



**The Third Report  
of  
The Cabinet Secretary to the  
National Assembly  
on  
Treaties Ratified by the Republic  
of Kenya**

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## **EXECUTIVE SUMMARY**

This Cabinet Secretary's third report to the National Assembly has been prepared pursuant to Section 15 (1) of the Treaty Making and Ratification Act, No. 45 of 2012 (*Rev. 2014*). The provision requires the Cabinet Secretary for Foreign Affairs to prepare and submit to the National Assembly, once every financial year, a report containing a record of all treaties which Kenya has ratified and which may in any way bind Kenya to specific actions.

This 2018-2019 report outlines the responsibilities of Ministries, Departments and Agencies (MDAs), the Cabinet and the National Assembly in the steps involved in treaty making and ratification process. The players in the treaty making and ratification process also have roles in treaty implementation and reporting.

The Report finally gives a breakdown of forty-one (41) treaties ratified by Kenya during the period 2013-2019 and lists all the treaties ratified since independence. The forty one (41) Agreements concluded in the period 2013-2019 are in the realms of Safety of Life at Sea; Marine Environment; Telecommunications; Environment, Forestry and Agriculture; Trade; Peace and Security; Transport; Diplomatic Relations; Fisheries; Human Rights; Intellectual Property; Education, Science and Technology and Fiscal Matters.

Treaties are made within the family of nations to further the aspirations of human kind including human rights, food and nutrition security, international relations and trade, sustainable development and conservation of the environment and resources for future generations. Thus all countries in the international arena seek to provide for their national development agenda in the bilateral, plurilateral and multilateral treaties that they ratify and also entrench implementation of the treaty obligations within their laws.

Kenya's development program is guided by the Kenya Vision 2030, her five-year Medium-Term Plans and the Big Four Agenda on manufacturing, provision of universal health coverage, affordable housing and food and nutrition security.

The report makes key recommendations to the National Assembly to increase budgetary allocation to Ministries, Departments and Agencies (MDAs) to support implementation of international obligations, improve capacity gaps and enhance research on treaties.

## 1.0 INTRODUCTION

- 1.1 Kenya's development agenda is guided by the Kenya Vision 2030 and its five-year Medium Term Plans. The Vision aims at transforming Kenya into a newly industrialized, middle income country providing a high quality of life to all its citizens in a clean and secure environment by 2030. Kenya has made great strides in all sectors of the economy since the onset of the implementation of the various projects and programs outlined in the Vision 2030. To accelerate the realization of development goals and aspirations of the people of Kenya, the Government has formulated the Big Four Agenda on manufacturing, provision of universal health coverage, affordable housing and food and nutrition security.
- 1.2 As a member of the community of nations, Kenya is party to a number of conventions, treaties and agreements which cut across the three pillars of the Vision (Economic, Political and Social). Article 2 (5) and 2 (6) of the Constitution of Kenya, 2010 provide that "*the general rules of international law shall form part of the Laws of Kenya and that any treaty or convention ratified by Kenya shall form part of the Laws of Kenya.*" In this regard, all legal instruments between Kenya and other States or International Organizations are governed by public international law and form part of Kenya's law. They are required to be tabled in the National Assembly following their signature or adoption by other procedure and prior to Kenya's formal notification that the country is bound by the instrument. This legislative process applies to all Government MDAs as prescribed by the Treaty Making and Ratification Act No. 45 of 2012 (*Rev. 2014*).
- 1.3 The Ministry of Foreign Affairs is responsible for the implementation of the Treaty Making and Ratification Act No. 45 of 2012 (*Rev. 2014*). In line with the Act, the Ministry prepares annual Reports for H.E. the President on the extent to which Kenya has honored her International Obligations as set out under Article 132 (1) (c) (iii) of the Constitution. These Reports have been submitted to the National Assembly during the State of the Nation address for the last five years. The Sixth Report was submitted to the National Assembly during the State of the Nation address.
- 1.4 In accordance with Section 15 (1) of the Treaty Making and Ratification Act, No. 45 of 2012 (*Rev. 2014*), the Cabinet Secretary for Foreign Affairs is required to prepare and submit to the National Assembly once every financial year, a report containing a record of all treaties which Kenya has ratified and which may in any way bind Kenya to specific

actions. This report contains a record of the treaties Kenya ratified during the period 2013-2019 and enlists the treaties ratified since independence.

## **2.0 BACKGROUND**

2.1 Kenya adheres to the definition of treaties in the Vienna Convention on the Law of Treaties of 1969. The Convention defines a treaty in Article 2 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 designation.

2.2 A treaty is also known by other names such as; Convention, Agreement, Protocol, Pact, Covenant and Charter. A Memorandum of Understanding, an Exchange of Diplomatic Notes or Letters can also constitute a treaty depending on the wording. Treaties can be bilateral, multilateral or plurilateral as follows:

- Bilateral treaties are those between Kenya and one other country.
- Multilateral treaties are those between three or more countries, generally developed under the auspices of International Organizations.
- Plurilateral treaties are between groups of States that come together to formulate, influence or negotiate outside multilateral frameworks.
- Agreements between Kenya and International Organizations are often treaties governed by public international law.

2.3 For the purpose of this document, “treaty” is used in the general sense of any type of instrument governed by public international law.

## **3.0 POLICY AND LEGAL FRAMEWORK**

### **3.1 Responsibility of Ministries, Departments and Agencies (MDAs)**

3.1.1. The Treaty Making and Ratification Act, No. 45 of 2012 (*Rev. 2014*) and the Executive Order No. 1 of 2016 on the Organization of Government of the Republic of Kenya and administrative practices, obligate MDAs to seek Cabinet approval prior to the commencement of the treaty making process.

MDAs should therefore ensure that the texts of negotiated treaties are verified well in advance before signature and relevant Government authority is obtained before Kenya signs a treaty or expresses its consent to be bound by it.

#### **4.0 TREATIES RATIFIED BY KENYA FROM 2013 TO 2019**

4.1 This report contains a matrix indicating the ratification status of all the treaties concluded by Kenya from 2013 to 2019, including a list of Kenya's membership to international bodies.

4.2 Forty-one (41) Agreements were concluded between 2013 and 2019 as follows:

- Protection of the Marine Environment - Two (2);
- Safety of Life and Navigation - Six (6);
- Fisheries - One (1);
- Information and Communication Technology - One (1);
- Environment, Forestry and Agriculture - Six (6);
- Peace and Security - Eight (8);
- Transport and Infrastructure - Two (2);
- Diplomatic Relations - Two (2);
- Education, Science and Technology - One (1)
- Human Rights - Two (2);
- Trade - Three (3);
- Intellectual Property - Five (5);
- Fiscal Matters - Two (2).

## PROTECTION OF THE MARINE ENVIRONMENT

### 1. International Convention on Civil Liability for Bunker Oil Pollution

**Adopted at:** London on 23rd March, 2001.

**Date of Accession:** 4th May, 2015.

**Entry into Force:** 21st November, 2017.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Convention:** To expedite the process by which claimants are able to recover costs incurred as a result of pollution from ships' bunker fuel oils, emanating from a bunker pollution incident or as a result of damage caused by bunker oil pollution.

**Depositary:** Secretary-General, International Maritime Organization (IMO).

**Legislative Status:** Domesticated vide the Kenya Maritime Authority Act, 2006 and the Merchant Shipping Act, 2009.

### 2. International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001

**Adopted at:** London on 5th October, 2001.

**Date of Accession:** 4th May, 2015.

**Entry into Force:** 17th September, 2008.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Convention:** Forbids the application of anti-fouling coatings to new and existing ships, fixed and floating platforms, floating productions and/or storage units, regardless of size after January, 2003.

**Depositary:** Secretary-General, International Maritime Organization (IMO).

**Legislative Status:** Domesticated vide the Kenya Maritime Authority Act, 2006 and the Merchant Shipping Act, 2009.

## SAFETY OF LIFE AND NAVIGATION AT SEA

### 3. The 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, 1976

**Adopted at:** London on 2nd May, 1996.

**Date of Accession:** 4th May, 2015.

**Entry into Force:** 13th May, 2004.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** To increase compensation amounts in the event of incidents leading to loss of property at sea or personal injury/loss of life by seafarers.

**Depositary:** Secretary-General, International Maritime Organization (IMO).

**Legislative Status:** Domesticated vide the Kenya Maritime Authority Act, 2006.

### 4. Protocol of 1988 Relating to the International Convention for the Safety of Life at Sea (SOLAS) 1974

**Adopted:** 11th November, 1988.

**Date of Accession:** 4th May, 2015.

**Entry into Force:** 3rd February, 2000.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** To introduce a new coordinated system of surveys and certification. It implements the Harmonized Ship Survey and Certification (HSSC) as provided in the Load lines 1966 Convention and the Marine Pollution Convention of 73/78 (MARPOL) as well as with various codes dealing with construction and equipment of ships carrying dangerous chemicals in bulk.

**Depositary:** Secretary-General, International Maritime Organization (IMO).

**Legislative Status:** Domesticated vide the Kenya Maritime Authority Act, 2006 and Merchant Shipping Act, 2009.

### 5. The 1998 Protocol to the International Convention on Load Lines

**Adopted at:** London on 11th November, 1988.

**Date of Accession:** 4th May, 2015.

**Entry into Force:** 3rd February, 2000.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** To harmonize the Convention's survey and certification requirements with those contained in the Safety of Life at Sea (SOLAS 74/78) and MARPOL. The harmonized system resolves issues arising from variances in survey dates and intervals.

**Depositary:** Secretary-General, International Maritime Organization (IMO).

**Legislative Status:** Domesticated vide the Kenya Maritime Authority Act, 2006 and Merchant Shipping Act, 2009.

**6. The 1978 Protocol to the International Convention for Safety of Life at Sea (SOLAS) 1994**

**Adopted on:** 17th February, 1978.

**Date of Accession:** 4th May, 2015.

**Entry into Force:** 1st May, 1981.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** Requires Contracting Governments to ensure safety of life at sea. To promulgate all laws, decrees, orders and regulations necessary to ensure that ships are fit for the service for which they are intended.

**Depositary:** Secretary-General, International Maritime Organization (IMO).

**Legislative Status:** Domesticated vide the Kenya Maritime Authority Act, 2006 and Merchant Shipping Act, 2009.

**7. Nairobi International Convention on Removal of Wrecks**

**Adopted at:** Nairobi on 18th May, 2007.

**Signature:** 18th May, 2007.

**Ratification:** 8th April, 2015.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Convention:** Provide the legal basis for States to remove or cause to be removed shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment.

**Depositary:** Secretary-General, International Maritime Organization (IMO).

**Legislative Status:** Domesticated vide the Merchant Shipping Act, 2009.

**8. International Maritime Labour Convention, 2006**

**Adopted at:** Geneva, Switzerland on 23rd February, 2006.

**Signature:** 1st January, 1970.

**Accession:** 31st July, 2014.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Convention:** For States to ensure that ships flying their flag are duly inspected to conform to international standards, and Kenya as a State Party to provide effective protection for Kenyan seafarers.

**Depositary:** Director-General of the International Labour Office (ILO).

**Legislative Status:** Domesticated vide the Kenya Maritime Authority Act, 2006.

## FISHERIES

### **9. Agreement on Port State Measures to Prevent, Deter and Eliminate. Illegal, Unreported and Unregulated (IUU) Fishing**

**Adopted at:** Rome, Italy 23rd November, 2009.

**Signature:** 19th November, 2010.

**Ratification:** 1st August, 2017.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Convention:** To prevent, deter and eliminate Illegal, Unreported and Unregulated (IUU) fishing by requiring that fishing vessels request permission to dock at a port and disclose its fishing operations; and prevent illegally caught fish from entering the market place.

**Depositary:** Food and Agriculture Organisation (FAO), Rome.

**Legislative Status:** Fisheries Management and Development Act, No. 35 of 2016.

## ICT AND COMMUNICATION

### **10. International Telecommunication Regulations, 2012**

**Adopted at:** Dubai on 14th December, 2012.

**Date of Accession:** 6th October, 2015.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Regulations:** Control traffic flows between telecommunication network operators; quality of international services, sufficiency of facilities; international routing, charging, accounting and billing between operators; health and safety priorities; prevent harm to networks and services.

**Depositary:** International Telecommunication Union.

**Legislative Status:** Domesticated vide the Kenya Communications Act, 2010 (*Rev. 2011*).

## ENVIRONMENT, FORESTRY AND AGRICULTURE

### 11. The 1991 Act of the New International Union for the Protection of New Varieties of Plants (UPOV) Convention

**Adopted at:** Paris, 2nd December, 1961.

**Entry into Force:** 29th June, 2005.

**Date of Accession:** 10th March, 2014.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Convention:** Provides a unique form of intellectual property protection, specifically adapted for the process of plant breeding, and developed with the aim of encouraging breeders to develop new varieties of plants.

**Depositary:** Union for the Protection of New Varieties of Plants (UPOV), Geneva, Switzerland.

**Legislative Status:** Domesticated vide the Seed and Plant Varieties Act, Cap. 326 Laws of Kenya.

### 12. The Paris Agreement on Climate Change

**Adopted at:** Paris on 12th December, 2016.

**Ratification:** 13th December, 2016.

**Signed by:** H.E. Hon. Uhuru Kenyatta, C.G.H., President of the Republic of Kenya.

**Object of the Agreement:** Enhances the implementation of The United Nations Convention on Climate Change, including strengthening global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty.

**Depositary:** Secretary General, United Nations.

**Legislative Status:** Domesticated vide the Climate Change Act, No. 11 of 2016.

### 13. Doha Amendment to the Kyoto Protocol

**Adopted at:** Doha, 8th December, 2012.

**Signature:** 8th December, 2012.

**Ratification:** 3rd March, 2014.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet

Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Amendment:** To establish a legal framework on reduction targets of Green House Gas (GHG) emissions by developed Countries or individually.

**Depositary:** Secretary General, United Nations.

**Legislative Status:** Domesticated vide the Environmental Management and Co-ordination Act, 1999 and the Climate Change Act, No. 11 of 2016.

**14. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS)**

**Adopted at:** Nagoya, 29th October, 2010.

**Ratification:** 3rd March, 2014.

**Entry into Force:** 12th October, 2014.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** Creates a transparent legal framework for the fair and equitable sharing of benefits arising out of the utilisation of Genetic Resources thereby contributing to the conservation and sustainable use of biodiversity.

**Depositary:** Secretary General, United Nations.

**Legislative Status:** Domesticated vide the Environmental Management and Co-ordination Act, 1999.

**15. Beijing Amendment to Montreal Protocol on Substances that Deplete Ozone Layer**

**Adopted at:** Beijing, 3rd December, 1999.

**Entry into force:** 25th February, 2002.

**Signature:** 16th September, 1987.

**Date of Accession:** 26th September, 2016.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** International cooperation and collaboration to protect the ozone layer by taking precautionary measures to control global emissions of substances that deplete the ozone layer.

**Depositary:** Secretary General, United Nations.

**Legislative Status:** Domesticated vide the Environmental Management and Co-ordination Act, 1999.

**16. East African Community Protocol on Sanitary and Phyto-Sanitary (SPS) Measures**

**Adopted at:** Arusha, 12th July, 2013.

**Ratification:** 29th June, 2016.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Measures:** Proposes a common and improved framework in East African Community to promote trade in food and agricultural commodities and strengthen the application of a harmonized approach for implementation of Sanitary and Phyto-Sanitary (SPS) measures and activities.

**Depositary:** The EAC Secretariat.

**Legislative Status:** Seed and Plant Varieties Act, Rev. 2012 No. 326; Animal Diseases Act, Cap. 364 (*Rev. 2012*).

## PEACE AND SECURITY

### **17. Declaration of Non-Acceptance of Jurisdiction of the International Criminal Court (ICC) Pertaining to the Crime of Aggression in Article 8 of the Rome Statute**

**Adopted in Kampala, 10th June, 2010.** Amendment to Article 8 of the Rome Statute of the ICC.

**Entry into force of Amendment to Article 8 for State parties:** 26th September, 2012.

**Date of Declaration by Kenya to the Amendment:** 30th November, 2015.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Declaration:** Enables State Parties to opt-out of the Court's exercise of jurisdiction over the Crime of Aggression in accordance with Article 12 of the Rome Statute.

**Depository:** Secretary General, United Nations.

**Legislative Status:** International Crimes Act, No. 16 of 2008 (*Rev. 2012*).

### **18. Mutual Defence Pact**

**Adopted at:** Kampala, 20th February, 2014.

**Signature:** 20th February, 2014.

**Ratification:** 7th October, 2015.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Pact:** Conflict prevention, management and resolution; prevent genocide; combat terrorism; control of proliferation of illicit small arms and light weapons; combat transnational organized crime; conduct peace support operations; undertake disaster risks reduction; manage crisis; manage refugees, asylum seekers and movement of people; exchange of information and sharing of intelligence; management of prisons and correctional services; address and combat cattle rustling; combat economic crimes, poaching and other environmental crimes as well as suppress piracy.

**Depository:** The EAC Secretariat.

**Legislative Status:** Domesticated vide the Kenya Defence Forces Act, No. 25 of 2012.

**19. Agreement on the Establishment of Eastern Africa Standby Force**

**Signature:** 26th June, 2014.

**Ratification:** 7th October, 2015.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Agreement:** It aims to enhance peace and security in the region through the enhancement of collaborative efforts by Partner States to ensure stability and regional integration. It also maintains a ready force to respond to crises.

**Depositary:** The EAC Secretariat.

**Legislative Status:** Domesticated by the Kenya Defence Forces Act, No. 25 of 2012.

**20. East African Community Protocol on Cooperation in Defence Affairs**

**Adopted at:** Arusha, 28th April, 2012.

**Entry into force:** 19th November, 2015.

**Signature:** 28th April, 2012.

**Ratification:** 7th October, 2015.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** Collaboration and cooperation of the EAC Partner States in all defence affairs with regional and International Organizations to promote peace, security and stability in the EAC.

**Depositary:** The EAC Secretariat.

**Legislative Status:** Domesticated vide the Kenya Defence Forces Act, No. 25 of 2012.

**21. Tripartite Agreement; the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees governing the Voluntary repatriation of Somali refugees living in Kenya**

**Adopted at:** Nairobi, 10th November, 2013.

**Signature:** 10th November, 2013.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** To provide for the repatriation of Somali refugees and their re-integration.

**Legislative Status:** Domesticated vide the Refugee Act, No. 13 of 2006.

**22. East African Community Protocol on Peace and Security**

**Adopted at:** Nairobi, 30th November, 2012.

**Signed on:** 15th February, 2013.

**Ratification:** 23rd March, 2017.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Charter:** To promote peace, security and stability within the Community and good neighbourliness among the EAC Partner States.

**Depositary:** East African Community Secretariat, Arusha.

**Legislative Status:** National Cohesion and Integration Act, No. 12 of 2008; Security Laws Amendment Act, No. 19 of 2014.

**23. Statute of the African Union Mechanism for Police Cooperation (AFRIPOL)**

**Adopted at:** Addis Ababa, 30th January, 2017.

**Entry into Force:** 30th January, 2017.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** To ensure commitment and determination of the AU Member States to promote collaboration among police institutions, human rights, good governance and rule of law to ensure peace and security, safety and stability.

**Depositary:** The Africa Union Commission.

**Legislative Status:** The National Police Service Act, No. 11A of 2011 (*Rev. 2016*).

**24. Protocol Additional to the Geneva Convention of 12th August, 1949 and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III) 8th December, 2015**

**Adopted at:** Geneva, 8th December, 2005.

**Entry into force:** 14th January, 2007.

**Date signed:** 8th December, 2005.

**Date of Accession:** 26th September, 2013.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** Protection of human persons in cases of armed conflict under the protection of the principles of humanity and dictates of the public conscience.

**Depositary:** Secretary General, United Nations.

**Legislative Status:** Domesticated vide the Geneva Conventions Act, Cap. 198 of the Laws of Kenya.

## TRANSPORT AND INFRASTRUCTURE

### 25. Africa Maritime Transport Charter, 2010

**Adopted at:** Durban, 26th July, 2010.

**Ratification:** 28th March, 2014.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Charter:** Harmonization of maritime policies to promote sustainable growth and development of African merchant fleets and foster closer cooperation among State Parties of the same region and between the regions. Further, to encourage the establishment and support of maritime and ports administrations.

**Depositary:** Chairperson of the African Union Commission.

**Legislative Status:** Domesticated vide the Kenya Maritime Authority Act of 2006 (*Rev. 2012*).

### 26. Tripartite Agreement for Development and Operation of a Standard Gauge Railway within the Framework of the Northern Corridor Integration Projects

**Adopted at:** Kampala, 28th August, 2013.

**Signature:** May, 2014.

**Ratification:** 4th November, 2015.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** To establish a framework under which the parties shall implement the provisions of the SGR Protocol. The directive of the 13th Northern Corridor Integration Projects Summit is to undertake joint operations with the aim of achieving seamless operations in line with the laws of Kenya, Uganda and Rwanda (South Sudan acceded on May, 2014).

**Depositary:** Secretariat, Northern Corridor Coordination Authority.

**Legislative Status:** Domesticated vide the Kenya Railways Corporation Act (*Rev. 2012*), Cap. 397 of the Laws of Kenya.

## DIPLOMATIC RELATIONS

### **27. Agreement on Privileges and Immunities of the Organization for the Prohibition of Chemical Weapons (OPCW)**

**Entry into Force:** 29th April, 1997.

**Signature:** 28th April, 2001.

**Ratification:** 24th March, 2014.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Agreement:** To grant privileges and immunities to the OPCW to enable the Organization function independently, without interference by Host States or Third Parties.

**Depositary:** Organization for the Prohibition of Chemical Weapons (OPCW), The Hague.

**Legislative Status:** Domesticated vide the Privileges and Immunities Act, Cap. 179 of the Laws of Kenya.

### **28. East African Community Protocol on Privileges and Immunities**

**Adopted at:** Arusha, Tanzania on February, 2015.

**Signature:** 31st May, 2018.

**Ratification:** 31st May, 2018.

**Signed by:** Amb. Monica Juma DPhil, C.B.S., Cabinet Secretary, Ministry of Foreign Affairs.

**Object of the Agreement:** To accord the Community, its organs, institutions and persons employed in different capacities in its service with such immunities and privileges as are accorded to similar International Organizations in the territories of the Partner States.

**Depositary:** East African Community (EAC).

**Legislative Status:** Domesticated vide the Privileges and Immunities Act, Cap. 179 of the Laws of Kenya.

**EDUCATION, SCIENCE AND TECHNOLOGY**

**29. The Africa Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology-Fifth Extension of Agreement**

**Adopted on:** 4th April, 2015.

**Date of Accession:** 9th November, 2015.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Agreement:** Pursuit by African Member States to further strengthen and enlarge the contribution of nuclear science and technology to socio-economic development on the African Continent.

**Depositary:** The African Union Commission.

**Legislative Status:** Domesticated vide the Science, Technology and Innovations Act, No. 28 of 2013; Universities Act, No. 42 of 2012.

### **30. Africa Youth Charter**

**Adopted at:** Banjul, Gambia on 2nd July, 2006.

**Entry into force:** 8th August, 2009.

**Date of Accession:** 23rd January, 2014.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Charter:** To ensure youth participation in society, politics and welfare development.

**Depositary:** Chairperson of African Union Commission.

**Legislative Status:** Domesticated vide the National Youth Council Act, No. 10 of 2009 and the National Youth Service Act, Cap. 208 of the Laws of Kenya.

### **31. Mauritius Declaration on the implementation of the United Nations Sendai Framework in Africa**

**Adopted at:** Mauritius, 25th November, 2016.

**Signature:** 25th November, 2016.

**Signed by:** Mr. Arthur Osiya Amug, Secretary, National Administration, Ministry of Interior and Co-ordination of the National Government.

**Object of the Protocol:** Brings together African States to review progress in the implementation of the continental and global disaster risk reduction frameworks. The Platform also enables the sharing of good practices and lessons learnt with a view to enhancing coordination, increasing awareness, and mobilizing commitments to disaster risk reduction across Africa.

**Depositary:** Ministry of Interior and Co-ordination of the National Government.

**Legislative Status:** National Disaster Risk Management Policy, 2016; Disaster Risk Management Bill, 2017.

**TRADE**

**32. Economic Partnership Agreements between the European Union and the East African Community**

**Adopted at:** Brussels, Belgium on 16th October, 2014.

**Signature:** 20th June, 2016.

**Ratification:** 20th September, 2016.

**Signed by:** Amb. Johnson Mwangi Weru, Ambassador of the Republic of Kenya to the Kingdom of Belgium, Grand Duchy of Luxembourg and Mission to the European Union Treasury.

**Object of the Agreements:** To enhance regional integration and economic development in the African, Caribbean and Pacific (ACP) countries by providing better for agricultural and fisheries products.

**Depositary:** EAC Secretariat.

**Legislative Status:** Domesticated by the East African Community Customs Management Act, 2004.

**33. African Continental Free Trade Agreement (AFCFTA)**

**Adopted:** Kigali, Rwanda on 21st March, 2018.

**Ratification:** 6th May, 2018.

**Signed by:** H.E Hon. Uhuru Kenyatta, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces.

**Object of the Agreement:** To promote intra-continental trade in Africa by opening the trade flow of goods within Africa and as a result promote Africa's self-reliance.

**Depositary:** Africa Union Commission.

**Legislative status:** Kenya Trade Remedies Act, No. 32 of 2017.

**34. Agreement establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa (COMESA), the East Africa Community (EAC) and the Southern African Development Community (SADC)**

**Adopted on:** 10th June, 2015.

**Signature:** 10th June, 2015.

**Ratification:** 6th May, 2018.

**Signed by:** Amb. Monica Juma DPhil, C.B.S., Cabinet Secretary, Ministry of

Foreign Affairs and International Trade.

**Object of the Agreement:** To strengthen and deepen economic integration of the Southern and Eastern Africa region through harmonisation of policies and programmes across the three Regional Economic Communities (RECs) in the areas of trade, customs and infrastructure development.

**Depositary:** Common Market for Eastern and Southern Africa (COMESA) Secretariat.

**Legislative status:** Treaty Making and Ratification Act, No. 45 of 2012 (*Rev. 2014*).

## INTELLECTUAL PROPERTY

### **35. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks**

**Adopted at:** Madrid, Spain on 27th June, 1989.

**Date of Accession:** 26th March, 1998.

**Entry into force:** 1st December, 1995 (for Kenya: 26th June, 1998).

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** Kenya deposited on 12th March, 2014, a declaration in accordance with Article 8 (7) (a) of the Madrid Protocol in connection with International Registration. The declaration enabled Kenya to receive specific fees known as "Individual Fees" from applicants designating Kenya in Madrid system applications.

**Depositary:** Director General, World Intellectual Property Organization (WIPO).

**Legislative Status:** Domesticated vide the Industrial Property Act, 2001 and the Trademarks Act, 1982 (*Rev. 2012*).

### **36. The Protocol Amending the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement**

**Signature:** 7th July, 2015.

**Ratification:** 21st July, 2015.

**Entry into force:** 23rd February, 2017.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Agreement:** Provides for minimum standards which allow members to provide more extensive protection of intellectual property.

**Depositary:** World Trade Organization (WTO).

**Legislative Status:** Domesticated vide the Industrial Property Act, of 2001.

### **37. Protocol amending the Marrakesh Agreement establishing the World Trade Organization**

**Adopted at:** Geneva, Switzerland on 27th November, 2014.

**Signature:** 3rd December, 2015.

**Ratification:** 10th December, 2015.

**Entry into Force:** 22nd February, 2017.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** To facilitate access for least-developed and developing countries to cheaper versions of patented medicines needed to address public health problems (such as HIV/AIDS, malaria and other epidemics). The Protocol establishes a mechanism for pharmaceutical products manufactured under compulsory licence to be exported to eligible importing Members under certain circumstances.

**Depositary:** World Trade Organization (WTO).

**Legislative Status:** Domesticated vide the Licensing Laws Act, No 17 of 2006.

**38. Economic Partnership Agreement Between the East African Community Partner States and the European Union and its Member States**

**Adopted at:** The European Parliament on 25th March, 2009.

**Signature:** 1st September, 2016.

**Ratification:** 20th September, 2016.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Agreement:** The agreement covers trade in goods and development cooperation. It also contains an extensive chapter on fisheries – aiming mainly to reinforce cooperation on the sustainable use of resources - and foresees further negotiations on services and trade-related rules in the future.

**Depositary:** The European Union.

**Legislative Status:** Domesticated vide the East African Community Customs Management Act, 2004.

**39. Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled**

**Adopted at:** Marrakesh, Morocco 27th June, 2013.

**Signature:** 28th June, 2013.

**Ratification:** 18th May, 2017.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** To create a set of mandatory limitations and exceptions

for the benefit of the blind, visually impaired and otherwise print disabled.

**Depositary:** World Intellectual Property Organization (WIPO), Geneva.

**Legislative Status:** Domesticated vide the Persons with Disabilities Act, No. 14 of 2003 (*Rev. 2017*).

## FISCAL MATTERS

### **40. Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol**

**Adopted at:** Strasbourg, France on 25th January, 1988.

**Entry into Force:** 8th February, 2016.

**Date of Accession:** 8th February, 2016.

**Signed by:** Mr. Henry Rotich, E.G.H., Cabinet Secretary for the National Treasury.

**Object of the Convention:** To address all forms of tax co-operation to tackle tax evasion and avoidance. It facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers.

**Depositary:** Secretary-General, Organization for Economic Co-operation and Development (OECD).

**Legislative Status:** Domesticated vide the Income Tax Act, No. 38 of 2016.

### **41. Protocol on Establishment of the East African Community Monetary Union**

**Adopted at:** Arusha.

**Signature:** November, 2013.

**Ratification:** 28th November, 2014.

**Signed by:** Ambassador (Dr.) Amina C. Mohamed, C.B.S., C.A.V., Cabinet Secretary, Ministry of Foreign Affairs and International Trade.

**Object of the Protocol:** Harmonize the EAC financial frameworks: achieve certain fiscal and monetary policy targets for eligibility to the Monetary Union.

**Depositary:** The EAC Secretariat.

**Legislative Status:** Domesticated vide the East African Trade Negotiations Act, 2007 and the Central Bank Act, Cap. 491 of 2014; Banking Act, Cap. 488; Microfinance Act, No. 19 of 2006; Capital Markets Act, No. 485 A 2013; Kenya Revenue Authority Act, No. 2 of 1995; Insurance Act (Amendment, 2006), Cap. 487; Retirement Benefits Authority Act, No. 3 of 1997.

## 5.0 LIST OF TREATIES AND GOVERNING BODIES

TREATY	GOVERNING BODY
<b>LAW OF TREATIES</b>	
1. The 1969 Vienna Convention on the Law of Treaties	The United Nations/Member States
<b>DIPLOMATIC RELATIONS</b>	
1. The Charter of the United Nations	The United Nations
2. The 1961 Vienna Convention on Diplomatic Relations	The United Nations
3. Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes	The United Nations
4. Optional Protocol to the Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality	The United Nations
5. Convention on the Privileges and Immunities of the United Nations	The United Nations
6. The 1963 Vienna Convention on Consular Relations	The United Nations
7. Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality	The United Nations
8. Convention on the Privileges and Immunities of the Specialized Agencies	The United Nations
9. Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents	The United Nations
10. Agreement on the Privileges and Immunities of the Organization for the Prohibition of Chemical Weapons	The Organization for the Prohibition of Chemical Weapons (OPCW)
11. General Convention on Privileges and Immunities on the Organization of African Unity	The African Union

TREATY	GOVERNING BODY
12. Additional Protocol to the OAU General Convention on Privileges and Immunities	The African Union
13. EAC Protocol on Foreign Policy Coordination	East African Community Secretariat
14. East African Community Protocol on Privileges and Immunities	The East African Community Secretariat
<b>HUMAN RIGHTS AND SOCIAL PROTECTION</b>	
<b>Human Rights</b>	
1. Universal Declaration on Human Rights	The United Nations Human Rights Council; and The United Nations Human Rights Committee
2. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	The United Nations Committee against Torture; and The United Nations Subcommittee on Prevention of Torture
3. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	The United Nations Committee on the Elimination of All Forms of Racial Discrimination (CERD)
4. The International Covenant on Civil and Political Rights (ICCPR)	The United Nations Human Rights Committee
5. The International Covenant on Economic, Social and Cultural Rights (ICESCR)	The United Nations Committee on Economic, Social and Cultural Rights (CESCR)
6. Geneva Convention Relative to the Treatment of Prisoners of War	The United Nations International Federation of Red Cross and Red Crescent Societies
7. Convention relating to the Status of Refugees	The United Nations Refugee Agency; United Nations High Commissioner for

TREATY	GOVERNING BODY
	Refugees; and International Organization for Migration (IOM)
8. Protocol relating to the Status of Refugees	United Nations High Commissioner for Refugees; and International Organization for Migration (IOM)
9. Convention on the Rights of the Child	The UN Committee on the Rights of the Child (CRC)
10. Convention on the Rights of Persons with Disabilities	The UN Committee on the Rights of Persons with Disabilities (CRPD)
11. Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)	The UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)
12. Geneva Convention Relative to the Protection of Civilian Persons in Time of War	The International Federation of Red Cross and Red Crescent Societies
13. Protocol Additional to the Geneva Conventions of 12th August, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)	The International Federation of Red Cross and Red Crescent Societies
14. Protocol Additional to the Geneva Conventions of 12th August, 1949, and relating to the Protection of Victims of Non – international Armed Conflicts (Protocol II)	The International Federation of Red Cross and Red Crescent Societies
15. Protocol Additional to the Geneva Conventions of 12th August, 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)	The International Federation of Red Cross and Red Crescent Societies
16. Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field	The International Federation of Red Cross and Red Crescent Societies

TREATY	GOVERNING BODY
17. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa – Maputo Protocol	The African Union Women's Committee (AUCW)
18. The African Youth Charter	The African Union - Pan African Youth Union (PYU)
<b>Social Protection</b>	
1. The Hague Convention on the Protection of Children and Cooperation in Respect of Inter Country Adoption	Hague Conference on Private International Law
2. Optional Protocol on the Sale of Children Child Prostitution and Child Pornography	The United Nations
3. African Charter on the Rights and Welfare of the Child (ACRWC)	The African Union
<b>PEACE AND SECURITY</b>	
1. Comprehensive Nuclear Test-Ban Treaty (CNTBT)	The Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty Organization
2. Convention against Transnational Organized Crime	The United Nations Office on Drug and Crime (UNODC)
3. Treaty on the Non-Proliferation of Nuclear Weapons	The United Nations Office for Disarmament Affairs
4. UN Optional Protocol on Involvement of Children in Armed Conflict	The UN Committee on the Rights of the Child (CRC)
5. Convention on the Prohibition of the Development, Production and Stockpiling Bacteriological (Biological) and Toxin Weapons and on their Destruction	The United Nations Office for Disarmament Affairs
6. The 1997 Convention on Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction	The United Nations Office for Disarmament Affairs

TREATY	GOVERNING BODY
7. Protocol for the Prohibition of the use of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare	The United Nations Office for Disarmament Affairs
8. Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction	The United Nations Office for Disarmament Affairs; and Organization for the Prohibition of Chemical Weapons (OPCW)
9. International Convention against Taking of Hostages	The United Nations Security Council Counter-Terrorism Committee
10. International Convention for the Suppression of Acts of Nuclear Terrorism	The United Nations Security Council Counter-Terrorism Committee
11. International Convention for the Suppression of Terrorist Bombings	The United Nations Office for Disarmament Affairs; and The United Nations Security Council Counter-Terrorism Committee
12. International Convention for the Suppression of the Financing of Terrorism	The United Nations Security Council Counter-Terrorism Committee
13. The Constitutive Act of the African Union	The African Union
14. Treaty Establishing the East African Community (EAC)	The EAC Secretariat
15. The Pact on Security, Stability and Development for the Great Lakes Region	The International Conference Secretariat on the Great Lakes Region (ICGLR)
16. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime African Nuclear-Weapon-Free Zone Treaty	The Peace and Security Council of the African Union

<b>TREATY</b>	<b>GOVERNING BODY</b>
17. OAU Convention on the Prevention and Combating of Terrorism	The Peace and Security Council of the African Union
18. Protocol Relating to the Establishment of Peace and Security Council of the African Union	The Peace and Security Council of the African Union
19. The African Nuclear Weapon Free Zone Treaty (Treaty of Pelindaba)	The African Commission on Nuclear Energy
20. Protocol on the Establishment of a Conflict Early Warning and Response Mechanism for IGAD Member States (CEWARN)	National Drought Management Authority & IGAD
21. The Nairobi Protocol for the Prevention, Control and Reduction of the Proliferation of Small Arms and Light weapons in the Great Lakes Region and Horn of Africa	Regional Centre on Small Arms (RECSA), Nairobi, Kenya
22. Protocol on Combating Drug Trafficking in the East African Region	The EAC Secretariat
23. EAC Protocol on Peace and Security	The EAC Secretariat
24. EAC Protocol on Cooperation in Defence Affairs	The EAC Secretariat
25. Pact on Security, Stability and Development in the Great Lakes Region, December, 2006.	International Conference on the Great Lakes Region (ICGLR)
<b>INTERNATIONAL TRADE AND INVESTMENT</b>	
1. Agreement Establishing the World Trade Organization	The World Trade Organization (WTO)
2. World Trade Organization (WTO) Trade Facilitation Agreement	The World Trade Organization (WTO)
3. Constitution of the United Nations Industrial Development Organization	The United Nations Industrial Development Organization (UNIDO)
4. Cotonou ACP-EU Partnership Agreement	The African-Caribbean-Pacific Secretariat

TREATY	GOVERNING BODY
5. International Centre for Settlement of Investments Disputes Convention (ICSID)	The International Centre for Settlement of Investments Disputes(ICSID)
6. Convention Establishing the Multilateral Investment Guarantee Agency	The Multilateral Investment Guarantee Agency
7. Articles of Agreement of the International Monetary Fund	The International Monetary Fund (IMF)
8. Common Market for Eastern and Southern Africa (COMESA)	The COMESA Secretariat
9. East African Monetary Union Protocol	The EAC Secretariat
10. Protocol on the Establishment of the East African Community Common Market	The EAC Secretariat
11. Protocol on the Establishment of the East African Customs Union	The EAC Secretariat
12. Agreement establishing the African Development Bank 2011	African Development Bank Group (AfDB)
13. Treaty and Charter of the East African Development Bank	East African Development Bank (EADB)
14. The International Bank for Reconstruction and Development (IBRD) Articles of Agreement	The World Bank
15. Charter of the Eastern and Southern African Trade and Development Bank	The Preferential Trade Area Bank
16. International Finance Co-operation Agreement	International Finance Co-operation
17. African Continental Free Trade Agreement (AFCTA)	The AU Secretariat
<b>STANDARDIZATION</b>	
1. The Metre Convention	International Bureau of Weights and Measures (BIPM)

TREATY	GOVERNING BODY
2. East Africa Community Protocol on Standardization Quality Assurance Metrology and Testing	The EAC Secretariat
3. Treaty establishing the International Organization for Standardization	International Organization for Standardization (ISO)
4. Codex Alimentarius Standards	<ul style="list-style-type: none"> <li>• Codex Alimentarius Commission</li> <li>• The World Health Organisation (WHO)</li> </ul>
<b>INTELLECTUAL PROPERTY</b>	
1. Convention Establishing the World Intellectual Property Organization	The World Intellectual Property Organization (WIPO)
2. Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPS Agreement	The World Trade Organization (WTO)
3. Berne Convention for the Protection of Literary and Artistic Works	The World Intellectual Property Organization (WIPO)
4. Patent Co-operation Treaty	The World Intellectual Property Organization (WIPO)
5. Paris Convention for the Protection of Industrial Property	The World Intellectual Property Organization (WIPO)
6. Paris Convention for the Protection of Industrial Property of March, 20, 1883, as revised at Brussels on December, 14, 1900, at Washington on June, 2, 1911, at The Hague on November, 6, 1925, at London on June, 2, 1934, at Lisbon on October, 31, 1958, and at Stockholm on July, 14, 1967	The World Intellectual Property Organization (WIPO)
7. Brussels Convention Relating to the Distribution of Programme – Carrying signals distributed by Satellite	The World Intellectual Property Organization (WIPO)

TREATY	GOVERNING BODY
8. Madrid Agreement Concerning the International Registration of Marks Madrid	The World Intellectual Property Organization (WIPO)
9. Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms	The World Intellectual Property Organization (WIPO)
10. Agreement on the Creation of an African Regional Industrial Property Organization (Lusaka Agreement) (1976)	The African Regional Industrial Property Organization (ARIPO)
11. Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization	The African Regional Industrial Property Organization (ARIPO)
12. Nairobi Treaty on the Protection of the Olympic Symbol	The World Intellectual Property Organization (WIPO)
<b>EDUCATION, SCIENCE AND TECHNOLOGY</b>	
1. Constitution of the United Nations Educational, Scientific and Cultural Organization	The United Nations Educational, Scientific and Cultural Organization (UNESCO)
2. Convention Concerning Paid Educational Leave	The International Labour Organization (ILO)
3. Protocol on the Establishment of the East African Kiswahili Commission	The EAC Secretariat
4. Protocol on the Establishment of the East African Science and Technology Commission	The EAC Secretariat
5. Protocol on the Establishment of the Inter-University Council for East Africa	The EAC Secretariat
<b>OUTER SPACE</b>	
1. Convention on the International Mobile Satellite Organization (INMARSAT)	The International Mobile Satellite Organization

TREATY	GOVERNING BODY
<b>PLANNING AND STATISTICS</b>	
1. New Partnership for Africa's Development (NEPAD)	The NEPAD Secretariat
2. The African Charter on Statistics	The African Union (AU)
<b>HEALTH</b>	
1. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	The United Nations Office on Drugs and Crime (UNODC)
2. The Convention on Psychotropic Substances, 1971	The United Nations Office on Drugs and Crime (UNODC)
3. The Single Convention on Narcotic Drugs (1961)	The United Nations Office on Drugs and Crime (UNODC)
4. The Constitution of the World Health Organization	The World Health Organization (WHO)
5. WHO Framework Convention on Tobacco Control	The World Health Organization (WHO)
6. WHO Nomenclature Regulations (NOMREGS), 1967	The World Health Organization (WHO)
7. Convention concerning the Compulsory Medical Examination of Children and Young Persons Employed at Sea	The International Labour Organization (ILO)
8. Protocol establishing East African Health Research Commission	The EAC Secretariat

TREATY	GOVERNING BODY
<b>TRANSPORT</b>	
<b>Air Transport</b>	
1. Convention on International Civil Aviation (1944 Chicago Convention)	The International Civil Aviation Organization (ICAO)
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971 Montreal Convention)	The International Civil Aviation Organization (ICAO)
3. Convention for the Suppression of Unlawful Seizure of Aircraft (1970 Hague)	The International Civil Aviation Organization (ICAO)
4. Convention for Unification of Certain Rules Relating to International Carriage by Air (1929 Warsaw)	The International Civil Aviation Organization (ICAO)
5. Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952 Rome Convention)	The International Civil Aviation Organization (ICAO)
6. Convention on International Interests in Mobile Equipment (Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment 2001	The International Civil Aviation Organization (ICAO)
7. Convention on Offences and Certain other Acts Committed on Board Aircraft (1963 Tokyo)	The International Civil Aviation Organization (ICAO)
8. Convention on the International Recognition of Rights in Aircraft	The International Civil Aviation Organization (ICAO)
9. Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991 Montreal)	The International Civil Aviation Organization (ICAO)
10. Convention on the Unification of Certain Rules of International Carriage by Air, (1999 Montreal Convention)	The International Civil Aviation Organization (ICAO)

TREATY	GOVERNING BODY
11. Protocol to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929	The International Civil Aviation Organization (ICAO)
12. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988 Montreal)	The International Civil Aviation Organization (ICAO)
13. Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation	The International Civil Aviation Organization (ICAO)
14. Protocol on the Establishment of the East African Community Civil Aviation Safety and Security Oversight Agency (CASSOA)	The EAC Secretariat
<b>Road Transport</b>	
15. Convention on Road Traffic	The United Nations
16. 1993 COMESA Protocol for the Establishment of Third Party Motor Vehicle Insurance Scheme Road Transport Market Liberalisation	The COMESA Secretariat
17. Regional Customs Transit Guarantee (RCTG) Agreement	The COMESA Secretariat
18. Lamu Port and Lamu – Southern Sudan – Ethiopia Transport Corridor (LAPSSET)	The LAPSSET Corridor Development Authority
19. The Northern Corridor Transit and Transport Agreement, 2007	The Northern Corridor Transit and Transport Coordination Authority
<b>Rail Transport</b>	
20. Protocol for the Development and Operation of the Standard Gauge Railway	The Northern Corridor Co-ordination Authority

TREATY	GOVERNING BODY
<b>Maritime Transport</b>	
21. United Nations Convention of the Carriage of Goods by Sea	The International Maritime Organization (IMO)
22. Convention on the International Maritime Organization	The International Maritime Organization (IMO)
23. Convention on the Territorial Sea and the Contiguous Zone	The International Maritime Organization (IMO)
24. International Convention on Load Lines	The International Maritime Organization (IMO)
25. Protocol of 1988 relating to the Load Lines Convention, 1966	The International Maritime Organization (IMO)
26. Protocol to the Convention on Limitation of Liability for Maritime Claims	The International Maritime Organization (IMO)
27. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	The International Maritime Organization (IMO)
28. Convention on Facilitation of International Maritime Traffic, 1965, as Amended	The International Maritime Organization (IMO)
29. Convention on the International Regulations for Preventing Collisions at Sea	International Maritime Organization (IMO)
30. Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter	The International Maritime Organization (IMO)
31. International Convention for Safe Containers	The International Maritime Organization (IMO)
32. International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004	The International Maritime Organization (IMO)
33. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL)	The International Maritime Organization (IMO)
34. International Convention for the Safety of Life at Sea, 1974, as Amended (SOLAS 1974)	The International Maritime Organization (IMO)

TREATY	GOVERNING BODY
35. Protocol to the 1978 Safety of Life at Sea (SOLAS) Convention	The International Maritime Organization (IMO)
36. Protocol of 1988 Relating to the International Convention for the Safety of Life at Sea, 1974	The International Maritime Organization (IMO)
37. International Convention on Civil Liability for Bunker Oil Pollution Damage	The International Maritime Organization (IMO)
38. International Convention on Maritime Search and Rescue, 1979 (SAR)	The International Maritime Organization (IMO)
39. International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990	The International Maritime Organization (IMO)
40. International Convention on Salvage, 1989	The International Maritime Organization (IMO)
41. International Convention on Standards of Training, Certification and Watch-Keeping for Seafarers, 1978 (STCW)	The Intergovernmental Maritime Consultative Organization
42. International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001	The International Maritime Organization (IMO)
43. International Convention on Tonnage Measurement of Ships	The International Maritime Organization (IMO)
44. Maritime Labour Convention (MLC)	The International Maritime Organization (IMO)
45. Nairobi International Convention on Removal of Wreck	The International Maritime Organization (IMO)
46. Intergovernmental Standing Committee on Shipping Agreement 1987 as Amended	The Intergovernmental Standing Committee on Shipping (ISCOS)
<b>LAW OF THE SEA</b>	
1. United Nations Convention on the Law of the Sea (UNCLOS)	The United Nations

TREATY	GOVERNING BODY
2. Code of Conduct for Responsible Fisheries, 1995	The Food and Agriculture Organization (FAO)
3. Southern Indian Ocean Fisheries Agreement	Southwest Indian Ocean Fisheries Commission (SWIOFC)
4. International Convention for Regulation of Whaling	The International Whaling Commission (IWC)
5. Ocean Tuna Commission Agreement	The Indian Ocean Tuna Commission (IOTC)
6. Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing	The Food and Agriculture Organization (FAO)
7. Convention on Fishing and Conservation of the Living Resources of the High Seas	The United Nations
8. Memorandum of Understanding concerning Conservation and Management of marine turtles and their habitats of the Indian Ocean and South East Asia	Southwest Indian Ocean Fisheries Commission (SWIOFC) and The Indian Ocean Rim Association
9. Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December, 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks	The Indian Ocean Tuna Commission; and The Southwest Indian Ocean Fisheries Commission
10. Convention for the Establishment of the Lake Victoria Fisheries Organization	The EAC Secretariat
<b>ENVIRONMENT, FORESTRY AND AGRICULTURE</b>	
1. Paris Agreement	The UNFCCC Secretariat, Bonn
2. Convention of Biological Diversity (CBD)	The CBD Secretariat, Montreal
3. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	The CITES Secretariat, Geneva

TREATY	GOVERNING BODY
4. Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)	The Ramsar Secretariat at the headquarters of the International Union for Conservation of Nature (IUCN)
5. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity	The CBD Secretariat, Montreal
6. The Kyoto Protocol to the United Nations Framework Convention on Climate Change	The UNFCCC Secretariat, Bonn
7. United Nations Convention to Combat Desertification (UNCCD)	The UNCCD Secretariat, Bonn
8. Convention on the Conservation of Migratory Species of Wild Animals (CMS)	The United Nations Environment Programme (UNEP)
9. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	The Rotterdam Secretariat, Geneva
10. Stockholm Convention on Persistent Organic Pollutants	The United Nations Environment Programme (UNEP)
11. Cartagena Protocol on Biosafety to the Convention on Biological Diversity	The CBD Secretariat, Montreal
12. United Nations Framework Convention on Climate Change	The UNFCCC Secretariat, Bonn
13. Vienna Convention for the Protection of the Ozone Layer	The Ozone Secretariat, Vienna
14. Montreal Protocol on Substances that Deplete the Ozone Layer	The Ozone Secretariat, Montreal
15. Constitution of the Food and Agriculture Organization of the United Nations	The Food and Agriculture Organization (FAO)
16. International Coffee Agreement (ICA)	The International Coffee Organization

TREATY	GOVERNING BODY
17. International Grains Agreement	International Grains Association
18. International Sugar Agreement 1992 (ISA)	The International Sugar Association
19. International Plant Protection Convention	The Food and Agriculture Organization (FAO)
20. Constitution of the International Rice Commission	The International Rice Commission
21. International Convention for the Protection of New Varieties of Plants	The Food and Agriculture Organization (FAO); and The International Union for the Protection of New Varieties of Plants (UPOV)
22. Agreement Establishing International Fund for Agricultural Development	The International Fund for Agricultural Development
23. Agreement for the Establishment of the Global Crop Diversity Trust	The Global Crop Diversity Trust
24. International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)	The Food and Agriculture Organization (FAO)
25. Treaty Establishing the Common Fund for Commodities	The Common Fund for Commodities
26. WTO Agreement on the Application of Sanitary and Phytosanitary Measures	The World Trade Organization (WTO)
27. Agreement establishing the International Fund for Agricultural Development (IFAD)	The International Fund for Agricultural Development (IFAD)
28. Phytosanitary Convention for Africa	The Inter African Phytosanitary Council
29. African Convention on the Conservation of Nature and Natural Resources (Revised Version)	The African Union Secretariat
30. Convention on the African Migratory Locust	The International Red Locust Control Organisation for Central and Southern

<b>TREATY</b>	<b>GOVERNING BODY</b>
	Africa; and The Desert Locust Control Organisation for Eastern Africa
31. Convention of the African Energy Commission	The African Energy Commission
32. Convention on the Establishment of the African Centre for Fertilizer Development	The African Centre for Fertilizer Development
33. East Africa Community Protocol for the Sustainable Development of Lake Victoria Basin	The EAC Secretariat
34. East Africa Community Protocol on Environment and Natural Resources Management	The EAC Secretariat
35. East Africa Community Protocol on Sanitary and Phyto-sanitary (SPS) Measures	The EAC Secretariat
36. International Agreement for the Creation of the Office International Des Epizooties	The World Organization for Animal Health (OIE)
37. Global Plan of Action for Animal Genetic Resources and the Interlaken Declaration	The Food and Agriculture Organization (FAO)
<b>ENERGY</b>	
1. Statute of the International Renewable Energy Agency (IRENA)	The International Renewable Energy Agency, Abu Dhabi
<b>ICT, RADIO REGULATIONS AND TELECOMMUNICATIONS</b>	
1. International Telecommunications Union (ITU)	The International Telecommunications Union (Special Agency of the UN)
2. Constitution of the Universal Postal Union	The Universal Postal Union (UPU)
3. General Regulations of the Universal Postal Union	The Universal Postal Union (UPU)
4. The African Telecommunications Union Agreement	The African Telecommunications Union

<b>TREATY</b>	<b>GOVERNING BODY</b>
5. Convention of the Pan African Postal Union (PAPU)	The Pan African Postal Union (PAPU)
6. Inter-governmental Agreement establishing the African Advanced Level Telecommunications Institute	The African Advanced Level Telecommunications Institute (AFRALTI)
7. The East African Community Protocol on Information, Communication and Technology	The EAC Secretariat
<b>ETHICS, INTEGRITY AND PUBLIC SERVICE ADMINISTRATION</b>	
1. United Nations Convention against Corruption (UNCAC)	The United Nations
2. African Convention on Preventing and Combating Corruption	The African Union
3. The African Charter on Values and Principles of Public Service and Administration	African Association of Public Administration (AAPAM)
<b>LABOUR AND EMPLOYMENT</b>	
<b>Fundamental Conventions</b>	
4. Equal Remuneration Convention, 100 of 1951	The International Labour Organization (ILO)
5. Forced Labour Convention, 29 of 1930	The International Labour Organization (ILO)
6. Minimum Age Convention, 138 of 1973	The International Labour Organization (ILO)
7. Right to Organize and Collective Bargaining Convention, 98 of 1949	The International Labour Organization (ILO)
8. Worst Forms of Child Labour Convention, 1999 (No. 182)	The International Labour Organization (ILO)
<b>Governance Conventions</b>	
9. Labour Inspection (Agriculture) Convention, 129 of 1969	The International Labour Organization (ILO)

TREATY	GOVERNING BODY
10. Labour Inspection (Industry) Convention, 81 of 1947	The International Labour Organization (ILO)
11. Tripartite Consultation (International Labour Standards) Convention, 1976	The International Labour Organization (ILO)
<b>Technical Conventions</b>	
12. C014 – Weekly Rest (Industry) Convention, 1921	The International Labour Organization (ILO)
13. C017 – Workmen’s Compensation (Accidents) Convention, 1925	The International Labour Organization (ILO)
14. C026 – Minimum Wage – Fixing Machinery Convention, 1928	The International Labour Organization (ILO)
15. C027 – Marking of Weight (Packages Transported by Vessels) Convention, 1929	The International Labour Organization (ILO)
16. C032 – Protection against Accidents (Dockers) Convention (Revised), 1932	The International Labour Organization (ILO)
17. C063 – Convention Concerning Statistics of Wages and Hours of Work, 1938	The International Labour Organization (ILO)
18. C088 – Employment Service Convention, 1948	The International Labour Organization (ILO)
19. C089 – Night Work (Women) Convention (Revised), 1948	The International Labour Organization (ILO)
20. C094 – Labour Clauses (Public Contracts) Convention, 1949	The International Labour Organization (ILO)
21. C118 – Equality of Treatment (Social Security) Convention, 1962 (No.118)	The International Labour Organization (ILO)
22. C132 – Holidays with Pay Convention (Revised), 1970 (No. 132)	The International Labour Organization (ILO)
23. C135 – Workers' Representatives Convention, 1971	The International Labour Organization (ILO)
24. C140 – Paid Educational Leave Convention, 1974	The International Labour Organization (ILO)
25. C141 – Rural Workers' Organizations' Convention, 1975	The International Labour Organization (ILO)

<b>TREATY</b>	<b>GOVERNING BODY</b>
26. C142 – Human Resources Development Convention, 1975	The International Labour Organization (ILO)
27. C149 – Nursing Personnel Convention, 1977	The International Labour Organization (ILO)
28. Minimum Wage Fixing Convention, 1970	The International Labour Organization (ILO)
29. Convention concerning the Compulsory Medical Examination of Children and Young Persons Employed at Sea	The International Labour Organization (ILO)
30. Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975	The Committee on Migrant Workers The International Labour Organization (ILO)
31. Migration for Employment Convention No. 97 of 1949	The International Labour Organization (ILO)
32. Minimum Age (Fishermen) Convention, 1959	The International Labour Organization (ILO)
33. Minimum Wage Fixing Machinery (Agriculture) Convention No. 99 (1951)	The International Labour Organization (ILO)
34. Right of Association (Agriculture) Convention No. 11 of 1921	The International Labour Organization (ILO)
35. Unemployment Convention No. 2 of 1919	The International Labour Organization (ILO)
<b>SPORTS, CULTURE AND THE ARTS</b>	
1. International Convention against Doping in Sport	The World Anti-doping Agency
2. Convention relating to International Exhibitions	The United Nations Educational, Scientific and Cultural Organization (UNESCO)
3. Constitution of the United Nations Educational, Scientific and Cultural Organization	The United Nations Educational, Scientific and Cultural Organization (UNESCO)

<b>TREATY</b>	<b>GOVERNING BODY</b>
4. The Convention for the Safeguarding of the Intangible Cultural Heritage	The United Nations Educational, Scientific and Cultural Organization (UNESCO)
5. Convention on the Protection and Promotion of Diversity of Cultural Expressions	The United Nations Educational, Scientific and Cultural Organization (UNESCO)
6. Convention for the Protection of the World Cultural and Natural Heritage	The United Nations Educational, Scientific and Cultural Organization (UNESCO)
7. Cultural Charter for Africa	The African Union Commission
<b>LAND, HOUSING AND URBAN DEVELOPMENT</b>	
1. The United Nations Agency for Human Settlement and Urban Development (UN Habitat Programme)	The UN-Habitat
2. Company for Habitat and Housing in Africa (Shelter Afrique)	The Board of Management of Shelter-Afrique
<b>TOURISM</b>	
1. Statutes of the World Tourism Organization	The United Nations World Tourism Organization
<b>JUDICIAL ORGANS</b>	
1. Statute of International Court of Justice	The International Court of Justice
2. Convention for the Pacific Settlement of International Disputes	The Permanent Court of Arbitration (PCA)
3. The Rome Statute of the International Criminal Court	The International Criminal Court
4. Statute of the African Court on Human and Peoples Rights	The African Court on Human and People's Rights
5. Protocol to Operationalize Extended	The East African Court of

TREATY	GOVERNING BODY
Jurisdiction of the East African Court of Justice	Justice
6. United Nations Convention on the Law of Sea	The International Tribunal for the Law of the Sea
7. COMESA Court of Justice (CCJ)	COMESA Secretariat

## **6.0 CHALLENGES**

- 6.1 Inadequate public awareness on the existence of the Office of the Registrar of Treaties within the Government Structure, and the treaty-making process in Kenya.
- 6.2 Inadequate financial, technical and human resource capacity to fully operationalize the Office of the Registrar of Treaties to execute its mandate.
- 6.3 Slow ratification of international treaties and implementation of international obligations.

## **7.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY**

- 7.1 The Ministry in collaboration with other stake holders to create awareness on the existence of the Office of the Registrar of Treaties and its functions within Government and the treaty-making process in Kenya.
- 7.2 Increased budgetary allocation to fully operationalize the Office of Registrar of Treaties to execute its mandate.
- 7.3 Fast-track ratification and implementation of the treaties.

## ANNEX I

### THE TREATY MAKING PROCESS IN KENYA

#### I. INITIATION AND NEGOTIATION OF TREATIES

1. A Ministry or State Department may initiate a treaty making process in such manner as may be prescribed by the Cabinet Secretary for Foreign Affairs.
2. When deciding whether or not to initiate negotiations of a treaty, the relevant Ministry or State department shall consider and record whether the following conditions are met in respect of the subject treaty—
  - The need that the new treaty is to meet;
  - The existing legal regime and the extent of the treaty's applicability to the perceived problem;
  - The probability of reaching the required measure of agreement on the solution aimed for;
  - Any relevant legislative efforts related to the perceived problem;
  - The optimal form for the proposed treaty;
  - In the case of multilateral treaties, the likelihood that the proposed treaty shall be accepted by a sufficient number of states;
  - The anticipated time schedule for completing the treaty-making process;
  - The expected costs to Kenya of formulating and adopting the treaty;
  - In formulating treaties relating to technical or scientific problems, whether extensive scientific research or studies have been carried out to determine the parameters of the problem and the potential solutions.
3. The relevant Ministry or State department shall in consultation with the Cabinet Secretary for Foreign Affairs, the Attorney General, and in the case where there are financial implications, the Cabinet Secretary responsible for the National Treasury, prepare and present a Memorandum to Cabinet to commence treaty making for approval by the Cabinet. The Cabinet Memorandum shall contain a comprehensive analysis of the object and the purpose of the treaty; the main obligations that the treaty will impose on Kenya; if there are

any time considerations for concluding the treaty; ministerial responsibility of the treaty; the advantages and disadvantages of the treaty; the tentative cost of entering into the treaty; social, cultural, economic and political implications of entering into the treaty; possible effects on domestic law and any associated instrument on the same; and any other relevant information of the proposal.

4. Cabinet shall consider the proposal for treaty making within a reasonable time and provide its directions, either approving or disapproving the proposal for treaty making.
5. If Cabinet grants its approval for treaty making, the Ministry or the relevant State department shall convene stakeholder consultations to consider the draft text of the treaty and develop a Country Position Paper on the negotiations of the treaty. A record of the stakeholder consultations and the agreed Country Position Paper shall be kept by the Ministry or the relevant State department and the Office of the Registrar of Treaties.
6. The Ministry or relevant State department, in consultation with the Ministry of Foreign Affairs, shall nominate a negotiating team of suitably qualified and competent officers from among the stakeholders to form part of the Government delegation to negotiate the draft treaty in the interest of the people of Kenya. In nominating the delegation, a representative of the Attorney General may be included as a member of the negotiating team. The Ministry of Foreign Affairs shall have the overriding authority over the constitution of the delegation.
7. After receipt of the names of the Negotiating Team from the relevant Ministry or State department, the Ministry of Foreign Affairs shall prepare the Credentials authorizing the Government delegation to negotiate the treaty on behalf of Republic of Kenya.
8. The Negotiating Team shall uphold national interest and put their best efforts and skill in analyzing and negotiating the text of the draft treaty until consensus is achieved upholding the national interest. The Negotiating Team shall be bound by the values and principles of the Constitution and shall take into account the regulatory impact of any proposed treaty.
9. During the negotiations of the text, the Negotiating Team through the Head of Delegation should consult with the Ministry of Foreign Affairs. It should be observed that often times negotiations on treaty text takes time, usually several months or even years. For example, the negotiations on the text of the United Nations Convention on the

Law of the Sea, 1982 took over ten (10) years. Where negotiations are protracted and spread over a considerable period of time, the Government should endeavor to reconstitute the Negotiating Team as the negotiations progress.

10. Where changes in the composition of the Negotiating Team become necessary, these changes shall be made by the Ministry of Foreign Affairs in consultation with the relevant State department.
11. Once final agreement is reached on the text of the treaty, the Head of Delegation shall inform the Ministry of Foreign Affairs of the same and provide the text of the final agreed text of the treaty for consideration. Thereafter, the Head of Delegation may initial the final agreed negotiated text of the treaty on behalf of the Republic of Kenya.

## **II. ADOPTION AND SIGNING OF TREATIES**

12. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty if he produces an Instrument of Full Powers issued by H.E. the President as Head of State or by the Minister for Foreign Affairs designating him or her for that specific purpose.
13. A head of a diplomatic mission of the Republic of Kenya, for the purpose of adopting the text of a treaty between Kenya and the accredited State, by virtue of his or her functions is considered as representing the country without having to produce Full Powers. Likewise, a Representative accredited by a State to an international conference or to an international organization for the purpose of adopting the text of a treaty in that conference, is considered as representing the country without having to produce Full Powers.
14. The adoption of the text of a treaty takes place by the consent of all the States participating in the drafting and negotiation of the treaty text. Such consent to be bound may be expressed by signature, exchange of instruments constituting a treaty, or by ratification, acceptance, approval or accession, or by any other means.
15. The text of a treaty is established as authentic and definitive by such procedure as may be provided for in the text of the treaty or agreed upon by the States participating in its negotiations or failing such procedure, by the signature or initialing of the text of the treaty or the Final Act of a conference incorporating the treaty text.
16. Signature by a representative of the Republic of Kenya on the text of the treaty serves as authentication of the treaty text and depending on

the provisions of the treaty, can serve as expressing the consent of a State to be bound by a treaty. More importantly, signature needs to be confirmed by the State before signature through Full Powers to constitute a signature of the treaty.

17. After adoption of the text of the treaty, the Negotiating Team shall provide a comprehensive report on the Treaty Negotiating process including its adoption together with the final treaty text for consideration by the Cabinet Secretary for Foreign Affairs. A copy of the report is to be provided to the relevant Cabinet Secretary and the Attorney General for information. In its report, the Negotiating Team shall provide its views or recommendations as to whether the Republic of Kenya may proceed to the next steps in the treaty making process.

### **III. RATIFICATION OF TREATIES**

#### **(a) Approval by Cabinet**

18. Where the Republic of Kenya has signed a treaty or where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant Ministry or State department shall, in consultation with the Cabinet Secretary for Foreign Affairs and the Attorney General prepare and submit to the Cabinet, the Treaty and a Memorandum seeking approval to ratify the treaty.
19. The Cabinet Memorandum shall provide comprehensive information on—
  - the objects and subject matter of the treaty;
  - any constitutional implications such as any proposed amendment to the Constitution and whether the treaty is consistent with the Constitution and promotes constitutional values and objectives;
  - the national interests to be affected by the ratification of the treaty;
  - obligations imposed on Kenya by the treaty;
  - requirements for implementation of the treaty;
  - policy and legislative considerations;
  - financial implications to the Government in ratifying the treaty;
  - the ministerial responsibility of the treaty;
  - whether the treaty has any implications on matters relating to counties;

- the summary of the process leading to the adoption of the treaty;
- the date of signature;
- the number of states that are party to the treaty;
- the views of the public on the ratification of the treaty;
- whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

20. Cabinet shall consider the proposal for ratification of a treaty presented to it by Ministries or relevant State departments within a reasonable time and provide its directions, either approving or disapproving the proposal for ratification.

**(b) Consideration by the National Assembly**

21. If Cabinet approves the ratification of a treaty, the Cabinet Secretary for Foreign Affairs shall within a reasonable time submit the Treaty and a Memorandum on the Treaty to the Speaker of the National Assembly. The Memorandum to the Speaker shall provide comprehensive information on—

- The Subject Matter: the objectives of the treaty;
- The Main Obligations: a description of the main obligations that will be imposed upon Kenya by the treaty, should it be brought into force;
- The National Interest Summary: a description of the reasons why Kenya should become a party;
- The Cabinet Secretarial Responsibility: a listing of Cabinet Secretaries whose spheres of responsibility are implicated by the contents of the treaty;
- Policy Considerations: an analysis as to how the obligations contained in the treaty, as well as how the treaty's implementation by Government Ministries/State Departments are or will be consistent or will change the Government's policies and/or legislation;

- Implications on matters relating to counties: whether the obligations in the treaty relate in whole or in part to matters under County Government jurisdiction;
  - Summary of the process leading to the adoption of the treaty;
  - The date of signature: whether Kenya has signed the treaty or not;
  - The number of States that are party to the treaty;
  - The views of the public on the ratification of the treaty;
  - Whether the treaty permits reservations and declarations and any recommendations that the Government has on reservations and declarations, including the proposed text of the reservation or declaration;
  - Financial implications in implementing the treaty.
  - Where Kenya wishes to withdraw from a treaty: the relevant Cabinet Secretary responsible for the subject matter of the treaty shall prepare a cabinet memorandum indicating the reasons for such an intention.
  - The text of the decision of cabinet approving the ratification of the treaty.
22. Depending on the subject matter of the treaty, the Speaker of the National Assembly shall forward the treaty together with the memorandum to the relevant Parliamentary Committee(s) for consideration. The relevant Parliamentary Committee(s) shall ensure public participation in the ratification process in accordance with the laid down Parliamentary procedures.
23. It is recommended that the National Assembly liaises with the Senate during the public participation stage of ratification of treaties to consider implications of the treaty in counties. It is important that the Senate provides for clear procedures on how to consider treaties or conventions that impact on counties.
24. The relevant Ministry or State Department is encouraged to sensitize the relevant Parliamentary Committee(s) on the content of the treaty, if requested. After conclusion of the Parliamentary Committee(s) consideration of the treaty, the Chairperson of the relevant Parliamentary Committee(s) shall submit a report to the Speaker of the National Assembly. The Speaker shall table the report for consideration.

25. The National Assembly may approve or disapprove the ratification of a treaty. The decision on ratification shall be in writing and is communicated by the Clerk of the National Assembly. If the National Assembly approves the ratification of a treaty it may do so with or without reservations to specific provisions of the treaty. Where the National Assembly approves a treaty with reservation, the reservation shall be introduced as a provision of the treaty by the National Assembly in accordance with the procedure set out in the Standing Orders. The treaty shall thereafter be ratified with those reservations to the corresponding article(s) in the treaty.
26. Where the National Assembly declines to approve the ratification of a treaty, the Clerk of the National Assembly shall submit the resolution of the House to the relevant Cabinet Secretary of the Ministry and State Department within fourteen (14) days of the resolution for information. Where the National Assembly declines to approve the ratification of the treaty, the Government shall not ratify the treaty.
27. Where the ratification of a treaty is approved by the National Assembly without any reservations to the treaty, the Clerk of the National Assembly shall issue a Certificate of Approval to the relevant Cabinet Secretary of the Ministry and State Department confirming that the treaty has been duly considered and ratified by the National Assembly.
28. The National Assembly shall not approve the ratification of a treaty if that treaty, or part of its provisions are contrary to the Constitution of Kenya. The National Assembly shall also not approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution of Kenya even if reservation is permitted or allowed under the provisions of the subject treaty.
29. Where the ratification of a treaty is approved by the National Assembly without any reservations to the treaty, the relevant Cabinet Secretary of the Ministry and State Department shall, within thirty (30) days from the date of the approval of the ratification of the treaty, request the Cabinet Secretary for Foreign Affairs to prepare the instrument of ratification of the treaty.
- (c) **Preparation and Deposit of Instrument of Ratification by the Cabinet Secretary for Foreign Affairs**
30. Upon receipt of a request to prepare the instrument of ratification of the treaty from the relevant Cabinet Secretary of the Ministry or State Department and receipt of the Certificate of Approval on the ratification of a treaty from the National Assembly, the Ministry of

Foreign Affairs shall, prepare the Instrument of Ratification, Accession, or Acceptance (as the case May, be) for signature by the Cabinet Secretary for Foreign Affairs.

31. Upon receipt of the Instrument of Ratification of the treaty, the Cabinet Secretary for Foreign Affairs shall consider it, sign it and cause the seal of the Ministry of Foreign Affairs to be affixed on the Instrument of Ratification.
32. The Cabinet Secretary for Foreign Affairs shall deposit the signed Instrument of ratification, accession or acceptance with the relevant Depository of the treaty or at the requisite international body and a copy thereof shall be filed with the Registrar of Treaties.
33. Following the deposit of the instrument of ratification, accession or acceptance, the Ministry of Foreign Affairs shall undertake to register the treaty with Secretary General of the United Nations pursuant with Article 102 of the Charter of the United Nations.
34. MDAs should ensure the effective implementation of the treaty at the national level through various measures. Where needed, the formulation of new laws and policy documents, amendment of laws or establishment of institutions could be undertaken.
35. A treaty will enter into force in such manner and on such a date as it May, provide or as the negotiating States may agree. Usually it is common for a treaty to enter into force as soon as consent to be bound by the treaty has been established for all the negotiating States. A treaty for example may require fifteen (15) ratifications for it to enter into force. Unless the treaty provides otherwise, where Kenya ratifies a treaty after the treaty has entered into force, the treaty enters into force for Kenya on the date of ratification. For example, a treaty may provide that it shall enter into force thirty (30) days after the deposit of the instrument of ratification.
36. The relevant Ministry or State Department shall take measures to inform and sensitize the public and create public awareness on every treaty under their mandate which Kenya has ratified.

#### **IV. GENERAL MATTERS**

37. Every treaty in force is binding upon the parties to it and must be performed by them in good faith. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its objects and purposes. A party to a treaty may not invoke the provisions of its domestic law as a justification for its failure to perform its obligations under a treaty.

38. Generally, treaties do not apply retroactively, unless a different intention appears or is established in the provisions of the treaty. Also, a treaty applies and is binding to the entire territory of a country.
39. It is a criminal offence for a person to ratify any treaty on behalf of the Republic of Kenya without consideration and approval by Cabinet and Parliament in accordance with the law. Such a person shall be liable to imprisonment for a term not exceeding fifteen (15) years or to a fine not exceeding KSh. 20 million or to both fine or imprisonment.
40. The process of treaty making and ratification elaborated in this Circular shall equally apply to subsequent amendments or modification of a treaty or protocols negotiated and adopted under a treaty. The general rule is that a treaty may be amended by agreement between the parties. Usually, the text of a treaty provides the procedure for an amendment of the treaty.
41. Where Kenya wishes to withdraw from a treaty, the relevant Cabinet Secretary of the Ministry or State Department shall, in consultation with the Cabinet Secretary for Foreign Affairs and the Attorney General, prepare a Cabinet Memorandum indicating the reasons for such an intention. The process of ratification of a treaty provided above shall also apply to withdrawal or denunciation of a treaty.
42. Some treaties have a periodic reporting obligation to the treaty bodies established under the provisions of the respective treaty as part of monitoring and evaluation of the implementation of the respective treaty at the national level. In that regard, the Cabinet Secretary for Foreign Affairs in conjunction with the Attorney General and the relevant Ministry and State Department facilitate the preparation of the periodic reports for submission to the relevant treaty bodies, through a consultative process involving all stakeholders. The periodic reports submitted to the relevant treaty bodies and any concluding observations thereafter from the treaty bodies shall also be provided to the Registrar of Treaties for record purposes.
43. It is prudent that a monitoring mechanism for the implementation of the treaties that have been ratified be established at the National Assembly to ensure adherence by Kenya to its international obligations. The same mechanism should be applied to analyze H.E. the President's Annual Report on the progress made in fulfilling the Republic of Kenya's International Obligations submitted for debate during the State of Nation address every year.

## ANNEX II

### Kenya's Membership to International and Regional Organizations

1. United Nations (UN)
2. International Court of Justice (ICJ)
3. World Trade Organisation (WTO)
4. United Nations Educational Scientific and Cultural Organisation- Inter-Governmental Oceanographic Commission (UNESCO-IOC)
5. Food and Agriculture Organisation (FAO)
6. UN Human Settlement and Urban development (UN-HABITAT)
7. United Nations Environmental Programme (UNEP)
8. United Nations High Commission for Refugees (UNHCR)
9. United Nations Industrial Development Organisation (UNIDO)
10. International Maritime Organisation (IMO)
11. United Nations World Tourism Organisation (UNWTO)
12. Commonwealth of Nations
13. Indian Ocean Tuna Commission (IOTC)
14. South West Indian Ocean Fisheries Commission (SWIOFC)
15. Western Indian Ocean Marine Science Association (WIOMSA)
16. Common Fund for Commodities (CFC)
17. World Association of Public Employment Services (WAPES)
18. World Organisation for Animal Health (OIE)
19. Tokyo International Conference on African Development (TICAD)
20. Codex Alimentarius Commission (CAC)
21. International Accreditation Forum (IAF)
22. International Laboratory Accreditation Cooperation (ILAC)
23. International Measurement Confederation (IMEKO)
24. International Organisation for Standardisation (ISO)
25. International Electro-Technical Commission (IEC)
26. Asia Pacific Metrology Programme (APMP)

**ANNEX II—(Contd.)**

27. World Council for Credit Unions (WOCCU)
28. International Co-operative Alliance (ICA)
29. World Intellectual Property Organisation (WIPO)
30. World Health Organisation (WHO)
31. International Mobile Satellite Organisation (INMARSAT)
32. International Seed Testing Organisation (ISTA)
33. International Fund for Agricultural Development (IFAD)
34. Organisation for Economic Cooperation Development (OECD) (Seed schemes, Fruits and Vegetable schemes and Forestry Seed Schemes)
35. International Network for Bamboo and Rattan (INBAR)
36. International Development Law Organization (IDLO)
37. International Telecommunications Union (ITU)
38. Universal Postal Union (UPU)
39. International Mobile Satellite Organization (IMSO 1976)
40. International Telecommunications Satellite Organization (ITSO 1971)
41. African Union (AU)
42. New Partnership for Africa's Development (NEPAD)
43. Pan African University Institute of Basic Sciences, Technology and Innovation (PAUISTI)
44. African Court on Human and People's Rights
45. Common Market for Eastern and Southern Africa (COMESA)
46. Common Market for Eastern and Southern Africa- Court of Justice (COMESA- CoJ)
47. Inter-Governmental Authority on Development (IGAD)
48. International Conference on the Great Lakes Region (ICGLR)
49. Gaming Regulators Africa Forum (GRAF)

ANNEX II—(Contd.)

50. Shelter Afrique
51. Inter-African Bureau for Animal Resources (AU-IBAR)
52. African Accreditation Cooperation (AFRAC)
53. African Electro-Technical Standardization Commission (AFSEC)
54. African Organization for Standardization (ARSO)
55. Intra-Africa Metrology System (AFRIMETS)
56. African Confederation of Co-operative Savings and Credit Association (ACCOSCA)
57. African Centre for Fertilizer Development (ACFD)
58. Africa Travel Association (ATA)/ Corporate Council for Africa (CCA)
59. Association of Hotel Training Schools in Africa (AHTSA)
60. African Telecommunication Union (ATU)
61. Pan African Postal Union (PAPU)
62. African Advanced Level Telecommunication Institute (AFRALTI)
63. East African Community (EAC)
64. East African Court of Justice (EACJ)
65. Lake Victoria Fisheries Organisation (LVFO)

