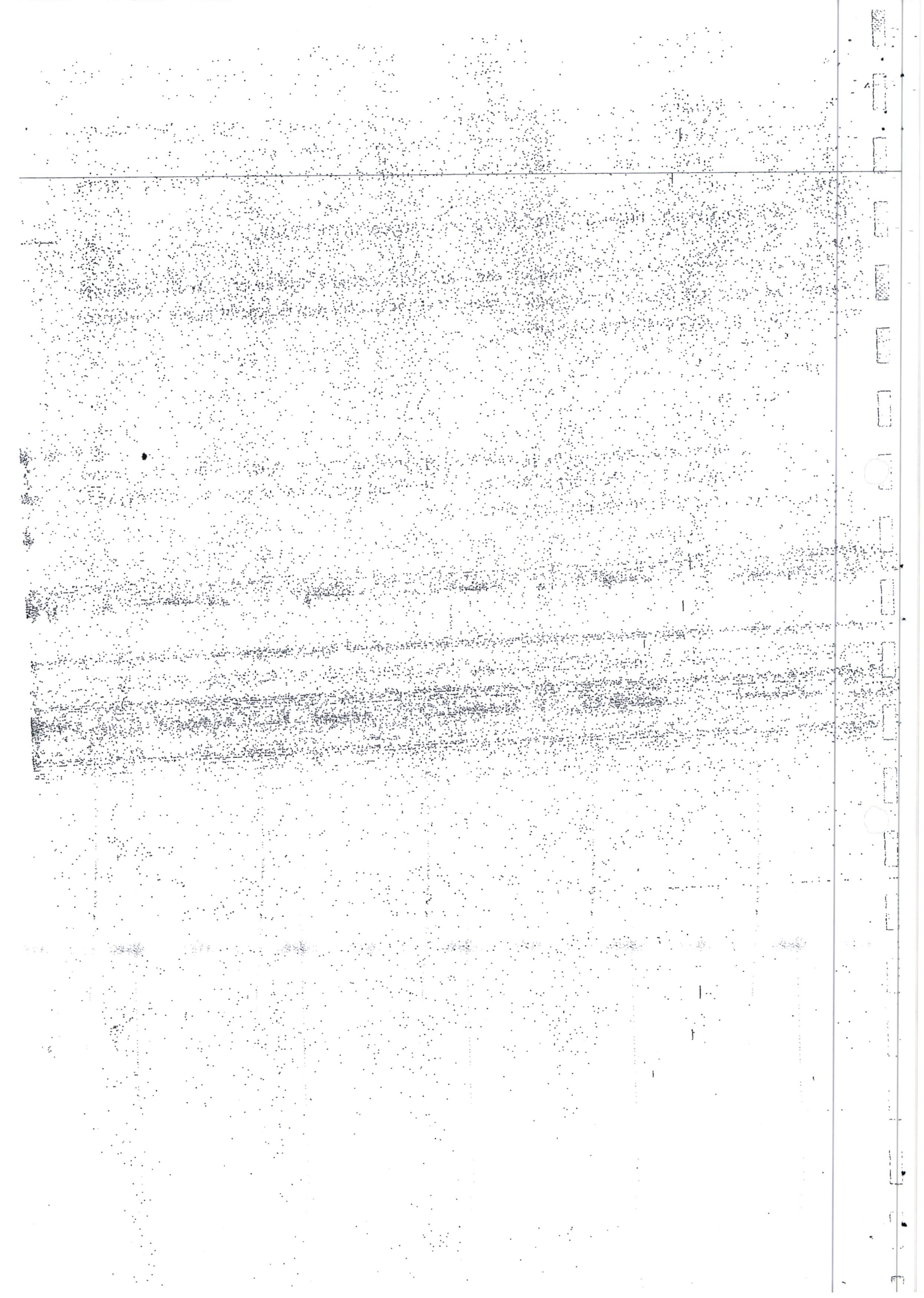
The Designated Airline(s) of Jamaica may operate all-cargo services between the Republic of Kenya and any point or points and the Designated Airline(s) of the Republic of Kenya may operate all-cargo services between Jamaica and any point or points.

Section 4

Change of Gauge

On any segment or segments of the routes above, any Designated Airline may perform international air transportation without any limitation as to change, at any point on the route, the type or number of aircraft operated; provided that, in the outbound direction, the transportation beyond such point is a continuation from the Territory of the Party that has Designated the Airline and, in the inbound direction, the transportation to the Territory of the Party that has Designated the Airline is a continuation of the transportation from beyond such point.

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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE REPUBLIC OF KENYA

AND

THE COMMONWEALTH OF THE BAHAMAS

Delegations representing the Aeronautical Authorities of the Government of the Republic of Kenya and the Government of the Commonwealth of The Bahamas held discussions in Nassau, The Bahamas on 8th December 2016, during the ICAO Air Services Negotiation Event (ICAN 2016), in order to discuss and initial an Air Services Agreement between their respective countries.

The list of the two delegations is attached as Appendix I.

The discussions were held in a friendly and cordial atmosphere. The delegations discussed the text of the draft Air Services Agreement proposed by Kenya and the following understanding was reached:

1. Air Services Agreement

The two delegations agreed and duly initialed the text of the Air Services Agreement and its Annex(es) which is attached as Appendix II. The two delegations further agreed to administratively apply the principles included in the initialed Agreement within the scope of their national legislation and regulations.

Both delegations undertook to advise their respective Governments to begin the internal procedures towards the signature and completion of their respective constitutional/legal requirements, for the entry into force of the Agreement.

2. Designation of Airlines

Both delegations accepted multiple designation of airline(s). It was agreed that each country will notify the other of their designated airline(s) through Diplomatic channels.

3. Traffic Rights and Capacity

The designated airlines of both Parties may operate unlimited weekly frequencies, exercising 3rd and 4th freedom traffic rights without any restrictions on capacity.

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APPENDIX 1

THE DELEGATION OF THE REPUBLIC OF KENYA

Head of Delegation

Mr. Enyenze, Benjamin Kiguhi
Principal Air Transport Officer
Ministry of Transport, Infrastructure,
Housing and Urban Development

Members

Mr. Mwangi, Samuel Karanja
Chief Air Transport Officer
Ministry of Transport, Infrastructure,
Housing and Urban Development

Ms. Kemunto, Brenda Mwango
State Counsel
Ministry of Transport, Infrastructure,
Housing and Urban Development

Mr. Kimemia, Joram Michael Kageto
State Counsel
Ministry of Foreign Affairs

Mr. Machio, David Wandera
Senior Air Transport Officer
Kenya Civil Aviation Authority

Ms. Mwarania, Ninette Kaari
Ag. Research Manager
Kenya Tourism Board

Mr. Wayong'o, Cyril Simiyu,
Manager Legal Services
Kenya Civil Aviation Authority

Ms. Muango, Ettah Achieng
Legal Counsel
Kenya Airports Authority

Ms. Asin, Iddah Adhiambo
Manager Government & Industry
Kenya Airways

Mr. William Yagomba
Manager Aviation & Industry Affairs
African Express Airways Limited

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THE DELEGATION OF THE COMMONWEALTH OF THE BAHAMAS

Head of delegation:

Mr. Keith Major
Actg. Director of Civil Aviation
Bahamas Civil Aviation
Commonwealth of The Bahamas

Delegates:

His Excellency Dr. Calsey Johnson
High Commissioner and Permanent Representative
Bahamas High Commission Ottawa, Canada

Mrs. Juliea Brathwaite-Rolle
CAD/ICAO Technical Safety Coordinator (ASA Lead Technical Negotiator)
Commonwealth of The Bahamas

Mr. Dwayne Bryan
Attorney, Office of the Attorney General (ASA Lead Legal Negotiator)
Commonwealth of The Bahamas

Mr. Peter Symonette
Foreign Officer
Commonwealth of The Bahamas

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4. Operation of Cargo Flights

The two delegations agreed that the designated airlines of both Parties shall have the right to operate all cargo services exercising 3rd, 4th and 5th freedom traffic rights without any restriction on routes, frequencies and capacity.

5. Code-sharing provision

In operating or holding out the agreed services on the specified routes, the designated airlines of each Contracting Party may enter into cooperative marketing arrangements such as code-sharing and blocked-space with:

- an airline(s) of the either Contracting Party, or
- an airline(s) of a third country

provided that airlines in such arrangements hold the appropriate authority to operate on the routes and segments concerned and meet the requirements normally applied to such arrangements, such as protection of and information to passengers, security, liability, competition and any other requirements generally applied to airlines operating international traffic.

Each airline involved in code-sharing arrangements shall make clear to the purchasers at the point of sale, which airline will actually operate each sector of the service and with which airline or airlines the purchaser is entering into contractual relationship.

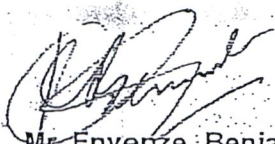
When a designated airline performs services under cooperative marketing arrangement as the marketing carrier, the total capacity offered by the airline will not be counted against the capacity entitlement of the Contracting Party designating the airline.

All code-share arrangements shall have prior approval of the appropriate aeronautical authorities before commencement.

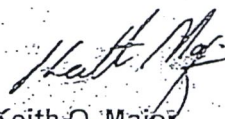
6. Entry into operation

The provisions of this Memorandum of Understanding shall enter into operation on the date of its signature.

Signed in Nassau, on 8th December 2016, in two original copies in the English language.



Mr. Enyenze, Benjamin Kiguhi
For the Delegation of the Republic of
Kenya



Mr. Keith O. Major
For the Delegation of The
Commonwealth of The Bahamas

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Draft Air Services Agreement between the Government of the Republic of Kenya and The Government of The Commonwealth of The Bahamas

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Preamble

The Government of the Republic of Kenya and the Government of The Commonwealth of The Bahamas (hereinafter, "the Contracting Parties");

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December, 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air services opportunities;

Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.

Have agreed as follows:

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Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Government of Republic of Kenya the Minister/Cabinet Secretary in charge of aviation; in the case of The Commonwealth of The Bahamas, Bahamas Civil Aviation Authority; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;
- c) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- d) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- e) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties;
- f) "designated airline" means an airline which has been designated and authorized in accordance with Article of this Agreement;
- g) "domestic air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in a State's territory are destined to another point in that same State's territory;
- h) "ICAO" means the International Civil Aviation Organization;
- i) "international air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;
- j) "Party" is a State which has formally agreed to be bound by this agreement;
- k) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation (including any other mode of transportation in connection therewith) charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- l) "territory" in relation to a State means the land areas and territorial waters adjacent thereto and the airspace above them under the sovereignty of that State has the meaning assigned to it in Article 2 of the Convention;
- m) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and
- n) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.

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Article 2 Grant of rights

1. Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights:
 - a) the right to fly without landing across the territory of the other Party;
 - b) the right to make stops in the territory of the other Party for non-traffic purposes; and
 - c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail separately or in combination.
3. The airlines of each Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.
4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Party.

Article 3 Designation and authorization

1. Each Party shall have the right to designate in writing to the other Party one or more airline(s) to operate the agreed services in accordance with this Agreement.
2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:
 - a) substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party;
 - b) the Party designating the airline is in compliance with the provisions set forth in Article 8 and Article 9; and
 - c) the designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.
3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

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Article 4

Withholding, revocation and limitation of authorization

1. The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article 3 of this Agreement with respect to an airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:

- a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party;
- b) in the event of failure of the Party designating the airline to comply with the provisions set forth in Article 8 and Article 9; and
- c) in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 8 or 9, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article 20 of this Agreement.

Article 5

Application of laws

1. The laws and regulations of one Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Party.

2. The laws and regulations of one Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.

3. Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

Article 6

Direct transit

Passengers, baggage, and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.

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Article 7

Recognition of certificates

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party and still in force shall be recognized as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.
2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.
3. Each Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Party.

Article 8

Safety

1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.
2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within an agreed time period.
3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.
4. If any such ramp inspection or series of ramp inspections gives rise to:
 - a. Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention; or
 - b. Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention;

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the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid or that the requirements under which that aircraft is operated are not equal to or above the minimum standards established pursuant to the Chicago Convention.

5. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party.

6. Any action by one Party in accordance with paragraph 5 above shall be discontinued once the basis for the taking of that action ceases to exist.

7. With reference to paragraph 2, if it is determined that one Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

Article 9 Aviation security

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other convention and protocol relating to the security of civil aviation which both Parties adhere to.

2. The Parties shall provide, upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Party may request immediate consultations with the other Party at any time to discuss any such differences.

4. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on

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items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time.

Article 10 User charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 21 (Settlement of Disputes), to be in breach of a provision of this Article, unless:

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a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or

b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of the other Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.

Article 11 Duties, Taxes and Fees

1. Each Party shall on the basis of reciprocity exempt a designated airlines of the other Contracting Party to the fullest extent possible under its national laws, rules and regulations from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items intended for use solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.

~~2. The exemptions granted by this article shall apply to the items referred to in paragraph 1~~

a) introduced into the territory of the Contracting Party by or on behalf of the designated airline of the other Contracting Party provide that such items may be required to be kept under customs supervision or control;

b) retained on board aircraft of the designated airline of one Contracting Party upon arrival in or leaving the territory of the other Contracting Party; or

c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

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Article 12

Fair competition

Each designated airline shall have a fair opportunity to operate the routes specified in the Agreement.

Article 13

Tariffs

1. The tariffs charged by airlines shall not be required to be filed with, or approved by either Contracting Parties.
2. Notwithstanding paragraph 1 of this Article, either Contracting Party may require information of tariffs proposed by its own airline, or the designated airline(s) of the other Contracting Party for carriage to or from its territory.
3. Without limiting the application of general competition and consumer law in each Contracting Party, consultations in accordance with the provisions set forth in Article 20 (Consultations) of the present Agreement, may be initiated by either Contracting Party to:
 - (a) prevent unreasonably discriminatory tariffs or practices;
 - (b) protect consumers from tariffs that are unreasonably high or unreasonably restrictive due to the abuse of a dominant position or to concerted practices among air carriers; and
 - (c) protect airlines from tariffs that are artificially low because of direct or indirect government subsidy or support.

Article 14

Currency conversion and remittance of earnings

Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.

Article 15

Sale and marketing of air service products

1. Each Party shall accord airlines of the other Party the right to sell and market international air services and related products in its territory, either directly or through agents or other intermediaries of the airline's choice, including the right to establish offices, both on-line and off-line.
2. Each airline shall have the right to sell air transport services in the currency of that territory or, at its discretion, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.
3. The Designated Airlines of each Contracting Party shall be permitted to have ground handling services in the other Contracting Party's territory provided in whole or in part by the agent authorized by the

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competent authorities of that other Contracting Party to provide such services or, at its option, it may provide its own ground handling services by engaging or giving positive consideration to engaging personnel employed by the agent authorized to perform such ground handling services.

Article 16 Aircraft leasing

1. Either Contracting Party may prevent the use of leased aircraft for services under this agreement which does not comply with Articles 8 and 9.
2. Subject to paragraph 1 above, the designated airlines of each Contracting Party may use aircraft (or aircraft and crew) leased from any company, including other airlines, provided that this would not result in a lessor airline exercising traffic rights it does not have.

Article 17 Environmental Protection

The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.

Article 18 Statistics

The aeronautical authorities of each Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Party.

Article 19 Approval of schedules

1. The designated airline of each Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.
2. For supplementary flights which the designated airline of one Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Party. Such requests shall usually be submitted at least two (2) working days prior to the operation of such flights.

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Article 20 Consultations

In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Party may also request to hold a "High Level" meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations.

Article 21 Settlement of disputes

Diplomatic channels

1. If any dispute arises between the Parties relating to the interpretation or application of this Agreement, the Parties shall in the first place endeavour to settle it by consultations and negotiation.
2. If the Parties fail to reach a settlement by negotiation, the dispute shall be settled through diplomatic channels.

Article 22 Amendment

Any amendments of this Agreement agreed by the Parties shall come into effect when confirmed by an exchange of diplomatic notes.

Article 23 Multilateral agreements

If a multilateral agreement concerning air transport comes into force in respect of both Parties, the present Agreement shall be deemed to be amended so as to conform to the provisions of that multilateral agreement.

Article 24 Termination

Either Party may, at any time, give notice in writing, through diplomatic channels, to the other Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Party, or any shorter period of time as may be agreed by both Parties, unless the notice is withdrawn by agreement before the end of the expiry period. In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.

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Article 25
Registration with ICAO

This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by the Contracting Parties.

Article 26
Entry into force

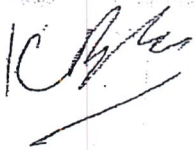
This Agreement shall be applied provisionally from the date of its signature and shall enter into force as soon as the two Contracting Parties have notified each other by an exchange of diplomatic notes, that their respective constitutional procedures for the entry into force of this agreement have been completed.

In the witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at, this ... Day of ... in the year ... in duplicate original copies in English and languages, both texts being equally authentic.

For the Government of the
Republic of Kenya

For the Government of The Commonwealth of
The Bahamas



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Annex I
Route schedules

Section 1

Airlines of each Contracting Party designated under this Annex shall be entitled to provide air transportation between points on the following routes:

A. Routes to be operated by the designated airline (or airlines) of Kenya:

From: Any points in Kenya; via any intermediate points; to: Any Points in Party B and Any beyond points.

B. Routes to be operated by the designated airline (or airlines) of The Bahamas:

From: Any points in Party B; via any intermediate points; to: Any points in Kenya and Any beyond points.

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE AERONAUTICAL AUTHORITY OF THE REPUBLIC OF KENYA
AND
THE AERONAUTICAL AUTHORITY OF THE REPUBLIC OF TURKEY**

Delegations representing the Aeronautical Authorities of the Republic of Kenya and Turkey hereinafter referred to as "The Delegations" met in Antalya on 21 October 2015 during ICAO International Air Services Negotiations Conference (ICAN 2015) to review their aviation relations and to evaluate new avenues for further developing the regulatory framework for air services between the two countries.

The list of members of the two delegations is attached as APPENDIX A to this Memorandum of Understanding.

The discussion was held in a friendly and cordial atmosphere, which reflects the excellent bilateral relations that exist between the two countries.

As a result of these discussions, the following understanding was reached between the two Delegations

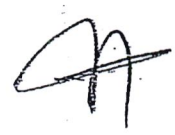

1. AMENDMENTS TO THE AGREEMENT

Both Delegations have agreed to amend the Article 13 (Establishment Of Tariffs) of the Air Services Agreement signed on 20 February 2009 in Ankara as per the initialed Protocol attached as APPENDIX B.

The Delegations agreed to recommend to their respective Governments the formal signing of the Protocol concerned and agreed that the provisions of the Article shall provisionally take effect from the date of this MoU.

2. TRAFFIC RIGHTS

Both Delegations agreed that the designated airlines of Turkey shall exercise own stopover rights on the Istanbul-Kilimanjaro-Mombasa-Istanbul route.



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3. ENTRY INTO FORCE

This Memorandum of Understanding (MOU) shall come into force upon signature.

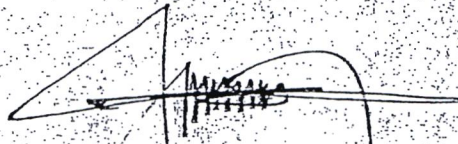
Done at Antalya on 21st October 2015 in English.

For the Aeronautical Authority of the
Republic of Kenya

For the Aeronautical Authority of the
Republic of Turkey



Mr. Nicholas Bodo
Ag. Director Air Transport
Ministry of Transport and Infrastructure



Mr. Bilal EKŞİ
Director General
Turkish DGCA

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APPENDIX A

DELEGATION LIST OF KENYA

Mr. Nicholas Bodo
Head of Delegation
Ag. Director Air Transport
Ministry of Transport and Infrastructure

Mr. Gilbert Kibe
Director General
Kenya Civil Aviation Authority

Mr. Benjamin K. Enyenze
Principal Air Transport Officer
Ministry of Transport and Infrastructure

Mr. Samuel Karanja
Chief Air Transport Officer
Ministry of Transport and Infrastructure

Mr. Joram Kimemia
Deputy Chief State Counsel
Ministry of Foreign Affairs and International Trade

Ms. Rachel Mbugua
State Counsel
Office of the Attorney General and Department of Justice

Ms. Katherine Kisila
Corporation Secretary
Kenya Airports Authority

Mr. Joseph Koech
Ag. Manager, Air Transport
Kenya Civil Aviation Authority

Ms. Mary Luseka
Manager, Strategy and Development

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Kenya Tourism Board

Ms. Idah Asin
Manager, Government and Industry Affairs
Kenya Airways

Mr. William Yagomba
Manager
Safari Express Cargo

DELEGATION LIST OF TURKEY

Mr. Bilal EKŞİ
Head of Delegation
Director-General,
Turkish DGCA

Mr. Bahri KESİCİ
Deputy Director General, Turkish DGCA

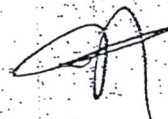
Mr. Aykut AKMAN
Act. Head of Air Transport Department, Turkish DGCA

Mr. Anil KOÇER
Act. Director of International Agreements Department, Turkish DGCA

Mr. Batın ŞİMŞEK
Asst. Aviation Expert, Turkish DGCA

Mrs. Başak KARABULUT
Expert, Turkish DGCA

Mrs. Güncihan TÜRKER
Expert, Turkish DGCA



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PROTOCOL
amending Air Services Agreement
between the Government of the Republic of Kenya
and the Government of the Republic of Turkey, signed
on February 20, 2009

The Government of the Republic of Kenya and the Government of the Republic of Turkey (hereinafter referred as Contracting Parties) have agreed to amend the Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Turkey dated February 20, 2009, hereinafter referred to as "the Agreement", as follows:

ARTICLE 1

To replace Article 13 "ESTABLISHMENT OF TARIFFS" of the Agreement as follows:

1. Each Contracting Party shall allow the tariffs for international air services operated to/from/through its territory to be established by the designated airlines at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit and the tariffs of other airlines. Intervention by the Contracting Parties shall be limited to:
 - a) prevention of unreasonably discriminatory prices or practices;
 - b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
 - c) protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support.
2. The tariffs established under paragraph 1 shall not be required to be filed by the designated airlines of one Contracting Party with the aeronautical authorities of the other Contracting Party for approval. Notwithstanding the foregoing, the airlines of the Contracting Parties shall continue to provide immediate access upon request, information on historical, existing and proposed tariffs to the aeronautical authorities of the Contracting Parties in a manner and format acceptable to the authorities.
3. Neither Contracting Party shall allow its designated airline or airlines, in the establishment of tariffs, either in conjunction with any other airline or airlines or separately, to abuse market power in a way which has or is likely or intended to have the effect of severely weakening a competitor, being a designated airline of the other Contracting Party, or excluding such a competitor from a route.



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4. The Contracting Parties agree that the following airline practices, in relation to the establishment of tariffs, may be regarded as possible unfair competitive practices which may merit closer examination.

- a. charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;
- b. the practices in question are sustained rather than temporary;
- c. the practices in question have a serious economic effect on, or cause significant damage to, designated airlines of the other Contracting Party; and
- d. behaviour indicating an abuse of dominant position on the route.

5. In the event that either aeronautical authority is dissatisfied with a tariff proposed or in effect for an airline of the other Contracting Party, the aeronautical authorities will endeavour to settle the matter through consultations, if so requested by either authority. In any event, the aeronautical authority of a Contracting Party shall not take unilateral action to prevent the coming into effect or continuation of a tariff of an airline of the other Contracting Party.

6. Notwithstanding the foregoing, the designated airlines of one Contracting Party shall provide, on request, to the aeronautical authorities of the other Contracting Party the information relating to the establishment of the tariffs, in a manner and format as specified by such authorities.

7. No Contracting Party shall impose on the other Contracting Party's designated airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

ARTICLE 2

The present Protocol shall enter into force on the date of the last written notification through diplomatic channels, confirming that the Contracting Parties have fulfilled all internal procedures necessary for entry into force of the present Protocol.

Signed on in duplicate, each in the English and Turkish Languages, all texts being equally authentic.

In case of any divergence of interpretation, the English text shall prevail.

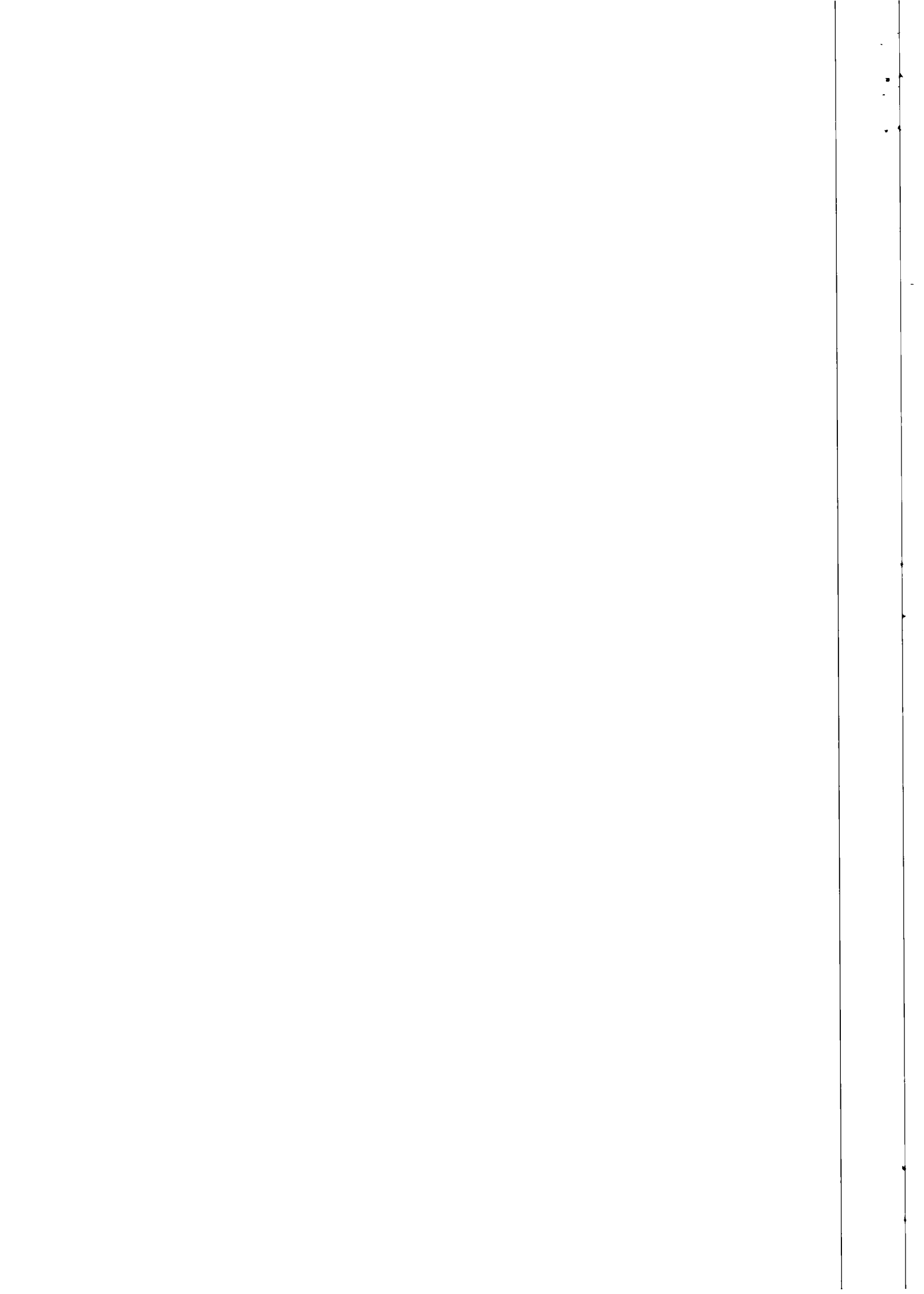
For the Government of the
Republic of Turkey

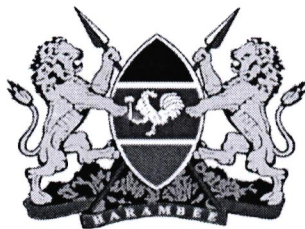
For the Government of the
Republic of Kenya

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ANNEXURE 2

EXPLANATORY MEMORANDUM
FROM THE MINISTRY





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

**EXPLANATORY MEMORANDUM ON THE RATIFICATION OF
BILATERAL AIR SERVICES AGREEMENTS BETWEEN KENYA AND
JORDAN; KENYA AND JAMAICA; KENYA AND THE BAHAMAS; AND
THE PROTOCOL AMENDING THE BILATERAL AIR SERVICES
AGREEMENT BETWEEN KENYA AND TURKEY**

(a) The Objects and Subject Matter of the Treaties;

Bilateral Air Services Agreements Between Kenya and Jordan initialed on 23rd April, 2008; Kenya and Jamaica initialed on 20th November, 2014; Kenya and the Bahamas initialed on 8th December, 2016; and the Protocol amending the Bilateral Air Services Agreement between Kenya and Turkey initialed on 21st October, 2015.

(b) Any Constitutional implications including –

(i) Any proposed amendment to the Constitution;

There is no proposed amendment to the Constitution.

**(ii) That the Treaties are consistent with the Constitution and
promotes constitutional values and objectives;**

The Treaties are consistent with the Constitution and promotes constitutional values and objectives.

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

The Bilateral Air Services Agreements between Kenya and the various States enable Kenyan air operators such as Kenya Airways and others to provide

scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market.

(d) Obligations imposed on Kenya by the Treaty;

Grant of Rights - Each Contracting Party grants to the other Contracting Party the following rights in respect of international air services:

- a. the right to fly across its territory without landing;
- b. the right to make stops in its territory for non-traffic purposes;

Designation and Authorization - Each Contracting Party shall have the right to designate an airline or airlines for the purpose of operating the agreed services and to withdraw or alter such designations.

Revocation of Authorization - Either Contracting Party may revoke, suspend or limit the operating authorisation or technical permissions of an airline designated by the other Contracting Party where:

Application of Laws and Regulations

National Laws - The laws and regulations of one Contracting Party governing entry into, or departure from its territory of aircraft engaged in international air services or to the operation and navigation of such aircraft while within the said territory shall apply to the designated airline(s) of the other Contracting Party.

Exemption from Taxes, Customs Duties and other Charges - Aircraft operated on international air services by a designated airline of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuel and lubricants, aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all taxes, customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment, spare parts, supplies and stores remain on board the aircraft up to such time as they are re-exported or are used or consumed by such aircraft on flights over that territory.

Airline Representation and Sales - The designated airline(s) of each Contracting Party shall have the right to freely establish and maintain in the territory of the other Contracting Party, within the scope of the laws and regulations in force therein, such offices and facilities, as well as administrative, commercial, technical,

operational, and other specialist personnel as may be necessary for the requirements of the designated airline concerned.

Aviation Security - Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

(e) Requirements for implementation of the Treaty;

The Bilateral Air Services Agreements between Kenya and Jordan was negotiated and initialed on 23rd April, 2008, Kenya and Jamaica negotiated and initialed on 20th November, 2014 and Kenya and the Bahamas negotiated and initialed on 8th December, 2016. In order to operationalize the Agreements the delegations signed Memoranda of Understanding (MoUs) that gave force to the Agreements while waiting formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. The Protocol amending the Air Services Agreement between Kenya and Turkey was initialed on 21st October, 2015.

The three Agreements are modeled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories without any restrictions.

(f) Policy and legislative considerations;

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is the practice for the delegations representing the concerned States to sign a Memorandum of Understanding (MoU) that gives force to the Agreement as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require the signing of the Agreement prior to entry into force.

(g) Financial implications;

There are no financial implications.

(h) Ministerial responsibility;

The Cabinet Secretary exercises powers conferred by Section 52 of the Civil Aviation Act (No. 21 of 2013) to negotiate and review Bilateral Air Services Agreements.

(i) Implications on matters relating to counties;

There are no implications on matters relating to counties.

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

The Kenya/Jordan Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Jordan was negotiated and initialed on 23rd April, 2008 in Amman, Jordan. It was operationalized by the signing of a Memorandum of Understanding.

The Agreement provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Hashemite Kingdom of Jordan. Similarly, there is no airline from Jordan operating scheduled air services between the two States. However, the Jordanian authorities have on several occasions requested through diplomatic channels for the Agreement to be formally signed.

The Kenya/Jamaica Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Jamaica was negotiated and initialed on 20th November, 2014 in Bali, Indonesia.

The Agreement provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route

schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Jamaican authorities have requested for the Agreement to be formally signed.

Kenya/the Bahamas Bilateral Air Services Agreement

The Kenya/Bahamas Bilateral Air Services Agreement was negotiated and initialed on 8th December, 2016 in Nassau, the Bahamas. The Agreement has not been operationalized. The Memorandum of Understanding signed administratively allowed for application of the principles of the Agreement within the scope of the national regulations pending the formal signing of the Agreement after the completion of internal procedures by both parties to enable it enter into force.

The Agreement provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no carrier from either party operates scheduled air services on the route between the two States. However, the Bahamas has completed their internal constitutional/legal procedures and are ready to formally sign the Agreement to enable it enter into force.

Protocol Amending the Kenya/Turkey Air Services Agreement

The existing Air Services Agreement between Kenya and Turkey was formally signed on 20th February, 2009 in Nairobi. The Protocol amending the Agreement was negotiated and initialed on 21st October, 2015 in Antalya, Turkey. The amendment was to replace Article 13 “*Establishment of Tariffs*” of the Agreement by a new text outlined in Article 1 of the Protocol. This was done to make it more liberal.

The Turkish authorities have requested for the Protocol to be formally signed to enable it enter into force.

(k) The date of signature;

The Bilateral Air Services Agreements between Kenya and Jordan was initialed on 23rd April, 2008; Kenya and Jamaica was initialed on 20th November, 2014; and Kenya and the Bahamas was initialed on 8th December, 2016. The Agreements have not been formally signed.

The existing Air Services Agreement between Kenya and Turkey was formally signed on 20th February, 2009 in Nairobi. The Protocol amending the Bilateral Air Services Agreement between Kenya and Turkey initialed on 21st October, 2015.

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

In each case, there are only two parties.

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

These Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways and other local airlines. Stakeholders are consulted including the Kenya Association of Air Operators.

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

The Bilateral Air Services Agreements all have Articles that allow for Consultations when need arises, Dispute Resolution and Termination.

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

The Bilateral Air Services Agreements all have Articles that allow for Consultations when need arises, Dispute Resolution and Termination.

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

Public funds will be incurred in implementing the Treaties. The Kenya Civil Aviation Authority has the mandate to carry out inspections on equipment (aircraft) from the States operating into Kenya. In addition, Kenya Airports

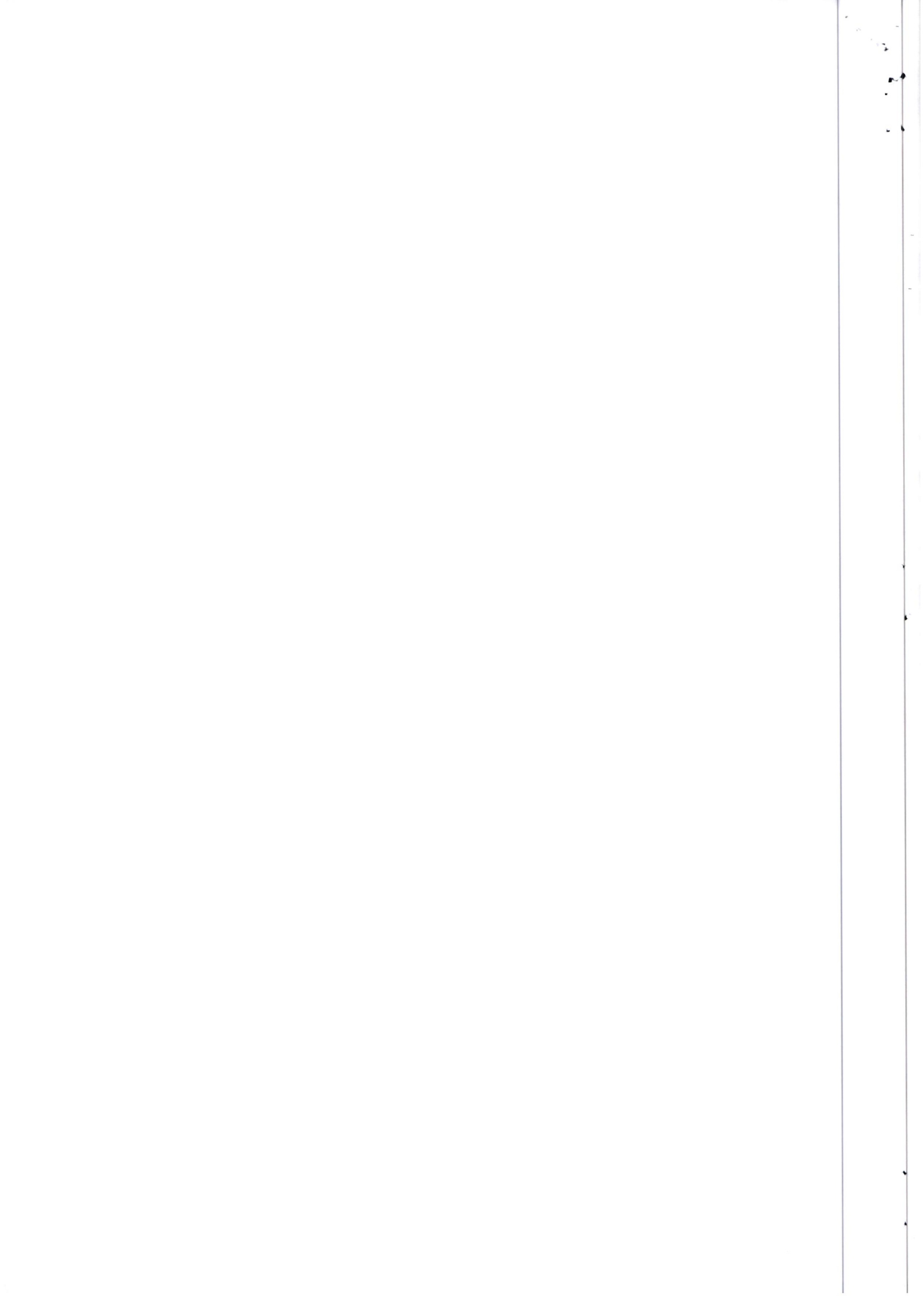
Authority will incur public expenditure on a cost recovery basis in providing services to any of the airlines from these States that utilize our airports.



N. E. Bodo

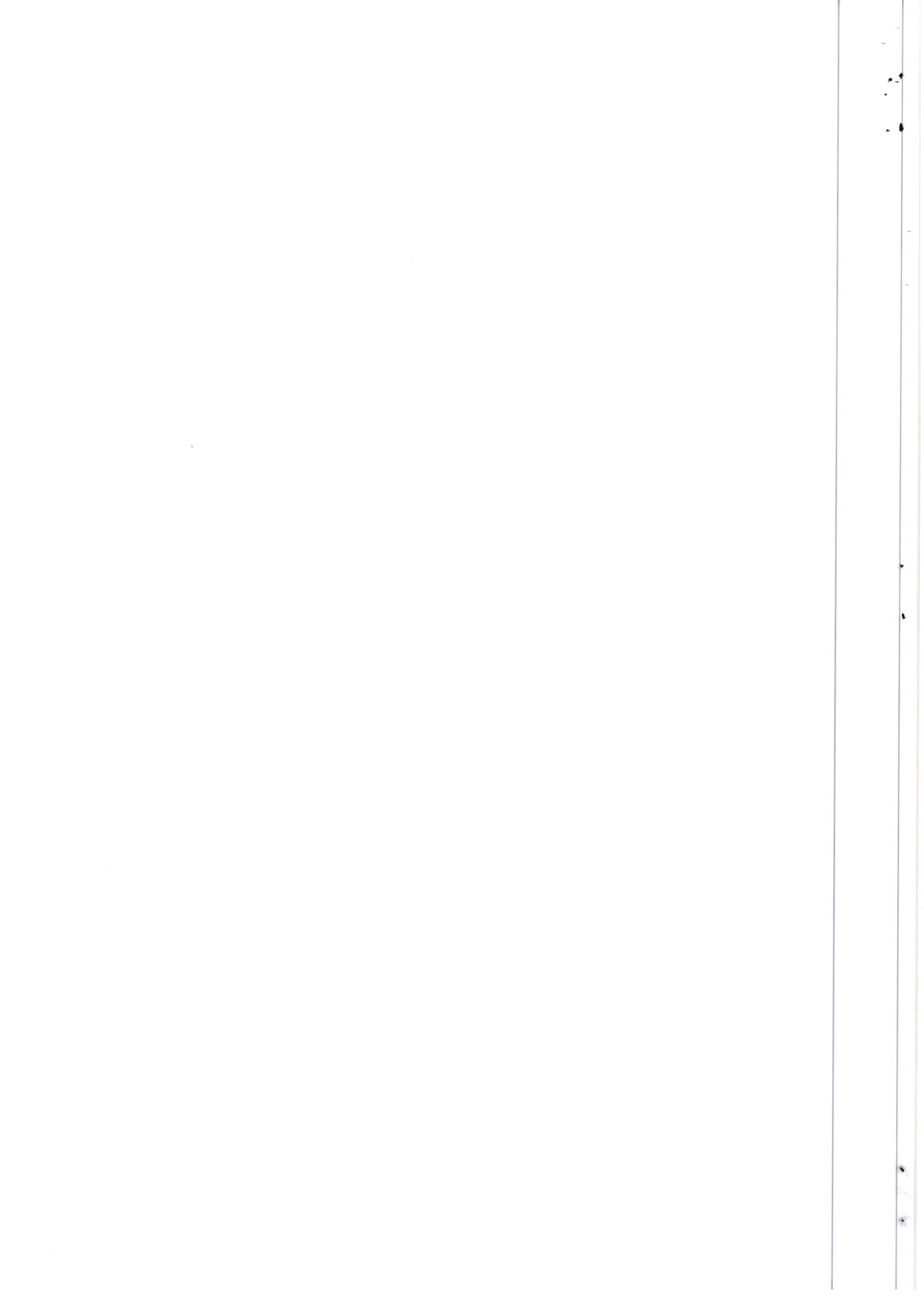
Ag. Director Air Transport

For **Prof. Arch. Paul M. Maringa PhD, CBS, Corp. Arch. Maak, Mkip**
PRINCIPAL SECRETARY



ANNEXURE 3

NEWSPAPER ADVERT



Deadline > The parliamentary committee has 10 days to present its report

CSs to answer queries on bad sugar

They will face a joint session of the Agriculture and trade committees of the National Assembly

BY DAVID MWERE
@davidmwere
dmw@ke.nationamedia.com

Investigations into how contraband sugar entered the country begin today, with four Cabinet secretaries among those to be questioned by MPs.

The four are set to appear before a joint sitting of Agriculture and Livestock and Trade, Industry and Cooperatives committees of the National Assembly to explain their roles.

Mr Henry Rotich (National Treasury) and Mr Mwangi Kiunjuri (Agriculture and Irrigation) will appear before the committees in the morning.

Dr Fred Matiang'i (Interior), who was the first to go public about the presence of poisonous sugar in the country, will appear in the afternoon, but after his Industrialisation and Enterprise Development colleague Adan Mohamed.

On Wednesday last week, National Assembly Speaker Justin Muturi directed that the two committees conduct joint investigations and present a report to the House within 10 days.

On Friday, the two committees co-chaired by Kient MP Kanini Kega (Trade, Industry, and Cooperatives) and his Mandera South colleague Adan Ali (Agriculture and Livestock) held a joint sitting at County Hall, the venue of the probe, to draw up their agenda.



Inspector General of Police Joseph Boinnet holds a packing sack of illegal contraband sugar on display at the Directorate of Criminal Investigations in Kiambu on June 5, 2018. The sugar was among contraband items including cooking oil impounded from a warehouse within the city during a police

"The matter we are dealing with is serious as it affects millions of Kenyans. We want them to tell us what they know and what they did about this poisonous sugar in the market," Mr Kega said.

On Tuesday and Wednesday, the committee, which has until Friday next week to compile its report, will visit the areas where the impounded sugar is held.

On Thursday, it will have a session with, among others, the Kenya Revenue Authority (KRA) and Kenya Bureau of Standards (Kebs), which is in charge of quality standards.

The Agriculture, Fisheries and Food Authority (AFFA), which is in charge of issuing licences to

traders in the industry as well as companies adversely mentioned in the illicit trade like West Kenya Sugar Company owned by the Rai family, among others, are also expected on Thursday.

AFFA, which is housed under the Ministry of Agriculture, replaced the Kenya Sugar Board (KSB) in 2014.

In May, 2017, Mr Rotich gazetted a temporary waiver of duty on sugar, which opened the floodgates for cheap imports. Among those who took advantage of this waiver were millers and traders.

The move was meant to address the 300,000-tonne deficit. Kenya consumes about 900,000 tonnes of sugar produces only 600,000

metric tonnes.

Dr Matiang'i is expected to tell the committee how he discovered the presence of mercury and copper in the sugar.

Leader of Majority in the National Assembly Aden Duale (Garissa Township), who tabled a list of over 100 companies allegedly involved in the illicit business, and Samburu West MP Naisula Lesuada, will also face the MPs.

On Tuesday, Ms Lesuada sought a ministerial statement on the influx of the contraband sugar.

She said the poisonous sugar is not only dangerous to the health of Kenyans, but also impacts negatively on the economy—loss of millions of shillings in tax evasion.

Kebs officials to appear in court today

BY STELLA CHERONO

Kenya Bureau of Standards (Kebs) Managing Director Charles Ongwae will today be arraigned in court alongside other officials to face multiple charges, including attempted murder.

Mr Ongwae and nine other Kebs officials were arrested on Friday, and they spent the weekend at Muthaiga Police Station cells.

Director of Criminal Investigations George Kinoti said inquiries had revealed that the officials were complicit in the importation of sub-standard fertiliser, and fake import standardisation mark stickers.

The other officials are Eric Chesire Kiptoo, Eric Ochieng' Onyango, Eric Kimutai, Catherine Chepcheng Bowen, Robin Shake, Rhoda Olesi Kirui and John Muringi Rukaria. They will be charged alongside Madras Security Printers Private Ltd, Prathaph Singh, Rajah Sunder Singh, Arul Prathaph Singh, Sam Prasad, Asir Prathaph Singh, Suseela Rajah, Ponmahni Prasad and Ramachandran Naataarajan.

The first charge is that on diverse dates between December 9, 2014, and May 23, 2018, in Nairobi, they conspired with intent to defraud the government of Kenya Sh882 million for the supply and delivery of Kebs quality marks. Mr Ongwae also faces charges of breach of trust.

He, together with his juniors, Peter Kinyanjui Ndungu and Eric Kariuki, OCP Kenya Ltd Directors Karim Lofu Senhadji, Malika Kirama and Younes Addou and unnamed Port health

Mudavadi calls for special commission

BY OUMA WANZALA

Amani National Congress (ANC) leader Musalia Mudavadi (below) yesterday asked President Uhuru Kenyatta to appoint a judicial commission to inquire into the dumping of poisoned consumable products, which pose a national threat.

Mr Mudavadi said the unravelling scandals are disturbing, and that the ongoing investigations and intended prosecution are limited in scope to third-tier culprits.

"They will not provide satisfactory deterrence to guarantee the country's safety from the purveyors of death. More pro-active interventions must, therefore, be taken to slay this systematic catastrophe of corruption without prejudicing the ongoing parallel criminal proceedings," said Mr Mudavadi in Nairobi during a press conference.

He said the Commission of inquiry will should also look e into the conduct of any public officer or the management of any public body or into any matter which an inquiry would, in the opinion of the President be in

the public interest.

"If the current corruption scandals are not in the public interest, then nothing is. We must find out what is wrong, where, the commission will enable the public and whistleblowers to participate, the truth will be told and the culprits identified, shamed and jailed," said Mr Mudavadi.

Meanwhile, Senate speaker Kenneth Lusaka has called for speedy investigations that will reveal individuals and entities behind the importation of contraband sugar in the country. Speaking yesterday when he paid Governor Sospeter Ojaamong a courtesy call, Mr Lusaka said revealing those behind the sugar imports will help save the local industry and thousands of jobs.

"Importation of sugar is killing our industry and we must stand together as leaders and condemn it. We must protect our farmers and our people. Let's not politicize

this war against corruption," he appealed.

His sentiments came as Nominated MP Godfrey Osotsi vowed to lead a demonstration over reports of contraband sugar in the Kenyan market.



ODM opposes disbandment of EACC

BY VICTOR OTIENO AND DERICK LUVEGA

The Orange Democratic Movement (ODM) yesterday vowed to oppose plans to disband the Ethics and Anti-Corruption Commission (EACC).

On Sunday, the Raila Odinga-led party also said it backed the Ward Development Fund Bill sponsored by Murang'a Senator Irungu Kang'ata. "ODM is a devolution party. We support the Bill by Irungu Kang'ata because it will ensure money is allocated to the wards for development," said party Secretary-General Edwin Sifuna during a funds drive in Vihiga County yesterday.

"We (ODM) will support any policy or Bill that seeks to bring development at the grassroots," he added.

The officials also reiterated that the party was not worried by some members' decision to support Deputy President William Ruto's 2022 residential bid.

Meanwhile, speaking to journalists in Kisumu, the party's Secretary for Political Affairs and National Assembly Public Accounts Committee Chairman Opiyo Wandayi said he will rally his colleagues to shoot down the bill to disband EACC, which is sponsored by Aldai MP Cornelio Serem, in the House.

Last week, Mr Serem began the process of disbanding the anti-graft body by publishing the bill, arguing that the commission has failed to tame graft, since tax-payers continue to lose millions of shillings through the vice.

REPUBLIC OF KENYA



TWELFTH PARLIAMENT
THE NATIONAL ASSEMBLY

INVITATION FOR PUBLIC PARTICIPATION & WRITTEN SUBMISSIONS

(Article 118 (1) (b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012)

In matter of consideration by the National Assembly: The Ratification of the Bilateral Air Services Agreements between-

- Kenya and Jordan;
- Kenya and Jamaica;
- Kenya and Bahamas; and
- the Protocol amending the Bilateral Air Service Agreement between Kenya and Turkey.

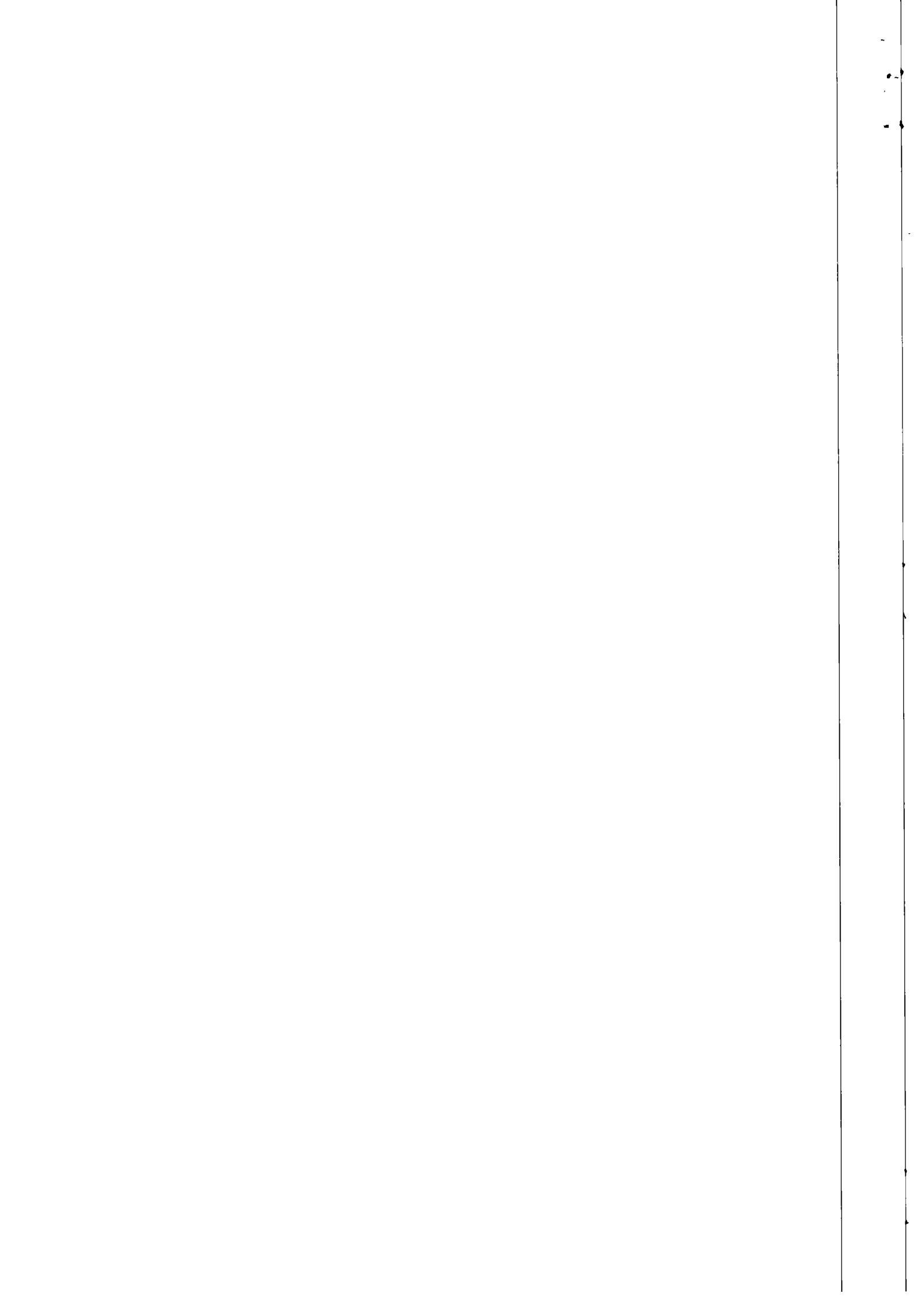
The National Assembly is in receipt of the above-mentioned Agreements for approval for ratification by the Government of the Republic of Kenya. The main purpose of these Agreements is to enable Kenyan operators provide scheduled commercial air transport services in foreign air service markets and also expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market.

The Agreements have since been committed to the Departmental Committees on Defence and Foreign Relations for deliberation prior to consideration by the National Assembly on the proposed approval of ratification;

Pursuant to Article 118 (1) (b) of the Constitution and section 8 of the Treaty Making and Ratification Act, 2012, the Committee invites interested members of the public to submit any views or make representations regarding the Agreements.

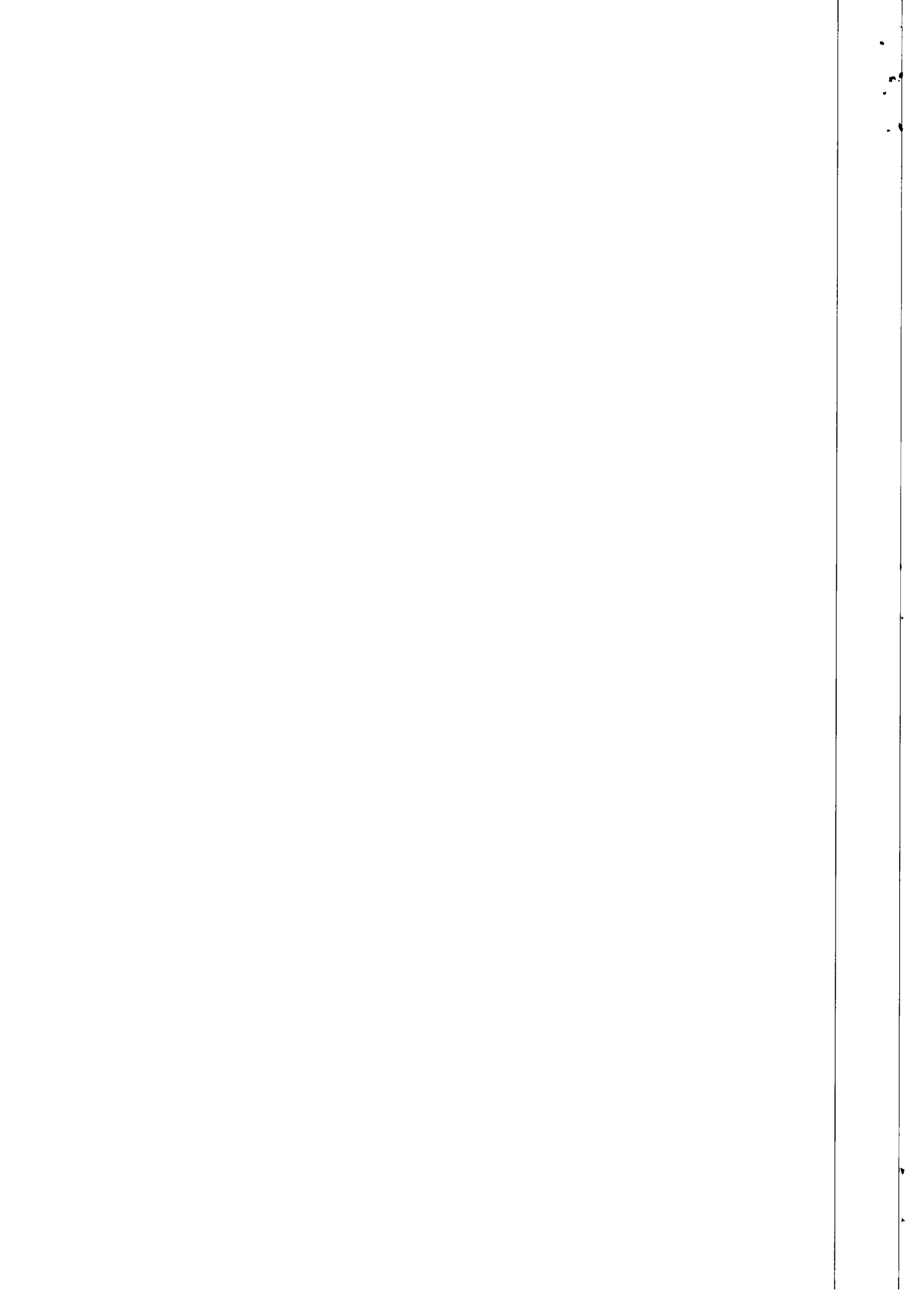
The views, representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Monday, 2nd July, 2018 at 5:00 pm. The full text of both Agreements and their accompanying Memoranda to Parliament may be accessed at www.parliament.go.ke.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY



ANNEXURE 4

COMMITTEE MINUTES



MINUTES OF THE FORTY NINETH (49TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 9TH AUGUST 2018 AT 10.00 A.M. IN 2ND FLOOR BOARDROOM, CONTINENTAL BUILDING, PARLIAMENT.

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. Samuel Arama
3. Hon. Johnson Many Naicca
4. Hon. Peris Pesi Tobiko
5. Hon. Suleiman Dori Ramadhani
6. Hon. Ahmed Bashane Gaal
7. Hon. Dominic Kipkoech Koskei
8. Hon. Kulow Maalim Hassan
9. Hon. Mugambi Murwithania Rindikiri
10. Hon. Shadrack John Mose
11. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria - Vice Chairperson
2. Hon. Savula Ayub Angatia
3. Hon. Rehema Dida Jaldesa
4. Hon. Ahmed Abdisalan Ibrahim
5. Hon. Tom Mboya Odege
6. Hon. Gideon Mutemi Mulyungi
7. Hon. David Njuguna Kiaraho
8. Hon. Rigathi Gachagua

SECRETARIAT

- | | | |
|-----------------------------|---|-------------------------|
| 1. Ms. Chelagat Aaron Tungo | - | Clerk Assistant I |
| 2. Ms. Brigitta Mati | - | Legal Counsel |
| 3. Mr. James Muguna | - | Researcher |
| 4. Mr. Abdinasir Moge | - | Fiscal Analyst |
| 5. Mr. Eugene Luteshi | - | Audio Officer |
| 6. Ms. Zainabu Wario | - | Sergeant at Arm |
| 7. Mr. Yeziel Jilo | - | Sergeant at Arm |
| 8. Ms. Noelle Chelang'at | - | Media Relations officer |

MIN No. TPWH 212/2018:

PRELIMINARIES

The Chairperson called the meeting to order at five minutes past ten o'clock, with a word of prayer from Hon. Mugambi Rindikiri, MP. The Chairperson informed the Committee that the first agenda of the meeting was to meet with the CS for Transport, Infrastructure, Housing and Urban Development, The PS for Infrastructure and the Director General, KENHA to deliberate on a Statement by Hon. Beatrice Adagala, MP (Vihiga County) on the effects of road construction to the residents of Mwoko- Masana Area.

The second agenda was to receive a briefing by the Legal Counsel on Ratification of Bilateral Air Service Agreement between Jordan, Kenya and Jamaica

The Committee was in receipt of a letter ref. MOTI& HUD/1/A.24.04.Vol.22/31 dated 8th August, 2018 from the PS for State Department of Infrastructure requesting for postponement of the meeting to a later date due to exigency of duty. The meeting was therefore rescheduled to Tuesday, 21st August, 2018 at 10.00 a.m.

MIN No. TPWH 213/2018:

BRIEFING BY THE LEGAL COUNSEL ON RATIFICATION OF BILATERAL AIR SERVICE AGREEMENT BETWEEN JORDAN, KENYA AND JAMAICA

The Committee noted that on Tuesday 15th May, 2018, the Cabinet approved a cabinet Memorandum on the ratification of the following bilateral air services agreements between-

- (a) Kenya and Jordan (signed on 23 April 2008);

- (b) Kenya and Jamaica (signed on 20th November, 2014);
- (c) Kenya and Bahamas (signed on 8th December, 2016); and
- (d) the Protocol amending the Bilateral Air Service Agreement between Kenya and Turkey (signed on 21st October, 2015).


An air service agreement also known as an air transport agreement is an agreement which two States sign to allow for international commercial air transport services between their territories.

Such bilateral agreements and their related understandings and arrangements, generally regulate the rules for airline ownership and the routes, frequency and capacity of flights by national carriers between the States Parties (and sometimes beyond those states). They may also include issues such as the provision of ground handling services, the procedure for approving tariffs, the designation of national carriers, and aviation security and safety. This bilateral system has its basis under the Chicago Convention which was signed in December 1944 and has regulated international air services since then.

The Chairman informed the Committee that another briefing meeting be scheduled for Thursday 16th August, 2018 where Officials from the Ministry, would brief Members on the agreement in detail.

MIN No. TPWH 214/2018: ADJOURNMENT

There being no other business, the sitting was adjourned at fifteen minutes to twelve noon. The next meeting to be held Tuesday, 14th August, 2018 at 10.00 a.m

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

Date.....

MINUTES OF THE FIFTY FIRST (51ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 16TH AUGUST 2018 AT 10.00 A.M. IN 2ND FLOOR BOARDROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. Moses Kuria - Vice Chairperson
3. Hon. Samuel Arama
4. Hon. Suleiman Dori Ramadhani
5. Hon. Ahmed Abdisalan Ibrahim
6. Hon. Mugambi Murwithania Rindikiri
7. Hon. Peris Pesi Tobiko
8. Hon. Shadrack John Mose
9. Hon. Tom Mboya Odege
10. Hon. Gideon Mutemi Mulyungi

MEMBERS ABSENT WITH APOLOGY

1. Hon. Rehema Dida Jaldesa
2. Hon. Ahmed Bashane Gaal
3. Hon. Dominic Kipkoech Koskei
4. Hon. Kulow Maalim Hassan
5. Hon. Johnson Many Naicca
6. Hon. Savula Ayub Angatia
7. Hon. David Njuguna Kiaraho
8. Hon. Vincent Kemosi Mogaka
9. Hon. Rigathi Gachagua

SECRETARIAT

- | | | |
|------------------------------|---|---------------------|
| 1. Ms. Chelagat Aaron Tungo | - | Clerk Assistant I |
| 2. Mr. Ahmed Salim A. | - | Clerk Assistant III |
| 3. Ms. Mercy Wanyonyi | - | Legal Counsel |
| 4. Ms. Brigitta Kathike Mati | - | Legal Counsel |
| 5. Mr. Eugene Luteshi | - | Audio Officer |
| 6. Ms. Zainab Wario | - | Sergeant at arm |

IN ATTENDANCE

- | | | |
|----------------------|---|-----------------------------|
| 1. Mr. Nicholas Bodo | - | Ag. Director, Air Transport |
| 2. | | |

MIN No. TPWH 221/2018: PRELIMINARIES

The Chairperson called the meeting to order at twelve minutes past ten o'clock, with a word of prayer from Hon. Moses Kuria, MP. The Chairperson informed the Committee that the agenda of the meeting was to go through the treaty ratification process. Members adopted the agenda, the proposer being Hon. Samuel Arama and the seconder being Hon. Ahmed Abdisalan.

MIN No. TPWH 222/2018: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN No. TPWH 223/2018: BRIEFING BY THE LEGAL COUNSEL AND THE RESOURCE PERSONS FROM THE MINISTRY

Members of the Committee were taken through the provisions of the Treaty Making and Ratification Act, 2012 by the Legal Counsels attached to the Committee. The Committee was particularly engaged on Section 4 of the Act on general responsibility for treaty initiation, Section 5 on initiation of treaty making process, Section 6 on values and principles in negotiating treaties, Section 7 on approval by Cabinet, Section 8 on consideration by the National Assembly, Section 9 on the approval process for ratification and Section 10 on ratification of a treaty. Other

sections covered were Section 11 on grant of full powers by the Cabinet Secretary to other persons, Section 12 which has made it an offence to ratify a treaty without approval and Section 13 which provides for Registry of Treaties.

Further the Committee was taken through the treaty making process by resource persons from the Ministry. In their presentation, they informed the Committee that it is normal for the treaty negotiations to take long time and at times over many years, depending on unique circumstances prevailing at the time, especially that the process requires deeper engagements of other government or parties. He however noted that at times, Memorandum of Understanding can be entered into between parties to operationalize certain agreements.

It was agreed that although the Committee had three Bilateral Air Services Agreements for ratification (between Kenya and Jordan; Kenya and Jamaica; and Kenya and the Bahamas) and one protocol amending the Bilateral Air Services Agreement between Kenya and Turkey, the Committee could be taken through one agreement between Kenya and Jordan as in order for the Committee to familiarize itself more with the contents of such a treaty. Mr. Nicholas Bodo took Members through the Bilateral Air Services Agreements between Kenya and Jordan clause by clause.

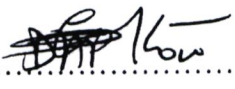
MIN No. TPWH 224/2018:

ANY OTHER BUSINESS

1. Members wanted to have details on the Kenya Airways maiden trip to the United States on 28th October 2018. Mr. Bodo undertook to get back to the Committee once he ascertains with relevant officers from the Ministry and Kenya Airways.
2. Members raised issues regarding the budget-making process for parastatals vis-à-vis the need for transparency and accountability and in light of the National Assembly's budget-making and oversight roles. It was proposed that a roundtable meeting or a retreat be organized between 5th and 8th September 2018 where all stakeholders will be invited for further deliberations.
3. Members also raised issues on absorption capacity of funds especially with regard to the State Department for Infrastructure. It was proposed that the Ministry, together with the National Treasury, be invited for further deliberations.

MIN No. TPWH 225/2018: ADJOURNMENT

There being no other business, the sitting was adjourned at half past noon. The next meeting to be held on notice.

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

Date.....

MINUTES OF THE SIXTY SEVENTH (67TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 30TH NOVEMBER 2018 AT 10.00 A.M. IN THE BARAZA CONFERENCE ROOM, WHITESANDS HOTEL, MOMBASA

MEMBERS PRESENT

1. Hon. Moses Kuria - Vice Chairperson (**Chairing**)
2. Hon. Johnson Many Naicca
3. Hon. Peris Pesi Tobiko
4. Hon. Suleiman Dori Ramadhani
5. Hon. Savula Ayub Angatia
6. Hon. Ahmed Bashane Gaal
7. Hon. Ahmed Abdisalan Ibrahim
8. Hon. Gideon Mutemi Mulyungi
9. Hon. Kulow Maalim Hassan
10. Hon. Rehema Dida Jaldesa

MEMBERS ABSENT WITH APOLOGY

1. Hon. David Pkosing - Chairperson
2. Hon. Samuel Arama
3. Hon. David Njuguna Kiaraho
4. Hon. Rigathi Gachagua
5. Hon. Vincent Kemosi Mogaka
6. Hon. Mugambi Murwithania Rindikiri
7. Hon. Shadrack John Mose
8. Hon. Dominic Kipkoech Koskei
9. Hon. Tom Mboya Odege

SECRETARIAT

1. Ms. Tungo Aaron - Clerk Assistant I
2. Ms. Nuri Nataan - Clerk Assistant III

- | | | |
|-----------------------|---|----------------------|
| 3. Mr. Abdinasir Moge | - | Fiscal Analyst II |
| 4. Ms. Mercy Wanyonyi | - | Legal Counsel II |
| 5. Mr. James Muguna | - | Research Officer III |
| 6. Mr. Eugene Luteshi | - | Audio Officer |
| 7. Mr. Yeziel Jilo | - | Sergeant at Arm |
| 8. Ms. Alice Kitur | - | Secretary |

MIN No. TPWH 312/2018: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past ten o'clock and proceeded to say a prayer. Introductions were made thereafter. The programme for the retreat was adopted having been proposed by and seconded by Hon. Rehema Dida Jaldesa and Hon. Ahmed Abdisalan Ibrahim respectively.

MIN No. TPWH 313/2018: CONSIDERATION FOR RATIFICATION OF THE BILATERAL AIR SERVICES AGREEMENTS BETWEEN KENYA AND JORDAN; KENYA AND JAMAICA; KENYA AND THE BAHAMAS; AND THE PROTOCOL AMENDING THE BILATERAL AIR SERVICE AGREEMENT BETWEEN KENYA AND TURKEY

The Committee considered and adopted the report with the following observations and recommendation, that:-

Observations

1. The Constitution in Article 2 (6) provides for the entrenchment of this Agreement into the laws of Kenya.
2. The Agreement provides for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.