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REPUBLIC OF KENYA THE NATIONAL ASSEMBLY	
DATE: 05 DEC 2023	
DAY: Tuesday	
TABLED BY:	Hon. Lydia Matika (Chairperson, Diaspora Affairs & Migrant Workers Committee)
OFFICIAL TELETYPE:	Inzejo Mwale

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT- SECOND SESSION- 2023

Approved
D/SWA
5/12/2023

DIASPORA AFFAIRS AND MIGRANT WORKERS COMMITTEE

REPORT OF THE DELEGATION TO THE 10TH SESSION OF THE WORKING GROUP ON THE SMUGGLING OF MIGRANTS AND CONSTRUCTIVE DIALOGUE ON THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (UNTOC) REVIEW MECHANISM

HELD FROM

**5TH TO 9TH OCTOBER, 2023,
VIENNA, AUSTRIA.**

**The Directorate of Audit, Appropriations and
Other Select Committees**
Clerk's Chambers
Parliament Buildings
NAIROBI.

December, 2023

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FOREWORD

This report documents a summary of the proceedings of the 10th Session of the Working Group on the Smuggling of Migrants, and the Constructive Dialogue on the United Nations Convention against Transnational Organized Crime (UNTOC) Review Mechanism held in Vienna, Austria from October 5th to 9th, 2023. A Delegation from the Diaspora Affairs and Migrant Workers Committee participated in the conference which served as a valuable forum to address and enhance strategies to combat migrant smuggling.

The session's discussions centered on defining the distinction between those liable for migrant smuggling charges; exploring developments, challenges; and best practices in preventing and combating maritime migrant smuggling, and addressing matters surrounding the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and its Protocols.

The report highlights the significance of aligning national legislation with the Smuggling of Migrants Protocol, particularly in enforcing sea interception measures while adhering to international human rights and refugee laws. It further advocates for comprehensive training of personnel involved in such operations to effectively address the needs and vulnerabilities of individuals on board vessels.

The Committee notes that Kenya lacks specific legislation addressing smuggling hence the importance of developing targeted legal frameworks to address this aspect of irregular migration. Further, noting that Kenya's strategic location may make it a potential transit route for maritime migrant smuggling to Europe or the Middle East, there is need for the government to recognize sea smuggling as a component of broader criminal networks and, encourage international collaboration in the fight against organized crime.

The Committee recommends for the development of a standalone anti-smuggling law to provide for effective measures to prevent and combat the smuggling of migrants by land, sea, and air and harmonization of existing national legislation with the Smuggling of Migrants Protocol. The Committee further recommends for allocation of financial resources to the Kenya Coast Guard Service for advanced surveillance equipment, communication systems, and vessels to enable them to effectively address migrant smuggling across sea routes.

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 the delegation.

Pursuant to Standing Order 199, it is my pleasant duty and privilege to present to the House the Diaspora Affairs and Migrant Workers Committee's delegation to the 10th Session of the Working Group on the Smuggling of Migrants and the Constructive Dialogue on the United Nations Convention against Transnational Organized Crime (UNTOC) Review Mechanism from 5th to 9th October, 2023.

Hon. Haika Mizighi, M.P,
Chairperson, Diaspora Affairs and Migrant Workers Committee

1.0 PREFACE

1.1 Establishment and Mandate

1. The Diaspora Affairs and Migrant Workers Committee, is a Select Committee of the National Assembly established under Standing Order 208B to:

- (i) Consider all matters directly relating to policies and programs for the protection of the rights and welfare of Kenyans in the diaspora, including;—
- (a) Kenyan nationals with dual citizenship;
 - (b) Kenyan migrant workers and their families abroad; and
 - (c) Kenyans undertaking studies overseas;

(ii) Examine policies and programs of the national government for;—

- (a) Efficiently harnessing, mobilizing and steering of Kenyan resources in the diaspora for economic and socio-cultural development;
- (b) Engaging and facilitating Kenyans in the diaspora, including persons eligible for dual citizenship; and
- (c) Suffrage of Kenyan nationals in the diaspora.

1.2 Committee Membership

2. The Committee was constituted by the House on 27th October, 2022 and comprises the following Members:—

The Hon. Haika Mizighi, M.P. – Chairperson

Taita – Taveta County

UDA Party

The Hon. Simon Nganga Kihara, M.P. – Vice Chairperson

Ruiru Constituency

UDA Party

MEMBERS

The Hon. Fred C. Kapondi, M.P.

Mount Elgon Constituency

UDA Party

The Hon. Kemei Justice Kipsang, M.P.

Sigowet/ Soin Constituency

UDA Party

The Hon. Capt. Ruweida Mohamed Obo, M.P.

Lamu East Constituency

Jubilee Party

The Hon. Ibrahim Abdi Saney, M.P.

Wajir North Constituency

UDA Party

The Hon. Charity Kathambi Chepkwony, M.P.
Njoro Constituency
UDA Party

The Hon. Paul Ongili Babu Owino, M.P.
Embakasi East Constituency
ODM Party

The Hon. Rashid Juma Bedzimba, M.P.
Kisauni Constituency
ODM Party

The Hon. Titus Lotee, M.P.
Kacheliba Constituency
KUP Party

The Hon. Donya Dorice Aburi, M.P.
Kisii County
WDM Party

The Hon. Phelix Odiwuor Khodhe, M.P.
Langata Constituency
ODM Party

The Hon. Leah Sopiato Sankaire, M.P.
Kajiado County
UDA Party

The Hon. Zamzam Chimba Mohamed, M.P.
Mombasa County
ODM Party

The Hon. Pamela Njoki Njeru Double N, M.P.
Embu County
UDA Party

1.3 Committee Secretariat

3. The Committee is facilitated by the following staff: -

Ms. Ruth Mwihaki Gakuya
Clerk Assistant I/Head of Secretariat

Mr. James Macharia
Media Relations Officer I

Ms. Viola Khalwali Saiya
Research Officer III

Mr. Peter Barasa
Legal Counsel II

Mr. Wilson Angatangoria
Serjeant - At- Arms

Ms. Fidliza Samba Mwangogo
Clerk Assistant III

Esther Mbatha
Public Communications Officer

1.4 Delegation Composition

4. The delegation comprised of the following;

- 1) Hon. Fred C. Kapondi, M.P – Delegation Leader,
- 2) Hon. Pamela Njoki Njeru Double N, M.P – Member, and;
- 3) Ms. Viola Khalwali Saiya – Delegation Secretary.

2.0 INTRODUCTION

2.1 Background Information

5. The Diaspora Affairs and Migrant Workers Committee was invited by the Ministry of Labour and Social Protection, State Department for Labour and Skills Development to participate in the UNTOC Review Mechanism at the 10th Session of the Working Group on the Smuggling of Migrants that was held from 5th to 9th October, 2023 in Vienna, Austria.
6. The Committee is cognizant of the increased cases of smuggling of migrant workers across the world and the need to for intergovernmental and other stakeholders' collaboration to fight this organized crime.
7. Smuggling of migrant workers often involves unregulated channels, making these workers vulnerable to exploitation and abuse. They are often forced to work in substandard conditions with low wages and no job security. This discourages legal labour migration and tarnishes the reputation of overseas work.
8. The presence of smuggled workers in the labour market can depress wages and working conditions for both legal migrants and local workers. Employers may prefer undocumented workers who can be paid lower wages creating unfair competition hampering licit labour movement.
9. Smuggled migrant workers often travel in dangerous conditions risking their lives in the process. This poses significant security risks not only to the workers themselves but also to the nation which may lead to a strained relationship with destination countries and impact the willingness of those countries to accept legal migrant labour from Kenya.
10. Smuggling further undermines government efforts to regulate and protect labour migration. It can also leads to the criminal offense of human trafficking. This can strain diplomatic relations with destination countries and reduce the chances of continued or negotiated favorable terms for legal labor migration agreements.

2.2 Objectives of the Sessions

11. Conference of the Parties to the United Nations Convention against Transnational Organized Crime in its Resolution 7/1, entitled "*Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*", resolved that the Working Group on the Smuggling of Migrants would be a constant element of the Conference forwarding its reports and recommendations to the Conference and encouraged the Working Group to consider meeting on an annual basis as well as hold its meetings consecutively with other working groups of the Conference.
12. The agreed agenda items for the 10th Session of the Working Group on the Smuggling of Migrants and Constructive Dialogue on the United Nations Convention against Transnational Organized Crime (UNTOC) Review Mechanism included;
 - (a) Determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler;

- (b) Developments, challenges and best practices in preventing and combating the smuggling of migrants by sea; and
- (c) Matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.

3.0 CONFERENCE PRESENTATIONS

The conference deliberations were organized on the following thematic areas:-

3.1 Migrant Smuggling Crime

13. Addressing the rise in migrant smuggling is now a pressing worldwide concern due to the human suffering, fatalities, and substantial profits associated with it. In 2016, approximately 2.5 million people were smuggled through 30 routes, generating criminal networks and actors an estimated \$5.5-7 billion.
14. The need for migrant smuggling is driven by individuals' strong desire to migrate, along with limited legal migration options and the challenges of independent migration. In some areas, barriers to exercising free movement rights such as corruption and safety risks further fuel the demand for smuggling.
15. To effectively measure and tackle migrant smuggling the Conference appealed for a standardized approach for defining those responsible for the crime to be established. The Conference further noted that there are different types of actors involved in a single migrant smuggling operation each playing one or a combination of the following roles:
 - (a) The coordinators or organizers hold ultimate responsibility for migrant smuggling operations. They manage various aspects, such as hiring personnel, route selection, and logistics coordination. Evidence collection against them is typically challenging;
 - (b) Recruiters promote migrant smuggling services and may collect fees. They often collaborate with multiple smugglers, typically residing in the origin or transit country, possessing language skills, and occasionally having personal connections to the migrants;
 - (c) Transporters/guides are individuals who physically guide migrants through multiple countries and borders. They can be easily recruited and, if apprehended, their absence doesn't significantly impact the smuggling operation. They may not be part of the broader network and offer services as needed, often at transportation hubs and border crossings;
 - (d) Spotters, drivers, messengers, and enforcers perform various temporary roles in the smuggling process. Spotters provide intelligence on law enforcement checks, while enforcers maintain order, often through intimidation and violence, by ensuring migrants' compliance; and
 - (e) Various ad hoc service providers and suppliers collaborate with multiple migrant smuggling groups to maximize their profits. They include boat owners, corrupt officials, accommodation providers, transportation personnel, and financiers who transfer

collected funds to smugglers. Some may unwittingly aid smuggling, while others are aware of their indirect involvement.

16. The Smuggling of Migrants Protocol established on 15th November, 2000 introduced a globally accepted and legally binding definition of migrant smuggling. The Smuggling of Migrants Protocol is a supplement to the United Nations Convention against Transnational Organized Crime (UNTOC), also known as the Palermo Convention.
17. It specifically addresses the issue of migrant smuggling, which involves the illegal transportation of migrants across international borders for financial gain. According to Article 3 of the Protocol, migrant smuggling involves facilitating the illegal entry of a person into a State party, in exchange for financial or other material gain, when the individual is not a national or permanent resident of that state. This definition serves as the basis for States to formulate their own domestic laws against migrant smuggling, comprising unlawful action and criminal intent.
18. Article 6 of the protocol requires State parties to criminalize the following actions for financial or material gain: migrant smuggling, the production of fake travel and identity documents for facilitating smuggling, assisting individuals who lack legal requirements to stay in a State, and involvement in attempts, complicity, or organizing and directing others in committing these offenses. Additionally, endangering migrants' lives and subjecting them to inhumane treatment are considered aggravating factors for these crimes.
19. Deciding whom to prosecute for migrant smuggling is a complex task. Failing to view the crime through a human rights lens may lead to unjust treatment of vulnerable groups. Prioritizing dismantling the financial aspects and organized crime networks involved in smuggling can help achieve the Smuggling of Migrants Protocol's objectives while maintaining fairness.

3.2 Developments, challenges and best practices in combating smuggling

20. The Working Group highlighted policy considerations related to the latest developments, challenges and best practices in preventing and combating the smuggling of migrants by sea. These recommendations stress the need to prioritize saving lives and ensuring safety when identifying vessels involved in smuggling. They also highlight that individuals who aid, rescue, or facilitate the safe landing of distressed smuggled migrants at sea should not face criminal charges.
21. Migrants and refugees resort to smugglers due to factors like conflict, persecution, and the promise of better economic opportunities. Limited access to safe and legal migration routes forces many to turn to smugglers as their only viable option. This reliance on smuggling networks puts them at greater risk of violence, exploitation, and even death. Restrictive migration policies have led to increased demand for smuggling services, pushing migrants onto longer and riskier routes with serious human rights implications.
22. Smuggling migrants by sea involves various life-threatening risks, including harsh weather, subpar equipment, and inadequate supplies and navigation skills. Some smugglers resort to

- killing or endangering migrants to damage vessels while others push migrants overboard to avoid detection even in calm seas.
23. It is crucial for authorities to investigate smuggling networks comprehensively, recognizing that these networks can span multiple countries and regions. Coordinating investigations into both sea and land/air movements allow for the detection of key organizers, particularly mid- and high-level smugglers.
 24. International collaboration, especially at the operational level along specific migrant smuggling routes, is vital for gathering crucial evidence. It involves sharing criminal intelligence among origin, transit, and destination countries. This requires strong political commitment for long-term success.
 25. Establishing jurisdiction for migrant smuggling on the high seas is a challenge, especially for vessels that are not flagged. When dealing with flagged vessels, the Smuggling of Migrants Protocol requires authorization from the flag State for actions against smuggling. For unflagged vessels, States can request assistance from other parties, but protecting migrants' human rights and respecting refugee law is crucial, as coercive measures may be involved.
 26. A significant challenge in prosecuting sea-based migrant smuggling is the lack of a common understanding of the crime and legal definitions among states. Some countries haven't included laws against migrant smuggling in their domestic legal systems.
 27. Smugglers are exploiting social media platforms like Facebook, Instagram, Telegram, Viber, TikTok, and YouTube to promote their services and reach potential clients. They leverage the anonymity and diverse client base provided by these communication tools. These platforms are used to share information about migration routes and logistics, as well as users' migration experiences.
 28. States should enhance cooperation by sharing information, utilizing databases, and witness protection programs to collect valuable data for investigations targeting smuggling organizers. Joint investigation teams have been effective in addressing online and financial aspects of the crime. Strengthening cooperation and understanding the transnational nature of migrant smuggling can be achieved by exchanging liaison magistrates between origin, transit, and destination countries.
 29. To enhance the detection of sea-based migrant smuggling, continuous assistance should be given to coastal States. This can include joint patrols, support from specialized agencies, and the provision of technical and human resources. Small island nations, in particular, require support to relieve the strain of patrolling search and rescue zones.

3.3 UNTOC Review Mechanism

30. The Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (UNTOC Review Mechanism) were deliberated upon. Following are the key takeaways from the discussions:–

3.3.1 Progress in implementing the UNTOC Review Mechanism

31. The UNTOC Review Mechanism has made significant progress in assessing the implementation of the UNTOC and its Protocols by States Parties. Since its launch in 2020, the Mechanism has conducted reviews of over 60 States Parties, covering a wide range of thematic areas, including criminalization, jurisdiction, international cooperation, and preventive measures.
32. The Mechanism's review process has been instrumental in identifying strengths and weaknesses in States Parties' implementation efforts. The Mechanism's peer-review approach, which involves the participation of experts from other States Parties, has provided valuable insights into different approaches and best practices.
33. In addition to identifying gaps in implementation, the UNTOC Review Mechanism has also provided States Parties with concrete recommendations on how to strengthen their implementation efforts. These recommendations have covered a wide range of topics, such as improving legislation, enhancing law enforcement capacity, and strengthening international cooperation.
34. The UNTOC Review Mechanism has played an important role in promoting transparency and accountability. The Mechanism's reports are publicly available, which allows for scrutiny of States Parties' implementation efforts. This transparency has helped to create an environment where States Parties are more likely to take action to address gaps in implementation.
35. The UNTOC Review Mechanism is a valuable tool in the fight against transnational organized crime. By continuing to strengthen its implementation efforts, the Mechanism can make an even greater contribution to global efforts to prevent and combat this serious crime. Some specific examples of the progress made by the UNTOC Review Mechanism include:
 - (a) Taking cognizance that many States Parties do not have adequate legislation to criminalize the smuggling of migrants. As a result of the Mechanism's recommendations, a number of States Parties have amended their legislation to address this gap;
 - (b) Providing States Parties with training on how to investigate and prosecute smuggling cases. This training has helped to improve the ability of law enforcement agencies to disrupt smuggling networks and bring smugglers to justice; and
 - (c) States Parties have been encouraged to share information and intelligence about smuggling networks. This cooperation has helped to disrupt smuggling activities and protect vulnerable migrants.

3.3.2 Challenges in implementing the UNTOC Review Mechanism

36. Limited resources have made it difficult for the UNTOC Review Mechanism to engage with civil society organizations and other stakeholders. This has limited the Mechanism's ability to collect information about the implementation of the UNTOC and its Protocols, and it has also limited the Mechanism's ability to disseminate its findings and recommendations.
37. Lack of awareness of the Mechanism has limited the ability of States Parties to benefit from the Mechanism's recommendations. States Parties that are not aware of the recommendations

may not be able to implement them, and States Parties that are aware of the recommendations may not have the resources to implement them.

38. The difficulty in obtaining data from States Parties has made it difficult for the UNTOC Review Mechanism to conduct comprehensive reviews. The Mechanism often has to rely on incomplete or inaccurate information, which can lead to flawed conclusions.

3.3.3 Ways to strengthen the UNTOC Review Mechanism

39. Increasing the resources for the UNTOC Review Mechanism is essential to its continued success. With additional funding, the Mechanism could conduct more reviews, provide more technical assistance to States Parties, and engage more with civil society organizations. This would allow the Mechanism to have a more comprehensive and impactful role in promoting the implementation of the UNTOC and its Protocols.
40. Raising awareness of the UNTOC Review Mechanism among States Parties is crucial to its effectiveness. Many States Parties are not aware of the Mechanism or its purpose, which has led to a lack of participation in the review process. By raising awareness, the Mechanism can encourage more States Parties to participate in reviews and benefit from the Mechanism's recommendations.
41. Improving the data collection process is essential for the UNTOC Review Mechanism to conduct comprehensive and accurate reviews. The Mechanism often has to rely on incomplete or inaccurate information from States Parties, which can lead to flawed conclusions. By improving data collection, the Mechanism can ensure that it has the information it needs to make sound recommendations.
42. In conclusion, the UNTOC Review Mechanism has made significant progress in promoting the implementation of the UNTOC and its Protocols. The Mechanism has assessed the progress of States Parties, provided valuable recommendations, and created an environment of transparency and accountability. However, challenges remain, including limited resources, lack of awareness, and difficulty in obtaining data. To address these challenges, the Mechanism should increase resources, raise awareness, and improve data collection. By strengthening the Mechanism, the global response to transnational organized crime can be strengthened.

4.0 KEY CONFERENCE OUTCOMES

Following are the key conference outcomes:

43. Urgent action is required to enhance search and rescue operations, especially considering that the first quarter of 2023 witnessed the highest number of migrant casualties in the Mediterranean since 2017. It is imperative to address monitoring deficiencies and human rights violations during these missions.
44. The involvement of humanitarian organizations is crucial in responding to migrant smuggling. They are key stakeholders who must be actively involved.
45. Despite the acknowledged importance of data in developing informed responses to sea smuggling, there is a scarcity of reliable and comprehensive data on this illicit activity. This dearth of information impedes effective maritime law enforcement efforts, international cooperation, and the formulation of evidence-based policies.
46. The battle against maritime smuggling frequently faces obstacles due to insufficient financial resources for conducting cross-border investigations. This budgetary constraint significantly restricts law enforcement agencies' capacity to efficiently pursue smugglers operating across international borders.
47. Numerous member countries do not possess the capacity or are hesitant to allocate funds for repatriating victims of human trafficking from abroad, as this falls outside the scope of their national budget allocation.
48. To enhance the prosecution of land-based smugglers behind sea migrant trafficking, law enforcement should utilize databases and boost cooperation between countries along smuggling routes. Building trust with rescued migrants can help gather information on land-based smugglers.
49. The prevailing focus on trafficking has led to a potential oversight of smuggling cases, indicating a need for nuanced distinctions in legal and policy responses to ensure a comprehensive approach. Migrant trafficking involves exploiting individuals through coercion or deception for forced labor or sexual exploitation, with traffickers seeking financial gain. In contrast, migrant smuggling centers on facilitating illegal border crossing for profit, where individuals willingly pay for assistance in evading immigration controls and reaching their destination. Both contribute to illicit migration, but trafficking involves exploitation, while smuggling focuses on assisting individuals to cross borders unlawfully for a fee;
50. Kenya actively participates in international initiatives aimed at collecting relevant data on maritime migrant smuggling. These engagements are important as they facilitate the development of more effective strategies to combat this illicit practice;
51. Pakistan's Prevention of Smuggling of Migrants Act, 2018, and Egypt's Law on Combating Illegal Migration and Smuggling of Migrants, 2016 are appropriate model laws for the development of anti-smuggling legislation;
52. Public awareness campaigns are an important tool that can be used to highlight the dangers of migrant smuggling. Australian Border Protection Command for instance employs public

information campaigns to dissuade potential migrants and raise awareness about the risks involved in irregular migration.

53. In order to ensure the deployment of effective interventions, it's important that parties to the convention must invest in cutting-edge technology for border surveillance and interception capabilities. The United States, through agencies like Customs and Border Protection, leverages drone technology and advanced sensors for effective monitoring of its borders, including coastal areas.

5.0 COMMITTEE OBSERVATIONS

54. The Committee observed that:

- 1) Kenya lacks specific legislation addressing smuggling hence the importance of developing targeted legal frameworks to address this aspect of irregular migration. Kenya's strategic location may make it a potential transit route for maritime migrant smuggling to Europe or the Middle East.
- 2) There is need for the government to recognize sea smuggling as a component of broader criminal networks and, encourage international collaboration in the fight against organized crime by seeking ways to foster partnerships with countries known for successful anti-migrant smuggling programs. For instance, the collaboration between Italy and Libya has seen joint patrols and information-sharing, contributing to effective control of migration routes in the Mediterranean.
- 3) In order to ensure the deployment of effective interventions, it's important that parties to the convention must invest in cutting-edge technology for border surveillance and interception capabilities. Adequate training for personnel engaged in interception operations is also crucial to addressing the unique challenges presented by migrant smuggling scenarios;
- 4) Public awareness campaigns are an important tool that can be used to highlight the dangers of migrant smuggling.

6.0 COMMITTEE RECOMMENDATIONS


55. Arising from the observations made and lessons learnt, the Committee recommends that:

- 1) The Cabinet Secretary, Ministry of Labour and Social Protection:
 - i. Initiates the process of developing standalone anti-smuggling law to provide for effective measures to prevent and combat the smuggling of migrants within one year of tabling of the report.
 - ii. Work together with other relevant Ministries to harmonize existing national legislation with the Smuggling of Migrants Protocol, incorporating provisions that allow for the enforcement of sea interception measures while upholding international human rights and refugee laws.
 - iii. Prioritizes the enhancement of legal migration opportunities by creating accessible, well-regulated channels to reduce smuggling through sea routes and conducts public awareness initiatives highlighting the dangers of migrant smuggling
- 2) The Cabinet Secretary, National Treasury and Economic Planning allocates sufficient budgetary resources for advanced surveillance equipment, communication systems, and vessels, ensuring the Kenya Coast Guard Service and other enforcement agencies are well-equipped to effectively address migrant smuggling across sea routes.

SIGNED..........DATE.....*02/12/23*.....

HON. HAIKA MIZIGHI, M.P.

CHAIRPERSON, DIASPORA AFFAIRS AND MIGRANT WORKERS COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2023	
DAY: <i>Tuesday</i>	
TABLED BY:	<i>Hon. Lydia Haika (Chairperson, Diaspora Affairs & Migrant Workers Committee)</i>
CLERK-AT THE TABLE:	<i>Inzeju Mwale</i>

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT- SECOND SESSION (2023)

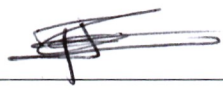




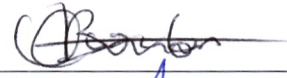

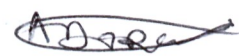



DIASPORA AFFAIRS AND MIGRANT WORKERS COMMITTEE

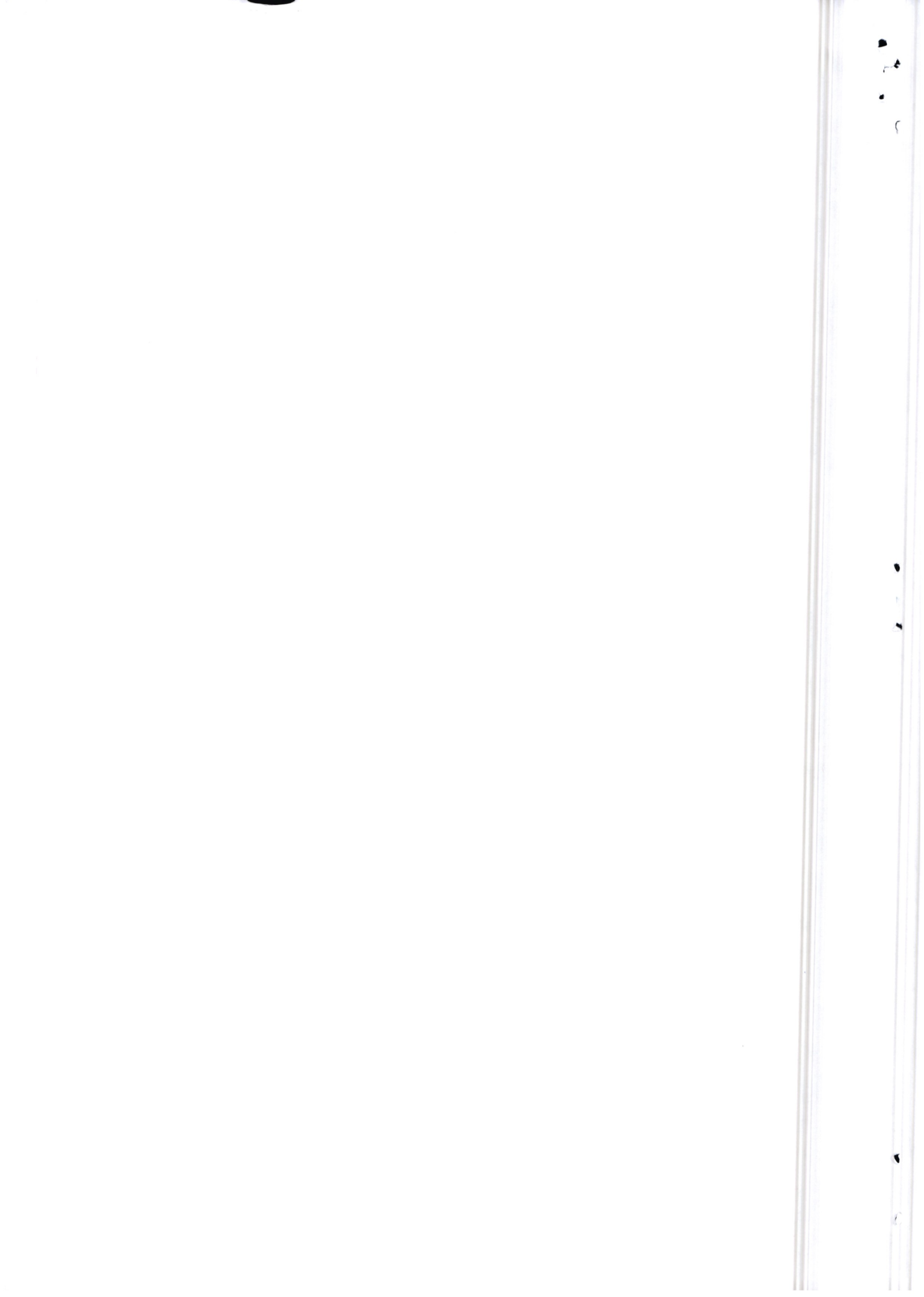
ADOPTION LIST

Report on the Committee Participation in the 10th Session of the Working Group on the smuggling of migrants and the Constructive Dialogue on the UNTOC review Mechanism in Vienna, Austria.

We, the undersigned members of the Diaspora Affairs and Migrant Workers Committee do hereby append our signatures to this Report to affirm our approval:

DATE: _____

	HON. MEMBER	SIGNATURE
1.	Hon. Haika Mizighi, MP (Chairperson)	
2.	Hon. Simon Nganga Kingara, MP (Vice Chairperson)	
3.	Hon. Fred C. Kapondi, MP	
4.	Hon. Capt. Ruweida Mohamed Obo, MP	
5.	Hon. Charity Kathambi Chepkwony, MP	
6.	Hon. Kemei Justice Kipsang, MP	
7.	Hon. Ibrahim Abdi Saney, MP	
8.	Hon. Paul Ongili Babu Owino, MP	
9.	Hon. Rashid Juma Bedzimba, MP	
10.	Hon. Donya Dorice Aburi, MP	
11.	Hon. Leah Sopiato Sankaire, MP	
12.	Hon. Pamela Njoki Njeru Double N, MP	
13.	Hon. Titus Lotee, MP	
14.	Hon. Phelix Odiwuor Khodhe, MP	
15.	Hon. Zamzam Chimba Mohamed, MP	



MINUTES OF THE 46TH SITTING OF THE DIASPORA AFFAIRS AND MIGRANT WORKERS HELD ON SATURDAY 18TH NOVEMBER, 2023 AT 9.30AM IN THE GARDEN SUITE 3, 6TH FLOOR, HILTON GARDEN INN HOTEL, MACHAKOS COUNTY

PRESENT

1. The Hon. Haika Mizighi, MP. - **Chairperson**
2. The Hon. Simon Nganga Kingara, MP. - **Vice Chairperson**
3. The Hon. Capt. Ruweida Mohamed Obo, MP.
4. The Hon. Charity Kathambi Chepkwony, MP.
5. The Hon. Kemei Justice Kipsang, MP.
6. The Hon. Ibrahim Abdi Saney, MP.
7. The Hon. Rashid Juma Bedzimba, MP.
8. The Hon. Donya Dorice Aburi, MP.
9. The Hon. Pamela Njoki Njeru Double N, MP.
10. The Hon. Titus Lotee, MP.
11. The Hon. Phelix Odiwuor Khodhe, MP.
12. The Hon. Zamzam Chimba Mohamed, MP.

ABSENT WITH APOLOGY

1. The Hon. Fred C. Kapondi, MP.

ABSENT

1. The Hon. Paul Ongili Babu Owino, MP.
2. The Hon. Leah Sopiato Sankaire, MP.

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Lucy Kimathi - Principal Clerk Assistant I/ HOD
2. Ms. Ruth Mwhaki Gakuya - First Clerk Assistant
3. Ms. Fidlizah S. Mwangogo - Third Clerk Assistant
4. Ms. Viola K. Saiya - Researcher III
5. Mr. Collins Mahamba - Audio Officer III
6. Mr. Meshack Mutali - Serjeant At Arms
7. Ms. Juliet Minayo - Office Assistant

MIN.NO.NA/DA&MWC/2023/191: PRELIMINARIES

The Chairperson called the meeting to order at 9.45am with a prayer.

**CONSIDERATION OF THE DELEGATION
REPORT ON THE COMMITTEE
PARTICIPATION IN THE 10TH SESSION OF
THE WORKING GROUP ON THE
SMUGGLING OF MIGRANTS AND THE
CONSTRUCTIVE DIALOGUE ON THE
UNTOC REVIEW MECHANISM IN VIENNA,
AUSTRIA**

The Committee considered the report and noted that:

1. The Committee was invited by the Ministry of Labour and Social Protection, State Department for Labour and Skills Development to participate in the UNTOC Review Mechanism at the 10th Session of the Working Group on the Smuggling of Migrants that was held from 5th to 9th October, 2023 in Vienna, Austria.
2. Conference of the Parties to the United Nations Convention against Transnational Organized Crime in its Resolution 7/1, entitled “*Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*”, resolved that the Working Group on the Smuggling of Migrants would be a constant element of the Conference forwarding its reports and recommendations to the Conference and encouraged the Working Group to consider meeting on an annual basis as well as hold its meetings consecutively with other working groups of the Conference.
3. The agreed agenda items for the meeting were:
 - a) Determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler;
 - b) Developments, challenges and best practices in preventing and combating the smuggling of migrants by sea; and
 - c) Matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.
4. The Committee observed that;
 - a) Kenya actively participates in international initiatives aimed at collecting relevant data on maritime migrant smuggling. These engagements are important as they facilitate the development of more effective strategies to combat this illicit practice;
 - b) The prevailing focus on trafficking has led to a potential oversight of smuggling cases, indicating a need for nuanced distinctions in legal and policy responses to ensure a comprehensive approach.
 - c) Migrant trafficking involves exploiting individuals through coercion or deception for forced labor or sexual exploitation, with traffickers seeking financial gain. In contrast, migrant smuggling centers on facilitating illegal border crossing for profit, where individuals willingly pay for assistance in evading immigration controls and reaching their destination. Both contribute to illicit migration, but trafficking involves exploitation, while smuggling focuses on assisting individuals to cross borders unlawfully for a fee;


- d) Kenya lacks specific legislation addressing smuggling hence the importance of developing targeted legal frameworks to address this aspect of irregular migration. Pakistan's Prevention of Smuggling of Migrants Act, 2018, and Egypt's Law on Combating Illegal Migration and Smuggling of Migrants, 2016 are appropriate model laws for the development of anti-smuggling legislation;
 - e) Kenya's strategic location may make it a potential transit route for maritime migrant smuggling. Migrants from East Africa and the Horn of Africa may use Kenya as a staging post to travel to Europe or the Middle East.
 - f) There is need for the government to recognize sea smuggling as a component of broader criminal networks and, encourage international collaboration in the fight against organized crime by seeking ways to foster partnerships with countries known for successful anti-migrant smuggling programs. For instance, the collaboration between Italy and Libya has seen joint patrols and information-sharing, contributing to effective control of migration routes in the Mediterranean. The Pacific is also the most notorious route for smuggling of persons, a special unit should be established at sea to take care of this menace.
 - g) Adequate training for personnel engaged in interception operations is crucial to addressing the unique challenges presented by migrant smuggling scenarios;
 - h) In order to ensure the deployment of effective interventions, Kenya must invest in cutting-edge technology for border surveillance and interception capabilities. The United States, through agencies like Customs and Border Protection, leverages drone technology and advanced sensors for effective monitoring of its borders, including coastal areas.
 - i) Public awareness campaigns are an important tool that can be used to highlight the dangers of migrant smuggling. Australian Border Protection Command for instance employs public information campaigns to dissuade potential migrants and raise awareness about the risks involved in irregular migration.
5. The Committee recommended that ;
- a. The Ministry of Labour and Social Protection should:
 - (i) Initiate the process of developing standalone anti-smuggling law to provide for effective measures to prevent and combat the smuggling of migrants by land, sea, and air and giving enforcement agencies with explicit authority and tools to combat migrant smuggling, covering land, air, and sea operations.
 - (ii) Work together with other relevant Ministries to harmonize existing national legislation with the Smuggling of Migrants Protocol, incorporating provisions that allow for the enforcement of sea interception measures while upholding international human rights and refugee laws.
 - (iii) Prioritize the enhancement of legal migration opportunities by creating accessible, well-regulated channels to reduce smuggling through sea routes and conducts public awareness initiatives highlighting the dangers of migrant smuggling
 - (iv) Utilize the assistance provided by the International Organization for Migration (IOM's) Immigration and Border Management (IBM) Division that supports Member States to build and strengthen their capacity to directly intervene in and disrupt migrant smuggling operations.

- b. The National Treasury should allocate sufficient budgetary resources for advanced surveillance equipment, communication systems, and vessels, ensuring the Kenya Coast Guard Service and other enforcement agencies are well-equipped to effectively address migrant smuggling across sea routes.

The report was adopted having been proposed by the Hon. Simon Nganga Kingara, M.P and Seconded by the Hon. Zamzam Chimba Mohamed, M.P.

MIN.NO.NA/DA&MWC/2023/193 ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 12.23 p.m. The next meeting will be held at 2.30pm.

SIGNED.....  DATE 04/12/23

CHAIRPERSON

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2023	DAY:
TABLED BY:	
CLERK AT THE TABLE:	