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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

REPORT ON THE RATIFICATION OF THE AMENDED NAIROBI CONVENTION AND
THE PROTOCOL FOR THE PROTECTION OF MARINE AND COASTAL ENVIRONMENT
OF THE WESTERN INDIAN OCEAN FROM LAND BASED SOURCES AND ACTIVITIES

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

MAY, 2023


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 04 MAY 2023	
DAY: Thursday	
TABLED BY:	Hon. David Gikaria (Chairperson, Committee on Environment, Forestry and Mining)
CLERK-AT THE-TABLE:	Joyce Kemerele

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CHAIRPERSON'S FOREWORD

The Cabinet Secretary, Ministry of Foreign Affairs, submitted a memorandum to the National Assembly dated 20th July 2022 regarding the Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern African Region. The Convention and the Memorandum were committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House.

The Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern Africa Region was adopted on 21st June 1985 to develop, plan, coordinate and co-operate in the protection and sustainable use of the Coastal and Marine Environment. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern African Region was adopted on 31st of March 2010 as an amendment to the Nairobi Convention alongside the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities. The ratification process was approved by the Cabinet during its meeting held on 12th May 2022.

Pursuant to the provisions of Article 118(1)(b) of the Constitution on public participation and section 8(3) of the Treaty Making and ratification Act of 2012, the Committee placed advertisements in two local dailies of nationwide circulation, on 16th December, 2022 requesting for submission of memoranda on the subject. The Committee did not receive a memorandum in support or not supporting the Convention by close of business on 8th January, 2023.

Further, the Committee deliberated on the Convention with the Ministry of Environment, Climate Change and Forestry, Ministry of Foreign and Diaspora Affairs and the Office of the Attorney General.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199, it is my pleasant duty to present the Report of the Departmental Committee on its consideration of the Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern African Region.

Hon. David Gikaria, MP.

Chairperson, Departmental Committee on Environment, Forestry and Mining

CHAPTER ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

1. The Departmental Committee on Environment, Forestry and Mining is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose functions pursuant to the **Standing Order 216 (5)** are as follows:
 - i. *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;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. *To study and review all legislation referred to it;*
 - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2. Subjects under the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, the following Subject: Climate change, environment management and conservation, forestry, mining and natural, pollution, waste management.
3. In executing its mandate, the Committee oversees the Ministry of Environment and Forestry, and the State Department for Mining.

1.3. Committee Membership

4. The Departmental Committee on Environment, Forestry and Mining was constituted by the House on 27th October, 2022 and comprises of the following Members:

Chairperson
The Hon. David Gikaria, MP
Nakuru Town East Constituency
UDA Party

Vice-Chairperson
The Hon. Charles Kamuren, MP
Baringo South Constituency
UDA Party

Members

The Hon. Mbalu Jessica Nduku Kiko, M.P.
Kibwezi East Constituency
Wiper Democratic Movement

The Hon. Yakub Adow Kuno, M.P.
Bura Constituency
United Party of Independent Alliance (UPIA)

The Hon. Mwanyanje Gertrude Mbeyu, M.P.
Kilifi County,
Orange Democratic Movement (ODM)

The Hon. Salim Feisal Bader, M.P.
Msambweni Constituency
United Democratic Alliance (UDA)

The Hon. Hiribae Said Buya, M.P.
Galole Constituency
Orange Democratic Movement (ODM)

The Hon. Joseph Wainaina Iraya, M.P.
Nominated,
United Democratic Alliance (UDA)

The Hon. Emathe Joseph Namuah, M.P.
Turkana Central Constituency
United Democratic Party (UDA)

The Hon. Kururia Elijah Njoroge. M.P.
Gatundu North Constituency
Independent Member

The Hon. Kemei Beatrice Chepng'eno, M.P.
Kericho County
United Democratic Alliance (UDA)

The Hon. Nguro Onesmus Ngogoyo, M.P.
Kajiado North Constituency
United Democratic Alliance (UDA)

The Hon. Masito Fatuma Hamisi, M.P.
Kwale County
Orange Democratic Movement (ODM)

The Hon. Mohamed Tubi Bidu, M.P.
Isiolo South Constituency
Jubilee Party (KPP)

The Hon. Titus Lotee, M.P.
Kacheliba Constituency
Kenya Union Party (KUP)

1.4. Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Fredrick O. Otieno
Clerk Assistant I/Head of Secretariat

Ms. Rose Natecho
Clerk Assistant III

Mr. Hamdi Hassan Mohamed
Clerk Assistant III

Ms. Mercy Wanyonyi
Senior Legal Counsel

Dr. Joseph Kuria
Research Officer III

Ms. Nancy Chamunga
Fiscal Analyst III

Ms. Catherine Wangui
Senior Sergeant-At-Arms

Mr. Boniface Mushila
Serjeant-At-Arms

Ms. Deborah Mupusi
Media Relations Officer II

Ms. Maryan Gabow
Public Communications Officer III

Mr. Muchiri Mwangi
Audio Recording Officer

CHAPTER TWO

2. ANALYSIS OF THE AGREEMENT

2.1. Background

6. The Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern Africa Region was adopted on 21st June 1985 to develop, plan, coordinate and co-operate in the protection and sustainable use of the Coastal and Marine Environment.
7. The overarching goal of this Regional Convention is to enhance the management of the Marine and Coastal Environment and natural heritage including its Biological Diversity (**Article 11**) for the sustainable use and benefit of present and future generations. It endeavours to protect from threat the Marine and Coastal Environment, its ecological equilibrium, resources and legitimate uses posed by pollution and the insufficient integration of the environmental dimension into the development process.
8. Administered by the United Nations Environmental Programme (UNEP), the Nairobi Convention, signed by **Comoros, France, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, Tanzania and the Republic of South Africa** provides a platform for governments, civil society, and the private sector to work together for the sustainable management and use of the marine and coastal environment.
9. The Amended Convention and its Protocol are Regional Legislations covering the Eastern and Southern African Region which currently has ten (10) state parties. Kenya is yet to ratify the Amended Convention and its Protocol.

2.2. Clause by Clause Analysis of the Protocol

10. Article 1 provides for the geographical coverage.
11. Article 2 provides for the definition of various terms as used in the Convention.
12. Article 3 provides that Contracting Parties may enter into bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection and management of the marine and coastal environment of the Convention area. Such agreements shall be consistent with this Convention.
13. Article 4 provides for the general obligations which include:
 - (a) State Parties to take all appropriate measures to prevent, reduce and combat pollution of the convention area and also ensure sound environmental management;
 - (b) To Co-operate in the formulation and adoption of the Protocols to facilitate effective implementation of the Convention; Harmonize policies and laws with regards to the Convention;
 - (c) To ensure effective implementation of the Convention and its Protocol;
 - (d) To apply relevant environmental principles such as the precautionary principal and the polluter pays principle in ensuring that in the application of the measures, they do not cause pollution outside the Convention area.

14. Article 5-8 provides that Contracting Parties are required to take appropriate measures to prevent, reduce and combat pollution of the Convention area caused by ships, dumping of wastes and other matter at sea from ships, aircraft and man-made structures at sea, discharges emanating from rivers and exploration and exploitation of the seabed. State parties are required to take into account applicable the international rules and standards.
15. Article 9-11 contains provisions to incorporate and provide for pollution resulting from transboundary movement of hazardous wastes and to recognize the importance of biological diversity. Contracting parties are required to take appropriate measures to prevent, reduce and combat pollution of the Convention area caused by transboundary movement and disposal of hazardous wastes and to take appropriate measures to conserve biological diversity and to preserve rare or fragile ecosystems, endangered or threatened species of Fauna and Flora and their habitats.
16. Article 12 provides that contracting parties are required to take appropriate measures to respond to pollution emergencies in the Convention area and to develop and promote contingency plans for responding to incidents involving pollution in the Convention area.
17. Article 13 provides that the contracting Parties shall take all appropriate measures to prevent, reduce and combat environmental damage in the Convention area in particular the destruction of marine and coastal ecosystems, caused by engineering activities such as land reclamation and dredging.
18. Article 14 provides that the contracting parties are required, in co-operation with regional and international organizations, to develop technical and other guidelines to assist in the planning of their major development projects so as to prevent or minimize harmful impacts on the Convention area.
19. Article 15 provides that the contracting Parties shall co-operate, directly or with the assistance of competent regional and international organizations, in scientific research, monitoring, and the exchange of data and other scientific information relating to the purposes of this Convention and its protocols.
20. Article 16 provides for liability and compensation.
21. Article 17 provides for institutional and financial arrangements.
22. Article 18 provides that Contracting Parties shall hold ordinary meetings once every two years
23. Article 19-21 provides that Contracting Parties may adopt additional protocols to the Convention or amend the Convention and its Protocols at the request of a two-thirds majority of the Contracting Parties and adopted by a two-thirds majority of the Contracting Parties.
24. Article 22 provides for the rules of procedures and financial rules.
25. Article 23 provides for a special exercise of the right to vote.
26. Article 24 provides that the Contracting Parties are required to transmit every two years to the Organization information on the measures adopted by them in the implementation of the Convention.

27. Article 25 provides for a dispute resolution mechanism through negotiations or any other peaceful means of their own choice. If the parties cannot settle their dispute, then the dispute shall be submitted to arbitration.
28. Article 26 provides for the relationship between the convention and its protocols.
29. Article 27 provides for compliance and enforcement.
30. Article 28 provides for sovereignty claims and rights.
31. Article 30 provides for ratification, acceptance, approval and depositary of the convention by the States.
32. Article 33 provides that a party may withdraw from the Convention by giving notice in writing any time after three years from the date when the Convention has entered into force. The withdrawal shall be effective one year after receipt of the notice by the Depositary.

CHAPTER THREE

3. ANALYSIS OF THE MEMORANDUM SUBMITTED BY THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

33. The Ministry of Foreign Affairs submitted that the ratification process was approved by the Cabinet during its meeting held on 12th May 2022.

3.1. Background

34. The Nairobi Convention on the Protection, Management, and Development of the Marine and Coastal Environment of the Eastern Africa Region was adopted on 21st June, 1985 to develop, plan, coordinate and co-operate in the protection and sustainable use of the Coastal and Marine Environment.
35. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern Indian Ocean from Land- Based Sources and Activities (the Amended Nairobi Convention) were adopted on 31st March, 2010 as an amendment to the Nairobi Convention.
36. The Protocol for the Protection of Marine and Coastal Environment of the Western Indian from Land Based Sources and Activities was also adopted alongside the Amended Nairobi Convention.
37. The Amended Convention and its Protocol are Regional Legislations covering the Eastern and Southern African Region which currently has ten (10) state parties. Kenya is yet to ratify the Amended Convention and its Protocol.

3.2. Objects and Subject Matter of the Amended Nairobi Convention

38. The overarching goal of this Regional Convention is to enhance the management of the Marine and Coastal Environment and natural heritage including its Biological Diversity as provided under Article 11 (1) of the Amended Convention for the sustainable use and benefit of present and future generations.
39. It endeavours to protect from threat the Marine and Coastal Environment, its ecological equilibrium, resources and legitimate uses posed by pollution and the insufficient integration of the environmental dimension into the development process.

3.3. Objects and Subject Matter of the Protocol

40. The Protocol is conscious of the grave danger posed by various Land-Based Sources and Activities to the Marine and Coastal Environment affecting its rich heritage of Biological Diversity, coastal tourism and human made endowments and resources.
41. The Protocol notes the threats to the Marine Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities, including but not limited to untreated domestic wastes and discharges, industrial discharges, Agricultural run-off and activities causing physical alteration and destruction of habitats.

3.4. Obligations Imposed by the Amended Convention

42. The State Parties are obligated to:

- (a) Take all appropriate measures to prevent, reduce and combat pollution of the convention area and also ensure sound environmental management;
- (b) Co-operate in the formulation and adoption of the Protocols to facilitate effective implementation of the Convention; Harmonize policies and laws with regards to the Convention;
- (c) Ensure effective implementation of the Convention and its Protocol;
- (d) Apply relevant environmental principles such as the precautionary principal and the polluter pays principle in ensuring that in the application of the measures, they do not cause pollution outside the Convention area.

3.5. Problem Analysis

43. The Amended Convention notes in the preamble that the existing international conventions concerning the Marine and Coastal Environment do not cover all aspects and sources of marine pollution and Environmental degradation and do not entirely meet the special requirements of the Western Indian Ocean.
44. The Amended text was adopted so as to incorporate the transboundary issues of climate changes, marine and land based pollution, integrated coastal management and the importance of biological diversity.

3.6. Justification for Accession

45. United Nations has adopted Seventeen (17) Sustainable Development Goals (SDGs) as a universal call to action to eradicate poverty, protect the planet and ensure by 2030, all people enjoy peace and prosperity. Ratifying the Amended Convention will enhance the achievement of goal number Fourteen (14) of the Sustainable Development Goals which seeks to conserve and sustainably use the Ocean, Seas and Marine resources for Sustainable development.
46. Kenya is a champion in Environmental matters and this is evidenced by the fact that it hosted the Blue Economy Conference that was held on the 26th to the 28th November 2018. The main objective of the conference was to harness potential of our Ocean, Seas, Lakes and Rivers to improve the lives of the people.
47. The Amended Convention as opposed to the former convention incorporates clear provisions for compliance and enforcement of its provisions. The convention requires the contracting parties to take measures to enforce and comply with the convention.
48. The Amended Convention will govern all aspects and sources of Marine Pollution and Environmental Degradation and also meet the special requirements of the Western Indian Ocean. It incorporates clear provisions for compliance and enforcement of its provisions.
49. The Amended Convention also takes into account emerging issues and trends at both global and regional levels, particularly those that have implications for the management of the Coastal and Marine Environment.

50. The Convention seeks to ensure the protection of Marine and Coastal Environment by incorporating appropriate measures to combat pollution and ensure sound management of the natural resources.

3.7. Constitutional and Legislative Implications

51. The Convention is consistent with the Constitution and promotes constitutional values and provisions under article 69 (1) (e) and (g) on obligations in respect to the Environment.
52. There will be no policy implication for Kenya since the provisions of the Convention and the Protocol are already embedded in the National Environment Policy, 2013, and Environmental Management and Coordination Act, 1999 (Rev. 2015), the Environmental Management and Coordination (Waste Management) Regulations of 2006 and Environmental Management and Coordination (Water Quality) Regulations of 2016.

3.8. Implication Relating to Counties

53. The obligations imposed under the protocols are under the purview of the National Government.

3.9. Reservations

54. The convention does not provide for reservations

3.10. Ministerial Responsibility

55. The Ministry responsible for the implementation and activity in regard to the Amended Nairobi Convention falls under the Ministry of Environment and Natural resources and Ministry of Foreign Affairs.
56. 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.

3.11. Financial Implications

57. Under the Amended Nairobi Convention framework, Contracting Parties are obligated to make financial contributions to the Eastern Africa Trust Fund. The implementation of the Trust Fund fulfils one of the main goals established by the Regional Seas Program that is to become financially self-sufficient.

CHAPTER FOUR

4. STAKEHOLDERS ENGAGEMENT

4.1. Joint Submission by the Ministry of Environment, Climate Change and Forestry, the Ministry of Foreign and Diaspora Affairs, and the Office of the Attorney General

58. On the 2nd March, 2023, the Principal Secretaries for State Department of Environment and Climate Change and State Department of Foreign Affairs and the Office of the Attorney General appeared before the Committee and made a joint submission on the Bamako Convention as follows:
59. That, the Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern Africa Region was adopted on 21st June 1985 to develop, plan, coordinate and co-operate in the protection and sustainable use of the Coastal and Marine Environment.
60. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern African Region was adopted on 31st of March 2010 as an amendment to the Nairobi Convention alongside the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.
61. The Amended Nairobi Convention takes into account emerging issues and trends at both global and regional levels, particularly those that have implications for the management of the coastal and marine environment. The emerging issues include marine pollution from micro plastics and other solid wastes.
62. The Protocol is conscious of the grave danger posed by various land-based sources and activities to the marine and coastal environment affecting its rich heritage of Biological Diversity, Coastal tourism, ports and harbours, human health and other natural and human-made endowments and resources.
63. The Protocol recognizes that land-based sources and activities constitute one of the major threats to the sustainability of the Marine and Coastal Environment. These sources and activities include; untreated domestic wastes and discharges, industrial discharges, agricultural run-off and activities causing physical alteration and destruction of habitats.
64. The title of the convention changed from East African Region to Western Indian Ocean to incorporate States parties from Southern Africa and the Island States that do not fall under the Eastern African Region geographically.
65. That, Kenya is yet to ratify this convention.

4.2. Problem Analysis

66. The Ministry submitted that the discharge of domestic, industrial and agricultural wastes into marine and freshwater ecosystems causes deterioration of water and sediment quality, thus compromising the marine resources used to spur national development and improve community livelihoods.

67. That the Wastewater from facilities and households is only partially treated before being discharged into the ocean, thereby polluting the marine environment and negatively affecting surrounding communities dependent on marine resources for their livelihoods.
68. That direct discharge of waste into the oceans, runoff into the waters due to rain, and pollutants released from the atmosphere are the critical inputs of pollution into the ocean.
69. That most ocean pollution begins on land. Land-based sources account for 80% of marine pollution. Land-based pollution includes untreated sewage, agricultural run-off, oils and heavy metals from industries, and sediment washed in from earthworks and logging. When large tracts of land are ploughed, the exposed soil can erode during rainstorms. Much of this runoff flows to the sea, carrying with it agricultural fertilizers and pesticides.
70. That, pollutants of land-based origin include pesticides, chemical waste, cleaning agents, petroleum products, mining waste, garbage and sewage. Pharmaceuticals ingested by humans, but not fully processed by the human body, have also been detected in fish. A redesigned and rehabilitated wastewater treatment system is thus needed to conserve Kenya's marine resources.
71. That, the challenges to the Indian Ocean include non-traditional security issues such as climate change, illegal fishing, drug smuggling, and human trafficking which will come to play a bigger role in the geopolitics of the Indian Ocean. This requires concerted efforts as a region to work with other state parties to the Convention for joint operations and collaborations to fix the transboundary marine pollution and related hazards and dangers in the western Indian Ocean.
72. That, the ratification of the Nairobi Convention is very important. State Parties to the Nairobi Convention are Somalia in the north to South Africa in the south, covering 10 African states. They include 5 mainland coastal states (Somalia, Kenya, Tanzania, Mozambique and South Africa) and 5 Island states (Comoros, Madagascar, Mauritius Seychelles and France La Reunion).
73. That, the Government of Kenya is the depository of the Nairobi Convention which creates an urgent need to ratify it.

4.3. Justification for ratification

74. Pollution from land-based sources and activities constitutes one of the major threats to the sustainability of the marine and coastal environment in the Western Indian Ocean. The Convention seeks to ensure the protection of marine and coastal environment by incorporating appropriate measures to combat pollution and ensure sound management of the natural resources for Sustainable development.
75. Ratifying the Amended Convention will enhance the achievement of goal number Fourteen (14) of the Sustainable Development Goals which seeks to conserve and sustainably use the Ocean, Seas and Marine Resources for Sustainable development.
76. The Amended Convention will govern all aspects and sources of Marine Pollution and Environmental Degradation and also meet the special requirements of the Western Indian Ocean. It incorporates clear provisions for compliance and enforcement of its provisions.

77. The Amended Convention also takes into account emerging issues and trends at both global and regional levels, particularly those that have implications for the management of the Coastal and Marine Environment.
78. The Amended Nairobi Convention provides a mechanism for regional cooperation and collaboration by the Contracting Parties to address interlinked problems facing the coastal and marine environment.
79. Tons of garbage and plastic make their way into the Indian Ocean each year, making it the world's second most polluted ocean after the North Pacific. Marine pollution in the Indian Ocean includes chemicals, oil spillage and plastic. Chemical pollution is caused due to the entry of harmful chemicals into water bodies. Kenya potentially releases garbage and plastic into the Indian Ocean.

4.4. Constitutional and Legislative Implications

80. The Amended Convention and its Protocol are consistent with the Constitution and promote constitutional values and objectives. The same does not allude to an amendment to the Constitution.
81. The Nairobi Convention and its protocol present no new policy implications for Kenya as the provisions of the Convention are already embedded in the National Environment Policy, 2013 and Environmental Management and Coordination Act 1999(Rev. 2015), the Environment Management and Coordination (Waste Management) Regulations of 2006 and Environment Management and Coordination (Water Quality) Regulations of 2006.

4.5. Benefits of ratifying the Convention

82. The Nairobi convention seeks to support the development and implementation of sound marine resources management, protection and conservation which would define sustainable land usage; support socio-economic development; ensure environmental sustainability, and provide strategies to deal with urbanization, transportation, agricultural expansion, and other threats.
83. In addition, the convention would ensure the deployment of sound but reliable technology to identify critical ecologically and Biologically Significant Areas (EBSA) in the coastal area.

4.6. Reservations

84. The Treaty does not provide for reservations but the amendments are not prejudicial to the interests of Kenya.

4.7. Financial Implication

85. Under the Nairobi Convention, Kenya is required to make annual subscriptions of USD 45,302. This amount is currently in arrears of USD 226,510. Further Kenya has benefitted under the Nairobi Convention Kenya Coastal Development Program (KCDP) in capacity building as well as enforcement work to prevent Beach erosion, pollution and marine litter from Land Based Pollution Sources and Activities.

CHAPTER FIVE

5. COMMITTEE OBSERVATIONS

86. The Committee having considered the Agreement observed the following:

- 1) That, the Amended Nairobi convention seeks to support and anchor the development and implementation of sound marine resources management, protection and conservation which would define sustainable land usage; support socio-economic development; ensure environmental sustainability, and provide strategies to deal with conservation, urbanization, transportation, agricultural expansion, and other threats.
- 2) That, adopting the convention in the Kenyan setting would ensure the deployment of sound research and development, reliable technology, promote cooperation and collaboration to identify critical ecologically and Biologically Significant Areas (EBSA) in the coastal area.
- 3) That, Ratifying the Amended Convention will enhance the achievement of goal number Fourteen (14) of the Sustainable Development Goals which seeks to conserve and sustainably use the Ocean, Seas and Marine Resources for Sustainable development.
- 4) That, the Amended Convention takes into account emerging issues and trends at both global and regional levels, particularly those that have implications for the management of the Coastal and Marine Environment.
- 5) That, the Convention provides a mechanism for regional cooperation and collaboration by the Contracting Parties to address interlinked problems facing the coastal and marine environment.
- 6) That, Kenya is required to make annual subscriptions of USD 45,302. This amount is currently in arrears of USD 226,510. Further Kenya has benefitted under the Nairobi Convention Kenya Coastal Development Program (KCDP) in capacity building as well as enforcement work to prevent Beach erosion, pollution and marine litter from Land Based Pollution Sources and Activities.
- 7) That, Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the laws of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya.
- 8) Pursuant to section 8(4) of the Treaty Making and Ratification Act, No. 45 of 2012, the National Assembly may approve the ratification of a treaty with or without reservations.
- 9) The Treaty does not provide for reservations but the amendments are not prejudicial to the interests of Kenya.
- 10) The procedure for approval of Treaties as outlined in section 8 of the Treaty Making and Ratification Act, 2012 was adhered to as the Convention was submitted to the Speaker of the National Assembly together with the memorandum and the Committee conducted public participation.

CHAPTER SIX

6. RECOMMENDATIONS

87. Having considered the submissions, and analyzed documents tabled, and pursuant to Section 8 of Treaty Making and Ratification Act, the Committee recommends that the House Approves the **Ratification of the Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern African Region**

SIGNED..... DATE.....

HON. DAVID GIKARIA, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING



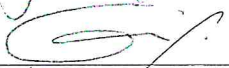

ADOPTION OF THE REPORT ON CONSIDERATION OF THE FOLLOWING TREATIES:

1. THE KIGALI AMENDMENTS TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER;
2. THE ACCESSION OF THE BAMAKO CONVENTION ON THE BAN ON THE IMPORT INTO AFRICA AND THE CONTROL OF THE TRANSBOUNDARY MOVEMENT AND MANAGEMENT OF HAZARDOUS WASTES WITHIN AFRICA; AND
3. THE AMENDED NAIROBI CONVENTION AND THE PROTOCOL FOR THE PROTECTION OF MARINE AND COASTAL ENVIRONMENT OF THE WESTERN INDIAN OCEAN FROM LAND BASED SOURCES AND ACTIVITIES.

We, the undersigned Honorable Members of the Departmental Committee on Environment, Forestry and Mining today Wednesday, 3rd May April 2023 do hereby affix our signatures to the following Reports on consideration of Agreements to affirm our approval and confirm their accuracy, validity and authenticity:

1. The Report on Consideration of the Kigali amendments to the Montreal protocol on substances that deplete the ozone layer;
2. The Report on Consideration of the accession of the Bamako convention on the ban on the import into Africa and the control of the transboundary movement and management of hazardous wastes within Africa; and
3. The Report on Consideration of the amended Nairobi convention and the protocol for the protection of marine and coastal environment of the western Indian ocean from land based sources and activities

NO.	NAME	SIGNATURE
1.	The Hon. Gikaria David, MP - Chairperson	
2.	The Hon. Charles Kamuren, MP - Vice-Chairperson	
3.	The Hon. Mbalu Jessica Nduku Kiko, CBS, MP.	
4.	The Hon. Hiribae Said Buya, MP.	
5.	The Hon. Mwanyanje Gertrude Mbeyu, MP.	
6.	The Hon. Salim Feisal Bader, MP.	
7.	The Hon. Emathe Joseph Namuer, MP.	
8.	The Hon. Joseph Wainaina Iraya, MP.	

9.	The Hon. Kemei Beatrice Chepngeo, MP.	
10.	The Hon. Kururia Elijah Njore Njoroge, MP.	
11.	The Hon. Masito Fatuma Hamisi, MP.	
12.	The Hon. Mohamed Tubi Bidu, MP.	
13.	The Hon. Nguro Onesmus Ngogoyo, MP.	
14.	The Hon. Yakub Adow Kuno, MP.	
15.	The Hon. Titus Lotee, MP.	



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION, 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 13TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY, AND MINING HELD ON WEDNESDAY 3RD MAY 2023 AT THE COMMITTEE ROOM, SECOND FLOOR, CONTINENTAL HOUSE AT 10.00AM.

PRESENT.

- | | |
|--|-------------------|
| 1. The Hon. Gikaria David, MP. | -Chairperson |
| 2. The Hon. Charles Kamuren, MP | -Vice-Chairperson |
| 3. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP | |
| 4. The Hon. Salim Feisal Bader, MP | |
| 5. The Hon. Mwanyanje Gertrude Mbeyu, MP | |
| 6. The Hon. Tubi Bidu Mohamed, MP. | |
| 7. The The Hon. Onesmus Ngogoyo Nguro, MP | |
| 8. The Hon. Kemei, Beatrice Chepngeno MP | |
| 9. The Hon. Joseph Wainaina Iraya, MP | |
| 10. The Hon. Yakub Adow Kuno, MP | |

APOLOGY

1. The Hon. Emathe Joseph Namuar,MP
2. The Hon. Masito Fatuma Hamisi, MP
3. The Hon. Titus Lotee, MP
4. The Hon. Elijah Njore Njoroge, MP

ABSENT

1. The Hon. Hiribae Said Buya, MP.

IN-ATTENDANCE; THE COMMITTEE SECRETARIAT

- | | | |
|-------------------------|---|----------------------------------|
| 1. Mr. Fredrick Otieno | - | Clerk Assistant I |
| 2. Mr. Hamdi H. Mohamed | - | Clerk Assistant III |
| 3. Ms. Mercy Wanyonyi | - | Senior Legal Counsel |
| 4. Dr. Joseph Kuria | - | Research Officer III |
| 5. Ms. Nancy Chamunga | - | Fiscal Analyst III |
| 6. Ms. Edith Chepngeno | - | Media Relations Officer III |
| 7. Ms. Maryan Gabow | - | Public Communication Officer III |
| 8. Mr. Boniface Mushila | - | Senior Sergeant-At-Arms |
| 9. Ms. Mercylyn Kerubo | - | Audio Officer |

MIN/NO.NA/DC-EF&M/2023/098: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at half past ten O'clock followed by a prayer said by Hon. Kemei Beatrice. The agenda of the meeting was adopted as hereunder having been proposed and seconded by the Hon. Kemei Beatrice and the Hon. Joseph Iraya MP respectively.

AGENDA:

1. Prayers
2. Introductions/preliminaries
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters arising
6. Pending Bills: None
7. Pending Petition(s): None
8. Questions: None
9. Statements: None
10. Adoption of the Reports on consideration of the following treaties:
 - i. The Kigali amendments to the Montreal protocol on substances that deplete the ozone layer;
 - ii. The accession of the Bamako convention on the ban on the import into Africa and the control of the transboundary movement and management of hazardous wastes within Africa; and
 - iii. The amended Nairobi convention and the protocol for the protection of marine and coastal environment of the western Indian Ocean from land based sources and activities.
11. Any Other Business; and
12. Adjournment

MIN/NO.NA/DC-EF&M/2023/099: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The confirmation of the Minutes of the previous sittings were deferred to the next sitting

MIN/NO.NA/DC-EF&M/2023/100: REPORT ON CONSIDERATION OF THE KIGALI AMENDMENTS TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER.

1. The Committee having considered the Kigali Amendments to the Montreal Protocol on Substance that Deplete the Ozone Layer and submissions from stakeholders makes the following observations:
 - i. The Montreal Protocol is a well-established multilateral environmental agreement that is successfully preventing massive damage to human health and the environment from excessive ultraviolet radiation from the sun by phasing out the production and consumption of substances that deplete the ozone layer. It has been amended five times. The Kigali Amendment is the fifth in a series of amendments to the Montreal

Protocol and is a binding international agreement, which is intended to create rights and obligations in international law.

- ii. That, the Kigali Amendment was adopted at the 28th Meeting of the Parties to Montreal Protocol on 15th October, 2016 in Kigali, Rwanda to phase down hydro fluorocarbons (HFCs). While Kenya has ratified the Montreal Protocol, it is yet to ratify the Kigali Amendment. The Amendment entered into force in January 2019. As of 4th November, 2022, 143 parties had ratified the Kigali Amendment.
- iii. The implementation of the new targets set out in the amendment is to be conducted in three phases taking into account the different socio-economic, scientific and technological capabilities of the member states. Under the Montreal Protocol, Kenya is classified as a developing country and is therefore entitled to start the process of phasing down HFCs by 2028.
- iv. That, the Kigali Amendment is an important legal instrument for the Continent as it will aid in the protection of our agricultural sector which is extremely vulnerable to climate change. The object of this instrument is also aligned with Kenya's existing legal framework that establishes a national mechanism that regulates the emission of greenhouse gases.
- v. The obligations imposed by the Kigali Amendment involve phasing down the consumption, production and importation of HFCs worldwide to protect the ozone layer from further depletion.
- vi. That, developing countries that are parties to the Kigali Amendment will have access to financial and technical support provided under the Protocol.
- vii. That, the Amendments do not pose any threats to our national interests as they enhance the provisions of the Montreal Protocol which Kenya already ratified.
- viii. That, the Convention is consistent with the Constitution and promotes constitutional values and objectives. It does not allude to an amendment of the Constitution and does not require Kenya to formulate any laws. The Convention is complementary to the Climate Change Act, 2016 and therefore implementation will not be hindered by domestic law.
- ix. Article 10 of the Montreal Protocol establishes a financial mechanism to provide financial and technical cooperation, including the transfer of technologies, to support developing countries' compliance with the Protocol.
- x. By adopting ozone and climate-friendly technologies, there would be opportunities for job creation. Trained refrigeration and air conditioning (RAC) technicians would be installing, repairing and maintaining RAC equipment.

- xi. Ratification of the Treaty will catalyze realization of a clean, healthy environment and is aligned with the objectives of Kenya's Climate Change Act, 2016 thereby facilitating the realization of Article 42 of the Constitution.
- xii. That, Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the laws of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya.
- xiii. Pursuant to section 8(4) of the Treaty Making and Ratification Act, No. 45 of 2012, the National Assembly may approve the ratification of a treaty with or without reservations. However, the Convention does not permit reservations.
- xiv. The procedure for approval of Treaties as outlined in section 8 of the Treaty Making and Ratification Act, 2012 was adhered to.
- xv. The Conventions is consistent with Article 69(1)(g) of the Constitution which provides that the State has an obligation to eliminate processes and activities that are likely to endanger the environment.

MIN/NO.NA/DC-EF&M/2023/101: REPORT ON THE ACCESSION OF THE BAMAKO CONVENTION ON THE BAN ON THE IMPORT INTO AFRICA AND THE CONTROL OF THE TRANSBOUNDARY MOVEMENT AND MANAGEMENT OF HAZARDOUS WASTES WITHIN AFRICA.

2. The Committee having considered the Agreement observed the following:
 - i. **That**, the Bamako Convention was first negotiated by twelve (12) nations of the Organisation of African Unity in Bamako, Mali on 30th January 1991 and came into force on 22nd April, 1998. Currently, thirty-five (35) African states have signed the Convention. Kenya signed the Convention on the 17th December, 2003 but is yet to accede to it.
 - ii. **That**, the Bamako convention is a response to Article 11 of the Basel convention which Kenya is a party. It encourages parties to enter into bilateral, multilateral and regional agreements on Hazardous Waste to help achieve the objectives of the convention. The need for the Bamako convention arose from the failure of the Basel Convention to prohibit the trade of hazardous waste to less developed countries (LDCs) and the realization that many developed nations were exporting toxic wastes to Africa.
 - iii. **That**, the Cabinet Secretary Ministry of Foreign and Diaspora Affairs submitted the Convention together with a memorandum to the National Assembly in accordance with the requirements set out under section 8 of the Treaty Making and Ratification Act 45 of 2012.

- iv. **That**, Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the laws of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya.
- v. **That**, the provisions of the Convention are already reflected in the laws of Kenya through the Constitution, in particular Article 42 that guarantees Kenyan citizens the right to a clean and healthy environment and Article 69(1) (g) that obligates the state to eliminate processes and activities that are likely to endanger the environment.
- vi. **That**, under the Environmental Management and Coordination Act (EMCA), 1999, Kenya has banned the import of waste into Kenya. The Convention will streamline and promote cooperation within African trading and complement the national law.
- vii. **That**, the present international, regional and national law applying to Kenya has proven to be inadequate, thus the Country is therefore in dire need of a law that would not only be a guideline but also stipulate clear procedures and have implementation mechanisms to ensure effective hazardous waste management.
- viii. **That**, the Country has previously witnessed attempted dumping of radioactive waste. This Convention will deter such occurrences.
- ix. **That**, Pursuant to section 8(4) of the Treaty Making and Ratification Act, No. 45 of 2012, the National Assembly may approve the ratification of a treaty with or without reservations. However, the Treaty does not provide for reservations but the amendments are not prejudicial to the interests of Kenya.
- x. **That**, Article 27 of the Convention provides for the withdrawal, at any time after three years from the date on which this Convention has entered into force for a Party.
- xi. **That**, the obligations that are imposed under the Convention are under the jurisdiction of the National Government.
- xii. **That**, Parties shall, at the first meeting of the Conference of the Parties, agree on a scale of contributions to the recurrent budget of the Secretariat and also consider the establishment of a revolving fund to assist on, an interim basis, in case of emergency situations to minimize damage from disasters or accidents arising from transboundary movements of hazardous wastes or during the disposal of such wastes.
- xiii. **That**, three months after ratification Kenya will designate a competent authority that will be the focal point in reporting and that will oversee that the prohibitions and restrictions under the Convention are implemented.

- xiv. That, adoption of Bamako Convention is vital in combating the illegal activities. To ensure effectiveness, the state parties to these instruments will develop and adopt national policies that give effect to the contents of these instruments.
- xv. **That** the procedure for approval of Treaties as outlined in section 8 of the Treaty Making and Ratification Act, 2012 was adhered to.

MIN/NO.NA/DC-EF&M/2023/102: THE AMENDED NAIROBI CONVENTION AND THE PROTOCOL FOR THE PROTECTION OF MARINE AND COASTAL ENVIRONMENT OF THE WESTERN INDIAN OCEAN FROM LAND BASED SOURCES AND ACTIVITIES

- 3. The Committee having considered the Agreement observed the following:
 - i. That, the Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern Africa Region was adopted on 21st June 1985 to develop, plan, coordinate and co-operate in the protection and sustainable use of the Coastal and Marine Environment.
 - ii. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Easter Indian Ocean from Land- Based Sources and Activities (the Amended Nairobi Convention) were adopted on 31st March, 2010 as an amendment to the Nairobi Convention. This resulted in the addition of two new Articles 9 and 11; to provide for pollution resulting from Transboundary Movement of Hazardous Wastes to prevent and abate pollution that might be caused by transboundary movement and disposal of hazardous waste and to provide for biological diversity in order to preserve rare or fragile ecosystems, endangered or threatened species of Fauna and Flora and their habitats.
 - iii. That, the Amended Nairobi convention seeks to support and anchor the development and implementation of sound marine resources management, protection and conservation which would define sustainable land usage; support socio-economic development; ensure environmental sustainability, and provide strategies to deal with conservation, urbanization, transportation, agricultural expansion, and other threats.
 - iv. That, adopting the convention in the Kenyan setting would ensure the deployment of sound research and development, reliable technology, promote cooperation and collaboration to identify critical ecologically and Biologically Significant Areas (EBSA) in the coastal area.
 - v. That, Ratifying the Amended Convention will enhance the achievement of goal number Fourteen (14) of the Sustainable Development Goals which seeks to conserve and sustainably use the Ocean, Seas and Marine Resources for Sustainable development.
 - vi. That, the Amended Convention takes into account emerging issues and trends at both global and regional levels, particularly those that have implications for the management of the Coastal and Marine Environment.

- vii. That, the Convention provides a mechanism for regional cooperation and collaboration by the Contracting Parties to address interlinked problems facing the coastal and marine environment.
- viii. That, Kenya is required to make annual subscriptions of USD 45,302. This amount is currently in arrears of USD 226,510. Further Kenya has benefitted under the Nairobi Convention Kenya Coastal Development Program (KCDP) in capacity building as well as enforcement work to prevent Beach erosion, pollution and marine litter from Land Based Pollution Sources and Activities.
- ix. That, Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the laws of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya.
- x. The Convention is consistent with the Constitution and promotes constitutional values and provisions under article 69 (1) (e) and (g) on obligations of the State in respect of the Environment.
- xi. Pursuant to section 8(4) of the Treaty Making and Ratification Act, No. 45 of 2012, the National Assembly may approve the ratification of a treaty with or without reservations. However, the Treaty does not provide for reservations but the amendments are not prejudicial to the interests of Kenya.
- xii. The procedure for approval of Treaties as outlined in section 8 of the Treaty Making and Ratification Act, 2012 was adhered to.

MIN/NO.NA/DC-EF&M/2023/103: ADOPTION OF THE REPORT ON CONSIDERATION OF THE KIGALI AMENDMENTS TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER.

The Committee considered and unanimously adopted the Report having been proposed and seconded by the Hon. Feisal Bader Salim, MP and the Hon. Beatrice Kemei Chepngeno, MP respectively.

MIN/NO.NA/DC-EF&M/2023/104: ADOPTION OF THE REPORT ON THE ACCESSION OF THE BAMAKO CONVENTION ON THE BAN ON THE IMPORT INTO AFRICA AND THE CONTROL OF THE TRANSBOUNDARY MOVEMENT AND MANAGEMENT OF HAZARDOUS WASTES WITHIN AFRICA.

The Committee considered and unanimously adopted the Report having been proposed and seconded by the Hon. Feisal Bader Salim, MP and the Hon. Onesmus Ngogoyo, MP respectively.

MIN/NO.NA/DC-EF&M/2023/105: ADOPTION OF THE REPORT ON THE AMENDED NAIROBI CONVENTION AND THE PROTOCOL FOR THE PROTECTION OF MARINE AND COASTAL ENVIRONMENT OF THE WESTERN INDIAN OCEAN FROM LAND BASED SOURCES AND ACTIVITIES.

The Committee considered and unanimously adopted the Report having been proposed and seconded by the Hon. Beatrice Kemei Chepngeño, MP and the Hon. Onesmus Ngogoyo, MP respectively.

MIN/NO.NA/DC-EF&M/2023/106: ADJOURNMENT AND DATE OF THE NEXT SITTING.

There being no other business, the meeting was adjourned at noon. The next meeting is to be held on notice

Signed..... Date: 4-05-23

(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

13TH PARLIAMENT - SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 9TH SITTING OF THE DEPARTMENTAL COMMITTEE ON THE ENVIRONMENT, FORESTRY, AND MINING HELD ON THURSDAY 2ND MARCH 2023 AT MAIN CHAMBERS, MAIN PARLIAMENT BUILDINGS AT 9:00AM

PRESENT.

- | | |
|--|-------------------|
| 1. The Hon. Gikaria David, MP. | -Chairperson |
| 2. The Hon. Charles Kamuren, MP | -Vice-Chairperson |
| 3. The Hon. Mwanyanje Gertrude Mbeyu, MP | |
| 4. The Hon. Salim Feisal Bader, MP | |
| 5. The Hon. Kemei, Beatrice Chepogeno MP | |
| 6. The Hon. Onesmus Ngogoyo Nguro, MP. | |
| 7. The Hon. Joseph Wainaina Iraya, MP | |
| 8. The Hon. Yakub Adow Kuno, MP | |
| 9. The Hon. Titus Lotee, MP | |
| 10. The Hon. Masito Fatuma Hamisi, MP | |

APOLOGY.

1. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP
2. The Hon. Tubi Bidu Mohamed, MP
3. The Hon. Elijah Njore Njoroge, MP
4. The Hon. Emathe Joseph Namuar, MP

ABSENT

The Hon. Hiribae Said Buya, MP.

IN-ATTENDANCE; THE COMMITTEE SECRETARIAT

- | | | |
|-------------------------|---|----------------------------------|
| 1. Mr. Fredrick Otieno | - | Assistant Clerk II |
| 2. Mr. Hamdi H. Mohamed | - | Assistant Clerk III |
| 3. Ms. Marcy Wanyoyi | - | SLC |
| 4. Ms. Nancy Chamunga | - | Fiscal Analyst III |
| 5. Ms. Edith Chepogeno | - | Media Relations Officer III |
| 6. Ms. Maryan Gabow | - | Public Communication Officer III |
| 7. Mr. Boniface Mushila | - | Sergeant-At-Arms |
| 8. Mr. Danto Nirvana | - | Audio Officer |

IN-ATTENDANCE-MINISTRIES OF ENVIRONMENT, CLIMATE CHANE AND FORESTRY, FOREIGN AND DIASPOARA AFFAIRS AND OFFICE OF THE ATTORNEY-GENERAL.

- | | | |
|---------------------------|---|---|
| 1. Eng. Festus Ng'eno | - | PS, State Department for Environment and Climate Change |
| 2. Dr. A. Korir Sig'Oea | - | PS, State Department for Foreign Affairs |
| 3. Ms. Magret Maina | - | Communication Officer, MECC&F |
| 4. Mr. James Thonjo | - | Technical Officer, MECC&F |
| 5. Mr. Mabwai Eliazer | - | PA, PS MECC&F |
| 6. Dr. Paufiga Ogolla | - | Director, CC |
| 7. Mr. Mrindany Karui | - | Coordinator, MECC&F |
| 8. Mr. Cyrus Mageria | - | Director, MECC&F |
| 9. Ms. Annie Syombua | - | Legal Officer, MECC&F |
| 10. Mr. Nicholas K.Maduku | - | Chief State Counsel, MFA&DA |
| 11. Ms. Sarah Mueni | - | Advocate Treaties, MFA&DA |
| 12. Ms. Purity Koech | - | Treaties Officer, MFA&DA |
| 13. Ms. Sokome Leshore | - | Foreign Service Officer, MFA&DA |
| 14. Amb. Samuel Gitonga | - | Director, MFA&DA |
| 15. Ms. Caroline Ofualah | - | Foreign Service, MFA |
| 16. Ms. Winnie Cheserem | - | Deputy Chief State Counsel, OAG&DOJ |
| 17. Ms. Anastacia Kamande | - | Principal State Counsel, OAG&DOJ |
| 18. Ms. Cindy Marasi | - | State Counsel, OAG&DOJ |
| 19. Mr. James Kamula | - | CDE, Lamu, NEEMA |
| 20. Mr. Nick M. Biketi | - | Secretary Parliamentary Office, SDPLA-OPCS |
| 21. Mr. Rodney Omari | - | Parliamentary Liaison Officer, MECC&F |

IN-ATTENDANCE-BUDGET AND APPROPRIATION COMMITTEE, BARINGO COUNTY ASSEMBLY.

- | | | |
|------------------------------|---|----------------------------------|
| 1. Hon. Earnest Chibet Tarus | - | Chairperson,Budget Committee |
| 2. Hon. Ben Koech | | |
| 3. Hon. Laurien Sam | | |
| 4. Hon. Symon Kiplagat | | |
| 5. Hon. L.K Taulam | | |
| 6. Hon. Maria Losile | | |
| 7. Mr. Jeffred Chepsa | | |
| 8. Mr. Wilson K. Kptui | | |
| 9. Mr. Emmanuel Kubae | - | Hansard Officer to the Committee |
| 10. Mr. Kiptom Jonathan | - | Clerk Assistant to the Committee |
| 11. Mr. Amos Kiprop | - | D/CSAA,BCA |
| 12. Mr. Motonyo Dennis | - | Staff, BCA |
| 13. Mr. Ronald Chemtich | - | PFA,BCA |

MIN/NO.NA/DC-EF&M/2023/051: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at twenty minutes to ten O'clock followed by a prayer said by Hon. Onesmus Ngogoyo, MP. The agenda of the meeting was adopted as hereunder having been proposed and seconded by the Hon. Titus Lotee, MP and the Hon. Yakub Adow, MP respectively. Thereafter, everyone present introduced themselves.

AGENDA:

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters Arising
6. Pending Bills – None
7. Pending Bills -None
8. Pending Petitions
9. Questions – None
10. Statements - None
11. Meeting with the Cabinet Secretaries Ministry of Environment, Climate Change and Forestry and Ministry of Foreign and Diaspora Affairs and the Attorney General to consider the following:
 - a) Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer;
 - b) The Accession of the Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes within Africa; and
 - c) The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.
12. Any Other Business; and
13. Adjournment.

MIN/NO.NA/DC-EF&M/2023/052: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed everyone to the meeting and underscored it was a privilege to the visitors to be seated in the Main Chambers National Assembly.

Thereafter, the Chairperson apprised the meeting on the provisions of Standing Order 216(fa) which states that Departmental Committees shall; *examine treaties, agreements and conventions*; and highlighted that the Meeting was in concurrent with the provisions of the National Assembly Standing Orders.

Finally, the Chairperson directed that those appearing before the Committee representing the invited witnesses should come with official communications and authority to bear

responsibilities of the deliberations of the Committee. He further emphasized that the invited witnesses should appear before the Committee in-person going forward.

MIN/NO.NA/DC-EF&M/2023/053: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN/NO.NA/DC-EF&M/2023/054: CONSIDERATION OF THE FOLLOWING AGREEMENTS:

- a) **KIGALI AMENDMENTS TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER;**
- b) **THE ACCESSION OF THE BAMAKO CONVENTION ON THE BAN ON THE IMPORT INTO AFRICA AND THE CONTROL OF THE TRANSBOUNDARY MOVEMENT AND MANAGEMENT OF HAZARDOUS WASTES WITHIN AFRICA; AND**
- c) **THE AMENDED NAIROBI CONVENTION AND THE PROTOCOL FOR THE PROTECTION OF MARINE AND COASTAL ENVIRONMENT OF THE WESTERN INDIAN OCEAN FROM LAND BASED SOURCES AND ACTIVITIES.**

The Principal Secretaries for State Departments for Environment and Climate Change and Foreign Affairs and the Office of the Solicitor-General appeared before the Committee and made a joint submission on the Agreements as follows:

THAT, on 12th May, 2022, the Cabinet approved a cabinet Memorandum on the ratification of the following Conventions-

- The Bamako Convention on the Import into Africa and the control of the Transboundary Movement and Management of Hazardous Wastes within Africa;
- The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities; and
- The Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

- a) **Kigali Amendments to The Montreal Protocol on Substances that Deplete the Ozone Layer;**
 - 1. The Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer was agreed upon at the 28th Meeting of Parties on the 15th of October 2016 in Kigali, Rwanda. While Kenya has ratified the Montreal Protocol, it is yet to ratify the Kigali Amendment. There are currently one hundred and thirty (130) state parties that have ratified the amended Protocol.
 - 2. The Montreal Protocol on Substances that Deplete the Ozone Layer is a global agreement that was finalized in 1987 with the objective of protecting the ozone layer as it protects the earth from harmful ultraviolet rays that come from the sun. The Montreal Protocol is signed by 197 countries.

3. The Kigali Amendment sets out the manner in which countries are to carry out the process of phasing down on the production and usage of hydrofluorocarbons (HFCs). The amendment also includes target baselines and emission levels that state parties have to achieve.
 4. The implementation of the new targets set out in the amendment is to be conducted in three phases taking into account the different socio-economic, scientific and technological capabilities of the member states. Under the Montreal Protocol, Kenya is classified as a developing country and is therefore entitled to start the process of phasing down HFCs by 2028
 5. The Obligations imposed by the Kigali Amendment under Article 2J are for state parties to-
 - (a) Reduce the consumption of Annex F Group I HFCs and ensure that the level of consumption does not exceed the percentages that are respective to the range of years specified;
 - (b) Involved in producing the controlled substances under Annex F do not exceed the percentages outlined;
 - (c) Destroy Annex F Group II HFCs in accordance with the percentages, timelines and processes set out;
 - (d) Gradually reduce the use of HFCs by 80-85% by late 2040s;
 - (e) Restrict the trading of controlled substances under Annex F with states that are not parties to the protocol;
 - (f) Establish and implement a new system that oversees the importation, exportation and licensing of new, used and reclaimed controlled substances;
 - (g) Monitor and report the production and consumption of HFCs and HFC-23 emissions within their states; and
 - (h) Ensure that baselines are calculated for both HFC and hydrofluorocarbon (HCFC) production and consumption.
 6. The timeline under which these obligations are to be implemented depends on whether a country is classified as an 'Article 5 Party' (developing country) or a 'non-Article 5 party' (developed countries). Under Article 5(8), Article 5 parties are entitled to delay their compliance with the measures set out under Article 2J and modify them according to the timelines provided.
 7. In addition, awareness on the dangerous consequences of these hazardous materials to both human life, health and the environment must be made.
 8. Adoption of Bamako Convention is vital in combating the illegal activities. To ensure the effectiveness the states parties to these instruments should develop and adopt national policies that give effect to the contents of these instruments.
- b) The Accession of the Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.**
1. The Bamako Convention was first negotiated by twelve (12) nations of the Organization of African Unity in Bamako, Mali on 30th January 1991 and came into force on 22nd April 1998. Currently, thirty-five (35) African states have signed the Convention. Kenya signed the Convention on the 17th December 2003 but is yet to accede to it.

2. The objective of this Memorandum is to seek the National Assembly's approval for Kenya's accession to the Bamako Convention on the Ban on the import into Africa and the Control of the Trans Boundary. The main object of the Convention is to **prohibit the import of any hazardous waste and to specifically ban transboundary movement of hazardous wastes**. State parties are imposed by the Convention to ban the importation into, and the transit through, their territory of hazardous wastes and substances for human health and environmental reasons.
 3. The **Obligations** imposed by the Convention are for to-
 - (a) Prohibit the import of all hazardous and radioactive waste into Kenya;
 - (b) Ensure that hazardous materials are disposed of in the safest way possible;
 - (c) Minimize transboundary movements of hazardous wastes within Kenya;
 - (d) Prohibit all ocean and inland water dumping in Kenya;
 - (e) Ensure that disposal of wastes in Kenya is conducted in an environmentally sound manner;
 - (f) Carry out its responsibilities concerning the transport and disposal of hazardous wastes in a manner that is consistent with the protection of human health and the environment; and
 - (g) Introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports.
 4. The Convention does not provide for reservations. However, a party may withdraw from the Convention by giving notice in writing any time after three years from the date when the Convention has entered into force. The withdrawal shall be effective one year after receipt of the notice by the Depository (Secretary General of the OAU).
 5. The impetus for the Bamako convention arose also from:
 - The failure of the Basel Convention to prohibit trade of hazardous waste to less developed countries (LDCs);
 - The realization that many developed nations were exporting toxic wastes to Africa.
- c) **The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.**
1. The Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern Africa Region was adopted on 21st June 1985 to develop, plan, coordinate and co-operate in the protection and sustainable use of the Coastal and Marine Environment.
 2. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Eastern African Region was adopted on 31st of March 2010 as an amendment to the Nairobi Convention alongside the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.
 3. The Amended Convention and its Protocol are Regional Legislations covering the Eastern and Southern African Region which currently has ten (10) state parties. Kenya is yet to ratify the Amended Convention and its Protocol.
 4. The objective of this Memorandum is to seek the National Assembly's approval for Kenya's ratification of the amended Nairobi Convention for the Protection, Management,

and Development of the Marine and Coastal Environment of the Western Indian Ocean and the Protocol for the Protection of Marine Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

5. It endeavors to protect from threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses, posed by pollution and the insufficient integration of an environmental dimension into the development process.
6. The Convention recognizes the impacts of climate change on marine and coastal environment resulting in, among other things, sea-level rise, increase of sea water temperature, ocean acidification, weather and climate variability that affect or are likely to affect coastal communities. It also recognizes the special hydrographical and ecological characteristics of the region, which require special care and responsible management.
7. It recognizes the need to adopt integrated policies and practices of sustainable coastal zone management to improve the quality of life of our people.
8. Under the Nairobi Convention, Kenya is required to make annual subscriptions of USD. 45,302. The PS however noted that the amount is currently in arrears of USD. 226,510.
9. Further, the representative of the office of Solitor-General informed the Members that the Treaties before the Committee is in line with Constitution of Kenya and therefore the office of Attorney-General pleads with Committee to facilitate the ratification of the treaties.

MIN/NO.NA/DC-EF&M/2023/055: COMMITTEE OBSERVATION.

1. It was noted that the treaties can only be ratified with reservations hence the Committee is legally not able to propose any amendments to the agreements.
2. It was noted that it has taken long to ratify the agreements despite the cabinet approval in May 2022.
3. It was further noted that under the Nairobi Convention, Kenya is required to make annual subscriptions of USD. 45,302 which is currently in arrears of USD. 226,510 which the Ministry of National Treasury needs to offset since payments for international subscriptions are vested under the Ministry.

MIN/NO.NA/DC-EF&M/2023/056: ADJOURNMENT.

There being no other business, the meeting was adjourned at twelve noon. The next meeting is to be held on the 7th March 2023 at 9.00am at Mini Chambers, County Hall, Parliament Buildings.

Signed..... Date:

(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)



**MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY; MINISTRY OF
FOREIGN AND DIASPORA AFFAIRS; AND OFFICE OF THE ATTORNEY GENERAL &
DEPARTMENT OF JUSTICE**

**JOINT BRIEF ON THE AMENDED NAIROBI CONVENTION AND THE PROTOCOL
FOR THE PROTECTION OF MARINE AND COASTAL ENVIRONMENT OF THE
WESTERN INDIAN OCEAN FROM LAND-BASED SOURCES AND ACTIVITIES**

1.0. BACKGROUND

- 1.1. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land-Based Sources and Activities (the Amended Nairobi Convention) were adopted on 31st March, 2010 as an amendment to the Nairobi Convention on the Protection, Management and Development of the Marine and Coastal Environment of the Eastern Africa Region that was adopted on 21st June, 1985.
- 1.2. The Amended Nairobi Convention takes into account emerging issues and trends at both global and regional levels, particularly those that have implications for the management of the coastal and marine environment. The emerging issues include marine pollution from micro plastics and other solid wastes.
- 1.3. The Protocol is conscious of the grave danger posed by various land-based sources and activities to the marine and coastal environment affecting its rich heritage of Biological Diversity, Coastal tourism, ports and harbours, human health and other natural and human-made endowments and resources.

- 1.4. The Protocol recognizes that land-based sources and activities constitute one of the major threats to the sustainability of the Marine and Coastal Environment. These sources and activities include; untreated domestic wastes and discharges, industrial discharges, agricultural run-off and activities causing physical alteration and destruction of habitats.
- 1.5. The title of the convention changed from East African Region to Western Indian Ocean to incorporate States parties from Southern Africa and the Island States that do not fall under the Eastern African Region geographically.

2.0. OBLIGATIONS IMPOSED ON KENYA BY THE AMENDED NAIROBI CONVENTION

2.1. State Parties are obligated to;

- 2.1.1. Take all appropriate measures to prevent, reduce and combat pollution of the convention area and also ensure sound environmental management;
- 2.1.2. Co-operate in the formulation and adoption of the Protocols to facilitate effective implementation of the Convention;
- 2.1.3. Harmonize policies and laws concerning the Convention;
- 2.1.4. Ensure effective implementation of the Convention and its protocol; and
- 2.1.5. Apply relevant environmental principles such as the precautionary principle and the polluter pay principle in ensuring that in the application of the measures, they do not cause pollution outside the Convention area.

3.0. PROBLEM ANALYSIS

- 3.1. About 9% of the total population of Kenya is based in the Coast Province and growing at 3.1 % p.a. which is significantly faster than the national average of 2.9 % p.a. (GOK – 2019 Census). There are two major drainage basins, namely the Tana and Sabaki-Galana-Athi basins which drain into the

Indian Ocean. The Tana River, which is the longest, drains a catchment area extending from Mt. Kenya and discharges into Ungwana bay. The Sabaki-Galana-Athi River basin has its tributaries rising from the Aberdare Range and discharging into Malindi Bay. Other river systems and streams discharging into the sea include Ramisi, Mkurumuji, Kombeni, Tsalu, Mwache and Uмба (which rises from the Kilimanjaro-Usambara hills in Tanzania). The river discharge areas are major sources of freshwater and sediments entering the sea.

- 3.2. Discharge of domestic, industrial and agricultural wastes into marine and freshwater ecosystems causes deterioration of water and sediment quality, thus compromising the marine resources used to spur national development and improve community livelihoods.
- 3.3. Wastewater from facilities and households is only partially treated before being discharged into the ocean, thereby polluting the marine environment and negatively affecting surrounding communities dependent on marine resources for their livelihoods.
- 3.4. Direct discharge of waste into the oceans, runoff into the waters due to rain, and pollutants released from the atmosphere are the critical inputs of pollution into the ocean.
- 3.5. Most ocean pollution begins on land. Land-based sources account for 80% of marine pollution. Land-based pollution includes untreated sewage, agricultural run-off, oils and heavy metals from industries, and sediment washed in from earthworks and logging. When large tracts of land are ploughed, the exposed soil can erode during rainstorms. Much of this runoff flows to the sea, carrying with it agricultural fertilizers and pesticides.
- 3.6. Pollutants of land-based origin include pesticides, chemical waste, cleaning agents, petroleum products, mining waste, garbage and sewage. Pharmaceuticals ingested by humans, but not fully processed by the human body, have also been detected in fish. A redesigned and rehabilitated

wastewater treatment system is thus needed to conserve Kenya's marine resources.

- 3.7. The challenges to the Indian Ocean include nontraditional security issues such as climate change, illegal fishing, drug smuggling, and human trafficking which will come to play a bigger role in the geopolitics of the Indian Ocean. This requires concerted efforts as a region to work with other state parties to the Convention for joint operations and collaborations to fix the transboundary marine pollution and related hazards and dangers in the western Indian ocean.
- 3.8. The ratification of the Nairobi Convention is very important. **State Parties** to the Nairobi Convention are **Somalia** in the north to **South Africa** in the south, covering 10 African states. They include 5 mainland coastal states (Somalia, Kenya, Tanzania, Mozambique and South Africa) and 5 Island states (Comoros, Madagascar, Mauritius Seychelles and France La Reunion).
- 3.9. The **Government of Kenya is the depository of the Nairobi Convention** which creates an urgent need to ratify it.

4.0. JUSTIFICATION FOR THE RATIFICATION OF THE AMENDED NAIROBI CONVENTION

- 4.1. Pollution from land-based sources and activities constitutes one of the major threats to the sustainability of the marine and coastal environment in the Western Indian Ocean. The Convention seeks to ensure the protection of marine and coastal environment by incorporating appropriate measures to combat pollution and ensure sound management of the natural resources for Sustainable development.
- 4.2. Ratifying the Amended Convention will enhance the achievement of goal number Fourteen (14) of the Sustainable Development Goals which seeks to conserve and sustainably use the Ocean, Seas and Marine Resources for Sustainable development.
- 4.3. The Amended Convention will govern all aspects and sources of Marine Pollution and Environmental Degradation and also meet the special

requirements of the Western Indian Ocean. It incorporates clear provisions for compliance and enforcement of its provisions.

- 4.4. The Amended Convention also takes into account emerging issues and trends at both global and regional levels, particularly those that have implications for the management of the Coastal and Marine Environment.
- 4.5. The Amended Nairobi Convention provides a mechanism for regional cooperation and collaboration by the Contracting Parties to address interlinked problems facing the coastal and marine environment.
- 4.6. Tons of garbage and plastic make their way into the Indian Ocean each year, making it the world's second most polluted ocean after the North Pacific. Marine pollution in the Indian Ocean includes chemicals, oil spillage and plastic. Chemical pollution is caused due to the entry of harmful chemicals into water bodies. Kenya potentially releases garbage and plastic into the Indian Ocean as presented in the table.

Table 1: Daily inflow of solid and plastic waste into the Indian Ocean from Coastal and Riverine Counties in Kenya

No.	County	Population	National Index solid waste generated per person	SOLID Waste generated in the County per day in kgs	% Plastic Waste in the solid waste generated	Plastic Waste Generated Per Day In Kgs
1	Kilifi	1,109,735	0.31	3,134,017.85	3	94020.00
2	Kwale	649,931	0.31	201,478.61	3	6044.36
3	Machakos	1,098,584	0.31	340,561.04	3	10216.83
4	Kitui	1,012,709	0.31	313,939.79	3	9418.19
5	Makueni	884,527	0.31	274,203.37	3	8226.09
6	Mombasa	1,208,333	0.31	374,583.23	3	11237.50
7	Taita Taveta	340,671	0.31	105,608.01	3	3168.24
8	Tana River	315,943	0.31	97,942.33	3	2938.27

9	Lamu	143,920	0.31	44,615.20	3	1338.46
	Total	6,764,353	0.31	2,096,949.43	3	62908.48

- 4.7. All these issues must be addressed by Kenya at the National, Regional and International levels.
- 4.8. Kenya has established standards to manage the coastal resources and environmental quality through installing both domestic and international laws from governance perspectives to ensure and enhance sound environmental safeguards, and socio-economic enhancement under article 43 of the constitution of Kenya 2010 for the people of Kenya.
- 4.9. The Domestic Laws and Regulations that Kenya has so far enacted complement the Nairobi Convention which also covers the blue economy sector, which is part of the justification to ratify the Nairobi Convention.

5.0. CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS

- 5.1. The Amended Convention and its Protocol are consistent with the Constitution and promote constitutional values and objectives. The same does not allude to an amendment to the Constitution.
- 5.2. The Nairobi Convention and its protocol present no new policy implications for Kenya as the provisions of the Convention are already embedded in the National Environment Policy, 2013 and Environmental Management and Coordination Act 1999(Rev. 2015), the Environment Management and Coordination (Waste Management) Regulations of 2006 and Environment Management and Coordination (Water Quality) Regulations of 2006.

6.0. RESERVATIONS

- 6.1. The Treaty does not provide for reservations but the amendments are not prejudicial to the interests of Kenya.

7.0. BENEFITS OF RATIFYING THE CONVENTION

- 7.1.** The Nairobi convention seeks to support the development and implementation of sound marine resources management, protection and conservation which would define sustainable land usage; support socio-economic development; ensure environmental sustainability, and provide strategies to deal with urbanization, transportation, agricultural expansion, and other threats.
- 7.2.** In addition, the convention would ensure the deployment of sound but reliable technology to identify critical ecologically and Biologically Significant Areas (EBSA) in the coastal area.

8.0. FINANCIAL IMPLICATIONS

- 8.1.** Under the Nairobi Convention, Kenya is required to make annual subscriptions of USD 45,302. This amount is currently in arrears of USD 226,510. Further Kenya has benefitted under the Nairobi Convention Kenya Coastal Development Program (KCDP) in capacity building as well as enforcement work to prevent Beach erosion, pollution and marine litter from Land Based Pollution Sources and Activities.



09 NOV 2022

Wednesday-Afternoon

Hon. Kimani Ichungwa, MP
Leader of the Majority Party

MINISTRY OF FOREIGN AFFAIRS

Mainah Wanjiku

PARLIAMENTARY MEMORANDUM

ON

THE RATIFICATION OF THE

AMENDED NAIROBI CONVENTION AND THE PROTOCOL FOR THE PROTECTION

OF MARINE AND COASTAL ENVIRONMENT OF THE WESTERN INDIAN OCEAN

FROM LAND BASED SOURCES AND ACTIVITIES.

22-

**PARLIAMENTARY MEMORANDUM ON THE RATIFICATION OF THE
AMENDED NAIROBI CONVENTION AND THE PROTOCOL FOR THE
PROTECTION OF MARINE AND COASTAL ENVIRONMENT OF THE
WESTERN INDIAN OCEAN FROM LAND BASED SOURCES AND
ACTIVITIES.**

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 the Amended Nairobi Convention for the Protection, Management, and Development of the Marine and Coastal Environment of the Western Indian Ocean and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.
- 1.2 The ratification process was approved by the Cabinet in a meeting held on 12th May 2022.

2.0 BACKGROUND

- 2.1 The Nairobi Convention on the Protection, Management, and Development of the Marine and Coastal Environment of the Eastern Africa Region was adopted on 21st June 1985 to develop, plan, coordinate and co-operate in the protection and sustainable use of the Coastal and Marine Environment
- 2.2 The Amended Nairobi Convention for the Protection, Management, and Development of the Marine and Coastal Environment of the Eastern African Region was adopted on 31st of March 2010 as an amendment to the Nairobi Convention.
- 2.3 The Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities was also adopted alongside the Amended Nairobi Convention.

2.4 The Amended Convention and its Protocol are Regional Legislations, covering the Eastern and Southern African Region. It currently has ten (10) state parties.

2.5 Kenya is yet to ratify the Amended Convention and its Protocol.

3.0 OBJECTS AND SUBJECT MATTER OF THE AMENDED NAIROBI CONVENTION

3.1 The overarching goal of this Regional Convention is to enhance the management of the Marine and Coastal Environment and natural heritage including its Biological Diversity as provided under article 11(1) of the Amended Convention for the sustainable use and benefits of present and future generations.

3.2 It endeavors to protect from threat the Marine and Coastal Environment, its ecological equilibrium, resources and legitimate uses, posed by pollution and the insufficient integration of environmental dimension into the development process.

3.3 The Convention recognizes the impact of climate change on the Marine and Coastal Environment in *inter alia*, sea-levels rise, increase of sea water temperatures ocean acidification, weather and climate variability that affect the coastal communities. It also recognizes the special hydrographical and ecological characteristics which require special care and responsible management.

3.4 The Convention is an important instrument in ensuring that sufficient policies and practices are integrated into the Marine and Coastal Environment due to their economic and social value.

- 3.5 The Convention takes into account the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, the 1992 Convention on Biological diversity (1992), the 1992 United Nations Framework Convention on Climate Change, the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous wastes and their disposals, the 1991 Bamako Convention on the Ban of the Import into Africa, other relevant International Conventions, outcomes and decisions of the United Nations Conference on Environment and Development.

4.0 OBJECTS AND SUBJECT MATTER OF THE PROTOCOL

- 4.1 The Protocol is conscious of the grave danger posed by various Land-Based Sources and Activities to the Marine and Coastal Environment affecting its rich heritage of Biological Diversity, coastal tourism, parts and harbours, human health and other natural and human made endowments and resources.
- 4.2 The Protocol notes the threats to the Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities, including but not limited to untreated domestic wastes and discharges, industrial discharges, Agricultural run-off and activities causing physical alteration and destruction of habitats.
- 4.2 The Protocol is further determined to Conserve and Protect the Marine and Coastal Environment, the sustainable development and use of the natural resources of the region by undertaking proactive and inclusive planning processes so as to meet the need of present and future generation in an equitable manner.

5.0 OBLIGATIONS IMPOSED BY THE AMENDED CONVENTION

5.1 State Parties are obligated to;

- Take all appropriate measures to prevent, reduce and combat pollution of the convention area and also ensure sound environmental management;
- Co-operate in the formulation and adoption of the Protocols to facilitate effective implementation of the Convention;
- Harmonize policies and laws with regards to the Convention;
- Ensure effective implementation of the Convention and its protocol;
- Apply relevant environmental principle such as the precautionary principle and the polluter pay principle in ensuring that in the application of the measures, they do not cause pollution outside the Convention area.

6.0 PROBLEM ANALYSIS

6.1 The Amended Convention notes in the preamble that the existing international conventions concerning the Marine and Coastal Environment does not cover all aspects and sources of marine pollution and Environmental degradation and do not entirely meet the special requirements of the Western Indian Ocean.

6.2 The Amended text was adopted so as to incorporate the transboundary issues of climate changes, marine and land based pollution, integrated coastal management and the importance of biological diversity.

6.3 This resulted to the addition of two new articles to the Convention:

- Article 9, Pollution resulting from Transboundary Movement of Hazardous Wastes to prevent and abate pollution that

might be caused by transboundary movement and disposal of hazardous waste and if possible eliminate such waste and;

- Article 11, Biological Diversity to preserve rare or fragile ecosystems, endangered or threatened species of Fauna and Flora and their habitats.

- 6.4 The rationale to this is that the utilization of transboundary resources causes impacts such as pollution, overfishing, and the destruction of habitat.

7.0 JUSTIFICATION

- 7.1 United Nations has adopted Seventeen (17) Sustainable development Goals (SDGs) as a universal call to action to eradicate poverty, protect the planet and ensure by 2030 all people enjoy peace and prosperity. Ratifying the Amended Convention will enhance the achievement of goal number Fourteen (14) of the Sustainable Development Goals which seeks to conserve and sustainably use the Ocean, Seas and Marine resources for Sustainable development.¹
- 7.2 Kenya is a Champion in Environmental matters and this is evidenced by the fact that it hosted the Blue Economy Conference that was held on the 26th to the 28th November 2018. The main objective of the conference was to harness potential of our Ocean, Seas, Lakes and Rivers to improve the lives of the people.
- 7.3 Pollution from land based sources and activities constitute one of the major threats to the sustainability of the Marine and Coastal Environment in the Western Indian Ocean. This necessitates the ratification of the Regional Protocol to address the problem.

¹ <http://www.globalgoals.org/resources/>

- 7.4 The Amended Convention as opposed to the former convention incorporates clear provisions for compliance and enforcement of its provisions. The article requires the contracting parties to take measures to enforce and comply with the convention.
- 7.5 The Convention will govern all aspects and sources of Marine Pollution and Environmental Degradation and also meet the special requirements of the Western Indian Ocean.
- 7.6 It also takes into account emerging issues and trends at both global and regional levels, particularly those that have implications on the management of the Coastal and Marine Environment.
- 7.7 The convention seeks to ensure the protection of Marine and Coastal Environment by incorporating appropriate measures to combat pollution and ensure sound management of the natural resources.

8.0 COMMON CONSTITUTIONAL AND LEGISLATIVE IMPLICATION

- 8.1 The Convention is consistent with the Constitution and promotes constitutional values and provisions under article 69 (1) (e) and (g) on obligations in respect to the Environment.
- 8.2 Additionally, there will be no policy implication for Kenya since the provisions of the Convention and the Protocol are already embedded in the National Environment Policy, 2013, and Environmental Management and Coordination Act 1999 (Rev. 2015), the Environmental Management and Coordination (Waste Management) Regulation of 2006 and Environmental Management and Coordination (Water Quality) Regulations of 2006.

9.0 IMPLICATION RELATING TO COUNTIES

- 9.1 The obligations imposed under the protocols are under the purview of the National Government.

10.0 FINANCIAL IMPLICATION

- 10.1 Under the amended Nairobi Convention framework, Contracting Parties are obligated to make financial contributions to the Eastern Africa Trust Fund. The implementation of the Trust Fund fulfills one of the main goals established by the Regional Seas Program that is to become financially self-sufficient.

11.0 MINISTERIAL RESPONSIBILITY

- 11.1 The Ministry responsible for the implementation and activity in regard to the amended Nairobi convention falls under the ministry of Environment and Natural resources and the Ministry of Foreign Affairs.
- 11.2 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

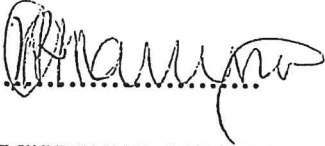
12.0 RESERVATION

- 12.1 The convention does not provide for reservations

13.0 RECOMMENDATION

- 13.1 In consideration of the aforementioned facts, the National Assembly is invited to:
- i. Note the contents of the Memorandum;

- ii. Consider and approve the Amended Nairobi Convention Protection Management and Development of Marine and Coastal Environment and its Protocol;
- iii. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the relevant instruments to the Depositary.

SIGNED.....

DATED.......... JULY, 2022

AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY
MINISTRY OF FOREIGN AFFAIRS



Final text of the

**Amended Nairobi Convention for the
Protection, Management and Development
of the Marine and Coastal Environment of
the Western Indian Ocean**

Adopted in Nairobi, Kenya
on 31 March 2010

09 NOV 2022	
WEE/MO/CLAY	
Hon. Kimani Ichung'uwa, MP Leader of the Majority Party	
Mauriah Wanjiku	

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Preamble

We, the Contracting Parties,

Fully aware of the economic and social value of the marine and coastal environment of the Western Indian Ocean region;

Conscious of our responsibility to manage our marine and coastal environment and natural heritage, including its biological diversity, for the sustainable use and benefit of present and future generations;

Aware of the impacts of climate change on marine and coastal environment resulting in, inter alia, sea-level rise, increase of sea water temperature, ocean acidification, weather and climate variability that affect or are likely to affect coastal communities;

Recognizing the special hydrographical and ecological characteristics of the region, which require special care and responsible management;

Recognizing further the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and the insufficient integration of an environmental dimension into the development process;

Seeking to ensure that resource development shall be in harmony with the maintenance of the environmental quality of the region and the evolving principles of rational environmental management, including, but not limited to, the ecosystem based management, polluter pays and precautionary principles;

Conscious of the need to adopt integrated policies and practices of sustainable coastal zone management to improve the quality of life of our people;

Realizing fully the need for co-operation amongst the Contracting Parties and with competent international and regional organizations in order to ensure a coordinated and comprehensive development of the natural resources of the region;

Taking into account the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, the 1992 Convention on Biological Diversity (1992), the 1992 United Nations Framework Convention on Climate Change, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, other relevant international conventions, outcomes and decisions of the 1992 United Nations Conference on Environment and Development;

Further taking into account the special circumstances and vulnerability of the small island states of the region reflected in, among others, the 2005 Mauritius Strategy for Further Implementation of the Programme of Action for Sustainable Development of Small Island Developing States;

Recognizing the desirability of promoting the wider acceptance and national implementation of existing international environmental agreements;

Noting the role of non-governmental organizations, civil society and other major groups in the promotion of sound environmental management;

Noting, however, that existing international conventions concerning the marine and coastal environment do not cover all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the Western Indian Ocean region;

Desirous to adopt a regional convention elaborated within the framework of the Action Plan for the Protection Management and Development of the Marine and Coastal Environment of the Western Indian Ocean region, and;

Convinced that the purposes of this Convention would be better achieved by amending the Original Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (1985).

Have agreed as follows,

Article 1 GEOGRAPHICAL COVERAGE

This Convention shall apply to the Western Indian Ocean covering the Eastern and Southern Africa region, hereinafter referred to as "the Convention area" as defined in paragraph (b) of Article 2.

Article 2 DEFINITIONS

For the purposes of this Convention:

- (a) "Contracting Party" means any state or regional inter-governmental integration organization located within the Convention area as defined in this Convention and which is a party to this Convention or its protocols;
- (b) The "Convention area" shall comprise the riparian, marine and coastal environment including the watershed of the Contracting Parties to this Convention. The extent of the watershed and of the coastal environment to be included within the Convention area shall be indicated in each protocol to this Convention, taking into account the objectives of the protocol concerned;
- (c) "Pollution" means the introduction by human intervention, directly or indirectly, or through river flows, of substances, organisms or energy into the marine and coastal environment, including estuaries, resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of sea water and reduction of amenities;
- (d) "Organization" means the body designated as responsible for carrying out secretarial functions pursuant to article 17 of this Convention; and
- (e) "Original Convention" means the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region adopted in Nairobi in 1985.

Article 3 GENERAL PROVISIONS

1. The Contracting Parties may enter into bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection and management of the marine and coastal environment of the Convention area. Such agreements shall be consistent with this Convention and Protocols made therein and in accordance with international law. Copies of such agreements shall be communicated to the Organization, and, through the Organization, to all Contracting Parties to this Convention.
2. Nothing in this Convention or its protocols shall be deemed to affect obligations assumed by a Contracting Party under agreements previously concluded and, in particular, the 1982 United Nations Convention on the Law of the Sea.

3. This Convention and its protocols shall be construed in accordance with international law relating to their subject matter. Nothing in this Convention and its protocols shall prejudice the present or future claims and legal views of any Contracting Party concerning the nature and extent of its maritime jurisdiction.
4. Nothing in this Convention and its protocols shall affect the immunity of warships and other government ships operated for non-commercial purposes. Nonetheless, each Contracting Party shall ensure that its vessels and aircraft, entitled to sovereign immunity under international law, act in a manner consistent with this Convention.

Article 4 **GENERAL OBLIGATIONS**

1. The Contracting Parties shall, individually or jointly, take all appropriate measures in conformity with international law and in accordance with this Convention and those of its protocols in force to which they are party, to prevent, reduce and combat pollution of the Convention area and to ensure sound environment management of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities.
2. The Contracting Parties shall co-operate in the formulation and adoption of protocols to facilitate the effective implementation of this Convention.
3. The Contracting Parties shall take all appropriate measures in conformity with international law for the effective discharge of the obligations prescribed in this Convention and its protocols and shall endeavor to harmonize their policies and laws in this regard.
4. The Contracting Parties shall co-operate with the competent international, regional and sub-regional organizations to ensure the effective implementation of this Convention and its protocols. They shall assist each other in fulfilling their obligations under this Convention and its protocols.
5. In taking the measures referred to in paragraph 1, the Contracting Parties shall ensure that the application of each of such measures does not cause pollution of the marine environment outside the Convention area, and in this regard shall endeavour to apply relevant environmental principles including but not limited to the precautionary principle, the polluter pays principle, and the promotion of integrated coastal zone management.

Article 5 **POLLUTION FROM SHIPS**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by discharge from ships and, for this purpose, to ensure the effective implementation of the applicable international rules and standards established by, or within the framework of, the competent international organization.

Article 6 **POLLUTION CAUSED BY DUMPING**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by dumping of wastes and other matter at sea from ships, aircraft, or manmade structures at sea, taking into account applicable international rules and standards and recommended practices and procedures.

Article 7

POLLUTION FROM LAND-BASED SOURCES AND ACTIVITIES

The Contracting Parties shall endeavor to take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other land-based sources and activities within their territories.

Article 8

POLLUTION FROM SEABED ACTIVITIES

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil.

Article 9

POLLUTION RESULTING FROM TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES

1. The Contracting Parties shall take all appropriate measures to prevent, abate and, to the fullest possible extent, eliminate pollution of the Convention area which may be caused by the transboundary movement and disposal of hazardous wastes, and to reduce to a minimum and, if possible, eliminate such transboundary movements.
2. The measures taken by the Contracting Parties under paragraph 1 shall be without prejudice to the obligations of the Parties resulting from their participation in the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes within Africa.

Article 10

AIRBORNE POLLUTION

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area resulting from discharges into the atmosphere from activities under their jurisdiction.

Article 11

BIOLOGICAL DIVERSITY

1. The Contracting Parties shall, individually or jointly, take appropriate measures to conserve biological diversity and protect and preserve rare or fragile ecosystems as well as rare, endangered or threatened species of fauna and flora and their habitats in the Convention area.
2. The Contracting Parties shall, in areas under their jurisdiction, establish protected areas, such as parks and reserves, and shall regulate and, where required and subject to the rules of international law, prohibit any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are established to protect.
3. The establishment of such areas shall not affect the rights of other Contracting Parties and third States and in particular other legitimate uses of the sea.

Article 12
CO-OPERATION IN COMBATING POLLUTION
IN CASES OF EMERGENCY

1. The Contracting Parties shall co-operate in taking all necessary measures to respond to pollution emergencies in the Convention area and to reduce or eliminate pollution or the threat of pollution resulting there from. To this end, the Contracting Parties shall, individually and jointly, develop and promote contingency plans for responding to incidents involving pollution or the threat thereof in the Convention area.
2. When a Contracting Party becomes aware of a case in which the Convention area is in imminent danger of being polluted or has been polluted, it shall immediately notify other States likely to be effected by such pollution, as well as competent international organizations. Furthermore, it shall inform, as soon as feasible, such other States and the Organization of any measures it has taken to minimize or reduce pollution or the threat thereof.

Article 13
ENVIRONMENTAL DAMAGE FROM ENGINEERING ACTIVITIES

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat environmental damage in the Convention area in particular the destruction of marine and coastal ecosystems, caused by engineering activities such as land reclamation and dredging.

Article 14
ENVIRONMENTAL IMPACT ASSESSMENT

1. As part of their environmental management policies, the Contracting Parties shall, in co-operation with competent regional and international organizations if necessary, develop technical and other guidelines to assist in the planning of their major development projects in such a way as to prevent or minimize harmful impacts on the Convention area.
2. Each Contracting Party shall assess, within its capabilities, the potential environmental impacts of major projects, which it has reasonable grounds to expect may cause substantial pollution of, or significant and harmful changes to the Convention area.
3. With respect to the assessments referred to in paragraph 2, the Contracting Parties shall, if appropriate in consultation with the Organization, develop procedures for the dissemination of information and, if necessary, for consultations among the Contracting Parties concerned.

Article 15
SCIENTIFIC AND TECHNICAL CO-OPERATION

1. The Contracting Parties shall co-operate, directly or with the assistance of competent regional and international organizations, in scientific research, monitoring, and the exchange of data and other scientific information relating to the purposes of this Convention and its protocols.
2. To this end, the Contracting Parties shall develop and co-ordinate their marine and coastal research and monitoring programmes to include, *inter alia*, biophysical and socio-economic aspects in the Convention area.
3. The Contracting Parties shall establish, in co-operation with competent regional and international organizations, a regional network of national research centres and institutes to ensure compatible results.

4. The Contracting Parties shall endeavor to participate in international arrangements for research and monitoring outside the Convention area.
5. The Contracting Parties shall co-operate, within their available capabilities, directly or through competent regional and international organizations, in the provision to other Contracting Parties of technical and other assistance in fields relating to pollution and sound environmental management of the Convention area.

Article 16 **LIABILITY AND COMPENSATION**

The Contracting Parties shall co-operate, directly or with the assistance of competent regional and international organizations, with a view to formulating and adopting appropriate rules and procedures, which are in conformity with international law in the field of liability and compensation for damage resulting from pollution of the Convention area.

Article 17 **INSTITUTIONAL AND FINANCIAL ARRANGEMENTS**

1. The Contracting Parties designate Executive Director of the United Nations Environment Programme as the secretariat of the Convention to carry out the following functions:
 - (a) to prepare and convene the meetings of Contracting Parties and Conferences provided for in articles 18, 19 and 20;
 - (b) to transmit to the Contracting Parties the information received in accordance with articles 3, 12, 14 and 24;
 - (c) to perform the functions assigned to it by protocols to this Convention;
 - (d) to consider enquiries by, and information from, the Contracting Parties and to consult with them on questions relating to this Convention and its protocols;
 - (e) to coordinate the implementation of co-operative activities agreed upon by the meetings of Contracting Parties;
 - (f) to ensure the necessary co-ordination with other regional and international bodies that the Contracting Parties consider competent; and
 - (g) to enter into such administrative and financial arrangements as may be required for the effective discharge of the secretariat functions.
2. Each Contracting Party shall designate an appropriate authority to serve as the channel of communication with the Organization for the purposes of this Convention and its protocols.

Article 18 **MEETINGS OF THE CONTRACTING PARTIES**

1. The Contracting Parties shall hold ordinary meetings once every two years. It shall be the function of the ordinary meetings of the Contracting Parties to keep under review the implementation of this Convention and its protocols and, in particular to:
 - (a) consider information submitted by the Contracting Parties under article 24;

- (b) adopt, review and amend annexes to this Convention and to its related protocols, in accordance with the provisions of article 21; make recommendations regarding the adoption of any additional protocols or amendments to this Convention or its protocols in accordance with the provisions of articles 19 and 20;
 - (c) establish working groups as required to consider any matters concerning this Convention and its protocols;
 - (d) assess periodically the state of the environment in the Convention Area;
 - (e) consider co-operative activities to be undertaken within the framework of this Convention and its protocols; including their financial and institutional implications, and to adopt decisions relating thereto; and
 - (f) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its protocols.
2. Extraordinary meetings shall be convened at the request of any Contracting Party or the Organization, provided that such requests are supported by a two-thirds majority of the Contracting Parties. It shall be the function of the extraordinary meeting of the Contracting Parties to consider only those items proposed in the request for the holding of the extraordinary meeting.

Article 19 **ADOPTION OF PROTOCOLS**

1. The Contracting Parties, at a conference of plenipotentiaries, may adopt additional protocols to this Convention pursuant to paragraph 2 of article 4.
2. If so requested by a two-third majority of the Contracting Parties, the Organization shall convene a conference of plenipotentiaries for the purpose of adopting additional protocols to this Convention.

Article 20 **AMENDMENT OF THE CONVENTION AND ITS PROTOCOLS**

1. Any Contracting Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a two-thirds majority of the Contracting Parties.
2. Any Contracting Party to this Convention may propose amendments to any protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a two-third majority of the Contracting Parties to the protocol concerned.
3. The text of any proposed amendment shall be communicated by the Organization to all Contracting Parties at least ninety days before the opening of the conference of plenipotentiaries.
4. Any amendment to this Convention shall be adopted by a two-thirds majority vote of the Contracting Parties to the Convention, which are present and voting at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the Convention. Amendments to any protocols shall be adopted by a two-thirds majority vote of Contracting Parties to the protocol which are present and voting at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the protocol.

5. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraph 4 shall enter into force between Contracting Parties having accepted such amendments on the thirtieth day following the date of receipt by the Depositary of the instruments of at least six of the Contracting Parties to this Convention or to the protocol convened, as the case may be. Thereafter the amendments shall enter into force for any other Contracting Party on the thirtieth day after the date on which that Party deposits its instrument.
6. After the entry into force of an amendment to this Convention or to a protocol, any new Contracting Party to this Convention or such protocol shall become a Contracting Party to the Convention or protocol as amended.

Article 21 ANNEXES AND AMENDMENTS OF ANNEXES

1. Annexes to this Convention or to a protocol shall form an integral part of the Convention or, as the case may be, such protocol.
2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the adoption and entry into force of amendments to annexes to this Convention or to annexes to a protocol:
 - (a) any Contracting Party may propose amendments to annexes to this Convention or annexes to any protocol at the meetings convened pursuant to article 18;
 - (b) such amendments shall be adopted by a two-thirds majority vote of the Contracting Parties to the instrument in question;
 - (c) the Depositary shall without delay communicate the amendments so adopted to all Contracting Parties to this Convention;
 - (d) any Contracting Party that is unable to accept an amendment to annexes to this Convention or to annexes to any protocol shall so notify the Depositary in writing within a period determined by the Contracting Parties concerned when adopting the amendment;
 - (e) the Depositary shall without delay notify all Contracting Parties of notifications received pursuant to the preceding subparagraph;
 - (f) on expiry of the period determined in accordance with subparagraph (d) above, the amendment to the annex shall become effective for all Contracting Parties to this Convention or to the protocol concerned which have not submitted a notification in accordance with the provisions of that subparagraph; and
 - (g) a Contracting Party may at any time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party.
3. The adoption and entry into force of a new annex to this Convention or to any protocol shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex, provided that, if it entails an amendment to the Convention or a protocol, the new annex shall not enter into force until such time as that amendment enters into force.
4. Any amendment to the Annex on Arbitration shall be proposed and adopted, and shall enter into force, in accordance with the procedures set out in article 20.

Article 22

RULES OF PROCEDURES AND FINANCIAL RULES

1. The Contracting Parties shall adopt rules of procedures for their meetings.
2. The Contracting Parties shall adopt financial rules, prepared in consultation with the Organization, to determine, in particular, their financial participation in the co-operative activities undertaken for the purposes of this Convention and of protocols to which they are parties.

Article 23

SPECIAL EXERCISE OF THE RIGHT TO VOTE

In their fields of competence, the regional intergovernmental integration organizations referred to in article 27 shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention and to one or more protocols. Such organizations shall not exercise their rights to vote if the member States concerned exercise theirs and vice versa.

Article 24

TRANSMISSION OF INFORMATION

The Contracting Parties shall transmit every two years to the Organization, at least six weeks before the Conference of Parties next following, information on the measures adopted by them in the implementation of this Convention and of protocols to which they are parties, in such form as the meetings of Contracting Parties may determine.

Article 25

SETTLEMENT OF DISPUTES

1. In case of a dispute between Contracting Parties as to the interpretation or application of this Convention or its protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute shall, upon common agreement of the Parties concerned, be submitted to arbitration under the conditions set out in the Annex on Arbitration.

Article 26

RELATIONSHIP BETWEEN THE CONVENTION AND ITS PROTOCOLS

No State or regional intergovernmental integration organization may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one protocol to the Convention. No State or regional intergovernmental integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same, a Contracting Party to this Convention.

Article 27

COMPLIANCE AND ENFORCEMENT

1. Each Contracting Party shall take all measures at its disposal, and in accordance with its capacities, and consistent with its obligations and prevailing international law, to enforce and comply with this Convention.
2. The Contracting Parties shall, through decisions of the Contracting Parties, establish and adopt procedures and mechanisms necessary to assess and promote compliance with and enforcement of this Convention, including mechanisms for open exchange of information between the parties.

Article 28
SOVEREIGNTY CLAIMS AND RIGHTS

1. Nothing in this Convention or any of its protocols, nor any act adopted on the basis of this Convention or its protocols shall prejudice the rights, the present and future claims or legal views of any state relating to the law of the sea, in particular, the 1982 United Nations Law of the Sea Convention, concerning the nature and the extent of marine areas, the delimitation of marine areas between states with opposite or adjacent coasts, freedom of navigation on the high seas, the right and the modalities of passage through straits used for international navigation and the right of innocent passage in territorial seas, as well as the nature and extent of jurisdiction of the coastal State, island or archipelagic States, the flag States and the port States.
2. No act or activity undertaken on the basis of this Convention or its protocols shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction.

Article 29
SIGNATURE

This Convention shall be open for signature at Nairobi, Kenya from the first day of April two thousand and ten to the first day of April two thousand and eleven by any Contracting Party and any non-contracting party that has been invited to the Conference of Plenipotentiaries. It shall also be open for signature between the same dates by any regional intergovernmental integration organization exercising competence in fields covered by the Convention and such protocols and having at least one member State which belongs to the Convention area region, provided that such regional organization has been invited to participate in the Conference of Plenipotentiaries.

Article 30
RATIFICATION, ACCEPTANCE, APPROVAL AND DEPOSITARY

This Convention and its protocols shall be subject to ratification, acceptance or approval by the States and organizations referred to in article 29. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Republic of Kenya, which will assume the functions of Depositary.

Article 31
ACCESSION

1. This Convention and its protocols shall be open for accession by the States and organizations referred to in article 26 as from the day following the date on which the Convention or the protocol concerned is closed for signature.
2. No State or regional intergovernmental integration organization may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one protocol to the Convention. No State or regional intergovernmental integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same, a Contracting Party to this Convention.
3. Decisions concerning any protocol shall be taken only by the Contracting Parties to the protocol concerned.
4. After the entry into force of this Convention and of any protocol, any State or regional intergovernmental integration organization not referred to in article 29 may accede to the Convention and to any protocol, subject to prior approval

by three-fourths of the Contracting Parties to the Convention or the protocol concerned.

5. Instruments of accession shall be deposited with the Depositary.

Article 32 **ENTRY INTO FORCE**

1. This Convention shall govern relationships among Contracting Parties and shall replace the Original Convention.
2. This Convention shall enter into force on the ninetieth day following the date of deposit of the sixth instrument of ratification, acceptance, or approval of, or accession to, this Convention by the States and organizations referred to in article 30.
3. Any protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the ninetieth day following the date of deposit of the sixth instrument of ratification, acceptance, or approval of, or accession to, such protocol by the States and organizations referred to in article 29.
4. Thereafter, this Convention and any protocol shall enter into force with respect to any State or organization referred to in article 29 or in article 31 on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 33 **WITHDRAWAL**

1. At any time after three years from the date of entry into force of this Convention with respect to a Contracting Party, that Contracting Party may withdraw from this Convention by giving written notification to the Depositary.
2. Except as may be otherwise provided in any protocol to this Convention, any Contracting Party may, at any time after three years from the date of entry into force of such protocol with respect to that Contracting Party, withdraw from such protocol by giving written notification to the Depositary.
3. Withdrawal shall take effect one year after the date on which notification of withdrawal is received by the Depositary.
4. Any Contracting Party which withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it was a Contracting Party.
5. Any Contracting Party which, upon its withdrawal from a protocol, is no longer a Contracting Party to any Protocol to this Convention, shall be considered as also having withdrawn from the Convention itself.


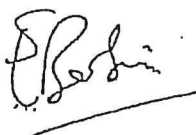

Article 34 **RESPONSIBILITIES OF THE DEPOSITARY**

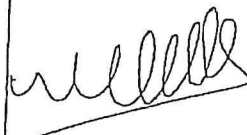

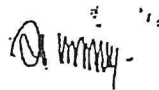
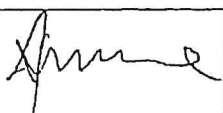

1. The Depositary shall inform the Signatories and the Contracting Parties, as well as the Organization, of:
 - (a) the signature of this Convention and of its protocols and the deposit of instruments of ratification, acceptance, approval or accession;
 - (b) the date on which the Convention or any protocol will come into force for each Contracting Party;

- (c) the notification of withdrawal and the date on which it will take effect;
 - (d) the amendments adopted with respect to the Convention or to any protocol, their acceptance by the Contracting Parties and the date of their entry into force; and
 - (e) all matters relating to new annexes and to the amendment of any annex.
2. The original of this Convention and of any protocol shall be deposited with the Depositary, which shall send certified copies thereof to the Signatories, the Contracting Parties and the Organization.
 3. As soon as the Convention or any protocol enters into force, the Depositary shall transmit a certified copy of the instrument concerned to the Secretary - General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments or organizations, have signed this Convention.

ADOPTED BY THE CONFERENCE OF THE PLENIPOTENTIARIES OF THE CONTRACTING PARTIES TO THE ORIGINAL CONVENTION IN NAIROBI, KENYA ON THIS THIRTY FIRST DAY OF MARCH TWO THOUSAND AND TEN IN SINGLE COPIES IN THE ENGLISH AND FRENCH LANGUAGES, THE TWO TEXTS BEING EQUALLY AUTHENTIC.

Name of Contracting Party	Name of Contracting Party Representative	Signature	Date
COMOROS	SAID MOHAMMED AH SAID		01/04/10
FRANCE	Elisabeth BARRIER		1-4-10
KENYA	Dr AYUB MACHARIA		01-04-10
MADAGASCAR			

Republic of MAURITIUS	Satceard Seebaluck		07/04/10
MOZAMBIQUE	ANA CHICHAUA		01.00.10
REPUBLIC SEYCHELLES	JOSEPH HOURLICE		1.04.10
SOMALIA	Abdullah MOHAMMED 1884		07/04/10
REPUBLIC OF SOUTH AFRICA			
UNITED REPUBLIC OF TANZANIA	Bahla BURIAN		01.04.10

ANNEX ON ARBITRATION

Article 1

Unless the agreement referred to in article 25 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with article 2 to 10 below.

Article 2

The claimant party shall notify the Organization that the parties agree to submit the dispute to arbitration pursuant to paragraph 2 of article 25 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. The Organization shall forward the information thus received to all Contracting Parties to the Convention or to the protocol concerned.

Article 3

The arbitration shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months' period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party, which has not appointed an arbitrator to do so within two months. After such period he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

Article 5

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of the Convention and the protocol or protocols concerned.
2. Any arbitral tribunal constituted under the provisions of this annex shall draw up its own rules of procedure.

Article 6

1. The decision of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
2. The arbitral tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of protection.
3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

4. The absence or default of a party to the dispute shall not constitute an impediment to the proceedings.

Article 7

The arbitral tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final settlement thereof to the parties.

Article 9

Any Contracting Party that has an interest of legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the arbitral tribunal.

Article 10

1. The arbitral tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time limit for a period, which should not exceed five months.
2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.
3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the tribunal which made award or, if the latter cannot be seized thereof, to another arbitral tribunal constituted for this purpose in the same manner as the first.



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (FIRST SESSION)
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

In the Matter of Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012
and

In the Matter of Consideration by the National Assembly of:

-] The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
-] The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
-] The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Pursuant to Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the following agreements were submitted to the Speaker of the National Assembly on 29th November, 2022 and consequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House:

- 1. Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- 2. The Accession of the Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
- 3. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer sets out to significantly limit future production and consumption of hydrofluorocarbons (HFCs). It also contains the manner in which countries are to carry out the process of phasing down on the production and usage of HFCs. The amendment further includes target baselines and emission levels that states in agreement with it are to achieve.

The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa aims to prohibit the import into Africa of any hazardous waste and to specifically ban the transboundary movement of hazardous wastes.

The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities aims to enhance the management of the marine and coastal environment and natural heritage including its biological diversity for the sustainable use and benefits of present and future generations.

The Departmental Committee on Environment, Forestry and Mining hereby invites the public and stakeholders to submit Memoranda on the three agreements. The full text of the Agreements and the accompanying Memorandum to Parliament may be accessed at <http://www.parliament.go.ke/the-national-assembly/house-business/paper-laid>

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke; to be received on or before Friday, 13th January, 2023.

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

16th December, 2022

For the Welfare of Society and the just Government of the People

Anex - 06

