

REPUBLIC OF KENYA  
OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

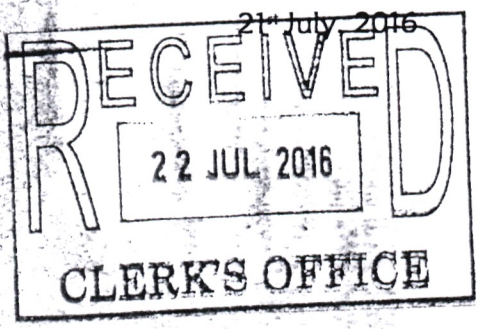
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Our Ref: AG/CONF/21/6/7/7/Vol. I

Mr. Justin Bundi, CBS  
Clerk of the National Assembly  
Parliament Building  
P.O. Box 41842-00100  
NAIROBI



**RE: RATIFICATION OF THE MONTREAL PROTOCOL, 2014.**

Reference is made to the above matter.

Kenya ratified the Convention on Offences and Certain Other Acts Committed on Board an Aircraft (Tokyo Convention, 1963) on 22<sup>nd</sup> June, 1970. This Convention applies to offences that may jeopardize the safety of the Aircraft. Due to increase in unruly passengers, the Tokyo Convention was reviewed culminating to a Diplomatic Conference held on 4<sup>th</sup> April, 2014. The Conference adapted the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board an Aircraft (Montreal Protocol, 2014) and was attended by 88 member States including Kenya.

The Montreal Protocol was opened for Signature on 4<sup>th</sup> April, 2014 and shall come into force on the 1<sup>st</sup> Day of the second Month following the deposit of the 22<sup>nd</sup> Instrument of ratification, acceptance, approval or accession with the Depository.

Kenya has not yet ratified the Protocol. The need to ratify the Protocol cannot be overemphasized as it gives Kenya jurisdictional power to deal with unruly passengers, while preserving its prosecutorial discretion.

During the Fifth Cabinet meeting held on 8<sup>th</sup> June, 2016 CAB(16) 31 jointly with the Attorney- General and the Ministry of Transport, Infrastructure, Housing and Urban Development presented a Cabinet Memorandum and:-

- a) Approved the ratification of the Protocol to amend the Convention on Offences and Certain Other Acts, Committed on Board Aircraft.

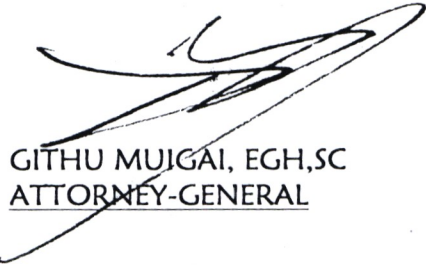
SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355/0700072929/0732529995  
EMAIL: [info@ag.go.ke](mailto:info@ag.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)  
DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILE SELASSIE AVENUE, P.O. Box 56057 - 00200, Nairobi - Kenya TEL: Nairobi 2224029/2240337  
EMAIL: [legals@justice.go.ke](mailto:legals@justice.go.ke)

THE NATIONAL ASSEMBLY  
PAPERS LAID  
DATE: 06 DEC 2018  
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Moses Lemuna

b) Directed the Attorney- General to submit the Protocol to the National Assembly for consideration and ratification.

By virtue of Section 8 of the Treaty Making and Ratification Act, this Office is required to seek approval of the National Assembly to ratify the Treaty.

In light of the above please find enclosed 3 copies of the Montreal Protocol and the Memorandum of the Protocol for consideration and approval by the National Assembly.



GITHU MUIGAI, EGH, SC  
ATTORNEY-GENERAL





REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

21<sup>st</sup> July, 2016

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DEPARTMENT OF JUSTICE

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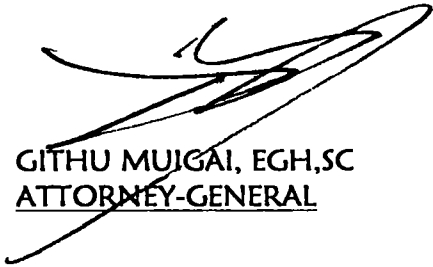
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GITHU MUIGAI, EGH, SC  
ATTORNEY-GENERAL



SECRET

**REPUBLIC OF KENYA**



**MINISTRY OF TRANSPORT AND INFRASTRUCTURE**

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

**BY**

**AG. CABINET SECRETARY  
MINISTRY OF TRANSPORT AND INFRASTRUCTURE**

**AND**

**ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL AND  
DEPARTMENT OF JUSTICE**

**OCTOBER, 2015**

SECRET

SECRET

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

**1.0 OBJECTIVE OF THE MEMORANDUM**

The objective of the Memorandum is to appraise the Cabinet on the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montreal Protocol, 2014) and to request the Cabinet to approve its ratification.

**2.0 BACKGROUND OF THE SUBJECT MATTER**

Kenya is a Contracting State to the International Civil Aviation Organization (ICAO) having formally given notice of its adherence to the Convention on International Civil Aviation on May 1, 1964. As a Contracting State of ICAO, Kenya has ratified 30 instruments comprising of 11 Conventions and 19 Protocols relating to civil aviation since it joined the Organization.

Kenya ratified the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963), on 22<sup>nd</sup> June, 1970. The Tokyo Convention, 1963 applies in respect of offences against penal law and acts which, whether or not are offences, may jeopardize the safety of aircraft.

Ensuring the safe, secure and efficient operation of commercial flights is the shared goal of governments, airlines and the wider aviation industry. However, incidents of unruly passengers on board aircraft threaten the safety and security of the flight and have become a significant issue faced by airlines and cabin crew. In addition, the behavior of unruly passengers also adversely affects the travel experience of other passengers, causes operational disruption and leads to significant costs for airlines.



A significant number of unruly passengers rarely face prosecution or other legal sanctions. This is because of jurisdictional and other gaps in the Tokyo Convention, 1963.

Due to the increase in unruly passenger incidents, the International Air Transport Association (IATA) made a formal request to ICAO in 2009 to review and enhance the Tokyo Convention, 1963 to allow law enforcement authorities adequate means to pursue offenders. The review process culminated in a Diplomatic Conference held from 26<sup>th</sup> March to 4<sup>th</sup> April 2014 in Montreal, Canada. The Conference adopted the Protocol and was attended by 88 Member States including Kenya. The Montreal Protocol, 2014 was opened for signature and ratification on 4<sup>th</sup> April, 2014.

### **3.0 ANALYSIS OF THE PROBLEM**

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

The main object of the Montreal Protocol, 2014 is to empower States to deal with unruly passengers, while preserving prosecutorial discretion.

The Montreal Protocol, 2014 will enhance civil aviation safety and security by:



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

#### **4.0 OPTIONS ON THE WAY FORWARD**

The Montreal Protocol, 2014 was opened for signature on 4<sup>th</sup> April, 2014 and will enter into force on the 1<sup>st</sup> day of the second month following the deposit of the 22<sup>nd</sup> instrument of ratification, acceptance, approval or accession with the Depositary. The ratification of the Protocol would ensure that Kenya meets her obligations under ICAO.

#### **5.0 FINANCIAL IMPLICATIONS**

Since the implementation of this Protocol will be incorporated into existing institutional frameworks, there are no budgetary changes envisaged in terms of financial implications.

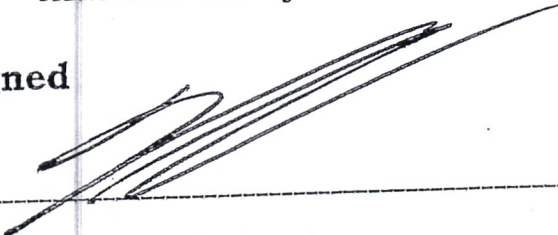


### 6.0 RECOMMENDATIONS TO THE CABINET

The Cabinet is requested to:-

- (i) take note of the contents of this Cabinet Memorandum;
- (ii) approve ratification of the Protocol to amend the Convention on Offences and Certain other Acts Committed on board Aircraft (Montreal Protocol, 2014); and
- (iii) direct the Cabinet Secretary for Foreign Affairs and International Trade to submit the Protocol to the Speaker of the National Assembly for consideration and ratification; and
- (iv) direct the Cabinet Secretary, Ministry of Foreign Affairs and International Trade and the Acting Cabinet Secretary, Ministry of Transport and Infrastructure to take necessary action.

Signed

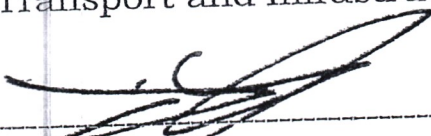



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James W. Macharia  
 Acting Cabinet Secretary, Ministry  
 of Transport and Infrastructure

22.10.15

Date




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Prof. Githu Muigai, EGH, SC  
 Attorney General  
 Office of the Attorney General and  
 Department of Justice

25.10.15

Date





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

(Submitted by the Attorney General)

### 1.0 PURPOSE

The purpose of this Memorandum is to seek the approval of the National Assembly to ratify the Protocol to Amend the Convention on Offences and Certain Other Acts Committed On board Aircraft (Montreal Protocol, 2014).

### 2.0 BACKGROUND

Kenya is a Contracting State to the International Civil Aviation Organization (ICAO) having formally given notice of its adherence to the Convention on International Civil Aviation on May 1, 1964. As a Contracting State of ICAO, Kenya has ratified 30 instruments comprising of 11 Conventions and 19 Protocols relating to civil aviation since it joined the Organization.

Kenya ratified the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963), on 22<sup>nd</sup> June, 1970. The Tokyo Convention, 1963 applies in respect of offences against penal law and acts which, whether or not are offences, may jeopardize the safety of aircraft.

Ensuring the safe, secure and efficient operation of commercial flights is the shared goal of governments, airlines and the wider aviation industry. However, incidents of unruly passengers on board aircraft threaten the safety and security of the flight and have become a significant issue faced by airlines and cabin crew. In addition, the behavior of

unruly passengers also adversely affects the travel experience of other passengers, causes operational disruption and leads to significant costs for airlines

A significant number of unruly passengers rarely face prosecution or other legal sanctions. This is because of jurisdictional and other gaps in the Tokyo Convention, 1963. Due to the increase in unruly passenger incidents, the International Air Transport Association (IATA) made a formal request to ICAO in 2009 to review and enhance the Tokyo Convention, 1963 to allow law enforcement authorities adequate means to pursue offenders. The review process culminated in a Diplomatic Conference held from 26<sup>th</sup> March to 4<sup>th</sup> April 2014 in Montreal, Canada. The Conference adopted the Protocol and was attended by 88 Member States including Kenya. The Montreal Protocol, 2014 was opened for signature and ratification on 4<sup>th</sup> April, 2014.

### 3.0 THE OBJECT AND SUBJECT MATTER OF THE PROTOCOL

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

The main object of the Montreal Protocol, 2014 is to empower States to deal with unruly passengers, while preserving prosecutorial discretion.

The Montreal Protocol, 2014 will enhance civil aviation safety and security by:

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



- d) Recognizing that States may establish an in-flight security officer programme on a bilateral or multilateral basis.

The Montreal Protocol, 2014 was opened for signature on 4<sup>th</sup> April, 2014 and will enter into force on the 1<sup>st</sup> day of the second month following the deposit of the 22<sup>nd</sup> instrument of ratification, acceptance, approval or accession with the Depositary. The ratification of the Protocol would ensure that Kenya meets her obligations under ICAO.

#### **4.0 CONSTITUTIONAL IMPLICATION OF THE PROTOCOL**

4.1 The Protocol does not propose any amendments to the Constitution of Kenya 2010.

4.2 .The Protocol is consistent with the Constitution and promote constitutional values and objectives. It specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness, interdependence, non-aggression and non –interference in the internal affairs of each contracting state.

4.3 The Impact of the Protocol on National Interest inter alia to enhance safety and security in civil aviation, promote passenger and freight air transportation, increase trade and tourism and facilitate regional and global integration.

#### **5.0 OBLIGATIONS IMPOSED ON KENYA BY THE PROTOCOL**

The Protocol requires the amendment of the Protection of the Aircraft Act, Cap 68 of the Laws of Kenya to align it with the provisions of the Protocol.

#### **6.0 FINANCIAL IMPLICATIONS**

Since the implementation of this Protocol will be incorporated into existing institutional frameworks, there are no budgetary changes envisaged in terms of financial implications.

#### **7.0 MINISTERIAL RESPONSIBILITY**

7.1. The Cabinet during its fifth meeting held on 8<sup>th</sup> June, 2016 approved the ratification of the Protocol.



7.2 The Ministerial responsibility on implementation of the Treaty will be on the Cabinet Secretary of the Ministry of Transport, Infrastructure, Housing and Urbanization.

## 8.0 IMPLICATIONS ON MATTERS RELATING TO COUNTIES

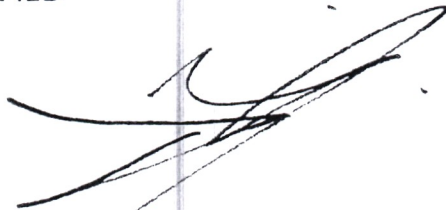
As per the Kenya Constitution of Kenya 2010, the areas of civil aviation and international relations covered by the Convention and Protocol fall under the functions of the National Government. The National Government shall whenever necessary coordinate with the County Governments.

## 9.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to:

- a) Consider the contents of this Memorandum, and
- b) To authorize the ratification of the Protocol.

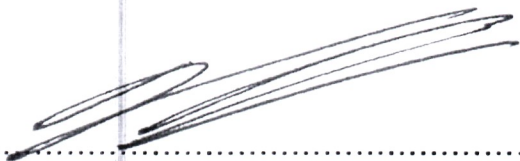
SIGNED



.....  
GITHU MUIGAI EGH, SC  
ATTORNEY GENERAL

DATE

21<sup>st</sup> July 2016.  
.....



JAMES W. MACHARIA, EGH  
CABINET SECRETARY  
MINISTRY OF TRANSPORT INFRASTRUCTURE, HOUSING & URBAN DEVELOPMENT

DATE

13<sup>TH</sup> JULY, 2016



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MINISTRY OF TRANSPORT INFRASTRUCTURE, HOUSING & URBAN DEVELOPMENT

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