 THE NATIONAL ASSEMBLY PARDISO I ATO	
DATE:	20 APR 2023
	DAY: Thursday
TABLED BY:	Hon. Owen Boga, MP, Deputy Leader-Majority
CLERK-AT THE TABLE:	Moses Lemina

**MINISTRY OF FOREIGN & DIASPORA AFFAIRS**

**PARLIAMENTARY MEMORANDUM**

**ON**

**THE RATIFICATION**

**OF**

**PROTOCOLS RELATING TO AMENDMENTS OF ARTICLE 50(A) AND 56 TO THE**

**CONVENTION ON INTERNATIONAL CIVIL AVIATION, 1944 (CHICAGO**

**CONVENTION)**

**PARLIAMENTARY MEMORANDUM ON THE RATIFICATION OF PROTOCOLS RELATING TO AMENDMENTS OF ARTICLE 50(A) AND 56 TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, 1944 (CHICAGO CONVENTION)**

**1.0 OBJECTIVE OF THE MEMORANDUM**

- 1.1 The purpose of this Parliamentary Memorandum is to appraise the National Assembly and seek approval for Kenya's ratification of Protocols relating to the amendment of Article 50(A) and 56 to the Convention on International Civil Aviation, 1944 (Chicago Convention).
- 1.2 The ratification process was approved by the Cabinet in a meeting held on **12<sup>th</sup> May 2022**.

**2.0 BACKGROUND**

- 2.1 The Chicago Convention was signed on 7<sup>th</sup> December, 1944, by 52 States. Kenya adhered to it on 1<sup>st</sup> May, 1964. There are currently 193 contracting States to the Convention. The Convention's objective is to regulate international air transport and establishes the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations.
- 2.2 Protocols relating to the amendment of articles 50(a) and 56 to the Convention on International Civil Aviation, 1944 (Chicago convention) were adopted in the 39<sup>th</sup> session at Montreal on 1<sup>st</sup> October, 2016, in order to increase the membership of the Council and the Air Navigation Commission.
- 2.4 The proposed amendment to the Convention shall come into force after the 128<sup>th</sup> Member State deposits their Instrument of Ratification as outlined by article 94(a) of the Convention. Currently 12 members have ratified the amendments.
- 2.5 Kenya is Party to the Convention and its protocols but is yet to ratify the Protocols relating to the amendment of the Convention.

### **3.0 OBJECTS AND SUBJECT MATTER OF PROTOCOLS RELATING TO AMENDMENTS OF ARTICLES 50 (A) AND 56 TO THE CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION**

3.1 The convention under article 44(a) states that the aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to insure the safe and orderly growth of international civil aviation throughout the world.

3.2 The Protocol relating to an amendment to article 50(a) of the Convention on International Civil Aviation, 1944 (Chicago Convention) was adopted with the aim of increasing the membership of the Council from thirty-six (36) to forty (40).

3.3 The adoption was done alongside the Protocol relating to an amendment to article 56 of the Convention which aims to increase the membership of the Air Navigation Commission from nineteen (19) to twenty-one (21).

3.4 The ever increasing number of Contracting Parties joining the ICAO and the growth of international air traffic movement and air navigation services through the creation of sub regions that lack representation from ICAO, has necessitated the amendments to the Convention.

### **4.0 OBLIGATIONS IMPOSED BY THE AMENDED CONVENTION**

4.1 There are no additional obligations imposed by the protocols relating to the amendments of the Convention other than those in the initial Convention.

### **5.0 PROBLEM ANALYSIS**

5.1 The convention notes that International civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security.

5.2 The protocol relating to the amendment notes the desire of a large number of contracting states to enlarge the membership of the council in order to ensure better balance by means of an increased representation of the contracting parties.

5.3 It further notes in its preamble the general desire of the contracting states to enlarge the membership of the Air Navigation Commission.

## **6.0 JUSTIFICATION**

6.1 Kenya was elected as a Part III member to the Council on 4<sup>th</sup> October, 2013 for a three-year term from 2013 to 2016. Subsequently Kenya was elected for a second term from 7<sup>th</sup> October 2016 to 6<sup>th</sup> October, 2019.

6.2 The increase of membership in the Council provides an opportunity for Kenya to lobby for Part II membership which is a Permanent Council Member seat, upon ratification and entry into force of the amendments.

## **7.0 COMMON CONSTITUTIONAL AND LEGISLATIVE IMPLICATION**

7.1 The Convention is consistent with the Constitutional provisions and promotes constitutional values and objectives.

## **8.0 IMPLICATION RELATING TO COUNTIES**

8.1 There are no obligations imposed under the protocols with regards to counties.

## **9.0 FINANCIAL IMPLICATION**

9.1 Under the protocol relating to the amendment, there are no additional financial obligations.

## **10.0 MINISTERIAL RESPONSIBILITY**

10.1 The Ministry responsible for the implementation and activity in regard to the amendment of the Chicago Convention falls under the Ministry of Roads, Transport and Public works.

10.2 The Ministry of Foreign Affairs and the Office of the Attorney General and Department of Justice will coordinate the reporting process on state obligation pursuant to Treaty Making and Ratification Act of 2012



**11.0 RESERVATION**

11.1 The convention does not provide for reservations

**12.0 RECOMMENDATION**

12.1 In consideration of the aforementioned facts, the National Assembly is invited to:

- i. Note the contents of the Memorandum;
- ii. Consider and approve the Protocols relating to the amendment of article 50(a) and 56 to the Convention on International Civil Aviation, 1944 (Chicago convention)
- iii. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the relevant instruments to the Depository.

SIGNED.......... DATED..........APRIL, 2023

**DR. ALFRED N. MUTUA, EGH  
CABINET SECRETARY  
MINISTRY OF FOREIGN & DIASPORA AFFAIRS**



# PROTOCOL

## RELATING TO AN AMENDMENT TO ARTICLE 56 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

Signed at Montréal on 6 October 2016

THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

HAVING MET in its Thirty-ninth Session at Montréal on 1 October 2016,

HAVING NOTED that it is the general desire of Contracting States to enlarge the membership of the Air Navigation Commission,

HAVING CONSIDERED it proper to increase the membership of that body from nineteen to twenty-one, and

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. APPROVES, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

“In Article 56 of the Convention the expression ‘nineteen members’ shall be replaced by ‘twenty-one members’.”;

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, one hundred and twenty-eight as the number of Contracting States upon whose ratification the aforesaid amendment shall come into force; and
3. RESOLVES that the Secretary General of the International Civil Aviation Organization shall draw up a Protocol, in the English, Arabic, Chinese, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the amendment above-mentioned and the matters hereinafter appearing:
  - a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
  - b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.
  - c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.

- d) The Protocol shall come into force in respect of the States that have ratified it on the date on which the one hundred and twenty-eighth instrument of ratification is so deposited.
- e) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.
- f) The Secretary General shall immediately notify all Contracting States to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

CONSEQUENTLY, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Thirty-ninth Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Montréal on the sixth day of October of the year two thousand and sixteen, in a single document in the English, Arabic, Chinese, French, Russian and Spanish languages, each text being equally authentic. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all Contracting States to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

A. Abdul Rahman  
*President of the Thirty-ninth Session  
of the Assembly*

F. Liu  
*Secretary General*



**Protocol Relating to an Amendment to the Convention on  
International Civil Aviation [Article 50(a)], signed at Montréal on  
6 October 2016**



PROTOCOL  
RELATING TO AN AMENDMENT TO THE  
CONVENTION ON INTERNATIONAL CIVIL AVIATION

[Article 50(a)]

Signed at Montréal on 6 October 2016

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permission in writing from the International Civil Aviation Organization.

# PROTOCOL

## RELATING TO AN AMENDMENT TO ARTICLE 50(a) OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

Signed at Montréal on 6 October 2016

THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

HAVING MET in its Thirty-ninth Session at Montréal on 1 October 2016,

HAVING NOTED that it is the desire of a large number of Contracting States to enlarge the membership of the Council in order to ensure better balance by means of an increased representation of Contracting States,

HAVING CONSIDERED it appropriate to increase the membership of that body from thirty-six to forty,

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. APPROVES, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

“In Article 50(a) of the Convention the second sentence shall be amended by replacing ‘thirty-six’ by ‘forty’.”;

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, one hundred and twenty-eight as the number of Contracting States upon whose ratification the proposed amendment aforesaid shall come into force;
3. RESOLVES that the Secretary General of the International Civil Aviation Organization draw up a Protocol, in the English, Arabic, Chinese, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the amendment above-mentioned and the matter hereinafter appearing:
  - a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
  - b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.

- c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.
- d) The Protocol shall come into force in respect of the States which have ratified it on the date on which the one hundred and twenty-eighth instrument of ratification is so deposited.
- e) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.
- f) The Secretary General shall immediately notify all Contracting States to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

CONSEQUENTLY, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Thirty-ninth Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Montréal on the sixth day of October of the year two thousand and sixteen, in a single document in the English, Arabic, Chinese, French, Russian and Spanish languages, each text being equally authentic. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all Contracting States to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

A. Abdul Rahman  
*President of the Thirty-ninth Session  
of the Assembly*

F. Liu  
*Secretary General*



**MINISTRY OF FOREIGN AND DIASPORA AFFAIRS**

**PARLIAMENTARY MEMORANDUM**

**ON**

**THE RATIFICATION OF THE**

**THE EAST AFRICAN COMMUNITY (EAC) MULTILATERAL**

**AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT**

**INVESTIGATIONS.**



**RATIFICATION OF THE EAST AFRICAN COMMUNITY (EAC) MULTILATERAL AGREEMENT ON AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS.**

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**1.0 OBJECTIVE OF THE MEMORANDUM**

- 1.1 The purpose of this Memorandum is to appraise the National Assembly and seek approval for Kenya's ratification of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations.
- 1.2 The ratification process was approved by the Cabinet vide a letter dated during its **1st Meeting of 2021** held on **25<sup>th</sup> February, 2021**.

**2.0 BACKGROUND**

- 2.1 Kenya is a party to the Convention on International Civil Aviation (Chicago Convention) signed on **7<sup>th</sup> December, 1944**. The Convention mandates that all civil aircraft operations be carried out in accordance with minimum operating standards procedures and practices that are globally accepted.
- 2.2 The EAC Treaty, to which Kenya is a signatory, stipulates in Article 92 that Partner States should implement measures to ensure that air transport services are safe, effective, and profitable; adopt common policies for the growth of civil air transport in the area; harmonize civil aviation rules and regulations; and coordinate efforts and cooperate in order to maintain high security.
- 2.3 A Multilateral Agreement on Aircraft Accident and Incident Investigations, attached as Appendix I, was adopted at the 16th Meeting of the Sectorial Council on Transport, Communication, and Meteorology, held on **24<sup>th</sup> – 28<sup>th</sup> June, 2019**, in Kampala, Uganda, to actualize the requirements under the Chicago Convention on International Civil Aviation (Chicago Convention) and the EAC Treaty concerning Aircraft Accident and Incident Investigations.
- 2.4 The Multilateral Agreement establishes a framework for legal collaboration between Partner States in managing investigations into aircraft accidents and incidents. The Multilateral Agreement was necessitated by the need to cooperate in Aircraft Accident and



Incident Investigations services in accordance with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS).

### **3.0 OBJECT AND SUBJECT MATTER OF THE AGREEMENT**

- 3.1 The main objective of the Agreement is to harmonize and coordinate their civil aviation in order to promote safe, reliable and efficient air transport in accordance with Article 92 of the Treaty for the establishment of the East African Community (EAC).
- 3.2 The Agreement reiterates and recognizes the importance of adopting common policies in the development of civil transport in the EAC and the need to co-operate in Aircraft Accident and Incident Investigations and provision of expeditious and effective Aircraft Accident and Incident Investigations services in accordance with international standards and procedures.
- 3.3 The Agreement recognizes the ICAO Universal Safety Oversight Audit Program (USOAP) and other ICAO missions have shown that many Contracting States have not established and/or managed effective accident and incident investigation organizations, mainly because sufficient resources have not been allocated to meet States' obligations under the Convention and Annex 13 to the Convention.
- 3.4 The Agreement takes into account the recommendations of the Accident Investigation and Prevention (AIP) Divisional Meeting (2008) (AIG/08) held in Montreal, Canada, from 13<sup>th</sup> – 18<sup>th</sup> October, 2008, and in particular Recommendation (6/3 a), urging Contracting States to conduct safety investigations pursuant to Article 26 of the Chicago Convention and Annex 13 which emphasizes that when an accident occurs in their territory, the states can seek regional support if the required capabilities or resources are not available.
- 3.5 The Agreement considers that Chapter 5 Article 1 of Annex 13 to the Convention on International Civil Aviation, Aircraft Accident and Incident Investigation, Eleventh Edition, July 2016, mandates the States of Occurrence to delegate the whole or any part of the conducting of an investigation to another State or regional accident and incident investigation organization by mutual arrangement and consent.

#### **4.0 OBLIGATIONS IMPOSED BY THE AGREEMENT**

4.1 Upon ratification, Kenya will be required to:

- a. Establish, in accordance with ICAO Global Aviation Safety plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies.
- b. Provide assistance in aircraft accident and incident investigation by availing experts, and any other required logistics to the Partner States as appropriate;
- c. Ensure all investigations into aircraft accident and incidents that are carried out in Partner States are independent from political or other interference or pressure;
- d. Provide adequate resources, including funding and qualified personnel, for carrying out investigations;
- e. Promote the use of common set of regulations in compliance with provisions of ICAO Annex 13;
- f. Promote the use of common guidance materials, accident investigation annuals or handbooks;
- g. Promote the application of the best practices in the area of aircraft accident and incident prevention;
- h. Enhance the qualification and experiences of aircraft accident and incident investigators in Partner States;
- i. Enhance cooperation and collaboration with Partner States relating to sharing safety information;
- j. Enhance development of regional institution capacity in training, research, research findings, related aircraft accident and incident investigation;
- k. Invite the other Partner States' investigators to attend general and specialized investigation courses which they conduct;
- l. Facilitate the attachment of other Partner States' investigators to their aircraft accident and incident investigation, with a view to enhancing their understanding of investigation requirements and procedures;

- m. Share with the other Partner State relevant information about an ongoing investigation in which the other Partner State has expressed an interest in consistency with ICAO Annex 13 to the Chicago Convention;
- n. Consult partner states in the organization of an investigation, drafting of the report, crisis management and communication, as deemed necessary;
- o. Identify their investment needs in the area of Aircraft Accident and Incident Investigation and prioritize relevant sources of funding for that investment;
- p. Promote the sharing of specialized equipment and facilities in the view of cutting the cost and avoiding duplication.

## **5.0 PROBLEM STATEMENT**

- 5.1 According to findings from the International Civil Aviation Organization's (ICAO) Universal Safety Audit Program (USOAP), many States have been unable to put in place an efficient accident and incident investigation system, primarily because not enough resources have been set aside to meet States' obligations under the Convention.
- 5.2 The Air Accident Investigation Department (AAID) under the Ministry of Transport and Infrastructure is tasked with investigating aviation accidents in Kenya. The Department was hived from the KCAA to increase its independence, thus impartiality while conducting its investigative operations. Air Accident Investigation data show that despite Kenya Civil Aviation Authority having increased its safety oversight through recruitment, training, developing safety procedures, and enforcement, aircraft accidents have continued to increase according to the Ministry of Transport (2013). Kenya has previously encountered a lot of air accidents, particularly with light aircraft and helicopters, and preventing accidents has continued to be a tough challenge.
- 5.3 This can be mitigated through the ratification of the Agreement to enhanced cooperation in this connection, pursuant to Article 26 of the Chicago Convention, when an accident occurs in their territory, States seek regional support in the required capabilities or resources that are not available. The Convention also allows States of occurrence to delegate the whole or any part of the conducting of an investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent.

## **6.0 JUSTIFICATION**

- 6.1 Upon signing of the Treaty, Kenya and other Partner States will benefit from enhanced cooperation and collaboration in the aircraft accident and incident investigation; Partner State resources; common guidance materials; accident investigation manuals and handbooks; sharing of safety information; enhanced capacity in training and research; consultations; crisis management and communication during investigations, and sharing of specialized equipment and facilities with a view to cutting cost and avoiding duplication.
- 6.2 The Agreement on Aircraft Accident and Incident Investigation overall objectives and provisions is based on its commitment to provide a safe and efficient civil aviation environment that contributes to the achievement of Kenya's developmental objectives, as articulated in Vision 2030.

## **7.0 LEGISLATIVE IMPLICATIONS**

- 7.1 The Agreement does not propose any amendment to the Constitution of Kenya 2010 and is consistent with the constitutional provisions.
- 7.2 The ratification of the Multilateral Agreement on Aircraft Accident and Incident Investigations presents no new policy implications for Kenya as the provisions of the Agreement are already embedded in the Civil Aviation Act (2013) and the Civil Aviation (Aircraft Accident and Incident Investigations) Regulations 2010.
- 7.3 The national laws relating to the aviation sector in Kenya include:
- i. The Civil Aviation Act (21/2013), which provides for the control, regulation and orderly development of civil aviation in Kenya. A number of detailed regulations have been issued under the act;
  - ii. The Kenya Airports Authority Act (Chapter 395 of the Laws of Kenya), which establishes the Kenya Airports Authority (KAA) with the mandate to manage, control and manage aerodromes and other related facilities in Kenya;

- iii. The Air Passenger Service Charge Act (Chapter 475 of the Laws of Kenya), which provides for the imposition of service charge on passengers departing by air from an airport within Kenya;
- iv. The Carriage by Air Act (2/1993), which gives effect to the application of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air in Kenya; and
- v. The International Interests in Aircraft Equipment Act, 2013, which gives effect to the Cape Town Convention on International Interests in Mobile Equipment and the Cape Town Protocol on the Convention to International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.

## **8.0 FINANCIAL IMPLICATIONS**

8.1 The Memorandum is aligned with the EAC Treaty and there are no immediate direct financial implications arising from the signing of the Agreement.

## **9.0 MINISTERIAL RESPONSIBILITY**

9.1 Responsibility for the implementation of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations will fall under the Ministry of Roads, Transport and Public works and the Ministry of East African Community and Regional Development.

9.2 The Office of the Attorney General, Department of Justice and the Ministry of Foreign and Diaspora Affairs will coordinate the reporting process on State obligations under the Treaty Making and Ratification Act No. 45 of 2012.

## **10.0 RESERVATIONS**



10.0 East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations does not expressly provide for reservations.

## **11.0 RECOMMENDATION**

11.1 In consideration of the aforementioned facts, the National Assembly is invited to:

1. Note the contents of the Agreement;

2. Consider and approve Kenya's ratification of the East African Community (EAC) Multilateral Agreement on Aircraft Accident and Incident Investigations; and
3. Direct the Cabinet Secretary of Foreign and Diaspora Affairs to prepare and deposit the instruments of ratification to the relevant depository.

SIGNED.......... DATED.......... APRIL, 2023

**DR. ALFRED N. MUTUA, EGH**  
**CABINET SECRETARY**  
**MINISTRY OF FOREIGN AND DIASPORA AFFAIRS**

Draft of 26<sup>th</sup> June, 2019



AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF BURUNDI,

THE GOVERNMENT OF THE REPUBLIC OF KENYA,

THE GOVERNMENT OF THE REPUBLIC OF RWANDA,

THE GOVERNMENT OF THE REPUBLIC OF SOUTH SUDAN,

THE GOVERNMENT OF THE REPUBLIC OF UGANDA; and

THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA

CONCERNING

THE COOPERATION IN AIRCRAFT ACCIDENT AND INCIDENT  
INVESTIGATION

## PREAMBLE

WHEREAS the Government of the Republic of Burundi, the Government of the Republic of Kenya, Government of the Republic of Rwanda, the Government of the Republic of South Sudan, the Government of Republic of Uganda and the Government of the United Republic of Tanzania (in this Agreement referred to as the "Partner States") undertook to harmonise and coordinate their civil aviation and air transport in order to promote safe, reliable and efficient air transport in accordance with Article 92 of the Treaty for the Establishment of the East African Community (EAC) (Herein referred to as the Treaty);

WHEREAS the Partner States have in furtherance of their commitment under Article 92 of the Treaty concluded among themselves the EAC Search and Rescue Agreement, 2002 and the Administrative Memorandum for Operationalization of the Search and Rescue Agreement, 2013;

AND WHEREAS the Partner States reiterate and recognize the importance of adopting common polices in the development of civil air transport in the EAC and the need to co-operate in Aircraft Accident and Incident Investigation and provision of expeditious and effective Aircraft Accident and Incident Investigation services in accordance with international standards and procedures;

WHEREAS Article 26 of the Chicago Convention on Civil Aviation (in this Agreement referred to as the "Convention") provides that a State in which an accident to an aircraft occurs within the terms of the Article "will institute an inquiry into the circumstances of the accident in accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization (ICAO)" domesticated by the Partner States through the harmonized EAC Civil Aviation Aircraft Accident and Incident Investigation Act;

AND WHEREAS Annex 13 to the Convention specifies Standards and Recommended Practices (SARPs) for the conduct of aircraft accident and incident investigations by States which has been domesticated by the Partner States through the harmonised EAC Civil Aviation (Aircraft Accident and Incident Investigation) Regulations;

RECOGNIZING that the ICAO Universal Safety Oversight Audit Program (USOAP) and other ICAO missions have shown that many Contracting States have not established and/or managed effective accident and incident investigation organizations, mainly because sufficient resources have not been allocated to meet States' obligations under the Convention and Annex 13 to the Convention;



TAKING INTO ACCOUNT the recommendations of the Accident Investigation and Prevention (AIG) Divisional Meeting (2008) (AIG/08) held in Montréal, Canada, from 13 to 18 October 2008, and in particular Recommendation 6/3 a), urging Contracting States to conduct safety investigations pursuant to Article 26 of the Chicago Convention and Annex 13 which emphasises that when an accident occurs in their territory, the state can seek regional support if the required capabilities or resources are not available; and

CONSIDERING that chapter 5 article 1 of Annex 13 to the Convention on International Civil Aviation, Aircraft Accident and Incident Investigation, Eleventh Edition, July 2016 that mandates the State of Occurrence to delegate the whole or any part of the conducting of an investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent;

DO HEREBY AGREE AS FOLLOWS:

#### ARTICLE 1: DEFINITIONS

(1) In this Agreement unless the context otherwise requires:

"accident" means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which—

- (a) a person is fatally or seriously injured as a result of—
  - (i) being in the aircraft;
  - (ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or
  - (iii) direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew;

- (b) the aircraft sustains damage or structural failure which:
  - (i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and
  - (ii) would normally require major repair or replacement of the affected component except for engine failure or damage, when the damage is limited to a

single-engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes), or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome); or

(c) the aircraft is missing or is completely inaccessible:

Provided that, an aircraft is deemed to be missing when the official search has been terminated and the wreckage has not been located;

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface;

"cause" means action, omission, event, condition, or a combination thereof, which led to an accident or incident;

"community" means the East African Community established by Article 2 of the EAC treaty;

"co-operation" includes the undertaking by the Partner States in common, jointly or in concert, of activities undertaken in furtherance of the objectives of the Community as provided for under the Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Community;

"council" means the Council of Ministers of the community established by Article 9 of the EAC treaty;

"designated authority" authority/ body/ organ/ agency/ department/ unit responsible for aircraft accident and incident investigation within a Partner State

"incident" means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;

"investigation" means a process conducted for the purpose of preventing an accident, includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, where appropriate, the making of safety recommendations;

"investigator-in-charge" means a person charged, on the basis of his or her qualifications, with the responsibility of organising, conducting or controlling an investigation;

"operator" means a person, organization or enterprise engaged in or offering to engage in an aircraft operation;

"Partner States" means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the Republic of Uganda, the

United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty;

"preliminary report" means the communication used for the prompt dissemination of data obtained during the early stages of an investigation;

"safety recommendation" means a proposal of the accident investigation authority of the State conducting the investigation, based on information derived from the investigation, made with the intention of preventing accidents or incidents;

"Secretary General" means the Secretary General of the EAC provided for by Article 67 of the Treaty;

"serious incident" means an incident involving circumstances indicating that an accident nearly occurred;

"State of design": means the State having jurisdiction over the organization responsible for the type design;

"State of manufacture" means the State having jurisdiction over the organization responsible for the final assembly of the aircraft;

"State of occurrence" means the State in the territory of which an accident or incident occurs;

"State of Registry" means the State on whose register the aircraft is entered;

"State of the operator" means the State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence.

- (2) Except where a specific definition is provided by this Agreement, the words and phrases used in this Agreement have the same meaning as those ascribed to them in Annex 13 to the Chicago Convention on Civil Aviation and the Treaty for the Establishment of the East African Community.

## **ARTICLE 2: COOPERATION IN AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION**

Upon the request by a Partner State, other Partner States shall cooperate in Aircraft Accident and Incident Investigation in accordance with this Agreement in order to promote safe, reliable and efficient air transport within the Community.

## **ARTICLE 3: AREAS OF COOPERATION**

- (1) The Partner States undertake to cooperate in aircraft accident and incident investigation, training, sharing of information, resources and expertise,

consistent with EAC harmonized Civil Aviation (**Aircraft Accident and Incident Investigation**) Regulations, related Technical Guidance Materials, and the ICAO Standards and Recommended Practices as contained in Annex 13 to the Chicago Convention on Civil Aviation.

- (2) For the purposes of paragraph (1), the Partner States shall:
- (a) establish, in accordance with ICAO Global Aviation Safety Plan, adequately funded, professionally trained, independent and impartial Aircraft Accident and Incident Investigation bodies;
  - (b) provide assistance in aircraft accident and incident investigation by availing experts, and any other required logistics to the other Partner States as appropriate;
  - (c) ensure that all investigations into aircraft accident and incidents that are carried out in Partner States are independent from political or other interference or pressure;
  - (d) provide adequate resources, including funding and qualified personnel, for carrying out investigations;
  - (e) promote the use of common set of regulations in compliance with provisions of ICAO Annex 13;
  - (f) promote the use of common guidance materials, accident investigation manuals or handbooks;
  - (g) promote the application of the best practices in the area of aircraft accident and incident prevention;
  - (h) enhance the qualifications and experience of aircraft accident and incident investigators in Partner States;
  - (i) enhance cooperation and collaboration within Partner States relating to sharing of safety information;
  - (j) enhance development of regional institutional capacity in training, research, research findings, related to aircraft accident and incident investigation;
  - (k) invite the other Partner States' investigators to attend general and specialized investigation courses which they conduct;
  - (l) facilitate the attachment of the other Partner States' investigators to their aircraft accident and incident investigations, with a view to enhancing their understanding of investigation requirements and procedures;
  - (m) share with the other Partner State relevant information about an ongoing investigation in which the other Partner State has expressed an interest in consistence with ICAO Annex 13 to the Chicago Convention;
  - (n) consult Partner States in the organization of an investigation, drafting of the report, crisis management and communications, as deemed necessary;
  - (o) Identify their investment needs in the area of Aircraft Accident and Incident Investigation and prioritize relevant sources of funding for that investment;
  - (p) Promote the sharing of specialized equipment and facilities in the view of cutting the cost and avoiding duplication.

#### ARTICLE 4: DESIGNATED AUTHORITY

- (1) Each Partner State shall designate the authority responsible for aircraft accident and incident investigation within the Partner State as the authority implementing this Agreement within the Partner State.
- (2) The Head of the accident and incident investigation authority or body shall be the contact person in the Partner State on all accident and incident investigation matters and shall coordinate the implementation of this Agreement in the Partner State.

#### ARTICLE 5: FUNDING OF ACCIDENT AND INCIDENT INVESTIGATIONS

The funding of Accident and Incident Investigation under this Agreement shall be undertaken by a designated Authority referred to in Article 4.

- (1) The Designated Authority of a Partner State of Occurrence shall fund all activities relating to investigation of an accident and incident in the Partner State, unless otherwise arranged by other Partner States.
- (2) In the case of an accident or incident, all the Designated Authorities of the Partner States shall offer assistance to the Partner State of Occurrence in their capacity and shall not claim for reimbursement.
- (3) Notwithstanding paragraph (2), where reimbursement is necessary, the Designated Authority of the Partner States shall not delay response to investigation or provision of technical or other assistance to the agreement or administrative arrangements relating to the reimbursement.

#### ARTICLE 6: CONFIDENTIALITY

- (1) A Partner State shall not disclose any information shared, exchanged or disclosed to that Partner State during or after an accident or incident investigation to any third party without the prior written consent of the Partner State of occurrence or disclosing the information.
- (2) Any proprietary information (properly identified as such by the disclosing party) to be contained in reports or disclosed by one Partner State to the other Partner State, shall be kept strictly confidential by the receiving Partner State, and shall not be disclosed to any third party.

- (3) Each Partner State shall observe the confidentiality and secrecy of documents, information and other data received or supplied by a Partner State during and after an accident or incident investigation.
- (4) This Article shall remain binding on all Partner States, notwithstanding the termination of this Agreement.

#### **ARTICLE 7: OTHER ARRANGEMENTS**

The Partner States may, pursuant to this Agreement and by mutual agreement, enter into other arrangements relating to Aircraft Accident and Incident investigation.

#### **ARTICLE 8: FORCE MAJEURE**

- (1) Where at any time during the subsistence of this Agreement, it becomes impossible for any of the Partner States to fulfill its obligations for reasons beyond its control; the Partner State affected shall notify the other Partner States promptly in writing of the reasons for the delay or impossibility to fulfill the obligations of that Partner State.
- (2) The Partner States may in writing waive or suspend the performance of specific obligations under this Agreement by the Partner State concerned for a specified period.

#### **ARTICLE 9: SETTLEMENT OF DISPUTES**

- (1) If any dispute arises between the Partner States relating to the interpretation or Application of this Agreement, the Partner States will endeavor to settle it amicably.
  - i. If the Partner States fail to reach an amicable settlement, the dispute shall be resolved through arbitration by the East African Court of Justice.
  - ii. The decision of the East African Court of Justice shall be final.

#### **ARTICLE 10: WITHDRAWAL**

- (1) Any Partner State wishing to withdraw from this Agreement shall notify the Secretary General in writing who shall within thirty (30) days of its receipt communicate the proposal to the other Partner States in writing.
- (2) The withdrawal shall take effect twelve months after the date of communication of the withdrawal to the other Partner States, unless that Partner State cancels the notice before the expiry of the twelve months.
- (3) A Partner State withdrawing from this Agreement shall during the twelve months referred to in paragraph (2) continue to be liable to discharge her obligations under this Agreement.
- (4) Notwithstanding the effective withdrawal from this Agreement by a Partner State, upon expiry of the notice, the withdrawing Partner State shall remain liable to discharge all subsisting obligations and long term commitments entered into under this Agreement prior to the withdrawal.

#### **ARTICLE 11: AMENDMENT OF THE AGREEMENT**

- (1) This Agreement may be amended by the Partner States by consensus.
- (2) A Partner State may submit proposals for the amendment of this Agreement to the Secretary General in writing who shall within thirty (30) days of its receipt communicate the proposed amendment to the Partner States in writing.
- (3) A Partner State which wishes to comment on a proposed amendment shall do so within ninety (90) days from the date of the dispatch of the proposal by the Secretary General.
- (4) Upon the expiry of the period prescribed under paragraph (3), the Secretary General shall submit the proposals and any comments received from the Partner States to the Sectoral Council on Transport, Communication and Meteorology for consideration and submission to the Council for final adoption.
- (5) Any amendment to this Agreement shall not prejudice the rights and obligations arising from or based on this Agreement before or up to the date of the amendment.

#### **ARTICLE 12: ENTRY INTO FORCE**

This Agreement will enter into force upon adoption by the Council.

**ARTICLE 13: ACCESSION**

- (1) A new Partner State which wishes to become a Party to this Agreement may do so upon request to the Secretary General
- (2) In case of accession, this Agreement will enter into force for the Party acceding, thirty (30) days after the date of signature.

**ARTICLE 14: DISSOLUTION**

This Agreement may be dissolved by the Partner States by consensus expressed through a resolution of the Council.

IN WITNESS WHEREOF, the undersigned, being duly authorized by the respective Partner States, have signed this Agreement at ..... on this ..... day of .....

FOR THE REPUBLIC OF BURUNDI: .....

FOR THE REPUBLIC OF KENYA: .....

FOR THE REPUBLIC OF RWANDA: .....

FOR THE REPUBLIC OF SOUTH SUDAN: .....

FOR THE REPUBLIC OF UGANDA: .....

FOR THE UNITED REPUBLIC OF TANZANIA: .....