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THIRTEENTH PARLIAMENT – SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

REPORT ON THE RATIFICATION OF THE BAMAKO CONVENTION ON THE BAN OF
THE IMPORTATION INTO AFRICA AND THE CONTROL OF TRANSBOUNDARY
MOVEMENT AND MANAGEMENT OF HAZARDOUS WASTE WITHIN AFRICA

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

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

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LIST OF ABBREVIATIONS AND ACRONYMS

COPS - Conference of the Parties

OAU - Organization of Africa Unity

NEMA - National Environment Management Authority

ANNEXURES

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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 Bamako Convention on the Ban of the Importation into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa. The Convention and the Memorandum were committed to the Departmental Committee on Environment, Forestry and Mining.

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 of December 2003 but is yet to accede to it. The commencement of the accession process of the Convention 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 submissions 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 accession of the Bamako Convention on the Ban of the Importation into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa.

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

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

Members

Hon. Mbalu Jessica Nduku Kiko, CBS, MP
Kibwezi East Constituency
WDP Party

Hon. Nguro Onesmus Ngogoyo, MP
Kajiado North Constituency
UDA Party

Hon. Mwanyanje Gertrude Mbeyu, MP
Kilifi County
ODM Party

Hon. Titus Lotee, MP
Kachaliba Constituency
KUP Party

Hon. Hiribae Said Buya, MP
Galole Constituency
ODM Party

Hon. Mohamed Tubi Bidu, MP
Isiolo South Constituency
Jubilee Party

Hon. Salim Feisal Bader, MP
Msambweni Constituency
UDA Party

Hon. Yakub Adow Kuno, MP
Bura Constituency
UPIA Party

Hon. Emathe Joseph Namuar, MP
Turkana Central Constituency
UDA Party

Hon. Joseph Wainaina Iraya, MP
Nominated
UDA Party

Hon. Kemei Beatrice Chepngeno, MP
Kericho County
UDA Party

Hon. Kururia Elijah Njore Njoroge, MP
Gatundu North Constituency
Independent Member

Hon. Masito Fatuma Hamisi, MP
Kwale County
ODM Party

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

Ms. Mercy Wanyonyi
Senior Legal Counsel

Ms. Nancy Chamunga
Fiscal Analyst III

Mr. Boniface Mushila
Serjeant-At-Arms

Ms. Maryan Gabow
Public Communications Officer III

Mr. Hamdi Hassan Mohamed
Clerk Assistant III

Dr. Joseph Kuria
Research Officer III

Ms. Catherine Wangui
Senior Sergeant-At-Arms

Ms. Deborah Mupusi
Media Relations Officer II

Mr. Muchiri Mwangi
Audio Recording Officer

CHAPTER TWO

2. ANALYSIS OF THE AGREEMENT

2.1. Background

6. Bamako Convention is a treaty of African nations prohibiting the import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes. The Convention was negotiated by nations of the Organization of the then African Unity (AU) at Bamako, Mali in January, 1991, and came into force in 1998. To date, it has 29 Signatories and 25 Parties. Kenya signed on 30th January 1991 but has not ratified the convention.
7. 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.
8. The *Basel Convention* seeks to regulate the transboundary movements of hazardous wastes and other wastes and obliges its Parties to ensure that such wastes are managed and disposed of in an environmentally sound manner. The Convention covers toxic, poisonous, explosive, corrosive, flammable, eco toxic and infectious wastes.
9. The third Conference of the Parties (COP 3) to the Bamako Convention was held in December 2020 and it reaffirmed the Parties' commitment to strengthen the Convention to prevent African countries from receiving unwanted hazardous waste in their territories as well as promoting sound management of chemicals and waste produced within the continent.
10. Parties reaffirmed their commitment to take concrete actions to implement decisions adopted at the first and second Bamako Convention COPs. They also agreed on a common scale to enhance their financial contributions to the Convention. Parties further called upon African States who have not yet ratified the Convention to do so. Kenya is yet to ratify this convention.

2.2. Clause by Clause Analysis of the Protocol

11. Article 1 provides for the definition of various terms as used in the Protocol.
12. Article 2 provides for the scope of the convention.
13. Article 3 provides that each state shall, within six months of becoming a Party to the convention inform the Secretariat of the Convention of wastes, other than those listed in *Annex 1* of the Convention, considered or defined as hazardous under its national legislations and of any requirements concerning transboundary movement procedures applicable to such wastes.
14. Article 4 provides for the general obligations which include: all parties shall take appropriate legal, administrative and other measures with the area under their jurisdiction to prohibit the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties; ban on dumping of Hazardous wastes at sea, internal waters and waterways; each party shall be responsible for managing

waste generated within its jurisdiction; each party shall strive to adopt and implement the preventive, precautionary approaches to pollution problems.

15. Article 5 provides for designation of competent authorities focal point and dump watch. It provides, designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit; Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities; Inform the Secretariat, within one month of the date of decision, of any changes regarding the designations made by them; Appoint a national body to act as a Dump watch. In such capacity as a dump watch, the designated national body only will be required to co-ordinate with the concerned governmental and non-governmental bodies.

16. Article 6 provides for transboundary movement and notification procedures:

- i. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the State concerned of any proposed transboundary movement of hazardous wastes. Such notification shall contain the declaration and information specified in Annex IV A of this Convention, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.
- ii. The State of import shall respond to the notifier in writing consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned that are Parties to this Convention.
- iii. The State of export shall not allow the transboundary movement until it has received:
 - a) written consent of the State of import, and
 - b) from the State of import written confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.
- iv. Each State of transit which is a Party to this Convention shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing within 60 days consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit.
- v. In the case of a transboundary movement of hazardous wastes where the wastes are legally defined as or considered to be hazardous wastes only:

(a) by the State of export, the requirements of paragraph 8 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;

(b) by the State of import or by the States of import and transit which are Parties to this Convention, the requirements of paragraph 1,3,4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or

(c) by any State of transit which is Party to this Convention, the provisions of paragraph 4 shall apply to such State.

- vi. The State shall use a shipment specific notification even where hazardous wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of entry of the State of import, and in the case of transit via the same customs office of entry and exit of the State or States of transit; specific notification of each and every shipment shall be required and contain the information in Annex IV A of this Convention.
 - vii. Each Party to this Convention shall limit their points or ports of entry and notify the Secretariat to this effect for distribution to all Contracting Parties. Such points and ports shall be the only ones permitted for the transboundary movement of hazardous wastes.
 - viii. The Parties to this Convention shall require that each person who taking charge of a transboundary movement of hazardous wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.
 - ix. The notification and response by this Article shall be transmitted to the competent authority of the States concerned.
 - x. Any transboundary movement of hazardous wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or a State of transit which is a Party to this Convention.
17. Article 7 provides for transboundary movement from a party through states which are not parties. Paragraph 2 of Article 6 of the Convention shall apply *mutatis mutandis* to transboundary movements of hazardous wastes from a Party through a State or States which are not Parties.
18. Article 8 provides for duty of re-import. It provides that, when a transboundary movement of hazardous wastes to which the consent of the States concerned has been given, subject to the provisions of the Convention, cannot be completed in accordance with the terms of the contract. The State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner within a maximum of 90 days from the time that the importing State informed the State of export and the Secretariat. To this end, the State of export and any State of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.
19. Article 9 contains provisions on concerning illegal traffic. It provides that, for the purpose of this Convention, any transboundary movement of hazardous wastes under the following situations shall be deemed to be illegal traffic:

- a) *if carried out without notification, pursuant to the provisions of this Convention, to all States concerned; or*
- b) *if carried out without the consent, pursuant to the provisions of this Convention, of a State concerned; or*
- c) *if consent is obtained from States concerned through falsification, misrepresentation or fraud; or*
- d) *if it does not conform in a material way with the documents; or*
- e) *if it results in deliberate disposal of hazardous wastes in contravention of this Convention and of general principles of international law.*

20. Article 10 provides for Intra-African cooperation. It provides that, the Parties to this Convention shall cooperate with one another and with relevant African organizations, to improve and achieve the environmentally sound management of hazardous wastes. To this end the parties shall:

- a) *make available information, whether on a bilateral or multilateral basis, with a view to promoting clean production methods and the environmentally sound management of hazardous wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes;*
- b) *cooperate in monitoring the effects of the management of hazardous wastes on human health and the environment;*
- c) *co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound clean production technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new and improved technologies;*
- d) *co-operate actively to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes. They shall also cooperate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;*
- e) *co-operate in developing appropriate technical guidelines and/or codes of practice;*
- f) *co-operate in the exchange and dissemination of information on the movement of hazardous wastes in conformity with Article 13 of this Convention.*

21. Article 11 provides for international co-operation in bilateral, multilateral and regional agreements. It provides that, parties to this Convention may enter into bilateral, multilateral, or regional agreements or arrangements regarding the transboundary movement and management of hazardous wastes generated in Africa with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are no less environmentally sound than those provided for by this Convention; Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 of this Article and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect

transboundary movements of hazardous wastes generated in Africa which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes as required by this Convention; each Contracting Party shall prohibit vessels flying its flag or aircraft registered in its territory from carrying out activities in contravention to this Convention; Parties shall use appropriate measures to promote South-South cooperation in the implementation of this Convention; taking into account the needs of developing countries, co-operation between international organizations is encouraged in order to promote, among other things, public awareness, the development of the rational management of hazardous wastes and the adoption of new and less polluting technologies.

22. **Article 12** provides that the Conference of Parties shall set up an Ad Hoc Expert Organ to prepare a Draft Protocol setting out appropriate rules and procedures in the field of liabilities and compensation for damage resulting from the transboundary movement of hazardous wastes.
23. **Article 13** provides for procedure for transmitting information. It provides that, the Parties shall ensure that in the case of an accident occurring during the transboundary movement of hazardous wastes or their disposal which is likely to present risks to human health and the environment in other States, those States are immediately informed; the Parties, consistent with national laws and regulations, shall set up information collection and dissemination mechanisms on hazardous wastes. They shall transmit such information through the Secretariat, to the Conference of the Parties established under Article 15 of the present Convention, before the end of each calendar year, in a report on the previous calendar year; The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes, and the response to it, are sent to the Secretariat.
24. **Article 14** provides for the financial aspects. It provides that, the regular budget of the Conference of the Parties, as required in Articles 15 and 16 of this Convention, shall be prepared by the Secretariat and approved by the Conference; 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; The Parties shall 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; and The Parties agree that, according to the specific needs of different regions and sub-regions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and the minimization of their generation should be established as well as appropriate funding mechanisms of a voluntary nature.
25. **Article 15** provides for Conference of the Parties. It provides that, a Conference of the Parties made up of Ministers having the environment as their mandate is hereby established. The first meeting of the Conference of the Parties shall be convened by the Secretary-General of the OAU not later than one year after the entry into force of this Convention. The Conference of the Parties to this Convention shall adopt Rules of Procedure and financial rules to determine the financial participation of the Parties. At their first meeting, they will consider additional measures to protect and preserve marine and inland waters environments. They will also promote policies, strategies and measures to minimize harm to human health and the environment. Organizations may be represented as observers, subject to the rules of procedures adopted by the Conference.

26. **Article 16** provides functions of the secretariat.
27. **Article 17** provides for Amendment of the Convention and of Protocols. It provides that, any Party may propose amendments to this Convention and any Party to a Protocol may propose amendments to that Protocol. Such amendments shall take due account, *inter alia* of relevant scientific, technical, environmental and social considerations. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting at the meeting. It shall then be submitted by the Depository to all Parties for ratification, approval, formal confirmation or acceptance; the procedure specified in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that Protocol present and voting at the meeting shall suffice for their adoption. *For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.*
28. **Article 18** provides for Adoption and Amendment of Annexes. It provides that, the annexes to this Convention or to any Protocol shall form an integral part of this Convention or of such Protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its Protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters. The procedure for proposal, adoption and entry into force of additional annexes to the Convention or of annexes to a protocol is provided. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any Protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a Protocol.
29. **Article 19** provides that any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention must inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat; the Party against whom the allegations are made. The Secretariat shall carry out a verification of the substance of the allegation and submit a report thereof to all the Parties to this convention.
30. **Article 20** provides procedure for settling disputes as follows. It provides that, in case of dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any Protocol thereto, the Parties shall seek a settlement of the dispute through negotiations or any other peaceful means of their own choice; If the Parties concerned cannot settle their dispute as provided in paragraph 1 of this Article, the dispute shall be submitted either to an Ad Hoc organ set up by the Conference for this purpose or to the International Court of Justice; The conduct of arbitration of disputes between Parties by the Ad Hoc organ provided for in paragraph 2 of this Article shall be as provided in Annex V of this Convention.
31. **Article 21** provides for this Convention shall be open for signature by Member States of the OAU in Bamako and Addis Ababa for a period of six months from 30 January, 1991 to 31 July, 1991.
32. **Article 22** provides that the Convention shall be subject to ratification, acceptance, formal confirmation or approval by Member States of the OAU. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depository. Parties shall be bound by all obligations of the Convention.

33. **Article 23** provides for accession. It provides that the Convention shall be open for accession by Member States of the OAU from the date after the day on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depository.
34. **Article 24** provides for right to vote. It provides that Each Contracting Party to this Convention shall have one vote.
35. **Article 25** provides for entry to force. It provides that This Convention shall enter into force on the ninetieth day after the date of deposit of the tenth instrument of ratification from Parties signatory to this Convention; For each State which ratifies this Convention or accedes thereto after the date of the deposit of the tenth instrument of ratification, it shall enter into force on the ninetieth day after the date of deposit by such State of its instrument of accession or ratification.
36. **Article 26** provides for reservations and declarations. It provides that, *No reservations or exception may be made to this Convention*. Paragraph 1 of this Article does not preclude a State when signing, ratifying, or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.
37. **Article 27** provides for the withdrawal. It provides that:
- a) At any time after three years from the date on which this Convention has entered into force for a Party that Party may withdraw from the Convention by giving written notification to the Depository.
 - b) Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.
 - c) Withdrawal shall not exempt the withdrawing Party from fulfilling any obligations it might have incurred under this Convention.
38. **Article 28** provides for the Depository. It provides that, the Secretary-General of the Organization of African Unity shall be the Depository for this Convention and of any Protocol thereto.
39. **Article 29** provides for registration. It provides that, the Convention, as soon as it enters into force, shall be registered with the Secretary-General of the United Nations Organization in conformity with Article 102 of the Charter of the United Nations.
40. **Article 30** provides for authentic texts. It provides that, The Arabic, English, French and Portuguese texts of this Convention are equally authentic.
41. The Convention was *Adopted in Bamako, Mali, On 30th January, 1991*

CHAPTER THREE

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

- 4.2. The Ministry of Foreign Affairs submitted that the ratification process was approved by the Cabinet during its meeting held on 12th May 2022.
- 4.3. 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 of December 2003 but is yet to accede to it.
- 4.4. That, the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa herein referred to as the Convention was ignited by a worldwide concern about the transboundary movement and disposal of hazardous wastes. The fight for the protection of the environment in these sectors began in the 1970s and the early 1980s.
- 4.5. That, the Bamako Convention came in to address the gaps of the Basel Convention. The Basel Convention does not possess legally binding waste destruction obligations; rather it only can offer weak, non-binding waste disposal guidelines which could lead to serious contamination of the biosphere. Further, it fails to prohibit the trade of hazardous waste to less developed countries.

3.1. Problem Analysis

- 4.6. The Ministry submitted that the Hazardous wastes pose a great threat to human health and the environment. The health effects of exposure to hazardous waste may progress slowly and end up in chronic conditions. The common health problems include; Skin conditions, respiratory infections, central nervous disorders, blood infections, congenital disorders.
- 4.7. That, African states have been victims of disposal of hazardous wastes in the past through importation or outright dumping. Examples of such circumstances are the discharge of 500 tons of toxic waste in Abidjan killing 17 people and poisoning thousands of others. 'In 1988, thousands of hazardous wastes disguised as building materials were also disposed of in Koko, Nigeria causing serious conditions for the residents.
- 4.8. That, in Kenya, the pastoral population of Mandera County has been treated in health facilities with complaints of poisoning or reaction resulting from hazardous substances. Moreover, in 2021, an order by the Kenyan Government was made to return a 20 feet container to India when hazardous chemicals like titanium were traced in the shipment.
- 4.9. The gaps in the law however that form the basis of this memorandum are:
 - i. Gaps in methods of monitoring discharges to the environment. Under the **Water Quality Regulations**, holders of effluent discharge licenses are required to

monitor their discharges by the methods and procedures of sampling and analysis prescribed by NEMA. However, such methods and procedures have not yet been developed.

- ii. Gaps in equipment for the treatment of non-hazardous waste. Under the **Waste Management Regulations**, waste generators must install at their premises antipollution technology for the treatment of the non-hazardous waste that is produced. However, there are neither prescribed measures on the matter nor recommendations on the use of existing national or international standards on the issue.
 - iii. Kenyan law has no provisions on underground disposal. Kenyan law fails to regulate work-over fluids, and naturally occurring radioactive materials (NORM)
 - iv. Water Quality Regulations do not provide sufficient requirements and methods for disposal of Liquid Effluents derived from the petroleum sector, except for discharge into water bodies and sewage systems which may not necessarily provide for effective methods for various reasons, e.g. availability of sewage system for disposal of large volumes of effluents.
 - v. Kenya has no regulatory requirements applicable to deck drainage systems for removing oil-containing fluid from an offshore facility.
50. The present international, regional and national law applying to Kenya has proven to be inadequate as evidenced by the above. 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 hazardous waste management.
51. Moreover, the law should have a standard way of regulating hazardous waste all over the African continent. The Bamako Convention is the best to address the gap.

3.2. Obligations imposed by the convention

52. Mindful of the threat that hazardous substances have to the environment, the rules of sustainable use of the environment, and the risk of damage to human health, state parties are bound by the obligations of the convention under Article 4 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 into 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.
 - g) Introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such

penalties shall be sufficiently high to both punish and deter such conduct. (Article 9(2)).

3.3. Justification for accession

53. Acceding to the Convention Kenya will:

- i. Enable Kenya to build Capacity for institutions for the implementation of Multilateral Agreements on chemicals and wastes;
- ii. Get information on all movements of hazardous wastes within and across the continent through the notification process for parties; (Article 13)
- iii. Be eligible for the second phase of the Africa Stockpiles Programme which will rid African Countries of obsolete pesticides and stockpiles as well as prevent future pile-ups of toxic wastes including e-waste;
- iv. Benefit from strengthened regional and sub-regional legal and institutional capacity for solid waste management;
- v. Reduce the likelihood of transboundary movement of hazardous waste in Kenya;
- vi. Receive support from the proposed merged African court in dealing with activities considered to be transboundary movement of hazardous wastes; (Article 20)
- vii. Have solutions to issues attracting transboundary movement of hazardous wastes; (Article 20)
- viii. Have a guideline for acts and emissions contributing to the transboundary movement of hazardous wastes. (Annex 1); and
- ix. Have a duty to Re-import hazardous wastes back to where they came from as per the provisions of Article 8.

3.4. Constitutional and legislative implications

54. The Convention is consistent with the Constitution of Kenya 2010 and other laws on the protection of the environment and human health. It promotes all the constitutional values and objectives and does not allude to an amendment of the Constitution.
55. The ratification of the Bamako Convention presents no new policy implications for Kenya as the provisions of the Convention are already embedded in the Environment Management and Coordination Act, 1999 (Rev 2015).
56. The national laws relating to hazardous waste management in Kenya are;
- i. The Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations 2003 which requires ships to off-load oil or oily mixture and wastes to the certified Port Waste Reception Facility at the Port of Mombasa.
 - ii. The Environmental Management and Coordination Act 1999 (EMCA 1999)- Provides the legal and institutional framework applicable to all local industries, including the petroleum sector. This is the foundation of environmental protection in Kenya.
 - iii. The Environmental Management and Coordination (Water Quality) Regulations 2006 provides more specific instructions on how to reach compliance with requirements imposed by EMCA 1999 on discharges of effluents into sewage systems, and into the environment.

- iv. Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations 2003 requires ships to off-load oil or oily mixture and wastes to the certified Port Waste Reception Facility at the Port of Mombasa.
- v. Environmental Impact Assessment Guidelines and Administrative Procedures-The guidelines provide details on the information on what is expected in applications for Environmental Impact licenses, and how it will assess such applications.
- vi. The Petroleum (Exploration, Development, and Production) Act, 2019)-This is the main law governing upstream petroleum operations in Kenya.

57. As it deems necessary, Kenya may have to incorporate in the law's provisions for;

- i. Imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct. (Article 9(2))
- ii. Imposing strict restrictions on the importation, dumping, and incineration of hazardous and radioactive waste into Kenya's oceans and inland water.
- iii. Establishing the classifications of hazardous and radioactive waste that are prohibited as per Annex 1 of the Convention.
- iv. Establishing a central national authority that will oversee that the prohibitions and restrictions under the Convention are implemented.

3.5. Implications relating to counties

58. The obligations that are imposed under the Convention are under the jurisdiction of the National Government.

3.6. Ministerial responsibility

59. The Ministry that will be responsible for the implementation and any activity regarding the Convention is the Ministry of Environment, Climate Change and Forestry.

60. The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45 of 2012.

3.7. Reservations

61. The Convention does not provide for reservations.

62. The Ministry of Foreign Affairs thus requested the National Assembly to:

- i. Consider and approve Kenya's accession to the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous wastes within Africa.
- ii. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the instruments of accession to the relevant depository.

CHAPTER FOUR

4. PUBLIC PARTICIPATION AND STAKEHOLDERS ENGAGEMENT

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

63. 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:
64. 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.
65. That, the third Conference of the Parties (COP) to the Bamako Convention was held in December 2020 and it reaffirmed the Parties' commitment to strengthen the Convention to prevent African countries from receiving unwanted hazardous waste in their territories as well as promoting sound management of chemicals and waste produced within the continent.
66. That, Parties reaffirmed their commitment to take concrete actions to implement decisions adopted at the first and second Bamako Convention COPs. They also agreed on a common scale to enhance their financial contributions to the Convention. Parties further called upon African States who have not yet ratified the Convention to do.
67. That, Kenya is yet to ratify this convention.

4.2. Justification for ratification

68. That, 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. (Koko case in Nigeria, Probo Koala case in Ivory Coast). The Bamako convention uses a format and language similar to that of the Basel Convention, except that: (a) it is much stronger in prohibiting all imports of hazardous waste, and (b) it does not make exceptions on certain hazardous wastes (like those for radioactive materials) made by the Basel convention.
69. That, African States have been victims of the disposal of hazardous wastes in the past through importation or outright dumping. The convention is important because it will do the following:
- a) Enable Kenya to build Capacity for handling hazardous waste;
 - b) Prohibit the import of all hazardous and radioactive wastes into the African continent for any reason;
 - c) Get information on all movements of hazardous wastes within and across the Continent through the notification process for parties;
 - d) Prohibit all ocean and inland water dumping or incineration of hazardous wastes.
 - e) To ensure that disposal of wastes is conducted in an "environmentally sound manner".
 - f) Promote cleaner production over the pursuit of a permissible emissions approach based on assimilative capacity assumptions;

- g) Establish the precautionary principle;
- h) Kenya will be eligible for the second phase of the Africa
- i) Stockpiles Programme which will rid African Countries of obsolete pesticides and stockpiles as well as prevent future pile-ups of toxic wastes including e-waste;
- j) Kenya will benefit from the strengthened regional and sub- regional legal and institutional capacity for solid waste management; and
- k) Have solutions to issues attracting the transboundary movement of hazardous wastes and deterrent guidelines for acts and emissions contributing to the transboundary movement of hazardous wastes.

70. That, under the Environmental Management and Coordination Act (EMCA), Kenya has banned the import of waste into Kenya. Kenya regularly exports waste for environmentally sound disposal. To streamline and promote cooperation within African trading parties and being a **generator of regional hazardous waste, the convention is important to Kenya.**

On Constitutional and Legal Implications

71. That, the Constitution of Kenya under Article 42 guarantees Kenyan citizens the right to a clean and healthy environment. Hazardous wastes cause air, water and soil pollution with elements associated with non-communicable diseases such as respiratory diseases, cancer, heart disease etc. Such pollution is the cause of the exponential increase in non-communicable diseases. Article 69(1) (g) obligates the state to eliminate processes and activities that are likely to endanger the environment.

72. That, Article 9(2) of the Treaty requires states to introduce appropriate national legislation to impose criminal penalties on certain acts including illegal imports. This is already embedded in the Environmental Management and Coordination Act of 1999 (Rev. 2015) and the Environmental Management and Coordination Act (Waste Management) Regulations of 2006.

4.3. Relevant Act

73. The government recognizes the need to mitigate the risks posed by chemicals to human health and the environment through air, water and land pollution. To this effect, the government has developed policies and laws to protect the environment and ensure sustainable use of natural resources including chemicals and waste management.

74. The convention will support legislations that are administered by Ministries responsible for health, labour, agriculture, county governments, trade and water resources; and which have specialized policies on environmental protection.

75. Several legislations exist for environmental health and occupational safety, among them the Environmental Management and Co-ordination Act (Act No.8 of 1999; Public Health Act, (Cap. 242); the Radiation Protection Act, (Cap 243); the Food, Drug and Chemical Substances Act, (Cap 254); the Occupational Safety and Health Act, 2007; the Pharmacy and Poisons Act, (Cap 244); the Water Act, (Cap 372); Pest Control Products Act, 346; Mining Act, 2016; Standards Act (Cap 496); County Government Act, 2012; and the Explosives Act, (Cap 115), National Policy on Occupational Safety and Health (2012), Anti-counterfeit Act (2008).

4.4. Reservations

76. The Treaty does not allow reservations. However, Article 20(2) of the Convention which refers Parties to an ad-hoc organ set up by the conference or to the International Court of Justice (ICJ) for dispute resolution calls for the issuance of a notification given that **Kenya withdrew from the compulsory jurisdiction of the ICJ on 24th September, 2021**. It would be worth notifying the depositary of this position through our instrument of ratification since it has an impact on the dispute resolution clause in the Treaty. Making full disclosure at the time of ratification is important as it may prevent unnecessary legal hurdles in the event of a dispute. This does not however affect the overall benefits of the Treaty to the country.

4.5. Economic Implication

77. The principle is that the current scale of contributions to the regular budget and the revolving fund for assistance in case of emergencies for Parties to the Bamako Convention is calculated according to the rules of the African Union reflecting the fact that the Convention was negotiated and adopted within the framework of that organization.

CHAPTER FIVE

5. COMMITTEE OBSERVATIONS

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

- 1) **That**, the memorandum submitted by the Ministry of Foreign and Diaspora affairs dated on 12th May 2022 indicated 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.
- 2) **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.
- 3) **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.
- 4) **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.
- 5) **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.
- 6) **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.
- 7) **That**, the Country has previously witnessed attempted dumping of radioactive waste. This Convention will deter such occurrences.
- 8) **That**, the Convention does not permit reservations.
- 9) **That**, Article 27 provides for the withdrawal, at any time after three years from the date on which this Convention has entered into force for a Party.
- 10) **That**, the obligations that are imposed under the Convention are under the jurisdiction of the National Government.
- 11) **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.

- 12) **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.
- 13) **That**, adoption of Bamako Convention is vital in combating the illegal activities. To ensure effectiveness, the states parties to these instruments will develop and adopt national policies that give effect to the contents of these instruments.
- 14) **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.
- 15) **That** 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

79. Having considered the submissions, and analyzed documents tabled, and pursuant to Section 8 of Treaty Making and Ratification Act, the House Approves the Ratification of the Bamako Convention on the Ban of the Importation into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa.

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


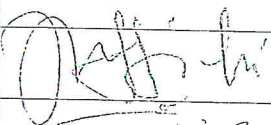

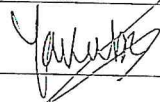
ADOPTION OF THE REPORT ON CONSIDERATION OF THE FOLLOWING TREATIES:

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 Chepngeno, 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 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
 - iv.
 - v. 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 Chepngeno, 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:

(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 Chepngeno 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 Chepngeno | - | 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 Change	-	PS, State Department for Environment and Climate
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: 24/4/23

(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 BAMAKO CONVENTION ON THE BAN OF THE IMPORT
INTO AFRICA AND THE CONTROL OF TRANSBOUNDARY MOVEMENT AND
MANAGEMENT OF HAZARDOUS WASTES WITHIN AFRICA

1.0 BACKGROUND

- 1.1. Bamako Convention is a treaty of African nations prohibiting the import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes. The Convention was negotiated by nations of the Organization of the then African Unity (AU) at Bamako, Mali in January, 1991, and came into force in 1998. To date, it has 29 Signatories and 25 Parties. Kenya signed on 30th January 1991 but has not ratified the convention.
- 1.2. 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.
- 1.3. The third Conference of the Parties (COP 3) to the Bamako Convention was held in December 2020 and It reaffirmed the Parties' commitment to strengthen the Convention to prevent African countries from receiving unwanted hazardous waste in their territories as well as promoting sound management of chemicals and waste produced within the continent.
- 1.4. Parties reaffirmed their commitment to take concrete actions to implement decisions adopted at the first and second Bamako Convention COPs. They also agreed on a common scale to enhance their financial contributions to the Convention. Parties further called upon African States who have not yet ratified the Convention to do. **Kenya is yet to ratify this convention.**

2.0. OBLIGATIONS IMPOSED ON KENYA BY BAMAKO CONVENTION

- 2.1 The general obligation for the party's signatory to the convention is that

- 3.1.1. Ban the import of hazardous and radioactive wastes as well as all forms of ocean disposal.
- 3.1.2. For Intra-African waste trade, parties must minimize the transboundary movement of wastes and only conduct it with the consent of the importing and transit states among other controls;
- 3.1.3. They should minimize the production of hazardous wastes; and
- 3.1.4. Cooperate to ensure that wastes are treated and disposed of in an environmentally sound manner.

3.0. JUSTIFICATION FOR RATIFICATION

- 3.1. 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. (Koko case in Nigeria, Probo Koala case in Ivory Coast). The Bamako convention uses a format and language similar to that of the Basel Convention, except that: (a) it is much stronger in prohibiting all imports of hazardous waste, and (b) it does not make exceptions on certain hazardous wastes (like those for radioactive materials) made by the Basel convention.
- 3.2. African States have been victims of the disposal of hazardous wastes in the past through importation or outright dumping. The convention is important because it will do the following:
 - 3.2.1. Enable Kenya to build Capacity for handling hazardous waste;
 - 3.2.2. Prohibit the import of all hazardous and radioactive wastes into the African continent for any reason;
 - 3.2.3. Get information on all movements of hazardous wastes within and across the Continent through the notification process for parties;
 - 3.2.4. Prohibit all ocean and inland water dumping or incineration of hazardous wastes.
 - 3.2.5. To ensure that disposal of wastes is conducted in an "environmentally sound manner".
 - 3.2.6. Promote cleaner production over the pursuit of a permissible emissions approach based on assimilative capacity assumptions;
 - 3.2.7. Establish the precautionary principle;
 - 3.2.8. Kenya will be eligible for the second phase of the Africa Stockpiles Programme which will rid African Countries of obsolete pesticides and stockpiles as well as prevent future pile-ups of toxic wastes including e-waste;
 - 3.2.9. Kenya will benefit from the strengthened regional and sub-regional legal and institutional capacity for solid waste management; and
 - 3.2.10. Have solutions to issues affecting the transboundary

acts and emissions contributing to the transboundary movement of hazardous wastes.

- 3.3. Under the Environmental Management and Coordination Act (EMCA) Kenya has banned the import of waste into Kenya. Kenya regularly exports waste for environmentally sound disposal. To streamline and promote cooperation within African trading parties and being a generator of regional hazardous waste, the convention is important to Kenya.

In August 2006, the cargo ship Probo Koala discharged 500 tons of toxic waste in Abidjan killing 17 people and poisoning thousands more. In 1988 thousands of barrels of hazardous waste disguised as building materials were discovered in the village of Koko, Nigeria. Several barrels were unsealed causing leakage and serious health effects to the residents.

4.0. CONSTITUTIONAL AND LEGAL IMPLICATIONS

- 4.1. The Constitution of Kenya under Article 42 guarantees Kenyan citizens the right to a clean and healthy environment. Hazardous wastes cause air, water and soil pollution with elements associated with non-communicable diseases such as respiratory diseases, cancer, heart disease etc. Such pollution is the cause of the exponential increase in non-communicable diseases. Article 69(1) (g) obligates the state to eliminate processes and activities that are likely to endanger the environment.
- 4.2. Article 9(2) of the Treaty requires states to introduce appropriate national legislation to impose criminal penalties on certain acts including illegal imports. This is already embedded in the Environmental Management and Coordination Act of 1999 (Rev. 2015) and the Environmental Management and Coordination Act (Waste Management) Regulations of 2006.

5.0. RELEVANT ACT

- 5.1. The government recognizes the need to mitigate the risks posed by chemicals to human health and the environment through air, water and land pollution. To this effect, the government has developed policies and laws to protect the environment and ensure sustainable use of natural resources including chemicals and waste management.
- 5.2. The convention will support legislations that are administered by Ministries responsible for health, labour, agriculture, county governments, trade and water resources; and which have specialized policies on environmental protection.
- 5.3. Several legislations exist for environmental health and occupational safety, among them the Environmental Management and Co-ordination

Act(Act No.8 of 1999; Public Health Act, (Cap. 242); the Radiation Protection Act, (Cap 243); the Food, Drug and Chemical Substances Act, (Cap 254); the Occupational Safety and Health Act, 2007; the Pharmacy and Poisons Act, (Cap 244); the Water Act, (Cap 372); Pest Control Products Act, 346; Mining Act, 2016; Standards Act (Cap 496); County Government Act, 2012; and the Explosives Act, (Cap 115), National Policy on Occupational Safety and Health(2012), Anti-counterfeit Act(2008).

6.0. RESERVATIONS

- 6.1. The Treaty does not allow reservations. However, Article 20(2) of the Convention which refers Parties to an ad-hoc organ set up by the conference or to the International Court of Justice (ICJ) for dispute resolution calls for the issuance of a notification given that **Kenya withdrew from the compulsory jurisdiction of the ICJ on 24th September, 2021.** It would be worth notifying the depository of this position through our instrument of ratification since it has an impact on the dispute resolution clause in the Treaty. Making full disclosure at the time of ratification is important as it may prevent unnecessary legal hurdles in the event of a dispute. This does not however affect the overall benefits of the Treaty to the country.

7.0. ECONOMIC IMPLICATION

- 7.1. The principle is that the current scale of contributions to the regular budget and the revolving fund for assistance in case of emergencies for Parties to the Bamako Convention is calculated according to the rules of the African Union reflecting the fact that the Convention was negotiated and adopted within the framework of that organization



MINISTRY OF FOREIGN AFFAIRS

PARLIAMENTARY MEMORANDUM

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 NATIONAL ASSEMBLY	
DATE: 29 NOV 2022	
Tuesday	
TABLED BY:	LOM
CLERK/CHIEF:	Moses Lemuna

TREATY MEMO NO:/2022

**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**

1.0 OBJECTIVE OF THE MEMORANDUM

- 1.1. 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 Movement and Management of hazardous wastes within Africa.
- 1.2. The ratification process was approved by Cabinet during its meeting held on 12th May 2022.

2.0 BACKGROUND

- 2.1. 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 of December 2003 but is yet to accede to it.
- 2.2. The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa herein referred to as the Convention was ignited by a worldwide concern about the transboundary movement and disposal of hazardous wastes. The fight for the protection of the environment in these sectors began in the 1970s and the early 1980s.

- 2.3. The Bamako Convention came in to address the gaps of the Basel Convention. The Basel Convention does not possess legally binding waste destruction obligations; rather it only can offer weak, non-binding waste disposal guidelines which could lead to serious contamination of the biosphere. Further, it fails to prohibit the trade of hazardous waste to less developed countries.

3.0 PROBLEM ANALYSIS

- 3.1. Hazardous wastes pose a great threat to human health and the environment. The health effects of exposure to hazardous waste may progress slowly and end up in chronic conditions. The common health problems include; Skin conditions, respiratory infections, central nervous disorders, blood infections, congenital disorders.
- 3.2. African states have been victims of disposal of hazardous wastes in the past through importation or outright dumping. Examples of such circumstances are the discharge of 500 tons of toxic waste in Abidjan killing 17 people and poisoning thousands of others. ¹In 1988, thousands of hazardous wastes disguised as building materials were also disposed of in Koko, Nigeria causing serious conditions for the residents.
- 3.3. In Kenya, the pastoral population of Mandera county has been treated in health facilities with complaints of poisoning or reaction resulting from hazardous substances, the most common waste includes wood, glass, scrap metal, textiles, kitchen waste, disposable nappies and scrap metal.² Moreover, in 2021, an order by the Kenyan Government was made to

¹ United Nations News "Côte d'Ivoire: 10 years on, survivors of toxic waste dumping 'remain in the dark,' say UN rights experts" 17th August 2016

² Omambia, B. & Ogonya, A. M. (2017). Assessing Household Solid Waste Management Systems in Baraton Centre. Retrieved from http://ueab.ac.ke/BIRJ/download/birj_articles_2015/2015_CONFERENCE_17.pdf

return a 20 feet container to India when hazardous chemicals like titanium were traced in the shipment.

3.4. Kenya's framework on environmental protection is vast starting from the national statutes and other international laws such as the Stockholm Declaration and the Basel Convention. All laws when read together show the intent of Kenya in the protection of the environment.

3.5. The gaps in the law however that form the basis of this memorandum are;

- *Gaps in methods of monitoring discharges to the environment.* Under the **Water Quality Regulations**, holders of effluent discharge licenses are required to monitor their discharges by the methods and procedures of sampling and analysis prescribed by NEMA. However, such methods and procedures have not yet been developed.
- *Gaps in equipment for the treatment of non-hazardous waste.* Under the **Waste Management Regulations**, waste generators must install at their premises antipollution technology for the treatment of the non-hazardous waste that is produced. However, there are neither prescribed measures on the matter nor recommendations on the use of existing national or international standards on the issue.
- *Kenyan law has no provisions on underground disposal.* Kenyan law fails to regulate work-over fluids, and naturally occurring radioactive materials (NORM)
- Water Quality Regulations do not provide sufficient requirements and methods for disposal of Liquid Effluents derived from the petroleum sector, except for discharge into water bodies and sewage systems which may not necessarily provide for effective methods for

various reasons, e.g. availability of sewage system for disposal of large volumes of effluents.

- Kenya has no regulatory requirements applicable to deck drainage systems for removing oil-containing fluid from an offshore facility.

3.6. The present international, regional and national law applying to Kenya has proven to be inadequate as evidenced by the above. 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 hazardous waste management.

3.7. Moreover, the law should have a standard way of regulating hazardous waste all over the African continent. The Bamako Convention is the best to address the gap.

4.0 OBJECT AND SUBJECT MATTER OF THE CONVENTION

4.1. The main object of the Convention is to prohibit the import into Africa 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.

4.2. The Bamako Convention outlines hazardous waste examples in Annex 1 and stipulates when exactly one can be deemed to be involved in the transboundary movement of hazardous waste. Further, it provides for a resolution mechanism under Article 20 should they find themselves with a case of transboundary movement of hazardous waste.

- 4.3. The Convention has clear guidelines for hazardous waste management, proper implementation procedures, and clear classifications of hazardous waste.

5.0 OBLIGATIONS IMPOSED BY THE CONVENTION

- 5.1. Mindful of the threat that hazardous substances have to the environment, the rules of sustainable use of the environment, and the risk of damage to human health, state parties are bound by the obligations of the convention under Article 4 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 into 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.
- g) Introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct. (Article 9(2))

6.0 JUSTIFICATION FOR ACCESSION

- 6.1. Acceding to the Convention Kenya will:

- i. Enable Kenya to build Capacity for institutions for the implementation of Multilateral Agreements on chemicals and wastes;
- ii. Get information on all movements of hazardous wastes within and across the continent through the notification process for parties;(Article 13)
- iii. Be eligible for the second phase of the Africa Stockpiles Programme which will rid African Countries of obsolete pesticides and stockpiles as well as prevent future pile-ups of toxic wastes including e-waste;
- iv. Benefit from strengthened regional and sub-regional legal and institutional capacity for solid waste management;
- v. Reduce the likelihood of transboundary movement of hazardous waste in Kenya;
- vi. Receive support from the proposed merged African court in dealing with activities considered to be transboundary movement of hazardous wastes; (Article 20)
- vii. Have solutions to issues attracting transboundary movement of hazardous wastes; (Article 20)
- viii. Have a guideline for acts and emissions contributing to the transboundary movement of hazardous wastes. (Annex 1);and
- ix. Have a duty to Re-import hazardous wastes back to where they came from as per the provisions of Article 8.

7.0 CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS

- 7.1. The Convention is consistent with the Constitution of Kenya 2010 and other laws on the protection of the environment and human health. It promotes all the constitutional values and objectives and does not allude to an amendment of the Constitution.

- 7.2. The ratification of the Bamako Convention presents no new policy implications for Kenya as the provisions of the Convention are already embedded in the Environment Management and Coordination Act, 1999 (Rev 2015).
- 7.3. The national laws relating to hazardous waste management in Kenya are;
1. The Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations 2003 which requires ships to off-load oil or oily mixture and wastes to the certified Port Waste Reception Facility at the Port of Mombasa.
 2. The Environmental Management and Coordination Act 1999 (EMCA 1999)- Provides the legal and institutional framework applicable to all local industries, including the petroleum sector. This is the foundation of environmental protection in Kenya.
 3. The Environmental Management and Coordination (Water Quality) Regulations 2006 provides more specific instructions on how to reach compliance with requirements imposed by EMCA 1999 on discharges of effluents into sewage systems, and into the environment.
 4. Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations 2003 requires ships to off-load oil or oily mixture and wastes to the certified Port Waste Reception Facility at the Port of Mombasa.
 5. Environmental Impact Assessment Guidelines and Administrative Procedures-The guidelines provide details on the information on what is expected in applications for Environmental Impact licenses, and how it will assess such applications.
 6. The Petroleum (Exploration, Development, and Production) Act, 2019)-This is the main law governing upstream petroleum operations in Kenya.

7.4. As it deems necessary, Kenya may have to incorporate in the laws provisions for;

- Imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct. (Article 9(2))
- Imposing strict restrictions on the importation, dumping, and incineration of hazardous and radioactive waste into Kenya's oceans and inland water.
- Establishing the classifications of hazardous and radioactive waste that are prohibited as per Annex 1 of the Convention.
- Establishing a central national authority that will oversee that the prohibitions and restrictions under the Convention are implemented.

8.0 IMPLICATIONS RELATING TO COUNTIES

8.1. The obligations that are imposed under the Convention are under the jurisdiction of the National Government.

9.0 MINISTERIAL RESPONSIBILITY

9.1. The Ministry that will be responsible for the implementation and any activity regarding the Convention is the Ministry of Environment and Natural Resources.

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

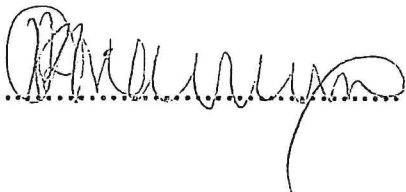

10.0 RESERVATIONS

10.1. The Convention does not provide for reservations.

11.0 RECOMMENDATION TO THE NATIONAL ASSEMBLY

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

1. Note the contents of the Memorandum;
2. Consider and approve Kenya's accession to The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous wastes within Africa.
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the instruments of accession to the relevant depository.


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

AMB. RAYCHELLE OMAMO, SC, EGH

CABINET SECRETARY

MINISTRY OF FOREIGN AFFAIRS

BAMAKO CONVENTION ON THE BAN OF THE IMPORT TO
AFRICA AND THE CONTROL OF TRANSBOUNDARY
MOVEMENT AND MANAGEMENT OF
HAZARDOUS WASTES WITHIN AFRICA

 THE NATIONAL ASSEMBLY P	
DATE: 29 NOV 2022	
TABLED BY:	
COPIES DISTRIBUTED:	

PREAMBLE

The Parties to this Convention,

1. *Mindful of the growing threat to human health and the environment posed by the increased generation and the complexity of hazardous wastes,*
2. *Further mindful that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,*
3. *Aware of the risk of damage to human health and the environment caused by transboundary movements of hazardous wastes,*
4. *Reiterating that States should ensure that the generator should carry out his responsibilities with regard to the transport and disposal of hazardous wastes in a manner that is consistent with the protection of human health and environment, whatever the place of disposal,*
5. *Recalling relevant Chapter of the Charter of the Organization of African Unity (OAU) on Environmental Protection, the African Charter for Human and Peoples Rights, Chapter IX of the Lagos Plan of Action and other Recommendations adopted by the Organization of African Unity on the environment,*
6. *Further recognizing the sovereignty of States to ban the importation into, and the transit through, their territory, of hazardous wastes and substances for human health and environmental reasons,*
7. *Recognizing also the increasing mobilization in Africa for the prohibition of transboundary movements of hazardous wastes and their disposal in African countries,*

8. *Convinced that hazardous wastes should, as far as is compatible with environmentally sound and efficient management, be disposed in the State where they were generated,*
9. *Convinced that the effective control and minimization of transboundary movements of hazardous wastes will act as an incentive, in Africa and elsewhere, for the reduction of the volume of the generation of such wastes,*
10. *Noting that a number of international and regional agreements deal with the problem of the protection and preservation of the environment with regard to the transit of dangerous goods,*
11. *Taking into account the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by Decision 14/30 of 17 June, 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), the Charter of Human Rights, relevant recommendations, declarations, instruments and regulations adopted within the United Nations System, the relevant Articles of the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, allows for the establishment of regional agreements which may be equal to or stronger than its own provisions, Article 39 of the Lome IV Convention relating to the international movement of hazardous wastes and radioactive wastes, African inter-governmental organizations and the work and studies done within other international and regional organizations,*
12. *Mindful of the spirit, principles, aims and functions of the African Convention on the Conservation of Nature and Natural Resources adopted by the African Heads of State and Government in Algiers (1968) and the World Charter for Nature adopted by the General Assembly of the United Nations at its Thirty-seventh Session (1982) as the rule of ethics in respect of the protection of human environment and the conservation of natural resources,*

13. Concerned by the problems of the transboundary traffic in hazardous wastes,

14. Recognizing the need to promote the development of clean production methods, including clean technologies, for the sound management of hazardous wastes produced in Africa, in particular, to avoid, minimize and eliminate the generation of such wastes,

15. Recognizing also that when necessary hazardous wastes should be transported in accordance with relevant international conventions and recommendations,

16. Determined to protect, by strict control, the human health of the African population and the environment against the adverse effects which may result from the generation of hazardous wastes,

17. Affirming a commitment also to responsibly address the problem of hazardous wastes originating within the Continent of Africa,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

DEFINITIONS

For the purpose of this Convention:

1. "Wastes" are substances or materials which are disposed of, or are intended to be disposed of, or are required to be disposed of by the provisions of national law;

2. *"Hazardous wastes" shall mean wastes as specified in Article 2 of this Convention;*
3. *"Management" means the prevention and reduction of hazardous wastes and the collection, transport, storage, treatment either for re-use or disposal of hazardous wastes including after-care of disposal sites;*
4. *"Transboundary Movement" means any movement of hazardous wastes from an area under the national jurisdiction of any state to or through an area under the national jurisdiction of another State, or to or through an area not under the national jurisdiction of another State, provided at least two States are involved in the movement;*
5. *"Clean production methods" means production or industrial systems which avoid or eliminate the generation of hazardous wastes and hazardous products in conformity with Article 4, Section 3 (f) and (g) of this Convention;*
6. *"Disposal" means any operation specified in Annex III to this Convention;*
7. *"Approved site or facility" means a site or facility for the disposal of hazardous wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;*
8. *"Competent authority" means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes and any information related to it, and for responding to such a notification, as provided in Article 6;*
9. *"Focal point" means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;*

10. *"Environmentally sound management of hazardous wastes" means taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and environment against the adverse effects which may result from such wastes;*
11. *"Area under the national jurisdiction of a State" means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;*
12. *"State of export" means a State from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated;*
13. *"State of import" means a State to which a transboundary movement is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;*
14. *"State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes is planned or takes place;*
15. *"States concerned" means Parties which are States of export or import, or transit States whether or not Parties;*
16. *"Person" means any natural or legal person;*
17. *"Exporter" means any person under the jurisdiction of the State export who arranges for hazardous wastes to be exported;*
18. *"Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes to be imported;*
19. *"Carrier" means any person who carries out the transport of hazardous wastes;*

20. "Generator" means any person whose activity produces hazardous wastes, or, if that person is not known, the person who is in possession and/or control of those wastes;

21. "Disposer" means any person to whom hazardous wastes are shipped and who carries out the disposal of such wastes;

22. "Illegal traffic" means any transboundary movement of hazardous wastes as specified in Article 9;

23. "Dumping at sea" means the deliberate disposal of hazardous wastes at sea from vessels, aircraft, platforms or other man-made structures at sea, and includes ocean incineration and disposal into the seabed and sub-seabed.

ARTICLE 2

SCOPE OF THE CONVENTION

1. The following substances shall be "hazardous wastes" for the purposes of this convention:

- (a) Wastes that belong to any category contained in Annex I of this Convention;
- (b) Wastes that are not covered under paragraph (a) above but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the State of export, import or transit;
- (c) Wastes which possess any of the characteristics contained in Annex II of this Convention;
- (d) Hazardous substances which have been banned, canceled or refused registration by government regulatory action, or

voluntarily withdrawn from registration, in the country of manufacture, for human health and environmental reasons.

2. *Wastes which, as a result of being radioactive, are subject to any international control systems, including international instruments, applying specifically to radioactive materials, are included in the scope of this Convention.*

3. *Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, shall not fall within the scope of this Convention.*

ARTICLE 3

NATIONAL DEFINITIONS OF HAZARDOUS WASTES

1. *Each State shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annex 1 of this Convention, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.*

2. *Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to Paragraph 1 of this Convention.*

3. *The Secretariat shall forthwith inform all Parties of the information it has received pursuant to Paragraphs 1 and 2 of this Article.*

4. *Parties shall be responsible for making the information transmitted to them by the Secretariat under Paragraph 3 of this Article, available to their exporters and other appropriate bodies.*

ARTICLE 4GENERAL OBLIGATIONS1. *Hazardous Waste Import Ban.*

All Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties. Such import shall be deemed illegal and a criminal act. All Parties shall:

- (a) Forward as soon as possible, all information relating to such illegal hazardous waste import activity to the Secretariat who shall distribute the information to all Contracting Parties;*
- (b) Co-operate to ensure that no imports of hazardous wastes from a non-Party enter a Party to this Convention. To this end, the Parties shall, at the Conference of the Contracting Parties consider other enforcement mechanisms.*

2. *Ban on Dumping of Hazardous Wastes at Sea, Internal Waters and Waterways.*

- (a) Parties in conformity with related international conventions and instruments shall, in the exercise of their jurisdiction within their internal waters, territorial seas, exclusive economic zones and continental shelf, adopt legal, administrative and other appropriate measures to control all carriers from non-Parties, and prohibit the dumping at sea of hazardous wastes, including their incineration at sea and their disposal in the seabed and sub-seabed; any dumping of hazardous wastes at sea, including incineration at sea as well as seabed and sub-seabed disposal, by Contracting Parties, whether in internal waters, territorial seas, exclusive economic zones or high seas shall be deemed to be illegal;*

- (b) Parties shall forward, as soon as possible, all information relating to dumping of hazardous wastes to the Secretariat which shall distribute the information to all Contracting Parties.

3.

Waste Generation in Africa,

Each Party shall:

- (a) *Ensure that hazardous waste generators submit to the Secretariat reports regarding the wastes that they generate in order to enable the Secretariat of the Convention to produce a complete hazardous waste audit;*
- (b) *Impose unlimited liability as well as joint and several liability on hazardous waste generators;*
- (c) *Ensure that the generation of hazardous wastes within the area under its jurisdiction is reduced to a minimum taking into account social, technological and economic aspects;*
- (d) *Ensure the availability of adequate treatment and/or disposal facilities, for the environmentally sound management of hazardous wastes which shall be located, to the extent possible, within its jurisdiction;*
- (e) *Ensure that persons involved in the management of hazardous wastes within its jurisdiction take such steps as are necessary to prevent pollution arising from such wastes and, if such pollution occurs, to minimize the consequence thereof for human health and environment;*

The Adoption of Precautionary Measures:

- (f) *Each Party shall strive to adopt and implement the preventive, precautionary approach to pollution problems which entails inter-alia, preventing the release into the environment of substances which may cause harm to humans or the environment without waiting for scientific proof regarding such harm. The Parties shall co-operate with each other in taking the appropriate measures to implement the precautionary principle to pollution prevention through the application of clean production methods, rather than the pursuit of a permissible emissions approach based on assimilative capacity assumptions;*
- (g) *In this respect Parties shall promote clean production methods applicable to entire product life cycles including:*
- *raw material selection, extraction and processing;*
 - *product conceptualization, design, manufacture and assemblage;*
 - *materials transport during all phases;*
 - *industrial and household usage;*
 - *reintroduction of the product into industrial systems or nature when it no longer serves a useful function;*

Clean production shall not include "end-of-pipe" pollution controls such as filters and scrubbers, or chemical, physical or biological treatment. Measures which reduce the volume of waste by incineration or concentration, mask the hazard by dilution, or transfer pollutants from one environmental medium to another, are also excluded,

- (h) *The issue of the transfer to Africa of polluting technologies shall be kept under systematic review by the Secretariat of the Conference and periodic reports made to the Conference of the Parties;*

Obligations in the Transport and Transboundary Movement of Hazardous Wastes from Contracting Parties;

- (i) *Each Party shall prevent the export of hazardous wastes to States which have prohibited by their legislation or international agreements all such imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;*
- (j) *A Party shall not permit hazardous wastes to be exported to a State which does not have the facilities for disposing of them in an environmentally sound manner;*
- (k) *Each Party shall ensure that hazardous wastes to be exported are managed in an environmentally sound manner in the State of import and of transit. Technical guidelines for the environmentally sound management of wastes subject to this convention shall be decided by the Parties at their first meeting;*
- (l) *The Parties agree not to allow the export of hazardous wastes for disposal within the area South of 60 degrees South Latitude, whether or not such wastes are subject to transboundary movement;*
- (m) *Furthermore, each Party shall:*

- (i) *prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes unless such persons are authorized or allowed to perform such operations;*
 - (ii) *ensure that hazardous wastes that are to be the subject of a transboundary movement are packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling and transport, and that due account is taken of relevant internationally recognized practices;*
 - (iii) *ensure that hazardous wastes be accompanied by a movement document, containing information specified in Annex IV B, from the point at which a transboundary movement commences to the point of disposal;*
- (n) *Parties shall take the appropriate measures to ensure that the transboundary movements of hazardous wastes only are allowed if:*
 - (i) *the State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or*
 - (ii) *the transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention;*

- (o) Under this Convention, the obligation of States in which hazardous wastes are generated, requiring that those wastes are managed in an environmentally sound manner, may not under any circumstances be transferred to the States of import or transit;
- (p) Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes which are exported to other States;
- (q) Parties exercising their right to prohibit the import of hazardous wastes for disposal shall inform the other Parties of their decision pursuant to Article 13;
- (r) Parties shall prohibit or shall not permit the export of hazardous wastes to States which have prohibited the import of such wastes when notified by the Secretariat or any competent authority pursuant to sub-paragraph (q) above;
- (s) Parties shall prohibit or shall not permit the export of hazardous wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes;
- (t) Parties shall ensure that the transboundary movement of hazardous wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movements;
- (u) Parties shall require that information about a proposed transboundary movement of hazardous wastes be provided to the States concerned, according to Annex IV A, and clearly state the potential effects of the proposed movement on human health and the environment.

4. *Furthermore:*

- (a) *Parties shall undertake to enforce the obligation of this Convention against offenders and infringements according to relevant national laws and/or order to better protect human health and the environment;*
- (b) *Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order to better protect human health and the environment;*
- (c) *This Convention recognizes the sovereignty of States over their territorial sea, waterways and air space established in accordance with international law, and jurisdiction which States have in their exclusive economic zone and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigation rights and freedoms as provided for in international law and as reflected in relevant international instruments.*

ARTICLE 5

DESIGNATION OF COMPETENT AUTHORITIES
FOCAL POINT AND DUMPWATCH

To facilitate the implementation of this Convention, the Parties shall:

1. *Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.*

2. *Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.*
3. *Inform the Secretariat, within one month of the date of decision, of any changes regarding the designations made by them under paragraph 2 above.*
4. *Appoint a national body to act as a Dumpwatch. In such capacity as a dumpwatch, the designated national body only will be required to co-ordinate with the concerned governmental and non-governmental bodies.*

ARTICLE 6

TRANSBOUNDARY MOVEMENT AND NOTIFICATION PROCEDURES

1. *The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the State concerned of any proposed transboundary movement of hazardous wastes. Such notification shall contain the declaration and information specified in Annex IV A of this Convention, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.*
2. *The State of import shall respond to the notifier in writing consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned that are Parties to this Convention.*
3. *The State of export shall not allow the transboundary movement until it has received:*

- (a) written consent of the State of import, and
- (b) from the State of import written confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

4. Each State of transit which is a Party to this Convention shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing within 60 days consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit.

5. In the case of a transboundary movement of hazardous wastes where the wastes are legally defined as or considered to be hazardous wastes only:

- (a) by the State of export, the requirements of paragraph 8 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;
- (b) by the State of import or by the States of import and transit which are Parties to this Convention, the requirements of paragraph 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or
- (c) by any State of transit which is Party to this Convention, the provisions of paragraph 4 shall apply to such State.

6. The State shall use a shipment specific notification even where hazardous wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of entry of the State of import, and in the case of transit via the same customs office of entry and exit of the State or

States of transit; specific notification of each and every shipment shall be required and contain the information in Annex IV A of this Convention.

7. *Each Party to this Convention shall limit their points or ports of entry and notify the Secretariat to this effect for distribution to all Contracting Parties. Such points and ports shall be the only ones permitted for the transboundary movement of hazardous wastes.*

8. *The Parties to this Convention shall require that each person who take charge of a transboundary movement of hazardous wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.*

9. *The notification and response by this Article shall be transmitted to the competent authority of the States concerned.*

10. *Any transboundary movement of hazardous wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or a State of transit which is a Party to this Convention.*

ARTICLE 7

TRANSBOUNDARY MOVEMENT FROM A PARTY THROUGH STATES WHICH ARE NOT PARTIES

Paragraph 2 of Article 6 of the Convention shall apply mutatis mutandis to transboundary movements of hazardous wastes from a Party through a State or States which are not Parties.

ARTICLE 8DUTY OF RE-IMPORT

When a transboundary movement of hazardous wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner within a maximum of 90 days from the time that the importing State informed the State of export and the Secretariat. To this end, the State of export and any State of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

ARTICLE 9ILLEGAL TRAFFIC

I. For the purpose of this Convention, any transboundary movement of hazardous wastes under the following situations shall be deemed to be illegal traffic:

- (a) if carried out without notification, pursuant to the provisions of this Convention, to all States concerned; or
- (b) if carried out without the consent, pursuant to the provisions of this Convention, of a State concerned; or
- (c) if consent is obtained from States concerned through falsification, misrepresentation or fraud; or
- (d) if it does not conform in a material way with the documents; or

(e) if it results in deliberate disposal of hazardous wastes in contravention of this Convention and of general principles of international law.

2. Each State shall introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct.

3. In case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are taken back by the exporter or generator or if necessary by itself into the State of export, within 30 days from the time the State of export has been informed about the illegal traffic. To this end the States concerned shall not oppose, hinder or prevent the return of those wastes to the State of export and appropriate legal action shall be taken against the contravenor(s).

4. In the case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are returned to the exporter by the importer and that legal proceedings according to the provisions of the Convention are taken against the contravenor(s).

ARTICLE 10

INTRA-AFRICAN COOPERATION

1. The Parties to this Convention shall cooperate with one another and with relevant African organizations, to improve and achieve the environmentally sound management of hazardous wastes.

2. To this end, the Parties shall:

- (a) *make available information, whether on a bilateral or multilateral basis, with a view to promoting clean production methods and the environmentally sound management of hazardous wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes;*
- (b) *cooperate in monitoring the effects of the management of hazardous wastes on human health and the environment;*
- (c) *co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound clean production technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new and improved technologies;*
- (d) *co-operate actively to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes. They shall also cooperate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;*
- (e) *co-operate in developing appropriate technical guidelines and/or codes of practice;*
- (f) *co-operate in the exchange and dissemination of information on the movement of hazardous wastes in conformity with Article 13 of this Convention.*

ARTICLE 11INTERNATIONAL CO-OPERATION
BILATERAL, MULTILATERAL AND REGIONAL AGREEMENTS

1. *Parties to this Convention may enter into bilateral, multilateral, or regional agreements or arrangements regarding the transboundary movement and management of hazardous wastes generated in Africa with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are no less environmentally sound than those provided for by this Convention.*
2. *Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 of this Article and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements of hazardous wastes generated in Africa which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes as required by this Convention.*
3. *Each Contracting Party shall prohibit vessels flying its flag or aircraft registered in its territory from carrying out activities in contravention to this Convention.*
4. *Parties shall use appropriate measures to promote South-South cooperation in the implementation of this Convention.*
5. *Taking into account the needs of developing countries, co-operation between international organizations is encouraged in order to promote, among other things, public awareness, the development of the rational management of hazardous wastes and the adoption of new and less polluting technologies.*

ARTICLE 12LIABILITIES AND COMPENSATION

The Conference of Parties shall set up an Ad Hoc Expert Organ to prepare a Draft Protocol setting out appropriate rules and procedures in the field of liabilities and compensation for damage resulting from the transboundary movement of hazardous wastes.

ARTICLE 13TRANSMISSION OF INFORMATION

1. The Parties shall ensure that in the case of an accident occurring during the transboundary movement of hazardous wastes or their disposal which is likely to present risks to human health and the environment in other States, those States are immediately informed.
2. The States shall inform each other, through the Secretariat, of:
 - (a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5 of the present Convention;
 - (b) Changes in their national definition of hazardous wastes, pursuant to Article 3 of the present Convention;
 - (c) Decisions made by them to limit or ban the import of hazardous wastes;
 - (d) Any other information required pursuant to paragraph 4 of this Article.
3. The Parties, consistent with national laws and regulations, shall set up information collection and dissemination mechanisms on hazardous wastes. They

shall transmit such information through the Secretariat, to the Conference of the Parties established under Article 15 of the present Convention, before the end of each calendar year, in a report on the previous calendar year, containing the following information:

- (a) Competent authorities, Dumpwatch, and focal points that have been designated by them pursuant to Article 5 of the present Convention.
- (b) Information regarding transboundary movements of hazardous wastes in which they have been involved including:
 - (i) the quantity of hazardous wastes exported, their category, characteristics, destination, any transit country and disposal methods as stated in the notification;
 - (ii) the amount of hazardous wastes imported, their category, characteristics, origin and disposal methods;
 - (iii) disposal which did not proceed as intended;
 - (iv) Efforts to achieve a reduction of the amount of hazardous wastes subject to transboundary movements.
- (c) Information on the measures adopted by them in the implementation of this Convention;
- (d) Information on available qualified statistics - which have been compiled by them on the effects on human health and the environment of the generation, transportation, and disposal of hazardous wastes - as part of the information required in conformity with Article 4 Section 3 (a) of this Convention;

- (e) *Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention.*
- (f) *Information on accidents occurring during the transboundary movements and disposal of hazardous wastes and on the measures undertaken to deal with them;*
- (g) *Information on disposal options operated within the area under their national jurisdiction;*
- (h) *Information on measures undertaken for the development of clean production methods, including clean production technologies, for the reduction and/or elimination of the production of hazardous wastes; and*
- (i) *Such other matters as the Conference of the Parties shall deem relevant.*

4. *The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes, and the response to it, are sent to the Secretariat.*

ARTICLE 14

FINANCIAL ASPECTS

1. *The regular budget of the Conference of the Parties, as required in Articles 15 and 16 of this Convention, shall be prepared by the Secretariat and approved by the Conference.*
2. *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.*

3. *The Parties shall 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.*

4. *The Parties agree that, according to the specific needs of different regions and sub-regions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and the minimization of their generation should be established as well as appropriate funding mechanisms of a voluntary nature.*

ARTICLE 15

CONFERENCE OF THE PARTIES

1. *A Conference of the Parties made up of Ministers having the environment as their mandate is hereby established. The first meeting of the Conference of the Parties shall be convened by the Secretary-General of the OAU not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.*

2. *The Conference of the Parties to this Convention shall adopt Rules of Procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.*

3. *The Parties to this Convention at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine and inland waters environments in the context of this Convention.*

4. The Conference of the Parties shall keep under continued review and evaluation the effective implementation of this Convention, and in addition, shall:

- (a) promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes;
- (b) consider and adopt amendments to this Convention and its annexes, taking into consideration, *inter-alia*, available scientific, technical, economic and environmental information;
- (c) consider and undertake any additional action that may be required for the achievement of the purpose of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11 of the present Convention;
- (d) consider and adopt protocols as required;
- (e) establish such subsidiary bodies as are deemed necessary for the implementation of this Convention; and
- (f) make decisions for the peaceful settlement of disputes arising from the transboundary movement of hazardous wastes, if need be, according to international law.

5. Organizations may be represented as observers at meetings of the Conference of the Parties to this Convention. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes which has informed the Secretariat, may be represented as an observer at a meeting of the Conference of the Parties to this Convention. The admission and participation of observers shall be subject to the rules of procedures adopted by the Conference of the Parties.

ARTICLE 16SECRETARIAT

1. *The functions of the Secretariat shall be:*
 - (a) *to arrange for, and service, meetings provided for in Articles 15 and 17 of the present Convention;*
 - (b) *to prepare and transmit reports based upon information received in accordance with Articles 3,4,6,11, and 13 of the present Convention as well as upon information derived from meetings of subsidiary bodies established under Article 15 of the present Convention as well as upon, as appropriate, information provided by relevant inter-governmental and non-governmental entities;*
 - (c) *to prepare reports on its activities carried out in the implementation of its functions under this Convention and present them to the Conference of the Parties;*
 - (d) *to ensure the necessary co-ordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;*
 - (e) *to communicate with focal points, competent authorities and Dumpwatch established by the Parties in accordance with Article 5 of this Convention as well as appropriate inter-governmental and non-governmental organizations which may provide assistance in the implementation of this Convention.*
 - (f) *to compile information concerning approved national sites and facilities of Parties to this Convention available for the disposal on*

treatment of their hazardous wastes and to circulate this information;

(g) *to receive and convey information from and to Parties to this Convention on:*

- *sources of technical assistance and training;*
- *available technical and scientific know-how;*
- *sources of advice and expertise; and*
- *availability of resources.*

This information will assist them in:

- *the management of the notification system of this Convention;*
- *environmentally sound clean production methods relating to hazardous wastes, such as clean production technologies;*
- *the assessment of disposal capabilities and sites;*
- *the monitoring of hazardous wastes; and*
- *emergency responses.*

(h) *to provide the Parties to this Convention with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them with examining a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes with the relevant notification, and/or whether the proposed disposal facilities for hazardous*

environmentally sound manner. Any such examinations would not be at the expense of the Secretariat;

- (i) to assist Parties to this Convention in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;*
- (j) to co-operate with Parties to this Convention and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and*
- (k) to perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties to this Convention.*

2. The Secretariat's functions shall be carried out on an interim basis by the Organization of African Unity (OAU) jointly with the United Nations Economic Commission for Africa (ECA) until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15 of the present Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

ARTICLE 17

AMENDMENT OF THE CONVENTION AND OF PROTOCOLS

1. Any Party may propose amendments to this Convention and any Party to a Protocol may propose amendments to that Protocol. Such amendments shall take due account, inter alia of relevant scientific, technical, environmental and social considerations.

2. *Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any Protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to this Convention or to any Protocol, except as may otherwise be provided in such Protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for their information.*

3. *The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting at the meeting. It shall then be submitted by the Depository to all Parties for ratification, approval, formal confirmation or acceptance.*

Amendment of Protocols to this Convention.

4. *The procedure specified in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that Protocol present and voting at the meeting shall suffice for their adoption.*

GENERAL PROVISIONS

5. *Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depository. Amendments adopted in accordance with paragraph 3 or 4 above shall enter into force between Parties having accepted them, on the ninetieth day after the receipt by the Depository of the instrument of ratification, approval, formal confirmation or acceptance by at least two-thirds of the Parties who accepted the amendments to the Protocol concerned, except as may otherwise be provided in such Protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.*

6. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

ARTICLE 18

ADOPTION AND AMENDMENT OF ANNEXES

1. The annexes to this Convention or to any Protocol shall form an integral part of this Convention or of such Protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its Protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.
2. Except as may be otherwise provided in any Protocol with respect to its annexes, the following procedures shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:
 - (a) Annexes to this Convention and its Protocols shall be proposed and adopted according to the procedures laid down in Article 17, paragraphs 1, 2, 3, and 4 of the present Convention;
 - (b) Any Party that is unable to accept an additional annex to this Convention or an annex to any Protocol to which it is Party shall so notify the Depository, in writing, within six months from the date of the communication of the adoption by the Depository. The Depository shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;
 - (c) Upon the expiration of six months from the date of the circulation of the communication by the Depository, the annex shall become

effective for all Parties to this Convention or to any Protocol concerned, which have not submitted a notification in accordance with the provision of sub-paragraph (b) above.

3. *The proposal, adoption and entry into force of amendments to annexes to this Convention or to any Protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a Protocol. Annexes and amendments thereto shall take due account, inter alia of relevant scientific and technical considerations.*

4. *If an additional annex or an amendment to an annex involves an amendment to this Convention or to any Protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the Protocol enters into force.*

ARTICLE 19

VERIFICATION

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention must inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. The Secretariat shall carry out a verification of the substance of the allegation and submit a report thereof to all the Parties to this convention.

ARTICLE 20

SETTLEMENT OF DISPUTES

1. *In case of dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any Protocol thereto, the Parties shall seek a settlement of the dispute through negotiations or any other peaceful means of their own choice.*
2. *If the Parties concerned cannot settle their dispute as provided in paragraph 1 of this Article, the dispute shall be submitted either to an Ad Hoc organ set up by the Conference for this purpose or to the International Court of Justice.*
3. *The conduct of arbitration of disputes between Parties by the Ad Hoc organ provided for in paragraph 2 of this Article shall be as provided in Annex V of this Convention.*

ARTICLE 21

SIGNATURE

This Convention shall be open for signature by Member States of the OAU in Bamako and Addis Ababa for a period of six months from 30 January, 1991 to 31 July, 1991.

ARTICLE 22

RATIFICATION, ACCEPTANCE, FORMAL CONFIRMATION OR APPROVAL

1. *This Convention shall be subject to ratification, acceptance, formal confirmation or approval by Member States of the OAU. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depository.*

2. *Parties shall be bound by all obligations of this Convention.*

ARTICLE 23

ACCESSION

This Convention shall be open for accession by Member States of the OAU from the date after the day on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depository.

ARTICLE 24

RIGHT TO VOTE

Each Contracting Party to this Convention shall have one vote.

ARTICLE 25

ENTRY INTO FORCE

1. *This Convention shall enter into force on the ninetieth day after the date of deposit of the tenth instrument of ratification from Parties signatory to this Convention.*
2. *For each State which ratifies this Convention or accedes thereto after the date of the deposit of the tenth instrument of ratification, it shall enter into force on the ninetieth day after the date of deposit by such State of its instrument of accession or ratification.*



ARTICLE 26

RESERVATIONS AND DECLARATIONS

1. *No reservations or exception may be made to this Convention.*
2. *Paragraph 1 of this Article does not preclude a State when signing, ratifying, or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.*

ARTICLE 27

WITHDRAWAL

1. *At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.*
2. *Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.*
3. *Withdrawal shall not exempt the withdrawing Party from fulfilling any obligations it might have incurred under this Convention.*

ARTICLE 28

DEPOSITORY

The Secretary-General of the Organization of African Unity shall be the Depository for this Convention and of any Protocol thereto.

ARTICLE 29

REGISTRATION

This Convention, as soon as it enters into force, shall be registered with the Secretary-General of the United Nations Organization in conformity with Article 102 of the Charter of the United Nations.

ARTICLE 30

AUTHENTIC TEXTS

The Arabic, English, French and Portuguese texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

ADOPTED IN BAMAKO, MALI, ON 30 JANUARY, 1991

[Handwritten signatures]

ANNEX I

CATEGORIES OF WASTES WHICH ARE HAZARDOUS WASTES

Waste Streams

- Y0 All wastes containing or contaminated by radionuclides, the concentration or properties of which result from human activity.*
- Y1 Clinical wastes from medical care in hospitals, medical centres and clinics.*
- Y2 Wastes from the production and preparation of pharmaceutical products.*
- Y3 Waste pharmaceuticals, drugs and medicines.*
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals.*
- Y5 Wastes from the manufacture, formulation and use of wood preserving chemicals.*
- Y6 Wastes from the production, formulation and use of organic solvents.*
- Y7 Wastes from heat treatment and tempering operations containing cyanides.*
- Y8 Waste mineral oils unfit for their originally intended use.*
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions.*
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCTs) and/or polychlorinated terphenyls (PCYs) and/or polybrominated biphenyls (PBBs).*
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment.*

Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish.

Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives.

Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on human and/or environment are not known.

Y15 Wastes of an explosive nature not subject to other legislation.

Y16 Wastes from production, formulation and use of photographic chemicals and processing materials.

Y17 Wastes resulting from surface treatment of metals and plastics.

Y18 Residues arising from industrial waste disposal operations.

Y46 Wastes collected from households, including sewage and sewage sludges.

Y46 Residues arising from the incineration of household wastes.

WASTES HAVING AS CONSTITUENTS:

Y19 Metal Carbonyls.

Y20 Beryllium; beryllium compounds.

Y21 Hexavalent chromium compounds.

Y22 Copper compounds.

- Y23 Zinc Compounds
- Y24 Arsenic; arsenic compounds.
- Y25 Selenium; selenium compounds.
- Y26 Cadmium; cadmium compounds
- Y27 Antimony; antimony compounds.
- Y28 Tellurium; tellurium compounds.
- Y29 Mercury; mercury compounds.
- Y30 Thallium; thallium compounds.
- Y31 Lead; lead compounds.
- Y32 Inorganic fluorine compounds excluding calcium fluoride.
- Y33 Inorganic cyanides.
- Y34 Acidic solutions or acids in solid form.
- Y35 Basic solutions or bases in solid form.
- Y36 Asbestos (dust and fibers).
- Y37 Organic phosphorus compounds.
- Y38 Organic cyanides.
- Y39 Phenols; phenol compounds including chlorophenols.

Y40 Ethers

Y41 Halogenated organic solvents.

Y42 Organic solvents excluding halogenated solvents.

Y43 Any congener of polychlorinated dibenzo-furan.

Y44 Any congener of polychlorinated dibenzo-p-dioxin.

Y45 Organohalogen compounds other than substances referred to in this Annex (e.g. Y39, Y41, Y42, Y43, Y44).

ANNEX II

LIST OF HAZARDOUS CHARACTERISTICS

UN Code Characteristics

Class*

1. *H1 Explosive*

An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction or producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

3 *H3 Flammable liquids*

The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5 degrees C, closed up test, or not more than 65.6 degrees C, open-cup test (Since the results of open-cup tests and of closed-up tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such difference would be within the spirit of this definition).

4.1. *H4.1 Flammable solids*

Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.

**Corresponds to the hazardous classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev. 5, United Nations, New York, 1988).*

4.2. H4.2 *Substances or wastes liable to spontaneous combustion*

Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.

4.3. H4.3 *Substances or wastes which, in contact with water emit flammable gases.*

Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.

5.1. H5.1 *Oxidizing.*

Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to the combustion of other materials.

5.2. H5.2 *Organic peroxides*

Organic substances or wastes which contain the bivalent -O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.

6.1. H6.1 *Poisonous (Acute)*

Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.

6.2. H6.2 *Infectious Substances*

Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.

8. H8 *Corrosives*

Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.

9. 10 *Liberation of toxic gases in contact with air or water.*

Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.

9. H11 *Toxic (Delayed or Chronic)*

Substances or wastes which, if they are inhaled or ingested, or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.

9. H12 *Ecotoxic*

Substances or wastes which if released, present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effect upon biotic systems.

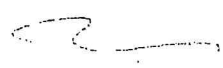
9. H13

Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

ANNEX III

DISPOSAL OPERATIONS

- D1 Deposit into or onto land; (e.g., landfill, etc.).*
- D2 Land treatment (e.g., biodegradation of liquid or sludgy discards in soils, etc.).*
- D3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.).*
- D4 Surface impoundment (e.g. placement of liquid into lined discrete cells which are capped and isolated from one another and the environment, etc.).*
- D6 Release into a water body except seas/oceans.*
- D7 Release into seas/oceans including sea-bed insertion.*
- D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Annex III.*
- D9 Physico-chemical treatment not specified elsewhere in the Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Annex III (e.g. evaporation, drying, calcination, neutralization, precipitation, etc.).*
- D10 Incineration on land.*
- D11 Incineration at sea.*
- D12 Permanent storage (e.g. emplacement of containers in a mine, etc.).*

- D13 *Blending or mixing prior to submission to any of the operations in Annex III.*
- D14 *Repackaging prior to submission to any of the operations in Annex III.*
- D15 *Storage pending any of the operations in Annex III.*
- D16 *Use of fuel (other than in direct incineration) or other means to generate energy.*
- D17 *Solvent reclamation/regeneration.*
- D18 *Recycling/reclamation of organic substances which are not used as solvents.*
- D19 *Recycling/reclamation of metals and metal compounds.*
- D20 *Recycling/reclamation of other inorganic materials.*
- D21 *Regeneration of acids and bases.*
- D22 *Recovery of components used for pollution abatement.*
- D23 *Recovery of components from catalysts.*
- D24 *Used oil re-refining or other reuses of previously used oil.*
- D25 *Land treatment resulting in benefit to agriculture or ecological improvement.*
- 

- D26 *Uses of residual materials obtained from any of the operations numbered D1 - 25.*
- D27 *Exchange of wastes for submission to any of the operations numbered D1 - 26.*
- D28 *Accumulation of material intended for any operation in Annex III.*

ANNEX IV A

INFORMATION TO BE PROVIDED ON NOTIFICATION

1. Reason for waste export.
2. Exporter of the waste 1/
3. Generator(s) of the waste and site of generation 1/
4. Importer and Disposer of the waste and actual site of disposal 1/
5. Intended carrier(s) of the waste or their agents, if known 1/
6. Country of export of the waste.
Competent authority 2/
7. Countries of transit
Competent authority 2/
8. Projected date of shipment and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit).
9. Means of transport envisaged (road, rail, sea, air, inland waters).
10. Information relating to insurance.
11. Designation and physical description of the waste including Y number and UN number and its composition 4/ and information on any special handling requirements including emergency provisions in case of accidents.

12. *Type of packaging envisaged (e.g. bulk, drummer, tanker).*
13. *Estimated quantity of weight/volume.*
14. *Process by which the waste is generated 5/*
15. *Waste classification from Annex II: Hazardous characteristics, H number, and UN Class.*
16. *Method of disposal as per Annex III.*
17. *Declaration by the generator and exporter that the information is correct.*
18. *Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import.*
19. *Information concerning the contact between the exporter and disposer.*

NOTES

- 1/ *Full name and address, telephone, telex or telefax number and the name, address, telephone, telex, or telefax number of the person to be contacted.*
- 2/ *Full name and address, telephone, telex or telefax number.*

- 3/ *Information to be provided on relevant insurance requirements and how they are met by exporter, carrier, and disposer.*
- 4/ *The nature and concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.*
- 5/ *Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.*

ANNEX IV B

INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT

1. Exporter of the waste 1/
2. Generator(s) of the waste and site of generation 1/
3. Importer and disposer of the waste and actual site of disposal 1/
4. Carrier(s) of the waste 1/ or his agent(s).
5. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste.
6. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated.
7. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable).
8. Information on special handling requirements including emergency provisions in case of accidents.
9. Type and number of packages.
10. Quantity in weight/volume.
11. Declaration by the generator or exporter that the information is correct.
12. Declaration by disposer or exporter indicating no objection from the competent authorities of all States concerned.

13. *Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the appropriate date of disposal.*

NOTES

The information required on the movement document shall, where possible, be integrated into one document with that required under transport rules. Where this is not possible, the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instruction as to who is to provide information and fill out any form.

- 1/ *Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.*

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ANNEX V

ARBITRATION

Article 1

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

Article 2

The claimant Party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to paragraph 1 or paragraph 2 of Article 20 of the Convention and include, in particular, the Articles of the Convention, and the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

Article 3

The Arbitral Tribunal 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 one of the 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 OAU 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 the receipt of the request, the other Party may inform the Secretary-General of the OAU 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 OAU 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 this Convention.*

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 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 in the dispute shall not constitute an impediment to the proceedings.*

Article 7

The Tribunal may hear and determine counter-claims 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 statement thereof to the Parties.

Article 9

Any Party that has an interest of a 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 Tribunal.

Article 10

1. *The 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 Arbitral Tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.*

ADOPTED IN BAMAKO, MALI, ON 30 JANUARY, 1991



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:

1. The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
2. 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.

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/hq-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, 1st January, 2023.

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

16th December, 2022

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

Annex-06

