

REPUBLIC OF KENYA



PARLIAMENT  
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NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION – 2016

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

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REPORT ON

THE CONSIDERATION OF BILATERAL AIR SERVICES AGREEMENTS BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENTS OF  
THE SOCIALIST REPUBLIC OF VIETNAM AND THE REPUBLIC OF LIBERIA  
RESPECTIVELY

DIRECTORATE OF COMMITTEE SERVICES,  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

JULY, 2016

**ANNEXES**

1. Adoption List
2. Minutes of Committee Meetings
3. The Bilateral Air Services Agreement between the Government of the Republic of Kenya And the Government of the Socialist Republic of Vietnam
4. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Liberia



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#### 4 CHAIRPERSON'S FOREWORD

The Bilateral Air Services Agreements (BASA) between the Government of the Republic of Kenya and the Governments of the Socialist Republic of Vietnam and the Republic of Liberia was laid on the Table of the House on varied dates and was referred to the Departmental Committee on Transport, Public Works and Housing pursuant to Section 8 of the Treaty Making and Ratification Act, 2012.

In considering the BASA, the Committee held one meeting with the Cabinet Secretary for the Ministry of Transport, Public Works, Housing and Urban Development Mr James Macharia. The meeting was aimed at interrogating the issues raised in the BASA.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

On behalf of the Committee and pursuant to Standing Order 199 (6) it is my duty to table on the Floor of the House the Report of the Committee on the petition.

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**Hon. Maina Kamanda, EGH, MP**

## 5 EXECUTIVE SUMMARY

The Committee considered the Bilateral Air Services Agreements (BASA) between the Government of the Republic of Kenya and the Governments of the Socialist Republic of Vietnam and the Republic of Liberia. 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..

The report entails matrices explaining the provisions of the Articles for each Air Services Agreement.

Pursuant to Section 8 of the Treaty Making and Ratification Act No. 45 of 2012, the Committee recommends that the House approves the ratification of the Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Vietnam and Liberia.

## 6 MANDATE OF THE COMMITTEE

2.1 The Departmental Committee on Transport, Public Works and Housing derives its mandate from the provisions of Standing Order No. 216(5). Pursuant to this Standing Order, the functions of the Committee are:

- a) To 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) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation,
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House; and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation

2.2 Further, the Second Schedule to the Standing Orders mandates the Committee 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.

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

- a) Transport
- b) Infrastructure;
- c) Housing and Urban Development;
- d) Public Works; and
- e) Shipping and Maritime Affairs.

**Chairperson**

The Hon. Maina Kamanda, M.P.

**Vice Chairperson**

The Hon. (Eng.) Mahamud Maalim, M.P.

**Members**

The Hon. Eng. Stephen Ngare, M.P.

The Hon. Ali Wario, M.P.

The Hon. (Arch.) David Kiaraho, M.P.

The Hon. Cecily Mbarire, M.P.

The Hon. Capt. Clement Wambugu, M.P.

The Hon. Eng. John Kiragu, M.P.

The Hon. Gideon Konchella, M.P.

The Hon. Barchilei Kipruto, M.P.

The Hon. Mark Lomunokol, M.P.

The Hon. Grace Kipchoim, M.P.

The Hon. Mathias Robi, M.P.

The Hon. Joseph Lomwa, M.P.

The Hon. Peter Shehe, M.P.

The Hon. Stephen Manoti, M.P.

The Hon. Emmanuel Wangwe, M.P.

The Hon. K.K. Stephen Kinyanjui Mburu, M.P.

The Hon. Suleiman Dori, M.P.

The Hon. Rashid Bedzimba, M.P.

The Hon. Simon Nyaundi Ogari, M.P.

The Hon. Johnson Many Naicca, M.P.

The Hon. Mishi Juma, M.P.

The Hon. Aduma Owuor, M.P.

The Hon. Chachu Ganya, M.P.

The Hon. Omar Mwinyi, M.P.

The Hon. Ahmed Abbas Ibrahim, M.P.

The Hon. Omulele Christopher, M.P.

The Hon. Mukwe James Lusweti, M.P.

**8 COMMITTEE SECRETARIAT**

1. Mr. Samuel Kalama - First Clerk Assistant
2. Mr. Abdifatah Bule - Third Clerk Assistant
3. Ms. Christine Ndiritu - Third Clerk Assistant
4. Mr. Salem Lorot - Legal Counsel II
5. Mr. Humphery Ringera - Research Officer III
6. Mr. James Chacha - Fiscal Analyst I

## List of recommendations

Pursuant to Section 8 of the Treaty Making and Ratification Act No. 45 of 2012, the Committee recommends that the House Approves the ratification of:-

1. **The Bilateral Air Services Agreement between the Government of the Republic of Kenya And the Government of the Socialist Republic of Vietnam (attached hereto);**
2. **The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Liberia (attached hereto);**

## 9 Introduction

In considering the Agreements, the Committee was guided by the following provisions of the Treaty Making and Ratification Act, No. 45 of 2012:-

- (1) 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.
- (2) A treaty approved for ratification by the Cabinet under section 7 of the Act shall, depending on its subject matter, be considered by both or the relevant House of Parliament paying due regard to Part 1 and Part 2 of Chapter Eight of the Constitution.
- (3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures
- (4) Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty
- (5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.
- (6) Where one House approves the ratification of a treaty and the other House refuses to approve the ratification of a treaty, the treaty shall be referred to the mediation committee in accordance with Article 112 of the Constitution.
- (7) Where the both Houses refuse to approve the ratification of a treaty, the Speakers of the two Houses shall submit their decision to the relevant Cabinet Secretary within fourteen days of the decision.
- (8) Nothing in this Act precludes the resubmission of a treaty to National Assembly and where applicable the Senate, where approval for the ratification of the treaty had been refused.
- (9) Parliament shall not approve the ratification of a treaty or part of it if its provisions are contrary to the Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.
- (10) Approval for ratification
  - (1) Where the ratification of a treaty referred to in section 7 of the Act is approved by Parliament without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of



the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

- (2) Where a treaty referred to in section 7 is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.
- (3) Where Parliament refuses to approve the ratification of the treaty referred to in section 7, the Government shall not ratify the treaty.”

Bilateral Air Agreement refers to an Agreement in which two nations sign to allow international commercial air transport services between their territories. Before an airline can operate international services to another country, the government must first negotiate a treaty level agreement with the destination country’s government.

During the consideration of the Agreements the Committee established that the Bilateral Air Services Agreements/Arrangements contains the following provisions:-

1. Traffic rights that are the routes airline can fly, including cities that can be served within, between and beyond the bilateral partners.
2. Capacity- that is, the number of flights that can be operated or passengers that can be carried between the bilateral partners.
3. Ownership and control. As regards this, the Agreement elaborates on the number of airlines the bilateral partners can nominate to operate services and the ownership criteria airlines must meet to be designated under the bilateral Agreement.
4. Tariffs/prices. The Agreements require airlines to submit ticket prices to aeronautical Authorities for approval. In a nutshell, the Agreements contain Articles addressing competition policy, safety and security.

It is worth mentioning that international aviation is regulated by a complex web of over three thousand (3000) interlocking bilateral Air Service Agreements. In the recent years, groups of countries have come together to negotiate air services agreements commonly known as plurilateral agreements. However, the majority of them are bilateral air Service agreement.

Bilateral Air Services Agreements (BASA) are useful in that they are used by States to enable scheduled air carriers operate between two or more States. In summary, some of the benefits of BASAs include:

1. Allow scheduled air carriers to fly between territories – i.e. between Kenya and other states – hence leading to construction of required infrastructure/facilities such as airports that creates employment;
2. Facilitation of trade between States – ease of movement of persons and goods between Kenya and other States, that is more than 80% of tourists use air transport;
3. Creates cooperation arrangements between States' competition authorities hence facilitating joint assessment of alliances between Kenyan and other States' carriers - i.e. KQ/KLM;
4. Creates market access on flights between Kenya and other States thus creating a level playing field between Kenyan and other carriers;

**Committee's consideration of the air services agreement between the government of the republic of Kenya and the government of the republic of Vietnam**

The Committee deliberated on the Agreement and the detailed analysis of the Articles is provided below

Article	Title	Comments
Article 1	Definitions	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Grant of Rights	The Article grants the first, second, third and fourth freedoms of the air on a reciprocal basis to each of the Contracting Parties.
Article 3	Designation and Authorization	The Article provides for multiple designation of airlines of both the Contracting Parties. Designation is liberal.
Article 4	Withholding, revocation and limitation of authorization	The Article provides for the right to withhold the authority to operate or revoke the certificate(s) if an airline does not meet the minimum set standards.
Article 5	Application of Laws	The Article 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.
Article 6	Direct Transit	The Article reaffirms that passengers, baggage and cargo on transit shall not be screened if they don't leave their designated area at airport. However, screening can be done for aviation security, narcotics control, prevention of illegal entry or in special circumstances.

Article 7	Recognition of Certificates	Parties reaffirm to recognize Certificates of airworthiness, certificates of competency and licenses issued by the other Contracting Party and are still valid. These certificates must be equal or above the ICAO standards.
Article 8	Aviation Safety	The Article provides for the procedure to be followed when safety standards being maintained by the other Party relating to aviation facilities, aircrew, aircraft and the operation of aircraft are inadequate. The Article is based on ICAO Annex 19.
Article 9	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 Article is based on ICAO Annex 17.
Article 10	User Charges	The Article provides for user charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 11	Duties, Taxes and Fees	The Article grants on reciprocal basis exemption from custom duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board aircraft and being used on flight. Inspection fees and other similar charges are also exempted.
Article 12	Fair Competition	The parties reaffirm to ensure fair and equal opportunity for the designated airlines to compete in providing international air transportation governed by the Agreement.
Article 13	Establishment of Tariffs	The Article provides for designated airlines to establish tariffs based on commercial considerations in the marketplace such as cost of operation, characteristics of the service, interests of the users, reasonable profit and other market considerations.
Article 14	Currency Conversion and remittance of Earnings	The Article provides for transfer of airlines revenues earned from the air transportation services in convertible currency from the territory of the other Party to their home country.

Article 15	Sale and marketing of air service product	The Article provides for the right to sell and market international air services and related products in territory directly or through agents, and right to establish offices.
Article 16	Codesharing/Cooperative arrangements	The Article provides for designated airlines to enter into co-operative marketing arrangements such as block space and code-share. The airlines may be from one Party or the other Party or third country airlines.
Article 17	Environmental Protection	The Parties reaffirm to comply with ICAO standards and Recommended practices of Annex 16 and existing ICAO policy and guidelines on environmental protection with regard to aviation activities. (noise and carbon monoxide)
Article 18	Statistics	Parties reaffirm to supply at the request of the aeronautical authorities of the other Party, statements and statistics of passengers, cargo and mail for purpose of reviewing operations of designated airlines.
Article 19	Approval of schedules	The Article provides for submission of flight schedules of designated airlines to the aeronautical authorities of the other Contracting Party for their approval at least 30 days prior to the operation of agreed services.
Article 20	Consultations	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. A Party may request for high level meeting up to Ministerial level or escalate the consultations higher if deemed necessary.
Article 21	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such tribunal/person or body pending its final decision.
Article 22	Amendment	The Article provides for the procedure of making amendments to the Agreement. Amendments agreed by the Contracting Parties come into effect when confirmed by an exchange of diplomatic Notes.
Article 23	Multilateral Agreements	The Parties reaffirm that the Agreement shall be deemed



		to have been amended by provisions of any multilateral air transport agreement, which may become binding both Parties.
Article 24	Termination	The Article provides for termination of the Agreement either Party and explains the procedure for termination and the period the termination takes to be effective.
Article 25	Registration with ICAO	In the Article the Parties reaffirm for registration of the Agreement and its amendments with the International Civil Aviation Organization (ICAO) upon signature ICAO is the repository.
Article 26	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.

**Committee's consideration of the air services agreement between the government of the republic of Kenya and the government of the republic of Liberia**

Article	Title	Comments
Article 1	Definitions	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Rights and Privileges of Designated Airlines	The Article grants on reciprocal basis the first, second, third and fourth freedoms of the air to each of the Contracting Parties. The Article is based on YD and is liberal.
Article 3	Designation and Authorization of Airlines	Provides for multiple designation of airlines of Contracting Parties. The Article is based on YD eligibility criteria.
Article 4	Revocation and Suspension of Operating Authorization	The Article grants the Contracting Parties the right to revoke or suspend an operating authorization for the rights specified in Article 2 in case a designated airline does not operate in accordance with the requirements of the Agreement.
Article 5	Applicability of National Laws and Regulations	The Article 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.
Article 6	Safety	The Article stipulates the safety standards to be maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation aircraft. It also grants the right for

		revocation. The Article is based ICAO Annex 19.
Article 7	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 Article is based on ICAO Annexes.
Article 8	Fair Competition	The Parties reaffirm to ensure fair and equal opportunity on non-discriminatory basis for the designated airlines to effectively compete in provision of air transport services.
Article 9	Pricing	The Article provides for Contracting Parties to allow for air fares to be established at reasonable levels by designated airlines based on commercial considerations in the market place.
Article 10	Exemption from Customs Duties, Taxes, Inspection Fees and other similar Charges	The Article provides for regular equipment supplies of fuel and lubricants and aircraft stores including food, beverages and tobacco on board designated airlines to be exempt from custom duties, taxes, inspection fees and other similar charges in the other Contracting Parties' territory
Article 11	User charges	The Articles provides for user charges imposed by the competent charging authority of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 12	Commercial Opportunities	The Article allows the designated airlines to establish offices in the territory of the other Party for promotion of air transportation and sale of air tickets and other facilities necessary for the provision of air transportation.
Article 13	Computer Reservation System (CRS)	Parties reaffirm to protect the interest of consumers of air transport against any misuse of information including misleading presentation. Designated airlines of Contracting Party and Airline agents are to be allowed unrestricted and non-discriminatory access to and use of CRS.
Article 14	Change of Gauge	The Article provides for change of gauge (equipment) on any segment of the specified route operated by a designated airline of either Contracting Party.
Article 15	Submission of	The Article stipulates the period required for submission of

	Time Table	time tables by designated airlines for approval by aeronautical authority of the Contracting Parties.
Article 16	Submission of Statistics	The Parties reaffirm to supply periodic or statements of statistics at the request of the aeronautical authorities of the other Party for purpose of reviewing operations of designated airlines.
Article 17	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.
Article 18	Consultations	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. Consultation may be made through discussions or correspondence. Amendments to the Agreement may be made as and when necessary by the two Parties.
Article 19	Registration of Agreement With I.C.A.O	The Article provides for registration of the Agreement, its amendments and any exchange of notes relating to the Agreement, with the International Civil Aviation Organization (ICAO) as the repository.
Article 20	Amendments	The Article provides for amendments to be made on Provisions of the Agreement. It describes the procedure of amendment and gives the aeronautical authorities of the Parties the right to agree directly on any amendment to the Annex of the Agreement.
Article 21	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period it takes to be effective.
Article 22	Entry into Force	The Agreement stipulates its applicability on a provisional basis from the date of signature pending exchange of notes confirming completion of all necessary internal procedures by each Party.



## Submission

### Submissions by the Ministry of Transport, Infrastructure, Housing and Urban Development

Mr. James Macharia, Cabinet Secretary for the Ministry of Transport, Infrastructure, Housing and Urban Development briefed the Committee on Kenya/Vietnam and Kenya/Liberia Bilateral Air Services Agreements as follows:-

1. the Ministry of Transport, Infrastructure, Housing and Urban Development is mandated to negotiate and review Bilateral Air Services Agreements between Kenya and various States to facilitate Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network, in addition to allowing foreign carriers access into the Kenyan market. These Agreements are negotiated by a team comprising of representatives from the Ministry of Transport and Infrastructure, Ministry of Foreign Affairs and International Trade, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.
2. The Agreements are negotiated in line with the Integrated National Transport Policy, which states that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for States within Africa and on the basis of equal opportunity and reciprocity for other States.
3. The Agreements facilitate airlines to expand their existing route networks by directly operating scheduled air services to other markets. In addition, where airlines are unable to offer services, the Agreements allow them to enter into Commercial Arrangements especially code share, which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations thereby offering passengers seamless connectivity to the traveling public.
4. 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. We have



submitted matrices explaining the provisions of the Articles for each Air Services Agreement being considered today.

5. In order to operationalize an Agreement it is normal 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 signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.
6. The Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7<sup>th</sup> August, 2014 in Ha Noi, Viet Nam. Delegations representing the two States signed a MoU on the same day operationalizing the provisions of the negotiated and initialed Agreement. Kenya Airways commenced scheduled flights to Ha Noi, Viet Nam from 30<sup>th</sup> March, 2015. It currently operates three (3) frequencies weekly and is keen on increasing the number of frequencies and entry points into Viet Nam in the near future. Additionally, the airline plans to extend its flights with 5<sup>th</sup> Freedom Traffic Rights to points into China from Viet Nam. Currently, there is no Vietnamese airline operating scheduled flights into Kenya. The signing of the Agreement will give impetus to Kenya Airways to increase frequencies and enable it to enjoy 5<sup>th</sup> Freedom Traffic rights.
7. The Agreement between the Republic of Kenya and the Republic of Liberia was negotiated and initialed on 16<sup>th</sup> August, 2005 in Monrovia, Liberia. Delegations representing the two States signed a MoU operationalizing the provisions of the negotiated and initialed Agreement.
8. Kenya Airways currently operates scheduled daily flights to Monrovia, Liberia. Currently, there is no Liberian airline operating scheduled flights into Kenya. The Agreement was formally signed in Nairobi on 11<sup>th</sup> December, 2015.

## 10 Findings

The Committee made the following observations:-

1. The Agreements facilitate airlines to expand their existing route networks by directly operating scheduled air services to other markets. In addition, where airlines are unable to offer services, the Agreements allow them to enter into Commercial Arrangements especially code share, which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations thereby offering passengers seamless connectivity to the traveling public.
2. The Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7th August, 2014 in Ha Noi, Viet Nam. Delegations representing the two States signed a MoU on the same day operationalizing the provisions of the negotiated and initialed Agreement. Kenya Airways commenced scheduled flights to Ha Noi, Viet Nam from 30th March, 2015. It currently operates three (3) frequencies weekly and is keen on increasing the number of frequencies and entry points into Viet Nam in the near future. Additionally, the airline plans to extend its flights with 5th Freedom Traffic Rights to points into China from Viet Nam. Currently, there is no Vietnamese airline operating scheduled flights into Kenya. The signing of the Agreement will give impetus to Kenya Airways to increase frequencies and enable it to enjoy 5th Freedom Traffic rights.
3. The Agreement between the Republic of Kenya and the Republic of Liberia was negotiated and initialed on 16th August, 2005 in Monrovia, Liberia. Delegations representing the two States signed a MoU operationalizing the provisions of the negotiated and initialed Agreement.

## 11 Recommendations

Pursuant to Section 8 of the Treaty Making and Ratification Act No. 45 of 2012, the Committee recommends that the House Approves the ratification of:-

3. The Bilateral Air Services Agreement between the Government of the Republic of Kenya And the Government of the Republic of Vietnam (attached hereto);
4. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Liberia (attached hereto);

Signed: \_\_\_\_\_



Date: \_\_\_\_\_

21/7/2016

Hon. Maina Kamanda, EGH, MP

Chairperson

Departmental Committee on Transport, Public Works and Housing

THE NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT – 4<sup>TH</sup> SESSION

DEPARTMENTAL COMMITTEE – TPWH: TRANSPORT, PUBLIC WORKS AND HOUSING

Adoption register for the Report on Bilateral Air Services Agreement – Tuesday, 5<sup>th</sup> July, 2016

NO.	MEMBER	SIGNATURE
1.	Hon. Maina Kamanda (Chairperson), MP	
2.	Hon. (Eng.) Mohamed Maalim (Vice Chairperson), MP	—
3.	Hon. KK Stephen Kinyanjui Mburu, MP	
4.	Hon. Christopher Omulele, MP	
5.	Hon. (Eng.) Stephen Ngare, MP	
6.	Hon. Johnson M. Naicca, MP	—
7.	Hon. (Eng.) John Kiragu, MP	—
8.	Hon. Stephen K. Manoti, MP	
9.	Hon. Joseph Lomwa, MP	—
10.	Hon. (Capt.) Clement M. Wambugu, MP	
11.	Hon. Emmanuel Wangwe, MP	
12.	Hon. Grace J. Kipchoim, MP	
13.	Hon. Cecily M. Mbarire, MP	
14.	Hon. Mishi Juma Khamis, MP	

15.	Hon. Peter Shehe, MP	
16.	Hon. Omar Mwinyi, MP	
17.	Hon. Suleiman Dori, MP	
18.	Hon. Rashid Juma Bedzimba, M.P	
19.	Hon. Aduma Owuor, MP	
20.	Hon. Gideon Konchella, MP	
21.	Hon. Abass Ahmed Ibrahim, MP	
22.	Hon. Ali Wario, MP	<i>[Handwritten signature]</i>
23.	Hon. David Kiaraho, MP	
24.	Hon. Barchilei Kipruto, MP	
25.	Hon. Simon Nyaundi Ogari, MP	
26.	Hon. Charhu Ganya , MP	<i>[Handwritten signature]</i>
27.	Hon. Mathias N Robi , MP	<i>[Handwritten signature]</i>
28.	Hon. Mukwe James Lusweti, MP	<i>[Handwritten signature]</i>
29.	Hon. Mark Lomunokol, MP	<i>[Handwritten signature]</i>

MINUTES OF THE 34<sup>TH</sup> SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON TUESDAY 5<sup>TH</sup> JULY, 2016 IN THE BOARDROOM, 2<sup>ND</sup> FLOOR, PROTECTION HOUSE AT 10:00 AM

PRESENT

1. Hon. Maina Kamanda, M.P. – Chairperson
2. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
3. Hon. Omulele Christopher, M.P.
4. Hon. Stephen Manoti, M.P.
5. Hon. (Capt.) Clement Wambugu, M.P.
6. Hon. Cecily Mbarire, M.P.
7. Hon. Mishi Juma, M.P.
8. Hon. Chachu Ganya, M.P.
9. Hon. Mathias Robi, M.P.
10. Hon. Mark Lomunokol, M.P.
11. Hon. Mukwe James Lusweti, M.P.
12. Hon. (Eng.) Stephen Ngare, M.P.
13. Hon. Ahmed Abbas Ibrahim, M.P.
14. Hon. Emmanuel Wangwe, M.P.
15. Hon. Grace Kipchoim, M.P.

APOLOGIES

1. Hon. (Eng.) Mahamud Maalim, M.P. – Vice Chairman
2. Hon. Suleiman Dori, M.P.
3. Hon. Ali Wario, M.P.
4. Hon. Rashid Juma Bedzimba, MP
5. Hon. (Arch.) David Kiaraho, M.P.
6. Hon. Aduma Owuor, M.P.

ABSENT

1. Hon. Johnson Many Naicca, M.P.
2. Hon. Joseph Lomwa, M.P.
3. Hon. Peter Shehe, M.P.
4. Hon. Gideon Konchella, M.P.
5. Hon. Omar Mwinyi, M.P.
6. Hon. (Eng.) John Kiragu, M.P.
7. Hon. Barchilei Kipruto, M.P.
8. Hon. Simon Nyaundi Ogari, M.P.



## IN ATTENDANCE

## NATIONAL ASSEMBLY

1. Mr. Samuel Kalama  
First Clerk Assistant
2. Ms. Christine Ndiritu  
Third Clerk Assistant

### MIN/DC-TPWH/2016/136 Preliminaries

The Chairperson called the meeting to order at 10:25 am and opened it with a word of prayer.

### MIN/DC-TPWH/2016/137 Confirmation of Minutes

Minutes of the previous sittings were confirmed as a true record of the proceedings as follows:

1. The minutes of the 28<sup>th</sup> Sitting were proposed and seconded by the Hon. James Luswetl, M.P. and the Hon. Emmanuel Wangwe, M.P. respectively.
2. The minutes of the 30<sup>th</sup> Sitting were proposed and seconded by the Hon. Grace Kipchoim, M.P. and the Hon. Chachu Ganya, M.P. respectively.
3. The minutes of the 31<sup>st</sup> Sitting were proposed and seconded by the Hon. Mathias Robi, M.P. and the Hon. Mishi Juma, M.P. respectively.
4. The minutes of the 32<sup>nd</sup> Sitting were proposed and seconded by the Hon. Mathias Robi, M.P. and the Hon. Grace Kipchoim, M.P. respectively.

### MIN/DC-TPWH/2016/138 Consideration and adoption of the Report on Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Governments of the Republics of Vietnam and Liberia

The Committee considered and adopted the report on Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Governments of the Republics of Vietnam and Liberia as proposed and seconded by the Hon. (Capt.) Clement Wambugu, MP and the Hon. Stephen Kinyanjui, MP with the following recommendations, that the House approves the ratification of;

1. The Bilateral Air Services Agreement between the Government of the Republic of Kenya And the Government of the Republic of Vietnam (attached to the report);
2. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Liberia (attached to the report)

It was however noted that the Committee needed to hold a meeting with the International Air Transport Association to get more insight on the various Air Services Agreements that Kenya has signed and the benefits of such Agreements to the National Carrier, Kenya Airways (KQ)

Further, the Committee resolved to meet with the Association of Pilots to get an insight of the issues revolving around Kenya Airways Ltd.

It was resolved that the two meeting be held on Thursday, 21<sup>st</sup> July, 2016 at 10.00 a.m. and 11.30 a.m. respectively.

MIN/DC-TPWH/2016/139

Any Other Business

The Committee was informed that the Constituency Allocations from the Fuel Levy fund by the Ministry of Transport, Infrastructure, Housing and Urban Development through the Kenya Rural Roads Authority (KERRA) had been reduced from Ksh. 18 million to Ksh. 11 million per Constituency.

To deliberate on this matter, the Committee resolved to invite the Cabinet Secretary for the Ministry of Transport, Infrastructure, Housing and Urban Development for a meeting on Tuesday, 19<sup>th</sup> July, 2016.

MIN/DC-TPWH/2016/140

Adjournment

The Chairperson adjourned the meeting at 11.30 am to be convened at a later date.

SIGNED..........

DATE .....21/7/2016.....

Hon. Maina Kamanda, EGH, M.P. (Chairperson)



MINUTES OF THE 20<sup>TH</sup> SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON THURSDAY 12<sup>TH</sup> MAY, 2016 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 10:20 AM

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) MahamudMaalim, M.P. – **Vice Chairman**
3. Hon. Ahmed Abbas Ibrahim, M.P.
4. Hon. Joseph Lomwa, M.P.
5. Hon. Simon NyaundiOgari,
6. Hon. Ali Wario, M.P.
7. Hon. Gideon Konchella, M.P.
8. Hon. AdumaOwuor, M.P.
9. Hon. Omar Mwinyi, M.P.
10. Hon. (Eng.) Stephen Ngare, M.P.
11. Hon. Grace Kipchoim, M.P.
12. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
13. Hon. (Arch.) David Kiaraho, M.P.
14. Hon. Emmanuel Wangwe, M.P.

ABSENT WITH APOLOGY

1. Hon. Mathias Robi, M.P.
2. Hon. (Capt.) Clement Wambugu, M.P.
3. Hon. Peter Shehe, M.P.
4. Hon. Stephen Manoti, M.P.
5. Hon. Mark Lomunokol, M.P.
6. Hon. Suleiman Dori, M.P.
7. Hon. MishiJuma, M.P.
8. Hon. ChachuGanya, M.P.
9. Hon. Rashid JumaBedzimba, M.P.
10. Hon. BarchileiKipruto, M.P.
11. Hon. Cecily Mbarire, M.P.
12. Hon. Mukwe James Lusweti, M.P.
13. Hon. (Eng.) John Kiragu, M.P.
14. Hon. Johnson ManyNaicca, M.P.
15. Hon. Omulele Christopher, M.P.

## IN ATTENDANCE

## NATIONAL ASSEMBLY

- |                          |                       |
|--------------------------|-----------------------|
| 1. Mr. Samuel Kalama     | First Clerk Assistant |
| 2. Mr. Abdifatah M. Bule | Third Clerk Assistant |
| 3. Mr. James Chacha      | Fiscal Analyst        |

## IN ATTENDANCE

## - MINISTRY OF TRANSPORT & INFRASTRUCTURE

- |                         |                                       |
|-------------------------|---------------------------------------|
| 1. Mr. James Macharia   | Cabinet Secretary                     |
| 2. Eng. J.K Mosonik     | Principal Secretary, Infrastructure   |
| 3. Mr. IrunguNyakera    | Principal Secretary, Transport        |
| 4. Mr. P.M Mundima      | Director General, KeNHA               |
| 5. Eng. J. Ruwa         | Executive Director, Kenya Roads Board |
| 6. Eng. Jackson Magomdu | Ag. General Manager, Finance, KeRRA   |
| 7. Eng. John O.O        | Director General, KeRRA               |

## MIN/DC-TPWH/2016/088 Preliminaries

The Chairperson called the meeting to order at 10:20 am with a word of prayer by the Hon. (Eng.) Stephen Ngare, MP. He then presented the agenda as follows:-

1. Prayer
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. Meeting with the Cabinet Secretary for the Ministry of Transport & Infrastructure on the following petitions, Bilateral Air Service Agreements and status of various roads indicated below:-

- I. Petition by the Hon. Anami Lisamula Silverse, MP on behalf of Residents of Shinyalu Constituency regarding the dilapidated state of the Kakamega-Webuye Road.
- II. Petition by the Hon. Raphael M. Otaalo, MP on behalf of Residents of Lurambi Constituency regarding the construction of speed bumps along the Kakamega-Mumias Road.
- III. Petition by the Hon. Cyprian Kubairingo, MP on behalf of Residents of Igembe Central Constituency regarding the deplorable state of a 28 kilometre section of the Meru-Maua Road from Farin to Murera Gate, Meru National Park.

- IV. Petition by the Hon. (Dr.) Rachael Nyamai, MP on behalf of Residents of Kitui South Constituency regarding the deplorable state of the Kibwezi-Kitui Road (Class B7).
- V. Petition by the Hon. David Kariithi, MP on behalf of pupils and parents of KK Nkengechia Primary School regarding the relocation and construction of the school.
- VI. Petition by Hon. Francis Munyua Waititu, MP on behalf of Residents of Juja Constituency regarding the construction of footbridges along the Thika Super Highway.
- VII. Bilateral Air service Agreements between the Government of the Republic of Kenya and the Government of the Socialist Republic of Vietnam.
- VIII. Bilateral Air service Agreement between the Government of the Republic of Kenya and the Government of Liberia.
- IX. Status of the following roads
  - (a) The Garissa-Mombasa road (B8)
  - (b) The Garissa-Mandera road (B9)
  - (c) The Lurambi-Navakholo-Kanduyi road (C41)
  - (d) The Karandi-Mochongoi-Marigat road (C51)
  - (e) The St. Stephen Scope road (1.4 KM linking Changamwe and Jomvu constituencies)

6. Any Other Business

MIN/DC-TPWH/2016/089 Consideration of petitions.

The Chairperson invited the Cabinet Secretary for the Ministry of Transport and Infrastructure to make his presentation on the various petitions:-

- A. Petition by the Hon. Anami Lisamula Silverse, MP on behalf of Residents of Shinyalu Constituency regarding the dilapidated state of the Kakamega-Webuye Road.
  - I. The Kakamega-Webuye Road is part of the International Trunk Road (A1) from Isebania (Kenya/ Tanzania border) through Kisumu and Lodwar to Nadapal (Kenya/ Sudan border). The Kakamega-Webuye section lies wholly within Kakamega County and is about 40km long.
  - II. The road starts at Kakamega town and runs in a North Easterly direction through Lurambi, Lubao, Kakunga, Kakoyi, and Malava, Kakamega forest, Butali, Matete and ends at Kaburengu (junction with A104), a distance of

approximately 6.8 Km from the Town of Webuye. The road traverses a rolling terrain.

- III. The Contractor for the Works was M/s VIL Limited of India and the Contract was signed on 12<sup>th</sup> July 2012. The commencement date was 1st April 2013 and the time for completion was 24 months therefore the completion date was 31<sup>st</sup> March 2015.
- IV. The Employer issued the Contractor with a notice of termination in May 2014 due to default in obligations including inadequate mobilization of staff and equipment and suspension of work without reasonable cause. The Contractor challenged the notice in court in May 2014 and a ruling was delivered in June 2015 referring the parties to Arbitration.
- V. Arbitral proceedings were initiated by the Employer in August 2015. In September 2015, the Contractor requested for discussions with the Employer with a view to reaching amicable termination of the Contract. This culminated in the execution, in March 2016, of a Deed of Settlement and Release between the 2 parties. Procedures specified in the Deed are ongoing and the 2 parties are expected to release each other in May 2016
- VI. The Employer has commenced procurement process for a new contractor to undertake works on the road. It is expected that a new contractor will commence the works in July 2016 and complete them in a period of 24 months.

**B. Petition by the Hon. Raphael M. Otaalo, MP on behalf of Residents of Lurambi Constituency regarding the construction of speed bumps along the Kakamega-Mumias Road.**

- i. The Ministry through Kenya National Highways Authority acknowledges that a good road network is a prerequisite to rapid economic growth as it facilitates administrative and commercial activities.
- ii. The ministry has a record cases of road accidents from the office of the Regional Traffic Enforcement Officer in Western that have occurred along the Kakamega-Ekero (C40) Road mainly at Lutonyi and Mwitoti areas and most recently at Shibuli.
- iii. These accidents are as a result of multiple factors including carelessness on the part of some road users who include motorists, pedestrians, and motorcyclists among others.



iv. Kenya National Highways Authority has started the procurement of erection of standard speed bumps at Lutonyi, Mwitoti and Shibuli under the road maintenance works of Kakamega –Ekeru (C40). The procurement process is at an advanced stage. However, there is need for more public consultative meetings on road safety along the market centres adjoining the road as part of generating a long-term solution.

C. Petition by the Hon. Cyprian Kubairingo, MP on behalf of Residents of Igembe Central Constituency regarding the deplorable state of a 28 kilometre section of the Meru-Maua Road from Farm to Murera Gate, Meru National Park.

This item was deferred to another sitting since the Hon. Cyprian Kubairingo, MP sent his apologies.

D. Petition by the Hon. (Dr.) Rachael Nyamai, MP on behalf of Residents of Kitui South Constituency regarding the deplorable state of the Kibwezi-Kitui Road (Class B7).

The Hon. (Dr.) Rachael Nyamai, MP informed the meeting that her road has been earmarked for construction to bitumen standards through an advertisement in the newspapers and she would not wish to pursue the petition.

E. Petition by the Hon. David Kariithi, MP on behalf of pupils and parents of KK Nkengechia Primary School regarding the relocation and construction of the school.

- 1) The Kenya Airports Authority (KAA) was instructed through the Ministry of Transport and Infrastructure to expand Isiolo Airport by way of extension of the runway and construction of an apron in Phase 1, which was completed and commissioned in February, 2013. The construction of the passenger terminal building, associated offices and pavements (apron and access road) were in Phases 2 and 3. These phases are ongoing and full completion and commissioning of works is expected by end of year.
- 2) As part of the planning process, the proposed future runway extension required acquisition of land belonging to K.K. Nkengechia Primary School that lies on the final approach of Runway 34. Relocation of the school that was promised during the process of land acquisition has not been realized owing to lack of funding.

- 3) The school has confirmed availability of 15 acres of land in Rwanda Location. However, the Authority is not in possession of land ownership documents to ascertain this position. This is being pursued by way of:-
- (i) Approved part development plan for the proposed new site;
  - (ii) Letter of allotment from the County Government/National Land Commission;
  - (iii) Letter from the County Education office to ascertain school ownership status; and
  - (iv) Survey plan of the new site.
4. KAA have undertaken preliminary estimates for relocation of the school, which comes to Kshs.74.65 million for facilities as follows:-
- (i) Classrooms (2 streams) - Kshs.21 million;
  - (ii) Pre-school (ECD) - Kshs.4.5 million;
  - (iii) Administration Block - Kshs.4.25 million;
  - (iv) Library - Kshs.4.5 million;
  - (v) VIP latrines - Kshs 9.4 million (for 20 No. cubicles and teacher's toilets,
  - (vi) Kitchen and stores - Kshs.4.5 million (minus equipments);
  - (vii) Fence, gate and water storage tanks (1500m long - wooden posts, barbed wire and electric link) - Kshs.4.5 million;
  - (viii) Furniture (basic) - Kshs.2 million;
  - (ix) P.C and provisional sums - Kshs 4.5 million;
  - (x) Contingencies (50%) - 3 million;
  - (xi) General and specific preliminaries - Kshs.3 million; and
  - (xii) VAT (16%) - Kshs.9.5 million.
5. Since the estimates (Kshs.74.65 million) were done before June, 2015, the Authority has allowed for inflation and therefore requested for Kshs.80 million from the Government in the Financial Year 2016/17. It is estimated that the period from commencement to start of construction will take six (6) months as follows:-
- ✓ 2 months for architectural and engineering drawings and preparation of the Bills of Quantities; and
  - ✓ Up to four (4) months for tender action, evaluations and preparation and signing of the contract.
  - ✓ Construction will take up to fifteen (15) months.

Members of the Committee urged the ministry to put in place temporary measures to ensure pupils are able to access the school as they pursue plans to relocate the school.

The Committee also resolved to undertake a fact finding visit to the school and the airport on 25<sup>th</sup> May, 2016.

F. Petition by Hon. Francis Munyua Waititu, MP on behalf of Residents of Juja Constituency regarding the construction of footbridges along the Thika Super Highway.

1. The Ministry through Kenya National Highways Authority (KeNHA) acknowledges that several footbridges are required along the Thika Superhighway as it has been necessitated by change in land use and increase in population considering the rising number of accidents along the busy Thika Highway which have either killed , maimed scores of people due to among other factors, human error and careless driving.
2. The footbridges on Thika Superhighway are located at:
  - (a) University Way
  - (b) Ring Road Ngara(Kariokor)
  - (c) Ngara Market
  - (d) Desai Road
  - (e) Pangani interchange
  - (f) Mathari River(Star fuel station)
  - (g) Muthaiga (Mathari Mental Hospital)
  - (h) NYS
  - (i) Safari Park
  - (j) Roysambu
  - (k) Clayworks (Between Githurai&Roysambu)
  - (l) KahawaWendani
  - (m) Kenyatta University
  - (n) Ruiru
  - (o) Juja Preparatory
  - (p) Juja(Sewarage Area)
  - (q) Mangu High School
  - (r) Vincentian Centre (Thika)
3. Kenya National Highways Authority is currently preparing tender documents for four footbridges including the requested one at Witeithie which will be tendered by June, 2016. These footbridges will be located at Ruaraka, Blue Springs Hotel, Witeithie and Mangu Road.
4. There are eighteen (18) numbers of footbridges along Thika Superhighway and ten (10) ten more footbridges were designed and have not been constructed due to budgetary allocation.

## MIN/DC-TPWH/2016/090 Consideration of Bilateral Air Service Agreements

The Cabinet Secretary informed the meeting on Kenya/Vietnam and Kenya/Liberia Bilateral Air Services Agreements as follows:-

- I. the Ministry of Transport and Infrastructure is mandated to negotiate and review Bilateral Air Services Agreements between Kenya and various States to facilitate Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network, in addition to allowing foreign carriers access into the Kenyan market. These Agreements are negotiated by a team comprising of representatives from the Ministry of Transport and Infrastructure, Ministry of Foreign Affairs and International Trade, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.
- II. The Agreements are negotiated in line with the Integrated National Transport Policy, which states that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for States within Africa and on the basis of equal opportunity and reciprocity for other States.
- III. The Agreements facilitate airlines to expand their existing route networks by directly operating scheduled air services to other markets. In addition, where airlines are unable to offer services, the Agreements allow them to enter into Commercial Arrangements especially code share, which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations thereby offering passengers seamless connectivity to the traveling public.
- IV. 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. We have submitted matrices explaining the provisions of the Articles for each Air Services Agreement being considered today.
- V. In order to operationalize an Agreement it is normal 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 signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.
- VI. The Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7<sup>th</sup> August, 2014 in Ha Noi, Viet Nam.



- Delegations representing the two States signed a MoU on the same day operationalizing the provisions of the negotiated and initialed Agreement. Kenya Airways commenced scheduled flights to Ha Noi, Viet Nam from 30<sup>th</sup> March, 2015. It currently operates three (3) frequencies weekly and is keen on increasing the number of frequencies and entry points into Viet Nam in the near future. Additionally, the airline plans to extend its flights with 5<sup>th</sup> Freedom Traffic Rights to points into China from Viet Nam. Currently, there is no Vietnamese airline operating scheduled flights into Kenya. The signing of the Agreement will give impetus to Kenya Airways to increase frequencies and enable it to enjoy 5<sup>th</sup> Freedom Traffic rights.
- VII. The Agreement between the Republic of Kenya and the Republic of Liberia was negotiated and initialed on 16<sup>th</sup> August, 2005 in Monrovia, Liberia. Delegations representing the two States signed a MoU operationalizing the provisions of the negotiated and initialed Agreement.
- VIII. Kenya Airways currently operates scheduled daily flights to Monrovia, Liberia. Currently, there is no Liberian airline operating scheduled flights into Kenya. The Agreement was formally signed in Nairobi on 11<sup>th</sup> December, 2015.

#### MIN/DC-TPWH/2016/091 Brief on Status of Road Development projects


Members of the Committee inquired on the status of various roads in the country. The Cabinet Secretary responded as follows:-

1. As regard to the status of the Garissa-Mombasa road (B8); the Ministry through Kenya National Highways Authority and Kenya Rural Roads Authority has carried out periodically maintenance since 2013 to date to motorable standards. Mombasa – Malindi section has been design with the view of rehabilitation, whose financing from either GoK or Development partners is awaited. Malindi – Hola – Garissa section is currently under design with the view of rehabilitation/upgrading to bitumen standards. Part of this section (Hola – Garissa) is a component of the LAPSETT Corridor forming a loop on the main corridor.
2. Regarding the status of the Garissa-Mandera road (B9), the Cabinet Secretary informed the Committee that the Kenya National Highways Authority and Kenya Rural Roads Authority have carried out periodical maintenance since 2013 to date to motorable standards. Future plans for this road is:-
  - i. Garissa – Modika (A3) section (12km) was upgraded to bitumen standard in 2009 and is currently under maintenance.
  - ii. Modika – Nuno (A3) section (12km) was also upgraded to bitumen standards by 2015.

- iii. Nuno – Modogashe (C81) section is currently under construction at a cost of Approx KES 10 Billion under the financing of BADEA. Works commenced in December 2015 and is expected to run for a period of 36months: the contractor has mobilized for the same.
    - iv. Modogashe – Wajir – Mandera (590km) section has been designed for upgrading and is currently awaiting sourcing of finances from either GoK or Development Partners.
  3. As regard to Lurambi-Navakholo-Kanduyi road (C41); Routine Maintenance works, at a cost of KES. 18,187,640 are on-going. Works commenced on 7<sup>th</sup> December, 2015 with a completion period of 6 months coming to an end on 6<sup>th</sup> June, 2016. For purposes of maintaining fairly comfortable service levels on the road, a further routine maintenance is planned in the financial year 2016/2017 expected to cost KShs 15 million. The road has been designed with the view of rehabilitation once finances are available from either GoK or Development Partners.
  4. Regarding the status of the Karandi-Mochongoi-Marigat road (C51); the Cabinet Secretary informed the Committee that routine maintenance works, at a cost of KES. 9,999,462.74 are on-going. Works commenced on 7<sup>th</sup> December, 2015 with a completion period of 6 months coming to an end on 6<sup>th</sup> June, 2016. The road has been designed with the view of rehabilitation once finances are made available either from GoK or Development Partners.
  5. On the St. Stephen Scope road (1.4 KM linking Changamwe and Jomvu constituencies) ; the Cabinet Secretary informed the Committee that the St. Stephen Scope Road is an unclassified road which is approximately 1.4 Km and located between Changamwe and Jomvu Constituencies. The road is not in a satisfactory state and has not had any road works carried out in the last two financial years 2014/2015 and 2015/2016, since the Changamwe Constituency Roads Committee did not prioritize it in their work plan. The road has since been devolved to the Mombasa County Government through the recent Kenya Gazette notice dated 22<sup>nd</sup> January 2016. The County Government had gone ahead and put up a publicity board on the road and promised to carry out repair and maintenance works on the road.

MIN/DC-TPWH/2016/092 Adjournment

The Chairperson adjourned the meeting at 12.10 pm to be convened at a later date.

SIGNED..........

DATE.....9/2/2016.....

Hon. Maina Kamanda, EGH, M.P.

(Chairperson)

# PARLIAMENTARY PAPER ON THE RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

## 1.0 Background Information

The Ministry of Transport and Infrastructure takes the lead in negotiating and reviewing Bilateral Air Services Agreements between Kenya and various States to facilitate Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network, in addition to allowing foreign carriers access into the Kenyan market. These Agreements are negotiated by a team comprising of representatives from the Ministry of Transport and Infrastructure, Ministry of Foreign Affairs and International Trade, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.

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 States within Africa and on the basis of equal opportunity and reciprocity for other States.

The Agreements facilitate airlines to expand their existing route networks by directly operating scheduled air services to other markets. In addition, where airlines are unable to offer services the Agreements provide for them to enter into Commercial Arrangements especially code share, which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations thereby offering passengers seamless connectivity to the traveling public.

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 normal 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 signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require for the signing of the Agreement prior to entry into force.

## **2.0 Analysis of the Issue**

The Bilateral Air Services Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7<sup>th</sup> August, 2014. In order to operationalize the Agreement, delegations from the two states signed a Memorandum of Understanding (MoU) that gave force to the Agreement while awaiting signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

The Agreement is modeled on the ICAO template and based on equal opportunities and reciprocity. The Agreement is liberal and aimed at enabling designated airlines of either State to operate scheduled air services between their territories without any restrictions. It provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of 5<sup>th</sup> Freedom Traffic Rights is subjected to agreement by the two aeronautical authorities.

### **2.1 Kenya/Viet Nam Blateral Air Services Agreement**

The Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7<sup>th</sup> August, 2014 in Ha Noi, Viet Nam (copy attached) Delegations representing the two States signed an MoU on the same day operationalizing the provisions of the negotiated and initialed Agreement. Kenya Airways plans to commence daily scheduled flights to Ha Noi, Viet Nam effective from 30<sup>th</sup> March, 2015 and is keen on increasing the number of frequencies and entry points into Viet Nam in the near future. Additionally, the airline plans to extend its flights to points into China from Viet Nam. Currently, there is no Viet Nameese airline operating scheduled flights into Kenya We believe that the signing of the Agreement will give impetus to Kenya Airways to increase additional frequencies and enable Viet Nameese airlines to start operating on the sector for fair competition.

### 3.0 Way forward

The National Assembly grants approval for the ratification of the Air Services Agreement between Kenya and Viet Nam to enable submission of the Agreements to Parliament and finalization of the ratification process. This will enable the signing of the Air Services Agreement between Kenya and Viet Nam.

# KENYA/VIETNAM BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definitions	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Grant of Rights	The Article grants the first, second, third and fourth freedoms of the air on a reciprocal basis to each of the Contracting Parties.
Article 3	Designation and Authorization	The Article provides for multiple designation of airlines of both the Contracting Parties. Designation is liberal.
Article 4	Withholding, revocation, limitation and authorization	The Article provides for the right to withhold the authority to operate or revoke the certificate(s) if an airline does not meet the minimum set standards.
Article 5	Application of Laws	The Article 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.
Article 6	Direct Transit	The Article reaffirms that passengers, baggage and cargo on transit shall not be screened if they don't leave their designated area at airport. However, screening can be done for aviation security, narcotics control, prevention of illegal entry or in special circumstances.
Article 7	Recognition of Certificates	Parties reaffirm to recognize Certificates of airworthiness, certificates of competency and licenses issued by the other Contracting Party and are still valid: The certificates must be equal or above the ICAO set standards.
Article 8	Aviation Safety	The Article provides for the procedure to be followed when safety standards being maintained by the other Party relating to aviation facilities, aircrew, aircraft and the operation of aircraft are inadequate. The Article is based on ICAO Annex 19.
Article 9	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 Article is based on ICAO Annex 17.



Article 10	User Charges	The Article provides for user charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 11	Duties, Taxes and Fees	The Article grants on reciprocal basis exemption from custom duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board aircraft and being used on flight. Inspection fees and other similar charges are also exempted.
Article 12	Fair Competition	The parties reaffirm to ensures fair and equal opportunity for the designated airlines to compete in providing international air transportation governed by the Agreement.
Article 13	Establishment of Tariffs	The Article provides for designated airlines to establish tariffs based on commercial considerations in the market place such as cost of operation, characteristics of the service, interests of the users, reasonable profit and other market considerations.
Article 14	Currency Conversion and remittance of Earnings	The Article provides for transfer of airlines revenues earned from the air transportation services in convertible currency from the territory of the other Party to their home country.
Article 15	Sale and marketing of air service product	The Article provides for the right to sell and market international air services and related products in its territory directly or through agents, and right to establish offices.
Article 16	Codesharing/Cooperative arrangements	The Article provides for designated airlines to enter into co-operative marketing arrangements such as blocked space and code-share. The airlines may be from one Party or the other Party or third country airlines.
Article 17	Environmental Protection	The Parties reaffirm to comply with ICAO standards and Recommended practices of Annex 16 and existing ICAO policy and guidelines on environmental protection with regard to aviation activities. (noise and carbon monoxide)
Article 18	Statistics	Parties reaffirm to supply at the request of the aeronautical authorities of the other Party, statements or statistics of passengers, cargo and



		mail for purpose of reviewing operations of designated airlines.
Article 19	Approval of schedules	The Article provides for submission of flight schedules of designated airlines to the aeronautical authorities of other Contracting Party for their approval at least 30 days prior to the operation of agreed services.
Article 20	Consultations	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. A Party may request for high level meeting up to Ministerial level or escalate the consultations higher if deemed necessary.
Article 21	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.
Article 22	Amendment	The Article provides for the procedure of making amendments to the Agreement. Amendments agreed by the Contracting Parties come into effect when confirmed by an exchange of diplomatic Notes.
Article 23	Multilateral Agreements	The Parties reaffirm that the Agreement shall be deemed to have been amended by provisions of any multilateral air transport agreement, which may become binding on both Parties.
Article 24	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period the termination takes to be effective.
Article 25	Registration with ICAO	In the Article the Parties reaffirm for registration of the Agreement and its amendments with the International Civil Aviation Organization (ICAO) upon signature. ICAO is the repository.
Article 26	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.

**MEMORANDUM OF UNDERSTANDING (MOU) ON AIR  
SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE  
REPUBLIC OF KENYA AND THE GOVERNMENT OF THE  
SOCIALIST REPUBLIC OF VIET NAM**

Delegations representing the Government of the Republic of Kenya (hereinafter referred to as The Kenya Delegation) and the Aeronautical Authority of the Socialist Republic of Viet Nam (hereinafter referred to as The Viet Nam Delegation) and hereinafter referred to collectively as "The Delegations" met in Ha Noi, Viet Nam on 6<sup>th</sup> and 7<sup>th</sup> August, 2014 for the purpose of negotiating a new Air Services Agreement and a Memorandum of Understanding.

The negotiations were held in a cordial and friendly atmosphere, characteristic of the good relations that exist between the Contracting Parties.

The list of both delegations is attached hereto as Appendix "A".

The following issues were discussed and agreed on as herein below:

**1. BILATERAL AIR SERVICES AGREEMENT**

Both delegations agreed to initial a new Air Services Agreement (the Agreement) attached as Appendix B.

Both delegations further agreed to recommend to their respective Governments the formal signing of the Agreement.

**2. MEMORANDUM OF UNDERSTANDING**

The following understanding was reached between the Delegations:

**a) DESIGNATION**

The Delegations agreed to adopt multi-designation of airlines from their respective countries.

**b) FREQUENCY AND CAPACITY**

The Delegations agreed that the capacity and frequencies to be applied on the agreed routes shall not be restricted.

**c) ROUTE SCHEDULE**

The Delegations agreed to adopt a liberal routes structure to be operated by the designated airlines as provided for in the Annex I to the Agreement.

**d) TRAFFIC RIGHTS**

Both delegations agreed that 3<sup>rd</sup> and 4<sup>th</sup> freedom traffic rights for passenger, combination and all-cargo services will continue to be freely exchanged in accordance with the provisions of the Agreement.

The delegations further agreed that, exercise of the fifth freedom traffic rights will be subject to agreement by the two aeronautical authorities.

**e) CODE-SHARE ARRANGEMENTS**

Both delegations agreed that designated airlines can code share with airlines of either Contracting Party. Further, designated airlines are free to code share with airlines of Third Party States as long as the third Party airlines have the underlying traffic rights on routes in question.



**f) AVOIDANCE OF DOUBLE TAXATION**

The Delegations agreed to urge their competent authorities to conclude an agreement for avoidance of double taxation on revenues, capital and profits arising from their respective airlines activities and income in the territory of the other Contracting Party.

**g) CO-TERMINATION**

The two delegations agreed that the designated airlines are free to combine points in the territory of either contracting party without cabotage.

**3. ENTRY INTO FORCE OF THE MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding shall come into force upon signature.

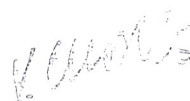
Done at Ha Noi on 7<sup>th</sup> August 2014.

For the Government of The Republic  
of Kenya



Mr. Benjamin Kiguhi Enyenze

For the Aeronautical Authority of  
the Socialist Republic of Viet Nam



Mr. Vo Huy Cuong

## LIST OF KENYAN DELEGATION

1. Chairman  
Mr. Enyenze Benjamin Kiguhi  
Senior Air Transport Officer  
Ministry of Transport and Infrastructure
2. Members  
Ms. Chesoni Joan Magonjo  
State Counsel  
State Law Office
3.  
Mr. Owiti Peter Opiyo  
Charge d'Affaire a.i  
Kenya Embassy, Bangkok, Thailand
4.  
Mr. Kimemia Joram Michael Kageto  
Legal Counsel  
Ministry of Foreign Affairs and International Trade
5.  
Mr. Wanje Ezekiel Mwamure  
Air Transport Officer  
Kenya Civil Aviation Authority
6.  
Mr. Kamau George Karuhui  
Legal Officer  
Kenya Airports Authority
7.  
Mr. Mwangi Isaac Gitonga  
Government and Industry Affairs  
Kenya Airways

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LIST OF VIETNAMESE DELEGATION

1. Chairman Mr. Vo Huy Cuong  
Deputy Director General  
Civil Aviation Authority of Viet Nam (CAAV)
2. Members Mr. Ngo Thanh Phuong  
Deputy Director  
Legal Affairs and International Cooperation Department, CAAV
3. Mr. Vu Hong Quang  
Deputy Director  
Air Transport Department, CAAV
4. Mrs. Le Thi Thu Ha  
Official  
Air Transport Department, CAAV
5. Mr. Nguyen Duc Lam  
Official,  
Legal Affairs and International Cooperation Department, CAAV
6. Mr. Nguyen Tien Hoang  
Deputy General Manager  
Vietnam Airlines



Appendix B

Air Services Agreement  
between  
the Government of the Republic of Kenya  
and  
the Government of the Socialist Republic of Viet Nam

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# Air Services Agreement

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## Preamble

The Government of the Republic of Kenya and the Government of the Socialist Republic of Viet Nam (hereinafter, "the Contracting Parties");

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

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

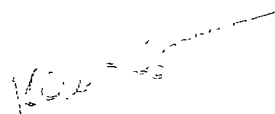
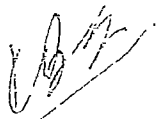
Desiring to facilitate the expansion of international air services opportunities;

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

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

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

Have agreed as follows



## Article 1 Definitions

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

- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Government of Republic of Kenya the Minister/Cabinet Secretary in charge of aviation; in the case of the Government of the Socialist Republic of Viet Nam, the Civil Aviation Authority of Viet Nam, Ministry of Transport ; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;
- c) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- d) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- e) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Contracting Parties;
- f) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- g) "ICAO" means the International Civil Aviation Organization;
- h) "international air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;
- i) "Contracting Party" is a State which has formally agreed to be bound by this agreement;
- j) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- k) "territory" in relation to a State means the land areas, and in the case of the Socialist Republic of Viet Nam, it includes mainland and islands, and under sovereignty of a Contracting Party, internal waters and territorial seas, and the airspace above the said areas;
- l) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and
- m) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.



## Article 2 Grant of rights

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

## Article 3 Designation and authorization

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

#### Article 4

### Withholding, revocation and limitation of authorization

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

a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Contracting Party designating the airline, nationals of that Contracting Party;

b) in the event of failure of the Contracting Party designating the airline to comply with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and

c) in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.

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

#### Article 5

### Application of laws

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

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

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

#### Article 6

### Direct transit

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

## Article 7 Recognition of certificates

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

## Article 8 Safety

1. Each Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Contracting Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Contracting Party shall then take appropriate corrective action within an agreed time period. Failure by the other Contracting Party to take appropriate action within the said period or such longer period as may be agreed shall be grounds for the application of Article 4 of this Agreement to revoke or suspend operating authorisation.
3. Notwithstanding the obligation mentioned in Article 33 of the Chicago Convention it is agreed that any aircraft operated by or, under a lease agreement, on behalf of the 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 made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its flight crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.
4. If any such ramp inspection or series of ramp inspections gives rise to:
  - a) Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention; or
  - b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention:
 the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licenses in respect of

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that aircraft or in respect of the flight crew of that aircraft had been issued or rendered valid or that the requirements under which that aircraft is operated are not equal to or above the minimum standards established pursuant to the Chicago Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of air aircraft operated by an airline of one Contracting Party in accordance with paragraph (3) of this Article is denied by a representative of that airline, the other contracting party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article arise and draw the conclusions referred in that paragraph.

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

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

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

## Article 9 Aviation security

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

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

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

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4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

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

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

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

## Article 10 User charges

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

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

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Contracting Party shall encourage the competent charging authorities to provide users with

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reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

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

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

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

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

## Article 11 Duties, Taxes and Fees

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

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

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

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

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

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

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

## Article 12 Fair competition

1. Each Contracting Party agrees:
  - a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and
  - b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Contracting Party.
2. Each Contracting Party shall allow each designated airline(s) to determine the frequency and capacity of the international air service it offers, as well as the traffic demand for the air services, based on commercial considerations of the marketplace.
3. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons, consistent with Article 15 of the Convention.
4. Neither Contracting Party shall require the filing of programmes for non-scheduled flights, or operational plans by the designated airlines of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph (2) of this Article. If a Contracting Party requires filing for information purposes, it shall minimise the administrative burdens of such filing requirements and procedures on air transport intermediaries and on designated airlines of the other Contracting Party.

## Article 13 Establishment of Tariffs

1. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations.
2. Each Contracting Party may require notification to or filing with its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other Contracting Party. Such notification or filing by the airlines of both Contracting Parties may be required to be made no later than the initial offering of a price.
3. Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Contracting Party in connection with the international air services provided for under this Agreement. Intervention, as described in paragraph (4) below, by the Contracting Parties shall be limited to:
  - a) Prevention of unreasonably discriminatory prices or practices;
  - b) Protection of consumers from prices that is unreasonably high or restrictive due to the abuse of a dominant position or due to concerted practice among airlines.
  - c) Protection of airlines from prices that are artificially low due to direct or indirect subsidy or support;

d) Protection of airlines from prices that is artificially low, where evidence exists as to an intent to eliminate competition.

4. Without prejudice to the provisions of paragraph (3) of this Article, the aeronautical authorities of either Contracting Party may expressly disapprove tariff submitted by the designated airlines of the other Contracting Party, where such aeronautical authorities find that a tariff proposed to be charged by such airlines falls within the categories set forth in paragraph 3.a), 3.b), 3.c) or 3.d). In such event, the concerned aeronautical authority

a) Shall send notification of its dissatisfaction to the aeronautical authorities of the other Contracting Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and

b) May request consultations in accordance with the procedures established under paragraph 5 of this Article. Unless both aeronautical authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.

5. The aeronautical authorities of each Contracting Party may request consultations with the aeronautical authorities of the other Contracting Party on any tariff charged by an airline of the other Contracting Party for international air services to or from the territory of the first Contracting Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The aeronautical authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.

#### Article 14

#### Currency conversion and remittance of earnings

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

#### Article 15

#### Sale and marketing of air service products

1. Each Contracting Party shall accord airlines of the other Contracting Party the right to sell and market international air services and related products in its territory, either directly or through agents or other intermediaries of the airline's choice, including the right to establish offices, both on-line and off-line.
2. Each airline shall have the right to sell air transport services, and any person shall have the right to purchase such transportation, in the currency of that territory, or in freely convertible currencies to the degree permitted by national laws and regulations, provided that they are applied on a non-discriminatory basis.



## Article 16 Codesharing/Cooperative arrangements

1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Contracting Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with:

- a) an airline or airlines of either Contracting Party; and
- b) an airline or airlines of a third country.

provided that all airlines in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

2. The Contracting Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

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

3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Contracting Parties at least 30 days before its proposed introduction.

## Article 17 Environmental Protection

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

## Article 18 Statistics

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

### Article 19 Approval of schedules

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

### Article 20 Consultations

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

### Article 21 Settlement of disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
4. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
5. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.



6. Either Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Contracting Party in default hereof.

## Article 22 Amendment

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

## Article 23 Multilateral agreements

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

## Article 24 Termination

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

## Article 25 Registration with ICAO

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

## Article 26 Entry into force

This Agreement shall be applied provisionally from the date of its signature and shall enter into force on the day the last written notification is received by diplomatic note confirming that the Contracting Parties have fulfilled all respective internal procedures required for the entry into force of this Agreement.

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

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

For the Government of the  
Republic of Kenya

For the Government of  
the Socialist Republic of Viet Nam

**Annex I**  
**Route schedules**

- A. The Designated Airline(s) of the Republic of Kenya shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Kenya	Any Points	Points in Viet Nam	Any Points

- B. The Designated Airline(s) of the Socialist Republic of Viet Nam shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

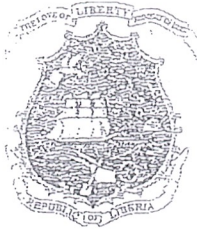
Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Viet Nam	Any Points	Points in Kenya	Any Points

Note:

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 Contracting Party designating the airline.
2. The right of the designated airlines of either Contracting Party to transport passengers, cargo and mail between the points in the territory of the other Contracting Party and points in the territory of Third Parties shall be discussed and agreed upon by the aeronautical authorities of the two Contracting Parties.

*WAM*

*12/10/76*



BILATERAL AIR SERVICES AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC  
OF LIBERIA

AND

THE GOVERNMENT OF THE REPUBLIC  
OF KENYA

AND

BEYOND THEIR RESPECTIVE TERRITORIES



## BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LIBERIA AND THE GOVERNMENT OF THE REPUBLIC OF KENYA BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

### PREAMBLE

The Government of the Republic of Liberia and the Government of the Republic of Kenya; (hereinafter, the Parties)

Desiring to facilitate the expansion of international air transport opportunities.

Desiring to make it possible for Airlines to offer the travelling and shipping public a variety of service options at prices that are not discriminatory and do not represent abuse of a dominant position and wishing to encourage individual Airlines to develop and implement innovative and competitive prices.

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

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944 and desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories; have agreed as follows:-

### ARTICLE 1 DEFINITIONS

For the purpose of this Agreement and any annex attached hereto, unless the context otherwise requires the term;

- a) "Aeronautical Authorities" means in the case of each Contracting Party its Minister or Secretary of State in charge of Civil Aviation or any person or





body authorized under its laws to perform a particular function to which this Agreement relates;

- b) "Agreed services" means the scheduled international air services which may be operated by virtue of this Agreement;
- c) "aircraft equipment" "aircraft stores" and "spare parts" have the meanings respectively assigned to them in Annex 9 of the Convention;
- d) "air service", "international air service", "Airline(s)" and "stop for non-traffic purposes" have the meaning respectively assigned to them in Article 96 of the Convention;
- e) "Change of gauge" means the operation of air service by a designated Airline(s) in such a way that one section of the route is flown by aircraft different in capacity to those used on another section;
- f) "Code-sharing" means a commercial arrangement whereby passengers of two or more Airline(s) travel together on one aircraft bearing the Airline(s) flight code of two or more Airline(s).
- g) "Computer Reservation System" (CRS) means a computerized system containing information about Airlines schedules, seat availability, fares and related services and through which reservations can be made and/or tickets can be issued and which makes some of all these facilities available to travel agents.
- h) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7th December 1944 and includes; (i) any amendment thereto which has entered into force under Article 94 (a) thereof and has been ratified by both Contracting Parties and (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, in so far as such amendment or annex is at the given time effective for both Contracting parties;
- i) "Designated Airline(s)" means the Airline(s) which has/have been designated and authorized in accordance with Article 3 of this Agreement.





- j) "full cost" means the cost of providing service plus a reasonable charge for administrative overhead.
- k) "scheduled services" means those services operated regularly by a designated Airline(s) according to schedules published in advance to cover a time table period;
- l) "specified routes" means the air routes as set forth in the Annex thereto on which the agreed service may be operated;
- m) "tariff" means the fare or rate to be paid for the carriage of passengers and their baggage and cargo (other than mail) and the conditions governing the availability or applicability of that fare or rate, including the charges and conditions for services ancillary to the carriage;
- n) "territory" in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that state;
- o) "traffic" means the carriage of passengers, cargo and mail;
- p) "user" charges" means fees or rates levied for the use of airports, navigational facilities and other related services offered by one contracting Party to the other.

## ARTICLE 2 RIGHTS AND PRIVILEGES OF DESIGNATED AIRLINE (S)

- 1) Each Contracting party grants to the other Contracting party, the rights specified in this Agreement for the purpose of establishing the agreed services on the specified routes in the annexes to this Agreement. The Airline (s) designated by each Contracting party shall enjoy, while operating the agreed services on the specified route, the following rights:
  - a) To fly without landing across the territory of the other Contracting party;

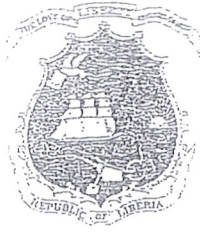


- b) To make stops in the said territory for non-traffic purposes;
  - c) To make stops in the said territory at the points specified for that route in the schedules to this Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of the other Contracting Party.
- 2) Nothing in paragraph (1) shall be deemed to confer on the Airline(s) of one Contracting party the privilege of taking up in the territory of the other Contracting Party, passengers and cargo or mail destined for another point in the territory of that other Contracting Party.

### ARTICLE 3 DESIGNATION AND AUTHORIZATION OF AIRLINES

- 1) Each Contracting party shall have the right to designate in writing to the other Contracting Party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels and shall identify whether the Airline or airlines are authorized to conduct the type of air transportation specified in the Annex.
- 2) On receipt of such designation, the other Contracting party shall, subject to the provisions of paragraph (3) and (4) of this Article, without delay but not later than 30 days, grant to the Airline(s) designated the appropriate operating authorization.
- 3) The Aeronautical Authority of a Contracting Party may require the Airlines designated by the other Contracting party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.
- 4) Each Contracting party shall have the right to refuse to grant the operating authorization referred to in paragraph (2) of this Article or to impose such conditions as it may deem necessary on the exercise by a designated





Airline(s) of the rights specified in Article 2 of this Agreement, in any case where the said Contracting party is not satisfied that the designated Airline or Airlines conform with the eligibility criteria as defined in Article 6.9 of the Yamoussoukro Decision.

- 5) The party designating the Airline(s) is maintaining and administering the standards set forth in Article 6 (safety) and Article 7 (Aviation Security).
- 6) When an Airline has been so designated and authorized it may begin at any time to operate the agreed services provided that a tariff established in accordance with the provisions of Article 9 of this Agreement is in force in respect of that service.

#### ARTICLE 4

#### REVOCATION AND SUSPENSION OF OPERATING AUTHORIZATION

- 1) Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline(s) of the other Contracting party, or to impose such conditions as it may deem necessary on the exercise of these rights;
  - a) In any case where it is no longer satisfied that the place of incorporation or principal place of business is not in accordance with article 3 (4)
  - b) In the case where it is no longer satisfied that the place of incorporation or principal place of business is not in accordance with the laws or the regulations in force in the territory of the Contracting Party granting these rights; or
  - c) In case the Airline(s) otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
  - d) The Other party is not maintaining and administering the standards as set forth in Article 6 (Safety).



- 2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of the laws or the regulations of the provisions of this Agreement, such right of revocation or suspension shall be exercised only after consultation with the aeronautical authorities of the other Contracting Party.

## ARTICLE 5 APPLICABILITY OF NATIONAL LAWS AND REGULATIONS

- 1) The laws and regulations of one Contracting party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline(s) engaged in international air navigation, or to the operation or navigation of such aircraft while within its territory shall likewise apply to the aircraft of the designated Airline of the other Contracting Party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.
- 2) The laws and regulations of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, emigration, immigration, passports as well as customs and sanitary measures, shall apply to passengers, crew or cargo including mail carried by the aircraft of the designated Airline of the other Contracting Party upon entry into or departure from or while within the territory of the said Contracting Party.
- 3) Neither Contracting Party may grant any preference to its own Airline with regard to the designated Airlines of the other Contracting Party in the application of the laws and regulations indicated in this Article.





## ARTICLE 6 SAFETY

- 1) Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses are at least equal to the minimum standards that may be established pursuant to the Convention.
- 2) Each Party reserves the right, however, to refuse to recognize, for the purpose of flights undertaken pursuant to rights granted under Article 2 (Rights and Privileges of Designated Airline(s)), certificates of competency and licenses granted to its own nationals by the other contracting party.
- 3) Either Party may request consultation concerning the Safety Standards maintained by the other Party relating to aeronautical facilities, air crews, aircraft and operation of the designated Airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards that may be established pursuant to the Convention, the other party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other party shall take appropriate corrective action.
- 4) Each Party reserves the right to withhold, revoke, or limit the operating authorization or technical permission of an Airline or Airlines designated by the other party in the event the other Party does not take such appropriate corrective action within reasonable time.



## ARTICLE 7 AVIATION SECURITY

- 1) 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. Without limiting the generality of their rights and obligations under international law, the Contracting parties shall in particular act in conformity with the provisions of the Convention on offenses and Certain Other Acts Committed on board Aircraft; signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16th December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23<sup>rd</sup> September 1971, and any other Convention on Aviation Security to which the Contracting parties shall become party.
- 2) The Contracting parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation. The parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
- 3) Each contracting party agrees that such operations of aircraft may be required to observe the aviation security provisions referred to in paragraph (3) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during





boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

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

#### ARTICLE 8 FAIR COMPETITION

- 1) Each party shall allow a fair and equal opportunity for the designated Airline(s) of both Parties to compete in providing the international air transportation covered by this Agreement.
- 2) Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the Airline(s) of the other party.
- 3) Neither party shall unilaterally limit the volume of traffic frequency or regularity of service, or aircraft type or types operated by the designated Airline(s) of the other Party, in terms of this Agreement, except as may be required for customs, technical, operational or environment reasons under uniform conditions consistent with Article 15 of the Convention.
- 4) Either Party may require the filing of schedules, Programmes for Charter Flights or operational plans by airlines of the other Party for approval. Provided such a requirement may be on a non-discriminatory basis. If a Party requires filings it shall minimize the administrative burden of filing requirement and procedures on air transportation intermediaries and on designated airlines of the other party.



- 5) Any restrictions on the operations of the designated Airline(s) of the other Contracting Party shall be in accordance with the terms of this Agreement and its Annexes or by such applicable conditions of the Convention

## ARTICLE 9 PRICING

- 1) Each party shall allow prices for air transportation to be established by each designated Airline based upon commercial considerations in the market place.
- 2) Intervention by the Parties shall be limited to:-
  - a) Prevention of unreasonably discriminatory prices or practices;
  - b) Protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position and
  - c) Protection of Airlines from prices that are artificially low.
- 3) Each party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by Airlines of the other Party. Notification or filing by the Airline(s) of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notifications for filing may be permitted on shorter notice than normally required. If a Party permits an Airline to file a price on short notice, the price shall become effective on the proposed date for traffic originating in the territory of that Party.
- 4) If a Party believes that a price proposed to be charged by an Airline of the other Party for international air transportation between the territories of parties is inconsistent with considerations set forth in paragraph 1 of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible.
- 5) Except as otherwise provided in this Article, neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by an Airline of either Party for international Air transportation between the territories on interline basis. If either Party

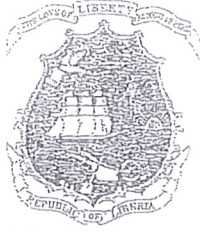




believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach Agreement with respect to a price for which a notice of dissatisfaction has been given, each party shall use its best efforts to put that Agreement into effect. Without such mutual Agreement, the previously existing price shall continue in effect.

#### ARTICLE 10 EXEMPTION FROM CUSTOMS DUTIES, TAXES INSPECTION FEES AND OTHER SIMILAR CHARGES

- 1) Aircraft operated on international air services by the designated Airline of either Contracting party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.
- 2) There shall also be exempt from the same duties, taxes, fees and charges with the exception of charges corresponding to the service performed;
  - a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the Customs Authorities of the said territory and for use on board outbound aircraft of the other contracting Party engaged on international air services.
  - b) Spare parts introduced into the territory of either Contracting Party for maintenance or repair of aircraft used on international air services by the designated airlines of the Contracting party;



- c) Fuel and lubricants supplied in the territory on a Contracting Party to an outbound aircraft of the designated Airlines of the other Contracting party, engaged on an international air service even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they will have been taken on board;
- d) Materials referred to in sub-paragraphs a, b, and c above may be required to be kept under Customs supervision or control;
- e) The regular airborne equipment as well as the material and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of Customs Authorities of that territory. In such cases they may be placed under the supervision of the said authorities up to such time as they may be placed under the supervision of the said authorities of that territory. In such cases they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

#### ARTICLE 11 USER CHARGES

- 1) User charges that may be imposed by the competent charging authorities or bodies of each party on the Airlines of the other Party shall be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users and based upon sound economic principles as set forth in paragraph 2 of this Article. In any event, any such user charges shall be assessed on the Airlines of the other Party on terms not less favourable than the most favourable terms available to any other Airline at the time the charges are assessed.
- 2) User charges imposed on the Airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation.





Facilities and services for which charges are made shall be provided on an efficient and economic basis.

- 3) Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the Airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the Airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (1) and (2) of this Article. Each Party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their view, and have their views taken into account, before changes are made.
- 4) Neither Party shall be held, in dispute resolution procedures pursuant to Article 19, to be in breach of a provision of this Article, unless (1) it fails to undertake review of the charge of practice that is the subject of complaint by the other Party within a reasonable amount of time; or (2) following such a review it fails to take all steps within its power to remedy and charge or practice that is inconsistent with this Article.

## ARTICLE 12 COMMERCIAL OPPORTUNITIES

- 1) The Airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation.
- 2) The designated Airline(s) of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operation, and other specialize staff required for the provision of air transport.
- 3) Each designated Airline shall have a right to select among competing agents for ground handling services in the territory of the other Party. Ground



handling services shall be available on equal basis to all Airlines; charges shall be based on costs of services provided.

- 4) Any Airline of each Party may engage in the sale of air transportation in the territory of the other Party directly and, at the Airline's discretion through its agents. Each Airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies
- 5) Each designated Airline shall have the right to remit to its country receipts in excess of sums locally disbursed in due proportion to the carriage of passengers, baggage, cargo and mail. Such transfers shall be effected on the basis of the foreign exchange regulations in force. If payments between the Contracting Parties are regulated by a special Agreement, this special Agreement shall apply.
- 6) Both parties agree that in operating the Agreed Services on the Routes Schedule, the designated airline(s) may enter into co-operative marketing arrangements such as blocked space, code-sharing with;
  - a) The Airlines of the other Party; and/or
  - b) An airline or Airlines of a third country provided that all Airlines in such arrangements hold appropriate authorizations for such arrangements from the other contracting Party.

### ARTICLE 13 COMPUTER RESERVATION SYSTEM (CRS)

- 1) The Contracting Parties agree that:
  - a) The interest of consumers of air transport products will be protected from any misuse of such information including misleading presentation thereof;
  - b) A designated Airline of a Contracting party and the Airline(s) agents will have unrestricted and non-discriminatory access to and use of CRS in the territory of the other Contracting Party;





- c) Both Parties agree to abide by any applicable codes of Conduct with regards to the use of CRS.
- 2) Each Contracting Party guarantees to the other Contracting Party free and unimpaired access in its territory, the CRS chosen as its primary system by the designated Airline of the other Contracting party. Neither Contracting party shall, in its territory, impose or permit to be imposed on the CRS of the designated Airline of the other Contracting Party more stringent requirements than those imposed on the CRS of its own designated Airline, such as with respect to:
- (i.) The operation and sale of the CRS services including CRS display and editing rules, and
  - (ii.) The access to and use of communications facilities, selection and use of technical hardware and software or the installation of hardware.

#### ARTICLE 14 CHANGE OF GAUGE

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

#### ARTICLE 15 SUBMISSION OF TIME TABLE

- 1) The designated Airline(s) of each Contracting party shall, not later than thirty (30) days prior to the operation of the agreed services on the specified routes, submit the envisaged time-table for approval to the aeronautical authority of the other Contracting party. The same procedure shall apply to any modification thereof.



- 2) For supplementary flights which the designated Airline(s) of the one Contracting Party wishes to operate on the agreed services on the specified routes outside the approved time-table it has to request prior permission from the aeronautical authority of the other Contracting Party. Such request shall usually be submitted at least two working days before such flights.

#### ARTICLE 16 SUBMISSION OF STATISTICS

The Aeronautical Authorities of one Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the operations of the designated Airline of the first Contracting party. Such statements shall include all information required to determine the amount of traffic carried by the Airline on the agreed services and the origins and destinations of such traffic.

#### ARTICLE 17 SETTLEMENT OF DISPUTES

- 1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation
- 2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Contracting party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Contracting party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting parties fails to nominate an arbitrator within the period specified





or if the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

- 3) Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
- 4) The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
- 5) Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.
- 6) Either Contracting Party or the designated Airline of either Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Contracting Party in default hereof.

#### ARTICLE 18 CONSULTATIONS

- 1) Exchange of views shall take place as needed between the Aeronautical Authorities of the Contracting Parties in order to achieve closer cooperation and agreement in all matters pertaining to the application of this agreement.
- 2) Either party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest date, but not later



than 60 days from the date the other Party receives the request unless otherwise agreed.

#### ARTICLE 19 REGISTRATION OF AGREEMENT WITH I.C.A.O

This Agreement, its Annex, as well as any amendments thereto shall be registered with the International Civil Aviation Organization.

#### ARTICLE 20 AMENDMENTS

- 1) If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, such modification, if agreed between the Contracting parties, shall come into effect when confirmed by an Exchange of Diplomatic Notes.
- 2) In the event of the conclusion of any general multilateral convention concerning air transport by which both Contracting Parties become bound, this Agreement and its Annexes shall be amended so as to conform with the provisions of such convention.

#### ARTICLE 21 TERMINATION

Either Contracting party may at any time give notice to the other Contracting Party of its intention to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such cases this Agreement shall terminate twelve (12) months 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. In the absence of acknowledgement of receipt by the other Contracting party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.





ARTICLE 22  
ENTRY INTO FORCE

This agreement shall be provisionally applicable from the date of signature and shall enter into force upon an exchange of notes confirming completion of all necessary internal procedures by each party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement in two originals in the English Language.

DONE at NAIROBI on this 11<sup>th</sup> day of December Two Thousand and Fifteen.

FOR THE GOVERNMENT OF  
THE REPUBLIC OF LIBERIA

FOR THE GOVERNMENT OF  
THE REPUBLIC OF KENYA

H. E. B. ELIAS SHONIYIN  
ACTING MINISTER OF  
FOREIGN AFFAIRS

AMB. (DR.) AMINA C. MOHAMED, CAV, CBS  
CABINET SECRETARY, MINISTRY OF FOREIGN  
AFFAIRS AND INTERNATIONAL TRADE



ANNEX 1

SCHEDULED AIR TRANSPORT SECTION 1

ROUTES AND TRAFFIC RIGHTS

Airline(s) of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled International Air Transport between points on the following routes:

ROUTE SCHEDULE AND TRAFFIC RIGHTS.

ROUTE SCHEDULE

FOR THE DESIGNATED AIRLINE OF THE REPUBLIC OF LIBERIA

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF LIBERIA	POINTS BEYOND THE REPUBLIC OF LIBERIA
Any Points in the Republic of Kenya	Any points	Any International Points in the Republic of Liberia	Any points

FOR THE DESIGNATED AIRLINE OF THE REPUBLIC OF KENYA

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF KENYA	POINTS BEYOND THE REPUBLIC OF KENYA
Points in the Republic of Liberia	Any points	Any International points in the Republic of Kenya	Any points



## NOTES ON THE ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINES

Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights that either begin or terminate in the territory of the country designating the airline.

### TRAFFIC RIGHTS

#### SECTION 2

#### OPERATIONAL FLEXIBILITY

Each designated Airline(s) may, on any or all flights and at its options;

- 1) Operate flights in either or both directions
- 2) Combine different flight numbers within one aircraft operation;
- 3) Serve intermediate, and beyond points and points in the territories of the parties on the routes in any combination and in any order.
- 4) Omit stops at any point or points
- 5) Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes
- 6) Serve points behind any point in its territory with or without change of aircraft or flight-number and may hold out and advertise such services to the public as through services. Without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services the service serves a point in the territory of the Party designating the Airline(s)



## ANNEX II

### (ALL CARGO TRANSPORTATION)

Scheduled all-cargo operations shall be allowed without restrictions as to:

- a) Capacity
- b) Frequency
- c) Routes



