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SNA  
4/9/23*

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

REPORT OF  
THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING  
ON  
THE RATIFICATION OF THE KIGALI AMENDMENTS ON THE MONTREAL  
PROTOCOL ON THE SUBSTANCES THAT DEplete THE OZONE LAYER

THE NATIONAL ASSEMBLY  
PAPERS LAID

DATE: 04 MAY 2023

DAY:  
Thursday

TABLED  
BY:

Hon. David Gikaria (Chairperson,  
Committee on Environment, Forestry  
and Mining)

CLERK-AT  
THE-TABLE:

Joyce Kemelle

DIRECTORATE OF DEPARTMENTAL COMMITTEES,  
CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI.

MAY, 2023

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## LIST OF ABBREVIATIONS.

MFA	Ministries of Foreign Affairs
USD	United State Dollar
GWPs	Global Warming Potentials
ODSs	Ozone-depleting Substances
HFCs	Hydrofluorocarbons
NDC	Nationally Determined Contribution
RAC	Refrigeration and Air Conditioning
CFCs	Chlorofluorocarbons

## **CHAIRPERSON'S FOREWORD**

The Cabinet Secretary, Ministry of Foreign Affairs, submitted a memorandum to the National Assembly dated 29<sup>th</sup> November 2022 regarding the treaty on the Kigali Amendments to the Montreal Protocol on Substance that Deplete the Ozone Layer. The memorandum and text of the Protocols were committed to the Departmental Committee on Environment, Forestry and Mining for processing.

The treaty on the Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer was adopted on 15<sup>th</sup> October 2016 in Kigali, Rwanda, and the commencement of the accession process of the protocols was approved by Cabinet during its meeting of 12<sup>th</sup> May 2022. While considering the protocols, the Committee held a total of Two sittings.

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 Clerk of the National Assembly placed advertisements in two local dailies of nationwide circulation, on 16<sup>th</sup> December 2022 requesting for submission of memoranda on the subject by 8<sup>th</sup> January, 2023. The Committee received no submissions from the public by close of business 8<sup>th</sup> January, 2023.

Further, the Committee deliberated on the protocols with the agencies involved, in recognition of the cross cutting nature of the protocols.

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 treaty on the Kigali Amendments to the Montreal Protocol on Substance that Deplete the Ozone Layer

**HON DAVID GIKARIA. MP**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY  
AND MINING**

## CHAPTER ONE

### 1.0 PREFACE

#### 1.1 Establishment of the Committee

1. The Departmental Committee on Environment, Forestry and Mining is one of the twenty 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. *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 27<sup>th</sup> October 2022 and comprises of the following Members:

**Chairperson**

The Hon. David Gikaria, MP  
Nakuru Town East Constituency

**UDA Party**

**Vice-Chairperson**

The Hon. Charles Kamuren, MP  
Baringo South Constituency

**UDA Party**

**Members**

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

**Wiper Democratic Movement**

The Hon. Yakub Adow Kuno, M.P.  
Bura Constituency

**United Party of Independent Alliance (UPIA)**

The Hon. Mwanyanje Gertrude Mbeyu, M.P.  
Kilifi County,

**Orange Democratic Movement (ODM)**

The Hon. Salim Feisal Bader, M.P.  
Msambweni Constituency

**United Democratic Alliance (UDA)**

The Hon. Hiribae Said Buya, M.P.  
Galole Constituency

**Orange Democratic Movement (ODM)**

The Hon. Joseph Wainaina Iraya, M.P.  
Nominated,

**United Democratic Alliance (UDA)**

The Hon. Emathe Joseph Namuah, M.P.  
Turkana Central Constituency

**United Democratic Party (UDA)**

The Hon. Kururia Elijah Njoroge, M.P.  
Gatundu North Constituency

**Independent Member**

The Hon. Kemei Beatrice Chepng'eno, M.P.  
Kericho County

**United Democratic Alliance (UDA)**

The Hon. Nguro Onesmus Ngogoyo, M.P.  
Kajiado North Constituency

**United Democratic Alliance (UDA)**

The Hon. Masito Fatuma Hamisi, M.P.  
Kwale County

**Orange Democratic Movement (ODM)**

The Hon. Mohamed Tubi Bidu, M.P.  
Isiolo South Constituency

**Jubilee Party (KPP)**

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

**Kenya Union Party (KUP)**

**1.4 Committee Secretariat**

5. The Committee is serviced by the following Members of Staff:

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

Ms. Rose Natecho  
**Clerk Assistant III**

Mr. Hamdi H. Mohamed  
**Clerk Assistant III**

Ms. Mercy Wanyonyi  
**Senior Legal Counsel**

Dr. Joseph Kuria  
**Research Officer II**

Ms. Nancy Chamunga  
**Fiscal Analyst III**

Ms. Catherine Wangui  
**Senior Sergeant-At-Arms**

Ms. Maryam Gabow  
**Protocol Officer**

Ms. Edith Chepngeno  
**Media Relations Officer II**

## CHAPTER TWO

### 2.0 ANALYSIS OF THE AGREEMENT

#### 2.1 Background

6. 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;
7. The Amendment was adopted at the 28<sup>th</sup> Meeting of the Parties to Montreal Protocol on 15<sup>th</sup> October, 2016 in Kigali, Rwanda. Adopted 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.
8. 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. Moreover, 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.
9. 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.
10. 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 law of Kenya under this Constitution.
11. The Treaty Making and Ratification Act, No. 45 of 2012 (hereinafter referred to as "the Act") was enacted by Parliament to give effect to Article 2(6) of the Constitution. The Act governs the making and ratification of treaties in Kenya.
12. Section 2 of the Act defines a treaty as an "international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention".
13. Under the Constitution and the Act, the responsibility of initiating the treaty making process, negotiating and ratifying a Treaty lies with the Executive. In making this decision, the Executive ought to be guided by Section 5(2) of the Act which provides considerations that must be followed including:
  - a) the need that the new treaty is to meet;
  - b) the existing legal regime, including the extent of its applicability to the perceived problem;
  - c) the probability of reaching the required measure of agreement on the solution aimed for;

- d) any relevant legislative efforts related to the perceived problem;
- e) the optimal form for the proposed treaty;
- f) the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral;
- g) the anticipated time schedule for completing the treaty-making process;
- h) the expected costs of formulating and adopting the treaty to Kenya; and
- i) in formulating treaties relating to technical or scientific problems; whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.

## **2.2 Problem Statement**

- 14. Article 4 of the Montreal Protocol restricts Parties from trading on controlled substances with states not a party to the Protocol. When Article 4 enters into force for the Kigali Amendment, the Amendment will restrict trade in HFCs between parties and states that are not parties to the Kigali Amendment.
- 15. A non-party to the Kigali Amendment may operate with technologies that are becoming obsolete and would fail to update its processes and facilities, thus operating at an economic disadvantage. This would result in the loss of export markets for non-party industries even before the protocol trade controls apply to HFCs and would inhibit the use of the latest innovative technology in related fields.
- 16. The Kigali Amendment was adopted to phase down HFCs, which are frequently used as substitutes for ozone-depleting substances (ODSs). Although HFCs are not ODS, they are powerful greenhouse gases that have significant global warming potentials (GWPs).

## **2.3 Economic, Environmental and Social Impacts**

- 17. Developing countries that are parties to the Kigali Amendment will have access to financial and technical support provided under the Protocol.
- 18. Through the Kigali Amendment, the Montreal Protocol takes responsibility for HFCs and plays a leading role in working towards an environmentally sustainable world where no one is left behind, consistent with the 2030 Agenda for Sustainable Development.
- 19. It is recognized that reducing the use of HFCs is one of the most cost effective ways of reducing greenhouse gas emissions. Under the Paris Agreement on climate change, the country has made an intended Nationally Determined Contribution (NDC) specifying the level of greenhouse gas (GHG) emission reduction that the country will aim to achieve. Reducing the use and emissions of HFCs through action can make a useful contribution to these emission reduction targets.
- 20. 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.

## **2.4 Obligations Imposed by the Kigali Amendments**

- 21. The Obligations imposed by the Kigali Amendment under Article 2J are for state parties to:-
  - (a) Reduce the consumption of Annex F Group 1HFCs 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.
22. 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.

## CHAPTER THREE

### 3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT

#### 3.1 Public Participation

23. Article 118 (1) (b) of the Constitution of Kenya provides that, "*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.*"
24. Section 8(3) of the Treaty Making and Ratification Act, No. 45 of 2012 provides that "*the relevant Parliamentary Committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures*".
25. Standing Order 170A (2) provides that "*the Committee shall undertake public participation before submitting its report to the House.*"
26. Pursuant to the aforementioned provisions of the Constitution, the Treaty Making and Ratification Act, 2012 and Standing Orders, the Committee through local daily newspapers of 16<sup>th</sup> December, 2022 published an advertisement inviting the public to submit memoranda.

#### 3.2 Submissions by the Ministries

27. On the 2<sup>nd</sup> March, 2023, the Principal Secretaries for the State Department of Environment and Climate Change and the 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:
28. That, 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
29. The Amendment was adopted at the 28th Meeting of the Parties to Montreal Protocol on 15th October 2016 in Kigali, Rwanda. Adopted 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.
30. 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. Moreover, 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.

##### 3.2.1 Current Status of Kigali Amendment

31. Kenya participated in the 34<sup>th</sup> Meeting of the Parties to the Montreal Protocol on substances that deplete the Ozone Layer held in Montreal Canada from 31<sup>st</sup> October to 4<sup>th</sup> November, 2022.

32. As of 4<sup>th</sup> November, 2022, 143 parties had ratified the Kigali Amendment. Decision XXXIV/22 on the status of ratification of the Kigali Amendment urged parties to consider ratifying the Amendment to ensure broad participation and achieve the goals of the amendment among other things.
33. During the meeting, under decision XXXIV/20 on Membership of the Executive Committee of the Multilateral Fund, Kenya was selected as one of the members of the Executive Committee of the Multilateral Fund for the implementation of the Montreal Protocol.

### **3.2.2 Obligations Imposed on Kenya by the Kigali Amendment**

34. 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. These are in Article 2J of the Amendment which prescribes that State Parties will:
  - i. 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 that are specified in subparagraphs (a) to (e).
  - ii. State parties that are involved in producing the controlled substances under Annex F do not exceed the percentages that are outlined in paragraphs, 2(J)(3)(a) to (e).
  - iii. Destroy Annex F Group II HFC by the percentage timelines and processes set out under Article 2J and Article 5.
  - iv. Gradually reduce the use of HFCs by 80-85% by the late 2040s.
  - v. Reset the trading of controlled substances under Annex F with states that are not parties to the protocol among other things.
  - vi. 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).

### **3.2.3 Problem Statement**

35. Article 4 of the Montreal Protocol restricts Parties from trading on controlled substances with states not a party to the Protocol. When Article 4 enters into force for the Kigali Amendment, the Amendment will restrict trade in HFCs between parties and states that are not parties to the Kigali Amendment.
36. A non-party to the Kigali Amendment may operate with technologies that are becoming obsolete and would fail to update its processes and facilities, thus operating at an economic disadvantage. This would result in the loss of export markets for non-party industries even before the protocol trade controls apply to HFCs and would inhibit the use of the latest innovative technology in related fields
37. The Kigali Amendment was adopted to phase down HFCs, which are frequently used as substitutes for ozone-depleting substances (ODSs).

### **3.2.4 Benefits of Ratifying the Convention**

38. Financial support; 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.
39. The Amendment maintains the Multilateral Fund for the implementation of the Montreal Protocol as the financial mechanism and that sufficient additional financial resources will be provided by developed countries (Parties not operating under paragraph 1 of Article 5 of the Montreal Protocol) to offset costs arising out of hydrofluorocarbon obligations for developing countries (Parties operating under paragraph 1 of Article 5) under the Amendment.
40. Developing countries will have the flexibility to prioritize HFCs, select technologies and alternatives, and implement their strategies to meet agreed HFC obligations, based on their specific needs and national circumstances, following a country-driven approach. Further, there will be support for enabling activities for import and export licensing and quotas, demonstration projects and the development of national strategies for phasing down HFCs.

### **3.2.5 Justification for Ratifying Kigali Amendment**

41. Kenya is already a member State of the Montreal Protocol on Substances that Deplete the Ozone Layer and ratifying the Kigali Amendment will further demonstrate its commitment to the international community's collective action against ozone-layer depletion and curbing global warming. The Kigali Amendment is aligned with the objectives of Kenya's Climate Change Act 2016.
42. The Montreal Protocol has put the ozone layer on the road to recovery by phasing out ozone-depleting substances (ODSs) and in the process has also mitigated climate change. Under the Amendment, parties will phase down the production and consumption of HFCs, creating the potential to avoid up to 0.5°C of warming by the end of the century;
43. The Kigali Amendment encourages the use of other environment-friendly alternatives to HFCs, and implementing it will give Kenya a competitive advantage in the world market. Alternative technologies are often cost-effective and lead to an improvement in the quality of the products, including in energy efficiency;
44. Kenya will avoid trade restrictions that will be imposed onto States that are not a party to the Protocol by 1st January, 2033; and
45. Ratifying the Convention will demonstrate Kenya's commitment to the International Community's collective action against ozone-layer depletion and global warming.

### **3.2.6 Constitutional and Legislative Implications**

46. The Amendments do not pose any threats to our national interests as they enhance the provisions of the Montreal Protocol which Kenya already ratified.
47. 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 and therefore implementation will not be hindered by domestic law.

### **3.2.7 Reservations**

48. The Montreal Convention does not provide for reservations and it, therefore, follows that ratification of the Kigali amendments is without reservations. In any event, the Treaty's object is to protect the environment and there are no imminent issues that may warrant accession with reservations.

### **3.2.8 The Economic, Environmental and Social Impacts**

49. Developing countries that are parties to the Kigali Amendment will have access to financial and technical support provided under the Protocol.
50. Through the Kigali Amendment, the Montreal Protocol takes responsibility for HFCs and plays a leading role in working towards an environmentally sustainable world where no one is left behind, consistent with the 2030 Agenda for Sustainable Development.
51. It is recognized that reducing the use of HFCs is one of the most cost-effective ways of reducing greenhouse gas emissions. Under the Paris Agreement on climate change, the country has made an intended Nationally Determined Contribution (NDC) specifying the level of greenhouse gas (GHG) emission reduction that the country will aim to achieve. Reducing the use and emissions of HFCs through action can make a useful contribution to these emission reduction targets.
52. 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.

## CHAPTER FOUR

### 4.0 COMMITTEE OBSERVATIONS

53. 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:

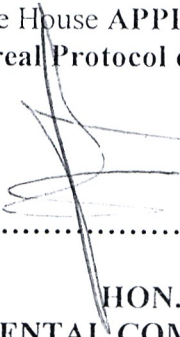
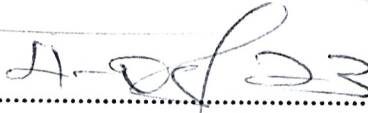
- 1) That, the Kigali Amendment was adopted at the 28<sup>th</sup> Meeting of the Parties to Montreal Protocol on 15<sup>th</sup> October, 2016 in Kigali, Rwanda to phase down hydro fluorocarbons (HFCs). While Kenya has ratified the Montreal Protocol, it is yet to ratify the Kigali Amendment. The Amendment entered into force in January 2019.
- 2) 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.
- 3) 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.
- 4) That, developing countries that are parties to the Kigali Amendment will have access to financial and technical support provided under the Protocol.
- 5) 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.
- 6) 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 and therefore implementation will not be hindered by domestic law.
- 7) 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.
- 8) 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.
- 9) Ratification of the Treaty will catalyze realization of 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.

- 10) 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.
- 11) 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.
- 12) That, the Convention does not permit reservations.
- 13) 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.
- 14) 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.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATION

54. Having considered the submissions, and analyzed documents tabled, and pursuant to Section 8 of Treaty Making and Ratification Act, the Committee recommends that the House **APPROVES the Ratification of the Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone layer.**

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


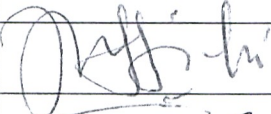


ADOPTION OF THE REPORT ON CONSIDERATION OF THE FOLLOWING TREATIES:

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, 3<sup>rd</sup> 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  
13<sup>TH</sup> PARLIAMENT - SECOND SESSION, 2023  
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

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

**PRESENT.**

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

**APOLOGY**

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

**ABSENT**

1. The Hon. Hiribae Said Buya, MP.

**IN-ATTENDANCE; THE COMMITTEE SECRETARIAT**

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

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

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

**AGENDA:**

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

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

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

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

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

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

- ii. That, the Kigali Amendment was adopted at the 28<sup>th</sup> Meeting of the Parties to Montreal Protocol on 15<sup>th</sup> 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 4<sup>th</sup> 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 30<sup>th</sup> January 1991 and came into force on 22<sup>nd</sup> April, 1998. Currently, thirty-five (35) African states have signed the Convention. Kenya signed the Convention on the 17<sup>th</sup> 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: 4-05-23

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



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

13<sup>TH</sup> PARLIAMENT - SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

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

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**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<br>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 Kiprof          | - | 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 12<sup>th</sup> 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 28<sup>th</sup> Meeting of Parties on the 15<sup>th</sup> 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 30<sup>th</sup> January 1991 and came into force on 22<sup>nd</sup> April 1998. Currently, thirty-five (35) African states have signed the Convention. Kenya signed the Convention on the 17<sup>th</sup> 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 21<sup>st</sup> 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 31<sup>st</sup> 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 7<sup>th</sup> 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 KIGALI AMENDMENT TO THE MONTREAL PROTOCOL ON  
SUBSTANCES THAT DEplete THE OZONE LAYER

1.0. BACKGROUND

- 1.1. 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
- 1.2. The Amendment was adopted at the 28<sup>th</sup> Meeting of the Parties to Montreal Protocol on 15<sup>th</sup> October 2016 in Kigali, Rwanda. Adopted 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.
- 1.3. The Kigali Amendment is and 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. Moreover, 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.

## **2.0. CURRENT STATUS OF KIGALI AMENDMENT**

- 2.1. Kenya participated in the 34th Meeting of the Parties to the Montreal Protocol on substances that deplete the Ozone Layer held in Montreal Canada from 31<sup>st</sup> October to 4<sup>th</sup> November 2022.
- 2.2. As of 4<sup>th</sup> November 2022 143 parties had ratified the Kigali Amendment. Decision XXXIV/22 on the status of ratification of the Kigali Amendment urged parties to consider ratifying the Amendment to ensure broad participation and achieve the goals of the amendment among other things.
- 2.3. During this meeting, under decision XXXIV/20 on Membership of the Executive Committee of the Multilateral Fund, Kenya was selected as one of the members of the Executive Committee of the Multilateral Fund for the implementation of the Montreal Protocol.

## **3.0. OBLIGATIONS IMPOSED ON KENYA BY KIGALI AMENDMENT**

- 3.1. 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. These are in Article 2J of the Amendment which prescribes that State Parties will:
  - 3.1.1. 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 that are specified in subparagraphs (a) to (e).
  - 3.1.2. State parties that are involved in producing the controlled substances under Annex F do not exceed the percentages that are outlined in paragraphs, 2(J)(3)(a) to (e).
  - 3.1.3. Destroy Annex F Group II HFC by the percentage timelines and processes set out under Article 2J and Article 5.
  - 3.1.4. Gradually reduce the use of HFCs by 80-85% by the late 2040s.
  - 3.1.5. Reset the trading of controlled substances under Annex F with states that are not parties to the protocol among other things.

3.1.6. 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).

#### 4.0. PROBLEM STATEMENT

- 4.1. Article 4 of the Montreal Protocol restricts Parties from trading on controlled substances with states not a party to the Protocol. When Article 4 enters into force for the Kigali Amendment, the Amendment will restrict trade in HFCs between parties and states that are not parties to the Kigali Amendment.
- 4.2. A non-party to the Kigali Amendment may operate with technologies that are becoming obsolete and would fail to update its processes and facilities, thus operating at an economic disadvantage. This would result in the loss of export markets for non-party industries even before the protocol trade controls apply to HFCs and would inhibit the use of the latest innovative technology in related fields
- 4.3. The Kigali Amendment was adopted to phase down HFCs, which are frequently used as substitutes for ozone-depleting substances (ODSs). Although HFCs are not ODS, they are powerful greenhouse gases that have significant global warming potentials (GWPs) as shown in the table below:

Global Warming Potentials (GWPs) and Ozone Depletion Potentials (ODPs) of some common refrigerants

Type	Gas	GWP	ODP
ODS	CFC – 12	10900	1.0
	HCFC – 22	1810	0.055
HFC	HFC – 404A	3922	0
	HFC – 410A	2088	0
	HFC – 134a	1430	0
	HFC – 32	675	0
Natural	Propane	3	0
	Carbon dioxide	1	0

Source: OzonAction Kigali Fact sheet, UN Environment

From the table, it is worth noting that CFCs, which are ozone-depleting substances (ODSs) have higher GWPs than HFCs. The phase-out of ozone-depleting substances was carried out to protect the ozone layer, but they have positive impacts on mitigating climate change. Because HFCs have high GWPs, they have to be phased down under the Kigali Amendment to mitigate climate change. Hence, the need for ratification of the Amendment.

## 5.0. BENEFITS OF RATIFYING THE CONVENTION

- 5.1. **Financial support;** 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.
- 5.2. The Amendment maintains the **Multilateral Fund for the implementation of the Montreal Protocol** as the financial mechanism and that sufficient additional financial resources will be provided by developed countries (Parties not operating under paragraph 1 of Article 5 of the Montreal Protocol) to offset costs arising out of hydrofluorocarbon obligations for developing countries (Parties operating under paragraph 1 of Article 5) under the Amendment.
- 5.3. Developing countries will have the flexibility to prioritize HFCs, select technologies and alternatives, and implement their strategies to meet agreed HFC obligations, based on their specific needs and national circumstances, following a country-driven approach. Further, there will be support for enabling activities for import and export licensing and quotas, demonstration projects and the development of national strategies for phasing down HFCs.

## 6.0. JUSTIFICATION FOR RATIFYING KIGALI AMENDMENT

- 6.1. Kenya is already a member State of the Montreal Protocol on Substances that Deplete the Ozone Layer and ratifying the Kigali Amendment will further demonstrate its commitment to the international community's

collective action against ozone-layer depletion and curbing global warming. The Kigali Amendment is aligned with the objectives of Kenya's Climate Change Act 2016.

- 6.2. The Montreal Protocol has put the ozone layer on the road to recovery by phasing out ozone-depleting substances (ODSs) and in the process has also mitigated climate change. Under the Amendment, **parties will phase down the production and consumption of HFCs, creating the potential to avoid up to 0.5°C of warming by the end of the century;**
- 6.3. Kigali Amendment encourages the use of other environment-friendly alternatives to HFCs, and implementing it will give Kenya a competitive advantage in the world market. Alternative technologies are often cost-effective and lead to an improvement in the quality of the products, including in energy efficiency;
- 6.4. Kenya will avoid trade restrictions that will be imposed onto States that are not a party to the Protocol by 1<sup>st</sup> January, 2033; and
- 6.5. Ratifying the Convention will demonstrate Kenya's commitment to the International Community's collective action against ozone-layer depletion and global warming.

## **7.0. CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS**

- 7.1. The Amendments do not pose any threats to our national interests as they enhance the provisions of the Montreal Protocol which Kenya already ratified.
- 7.2. 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 and therefore implementation will not be hindered by domestic law.

## **8.0. RESERVATIONS**

- 8.1. The Montreal Convention does not provide for reservations and it, therefore, follows that ratification of the Kigali amendments is without

reservations. In any event, the Treaty's object is to protect the environment and there are no imminent issues that may warrant accession with reservations.

## **9.0. THE ECONOMIC, ENVIRONMENTAL AND SOCIAL IMPACTS**

- 9.1. Developing countries that are parties to the Kigali Amendment will have access to financial and technical support provided under the Protocol.
- 9.2. Through the Kigali Amendment, the Montreal Protocol takes responsibility for HFCs and plays a leading role in working towards an environmentally sustainable world where no one is left behind, consistent with the 2030 Agenda for Sustainable Development.
- 9.3. It is recognized that reducing the use of HFCs is one of the most cost-effective ways of reducing greenhouse gas emissions. Under Paris Agreement on climate change, the country has made an intended Nationally Determined Contribution (NDC) specifying the level of greenhouse gas (GHG) emission reduction that the country will aim to achieve. Reducing the use and emissions of HFCs through action can make a useful contribution to these emission reduction targets.
- 9.4. 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.



**MINISTRY OF FOREIGN AFFAIRS**

**PARLIAMENTARY MEMORANDUM ON THE RATIFICATION ON**

**THE KIGALI AMENDMENT TO THE MONTREAL PROTOCOL**

**ON SUBSTANCES THAT DEplete THE OZONE LAYER.**

THE NAT'L ASSEMBLY	
DATE: 29/07/2022 Tuesday	
TABLED BY:	LOM
BY:	Nasey Lemuna





**MINISTRY OF FOREIGN AFFAIRS**

**PARLIAMENTARY MEMORANDUM ON THE RATIFICATION ON**

**THE KIGALI AMENDMENT TO THE MONTREAL PROTOCOL**

**ON SUBSTANCES THAT DEplete THE OZONE LAYER.**

THE NAT L ASSEMBLY	
DATE: 29/07/2022 Tuesday	
FILED BY:	LOM
FILED:	Noses Lemana

**PARLIAMENTARY MEMORANDUM ON KENYA'S RATIFICATION OF THE KIGALI AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER**

**1. INTRODUCTION**

- 1.1 The purpose of this Parliamentary Memorandum is to appraise the National Assembly and seek approval for Kenya's ratification of the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- 1.2 The ratification was approved by the Cabinet in its meeting held on the 12<sup>th</sup> May, 2022.

**2. BACKGROUND**

- 2.1 The Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer was agreed upon at the 28<sup>th</sup> Meeting of Parties on the 15<sup>th</sup> 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.
- 2.2 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 treaty set out to protect the global environment by phasing out the production and consumption

of ozone-depleting substances (ODSs).<sup>1</sup> The protocol is supplementary to the Vienna Convention for the Protection of the Ozone Layer and controls the use of manufactured chemicals that destroy the ozone layer and essentially restricts the international trade of ODSs.<sup>2</sup>

- 2.3 The Montreal Protocol is signed by 197 countries and is the first treaty to achieve universal ratification. It is also considered be one of most successful environmental global action plans.<sup>3</sup>
- 2.4 The purpose of the Meeting of Parties was to engage members states of the Montreal Protocol on a new action plan where they would phase down production and consumption of hydrofluorocarbons (HFCs) worldwide using the approaches that are in the Montreal Protocol which under Article 5, distinguishes levels of implementation and progress required from Article 5 and non-Article 5 countries. Under the Montreal Protocol, Article 5 provides that developing countries are entitled to a ten-year delay in compliance with its control measures and the same is to be transplanted in the implementation of the Kigali Amendment.<sup>4</sup>
- 2.5 The Montreal Protocol addresses and limits the production and consumption of various ozone depleting substances (ODSs) such as chlorofluorocarbons (CFCs)<sup>5</sup>. Due to this, the common practice become alternating them with HFCs which are greenhouse gases commonly used in sectors such as refrigeration, air conditioning, aerosols and fire suppression. However, new research has found that HFCs can have

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<sup>1</sup> The Kigali Amendment to the Montreal Protocol: Another Global Commitment to stop Climate Change, UN Environmental Programme, Available at < <https://www.unep.org/news-and-stories/story/kigali-amendment-montreal-protocol>>

<sup>2</sup> Trade Beat, 'The Montreal Protocol on Substances that Deplete the Ozone Layer', Volume 8, Issue 3, 1, June 2016.

<sup>3</sup> International Actions- The Montreal Protocol on Substances that Deplete the Ozone Layer, United States Environmental Protection Agency, Available at < <https://www.epa.gov/ozone-layer-protection/international-actions-montreal-protocol-substances-deplete-ozone-layer> >

<sup>4</sup> Article 5, *Montreal Protocol on Substances that Deplete the Ozone Layer*, 2000.

<sup>5</sup> Article 2A, *Montreal Protocol on Substances that Deplete the Ozone Layer*, 2000.

high global warming potentials (GWPs) and can be more potent than carbon dioxide.<sup>6</sup>

- 2.6 The Kigali Amendment is the most recent amendment of the Montreal Protocol and sets out to significantly limit the future production and consumption of HFCs. Without the amendments made therein, the emissions of HFCs are projected to peak around 2035 leading to surface temperatures peaking as high as 0.3-0.5 degrees Celsius by 2100. It is estimated that the provisions of the Amendment will reduce future global warming that may occur due to the HFC emissions from a baseline of 0.3-0.5 degrees Celsius to less than 0.1 degrees Celsius by the end of the century.<sup>7</sup>

### **3. OBJECT AND SUBJECT MATTER**

- 3.1 The Kigali Amendment contains the manner in which countries are to carry out the process of phasing down on the production and usage of HFCs. The amendment also includes target baselines and emission levels that States in agreement with it are to achieve. There is also an objective of replacing HFCs with more planet friendly alternatives, provisions to restrict countries that have ratified the protocol or its amendments from trading in controlled substances with countries that are yet to ratify it. Lastly, there is an agreement for non-Article 5 states to aid Article 5 states with their transition to alternative safe products.
- 3.2 The new amendment classifies the HFCs that are included in the phase down exercise in a new Annex F and the baselines, timelines and percentages that they are to be phased out in is to be done in accordance with Article 2(J) and Article 5(8) of the amended

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<sup>6</sup> Hydrofluorocarbons (HFCs), Climate and Clean Air Coalition, Available at <<https://www.ccacoalition.org/en/slcp/hydrofluorocarbons-hfcs> >

<sup>7</sup> Hydrofluorocarbons (HFCs), Climate and Clean Air Coalition, Available at <<https://www.ccacoalition.org/en/slcp/hydrofluorocarbons-hfcs> >

protocol.<sup>8</sup> Furthermore, Article 5(8) qua provides for the timeline considerations that are to be granted onto developing countries.<sup>9</sup> In addition, the amendment creates four different groups of countries each with different baseline volumes and reduction schedules.<sup>10</sup>

3.3 The Amendment was to enter into force on 1<sup>st</sup> of January 2019, provided that it is ratified by at least 20 states that are parties of the Montreal Protocol.<sup>11</sup> As of October 2021, 130 states including the European Union have ratified the Kigali Amendment.

3.4 The implementation of the new targets set out in the amendment will be conducted in three phases which take 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.

#### **4. OBLIGATIONS IMPOSED BY THE KIGALI AMENDMENT.**

4.1 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. These are found under Article 2J of the Amendment which prescribes that State Parties are to:

- i. Reduce the consumption of Annex F Group I HFCs and ensure that the level of consumption does not exceed the percentages

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<sup>8</sup> Article 1, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

<sup>9</sup> Article 5(8) qua, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

<sup>10</sup> UNEP, OzoneAction Fact Sheet, The Kigali Amendment to the Montreal Protocol: HFC Phase-down.

<sup>11</sup> Article IV, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

that are respective to the range of years that are specified in subparagraphs (a) to (e).<sup>12</sup>

- ii. State parties that are involved in producing the controlled substances under Annex F do not exceed the percentages that are outlined in paragraph, 2(J)(3)(a) to (e).<sup>13</sup>
- iii. Destroy Annex F Group II HFCs in accordance with the percentages timelines and processes set out under Article 2J and Article 5.<sup>14</sup>
- iv. Gradually reduce the use of HFCs by 80-85% by late 2040s.<sup>15</sup>
- v. Restrict the trading of controlled substances under Annex F with states that are not parties to the protocol.<sup>16</sup>
- vi. Establish and implement a new system that oversees the importation, exportation and licensing of new, used and reclaimed controlled substances under Article 4B 2bis.<sup>17</sup>
- vii. Monitor and report the production and consumption of HFCs and HFC-23 emissions within their states under new Articles 7(2) (3) and 3(ter).<sup>18</sup>
- viii. Ensure that baselines are be calculated for both HFC and hydrofluorocarbon (HCFC) production and consumption.

4.2 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).

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<sup>12</sup> Article 2J(1), Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

<sup>13</sup> Article 2J(3), Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

<sup>14</sup> Article 2J(7), Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

<sup>15</sup> 'What is the Kigali Amendment?', European Fluorocarbons Technical Committee (EFTC), Available at < <https://www.fluorocarbons.org/environment/climate-change/kigali-amendment/>>

<sup>16</sup> Article 4, *Montreal Protocol on Substances that Deplete the Ozone Layer*, 2000.

<sup>17</sup> Article 4B 2bis, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

<sup>18</sup> Article 7, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

- 4.3 Under Article 5(8) qua, 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 therein.<sup>19</sup>

## 5. PROBLEM STATEMENT

5.1 The ozone-layer is a naturally occurring layer of gas in the earth's upper atmosphere and acts as a shield that protects us from harmful ultraviolet radiation. Initially, CFCs were found to be the root cause of damage to the ozone layer, and this prompted governments to create an agreement that would reduce their production and consumption. This led to the creation of the Montreal Protocol which aimed at reducing the prevalence of ozone depleting substances (ODSs) in the atmosphere in order to protect the ozone layer.

5.2 However, new research has found that the alternative to the previous mentioned ODSs, HFCs also contribute to the depletion of the ozone layer as they have the potential to be more potent than carbon dioxide in contributing to climate change and global warming.<sup>20</sup> HFCs currently represent approximately 1 percent of total greenhouse gases, however, their impact on global warming is estimated to be thousands of times greater than that of carbon dioxide per unit of mass. For example, HFC-134a which is one of the most abundant HFC is capable of being 3,790 times more damaging to the climate than carbon dioxide over a 20-year period. The rate of emission is growing at a rate of ten to fifteen percent per year, which may double every five to ten years.<sup>21</sup>

5.3 The discovery highlights a grave threat to African countries which are extremely vulnerable to climate change as the yield in the

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<sup>19</sup> Article 5(8) qua, *Montreal Protocol on Substances that Deplete the Ozone Layer, 2000*.

<sup>20</sup> Velders J. M, 'The large contribution of projected HFC emissions to future climate forcing', July 7, 2009, Available at <  
<https://www.pnas.org/doi/10.1073/pnas.0902817106>>

<sup>21</sup> Hydrofluorocarbons (HFCs), Climate and Clean Air Coalition, Available at <  
<https://www.ccacoalition.org/en/slcp/hydrofluorocarbons-hfcs>>

agriculture sector would decline leading to a risk of undernourishment and massive economic losses.<sup>22</sup> Due to this, the Kigali agreement was created to target the decreased used of HFCs and replace them with more planet friendly alternatives. The Kigali Amendment is a viable solution to this problem as it establishes a timeline through which parties to the Protocol will be expected to implement obligations under the Amendment.

## 6. JUSTIFICATION

Ratification of the Kigali Amendment will:

- i. Enable Kenya to access financial support as Article 10 of the Montreal Protocol establishes a Multilateral Fund to support Article 5 parties. Extra financial support will be available for Article 5 parties that accelerate the phasing down of HFCs;
- ii. Help reduce the rate of ozone layer depletion therefore leading the overall reduction of global warming;
- iii. Encourage Kenya to strengthen and develop strategies for phasing down HFCs;
- iv. Kenya will be able to avoid the trade restrictions that are will be imposed onto states that are not party to the Protocol by 1<sup>st</sup> of January 2033;
- v. As the amendment encourages the use of other environmentally friendly alternatives to HFCs, implementing it will give Kenya a competitive advantage in the world market;
- vi. Demonstrate Kenya's commitment to the international community's collective action against ozone-layer depletion and global warming;
- vii. Kenya is already a member state of the Montreal Protocol on Substances that Deplete the Ozone Layer and,

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<sup>22</sup> 'The Kigali Amendment to the Montreal Protocol: Another Global Commitment to stop climate change', UN environment programme, Available at < <https://www.unep.org/news-and-stories/story/kigali-amendment-montreal-protocol-another-global-commitment-stop-climate>>

- viii. The Kigali Amendment is aligned with the objectives of Kenya's Climate Change Act, 2016.

## 7. EXPECTED OUTCOMES

- 7.1 Following the timelines and baselines provided under Article 2J and Article 5(8) qua the expected outcome is that Parties to the Protocol and Amendment shall gradually reduce the HFC use and consumption by 80-85 percent by the late 2040s.<sup>23</sup>
- 7.2 Under Article 5(8) qua, the phase down in the consumption and production of HFCs for Article 5 countries is as follows respectively:
- i. 2024 to 2028: 100 per cent
  - ii. 2029 to 2034: 90 per cent
  - iii. 2035 to 2039: 70 per cent
  - iv. 2040 to 2044: 50 per cent
  - v. 2045 and thereafter: 20 percent
- 7.3 Additionally, Kenya is an Article 5 country under the Montreal Protocol and is therefore entitled to assistance from non-Article 5 countries to aid the fulfillment of the obligations as per the amendment.
- 7.4 Kenya will be able to transplant the objectives of the Kigali Amendment to its existing legal framework that establishes a national mechanism that regulates the emissions of greenhouse gases including HFCs enshrined under the Climate Change Act 2016.<sup>24</sup> The amendment will assist Kenya achieve its environmental

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<sup>23</sup> UNEP, OzoneAction Fact Sheet, The Kigali Amendment to the Montreal Protocol: HFC Phase-down.

<sup>24</sup> Climate Change Act, 2016.

and climate change objectives as highlighted in the National Climate Change Action Plan that is created under Article 13 of the Climate Change Act, 2016.

## **8. COMMON CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS**

- 8.1 The Kigali Amendment is consistent with Article 69(1)(g) of Constitution of Kenya, 2010 which provides that the State has obligations to eliminate processes and activities that are likely to endanger the environment.<sup>25</sup> In addition, the Kigali Amendment promotes Kenya's constitutional values and objectives which are enshrined in its preamble particularly, the provision on the respect and sustenance of the environment for future generations. It does not allude to an amendment of the Constitution.
- 8.2 Ratification of the Kigali Amendment will provide a timeline and framework under which Kenya can implement the obligations set out under it with aid from developed/ non-article 5 parties.
- 8.3 Kenya enacted the Climate Change Act 2016, which is an Act of Parliament with the purpose of providing a regulatory framework that enhances the responses, mechanisms and measures in response to climate change to achieve low carbon climate development. Part of their mandate involves the establishment of Climate Change Council whose main duty under Section 5 is to provide a national mechanism that sets targets for the regulation of greenhouse gas emissions including HFCs under Section 2.<sup>26</sup> This is aligned with the chief objectives of the Kigali Amendment therefore increasing the capacity of its implementation.
- 8.4 Due to this the Climate Change Act is sufficient for the implementation of the Kigali Amendment as it establishes:

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<sup>25</sup> Article 69(1)(g), Constitution of Kenya, 2010.

<sup>26</sup> Section 5, Climate Change Act, 2016.

- i. The National Climate Change Council which is the principal climate change coordination mechanism.<sup>27</sup>
- ii. Climate Change Directorate which is established as the lead agency on national climate change plans and actions.<sup>28</sup>
- iii. National Climate Change Action plan which identifies all actions required to enable climate change response and reviews levels and trends of greenhouse gas emissions.<sup>29</sup>
- iv. The National Environmental Management Authority which shall on behalf of the council regulate, enforce and monitor compliance levels of greenhouse gas emissions as set out by the National Climate Change Council.<sup>30</sup>
- v. The powers and duties of the Cabinet Secretary which involves the responsibility of creating a biannual report to Parliament on the status of implementation of international obligations to respond to climate change and the attainment of low carbon climate resilient development.<sup>31</sup>

The above mechanisms and authorities can be exercised regarding the Implementation of the Kigali Amendment.

## **9. FINANCIAL IMPLICATIONS**

- 9.1 Financial requirements for the implementation for the Convention which include administrative costs will be provided for under normal budgetary estimates of the relevant institution.
- 9.2 The implementation of the Kigali Amendment is based on a phase-down schedule supported through the Multilateral Fund for the implementation of the Montreal Protocol.

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<sup>27</sup> Section 5, Climate Change Act, 2016.

<sup>28</sup> Section 9, Climate Change Act, 2016.

<sup>29</sup> Section 13, Climate Change Act, 2016.

<sup>30</sup> Section 17, Climate Change Act, 2016.

<sup>31</sup> Section 8, Climate Change Act, 2016.

9.3 The financial benefits would include, and not limited to; capacity building and training in handling HFC alternatives, licensing and quota systems, monitoring, reporting, and project preparation activities.

9.4 The Government may need to allocate additional funds to the relevant MDAs to ensure Kenya has inspectors and regulators that are equipped to ensure that the respective timelines and baselines under the Amendment are adhered to as well as monitor the consumption and production of HFCs.

## **10. MINISTERIAL RESPONSIBILITY**

10.1 Responsibility for the implementation of the Kigali Amendment to the Montreal Protocol will fall under the Ministry of Environment and Forestry.

10.2 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.

## **11. VIEWS OF THE PUBLIC**

Public participation has not been conducted on the Agreement.

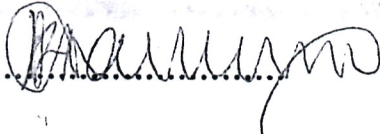
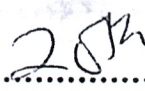
## **12. RESERVATIONS**

The Kigali Amendment does not expressly provide for reservations.

## **13. RECOMMENDATION TO THE NATIONAL ASSEMBLY**

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

1. Note the contents of the Amendment;
2. Consider and approve Kenya's ratification of the Kigali Amendment to the Montreal Protocol on Substances the Deplete the Ozone Layer.
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the instruments of ratification to the relevant depository.

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

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



**Decision XXVIII/1: Further Amendment of the Montreal Protocol**

To adopt, in accordance with the procedure laid down in paragraph 4 of Article 9 of the Vienna Convention for the Protection of the Ozone Layer, the Amendment to the Montreal Protocol set out in annex I to the report of the Twenty-Eighth Meeting of the Parties;

THE NATIONAL ASSEMBLY	
DATE: 23 197 202	
TABLED BY:	
CLERK OF PARLIAMENT:	

# Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer

## Article I: Amendment

### *Article 1, paragraph 4*

In paragraph 4 of Article 1 of the Protocol, for the words:

“Annex C or Annex E”

there shall be substituted:

“Annex C, Annex E or Annex F”

### *Article 2, paragraph 5*

In paragraph 5 of Article 2 of the Protocol, for the words:

“and Article 2H”

there shall be substituted:

“Articles 2H and 2J”

### *Article 2, paragraphs 8 (a), 9 (a) and 11*

In paragraphs 8 (a) and 11 of Article 2 of the Protocol, for the words:

“Articles 2A to 2I”

there shall be substituted:

“Articles 2A to 2J”

The following words shall be added at the end of subparagraph (a) of paragraph 8 of Article 2 of the Protocol:

“Any such agreement may be extended to include obligations respecting consumption or production under Article 2J provided that the total combined calculated level of consumption or production of the Parties concerned does not exceed the levels required by Article 2J.”

In subparagraph (a) (i) of paragraph 9 of Article 2 of the Protocol, after the second use of the words:

“should be;”

there shall be deleted:

“and”

Subparagraph (a) (ii) of paragraph 9 of Article 2 of the Protocol shall be renumbered as subparagraph (a) (iii).

The following shall be added as subparagraph (a) (ii) after subparagraph (a) (i) of paragraph 9 of Article 2 of the Protocol:

“Adjustments to the global warming potentials specified in Group I of Annex A, Annex C and Annex F should be made and, if so, what the adjustments should be; and”

### *Article 2J*

The following Article shall be inserted after Article 2I of the Protocol:

“Article 2J: Hydrofluorocarbons

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 2019, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Annex F, expressed in CO<sub>2</sub> equivalents, does not exceed the percentage, set out for the respective range of years specified in subparagraphs (a) to (e) below, of the annual average of its calculated levels of consumption of Annex F controlled substances for the years 2011, 2012 and 2013, plus fifteen per cent of its calculated level of

consumption of Annex C, Group I, controlled substances as set out in paragraph 1 of Article 2F, expressed in CO<sub>2</sub> equivalents:

- (a) 2019 to 2023: 90 per cent
- (b) 2024 to 2028: 60 per cent
- (c) 2029 to 2033: 30 per cent
- (d) 2034 to 2035: 20 per cent
- (e) 2036 and thereafter: 15 per cent

2. Notwithstanding paragraph 1 of this Article, the Parties may decide that a Party shall ensure that, for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Annex F, expressed in CO<sub>2</sub> equivalents, does not exceed the percentage, set out for the respective range of years specified in subparagraphs (a) to (e) below, of the annual average of its calculated levels of consumption of Annex F controlled substances for the years 2011, 2012 and 2013, plus twenty-five per cent of its calculated level of consumption of Annex C, Group I, controlled substances as set out in paragraph 1 of Article 2F, expressed in CO<sub>2</sub> equivalents:

- (a) 2020 to 2024: 95 per cent
- (b) 2025 to 2028: 65 per cent
- (c) 2029 to 2033: 30 per cent
- (d) 2034 to 2035: 20 per cent
- (e) 2036 and thereafter: 15 per cent

3. Each Party producing the controlled substances in Annex F shall ensure that for the twelve-month period commencing on 1 January 2019, and in each twelve-month period thereafter, its calculated level of production of the controlled substances in Annex F, expressed in CO<sub>2</sub> equivalents, does not exceed the percentage, set out for the respective range of years specified in subparagraphs (a) to (e) below, of the annual average of its calculated levels of production of Annex F controlled substances for the years 2011, 2012 and 2013, plus fifteen per cent of its calculated level of production of Annex C, Group I, controlled substances as set out in paragraph 2 of Article 2F, expressed in CO<sub>2</sub> equivalents:

- (a) 2019 to 2023: 90 per cent
- (b) 2024 to 2028: 60 per cent
- (c) 2029 to 2033: 30 per cent
- (d) 2034 to 2035: 20 per cent
- (e) 2036 and thereafter: 15 per cent

4. Notwithstanding paragraph 3 of this Article, the Parties may decide that a Party producing the controlled substances in Annex F shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of production of the controlled substances in Annex F, expressed in CO<sub>2</sub> equivalents, does not exceed the percentage, set out for the respective range of years specified in subparagraphs (a) to (e) below, of the annual average of its calculated levels of production of Annex F controlled substances for the years 2011, 2012 and 2013, plus twenty-five per cent of its calculated level of production of Annex C, Group I, controlled substances as set out in paragraph 2 of Article 2F, expressed in CO<sub>2</sub> equivalents:

- (a) 2020 to 2024: 95 per cent
- (b) 2025 to 2028: 65 per cent
- (c) 2029 to 2033: 30 per cent
- (d) 2034 to 2035: 20 per cent
- (e) 2036 and thereafter: 15 per cent

5. Paragraphs 1 to 4 of this Article will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by the Parties to be exempted uses.
6. Each Party manufacturing Annex C, Group I, or Annex F substances shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its emissions of Annex F, Group II, substances generated in each production facility that manufactures Annex C, Group I, or Annex F substances are destroyed to the extent practicable using technology approved by the Parties in the same twelve-month period.
7. Each Party shall ensure that any destruction of Annex F, Group II, substances generated by facilities that produce Annex C, Group I, or Annex F substances shall occur only by technologies approved by the Parties.

### *Article 3*

The preamble to Article 3 of the Protocol should be replaced with the following:

"1. For the purposes of Articles 2, 2A to 2J and 5, each Party shall, for each group of substances in Annex A, Annex B, Annex C, Annex E or Annex F, determine its calculated levels of:"

For the final semi-colon of subparagraph (a) (i) of Article 3 of the Protocol there shall be substituted:

“, except as otherwise specified in paragraph 2;”

The following text shall be added to the end of Article 3 of the Protocol:

“; and

(d) Emissions of Annex F, Group II, substances generated in each facility that generates Annex C, Group I, or Annex F substances by including, among other things, amounts emitted from equipment leaks, process vents and destruction devices, but excluding amounts captured for use, destruction or storage.

2. When calculating levels, expressed in CO<sub>2</sub> equivalents, of production, consumption, imports, exports and emissions of Annex F and Annex C, Group I, substances for the purposes of Article 2J, paragraph 5 of Article 2 and paragraph 1 (d) of Article 3, each Party shall use the global warming potentials of those substances specified in Group I of Annex A, Annex C and Annex F.”

### *Article 4, paragraph 1 sept*

The following paragraph shall be inserted after paragraph 1 *sex* of Article 4 of the Protocol:

"1 *sept*. Upon entry into force of this paragraph, each Party shall ban the import of the controlled substances in Annex F from any State not Party to this Protocol.”

### *Article 4, paragraph 2 sept*

The following paragraph shall be inserted after paragraph 2 *sex* of Article 4 of the Protocol:

"2 *sept*. Upon entry into force of this paragraph, each Party shall ban the export of the controlled substances in Annex F to any State not Party to this Protocol.”

### *Article 4, paragraphs 5, 6 and 7*

In paragraphs 5, 6 and 7 of Article 4 of the Protocol, for the words:

“Annexes A, B, C and E”

there shall be substituted:

“Annexes A, B, C, E and F”

### *Article 4, paragraphs 8*

In paragraph 8 of Article 4 of the Protocol, for the words:

“Articles 2A to 2I”

there shall be substituted:

“Articles 2A to 2J”

*Article 4B*

The following paragraph shall be inserted after paragraph 2 of Article 4B of the Protocol:

“2 *bis*. Each Party shall, by 1 January 2019 or within three months of the date of entry into force of this paragraph for it, whichever is later, establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annex F. Any Party operating under paragraph 1 of Article 5 that decides it is not in a position to establish and implement such a system by 1 January 2019 may delay taking those actions until 1 January 2021.”

*Article 5*

In paragraph 4 of Article 5 of the Protocol, for the word:

“2I”

there shall be substituted:

“2J”

In paragraphs 5 and 6 of Article 5 of the Protocol, for the words:

“Article 2I”

there shall be substituted:

“Articles 2I and 2J”

In paragraph 5 of Article 5 of the Protocol, before the words:

“any control measures”

there shall be inserted:

“with”

The following paragraph shall be inserted after paragraph 8 *ter* of Article 5 of the Protocol:

“8 *qua*

(a) Each Party operating under paragraph 1 of this Article, subject to any adjustments made to the control measures in Article 2J in accordance with paragraph 9 of Article 2, shall be entitled to delay its compliance with the control measures set out in subparagraphs (a) to (e) of paragraph 1 of Article 2J and subparagraphs (a) to (e) of paragraph 3 of Article 2J and modify those measures as follows:

- (i) 2024 to 2028: 100 per cent
- (ii) 2029 to 2034: 90 per cent
- (iii) 2035 to 2039: 70 per cent
- (iv) 2040 to 2044: 50 per cent
- (v) 2045 and thereafter: 20 per cent

(b) Notwithstanding subparagraph (a) above, the Parties may decide that a Party operating under paragraph 1 of this Article, subject to any adjustments made to the control measures in Article 2J in accordance with paragraph 9 of Article 2, shall be entitled to delay its compliance with the control measures set out in subparagraphs (a) to (e) of paragraph 1 of Article 2J and subparagraphs (a) to (e) of paragraph 3 of Article 2J and modify those measures as follows:

- (i) 2028 to 2031: 100 per cent
- (ii) 2032 to 2036: 90 per cent
- (iii) 2037 to 2041: 80 per cent
- (iv) 2042 to 2046: 70 per cent
- (v) 2047 and thereafter: 15 per cent

(c) Each Party operating under paragraph 1 of this Article, for the purposes of calculating its consumption baseline under Article 2J, shall be entitled to use the average of its calculated levels of consumption of Annex F controlled substances for the years 2020, 2021 and 2022,

plus sixty-five per cent of its baseline consumption of Annex C, Group I, controlled substances as set out in paragraph 8 *ter* of this Article.

(d) Notwithstanding subparagraph (c) above, the Parties may decide that a Party operating under paragraph 1 of this Article, for the purposes of calculating its consumption baseline under Article 2J, shall be entitled to use the average of its calculated levels of consumption of Annex F controlled substances for the years 2024, 2025 and 2026, plus sixty-five per cent of its baseline consumption of Annex C, Group I, controlled substances as set out in paragraph 8 *ter* of this Article.

(e) Each Party operating under paragraph 1 of this Article and producing the controlled substances in Annex F, for the purposes of calculating its production baseline under Article 2J, shall be entitled to use the average of its calculated levels of production of Annex F controlled substances for the years 2020, 2021 and 2022, plus sixty-five per cent of its baseline production of Annex C, Group I, controlled substances as set out in paragraph 8 *ter* of this Article.

(f) Notwithstanding subparagraph (e) above, the Parties may decide that a Party operating under paragraph 1 of this Article and producing the controlled substances in Annex F, for the purposes of calculating its production baseline under Article 2J, shall be entitled to use the average of its calculated levels of production of Annex F controlled substances for the years 2024, 2025 and 2026, plus sixty-five per cent of its baseline production of Annex C, Group I, controlled substances as set out in paragraph 8 *ter* of this Article.

(g) Subparagraphs (a) to (f) of this paragraph will apply to calculated levels of production and consumption save to the extent that a high-ambient-temperature exemption applies based on criteria decided by the Parties.”

#### *Article 6*

In Article 6 of the Protocol, for the words:

“Articles 2A to 2I”

there shall be substituted:

“Articles 2A to 2J”

#### *Article 7, paragraphs 2, 3 and 3 ter*

The following line shall be inserted after the line that reads “– in Annex E, for the year 1991,” in paragraph 2 of Article 7 of the Protocol:

“– in Annex F, for the years 2011 to 2013, except that Parties operating under paragraph 1 of Article 5 shall provide such data for the years 2020 to 2022, but those Parties operating under paragraph 1 of Article 5 to which subparagraphs (d) and (f) of paragraph 8 *qua* of Article 5 applies shall provide such data for the years 2024 to 2026;”

In paragraphs 2 and 3 of Article 7 of the Protocol, for the words:

“C and E”

there shall be substituted:

“C, E and F”

The following paragraph shall be added to Article 7 of the Protocol after paragraph 3 *bis*:

“3 *ter*. Each Party shall provide to the Secretariat statistical data on its annual emissions of Annex F, Group II, controlled substances per facility in accordance with paragraph 1 (d) of Article 3 of the Protocol.”

#### *Article 7, paragraph 4*

In paragraph 4 of Article 7, after the words:

“statistical data on” and “provides data on”

there shall be added:

“production,”

*Article 10, paragraph 1*

In paragraph 1 of Article 10 of the Protocol, for the words:

“and Article 2I”

There shall be substituted:

“, Article 2I and Article 2J”

The following shall be inserted at the end of paragraph 1 of Article 10 of the Protocol:

“Where a Party operating under paragraph 1 of Article 5 chooses to avail itself of funding from any other financial mechanism that could result in meeting any part of its agreed incremental costs, that part shall not be met by the financial mechanism under Article 10 of this Protocol.”

*Article 17*

In Article 17 of the Protocol, for the words:

“Articles 2A to 2I”

there shall be substituted:

“Articles 2A to 2J”

*Annex A*

The following table shall replace the table for Group I in Annex A to the Protocol:

Group	Substance	Ozone-Depleting Potential*	100-Year Global Warming Potential
<i>Group I</i>			
CFCl <sub>3</sub>	(CFC-11)	1.0	4,750
CF <sub>2</sub> Cl <sub>2</sub>	(CFC-12)	1.0	10,900
C <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	(CFC-113)	0.8	6,130
C <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	(CFC-114)	1.0	10,000
C <sub>2</sub> F <sub>5</sub> Cl	(CFC-115)	0.6	7,370

*Annex C and Annex F*

The following table shall replace the table for Group I in Annex C to the Protocol:

Group	Substance	Number of isomers	Ozone-Depleting Potential*	100-Year Global Warming Potential***
<i>Group I</i>				
CHFCl <sub>2</sub>	(HCFC-21)**	1	0.04	151
CHF <sub>2</sub> Cl	(HCFC-22)**	1	0.055	1810
CH <sub>2</sub> FCl	(HCFC-31)	1	0.02	
C <sub>2</sub> HFCl <sub>4</sub>	(HCFC-121)	2	0.01–0.04	
C <sub>2</sub> HF <sub>2</sub> Cl <sub>3</sub>	(HCFC-122)	3	0.02–0.08	
C <sub>2</sub> HF <sub>3</sub> Cl <sub>2</sub>	(HCFC-123)	3	0.02–0.06	77
CHCl <sub>2</sub> CF <sub>3</sub>	(HCFC-123)**	–	0.02	
C <sub>2</sub> HF <sub>4</sub> Cl	(HCFC-124)	2	0.02–0.04	609
CHFClCF <sub>3</sub>	(HCFC-124)**	–	0.022	
C <sub>2</sub> H <sub>2</sub> FCl <sub>3</sub>	(HCFC-131)	3	0.007–0.05	
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>2</sub>	(HCFC-132)	4	0.008–0.05	
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Cl	(HCFC-133)	3	0.02–0.06	
C <sub>2</sub> H <sub>3</sub> FCl <sub>2</sub>	(HCFC-141)	3	0.005–0.07	
CH <sub>3</sub> CFCl <sub>2</sub>	(HCFC-141b)**	–	0.11	725
C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Cl	(HCFC-142)	3	0.008–0.07	
CH <sub>3</sub> CF <sub>2</sub> Cl	(HCFC-142b)**	–	0.065	2310
C <sub>2</sub> H <sub>4</sub> FCl	(HCFC-151)	2	0.003–0.005	

C <sub>3</sub> HFCl <sub>6</sub>	(HCFC-221)	5	0.015–0.07	
C <sub>3</sub> HF <sub>2</sub> Cl <sub>5</sub>	(HCFC-222)	9	0.01–0.09	
C <sub>3</sub> HF <sub>3</sub> Cl <sub>4</sub>	(HCFC-223)	12	0.01–0.08	
C <sub>3</sub> HF <sub>4</sub> Cl <sub>3</sub>	(HCFC-224)	12	0.01–0.09	
C <sub>3</sub> HF <sub>5</sub> Cl <sub>2</sub>	(HCFC-225)	9	0.02–0.07	
CF <sub>3</sub> CF <sub>2</sub> CHCl <sub>2</sub>	(HCFC-225ca)**	–	0.025	122
CF <sub>2</sub> ClCF <sub>2</sub> CHClF	(HCFC-225cb)**	–	0.033	595
C <sub>3</sub> HF <sub>6</sub> Cl	(HCFC-226)	5	0.02–0.10	
C <sub>3</sub> H <sub>2</sub> FCl <sub>5</sub>	(HCFC-231)	9	0.05–0.09	
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	(HCFC-232)	16	0.008–0.10	
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	(HCFC-233)	18	0.007–0.23	
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	(HCFC-234)	16	0.01–0.28	
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Cl	(HCFC-235)	9	0.03–0.52	
C <sub>3</sub> H <sub>3</sub> FCl <sub>4</sub>	(HCFC-241)	12	0.004–0.09	
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Cl <sub>3</sub>	(HCFC-242)	18	0.005–0.13	
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Cl <sub>2</sub>	(HCFC-243)	18	0.007–0.12	
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Cl	(HCFC-244)	12	0.009–0.14	
C <sub>3</sub> H <sub>4</sub> FCl <sub>3</sub>	(HCFC-251)	12	0.001–0.01	
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Cl <sub>2</sub>	(HCFC-252)	16	0.005–0.04	
C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Cl	(HCFC-253)	12	0.003–0.03	
C <sub>3</sub> H <sub>5</sub> FCl <sub>2</sub>	(HCFC-261)	9	0.002–0.02	
C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Cl	(HCFC-262)	9	0.002–0.02	
C <sub>3</sub> H <sub>6</sub> FCl	(HCFC-271)	5	0.001–0.03	

\* Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP.

\*\* Identifies the most commercially viable substances with ODP values listed against them to be used for the purposes of the Protocol.

\*\*\* For substances for which no GWP is indicated, the default value 0 applies until a GWP value is included by means of the procedure foreseen in paragraph 9 (a) (ii) of Article 2.

The following annex shall be added to the Protocol after Annex E:

*"Annex F: Controlled substances*

Group	Substance	100-Year Global Warming Potential
<i>Group I</i>		
CHF <sub>2</sub> CHF <sub>2</sub>	HFC-134	1,100
CH <sub>2</sub> FCF <sub>3</sub>	HFC-134a	1,430
CH <sub>2</sub> FCHF <sub>2</sub>	HFC-143	353
CHF <sub>2</sub> CH <sub>2</sub> CF <sub>3</sub>	HFC-245fa	1,030
CF <sub>3</sub> CH <sub>2</sub> CF <sub>2</sub> CH <sub>3</sub>	HFC-365mfc	794
CF <sub>3</sub> CHFCF <sub>3</sub>	HFC-227ea	3,220
CH <sub>2</sub> FCF <sub>2</sub> CF <sub>3</sub>	HFC-236cb	1,340
CHF <sub>2</sub> CHFCF <sub>3</sub>	HFC-236ea	1,370
CF <sub>3</sub> CH <sub>2</sub> CF <sub>3</sub>	HFC-236fa	9,810
CH <sub>2</sub> FCF <sub>2</sub> CHF <sub>2</sub>	HFC-245ca	693
CF <sub>3</sub> CHFCHFCF <sub>2</sub> CF <sub>3</sub>	HFC-43-10mee	1,640
CH <sub>2</sub> F <sub>2</sub>	HFC-32	675
CHF <sub>2</sub> CF <sub>3</sub>	HFC-125	3,500
CH <sub>3</sub> CF <sub>3</sub>	HFC-143a	4,470
CH <sub>3</sub> F	HFC-41	92

CH <sub>2</sub> FCH <sub>2</sub> F	HFC-152	53
CH <sub>3</sub> CHF <sub>2</sub>	HFC-152a	124
<i>Group II</i>		
CHF <sub>3</sub>	HFC-23	14,800

**Article II: Relationship to the 1999 Amendment**

No State or regional economic integration organization may deposit an instrument of ratification, acceptance or approval of or accession to this Amendment unless it has previously, or simultaneously, deposited such an instrument to the Amendment adopted at the Eleventh Meeting of the Parties in Beijing, 3 December 1999.

**Article III: Relationship to the United Nations Framework Convention on Climate Change and its Kyoto Protocol**

This Amendment is not intended to have the effect of excepting hydrofluorocarbons from the scope of the commitments contained in Articles 4 and 12 of the United Nations Framework Convention on Climate Change or in Articles 2, 5, 7 and 10 of its Kyoto Protocol.

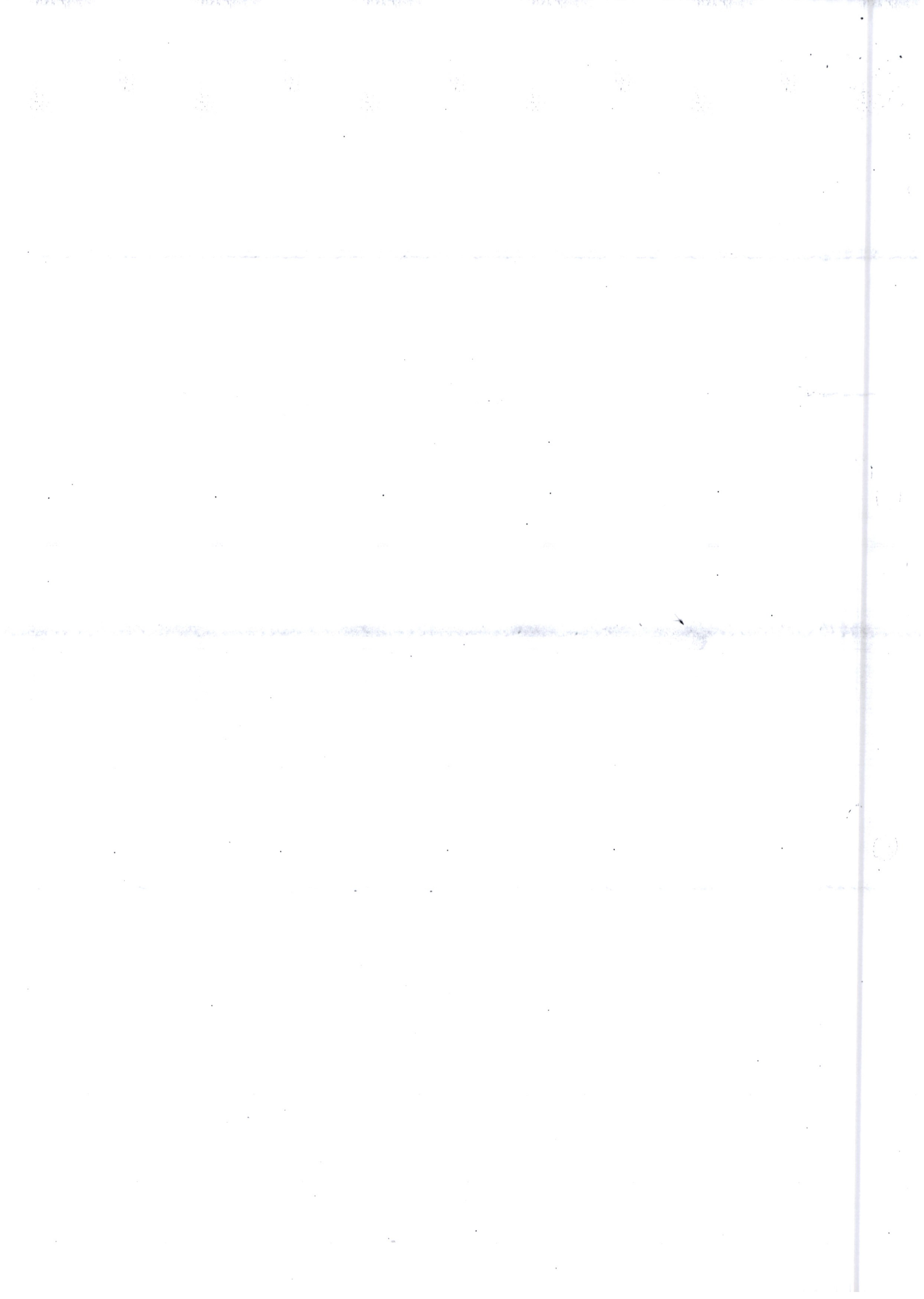
**Article IV: Entry into force**

1. Except as noted in paragraph 2, below, this Amendment shall enter into force on 1 January 2019, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.
2. The changes to Article 4 of the Protocol, Control of trade with non-Parties, set out in Article I of this Amendment shall enter into force on 1 January 2033, provided that at least seventy instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.
3. For purposes of paragraphs 1 and 2, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
4. After the entry into force of this Amendment, as provided under paragraphs 1 and 2, it shall enter into force for any other Party to the Protocol on the ninetieth day following the date of deposit of its instrument of ratification, acceptance or approval.

**Article V: Provisional application**

Any Party may, at any time before this Amendment enters into force for it, declare that it will apply provisionally any of the control measures set out in Article 2J, and the corresponding reporting obligations in Article 7, pending such entry into force.

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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 29<sup>th</sup> November, 2022 and consequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House:

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.
3. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

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

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

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

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

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to [ena@parliament.go.ke](mailto:ena@parliament.go.ke); to be received on or before Friday, 1<sup>st</sup> January, 2023.

SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY

16<sup>th</sup> December, 2022

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

Annex - 06

