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REPUBLIC OF KENYA



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6/6/19

TWELFTH PARLIAMENT - THIRD SESSION

THE NATIONAL ASSEMBLY

THE NATIONAL ASSEMBLY
PAPERS LAID ON THE TABLE
DATE: 06 JUN 2019
Chair, Transport & Public Works
PR

REPORT OF
THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC
WORKS AND HOUSING

ON

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

Directorate of Committee Services
Clerk's Chambers
Parliament Buildings
NAIROBI

June 2019

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PREFACE

A. Mandate of the Committee

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

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

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

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

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

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

Membership of the Committee

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

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

- | | | | |
|-----|-----------------------------|--------|----------------|
| 17. | Hon. Gideon Mutemi Mulyungi | WDP | Mwingi Central |
| 18. | Hon. Savula Ayub Angatia | ANC | Lugari |
| 19. | Hon. Vincent Kemosi Mogaka | Ford K | West Mugirango |

B. Committee Secretariat:

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

C. EXECUTIVE SUMMARY

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

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

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

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

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

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

F. Acknowledgement

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

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

HON. DAVID PKOSING, CBS, M.P

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

1.0 INTRODUCTION

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

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

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

I. Outline of the Protocol

a. Articles of the Montreal Protocol

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

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

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

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

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

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

a. Purpose of the Protocol

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

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

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

b. Constitutional Implications

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

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

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

d. Obligations imposed by the Protocol

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

e. Policy and legislative considerations

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

The International Civil Aviation Organization (ICAO) Diplomatic Conference held in Montréal, Canada from 26th March to 4th April, 2014 adopted the Montreal Protocol, 2014. The Protocol

amends the Convention on Offences and Certain Acts Committed on Board Aircraft (Tokyo Convention, 1963) which Kenya ratified on 22nd June 1970.

f. Implications on matters relating to Counties

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

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

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

h. The date of Signature

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

i. Proposed text of any reservation

Reservations are not contemplated in the Protocol.

3.0 MEETING BETWEEN THE COMMITTEE AND THE MINISTRY

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

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

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

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

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

4.0 COMMITTEE OBSERVATIONS

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

2. The Protocol seeks to empower States to deal with unruly passengers, while preserving prosecutorial discretion and was necessitated by the fact that there has been an increase in incidents of unruly passengers on aircraft

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

5.0 COMMITTEE RECOMMENDATION

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

SIGNED



HON. DAVID PKOSING, CBS, M.P
CHAIRPERSON


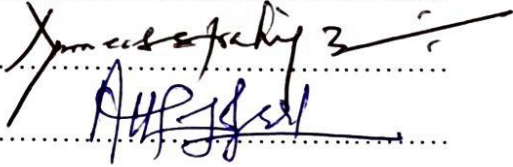

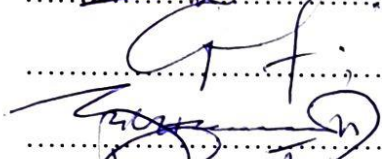

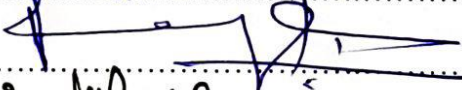




DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

4th June, 2019

DATE.....

Adoption of the Report

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

1. Hon. David Pkosing, M.P. -Chairperson 
2. Hon. Moses Kuria, M.P. -Vice Chairperson
3. Hon. Samuel Arama, M.P.
4. Hon. Johnson Many Naicca, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Savula Ayub Angatia, M.P.
7. Hon. Suleiman Dori Ramadhani, M.P.
8. Hon. Ahmed Abdisalan Ibrahim, M.P. 
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