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REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 JUN 2019	
THE NATIONAL ASSEMBLY DAY	
TABLED BY:	chair, Transport & Public Works (Hon. Phosy David)
CLERK-AT-THE-TABLE:	

REPORT OF

THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

ON

THE RATIFICATION OF THE BILATERAL AIR SERVICES AGREEMENT BETWEEN KENYA AND THE HELLENIC REPUBLIC; KENYA AND BURKINA FASO; KENYA AND CAMBODIA; KENYA AND SEYCHELLES AND KENYA AND FINLAND

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	Ol 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 following bilateral air service agreements:

- a) Kenya and the Hellenic Republic;
- b) Kenya and Burkina Faso;
- c) Kenya and Cambodia;
- d) Kenya and Seychelles; and
- e) Kenya and Finland.

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 on 12th March, 2019 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 instrument is to approve Bilateral Air Services Agreements between Kenya and various Countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market.

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

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.

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

The Committee received a comprehensive brief from the Ministry of Transport Public Works and Housing on Tuesday, 23rd April, 2019, in a meeting that was held in Parliament.

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.

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 bilateral air services agreement between Kenya and the Hellenic Republic; Kenya and Burkina Faso; Kenya and Cambodia; Kenya and Seychelles and Kenya and Finland 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

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

The Cabinet approved the signing of Agreements between Kenya and the various States during the ICAO Air Services Negotiation Event (ICAN 2018) in Nairobi, and thereafter subject them to ratification process as per the provisions of the Treaty Making and Ratification Act, 2012. The various States were ready to sign the respective Agreements and it was prudent to save on costs by having them signed during ICAN.

The Bilateral Air Services Agreements between Kenya and the Kingdom of Cambodia was negotiated, concluded and signed on 19th September, 2014, Kenya and Burkina Faso was negotiated and initialled on 28th August, 2008 and signed on 14th December, 2018, Kenya and Finland was negotiated and initialled during ICAN 2017 on 5th December, 2017 and signed on 14th December, 2018 and Kenya and Seychelles Bilateral Air Services Agreement was negotiated on 13th December, 2013 and Kenya and the Hellenic Republic Bilateral Air Services Agreement was negotiated on 5th December, 2016 and signed on 14th December, 2018.

The five (5) Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories.

I. OUTLINE OF THE FIVE AGREEMENTS

(1) Bilateral Air Services Agreements common Articles

1. **Definition of terms** - this article defines the technical terminologies as used in the Air Services Agreement;
2. **Grant of rights** - Provides for grants of rights by the parties. The airlines of the parties shall enjoy the right to fly without landing across the territory of the other party, the right to make stops in the other territory for non-traffic purposes, and the right to make stops in the other territory to offload and take passengers on board;
3. **Designation and authorization** - Provides for designation and authorization. In terms of this Article, each party may designate through diplomatic channels, one or more airlines to operate the agreed services in accordance with the agreement, and such grant of authorization should be done with minimum procedural delay;

4. **Withholding, revocation and limitation of authorization** - gives a party state the right to withhold , revoke and limit an authorisation granted due to failure to have “substantial ownership and effective control” or “principal place of business”;
5. **Application of laws** - Provides for applicability of laws and regulations. It reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the parties’ territory. The laws and regulations apply to the designated airlines of the other party, passengers, crew, mail and cargo. Such laws shall apply each party while in the territory of the other party;
6. **Fair Competition** - In terms of this Article, each party shall ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete, in providing air transport services within their respective territories;
7. **Customs duties, taxes and charges** - Provides for exemption from customs duties and taxation. It provides that each party shall be guided by national laws and regulations in granting exemption from paying customs duty to the other party for regular equipment, spare parts, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on the flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services. Such equipment and materials may be unloaded only with the approval of the customs authority of the other party, and must be placed under the supervision of the customs authorities.
8. **User charges** - Provides for fair competition. In terms of this Article, each party shall ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete, in providing air transport services within their respective territories.
9. **Recognition of certificates** - Provides for recognition of certificates and licenses. It reaffirms the parties’ obligations to recognize the validity of certificates of airworthiness, competency and licenses issued by the other party, so long as they meet the minimum standards under the convention;
10. **Tariffs (pricing)** - Provides for the establishment of Air Transport Tariffs. It provides that the applicable tariffs between the territories shall be at reasonable levels. In establishing the tariffs regard shall be had to the cost of operation, interests of users, reasonable profit and class of service. The parties may engage in consultations in respect of any tariff charged by the other party, and such consultations shall be held within 30 days of request.
11. **Direct transit** - it provides for a standard facilitation measure for simplified transit found in most air services agreements;
12. **Safety** - Provides for aviation safety provisions. It provides for the procedure to be followed when safety standards being maintained by the other party relating to

aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The consultations concerning the safety standards should take place within 30 days of request, and the parties should outline the steps necessary to be taken so as to conform to the ICAO standards. This Article grants the right of a party to conduct a search on the aircraft of the other party within its territory, but this shall be done without causing unreasonable delay;

13. **Aviation Security** - Provides for aviation security. The Article reaffirms the parties' obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The parties shall act in conformity with the international conventions dealing with aviation security. In case of any threats, parties shall assist each other by facilitating communications and any other appropriate measures intended to terminate such threat;
14. **Currency conversion and remittance of earnings**-provision to facilitate currency conversion and remittance;
15. **Representation** - Provides for the designated carriers to establish offices in the territory of the other party for promotion of air transport and sale of air tickets and other facilities necessary for the provision of air transportation;
16. **Cooperative arrangements** - provides for cooperative marketing arrangements such as joint venture with any airline of a third country provided that parties shall ensure that consumers are informed and protected with respect or code-shared flights operating to and from their territory. Further, aeronautical authorities are to verify that all airlines have the appropriate authority and meet requirements applied to such arrangements;
17. **Environmental protection** - this provides that States take into account the impact of air transport industry on the environment;
18. **Statistics** - Provides for supply of statistics. In terms of this Article, the parties shall supply on request to the other party's aeronautical authorities, periodic or other statements of statistics;
19. **Approval of schedules** - Provides for capacity regulations and approval of timetables. It provides that the primary objective of each party shall be provision of capacity adequate for carriage of passengers, cargo and mail between the territory of the contracting party and designating the airline;
20. **Consultations**- Provides for consultations and modifications. It provides that parties shall consult from time to time to ensure the effective implementation and satisfactory compliance with the agreement;

21. **Settlement of disputes** - Provides for settlement of disputes. In case of disputes, the parties shall first try to settle the dispute through negotiation. In the event of failure to agree after negotiation, the matter shall be referred to an arbitration tribunal;
22. **Amendments (Modifications)** - The amendment or modification provision in an agreement may be in the context of a consultation provision since the negotiation of an amendment may be seen as merely another matter for consultation. The amendments shall come into force once contracting parties confirm an exchange of diplomatic notes;
23. **Multilateral agreements** - Provides for conformity with multilateral agreements. The agreement shall be deemed to have been amended by the provisions of any multilateral air transport agreement which may become binding on both parties;
24. **Termination-** Either party may in writing, both to the other party and to the ICAO, give notice of termination of the agreement. The agreement shall terminate 12 months after the date of receipt of the termination notice, or at a shorter period as may be determined by the parties;
25. **Registration with ICAO** - Provides for registration. Registration shall be done by the International Civil Aviation Organization;
26. **Entry into force** - Provides for the entry into force. The agreement shall enter into force between the parties immediately upon signature and notification by exchange of diplomatic notes.

**(2) 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.*

(1) Purpose of the Agreements

The purpose of the instruments 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) Constitutional Implications

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

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

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

(4) Obligations imposed by the Agreements

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

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

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

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

Application of Laws and Regulations

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

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

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

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

(5) Requirements for implementation of the Treaties

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.

(6) Policy and legislative considerations

The Ministry of Transport, Infrastructure, Housing and Urban Development negotiates and reviews 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. These Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.

The Cabinet approved the signing of Agreements between Kenya and the various States during the ICAO Air Services Negotiation Event (ICAN 2018) in Nairobi, and thereafter subject them to ratification process as per the provisions of the Treaty Making and Ratification Act, 2012. The various States were ready to sign the respective Agreements and it was prudent to save on costs by having them signed during ICAN.

The Bilateral Air Services Agreements between Kenya and the Kingdom of Cambodia was negotiated, concluded and signed on 19th September, 2014, Kenya and Burkina Faso was negotiated and initialled on 28th August, 2008 and signed on 14th December, 2018, Kenya and Finland was negotiated and initialled during ICAN 2017 on 5th December, 2017 and signed on 14th December, 2018 and Kenya and Seychelles Bilateral Air Services Agreement was negotiated on 13th December, 2013 and Kenya and the Hellenic Republic Bilateral Air Services Agreement was negotiated on 5th December, 2016 and signed on 14th December, 2018

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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.

(7) 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.

(8) The Summary of the Process Leading to the Adoption of the Agreements

The five (5) Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories.

(i) The Kenya/Cambodia Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and the Kingdom of Cambodia was negotiated, concluded and initialled on 9th and 10th September, 2014 in Phnom Penh, Kingdom of Cambodia. It was operationalized by the signing of a Memorandum of Understanding on 10th September, 2014.

The Agreement provides for multiple designation of airlines, limits the number frequencies to seven (7), no restriction on aircraft capacity and an open and liberal route schedule. The exercise of the fifth freedom traffic rights for designated airlines to be exchanged on reciprocal basis subject to approval by the aeronautical authorities of the respective Parties.

Currently, no Kenyan airline operates scheduled air services to/from Cambodia. Similarly, there is no airline from Cambodia operating scheduled air services between the two States. The Cambodia authorities requested through diplomatic channels for the initialled Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi. Consequently, the Agreement was formally signed on 10th December, 2018 in Nairobi.

(ii) The Kenya/Burkina Faso Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Burkina Faso was negotiated and initialled on 28th August, 2008 in Burkina Faso. 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. With regard to exercise of 5th freedom Traffic rights, designated airlines can operate two (2) frequencies with full 5th freedom traffic rights on any four (4) intermediate points and two (2) beyond points.

Currently, no Kenyan carrier operates scheduled air services to/from Burkina Faso. Similarly, there is no airline from Burkina Faso operating scheduled air services between the two States. However, the Burkina Faso authorities requested through diplomatic channels for the Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi.

(iii) The Kenya/Finland Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Finland was negotiated and initialled during ICAN 2017 on 5th December, 2017 in Colombo, Sri Lanka. It was signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 14 frequencies per week, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Republic of Finland. Similarly, there is no airline from Finland operating scheduled air services to Kenya.

(iv) Kenya/the Hellenic Republic (Greece) Bilateral Air Services Agreement

The Kenya/the Hellenic Republic Bilateral Air Services Agreement was negotiated in 1978. It was reviewed and initialled on 5th December, 2016 in Nassau, the Bahamas and finally signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 7 frequencies for passenger services, no restrictions on aircraft capacity, no restrictions on all cargo operations and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no carrier from either party operates scheduled air services on the route between the two States.

(v) Kenya and Seychelles Bilateral Air Services Agreement

The Kenya and Seychelles Bilateral Air Services Agreement was negotiated and initialled on 13th December, 2013 in Durban, South Africa. It was signed on 14th December, 2018.

The Agreement provides for unlimited frequencies and capacity, multiple designation and a liberal Route Schedule. Exercising 5th Freedom Traffic Rights is on reciprocal basis. Kenya Airways is operating daily to Seychelles.

(9) The date of Signature

The Bilateral Air Services Agreements between Kenya and Cambodia was initialed on 10th September, 2014; Kenya and Burkina Faso initialed on 28th August, 2008; Kenya and Finland was initialed on 5th December, 2017; Kenya and Seychelles was initialed on 13th December, 2013; and Kenya and the Hellenic Republic was negotiated and initialed on 5th December, 2016

(10) Proposed text of any reservation

Reservations are not contemplated in these Agreement.

3.0 MEETING BETWEEN THE COMMITTEE AND THE MINISTRY

On Tuesday, 23rd April, 2019, the Departmental Committee held a meeting with officials from the State Department of Transport.

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.

Presentation by the Ministry of Transport Public Work and Housing

The Kenya/Cambodia Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and the Kingdom of Cambodia was negotiated, concluded and initialled on 9th and 10th September, 2014 in Phnom Penh, Kingdom of Cambodia. It was operationalized by the signing of a Memorandum of Understanding on 10th September, 2014.

The Agreement provides for multiple designation of airlines, limits the number frequencies to seven (7), no restriction on aircraft capacity and an open and liberal route schedule. The exercise of the fifth freedom traffic rights for designated airlines to be exchanged on reciprocal basis subject to approval by the aeronautical authorities of the respective Parties.

Currently, no Kenyan airline operates scheduled air services to/from Cambodia. Similarly, there is no airline from Cambodia operating scheduled air services between the two States. The Cambodia authorities requested through diplomatic channels for the initialled Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi. Consequently, the Agreement was formally signed on 10th December, 2018 in Nairobi.

The Kenya/Burkina Faso Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Burkina Faso was negotiated and initialled on 28th August, 2008 in Burkina Faso. 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. With regard to exercise

of 5th freedom Traffic rights, designated airlines can operate two (2) frequencies with full 5th freedom traffic rights on any four (4) intermediate points and two (2) beyond points.

Currently, no Kenyan carrier operates scheduled air services to/from Burkina Faso. Similarly, there is no airline from Burkina Faso operating scheduled air services between the two States. However, the Burkina Faso authorities requested through diplomatic channels for the Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi.

The Kenya/Finland Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Finland was negotiated and initialled during ICAN 2017 on 5th December, 2017 in Colombo, Sri Lanka. It was signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 14 frequencies per week, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Republic of Finland. Similarly, there is no airline from Finland operating scheduled air services to Kenya.

Kenya/the Hellenic Republic (Greece) Bilateral Air Services Agreement

The Kenya/the Hellenic Republic Bilateral Air Services Agreement was negotiated in 1978. It was reviewed and initialled on 5th December, 2016 in Nassau, the Bahamas and finally signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 7 frequencies for passenger services, no restrictions on aircraft capacity, no restrictions on all cargo operations and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no carrier from either party operates scheduled air services on the route between the two States.

Kenya and Seychelles Bilateral Air Services Agreement

The Kenya and Seychelles Bilateral Air Services Agreement was negotiated and initialled on 13th December, 2013 in Durban, South Africa. It was signed on 14th December, 2018.


The Agreement provides for unlimited frequencies and capacity, multiple designation and a liberal Route Schedule. Exercising 5th Freedom Traffic Rights is on reciprocal basis. Kenya Airways is operating daily to Seychelles.

4.0 COMMITTEE OBSERVATIONS

1. The Constitution in Article 2 (6) provides for the entrenchment of this Agreement into the laws of Kenya.
2. The Agreements provide for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule.
3. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.
4. The five Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories without any restrictions.
5. Currently, no Kenyan airline operates scheduled air services to/from Cambodia. Similarly, there is no airline from Cambodia operating scheduled air services between the two States.
6. Currently, no Kenyan carrier operates scheduled air services to/from Burkina Faso. Similarly, there is no airline from Burkina Faso operating scheduled air services to Kenya.
7. Currently, no Kenyan carrier operates scheduled air services to/from the Republic of Finland. Similarly, there is no airline from Finland operating scheduled air services to Kenya.
8. Currently, no Kenyan carrier operates scheduled air services to/from the Hellenic Republic (Greece). Similarly, there is no airline from the Hellenic Republic (Greece) operating scheduled air services to Kenya.
9. Currently Kenya Airways is operating daily to Seychelles.

5.0 COMMITTEE RECOMMENDATION

The Committee recommends that the House approves the ratification of the Bilateral Air Services Agreement between Kenya and the Kingdom of Cambodia, Kenya and Burkina Faso, Kenya and Finland, Kenya and Seychelles and Kenya and the Hellenic Republic as the approvals are in Kenya's national interest.

SIGNED 



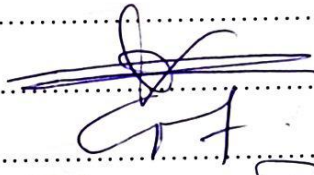
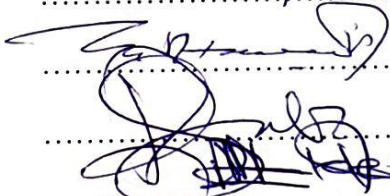
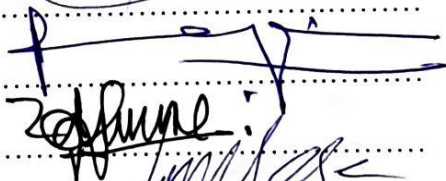
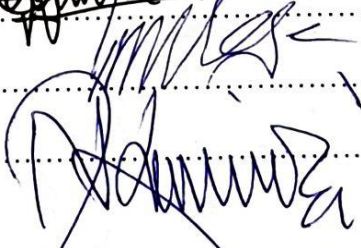
HON. DAVID PKOSING, CBS, M.P
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

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 bilateral air services agreement between Kenya and Cambodia; Kenya and Burkina Faso; Kenya and Finland; Kenya and Seychelles; and Kenya and the Hellenic Republic for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

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17. Hon. Shadrack John Mose, M.P.
18. Hon. Tom Mboya Odege, M.P. 
19. Hon. Vincent Kemosi Mogaka, M.P. 