

BILATERAL AIR SERVICES

AGREEMENT

BETWEEN


THE GOVERNMENT OF
THE REPUBLIC OF KENYA

AND

THE GOVERNMENT OF
THE REPUBLIC OF
SOUTH AFRICA

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 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 JUN 2021	DAY: THURSDAY
TABLED BY:	LOM
SUBMITTED BY:	Mainak Wayku

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**BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA
PREAMBLE**

The Government of the Republic of Kenya and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Contracting Parties" and in the singular as a "Contracting Party");

BEING parties to

The Yamoussoukro Declaration on a New African Air Transport Policy adopted on 7 October 1988;

The Yamoussoukro Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalisation of Access to Air Transportation markets in Africa on 14 November 1999 as endorsed by the organisation of African unity (OAU) Heads of States in July 2000; and

The Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;

ACKNOWLEDGING the importance of air transportation as a means of creating and preserving friendship, understanding and co-operation between the peoples of the two countries;

DESIRING to contribute to the progress of international civil aviation;

DESIRING to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories;

HEREBY AGREE as follows:



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ARTICLE 1
DEFINITIONS

In this Agreement, unless the context otherwise indicates -

"Abuja Treaty" means the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June 1991 and which entered into force on 12 May 1994;

"aeronautical authority" means, in the case of the Republic of Kenya, the Minister responsible for civil aviation and, in the case of the Republic of South Africa the Minister responsible for civil aviation as provided for in this Agreement;

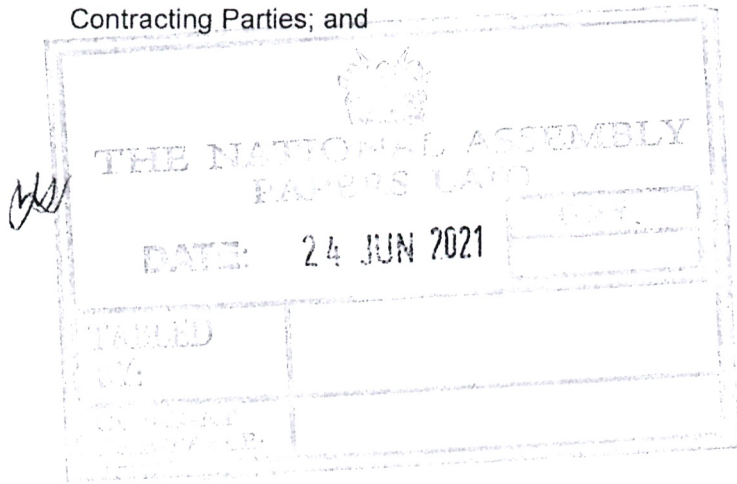
"agreed services" means a scheduled international air service on the routes specified in the Annex to this Agreement for the transport of passengers, baggage, cargo and mail in accordance with agreed capacity entitlements;

"Agreement" means this Agreement, the Annex thereto and any amendments to the Agreement or to the Annex;

"air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;

"Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December 1944, and includes -

- (a) any Annex or any amendment thereto adopted in terms of Article 90 of the Convention, insofar as such Annex or amendment is binding on the Contracting Parties; and



- (b) any amendment which has entered into force in terms of Article 94(a) of the Convention and has been ratified by the Contracting Parties in terms of their applicable domestic law;

"Countries bound by the Yamoussoukro Decision" means:

- The African States signatory to the Abuja Treaty and who has not filed formal notification to withdraw from the Yamoussoukro Decision; and
- any other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision;

"designated airline" means one or more airlines designated and authorised in accordance with Article 3 of this Agreement;

"regular equipment" means an article, other than stores and spare parts of a removable nature, for use on board an aircraft during flight, including first aid and survival equipment;

"spare part" means an article of a repair or replacement nature for incorporation in an aircraft;

"specified route" means a route specified in the Annex to this Agreement;

"tariff" means the prices to be charged for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions of agency and other auxiliary services, but excluding remuneration and conditions for carriage of mail;

"territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;

"user charge" means a charge made to airlines for the provision for aircraft,

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their crews and passengers of airport and air navigation facilities, including related services and facilities; and

"Yamoussoukro Decision" means the "Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air Transport Markets in Africa" adopted by the Assembly of Heads of States and Government in Lome, Togo, on 12 July 2000.

ARTICLE 2
GRANT OF RIGHTS

- (1) Each Contracting Party shall grant to the other Contracting Party the rights provided for in this Agreement to enable its designated airline to establish and operate international air services on the routes specified in the Annex.
- (2) Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall have the right-
 - (a) to fly across the territory of the other Contracting Party without landing;
 - (b) to make stops in that territory for non-traffic purposes; and
 - (c) to land in the territory of the other Contracting Party for the purpose of taking on board and discharging traffic in passengers, baggage, cargo and mail while operating an agreed service.
- (3) The airlines of each Contracting Party, other than those designated in terms of Article 3, shall also have the rights provided for in paragraphs (a) and (b) of sub-Article (2).
- (4) Nothing in sub-Article (2) shall confer on a designated airline of a Contracting Party the right of taking on board in the territory of the other Contracting Party, passengers, baggage, cargo and mail, carried for remuneration or hire and

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destined for another point in the territory of the other Contracting Party.

- (5) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of a Contracting Party is unable to operate a service on its normal routes, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of such routes, including the temporary granting of alternative rights, as mutually decided by the Contracting Parties.

ARTICLE 3

DESIGNATION AND AUTHORISATION

- (1) Each Contracting Party shall have the right to designate in writing, through the diplomatic channel, to the other Contracting Party one or more airlines to operate the agreed services on the specified routes and to revoke or alter in writing through the diplomatic channel, any designation of an airline.
- (2) The agreed services may begin at any time, in whole or in part, but not before-
- (a) the Contracting Party to whom the rights have been granted shall have designated an airline for the specified route pursuant to sub-Article (1);
 - (b) the Contracting Party granting the rights shall have given, with the least possible delay and subject to Article 4, the appropriate operating authorisation to the airline concerned; and
 - (c) a timetable has been filed in accordance with Article 12.
- (3) For the purpose of granting the appropriate operating authorisation provided for in sub-Article (2), the aeronautical authority of a Contracting Party may require the designated airline of the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the domestic law in force in their respective countries normally applied to the operation of

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international air services by such authorities in conformity with the provisions of the Convention and eligibility criteria as defined in the Yamoussoukro Decision.

ARTICLE 4

REVOCATION AND LIMITATION OF AUTHORISATION

- (1) The aeronautical authority of a Contracting Party shall, in respect of a designated airline of the other Contracting Party, have the right to withhold the authorisation referred to in Article 3, to revoke or suspend such authorisation or impose conditions, temporarily or permanently at any time in the event-
 - (a) of failure by such airline to qualify in terms of or to comply with the domestic laws in force in their respective countries normally applied by the aeronautical authority of the Contracting Party in conformity with the Convention;
 - (b) that the aeronautical authorities of the first Contracting Party are not satisfied that the said airline is substantially owned by citizens of the Contracting Party designating it, and holds appropriate operating authorisation issued by the Contracting Party designating the airline; or
 - (c) that such airline fails to operate in accordance with the conditions prescribed in this Agreement.
- (2) Unless immediate action is essential to prevent further infringement of the laws referred to above, the rights enumerated in sub-Article (1) shall be exercised only after consultations in accordance with Article 17 with the aeronautical authority of the other Contracting Party.

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ARTICLE 5
AVIATION SAFETY

- (1) A Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of such request.
- (2) If, following such consultations, a Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas referred to above which 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. Such Contracting Party shall take appropriate corrective action and failure to take appropriate action within fifteen (15) days of being notified thereof, or such longer period as may be agreed upon, shall be grounds for the application of Article 4.
- (3) Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the designated airline of one Contracting Party on services to or from the territory of the other Contracting Party, while within the territory of the other Contracting Party, be subject to an examination by the authorised representative of that Contracting Party. The purpose of such examination shall include the verification of the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (hereinafter referred as "ramp inspection"), provided this does not lead to unreasonable delay.
- (4) If any such ramp inspection or series of ramp inspections gives rise to serious concerns that-

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- (a) 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) 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 ramp 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 designated airline of one Contracting Party in accordance with sub-Article 3 above is denied by the representatives of that designated airline, the other Contracting Party may infer that serious concerns of the type referred to in sub-Article 4 above arise and draw conclusions referred to in that sub-Article.
- (6) Each Contracting Party reserves the right to immediately suspend or vary the operating authorisation of a designated airline of the other Contracting Party in the event the first Contracting Party concludes, whether as a result of a ramp inspection or consultation, that immediate action is essential to the safety of airline operation.
- (7) Any action by one Contracting Party in accordance with sub-Articles (2) and (6) above shall be discontinued upon compliance by the other Contracting Party with the safety provisions of this Article.



ARTICLE 6
APPLICATION OF DOMESTIC LAW

- (1) The domestic law in force in the territory of a Contracting Party relating to the admission to, sojourn in, or departure from its territory of aircraft engaged in international air services, or to the operation and navigation of such aircraft, shall be applied to the aircraft of a designated airline of the other Contracting Party upon its entry into, departure from and while within the territory of the first Contracting Party.

- (2) The domestic law in force in the territory of a Contracting Party relating to the admission to, sojourn in, and departure from its territory of passengers, baggage, crew, cargo or mail of aircraft, including laws and regulations relating to entry, clearance, aviation security, immigration, passports, customs, quarantine and sanitary measures, or in the case of mail, postal laws and regulations, shall be complied with by or on behalf of such passengers, baggage, crew, cargo or mail of the designated airline of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

- (3) Passengers, baggage, cargo and mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purposes shall, except in respect of security measures, narcotics control or in special circumstances, be subject to no more than a simplified control.

- (4) Neither Contracting Party may grant any preference to its own or any other airline over the designated airline of the other Contracting Party in the application of domestic law referred to in this Article.

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ARTICLE 7RECOGNITION OF CERTIFICATES AND LICENCES

- (1) A certificate of airworthiness, a certificate of competency and any licence issued, or rendered valid by a Contracting Party and which is still in force, shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services: Provided that such a certificate or licence was issued or rendered valid pursuant to, and in conformity with, the minimum standards established in terms of the Convention: Provided further that each Contracting Party reserves the right to refuse to recognise, for the purpose of flights undertaken pursuant to rights granted under Article 2(2), any certificate of competency and any licence granted to its own nationals by another State.
- (2) If the privileges or conditions of a licence or certificate issued or rendered valid by a Contracting Party permit a difference from the standards established in terms of the Convention, whether or not that difference has been filed with the International Civil Aviation Organisation, the other Contracting Party may, without prejudice to the rights of the first Contracting Party, request consultations in accordance with Article 17 with the first Contracting Party with a view to satisfying itself that the practice in question is acceptable to it.

ARTICLE 8CUSTOMS DUTIES AND OTHER CHARGES

- (1) Aircraft operated on agreed services by a designated airline of a Contracting Party, as well as their regular equipment, supplies of fuel, lubricants (including hydraulic fluids), consumable technical supplies, spare parts, aircraft stores including food, beverages, liquor, tobacco and other products for sale to or use by passengers, in limited quantities, during the flight, and other items intended for or used solely in connection with the aviation operation or servicing, which are on board such aircraft, shall, on entering into the territory of the other Contracting Party, be exempt from customs duties, excise duties and charges: Provided that such equipment, supplies and stores remain on

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board the aircraft until they are re-exported or consumed during flight on the agreed service.

- (2) There shall also be exemption from the same national or local duties, fees and charges, with the exception of charges based on the cost of the service provided, in respect of-
 - (a) aircraft stores taken on board in the territory of a Contracting Party, within the limits that may be fixed by the appropriate authorities of the said Contracting Party, and intended for use on board the aircraft operated on an international service by a designated airline of the other Contracting Party;
 - (b) spare parts (including engines) and regular equipment imported into the territory of a Contracting Party for the maintenance or repair of aircraft operating agreed services by the designated airline of the other Contracting Party;
 - (c) fuels and lubricants (including hydraulic fluids) destined for the designated airline of a Contracting Party to supply aircraft operating agreed services, even when these supplies are to be used on any part of a journey performed over the territory of the other Contracting Party in which they have been taken on board; and
 - (d) baggage and cargo in direct transit.
- (3) The items referred to in paragraphs (a), (b), (c) and (d) of sub-Article (2), may be required to be kept under customs supervision or control.
- (4) The regular equipment, as well as spare parts, aircraft stores, supplies of fuel, lubricants (including hydraulic fluids) and other items referred to in sub-Article (1) normally retained on board an aircraft operated by a designated airline of a Contracting Party may be unloaded in the territory of the other Contracting

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Party only with the approval of the customs authorities of that territory. In such case, the said items may be placed under the supervision of those customs authorities until they are re-exported or otherwise disposed of in accordance with the domestic law of that Contracting Party.

- (5) The exemptions provided for in this Article shall be available in situations where a designated airline of a Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items referred to in sub-Articles (1) and (2): Provided that such other airline similarly enjoys such exemptions from the other Contracting Party.

ARTICLE 9

PRINCIPLES GOVERNING THE OPERATION OF AGREED

SERVICES

- (1) The designated airlines of each Contracting Party shall be allowed fair and equitable treatment in order that it may enjoy equal opportunity in the operation of the agreed service. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination and unfair competitive or predatory practices adversely affecting the competitive position of the designated airlines of the other Contracting Party in the exercise of its rights and entitlements set out in this Agreement.
- (2) There shall be no limits on the number of frequencies and capacity offered on air service linking any intra-African city pair combinations between the Contracting Parties. Each designated airline(s) shall be allowed to mount and operate such capacity and frequency as such airline(s) deems appropriate.
- (4) Consistent with the rights referred to in sub-Article (3), the Contracting Parties shall not unilaterally limit the volume of traffic, the type of aircraft to be operated or the number of flights per week, except for environmental, safety, technical or other special consideration: Provided that such actions are not

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intended as measures for the protection of the commercial or economic interests of a designated airline.

- (5) Notwithstanding sub-Articles (3) and (4), the Contracting Parties may impose conditions, limit or refuse the increase of capacity or frequency of a designated airline: Provided such actions-
- (a) are non-discriminatory and applied under uniform conditions to all airlines and are consistent with Article 15 of the Convention, without discrimination on the ground of nationality or identity of airlines;
 - (b) have a limited period of validity;
 - (c) do not unduly affect the objectives of the Yamoussoukro Decision;
 - (d) do not unduly distort competition between airlines; and
 - (e) are not more restricted than necessary in order to relieve the problem and are not more restrictive than those applied to any other airlines(s) of a state not party to the Yamoussoukro Decision.
- (6) When a Contracting Party considers that intervention in terms of sub-Article (4) is necessary, such Contracting Party shall, at least sixty (60) days before the effective date of such action, notify the other Contracting Party thereof, providing adequate justification for the need for such measures so as to allow consultations prior to the date of entry into force of the measure. Such measure may be implemented only if within thirty (30) days of its notification, the other Contracting Party has not indicated the intention to consent to such measures.

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ARTICLE 10
COMMERCIAL ACTIVITIES

- (1) A designated airline of a Contracting Party shall, on a reciprocal basis, be allowed to establish in the territory of the other Contracting Party offices for the promotion and sale of air transportation services.
- (2) A designated airline of a Contracting Party shall be allowed to bring in and maintain in the territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of air transportation. These staff requirements may, at the option of a designated airline, be satisfied by its own personnel or by using the services of any other organisation, company or airline operating in the territory of the other Contracting Party, and authorised to perform such services in the territory of that Contracting Party.
- (3) A Contracting Party shall grant to any designated airline of the other Contracting Party the right to engage in the sale of air transportation in its territory directly and, at the airline's discretion, through its agents. Each designated airline shall have the right to sell such transportation and any person shall be free to purchase such transportation in any currency.
- (4) Any designated airline of a Contracting Party shall have the right to pay for local expenses in the territory of the other Contracting Party in local currency, or in freely convertible currencies: Provided that this accords with local currency regulations.
- (5) The activities referred to in this Article shall be carried out in accordance with the domestic law in force in the territory of the relevant Contracting Party.

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ARTICLE 11TARIFFS

- (1) In the case of a tariff increase, there shall be no approval required by the aeronautical authorities of the Contracting Party concerned for a tariff to be charged by the designated airlines of Contracting Parties for the carriage of passenger, cargo and mail. The airlines shall in this case file such tariff with the competent authorities thirty (30) working days before they enter into effect.
- (2) This provision is not applicable in the case of lowering of a tariff, which takes immediate effect according to the will of the airline.

ARTICLE 12TIMETABLE

- (1) A designated airline of a Contracting Party shall submit to the aeronautical authority of the other Contracting Party for its information, 30 days in advance, the timetable of its intended services, specifying the frequency, type of aircraft, configuration and number of seats to be made available to the public.
- (2) Any subsequent changes to the approved timetables of a designated airline shall be submitted to the aeronautical authority of the other Contracting Party for its information.

ARTICLE 13PROVISION OF INFORMATION

The aeronautical authority of a Contracting Party shall, upon request, provide or shall cause its designated airline(s) to provide the aeronautical authority of the other Contracting Party with such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the operation of the agreed services, including, but not limited to, statements of statistics related to the traffic

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carried by its designated airline(s) between points in the territory of the other Contracting Party and other points on the specified routes.

ARTICLE 14
TRANSFER OF EARNINGS

- (1) Subject to its applicable domestic law, each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure earned by such designated airline in the territory of such Contracting Party in connection with the carriage of passengers, baggage, cargo and mail, as well as from any other activities related to air transport that may be permitted under domestic law. Such transfers shall be effected at the rate of exchange in accordance with the domestic law applicable in the respective countries governing current payments, but where there is no official exchange rate such transfers shall be effected at the prevailing foreign exchange market rate for current payments.
- (2) In the event that the form of payment between the Contracting Parties is governed by a special agreement, such an agreement shall apply.

ARTICLE 15
USER CHARGES

- (1) Each Contracting Party shall endeavour to ensure that user charges imposed or permitted to be imposed by its competent authorities on a designated airline of the other Contracting Party are just and reasonable. These charges shall be based on sound economic principles.
- (2) Neither Contracting Party shall impose or permit to be imposed on the designated airline of the other Contracting Party user charges higher than those imposed on its own designated airline operating similar international air services using similar aircraft and associated facilities and services.

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- (3) Each Contracting Party shall encourage consultations between its responsible charging bodies and the designated airline using the facilities and services. Where practicable, such consultations should be through the appropriate representative airline organisation.
- (4) Reasonable advance notice shall, whenever possible, be given to the designated airline of any proposals for changes to charges referred to in this Article, together with relevant supporting information and data, to enable it to express and have its views taken into account before any changes are made.

ARTICLE 16
AVIATION SECURITY

- (1) Consistent with their rights and obligations under international law binding on the Contracting Parties, the Contracting Parties affirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference, forms an integral part of this Agreement.
- (2) Subject to applicable domestic law and without derogating from the generality of their rights and obligations in terms of 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, opened for signature at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971; and any other multilateral agreement governing civil aviation security binding upon both Contracting Parties.
- (3) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other

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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.

- (4) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to both Contracting Parties.
- (5) The Contracting Parties 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 respective territories, and the operators of airports in their respective territories, act in conformity with such aviation security provisions as are applicable to both Contracting Parties.
- (6) Each Contracting Party agrees that its operators of aircraft shall be required to observe the aviation security provisions referred to in sub-Article (4) applied by the other Contracting Party for entry into, sojourn in, or departure from 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 apply security controls to passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall give positive consideration to any request from the other Contracting Party for reasonable special security measures in its territory to meet a particular threat to civil aviation.
- (7) If an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of such aircraft, their passengers and crew, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat as rapidly as possible

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commensurate with minimum risk to life

- (8) Each Contracting Party shall take such measures as it may find practicable to ensure that an aircraft of the other Contracting Party, subjected to an act of unlawful seizure or any other act of unlawful interference, which is on the ground in its territory, is detained thereon unless its departure is necessitated by the overriding duty to protect the lives of its crew and passengers. Wherever practicable, such measures shall be taken on the basis of consultations with the other Contracting Party.
- (9) If a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the aeronautical authority of the first Contracting Party may request immediate consultations with the aeronautical authority of the other Contracting Party. Failure to reach a satisfactory agreement within (15) fifteen days from the date of such request shall constitute grounds for the application of sub-Article (1) of Article 4. If required by an emergency, a Contracting Party may take action in terms of Article 4 prior to the expiry of fifteen (15) days. Any action taken in accordance with this sub-Article shall be discontinued upon compliance by the other Contracting Party with the security provisions of this Article.

ARTICLE 17
CONSULTATIONS

- (1) Either Contracting Party may at any time request consultations on the implementation, interpretation, application, amendment of, or compliance with this Agreement.
- (2) Subject to Articles 5 and 16 such consultations, which may be through discussion or correspondence, shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise mutually decided.





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ARTICLE 18AMENDMENT OF AGREEMENT

- (1) If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, such amendment shall be agreed upon in accordance with the provisions of Article 17 and shall be effected by an Exchange of Notes, through the diplomatic channel, and shall come into effect on the date on which each Contracting Party has notified the other of its compliance with the constitutional requirements necessary for the implementation of the relevant amendment.
- (2) Notwithstanding the provisions of sub-Article (1), amendments to the Annex to this Agreement may be agreed upon directly by the aeronautical authority of the Contracting Parties. Such amendments shall apply from the date they have been agreed upon and enter into force when confirmed by both Contracting Parties through the diplomatic channel.
- (3) This Agreement shall, *mutatis mutandis*, be deemed to have been amended by those provisions of any international convention or multilateral agreement that may become binding on both Contracting Parties.

ARTICLE 19SETTLEMENT OF DISPUTES

- (1) If any dispute arises between the Contracting Parties relating to the interpretation or implementation of this Agreement, the Contracting Parties shall in the first place endeavour to settle such dispute by negotiation.
 - (2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute to some competent and independent person or body for mediation.
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- (3) If settlement is not reached in accordance with sub-Article (1) or (2) the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators.
- (4) Each Contracting Party shall appoint one arbitrator and the third arbitrator, to be jointly appointed by the two arbitrators so appointed, shall act as President of the tribunal.
- (5) Each Contracting Party shall appoint its arbitrator within a period of sixty (60) days from the date of receipt of a notice by either Contracting Party from the other, through the diplomatic channel, requesting arbitration of the dispute by such a tribunal and the third arbitrator, who shall be a national of a third State, shall be appointed within a further period of sixty (60) days.
- (6) If either Contracting Party fails to appoint an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified; the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators, as the case may be: Provided that the President is not a national of either Contracting Party, in which case the Vice President of that Council may be so requested. In such a case, the arbitrator or arbitrators appointed by the said President or Vice President, as the case may be, shall not be nationals or permanent residents of the respective States of the Contracting Parties.
- (7) The tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure.
- (8) Subject to the final decision of the tribunal, the Contracting Parties shall bear in equal proportion the interim costs of arbitration.
- (9) The Contracting Parties shall comply with any provisional ruling and the final decision of the tribunal.



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- (10) If, and for as long as, a Contracting Party fails to comply with a decision contemplated in sub-Article (6), the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted in terms of this Agreement to the Contracting Party in default.

ARTICLE 20

REGISTRATION OF AGREEMENT AND AMENDMENTS

The Contracting Parties shall submit this Agreement and any subsequent amendments thereto to the International Civil Aviation Organisation for registration.

ARTICLE 21

TERMINATION OF AGREEMENT

- (1) Either Contracting Party may at any time from the entry into force of this Agreement give notice in writing through the diplomatic channel to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organisation. The Agreement shall terminate one (1) year after the date of receipt of the notice by the other Contracting Party unless the notice to terminate is withdrawn by agreement before the expiry of this period.
- (2) In default of acknowledgement of receipt of a notice of termination by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the date on which the International Civil Aviation Organisation acknowledged receipt thereof unless the notice to terminate is withdrawn by agreement before the expiry of this period.

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ARTICLE 22
ENTRY INTO FORCE

This Agreement shall enter into force on the date on which both Contracting Parties have notified each other in writing through the diplomatic channel, of their compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in two originals in the English language.

DONE at on this day of

**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF KENYA**

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ANNEX
ROUTE SCHEDULE

For the designated airline(s) of the Republic of Kenya

Point(s) of Origin	Intermediate Point(s)	Point(s) in the Republic of Kenya	Point(s) Beyond
Points in the Republic of South Africa	Any points	Any points	Any points

For the designated airline(s) of the Republic of South Africa

Point(s) of Origin	Intermediate Point(s)	Point(s) in the Republic of South Africa	Point(s) Beyond
Points in the Republic of Kenya	Any points	Any points	Any points

Notes

- Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights: Provided that any service either begins or terminates in the territory of the country designating the airline.

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VEN



BILATERAL AIR SERVICES

AGREEMENT

BETWEEN

**THE GOVERNMENT OF
THE REPUBLIC OF KENYA**

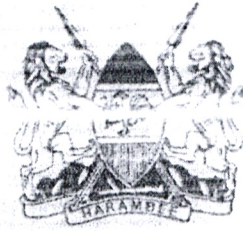
AND

**THE GOVERNMENT OF
THE REPUBLIC OF BOTSWANA**

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 JUN 2021	DAY: THURSDAY
TABLED BY:	LOM
	Mamah Wayiku

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PREAMBLE

The Government of the Republic of Kenya and the Government of the Republic of Botswana (hereinafter jointly referred to as the "Contracting Parties" and in the singular as a "Contracting Party");

BEING parties to:

The Yamoussoukro Declaration on a New African Air Transport Policy adopted on 7 October 2008;

The Yamoussoukro Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalisation of Access to Air Transportation markets in Africa on 14 November 1999 as endorsed by the organisation of African unity (OAU) Heads of States in July 2000; and

The Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;

ACKNOWLEDGING the importance of air transportation as a means of creating and preserving friendship, understanding and co-operation between the peoples of the two countries;

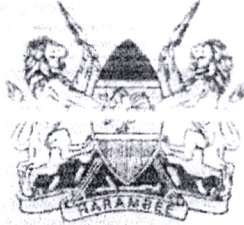
DESIRING to contribute to the progress of international civil aviation;

DESIRING to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories;

HEREBY AGREE as follows:

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ARTICLE 1
DEFINITIONS

In this Agreement, unless the context otherwise indicates -

"Abuja Treaty" means the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June 1991 and which entered into force on 12 May 1994;

"Aeronautical Authority" means in the case of the Republic of Kenya, the Cabinet Secretary in Charge of Civil Aviation and, in the case of the Republic of Botswana, the Minister responsible for civil aviation or in either case any person or body authorised to perform any particular function provided for in this Agreement;

"Agreed Services" means a scheduled international air service on the routes specified in the Annex to this Agreement for the transport of passengers, baggage, cargo and mail in accordance with agreed capacity entitlements;

"Agreement" means this Agreement, the Annex thereto and any amendments to the Agreement or to the Annex;

"Airline" and "Air Service" have their meanings respectively assigned to them in Article 96 of the Convention;

THE NATIONAL ASSEMBLY iii PAPERS LAID	
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CLERK OF PARLIAMENT	

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- "Convention" means the Convention on International Civil Aviation, adopted on 4th April 1947 and includes -
- (a) any Annex or any amendment thereto adopted in terms of Article 90 of the Convention, in so far as such Annex or amendment is binding on the Contracting Parties; and
 - (b) any amendment which has entered into force in terms of Article 94(a) of the Convention and has been ratified by the Contracting Parties in terms of their applicable domestic law;
- "Designated airline" means one or more airlines designated and authorised in accordance with Article 3 of this Agreement;
- "International Air Service" has its meaning assigned to it in Article 96 of the Convention;
- "Regular equipment" means an article, other than stores and spare parts of a removable nature, for use on board an aircraft during flight, including first aid and survival equipment;
- "Spare part" means an article of a repair or replacement nature for incorporation in an aircraft;



"Specified route"

means a route specified in the Annex to this Agreement;

"Tariff"

means the prices to be charged for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions of agency and other auxiliary services, but excluding remuneration and conditions for carriage of mail;

"Territory"

in relation to a State has the meaning assigned to it in Article 2 of the Convention;

"User charge"

means a charge made to airlines for the provision for aircraft, their crews and passengers of airport and air navigation facilities, including related services and facilities; and

"Yamoussoukro Decision"

means the "Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air Transport Markets in Africa" adopted by the Assembly of Heads of States and Government in Lome, Togo, on 12 July 2000.



ARTICLE 2
GRANT OF RIGHTS

- (1) Each Contracting Party shall grant to the other Contracting Party the rights provided for in this Agreement to enable its designated airline to establish and operate international air services on the routes specified in the Annex.
- (2) Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall have the right-
 - (a) to fly across the Territory of the other Contracting Party without landing;
 - (b) to make stops in that Territory for non-traffic purposes; and
 - (c) to land in the Territory of the other Contracting Party for the purpose of taking on board and discharging traffic in passengers, baggage, cargo and mail while operating an agreed service.
- (3) The designated airlines may exercise unrestricted 5th freedom traffic rights at Intra-African points in accordance with the Yamoussoukro Decision.
- (4) The Airlines of each Contracting Party, other than those designated in terms of Article 3, shall also have the rights provided for in paragraphs (a) and (b) of sub-Article (2).
- (5) Nothing in sub-Article (2) shall confer on a designated Airline of a Contracting Party the right of taking on board in the Territory of the other Contracting Party, passengers, baggage, cargo and mail, carried for remuneration or hire and destined for another point in the Territory of the other Contracting Party.

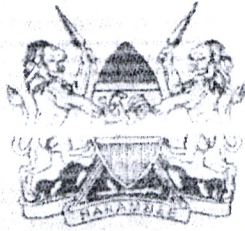


- (6) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of a Contracting Party is unable to operate a service on its normal routes, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of such routes, including the temporary granting of alternative rights, as mutually agreed by the Contracting Parties.

ARTICLE 3

DESIGNATION AND OPERATING AUTHORISATION

- (1) Each Contracting Party shall have the right to designate in writing, through the diplomatic channel, to the other Contracting Party, one or more airlines to operate the agreed services on the specified routes and to revoke or alter in writing through the diplomatic channel, any designation of an airline.
- (2) The agreed services may begin at any time, in whole or in part, but not before-
- (a) the Contracting Party to whom the rights have been granted shall have designated an airline for the specified route pursuant to sub-Article (1);
 - (b) the Contracting Party granting the rights shall have given, with the least possible delay and subject to Article 4, the appropriate operating authorisation to the airline concerned; and
 - (c) a timetable has been filed in accordance with Article 12.
- (3) For the purpose of granting the appropriate operating authorisation provided for in sub-Article (2), the Aeronautical Authority of a Contracting Party may require the designated airline of the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the domestic law in force in their respective countries normally applied to the operation of international air

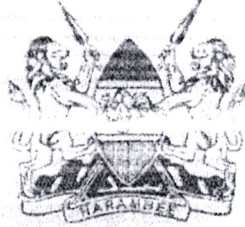


services by such authorities in conformity with the provisions of the Convention and eligibility criteria as defined in the Yamoussoukro Decision.

ARTICLE 4

REVOCAION AND LIMITATION OF AUTHORISATION

- (1) The Aeronautical Authority of a Contracting Party shall, in respect of a designated airline of the other Contracting Party, have the right to withhold the authorisation referred to in Article 3, to revoke or suspend such authorisation or impose conditions, temporarily or permanently at any time in the event-
 - (a) of failure by such airline to qualify in terms of or to comply with the domestic laws in force in their respective countries normally applied by the Aeronautical Authority of the Contracting Party in conformity with the Convention and eligibility criteria as defined in the Yamoussoukro Decision.;
 - (b) that the Aeronautical Authorities of the first Contracting Party are not satisfied that the said airline is incorporated and has its principal place of business in the Territory of the Contracting Party designating it, and holds appropriate operating authorisation issued by the Contracting Party designating the airline; or
 - (c) that such airline fails to operate in accordance with the conditions prescribed in this Agreement and the international undertakings of the Contracting Parties.
- (2) Unless immediate action is essential to prevent further infringement of the laws referred to above, the rights enumerated in sub-Article (1) shall be exercised only after consultations in accordance with Article 17 with the Aeronautical Authority of the other Contracting Party.



ARTICLE 5
AVIATION SAFETY

- (1) A Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of such request.
- (2) If, following such consultations, a Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas referred to above which 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. The Contracting Parties shall agree on a suitable period for the implementation of the appropriate corrective action. The first Contracting Party is at liberty to offer any assistance if its resources permit.
- (3) Failure to take appropriate action within the agreed corrective period, or such longer period as may be agreed upon, shall be grounds for the application of Article 4.
- (4) Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the designated airline 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 subject to an examination by the authorised representative of that Contracting Party. The purpose of such examination shall include the verification of the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (hereinafter referred as "ramp inspection"), provided this does not lead to unreasonable delay.



- (5) If any such ramp inspection or series of ramp inspections gives rise to serious concerns that-
- (a) 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) 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 ramp 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.

- (6) In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the designated airline of one Contracting Party in accordance with sub-Article 4 above is denied by the representatives of that designated airline, the other Contracting Party may infer that serious concerns of the type referred to in sub-Article 5 above arise and draw conclusions referred to in that sub-Article.
- (7) Each Contracting Party reserves the right to immediately suspend or vary the operating authorisation of a designated airline of the other Contracting Party in the event the first Contracting Party concludes, whether as a result of a ramp inspection or consultation, that immediate action is essential to the safety of airline operation.

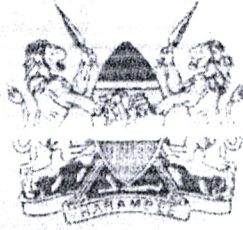


- (8) Any action by one Contracting Party in accordance with sub-Articles (3) and (7) above, shall be discontinued upon compliance by the other Contracting Party with the safety provisions of this Article.

ARTICLE 6

APPLICATION OF DOMESTIC LAW

- (1) The domestic law in force in the Territory of a Contracting Party relating to the admission to, sojourn in, or departure from its Territory of aircraft engaged in international air services, or to the operation and navigation of such aircraft, shall be applied to the aircraft of a designated airline of the other Contracting Party upon its entry into, departure from and while within the Territory of the first Contracting Party.
- (2) The domestic law in force in the Territory of a Contracting Party relating to the admission to, sojourn in, and departure from its Territory of passengers, baggage, crew, cargo or mail of aircraft, including laws and regulations relating to entry, clearance, aviation security, immigration, passports, customs, quarantine and sanitary measures, or in the case of mail, postal laws and regulations, shall be complied with by or on behalf of such passengers, baggage, crew, cargo or mail of the designated airline of the other Contracting Party upon entrance into or departure from and while within the Territory of the first Contracting Party.
- (2) Passengers, baggage, cargo and mail in direct transit across the Territory of either Contracting Party and not leaving the area of the airport reserved for such purposes shall, except in respect of security measures, narcotics control or in special circumstances, be subject to no more than a simplified control.



- (3) Neither Contracting Party may grant any preference to its own or any other airline over the designated airline of the other Contracting Party in the application of domestic law referred to in this Article.

ARTICLE 7

RECOGNITION OF CERTIFICATES AND LICENCES

- (1) A certificate of airworthiness, a certificate of competency and any licence issued, or rendered valid by a Contracting Party and which is still in force, shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services: Provided that such a certificate or licence was issued or rendered valid pursuant to, and in conformity with, the minimum standards established in terms of the Convention: Provided further that each Contracting Party reserves the right to refuse to recognise, for the purpose of flights undertaken pursuant to rights granted under Article 2(2), any certificate of competency and any licence granted to its own nationals by another State.
- (2) If the privileges or conditions of a licence or certificate issued or rendered valid by a Contracting Party permit a difference from the standards established in terms of the Convention, whether or not that difference has been filed with the International Civil Aviation Organisation, the other Contracting Party may, without prejudice to the rights of the first Contracting Party, request consultations in accordance with Article 17 of this Agreement with the first Contracting Party with a view to satisfying itself that the practice in question is acceptable to it.



ARTICLE 8

CUSTOMS DUTIES AND OTHER CHARGES

- (1) Aircraft operated on agreed services by a designated airline of a Contracting Party, as well as their regular equipment, supplies of fuel, lubricants (including hydraulic fluids), consumable technical supplies, spare parts, aircraft stores including food, beverages, liquor, tobacco and other products for sale to or use by passengers, in limited quantities, during the flight, and other items intended for or used solely in connection with the aviation operation or servicing, which are on board such aircraft, shall, on entering into the Territory of the other Contracting Party, be exempt from customs duties, excise duties and charges: Provided that such equipment, supplies and stores remain on board the aircraft until they are re-exported or consumed during flight on the agreed service.
- (2) There shall also be exemption from the same national or local duties, fees and charges, with the exception of charges based on the cost of the service provided, in respect of-
 - (a) aircraft stores taken on board in the Territory of a Contracting Party, within the limits that may be fixed by the appropriate authorities of the said Contracting Party, and intended for use on board the aircraft operated on an international service by a designated airline of the other Contracting Party;
 - (b) spare parts (including engines) and regular equipment imported into the Territory of a Contracting Party for the maintenance or repair of aircraft operating agreed services by the designated airline of the other Contracting Party;



(c) fuels and lubricants (including hydraulic fluids) destined for the designated airline of a Contracting Party to supply aircraft operating agreed services, even when these supplies are to be used on any part of a journey performed over the Territory of the other Contracting Party in which they have been taken on board; and

(d) baggage and cargo in direct transit.

(3) The items referred to in paragraphs (a), (b), (c) and (d) of sub-Article (2), may be required to be kept under customs supervision or control.

(4) The regular equipment, as well as spare parts, aircraft stores, supplies of fuel, lubricants (including hydraulic fluids) and other items referred to in sub-Article (1) normally retained on board an aircraft operated by a designated airline of a Contracting Party may be unloaded in the Territory of the other Contracting Party only with the approval of the customs authorities of that Territory. In such case, the said items may be placed under the supervision of those customs authorities until they are re-exported or otherwise disposed of in accordance with the domestic law of that Contracting Party.

(4) The exemptions provided for in this Article shall be available in situations where a designated airline of a Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the Territory of the other Contracting Party of the items referred to in sub-Articles (1) and (2): Provided that such other airline similarly enjoys such exemptions from the other Contracting Party.



ARTICLE 9
PRINCIPLES GOVERNING THE OPERATION OF AGREED
SERVICES

- (1) The designated airlines of each Contracting Party shall be allowed fair and equitable treatment in order that it may enjoy equal opportunity in the operation of the agreed service. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination and unfair competitive or predatory practices adversely affecting the competitive position of the designated airlines of the other Contracting Party in the exercise of its rights and entitlements as set out in this Agreement and in accordance with the Institutional and Regulatory texts of the Yamoussoukro Decision.
- (2) In operating the agreed services the designated airlines of each Contracting Party shall take into consideration the interests of the designated airlines of the other Contracting Party so as not to unduly affect the services which the latter provide on the whole or part of the same routes.
- (3) There shall be no limits on the number of frequencies and capacity offered on air service linking any intra-African city per combinations between the Contracting Parties. Each designated airline(s) shall be allowed to mount and operate such capacity and frequency as such airline(s) deems appropriate.
- (4) Consistent with the rights referred to in sub-Article (3), the Contracting Parties shall not unilaterally limit the volume of traffic, the type of aircraft to be operated or the number of flights per week, except for environmental, safety, technical or other special consideration: Provided that such actions are not intended as measures for the protection of the commercial or economic interests of a designated airline.



- (5) Notwithstanding sub-Articles (3) and (4), the Contracting Parties may impose conditions, limit or refuse the increase of capacity or frequency of a designated airline: Provided such actions-
- (a) are non-discriminatory and applied under uniform conditions to all airlines and are consistent with Article 15 of the Convention, without discrimination on the ground of nationality or identity of airlines;
 - (b) have a limited period of validity;
 - (c) do not unduly affect the objectives of the Yamoussoukro Decision;
 - (d) do not unduly distort competition between airlines; and
 - (e) are not more restricted than necessary in order to relieve the problem and are not more restrictive than those applied to any other airlines(s) of a state not party to the Yamoussoukro Decision.

(5) When a Contracting Party considers that intervention in terms of sub-Article (4) is necessary, such Contracting Party shall, at least sixty (60) days before the effective date of such action, notify the other Contracting Party thereof, providing adequate justification for the need for such measures so as to allow consultations prior to the date of entry into force of the measure. Such measure may be implemented only if within thirty (30) days of its notification, the other Contracting Party has not indicated the intention to consent to such measures.



ARTICLE 10
COMMERCIAL ACTIVITIES

- (1) A designated airline of a Contracting Party shall, on a reciprocal basis, be allowed to establish in the Territory of the other Contracting Party offices for the promotion and sale of air transportation services.
- (2) A designated airline of a Contracting Party shall be allowed to bring in and maintain in the Territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of air transportation in accordance of the laws of the other Contracting Party. These staff requirements may, at the option of a designated airline, be satisfied by its own personnel or by using the services of any other organisation, company or airline operating in the Territory of the other Contracting Party, and authorised to perform such services in the Territory of that Contracting Party.
- (3) A Contracting Party shall grant to any designated airline of the other Contracting Party the right to engage in the sale of air transportation in its Territory directly and, at the airline's discretion, through its agents. Each designated airline shall have the right to sell such transportation and any person shall be free to purchase such transportation in any currency.
- (4) Any designated airline of a Contracting Party shall have the right to pay for local expenses in the Territory of the other Contracting Party in local currency, or in freely convertible currencies: Provided that this accords with local currency regulations.



- (5) The activities referred to in this Article shall be carried out in accordance with the domestic law in force in the Territory of the relevant Contracting Party.

ARTICLE 11

TARIFFS

- (1) In the case of a tariff increase, there shall be no approval required by the aeronautical authorities of the Contracting Party concerned for a tariff to be charged by the designated airlines of Contracting Parties for the carriage of passenger, cargo and mail. The airlines shall in this case file such tariff with the competent authorities thirty (30) working days before they enter into effect.
- (2) This provision is not applicable in the case of lowering of a tariff, which takes immediate effect according to the will of the airline.

ARTICLE 12

TIMETABLE

- (1) A designated airline of a Contracting Party shall submit to the Aeronautical Authority of the other Contracting Party for its information, thirty (30) days in advance, the timetable of its intended services, specifying the frequency, type of aircraft, configuration and number of seats to be made available to the public.
- (2) Any subsequent changes to the approved timetables of a designated airline shall be submitted to the Aeronautical Authority of the other Contracting Party for its information.



ARTICLE 13
PROVISION OF INFORMATION

The Aeronautical Authority of a Contracting Party shall, upon request, provide or shall cause its designated airline(s) to provide the Aeronautical Authority of the other Contracting Party with such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the operation of the agreed services, including, but not limited to, statements of statistics related to the traffic carried by its designated airline(s) between points in the Territory of the other Contracting Party and other points on the specified routes.

ARTICLE 14
TAXATION AND TRANSFER OF EARNINGS

- (1) Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.
- (2) Subject to its applicable domestic law, each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure earned by such designated airline in the Territory of such Contracting Party in connection with the carriage of passengers, baggage, cargo and mail, as well as from any other activities related to air transport that may be permitted under domestic law. Such transfers shall be effected at the rate of exchange in accordance with the domestic law applicable in the respective countries governing current payments, but where there is no official exchange rate such transfers shall be effected at the prevailing foreign exchange market rate for current payments.



- (3) In the event that the form of payment between the Contracting Parties is governed by a special agreement, such an agreement shall apply.

ARTICLE 15
USER CHARGES

- (1) Each Contracting Party shall endeavour to ensure that user charges imposed or permitted to be imposed by its competent authorities on a designated airline of the other Contracting Party are just and reasonable. These charges shall be based on sound economic principles.
- (2) Neither Contracting Party shall impose or permit to be imposed on the designated airline of the other Contracting Party user charges higher than those imposed on its own designated airline operating similar international air services using similar aircraft and associated facilities and services.
- (3) Each Contracting Party shall encourage consultations between its responsible charging bodies and the designated airline using the facilities and services. Where practicable, such consultations should be through the appropriate representative airline organisation.
- (4) Reasonable advance notice shall, whenever possible, be given to the designated airline of any proposals for changes to charges referred to in this Article, together with relevant supporting information and data, to enable it to express and have its views taken into account before any changes are made.



ARTICLE 16
AVIATION SECURITY

- (1) Consistent with their rights and obligations under international law binding on the Contracting Parties, the Contracting Parties affirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference, forms an integral part of this Agreement.
- (2) Subject to applicable domestic law and without derogating from the generality of their rights and obligations in terms of 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, opened for signature at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971; and any other multilateral agreement governing civil aviation security binding upon both Contracting Parties.
- (3) 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.
- (4) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to both Contracting Parties.



- (5) The Contracting Parties 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 respective territories, and the operators of airports in their respective territories, act in conformity with such aviation security provisions as are applicable to both Contracting Parties.
- (6) Each Contracting Party agrees that its operators of aircraft shall be required to observe the aviation security provisions referred to in sub-Article (4) applied by the other Contracting Party for entry into, sojourn in, or departure from 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 apply security controls to passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall give positive consideration to any request from the other Contracting Party for reasonable special security measures in its Territory to meet a particular threat to civil aviation.
- (7) If an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of such aircraft, their passengers and crew, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat as rapidly as possible commensurate with minimum risk to life.
- (8) Each Contracting Party shall take such measures as it may find practicable to ensure that an aircraft of the other Contracting Party, subjected to an act of unlawful seizure or any other act of unlawful interference, which is on the ground



in its Territory, is detained thereon unless its departure is necessitated by the overriding duty to protect the lives of its crew and passengers. Wherever practicable, such measures shall be taken on the basis of consultations with the other Contracting Party.

- (9) If a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the Aeronautical Authority of the first Contracting Party may request immediate consultations with the Aeronautical Authority of the other Contracting Party. Failure to reach a satisfactory agreement within (15) fifteen days from the date of such request shall constitute grounds for the application of sub-Article (1) of Article 4. If required by an emergency, a Contracting Party may take action in terms of Article 4 prior to the expiry of fifteen (15) days. Any action taken in accordance with this sub-Article shall be discontinued upon compliance by the other Contracting Party with the security provisions of this Article.

ARTICLE 17
CONSULTATIONS

- (1) Either Contracting Party may at any time request consultations on the implementation, interpretation, application, amendment of, or compliance with this Agreement.
- (2) Subject to Articles 5 and 16 such consultations, which may be through discussion or correspondence, shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise mutually agreed.



ARTICLE 18

AMENDMENT OF AGREEMENT

- (1) If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, such amendment shall be agreed upon in accordance with the provisions of Article 17 and shall be effected by an Exchange of Notes, through the diplomatic channel, and shall come into effect on the date on which each Contracting Party has notified the other of its compliance with the constitutional requirements necessary for the implementation of the relevant amendment.
- (2) Notwithstanding the provisions of sub-Article (1), amendments to the Annex to this Agreement may be agreed upon directly by the Aeronautical Authority of the Contracting Parties. Such amendments shall apply from the date they have been agreed upon and enter into force when confirmed by both Contracting Parties through the diplomatic channel.
- (3) This Agreement shall, *mutatis mutandis*, be deemed to have been amended by those provisions of any international convention or multilateral agreement that may become binding on both Contracting Parties.

ARTICLE 19

SETTLEMENT OF DISPUTES

- (1) If any dispute arises between the Contracting Parties relating to the interpretation or implementation of this Agreement, the Contracting Parties shall in the first place endeavour to settle such dispute by negotiation.



- (2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute to some competent and independent person or body for mediation.
- (3) If settlement is not reached in accordance with sub-Article (1) or (2) the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators.
- (4) Each Contracting Party shall appoint one arbitrator and the third arbitrator, to be jointly appointed by the two arbitrators so appointed, shall act as President of the tribunal.
- (5) Each Contracting Party shall appoint its arbitrator within a period of sixty (60) days from the date of receipt of a notice by either Contracting Party from the other, through the diplomatic channel, requesting arbitration of the dispute by such a tribunal and the third arbitrator, who shall be a national of a third State, shall be appointed within a further period of sixty (60) days
- (6) If either Contracting Party fails to appoint an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators, as the case may be: Provided that the President is not a national of either Contracting Party, in which case the Vice President of that Council may be so requested. In such a case, the arbitrator or arbitrators appointed by the said President or Vice President, as the case may be, shall not be nationals or permanent residents of the respective States of the Contracting Parties.



- (7) The tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure.
- (8) Subject to the final decision of the tribunal, the Contracting Parties shall bear in equal proportion the interim costs of arbitration.
- (9) The Contracting Parties shall comply with any provisional ruling and the final decision of the tribunal.
- (10) If, and for as long as, a Contracting Party fails to comply with a decision contemplated in sub-Article (6), the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted in terms of this Agreement to the Contracting Party in default.

ARTICLE 20

REGISTRATION OF AGREEMENT AND AMENDMENTS

The Contracting Parties shall submit this Agreement and any subsequent amendments thereto to the International Civil Aviation Organisation for registration.



ARTICLE 21
TERMINATION OF AGREEMENT

- (1) Either Contracting Party may at any time from the entry into force of this Agreement give notice in writing through the diplomatic channel to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organisation. The Agreement shall terminate one (1) year after the date of receipt of the notice by the other Contracting Party unless the notice to terminate is withdrawn by agreement before the expiry of this period.

- (2) In default of acknowledgement of receipt of a notice of termination by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the date on which the International Civil Aviation Organisation acknowledged receipt thereof unless the notice to terminate is withdrawn by agreement before the expiry of this period.

ARTICLE 22
ENTRY INTO FORCE

This Agreement shall enter into force on the date on which both Contracting Parties have notified each other in writing through the diplomatic channel, of their compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.



IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in two originals in the English language.

DONE at **NAIROBI** on this **23rd** day of **JULY, 2019**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF KENYA**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF BOTSWANA**

Mr. James Macharia, EGH
Cabinet Secretary for Transport,
Infrastructure, Housing, Urban
Development and Public Works

Dr. Unity Dow
Minister of International Affairs and
Cooperation



ANNEX
ROUTE SCHEDULE

For the designated airline(s) of the Republic of Botswana

Point(s) of Origin	Intermediate Point(s)	Point(s) in the Republic of Botswana	Point(s) Beyond
Any International Airport	Any points		Any points

For the designated airline(s) of the Republic of Kenya

Point(s) of Origin	Intermediate Point(s)	Point(s) in the Republic of Kenya	Point(s) Beyond
	Any points	Any International Airport	Any points

Notes

1. Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights: Provided that any service either begins or terminates in the Territory of the country designating the airline.
2. The designated airlines may exercise unrestricted 5th freedom traffic rights at intra-African points in accordance with the Yamoussoukro Decision.



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

**EXPLANATORY MEMORANDUM TO RATIFICATION OF BILATERAL
AIR SERVICES AGREEMENTS BETWEEN KENYA AND SOUTH
AFRICA; AND KENYA AND BOTSWANA**

Name of the statutory instrument : Bilateral Air Services Agreements:
Between Kenya and South Africa
initialed on 15th October, 2008; and
Kenya and Botswana signed on 23rd July,
2019.

Name of the Parent Act : The Civil Aviation Act (No. 21 of 2013)

Enacted Pursuant to : Section 52 of the Civil Aviation Act
(No. 21 of 2013)

Name of the Ministry : Ministry of Transport, Infrastructure,
Housing, Urban Development and Public
Works

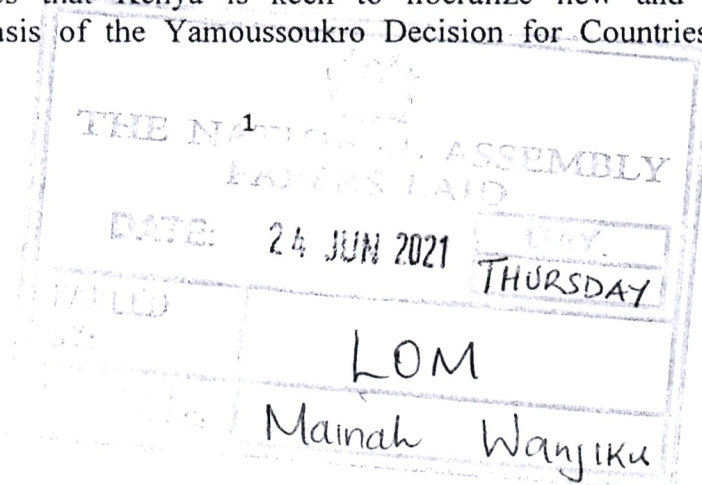
Approved on : 21st November, 2019.

1. Purpose of the Statutory Instrument

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.

2. 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.

3. Policy Background

The Ministry of Transport, Infrastructure, Housing ,Urban Development and Public Works negotiates and reviews Bilateral Air Services Agreements between Kenya and various Countries to enable Kenyan air operators provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market. 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 and Kenya Airways.

The Bilateral Air Services Agreements between Kenya and South Africa was negotiated and initialed on 15th October, 2008, and Kenya and Botswana reviewed and signed on 23rd July, 2019. 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 two Agreements are modeled on the basis of the Yamoussoukro Decision and are aimed at enabling designated airlines of either States to operate scheduled services between their territories without any restrictions.

The Kenya/South Africa Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and South Africa was negotiated and initialed on 15th October, 2008 in Nairobi. 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, Kenyan carriers operate scheduled air services to/from the Johannesburg, including Kenya Airways and Astral Aviation for all cargo operations. Similarly, South African Airways operates scheduled air services between the two States. The South Africa authorities have on several occasions requested through diplomatic channels for the Agreement to be formally signed.

The Kenya/Botswana Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Botswana was reviewed and signed on 23rd July, 2019 in Nairobi during the State visit to Kenya by the President of the Republic of Botswana on 22nd to 24th July, 2019.

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.

4. Consultation Outcome

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.

5. Impact

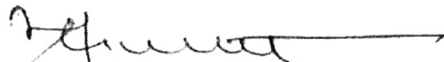
An impact assessment has not been prepared for this statutory instrument.

6. Monitoring and review

The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the Kenya Civil Aviation Authority monitor and review the implementation of the Bilateral Air Services Agreements.

7. Contact

Nicholas Bodo, Deputy Director Air Transport, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, Telephone No. 2729200.



Esther Koimett, CBS
Principal Secretary



THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 JUN 2021	DAY: THURSDAY
TABLED	LOM
BY: Mainah Wanjiku	

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

**EXPLANATORY MEMORANDUM ON THE RATIFICATION OF THE
BILATERAL AIR SERVICES AGREEMENTS BETWEEN KENYA AND
SOUTH AFRICA; AND KENYA AND BOTSWANA**

a) The Objects and Subject Matter of the Agreement

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

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

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

The Agreements were 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 strategic national interests of Kenya are paramount during the negotiations. These Agreements enable airlines to expand their existing route networks by directly operating scheduled services to other markets. In addition, where airlines are unable to offer services the Agreements allow them to enter into Commercial Arrangements such as code share agreements, which allow airlines to grow the demand in

other markets by putting their code on other carriers thereby offering seamless connectivity to the traveling public.

b) Any Constitutional Implications

i. Proposed amendment to the Constitution

There is no proposed amendment to the Constitution.

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

The Bilateral Air Services Agreements between Kenya and South Africa; and Kenya and Botswana are consistent with the Constitution and promotes constitutional values and objectives.

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

Kenyan carriers operate scheduled air services to/from Johannesburg and Cape Town, including Kenya Airways for passengers and cargo and Astral Aviation for all cargo operations. Similarly, South African Airways operates scheduled air services between the two States.

There are no scheduled air services between Kenya and Botswana. Kenya Airways suspended its scheduled operations to Botswana in 2016 and no airline from Botswana has operated scheduled services between the two countries.

It is in the interest of the Country to ratify the two Agreements.

d) Obligations imposed on Kenya by the Amendment of the Convention

There is no additional obligation that will be imposed on Kenya by the ratification of the Agreements.

e) Requirements for implementation of the Agreements

The instruments of ratification of the Agreements shall be deposited with International Civil Aviation Organization for registration.

f) Policy and legislative considerations

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 contains 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 aeronautical authorities i.e. 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

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

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

h) Ministerial responsibility

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

Further, the Cabinet Secretary enforces the provisions of the Bilateral Air Services Agreements as well as reviewing the existing agreements in line with the Medium Term Expenditure Plan.

i) Implications on matters relating to counties

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

j) The summary of the process leading to the adoption of the Agreements

i. The Kenya/South Africa Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and South Africa was negotiated and initialed on 15th October, 2008 in Nairobi. It was operationalized by the signing of a Memorandum of Understanding on the same date. The Agreement was subsequently approved by the Cabinet during the 5th Cabinet Meeting – 2019 held on Thursday, 21st November 2019.

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.

ii. The Kenya/Botswana Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Botswana was reviewed and signed on 23rd July, 2019 in Nairobi during the State visit to Kenya by the President of the Republic of Botswana on 22nd to 24th July, 2019. The Agreement was subsequently approved by the Cabinet during the 5th Cabinet Meeting – 2019 held on Thursday, 21st November 2019.

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.

k) The date of signature

The Bilateral Air Services Agreement between Kenya and South Africa was negotiated and initialed on 15th October, 2008.

The Bilateral Air Services Agreement between Kenya and Botswana was reviewed and signed on 23rd July, 2019.

l) The number of States that are party to the Agreements

The Agreements are on a bilateral basis between Kenya and South Africa and Kenya and Botswana.

m) The views of the public on the ratification of the Agreements

These Agreements are negotiated by a team comprising representatives from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works; Ministry of Foreign Affairs; Office of the Attorney General and Department of Justice; Kenya Civil Aviation Authority; Kenya Airports Authority; and a representative of the Kenya Association of Air Operators namely Kenya Airways and other local carriers

n) Whether the Agreements sought to be ratified permit reservations and any recommendations on reservations and declarations

The Agreements do not allow for reservations. However, they can be amended through mutual agreement by the Contracting Parties.

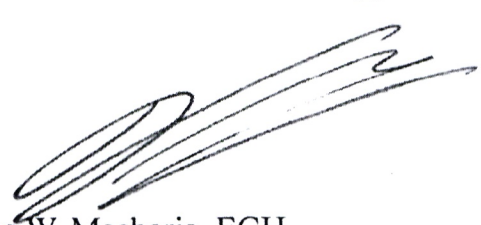
There are no recommendations for reservations of the Agreements.

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

The Agreements do not require any reservation.

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

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



James W. Macharia, EGH
CABINET SECRETARY

Date3/2/2021.....