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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN
RELATIONS

REPORT ON:

THE CONSIDERATION OF THE RATIFICATION OF THE AFRICAN UNION
CONVENTION ON CROSS BORDER COOPERATION (NIAMEY CONVENTION).

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 14 MAR 2024	DAY: THUR
TABLED BY:	HON. ABBULLAH BASHIR, MP
CLERK AT THESE:	VICE-CHAIR, D-C ON DEFENCE INTELLIGENCE & FOREIGN RELATIONS ANNE SHIBUKO

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

MARCH, 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

AU	-	African Union
AUPSC	-	African Union Peace and Security Council
BCOCC	-	Border Control and Operations Coordination Committee
EAC	-	East African Community
IGAD	-	Intergovernmental Authority on Development
NIS	-	National Intelligence Service
RECs	-	Regional Economic Communities
UNSC	-	United Nations Security Council
MDAs	-	Ministries, Departments and Agencies
UN	-	United Nations
EAC	-	East Africa Community
MOU	-	Memorandum of Understanding
AUBP	-	African Union Border Programme
OAU	-	Organization of African Unity

LIST OF ANNEXURES

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CHAIRPERSON'S FOREWORD

This report details the consideration by the Departmental Committee on Defence, Intelligence and Foreign Relations of the African Union Convention on Cross-Border Cooperation (Niamey Convention). The Convention is a regional agreement aimed at promoting cooperation and integration among African countries. The Convention was adopted by the 23rd Ordinary Session of the African Union (AU) Assembly of Heads of State and Government on 27th June, 2014 to steer African states to cooperate towards the full realization of the benefits accruable through cross-border cooperation. The Convention encourages member states to develop mechanisms for promoting trade, investment, and economic cooperation across borders. This includes facilitating the movement of goods, services, and capital, as well as harmonizing trade policies and regulations. In sum, the Convention is aimed at steering African States towards the realization of the objectives and principles enshrined in the *Constitutive Act of the African Union, 2000* and the *Treaty establishing the African Economic Community, 1991*.

In considering the Convention, the Committee held a total of three (3) Sittings. The first sitting was for an internal briefing on the agreement in order to familiarise with its contents. The second sitting was held with the Cabinet Secretary for the Ministry of Foreign and Diaspora Affairs to apprise Members on the justification for the proposed ratification of the Convention. The third sitting was to consider and adopt this report.

Pursuant to Article 118(1)(b) of the Constitution of Kenya 2010 on Public Participation and Section 8(3) of the Treaty Making and Ratification Act, 2012, the Committee placed advertisements in two local dailies on Wednesday 21st June, 2023, calling for submissions of Memoranda on the subject matter. By the close of the deadline, the Committee had not received any Memorandum for or against the ratification of the Convention. Further, the Committee engaged various stakeholders who made submissions on the Convention. These were the Ministry of Foreign and Diaspora Affairs, the Office of the Attorney-General, the Kenya Law Reform Commission, the State Department for East African Community, and the Ministry of Interior and National Administration.

Having considered the Convention and analysed the submissions made, the Committee observed that the Convention promotes constitutional values and objectives and does not in any way allude to an amendment of the Constitution. Further, the Convention does not necessitate changes to Kenya's domestic laws. However, because the Treaty compels State Parties to collaborate in institutional growth, this may necessitate policy considerations or a review of the current legislative framework. This, however, has no bearing on the country's interests, as the primary goal is to aid in the implementation of the treaty.

Further, it was observed that the Convention imposes a number of obligations on Kenya upon ratification. For instance, the country will be required to commit to cross-border cooperation in the surveying of boundaries, socioeconomic development of borderlands, promotion of culture and sports across borders, and combating cross-border crime (border security); encourage, promote and facilitate information and intelligence sharing; communicate with the institution in charge of border matters; harmonize its domestic law with the Convention; submit a report on the measures taken for the implementation of the Convention every two years. Additionally, there is an obligation to Member States through their various Regional Economic Communities (RECs) to effectively coordinate with the African Union regarding the implementation of cross-border activities within their regions, which will further the principles of subsidiarity and complementarity within the Continent.

The Committee further observed that at the time of consideration of the Convention for ratification, it had been signed by nineteen (19) out of the 55 African Countries. Equally, only eight (8) countries had ratified the Convention yet fifteen (15) countries were required to ratify it for it to enter into force. Further, the Committee observed that in the Eastern African region, countries were closely monitoring the ratification by Kenya which was likely to trigger ratifications by her neighbours.

The Committee equally noted that there were no financial implications on Kenya ratifying the Convention since the country will be joining the Convention as a non-contributing member state. The appropriate institutions' regular budgetary projections will cover the financial requirements for implementing the Convention.

In addition, the Committee noted that cross-border cooperation greatly contributes to the development of the border zones, which tend to be less economically developed, compared to other areas in a country. The Convention allows for economic growth in border areas through the creation of employment opportunities and infrastructural development. Additionally, the Convention promotes economic development in terms of trade and cross-border cooperation and is a driver for the development of infrastructure, trade, transportation, and other sectors in border zones.

Furthermore, it was noted that Kenya had put in place various policy, legislative, and institutional frameworks for cross-border cooperation. This includes the enactment of the Security Laws (Amendment) Act 2014 that established the Border Control and Operations Coordination Committee (BCOCC). This Committee facilitates the borders as bridges under the principles of the African Union Border Programme (AUBP) by ensuring that there is cross-border development in an open and secure environment including facilitating cross-border trade. Equally, there is the Joint Border Commissioners/Administrative Committee with all the neighbouring countries which meet regularly to discuss cross-border matters, including animal health, security issues, and maintenance of boundary infrastructure among others.

Finally, the Committee noted that the EAC Protocol on Peace and Security greatly encourages Member States to implement African Union Conventions and other international instruments that promote peace and security. Kenya has also negotiated, agreed upon, and signed a Memorandum of Understanding (MOU) on the demarcation and re-affirmation of the boundary with Uganda, Tanzania, and South Sudan. The reaffirmation and demarcation of the Kenya/Tanzania border has already begun, with around 238 kilometres of the 760km well on its way to completion.

Having reviewed the Convention and considered the submissions made, the Committee recommends that, pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the House adopts this report and **approves** the ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention).

Pursuant to Standing Orders 199(6) and 170A (4) it is my pleasant duty to present to the House the Report of the Departmental Committee on Defence, Intelligence and Foreign Relations on its consideration of the African Union Convention on Cross-Border Cooperation (Niamey Convention).

Hon. Nelson Koech, M.P.

Chairperson, Departmental Committee on Defence, Intelligence and Foreign Relations

PART I

1.0 PREFACE

1.1 Introduction

1. This report details the consideration by the Departmental Committee on Defence, Intelligence and Foreign Relations of the African Union Convention on Cross-Border Cooperation (Niamey Convention).
2. The African Union Convention on Cross-Border Cooperation (the Niamey Convention) is a regional agreement aimed at promoting cooperation and integration among African countries. The Convention was adopted by the 23rd Ordinary Session of the African Union (AU) Assembly of Heads of State and Government on 27th June, 2014 to gear African states to cooperate towards the full realization of the benefits accruable through cross-border cooperation.
3. The Convention focuses on enhancing collaboration in various policy areas related to cross-border issues. It defines cross-border cooperation as any act or policy aimed at promoting and strengthening good-neighbourly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose.
4. The Convention encourages member states to develop mechanisms for promoting trade, investment, and economic cooperation across borders. This includes facilitating the movement of goods, services, and capital, as well as harmonizing trade policies and regulations.

1.2 Mandate of the Committee

5. The Committee is established under the National Assembly Standing Order No. 216. The mandate of the Committee includes, among others, ***“to examine treaties, agreements and conventions”***.
6. The Committee’s subject matters are stated in the Second Schedule of the National Assembly Standing Orders and are as follows: Defence, intelligence, foreign relations, diplomatic and consular services, international boundaries including territorial waters, international relations, and veteran affairs.

1.3 Oversight

7. In executing its mandate, the Committee oversees the following MDAs: The Ministry of Defence, the Ministry of Foreign and Diaspora Affairs, the State Department for East African Community (EAC) Affairs, the National Intelligence Service (NIS).

1.4 Committee Membership

8. The Departmental Committee on Defence, Intelligence and Foreign Relations was constituted by the House on 27th October, 2022 and comprises the following Members:

Chairperson

Hon. Koech Nelson, M.P.

Belgut Constituency

UDA Party

Vice-Chairperson

Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.

Mandera North Constituency

UDM Party

Members

Hon. Wanjira Martha Wangari, M.P,
Gilgil Constituency

UDA Party

Hon. Joshua Kandie, MP
Baringo Central Constituency

UDA Party

Hon. Hassan Abdi Yusuf, MP
Kamkunji Constituency

Jubilee Party

Hon. Kwenya Thuku Zachary, MP
Kinangop Constituency

Jubilee Party

Hon. Odhiambo Millie G. Akoth,MP
Suba North Constituency

ODM Party

Hon. Logova Sloya Clement, MP
Sabatia Constituency

UDA Party

Hon. Kanchory Elijah Memusi, MP
Kajiado Central Constituency

ODM Party

Hon. Ikana Fredrick Lusuli, MP
Shinyalu Constituency

ANC Party

Hon. (Dr.) Kasalu Irene Muthoni,MP
Kitui County

WDM-K

Hon. Mohamed A. Hussein, MP
Lagdera Constituency

ODM Party

Hon. Kirima Moses Nguchine, MP
Imenti Central Constituency

UDA Party

Hon. Teresia Wanjiru Mwangi, MP
Nominated Member

UDA Party

Hon. Luyai Caleb Amisi, MP
Saboti Constituency

ODM Party

1.5 Committee Secretariat

9. The Committee is facilitated by the following staff:

Mr. Dennis Mogare Ogechi
First Clerk Assistant/Head of Secretariat

Ms. Clarah Kimeli
Principal Legal Counsel II

Mr. Benard Njeru
Clerk Assistant III

Mr. Salat Ali
Principal Serjeant-at-Arms

Mr. Edwin Machuki
Fiscal Analyst III

Ms. Noelle Chelagat
Media Relations Officer I

Mr. Lenny Muchangi
Legal Counsel II

Mr. Daniel Ominde, PhD
Research Officer I

Ms. Faith Malala
**Public Communications
Officer III**

Mr. John Nga'ng'a
Audio Recording Officer

PART II

2.0 BACKGROUND TO THE AFRICAN UNION CONVENTION ON CROSS BORDER COOPERATION

2.1 Background to the African Union

10. The African Union (AU) is a continental body consisting of the 55 member states that make up the countries of the African Continent. It was officially launched in 2002 as a successor to the Organisation of African Unity (OAU, 1963-1999). The decision to re-launch Africa's pan-African organization was the outcome of a consensus by African leaders that in order to realize Africa's potential, there was a need to refocus attention from the fight for decolonization and ridding the continent of apartheid, which had been the focus of the OAU, towards increased cooperation and integration of African states to drive Africa's growth and economic development.¹
11. The AU is guided by its vision of "An Integrated, Prosperous and Peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena." The Constitutive Act of the African Union and the Protocol on Amendments to the Constitutive Act of the African Union lay out the aims of the AU.²

2.2 Treaty Making in Kenya

12. Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the law of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.
13. The Treaty Making and Ratification Act, No. 45 of 2012 was enacted by the National Assembly to give effect to Article 2(6) of the Constitution. The Act governs the making and ratification of treaties in Kenya. Indeed, Section 2 of the Act defines a treaty as an "international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention".
14. Under the Act, the responsibility of initiating the treaty making process, negotiating and ratifying a Treaty lies with the Executive. In making this decision, the Executive ought to be guided by Section 5(2) of the Act which provides the considerations that must be followed including: the need that the new treaty is to meet; the existing legal regime, including the extent of its 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; the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral; the anticipated time schedule for completing the treaty-making process; the expected costs of formulating and adopting the treaty to Kenya; and in formulating treaties relating to technical or scientific problems; whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.

¹ African Union, [https://au.int/en/overview#:~:text=The%20African%20Union%20\(AU\)%20is,OAU%2C%201963%2D1999](https://au.int/en/overview#:~:text=The%20African%20Union%20(AU)%20is,OAU%2C%201963%2D1999)

² Ibid

15. Although initiation of the treaty making process is the role of the Executive, Parliament as the legislative arm decides whether a Treaty shall form part of the law of Kenya upon which the treaty comes into force. This flows from Article 94(5) of the Constitution which provides that “no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation”.
16. After the Treaty has been approved by the National Assembly, it therefore becomes binding upon Kenya and Kenya cannot invoke the provisions of its domestic law to justify any failure to perform its obligations under a treaty ratified by it. According to the Vienna Convention on the Law of Treaties, 1969 which governs the making and ratification of treaties internationally, a treaty becomes binding on a state upon ratification.
17. Section 2 of the Treaty Making and Ratification Act defines ratification as the “the international act by which the State signifies its consent to be bound by a treaty and includes acceptance, approval and accession where the treaty so provides”.
18. Under section 7 of the Act, where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State Department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum for consideration and adoption.
19. Section 8 of the Act provides for the consideration of Treaties by Parliament. Upon approval of a Treaty by Cabinet, the relevant Cabinet Secretary is obligated to submit the Treaty together with a memorandum on the Treaty to the Speaker of the National Assembly for tabling pursuant to the Standing Orders. The relevant parliamentary Committee in the National Assembly is then tasked with consideration of the Treaty and shall ensure public participation in the ratification process in accordance with the laid down parliamentary procedures. (Section 8(3) of the Act).

2.3 Background to the Niamey Convention

20. National security is the protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.³ Article 238(2) (b) of the Constitution enjoins the government to promote and guarantee the national security in compliance with the law. In this regard, Kenya has endeavoured to partner with other states in various aspects in Africa. For instance, Kenya is enjoined under Article 5(1) of the EAC Treaty to adhere to the EAC policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields.
21. Further, Article 151(1) of the EAC Treaty provides for the conclusion of any Protocols as may be necessary in each area of co-operation which shall spell out the objectives and scope of, and institutional mechanisms for co-operation and integration. In this regard, the EAC has adopted the Protocol on Peace and Security requiring the Partner States to cooperate in peace and security matters and collaborate with international and regional organizations to promote peace and security in the region.

³ Constitution of Kenya, Art 238(1).

22. It is on the foregoing basis that Kenya is seeking to accede to the *African Convention on Cross-Border Cooperation* (the *Niamey Convention*), a regional agreement aimed at promoting cooperation and integration among African countries. The Convention was adopted by the 23rd Ordinary Session of the AU Assembly of the Heads of State and Government on 27th June, 2014 to gear African States to cooperate towards the full realization of the benefits accruable through cross-border cooperation.
23. The Niamey Convention focuses on enhancing collaboration in various policy areas related to cross-border issues.⁴ It defines cross-border cooperation as any act or policy aimed at promoting and strengthening good-neighbourly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose.
24. The Niamey Convention is aimed at steering African States towards the realization of the objectives and principles enshrined in the *Constitutive Act of the African Union, 2000* and the *Treaty establishing the African Economic Community, 1991*, among them being:
- a) the affirmation of a common identity and the process of attainment of African unity and the provision of a unique framework for the collective action in Africa and its relations with the rest of the world;
 - b) taking up multifaceted challenges that confront the African continent and people in light of social, economic and political challenges taking place in the world;
 - c) implementation of the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to effectively face the challenges posed by globalization;
 - d) the common vision of a united Africa and the need to build partnership between governments and all segments of civil society in order to strengthen solidarity and cohesion among African people;
 - e) the fact that the scourge of conflict in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of African development and integration;
 - f) promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;
 - g) take all necessary measures to strengthen Africa's common institutions and provide them with the necessary powers and resources to enable the discharge their mandate.

2.4 Outline of the Niamey Convention

25. The Preamble affirms the need for a legal framework for cross-border cooperation which would accelerate integration in Africa.
26. Article 1 comprises the various definitions applying to the convention including:
- (a) Border programme means the African Union Border Programme as defined in the Declarations adopted by the Conference of African Ministries in charge of Border Issues, held in Addis Ababa, on 7 June 2007 and 25 March 2010 in Niamey, on 17 May 2012 and subsequently endorsed by the Executive Council of the African Union; and

⁴ The Need to Reinforce for Regional Cooperation: The Niamey Convention <https://www.peaceau.org/uploads/niamey-convention-quick-sheet-english.pdf>

(b) Cross-border cooperation means any act or policy aimed at promoting and strengthening good neighbourly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States including the conclusion of agreements and arrangements useful for this purpose.

27. Article 2 outlines the objectives of the Convention which include: promote cross-border cooperation at local, sub-regional and regional levels; seize the opportunities arising from shared borders and address the related challenges; facilitate the delimitation, demarcation and reaffirmation of interstate border in conformity with mechanism agreed upon by the parties concerned; facilitate the peaceful resolution of border disputes; ensure efficient and effective integrated border management; transform border areas into catalysts for growth, socio-economic and political integration of the continent; and promote peace and stability through the prevention of conflicts, the integration of the continent and the deepening of its unity.

28. Article 3 identifies the areas of cooperation as follows: mapping and geographical information, including survey; socio-economic development, including transportation, communication, trade, agro pastoral activities, handicrafts, energy resources, industry, health, sanitation, drinking water, education and environmental protection; cultural activities and sports; security, especially combating cross-border crime, terrorism, piracy and other form of crime; de-mining of border areas; institutional development in all areas covered by the present convention, including identification, formulation and execution of projects and programmes; and any other areas agreed upon by the State Parties.

29. Article 4 requires State Parties to solve any legal, administrative, security, cultural or technical impediment likely to hamper the strengthening and smooth functioning of cross-border cooperation.

30. Article 5 provides the sharing of information and intelligence among State Parties with a view to facilitating the performance of the requesting State of its obligations under the convention.

31. Article 6 obligates State Parties to communicate to the African Union Commission a list of competent authorities responsible for border issues under their domestic law, which shall serve as focal points.

32. Article 7 deals the requirement of domestication of the convention by the State Parties;

33. Article 8 provides for mechanisms for implementation of cross-border cooperation at the level of state parties including—

(a) state parties shall commit to apply the provision of the convention and attain its objectives by establishing cooperation mechanisms, including legal frameworks; taking into account domestication of the provisions of the convention in the development of their national policies and strategies; and submitting, every two years, a report on the measures taken for the implementation of the present convention.

(b) activities pertaining to cross border cooperation shall be undertaken by local territorial communities or authorities as defined by the domestic law of State Parties;

(c) the decentralized border territorial administration or authorities, established under the domestic law of State Parties shall exercise their powers, including the conclusion of cooperation agreements with decentralized border territorial administrations or authorities of neighbouring State Parties, in conformity with the domestic law of their respective states;

- (d) state parties may establish Border Consultative Committees comprising representatives of competent bodies to assist, in an advisory capacity, the border communities and authorities in the consideration of cross-border cooperation matters.
34. Article 9 provides for mechanisms for implementation of cross-border cooperation at the level of Regional Economic Communities to include:
- a) establishing a framework for cooperation with the Regional Economic Communities on the implementation of the Border Programme by requesting the Regional Economic Communities to encourage member states to sign, ratify or acceded to the convention; and designate focal points for coordination, evaluation and monitoring of the implementation of the convention.
 - (b) encouraging the Regional Economic Communities to establish Regional Border Consultative Committees which shall assist in the formulation of policies and activities for the promotion of cross-border cooperation in administrative, cultural, socio-economic and security areas in their respective regions; prepare road maps outlining the action necessary for enhancing cross-border cooperation; coordinate all the activities, as well as the mobilization of the required means for the attainment of the objectives stipulated in the convention; facilitate dialogue and consultation between regional and local authorities on either side of border areas; recommend the adoption of best practices for the effective management and administration of border areas; examine the problems faced by border populations and suggest solutions; and make recommendations on ways of promoting cross-border activities undertaken by different entities located within border areas.
35. Article 10 provides for mechanism for implementation of cross border cooperation at the continental level. It provides that:
- a) the Commission shall act as central coordinating structure for the implementation of the convention; support state parties in implementing the convention; coordinate the evaluation of the implementation of the convention with other appropriate organs of the Union, the Regional Economic Communities and competent national bodies; establish the Continental Border Consultative Committees; and support the efforts of the state parties for an effective sharing of information and intelligence.
 - (b) the Continental Border Consultative Committee shall advice the commission on cross-border matters; consider and propose general guidelines to promote cross-border cooperation in administrative, security, socio-economic, cultural and other areas; identify priority actions and resources needed for the implementation of these guidelines; promote best practices relating to the development of border regions; and examine problems faced by border populations and propose recommendations.
36. Article 11 provides for the establishment of a Border Programme Fund whose resources shall be provided through voluntary contributions of member states and miscellaneous income, including donations and grants.
37. Article 12 deals with safeguard provisions.
38. Article 13 deals settlement of disputes through direct negotiations between state parties.
39. Article 14 provides for signing, ratification or accession of the convention by member states;

40. Article 15 provides that the convention shall enter into force thirty (30) days after the date of receipt of the fifteenth (15th) instrument of ratification by the Chairperson of the Commission of the African Union.
41. Article 16 provides for the amendment of the convention.
42. Article 17 provides that the instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union. A State Party may withdraw from the convention by giving a written notice of one (1) year in advance to the Chairperson of the Commission of the African Union.

2.5 Policy Aspects and Implications of the Niamey Convention

43. The Niamey Convention offers more opportunities for Kenya to improve the following cross-border initiatives:
 44. Trade and Economic Cooperation - The convention encourages member states to develop mechanisms for promoting trade, investment, and economic cooperation across borders. This includes facilitating the movement of goods, services, and capital, as well as harmonizing trade policies and regulations.⁵
 45. Infrastructure Development - The convention emphasizes the importance of developing and improving cross-border infrastructure, such as transportation networks, energy grids, and telecommunications systems. It encourages member states to cooperate in infrastructure planning, financing, and implementation to enhance regional connectivity and economic integration.⁶
 46. Border Management and Security - The convention addresses issues related to border management, including customs procedures, immigration, and security. It promotes collaboration among member states to ensure efficient and secure border crossings while combating transnational crimes, smuggling, and illegal migration.⁷
 47. Environmental Protection and Natural Resource Management - The convention recognizes the need for joint efforts to address environmental challenges and manage shared natural resources. It encourages member states to cooperate on issues such as water management, conservation of biodiversity, and combating climate change.
 48. Social and Cultural Cooperation - The convention promotes cultural exchanges, social integration, and people-to-people interactions across borders. It encourages member states to collaborate on issues related to education, healthcare, tourism, and cultural preservation to foster regional cohesion and understanding.⁸ Similarly, cross-border cooperation will also contribute to the development of the often-marginalized border areas and zones, which tend to be less economically developed, compared to other areas in the country.

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Ibid

2.6 Possible Challenges to Implementation of the Niamey Convention

49. While the Niamey Convention aims to foster cooperation and integration among African countries, there are some potential pitfalls and challenges associated with its implementation. These include:
50. **Limited Implementation Capacity** - The convention requires significant coordination to implement its provisions effectively. However, some member states may lack the institutional capacity and technical expertise to fully comply with the convention's requirements, leading to delays or ineffective implementation.
51. **Political Will and Commitment** - The success of the convention depends on the political will and commitment of member states to cooperate and address cross-border issues. In some cases, political tensions, conflicting interests, or lack of trust among member states can hinder effective cooperation and limit the convention's impact.
52. **Uneven Regional Integration** - The convention aims to promote regional integration by addressing cross-border challenges. However, regional integration efforts in Africa face various hurdles, including political, economic, and logistical barriers. These challenges can undermine the convention's goals of seamless cooperation and hinder progress towards greater regional integration.
53. **Border Disputes and Conflicts** - Many African countries have unresolved border disputes or historical conflicts that can hinder cross-border cooperation efforts. These disputes can create tensions and hinder the implementation of the convention, as countries may be reluctant to cooperate on certain issues until border disputes are resolved. Further, to compound the foregoing challenges, there is general lack of dispute resolution mechanisms to resolve socio-economic conflicts, resource-based conflicts and boundary disputes in Africa.
54. **Varying National Priorities and Policies** - African countries have diverse national priorities, policies, and development agendas. This diversity can pose challenges to harmonizing policies and regulations across borders, particularly when countries have different levels of economic development, legal frameworks, or policy approaches.
55. **Limited Stakeholder Participation** - The success of cross-border cooperation relies on the active involvement and engagement of various stakeholders, including local communities, civil society organizations, and the private sector. However, the convention may not always provide adequate mechanisms for inclusive stakeholder participation, which can limit the effectiveness and legitimacy of the cooperation initiatives.

PART III

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

3.1 Call for Memoranda from the Public

56. Pursuant to Article 118(1)(b) of the Constitution on Public Participation and Section 8(3) of the Treaty Making and Ratification Act, 2012, the Committee placed advertisements in two local dailies, on Wednesday 21st June, 2023 calling for submissions of memoranda on the subject matter. By the close of the deadline, the Committee had not received any Memorandum on the Agreement.

57. Further, the Committee sought the views of the Office of the Attorney General, the Ministry of Interior and National Administration; and Ministry of East African Community, ASALs and Regional Development through a letter dated 28th August, 2023.

3.2 Meeting with the Cabinet Secretary, Ministry of Foreign and Diaspora Affairs

58. On behalf of the Cabinet Secretary for Foreign and Diaspora Affairs, Amb. James Waweru, the Registrar of Treaties at the Ministry of Foreign and Diaspora Affairs, appeared before the Committee on 10th August, 2023 and briefed the Committee as follows:

Objectives of the Convention

59. On the objectives of the Convention, he stated that the Convention aims to foster cross-border cooperation and assure peaceful border dispute resolution. Its purpose is to encourage the development of borders and the free flow of people and products through collaborative initiatives between neighbouring countries. He further stated that the Niamey Convention establishes a legal framework for Member States to design and implement cross-border cooperation initiatives. It is also a method for formalizing international collaboration that other stakeholders might use when discussing "support mechanisms." Further, he asserted that the Niamey Convention raises the issue of cross-border collaboration as a method of institutionalizing cross-border cooperation through the establishment of a continentally agreed-upon framework, such as Joint Border Commissioners.

Analysis of the Problem

60. On the analysis of the problem that the convention intends to cure, he stated that the founding African leaders anticipated the possible hazards that expanding borders would pose to the continent's peace and security. They established the principle of respecting existing borders for the accomplishment of national independence during the 1st Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in Cairo in July 1964. It is commonly acknowledged that well-established border areas, among other things, are accelerators for economic growth, infrastructure development, the ease of movement of persons and commodities, the reduction of transnational crimes, the establishment of customs, and the enhancement of peace and security within border areas.

61. He further stated that Africa was yet to fully realize the potential benefits of cross-border cooperation. The realization has been hampered by obstacles such as political consideration, cross-border conflicts, and a lack of clearly defined borders, among others.
62. He further noted that there are insufficient structures across the continent to meet the consistent demand for experience-sharing to inspire and replicate effective practices and models being adopted in other countries/regions. Further, the overall lack of dispute resolution systems to settle socio-cultural ethnic conflicts, resource-based conflicts, and boundary disputes, among many others, exacerbates the issues faced in borderlands. He concluded that the Niamey Convention gives the continent a chance to find answers to difficulties that have hampered the economic progress of the Continent's borderlands through regional and bilateral frameworks. It entails a vision of an interconnected Africa in which borders serve as bridges for peace, growth, and development, laying the groundwork for a growing need for cross-border collaboration.

Benefits of Kenya Ratifying the Convention

63. On the benefits of Kenya ratifying the Convention, he stated that by ratifying the Convention, Kenya will benefit from enhanced peace, security and stability while ensuring social and economic development and assisting in the efficient implementation of community laws and regulations.
64. Further, the Convention will aid in the development of marginalized zones - Border regions are typically less economically developed than interior regions. Through Agreements, employment, and development, the Convention enables economic growth at the border.
65. The convention will also contribute to regional economic development through trade and cross-border cooperation - Economic development in terms of Trade and Cross-Border Cooperation is the driving force behind the development of border zones and the creation of an environment favourable to the development of infrastructure, trade, transportation, and other industries. Adopting economic cooperation agreements and developing trade perspectives help to strengthen regional policies and spatial development.
66. The Convention will trigger resource sharing agreements - Many natural resources cross borders. This could lead to violence in countries that have yet to adequately delimit and demarcate their borders. The Convention provides an inclusive approach to shared natural resource management that will benefit local communities and boost the country's progress.
67. Finally, the Convention will strengthen and develop good neighbourly relations - Reinforcement and development of good neighbourly relations among border communities and authorities from two or more Member States, as well as ratified agreements and arrangements required for this purpose. We are a continent of opportunity, hospitality, and friendly relationships. Neighbourly relationships help ensure the safety of people living on the border.

Justification for the Ratification of the Convention

68. On the justification for the ratification of the Niamey Convention, he stated that the importance of cross-border cooperation, particularly for border communities cannot be understated. It greatly

contributes to the development of the border area zones, which tend to be less economically developed, compared to other areas in the county. He further stated that the Convention allows for economic growth at the border through the creation of employment opportunities and infrastructure development. Additionally, the Convention promotes economic development in terms of trade and cross-border cooperation and is a driver for the development of infrastructure, trade, transportation, and other sectors in border zones. Furthermore, Kenya had put in place various policy, legislative, and institutional frameworks for cross-border cooperation. This includes the enactment of the Security Laws (Amendment) Act 2014 that established the Border Control and Operations Coordination Committee (BCOCC). This Committee facilitates the borders as bridges under the principles of the African Union Border Programme (AUBP) by ensuring that there is cross-border development in an open and secure environment including facilitating cross-border trade; equally, there is the Joint Border Commissioners/Administrative Committee with all the neighbouring countries which meet regularly to discuss cross-border matters, including animal health, security issues, and maintenance of boundary infrastructure among others.

69. On the international plane, the justification for the Convention is that it is consistent with the objectives of the East African Community (EAC), which has adopted and passed various economic cooperation agreements such as the customs union protocol and the common market protocol. These have contributed to the growth and improvement of the region, particularly the growth of border towns such as Namanga, Busia, and Mandera, which has resulted in the creation of employment opportunities and the provision of basic amenities.

70. Further, internationally, the EAC Protocol on Peace and Security greatly encourages Member States to implement African Union Conventions and other international instruments that promote peace and security; Kenya has also negotiated, agreed upon, and signed a Memorandum of Understanding (MOU) on the demarcation and re-affirmation of the boundary with Uganda, Tanzania, and South Sudan. The reaffirmation and demarcation of the Kenya/Tanzania border have already begun, with around 238 kilometres of the 760km well on its way to completion.

71. In addition, Kenya has signed a number of bilateral treaties with bordering nations in order to provide border people with chances for improved cooperation and to promote peaceful coexistence in order to improve their livelihoods and socioeconomic conditions. This is being realized through the establishment of collaborative peace committees and the supply of essential social infrastructures such as schools, watering stations, cattle dips, and joint animal vaccination points, among other things.

72. Whilst Kenya has made efforts to promote cross-border cooperation internally, the ratification of the Niamey Convention offers more opportunities for Kenya to improve cross-border initiatives, by offering the chance to enhance the existing legal framework and mechanisms for cross-border cooperation initiatives; formalize the cooperation between countries that will create a basis for peer review of national efforts towards implementation of cross-border initiatives; institutionalize cross-border cooperation through a continentally accepted framework, e.g. by the creation of Joint Border Commissions; request technical and financial assistance from the African Union and development partners to accelerate completion of the delimitation and demarcation of the country's International boundaries, among other cross-border initiatives; and enhance the use of the dispute resolution

mechanisms available within the African Union, especially in the resolution of any boundary disputes.

73. Since the adoption of the Niamey Convention has been slow on the continent, Kenya's ratification will reaffirm the country's commitment to the promotion of peace and security, particularly in conflict-prone borderlands. It will also provide an opportunity for Kenya, once the continent's representative to the United Nations Security Council (UNSC) and a former member of the African Union Peace and Security Council (AUPSC), to advocate for the respect of the principle of subsidiarity through the use of continental dispute resolution mechanisms.
74. On the obligations imposed on Kenya by the Niamey Convention upon ratification, he stated that Kenya will be required to commit to cross-border cooperation in the surveying of boundaries, socioeconomic development of borderlands, promotion of Culture and sports across borders, and combating cross-border crime (border security); cooperate fully in the implementation of the Border Programme; encourage, promote and facilitate information and intelligence sharing; communicate with the institution in charge of border matters; harmonize its domestic law with the Convention; submit a report on the measures taken for the implementation of the Convention every two years. Additionally, there is an obligation to Member States through their various Regional Economic Communities (RECs) to effectively coordinate with the African Union regarding the implementation of cross-border activities within their regions which, will further the principles of subsidiarity and complementarity within the Continent.
75. On the constitutional and legislative implications, he stated that the Convention promotes constitutional values and objectives and does not allude to an amendment of the Constitution. Further, the Convention does not necessitate changes to Kenya's domestic laws. However, because the Treaty compels State Parties to collaborate in institutional growth, this may necessitate policy considerations or a review of the current legislative framework. This, however, has no bearing on the country's interests, as the primary goal is to aid in the implementation of the treaty.
76. On reservations to the Convention, he asserted that the Treaty is silent on reservations, but there is no imminent issue that may warrant a declaration or reservation.
77. On financial implications, he stated that Kenya will be joining the Convention as a non-contributing Member State. The appropriate institutions' regular budgetary projections will cover the financial requirements for implementing the Niamey Convention.

3.3 Submissions from the Office of the Attorney-General and Department of Justice

78. Through a letter Ref. AG/CONF/6/B/18/1 VOL.I dated 6th September, 2023, the Office of the Attorney-General associated itself with the preparation of the Cabinet Memorandum forwarding the Convention to the Cabinet for consideration. The memorandum formed the basis for approval of the Convention by the Cabinet. The Office indicated its concurrence with the approval of the ratification of the Convention.

3.4 Submissions from the Kenya Law Reform Commission

79. Through a letter Ref. KLRC/8/64/VOL.IX(25) dated 20th November, 2023 the Commission noted that the Convention is tandem with the Kenya's policy, legislative and institutional frameworks. The Commission noted that Kenya's milestones in cross-border cooperation along all its border points and establishment of Border Control and Operations Coordination Committee will be enhanced by the ratification of the Convention.

3.5 Submissions from the State Department for East African Community

80. Through a letter Ref. ADM/CONF/37/VOL.III/63, the Principal Secretary for East Africa Community Affairs submitted that the Niamey Convention is in tandem with the Treaty establishing EAC and related instruments which Kenya had signed and ratified which includes the Customs Union Protocol and the Common Market Protocol.

81. He cited that Article 124 of the East African Community Treaty identifies peace and security as pre-requisites to social-economic development whereby partner states undertake to observe and encourage the implementation of the UN, AU and other international conventions and treaties on, among others, peaceful relations among partner states.

82. The Principal Secretary acknowledged the involvement of the State Department with other stakeholders in the preparation of the Cabinet Memorandum, which facilitated Cabinet approval of the Convention.

3.6 Submissions by the Ministry of Interior and National Administration

83. The Ministry of Interior and National Administration, through a letter Ref. MOINA/SEC. 2/3, dated 15th December 2023, noted that Kenya had signed several bilateral instruments on Cross-Border cooperation and the Ministry acceded to the ratification of the Niamey Convention.

PART IV

4.0 COMMITTEE OBSERVATIONS

84. Having considered the Convention and analyzed the submissions made, the Committee observed as follows:

- 1) The Convention promotes constitutional values and objectives and does not in any way allude to an amendment of the Constitution. Further, the Convention does not necessitate changes to Kenya's domestic laws. However, because the Treaty compels State Parties to collaborate in institutional growth, this may necessitate policy considerations. This, however, has no bearing on the country's interests, as the primary goal is to aid in the implementation of the treaty.
- 2) The Convention imposes a number of obligations on Kenya upon ratification. For instance, the country will be required to commit to cross-border cooperation in the surveying of boundaries, socioeconomic development of borderlands, promotion of culture and sports across borders, and combating cross-border crime (border security); encourage, promote and facilitate information and intelligence sharing; communicate with the institution in charge of border matters; harmonize its domestic law with the Convention; submit a report on the measures taken for the implementation of the Convention every two years. Additionally, there is an obligation to Member States through their various Regional Economic Communities (RECs) to effectively coordinate with the African Union regarding the implementation of cross-border activities within their regions, which will further the principles of subsidiarity and complementarity within the Continent.
- 3) The Niamey Convention has been signed by nineteen (19) out of the 55 African Countries. Equally, only eight (8) countries had ratified the Convention yet fifteen (15) countries were required for it to enter into force. It was further observed that in the Eastern African region, countries were closely monitoring the ratification by Kenya, which was likely to trigger ratifications by her neighbours.
- 4) There are no financial implications on Kenya ratifying the Convention since the country will be joining the Convention as a non-contributing member state. The appropriate institutions' regular budgetary projections will cover the financial requirements for implementing the Convention.
- 5) Cross-border cooperation greatly contributes to the development of the border area zones, which tend to be less economically developed, compared to other areas in a country. The Convention allows for economic growth in border areas through the creation of employment opportunities and infrastructural development. Additionally, the Convention promotes economic development in terms of trade and cross-border cooperation and is a driver for the development of infrastructure, trade, transportation, and other sectors in border zones.
- 6) Kenya had, on its own motion, put in place various policy, legislative, and institutional frameworks for cross-border cooperation. This includes the enactment of the Security Laws (Amendment) Act 2014 that established the Border Control and Operations Coordination Committee (BCOCC). This Committee facilitates cross-border development in an open and secure environment including facilitating cross-border trade. Equally, there is the Joint Border Commissioners/Administrative Committee with all the neighbouring countries which meets

regularly to discuss cross-border matters, including animal health, security issues, and maintenance of boundary infrastructure among others.

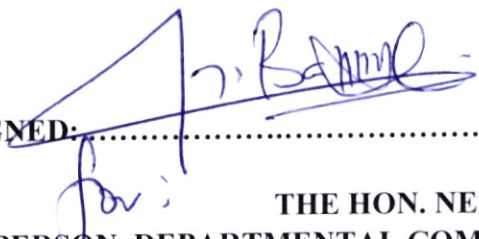
- 7) The Convention is consistent with the objectives of the East African Community (EAC), which has adopted and passed various economic cooperation agreements such as the customs union protocol and the common market protocol. These have contributed to the growth and improvement of the region, particularly the growth of border towns such as Namanga, Busia, and Mandera. This has resulted in the creation of employment opportunities and the provision of basic amenities.
- 8) The EAC Protocol on Peace and Security greatly encourages Member States to implement African Union Conventions and other international instruments that promote peace and security. Kenya has also negotiated, agreed upon, and signed a Memorandum of Understanding (MOU) on the demarcation and re-affirmation of the boundary with Uganda, Tanzania, and South Sudan. The reaffirmation and demarcation of the Kenya/Tanzania border has already begun, with around 238 kilometres of the 760km well on its way to completion.
- 9) The provisions of National Assembly Standing Order 170A have been fully satisfied in the consideration of the Convention.

PART V


5.0 COMMITTEE RECOMMENDATION

85. The Committee, having reviewed the Agreement and considered the submissions made, recommends THAT:

Pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the House approves the Ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention).

SIGNED:  DATE: 14/03/2024

for: THE HON. NELSON KOECH, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN RELATIONS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 14 MAR 2024	Day: Tues
TABLED BY:	HON ABULLAH, BASHIR, MP
	VICE CHAIR - DEFENCE
CLERK AT THE TABLE:	A. SHUBUKO

Annexure 1:

Signed list of Members who attended the sitting which considered and adopted the Report



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION-2024
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND
FOREIGN RELATIONS.
REPORT ADOPTION LIST

REPORT ON THE CONSIDERATION OF THE RATIFICATION OF THE AFRICAN UNION CONVENTION ON CROSS BORDER COOPERATION (NIAMEY CONVENTION)

We, Members of the Departmental Committee on Defence, Intelligence, and Foreign Relations, have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Friday 1st March 2024.**

	NAME	SIGNATURE
1.	The Hon. Koech Nelson, M.P. (Chairperson)	
2.	The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P. (Vice Chairperson)	
3.	The Hon. Hassan Abdi Yusuf, M.P	
4.	The Hon. Wanjira Martha Wangari, M.P	
5.	The Hon. Odhiambo Millie Grace Akoth, MP	
6.	The Hon. Kanchory Elijah Memusi, MP	
7.	The Hon. (Dr.) Kasalu Irene Muthoni, M.P	
8.	The Hon. Kirima Moses Nguchine, M.P	
9.	The Hon. Kandie Joshua Chepyegon, M.P	
10.	The Hon. Kwenya Thuku Zachary, M.P	
11.	The Hon. Luyai Caleb Amisi, M.P	
12.	The Hon. Teresia Wanjiru Mwangi, M.P	
13.	The Hon. Logova Sloya Clement, M.P	
14.	The Hon. Ikana Fredrick Lusuli, M.P	
15.	The Hon. Mohamed Abdikadir Hussein, M.P	

Annexure 2:

**Minutes on sittings of the Committee on consideration
of the agreement**



THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION - 2024
DIRECTORATE OF DEPARTMENTAL COMMITTEES
DC- DEFENCE, INTELLIGENCE AND FOREIGN RELATIONS

MINUTES OF THE 7TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS HELD ON FRIDAY 1ST MARCH, 2024 AT 10:00 A.M AT SAWELA LODGE, NAIVASHA, NAKURU COUNTY.

PRESENT

- 1. The Hon. Koech Nelson, M.P.** - Chairperson
2. The Hon. Wanjira Martha Wangari, M.P
3. The Hon. Kanchory Elijah Memusi, MP
4. The Hon. Kirima Moses Nguchine, M.P
5. The Hon. Kandie Joshua Chepyegon, M.P
6. The Hon. Kwenya Thuku Zachary, M.P
7. The Hon. Luyai Caleb Amisi, M.P
8. The Hon. Ikana Fredrick Lusuli, M.P
9. The Hon. Mohamed Abdikadir Hussein, M.P

APOLOGIES

- 1. The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.** - Vice Chairperson
2. The Hon. Hassan Abdi Yusuf, M.P
3. The Hon. Logova Sloya Clement, M.P
4. The Hon. (Dr.) Kasalu Irene Muthoni, M.P
5. The Hon. Odhiambo Millie Grace Akoth, MP
6. The Hon. Teresia Wanjiru Mwangi, M.P

IN ATTENDANCE

THE NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|----------------------------|
| 1. Mr. Dennis M. Ogechi | - | Clerk Assistant I |
| 2. Mr. Bernard Njeru | - | Clerk Assistant III |
| 3. Mr. Lenny Muchangi | - | Legal Counsel |
| 4. Mr. Salat Ali | - | Principal Serjeant-at-Arms |
| 5. Ms. Noelle Chelagat | - | Media relations Officer |
| 6. Mr. Fred Juma | - | Intern |

AGENDA

1. Preliminaries – Prayers, Adoption of the Agenda
2. Confirmation of minutes of previous meeting
3. **Report writing on the consideration of the ratification of the African Union Convention on the Cross-Border Cooperation (Niamey Convention).**
4. Any Other Business
5. Adjournment/Date of the next Sitting

The meeting was called to order at 10:05 a.m. and prayer was said. The agenda was unanimously adopted, having been proposed by Hon. Wanjira Martha Wangari, M.P. and seconded by Hon. Kirima Moses Nguchine, M.P., as consideration and adoption of report the following Reports:

- a) A report on the consideration of the ratification of the African Union Convention on the Cross-Border Cooperation (Niamey Convention), and
- b) A Report on the participation in the Diaspora Mobile Consular Services (MCS) exercise in Japan from 20th to 27th November 2023

MIN.NO. DDC/DIFR/033/2024:

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of minutes of the previous meetings was deferred to a later date.

MIN.NO. DDC/DIFR/034/2024:

CONSIDERATION AND ADOPTION OF REPORT ON THE CONSIDERATION OF THE RATIFICATION OF THE AFRICAN UNION CONVENTION ON THE CROSS-BORDER COOPERATION (NIAMEY CONVENTION).

The report on consideration of the ratification of the African Union Convention on the Cross-Border Cooperation (Niamey Convention) was adopted having been proposed by Hon. Wanjira Martha Wangari, M.P and seconded by Hon. Mohamed Abdikadir Hussein, M.P.

It was adopted with the following observations and recommendations:

OBSERVATIONS

Having considered the Convention and analyzed the submissions made, the Committee observed as follows:

1. The Convention promotes constitutional values and objectives and does not in any way allude to an amendment of the Constitution. Further, the Convention does not necessitate changes to Kenya's domestic laws. However, because the Treaty compels State Parties to collaborate in institutional growth, this may necessitate policy considerations or a review of the current legislative framework. This, however, has no bearing on the country's interests, as the primary goal is to aid in the implementation of the treaty.
2. The Convention imposes a number of obligations on Kenya upon ratification. For instance, the country will be required to commit to cross-border cooperation in the surveying of boundaries, socioeconomic development of borderlands, promotion of culture and sports across borders, and combating cross-border crime (border security); encourage, promote and facilitate information and intelligence sharing; communicate with the institution in charge of border matters; harmonize its domestic law with the Convention; submit a report on the measures taken for the implementation of the Convention every two years. Additionally, there is an obligation to Member States through their various Regional Economic Communities (RECs) to effectively coordinate with the African Union regarding the implementation of cross-border activities within their regions, which will further the principles of subsidiarity and complementarity within the Continent.
3. The Niamey Convention has been signed by nineteen (19) out of the 55 African Countries. Equally, only eight (8) countries had ratified the Convention yet fifteen (15) countries were required for it to enter into force. It was further observed that in the Eastern African region,

- countries were closely monitoring the ratification by Kenya, which was likely to trigger ratifications by her neighbours.
4. There are no financial implications on Kenya ratifying the Convention since the country will be joining the Convention as a non-contributing member state. The appropriate institutions' regular budgetary projections will cover the financial requirements for implementing the Convention.
 5. Cross-border cooperation greatly contributes to the development of the border area zones, which tend to be less economically developed, compared to other areas in a country. The Convention allows for economic growth in border areas through the creation of employment opportunities and infrastructural development. Additionally, the Convention promotes economic development in terms of trade and cross-border cooperation and is a driver for the development of infrastructure, trade, transportation, and other sectors in border zones.
 6. Kenya had, on its own motion, put in place various policy, legislative, and institutional frameworks for cross-border cooperation. This includes the enactment of the Security Laws (Amendment) Act 2014 that established the Border Control and Operations Coordination Committee (BCOCC). This Committee facilitates cross-border development in an open and secure environment including facilitating cross-border trade. Equally, there is the Joint Border Commissioners/Administrative Committee with all the neighbouring countries which meets regularly to discuss cross-border matters, including animal health, security issues, and maintenance of boundary infrastructure among others.
 7. The Convention is consistent with the objectives of the East African Community (EAC), which has adopted and passed various economic cooperation agreements such as the customs union protocol and the Common Market Protocol. These have contributed to the growth and improvement of the region, particularly the growth of border towns such as Namanga, Busia, and Mandera. This has resulted in the creation of employment opportunities and the provision of basic amenities.
 8. The EAC Protocol on Peace and Security greatly encourages Member States to implement African Union Conventions and other international instruments that promote peace and security. Kenya has also negotiated, agreed upon, and signed a Memorandum of Understanding (MOU) on the demarcation and re-affirmation of the boundary with Uganda, Tanzania, and South Sudan. The reaffirmation and demarcation of the Kenya/Tanzania border has already begun, with around 238 kilometers of the 760km well on its way to completion.
 9. The provisions of National Assembly Standing Order 170A have been fully satisfied in the consideration of the Convention.

RECOMMENDATION

The Committee, having reviewed the Agreement and considered the submissions made, recommended that pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the House approves the Ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention).

MIN.NO. DDC/DIFR/035/2024:

**ADJOURNMENT AND DATE OF
NEXT MEETING**

There being no other business, the meeting was adjourned at 02:37 p.m. The next meeting will be held on 2nd March 2024 at 10:00 a.m. at Sawela Lodge, Naivasha.

SIGNED: .....DATE: 14/03/2024.....

 THE HON. NELSON KOECH, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE,
INTELLIGENCE AND FOREIGN RELATIONS



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

**MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS HELD ON THURSDAY
10TH AUGUST, 2023 AT 10.00 AM AT THE WESTON HOTEL, NAIROBI.**

PRESENT

1. **The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P. - Vice Chairperson**
2. The Hon. Wanjira Martha Wangari, M.P
3. The Hon. Kandie Joshua Chepyegon, M.P
4. The Hon. Luyai Caleb Amisi, M.P
5. The Hon. Kirima Moses Nguchine, M.P
6. The Hon. Mohamed Abdikadir Hussein, M.P

APOLOGIES

1. **The Hon. Koech Nelson, M.P. - Chairperson**
2. The Hon. Odhiambo Millie Grace Akoth, MP
3. The Hon. Hassan Abdi Yusuf, M.P
4. The Hon. Kanchory Elijah Memusi, MP
5. The Hon. (Dr.) Kasalu Irene Muthoni, M.P
6. The Hon. Kwenya Thuku Zachary, M.P
7. The Hon. Ikana Fredrick Lusuli, M.P
8. The Hon. Logova Sloya Clement, M.P
9. The Hon. Teresia Wanjiru Mwangi, M.P

IN ATTENDANCE

THE SECRETARIAT

- | | | |
|-----------------------------|---|----------------------|
| 1. Mr. Dennis Mogare Ogechi | - | Clerk Assistant I |
| 2. Dr. Donald Manyala | - | Researcher Officer I |
| 3. Ms. Rhoda Muchori | - | Hansard Reporter III |
| 4. Mr. John Nganga | - | Audio Officer |

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

- | | | |
|----------------------|---|-------------------------------------|
| 1. Amb. James Waweru | - | Registrar of Treaties |
| 2. Ms. Sarah Mueni | - | Office of the Registrar of Treaties |
| 3. Ms. Diana Ndungu | - | Office of the Registrar of Treaties |

AGENDA

1. Preliminaries – Prayers, Adoption of the Agenda
2. Confirmation of minutes of the previous Sitting.

3. **Briefing by the Cabinet Secretary for Foreign and Diaspora Affairs on the AU Convention on Cross-Border Cooperation (Niamey Convention).**
4. Any Other Business
5. Adjournment/Date of the next Sitting

MIN.NO. DDC/DIFR/262/2023:

PRELIMINARIES

The meeting was called to order at 10:29 a.m. and a prayer was said. The Chairperson then stated that the main agenda was receiving a briefing from the Cabinet Secretary for Foreign and Diaspora Affairs on the AU Convention on Cross-Border Cooperation (Niamey Convention).

The agenda was adopted after being proposed by Hon. Martha Wangari, M.P and seconded by Hon. Joshua Chepyegon Kandie, M.P

MIN.NO. DDC/DIFR/263/2023:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

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

MIN.NO. DDC/DIFR/264/2023:

BRIEFING BY THE CABINET SECRETARY FOR FOREIGN AND DIASPORA AFFAIRS ON THE AU CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION).

Amb. James Waweru, the Registrar of Treaties at the Ministry of Foreign and Diaspora Affairs appeared before the Committee on behalf of the Cabinet Secretary. He conveyed the apologies of the Cabinet Secretary who was accompanying the President on a foreign trip. He then briefed the Committee as follows:

1. On the objectives of the Convention, he stated that:
 - a) The Convention on Cross-Border Cooperation (Niamey Convention) aims to foster cross-border cooperation and assure peaceful border dispute resolution. Its purpose is to encourage the development of borders and the free flow of people and products through collaborative initiatives between neighbouring countries.
 - b) Niamey Convention establishes a legal framework for Member States to design and implement cross-border cooperation initiatives. It is also a method for formalizing international collaboration that other stakeholders might use when discussing "support mechanisms."
 - c) Niamey Convention raises the issue of cross-border collaboration as a method of institutionalizing cross-border cooperation through the establishment of a continentally agreed-upon framework, such as Joint Border Commissioners.
2. On the analysis of the problem that the convention intends to cure, he stated that:
 - a) The founding African leaders anticipated the possible hazards that expanding borders would pose to the continent's peace and security. They established the principle of respecting existing borders for the accomplishment of national independence during the 1st Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in Cairo in July 1964. It is commonly acknowledged that well-established border areas, among other things, are accelerators for economic growth,

infrastructure development, the ease of movement of persons and commodities, the reduction of transnational crimes, the establishment of customs, and the enhancement of peace and security within border areas.

- b) Africa was yet to fully realize the potential benefits of cross-border cooperation. The realization has been hampered by obstacles such as political considerations, cross-border conflicts, and a lack of clearly defined borders, among others.
 - c) Further, there are insufficient structures across the continent to meet the consistent demand for experience-sharing to inspire and replicate effective practices and models being adopted in other countries/regions.
 - d) Further, the overall lack of dispute resolution systems to settle socio-cultural ethnic conflicts, resource-based conflicts, and boundary disputes, among many others, exacerbates the issues faced in borderlands.
 - e) The Niamey Convention gives the continent a chance to find answers to difficulties that have hampered the economic progress of the Continent's borderlands through regional and bilateral frameworks. It entails a vision of an interconnected Africa in which borders serve as bridges for peace, growth, and development, laying the groundwork for a growing need for cross-border collaboration.
3. On the Benefits of Kenya Ratifying the Convention he stated that by ratifying the Convention, Kenya will benefit from the following:
- a) Promoting peace, security, and stability - Promoting and reinforcing peace, security, and stability while ensuring social and economic development and assisting in the efficient implementation of community laws and regulations.
 - b) Aid in the development of marginalized zones - Border regions are typically less economically developed than interior regions. Through Agreements, employment, and development, the Convention enables economic growth at the border.
 - c) Contribute to regional economic development through trade and cross-border cooperation - Economic development in terms of Trade and Cross-Border Cooperation is the driving force behind the development of border zones and the creation of an environment favourable to the development of infrastructure, trade, transportation, and other industries. Adopting economic cooperation agreements and developing trade perspectives help to strengthen regional policies and spatial development.
 - d) Reaching resource sharing agreements - Many natural resources cross borders. This could lead to violence in countries that have yet to adequately delimit and demarcate their borders. The Convention provides an inclusive approach to shared natural resource management that will benefit local communities and boost the country's progress.
 - e) Strengthen and develop good neighbourly relations - Reinforcement and development of good neighbourly relations among border communities and authorities from two or more Member States, as well as ratified agreements and arrangements required for this purpose. We are a continent of opportunity, hospitality, and friendly relationships. Neighbourly relationships help ensure the safety of people living on the border.
4. On the justification for the ratification of the Niamey Convention he stated that:
- a) The importance of cross-border cooperation, particularly for border communities cannot be understated. It greatly contributes to the development of the border area zones, which tend to be less economically developed, compared to other areas in the county.
 - b) The Convention allows for economic growth at the border through the creation of employment opportunities and infrastructure development. Additionally, the Convention promotes economic development in terms of trade and cross-border cooperation and is a driver for the development of infrastructure, trade, transportation, and other sectors in border zones.

- c) Kenya had put in place various policy, legislative, and institutional frameworks for cross-border cooperation. This includes:
- The enactment of the Security Laws (Amendment) Act 2014 established the Border Control & Operations Coordination Committee (BCOCC). This Committee facilitates the borders as bridges principles of AUBP by ensuring that there is cross-border development in an open and secure environment including facilitating cross-border trade;
 - There is in place the Joint Border Commissioners/ Administrative Committee with all the neighbouring countries which meet regularly to discuss cross-border matters, including animal health, security issues, and maintenance of boundary infrastructure among others;
- d) On the international plane:
- The Niamey Convention is consistent with the objectives of the East African Community (EAC), which has adopted and passed various economic cooperation agreements such as the customs union protocol and the common market protocol, which have contributed to the growth and improvement of the region, particularly the growth of border towns such as Namanga, Busia, and Mandera, which has resulted in the creation of employment opportunities and the provision of basic amenities;
 - The EAC Protocol on Peace and Security greatly encourages Member States to implement African Union Conventions and other international instruments that promote peace and security; e) Kenya has also negotiated, agreed upon, and signed a Memorandum of Understanding (MOU) on the demarcation and re-affirmation of the boundary with Uganda, Tanzania, and South Sudan. The reaffirmation and demarcation of the Kenya/Tanzania border have already begun, with around 238 kilometres of the 760km well on its way to completion;
 - Kenya has signed a number of bilateral treaties with bordering nations in order to provide border people with chances for improved cooperation and to promote peaceful coexistence in order to improve their livelihoods and socioeconomic conditions. This is being realized through the establishment of collaborative peace committees and the supply of essential social infrastructures such as schools, watering stations, cattle dips, and joint animal vaccination points, among other things.
- e) Whilst Kenya has made efforts to promote cross-border cooperation internally, the ratification of the Niamey Convention offers more opportunities for Kenya to improve cross-border initiatives, by offering the chance to:
- Enhance the existing legal framework and mechanisms for cross-border cooperation initiatives;
 - Formalize the cooperation between countries that will create a basis for peer review of national efforts towards implementation of cross-border initiatives;
 - Institutionalize cross-border cooperation through a continentally accepted framework, e.g. by the creation of Joint Border Commissions;
 - Request technical and financial assistance from the African Union and development partners to accelerate completion of the delimitation and demarcation of the country's International boundaries, among other cross-border initiatives; and
 - Enhance the use of the dispute resolution mechanisms available within the African Union, especially in the resolution of any boundary disputes.
- f) Another important benefit of ratification is that, because the Niamey Convention's adoption has been slow on the Continent, Kenya's ratification will reaffirm Kenya's commitment to the promotion of peace and security, particularly in conflict-prone borderlands.

- g) It will also provide an opportunity for Kenya, once the continent's representative to the United Nations Security Council (UNSC) and a former member of the African Union Peace and Security Council (AUPSC), to advocate for the respect of the principle of subsidiarity through the use of continental dispute resolution mechanisms.
5. On the obligations imposed on Kenya by the Niamey Convention upon Ratification, he stated that Kenya will be required to commit to:
- Cross-border cooperation in the surveying of boundaries, socioeconomic development of borderlands, promotion of Culture and sports across borders, and combating cross-border crime (border security);
 - Cooperate fully in the implementation of the Border Programme;
 - Encourage, promote, and facilitate information and intelligence sharing;
 - Communicate with the institution in charge of border matters;
 - Harmonize its domestic law with the Convention;
 - Submit a report on the measures taken for the implementation of the Convention every two years.
 - Additionally, there is an obligation to Member States through their various Regional Economic Communities (RECs) to effectively coordinate with the African Union regarding the implementation of cross-border activities within their regions which will further the principles of subsidiarity and complementarity within the Continent.
6. On the constitutional and legislative implications, he stated that:
- a) The Convention promotes constitutional values and objectives and does not allude to an amendment of the Constitution.
- b) The Convention does not necessitate changes to Kenya's domestic laws. However, because the Treaty compels State Parties to collaborate in institutional growth, this may necessitate policy considerations or a review of the current legislative framework. This, however, has no bearing on the country's interests, as the primary goal is to aid in the implementation of the treaty.
7. On Reservations he asserted that the Treaty is silent on reservations, but there is no imminent issue that may warrant a declaration or reservation.
8. On financial implications he stated that Kenya will be joining the Convention as a non-contributing member state. The appropriate institutions' regular budgetary projections will cover the financial requirements for implementing the Niamey Convention.

MIN.NO. DDC/DIFR/265/2023:

COMMITTEE OBSERVATIONS

The Committee observed as follows:

1. IGAD was working on a similar cross-border cooperation initiative geared towards Strengthening Cross-border Cooperation in the IGAD Clusters. Since Kenya was a member of IGAD, there was a need to fast-track the same as much as a continental initiative was also being covered by the Niamey Convention.
2. Kenya ought to consider mobilizing IGAD members to join the Niamey Convention, as they await the IGAD initiative to be processed through appropriate channels.
3. The Niamey Convention had been signed by 18 out of the 55 African Countries. Equally, 6 countries had ratified the Convention and 15 were required for it to enter into force.
4. Countries in the Eastern African region were closely monitoring the ratification by Kenya. Kenya's ratification would trigger ratification of the convention by countries bordering Kenya.


MIN.NO. DDC/DIFR/266/2023:

ADJOURNMENT

There being no other business, the meeting was adjourned at 12.22 pm.

SIGNED: *[Signature]* DATE: 14/03/2024

for: **THE HON. NELSON KOECH, M.P.**
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE
AND FOREIGN RELATIONS**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 14 MAR 2024	DAY: <input type="text"/>
TABLED BY:	
CLERK-AT THE TABLE:	

MINUTES OF THE 41ST SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS HELD ON TUESDAY 13TH JUNE, 2023 AT 10.00 AM IN THE COMMITTEE ROOM ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.

PRESENT

1. **The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.** - **Vice Chairperson**
2. The Hon. Hassan Abdi Yusuf, M.P
3. The Hon. Wanjira Martha Wangari, M.P
4. The Hon. Kanchory Elijah Memusi, MP
5. The Hon. Luyai Caleb Amisi, M.P
6. The Hon. Kirima Moses Nguchine, M.P
7. The Hon. Kandie Joshua Chepyegon, M.P
8. The Hon. Mohamed Abdikadir Hussein, M.P

APOLOGIES

1. **The Hon. Koech Nelson, M.P.** - **Chairperson**
2. The Hon. Odhiambo Millie Grace Akoth, MP
3. The Hon. (Dr.) Kasalu Irene Muthoni, M.P
4. The Hon. Kwenya Thuku Zachary, M.P
5. The Hon. Logova Sloya Clement, M.P.
6. The Hon. Teresia Wanjiru Mwangi M.P
7. The Hon. Ikana Fredrick Lusuli, M.P

IN ATTENDANCE

THE NATIONAL ASSEMBLY

1. Mr. Dennis M. Ogechi - Clerk Assistant I
2. Ms. Winfred Kambua Kilonzo - Clerk Assistant III
3. Dr. Donald Manyala - Research Officer I
4. Mr. Lenny Muchagi - Legal counsel II
5. Mr. Machuki Mwebi - Fiscal Analyst III
6. Ms. Rose Njuki - Senior Sergeant-at-Arms
7. Ms. Rhoda Muchori - Hansard Officer III
8. Mr. Kelvin Nganga - Research Officer III
9. Mr. John Nganga - Audio officer III
10. Mr. Machuki Mwebi - Fiscal Analyst III
11. Mr. Antony Wamae - Searjent-At-Arms

AGENDA

1. Preliminaries – Prayers, Adoption of the Agenda
2. **Briefing by the Secretariat on:**
 - a) **The Agreement Between Kenya and Italy on the Luigi-Broglio Malindi Space Center**
 - b) **The Committee Report on Agreement Between Kenya and Italy on the Luigi-Broglio Malindi Space Center in the 12th Parliament.**

- c) **The African Union Convention on Cross-Border Cooperation (Niamey Convention).**
- 3. Any Other Business
- 4. Adjournment/Date of the next Sitting

MIN.NO. DDC/DIFR/210/2023:

PRELIMINARIES

The meeting was called to order at 10:40 a.m. and a prayer was said. Then the Chairperson stated that the main agenda of the meeting was a briefing by the Secretariat on:

- d) The Committee Report on Agreement Between Kenya and Italy on the Luigi-Broglio Malindi Space Center in the 12th Parliament.
- e) The Agreement Between Kenya and Italy on the Luigi-Broglio Malindi Space Center
- f) The African Union Convention on Cross-Border Cooperation (Niamey Convention).

The agenda was adopted.

MIN.NO. DDC/DIFR/211/2023:

**CONFIRMATION OF MINUTES OF
THE PREVIOUS SITTINGS**

Minutes of the following Sittings were confirmed as follows:

Minutes of the 27th Sitting held on Tuesday 25th April, 2023 were confirmed as a true record of the proceedings after being proposed by Hon. Wanjira Martha Wangari, M.P and seconded by Hon. Kandie Joshua Chepyegon, M.P

Minutes of the 28th Sitting held on Friday 28th April, 2023 were confirmed as a true record of the proceedings after being proposed by Hon. Kirima Moses Nguchine, M.P and seconded by the Hon. Mohamed Abdikadir Hussein, M.P

Minutes of the 29th Sitting held on Friday 28th April, 2023 at 2.00 p.m. were confirmed as a true record of the deliberations held after being proposed by Hon. Wanjira Martha Wangari, M.P. and seconded by Hon. Kirima Moses Nguchine, M.P

Minutes of the 30th Sitting held on Saturday 29th April, 2023 at 2.00 p.m. were confirmed as a true record of the proceedings after being proposed by Hon. Kandie Joshua Chepyegon, M.P and seconded by Hon. Ikana Fredrick Lusuli, M.P.

Minutes of the 31st Sitting held on Tuesday 2nd May, 2023 were confirmed as a true record of the proceedings after being proposed by Hon. Wanjira Martha Wangari, M.P and seconded by Hon. Hon. Mohamed Abdikadir Hussein, M.P

MIN.NO. DDC/DIFR/212/2023:

**BRIEFING ON THE COMMITTEE REPORT
ON THE AGREEMENT BETWEEN KENYA
AND ITALY ON THE LUIGI-BROGLIO
MALINDI SPACE CENTER IN THE 12TH
PARLIAMENT.**

The Research Officer briefed the Committee as follows:

- 1. The Departmental Committee on Defence and Foreign Relations of the 12th Parliament tabled a report on the consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio – Malindi Space Centre on Wednesday, the 26th day of June, 2019, which was adopted by the House and the

Agreement ratified on 15th October 2020. It formally came into effect on 16th December 2020 with the completion of an exchange of diplomatic communications on the ratification of the Agreement.

2. The Luigi Broglio Malindi Space Centre formerly referred to as the San Marco Satellite Launching and Tracking Station is located at Ngomeni Village, Magarini Constituency in Kilifi County. It was established in 1962.
3. An initial Agreement was signed between the Royal Technical College of Nairobi (now the University of Nairobi) and the University of Rome on behalf of their respective Governments. The Agreement was ratified by the two Kenyan and Italian Governments in 1964 and had subsequently been renewed as follows:
 - a) On 1st April 1987 to inform the establishment of the National Space Secretariat under the Ministry of Defence
 - b) On 14th March 1995, the Agreement was extended for a further period of fifteen (15) years which expired on 14th March 2010. The Validity of the agreement was extended to 31st December 2011 to allow for negotiations between the parties.
 - c) On 5th June 2012, the validity of the Agreement was further extended to allow the parties to conclude a new comprehensive Agreement for cooperation on space matters together with implementing arrangements. The Agreement was signed in Trento, Italy on 24th October 2016 on behalf of the Government of Kenya by the Cabinet Secretary for Defence, and submitted to the National Assembly for Ratification on 22nd February, 2019.
4. The Agreement was designed to have five implementing arrangements which include:
 - a) Implementing Arrangement on support to the Kenya Space Agency;
 - b) Implementing Arrangements on Access to Earth Observation and Space Science Data;
 - c) Implementing Arrangement on Education and Training;
 - d) Implementing arrangement on Telemedicine; and
 - e) Implementing Arrangement on Establishment of a Regional Centre for Earth observation.
5. There had been a concern raised in the 11th Parliament through a parliamentary question by the Hon. Wilbur Ottichilo to the Minister of State for Defence on the status of the San Marco Space Application Centre in Malindi, which was investigated by a Joint Committee of Energy, Communications and Information; and Education, Research, and Technology.
6. The Committee made several recommendations, which were noted to have been implemented in the Agreement that was considered by the House in 2019. On the recommendations, the DC on Defense and Foreign Relations observed as follows in the Agreement:
 - a) With regard to the enhancement of the oversight role of the Kenya Government over the centre, the Agreement retained the Joint Organs to oversee the implementation of the Agreement and the programmes of the Centre, the Joint Council of Ministers and the Joint Steering Committee; and established a Joint management Board which is to be chaired on a rotational basis. The Agreement also established the position of Deputy Chief Executive Officer which is to be held by a Kenyan and allows parties the right to inspect the Centre at any time through authorised personnel.
 - b) The Agreement was subject to ratification by the National Assembly, as recommended, and was ratified.
 - c) The Kenyan government is entitled to approve all third-party agreements for the use of the Centre, payment of USD 50,000 authorization fee from each third party and 50% of the profits from any agreements with third parties for the use of the Centre.

- d) The Kenyan government is entitled to second professional employees to the Centre and participates in the oversight of any expatriates through the Joint Management Board and the Deputy CEO.
 - e) The Agreement contains various Implementation arrangements to govern and benefit key sectors; and
 - f) The Centre is to vest in the Kenyan Government after the lapse of its fifteen (15) year term or such lesser time as may be agreed upon. The Agreement may be terminated at the lapse of a twelve (12) month notice period.
7. As regards the financial implication of the Agreement; Kenya's contribution is the provision of land upon which the Centre is established. The Agreement also provides for the payment of compensation of USD 250,000 per year by the Government of Italy to the Government of Kenya for the use of the land. The compensation is to be reviewed every five years with an increment of USD 50,000.
 8. Pursuant to the provisions of Article 118(1)(b) of the Constitution regarding public participation the Clerk of the National Assembly called for submission of memoranda on Tuesday 19th March 2019. The following stakeholders submitted:
 - a) Prof. Paul Baki from the Union Space working group, Technical University of Kenya. Prof Baki;
 - b) The Staff of the Broglio Space Centre; and
 - c) Mr. Joseph Mutua Muvea from Green Kenya Investment Cooperation, a company dealing with environmental protection.
 9. The Committee also received submissions from the P.S State Department of Defense Mr Torome Saitoti, CBS; Major Gen. Adan Mulata, from KDF and the Ag. Director General for Kenya Space Agency, Dr John Kimani.
 10. The Committee noted that the following stakeholders are involved in the issues around the Agreement and its attendant implementation:
 - a) Ministry of Defence and National Security organs
 - b) Ministry of Education Science and Technology
 - c) Ministry of Environment and Natural Resources
 - d) Ministry of Lands, Housing & Urban Development
 - e) The National Treasury
 - f) Communications Authority of Kenya
 - g) Directorate of Resource Surveys and Remote Sensing
 - h) Kenya Meteorological Department
 - i) Kenya Civil Aviation Authority
 - j) Survey of Kenya
 - k) National Commission for Science Technology & Innovation
 11. The Ministry of Defence in its submissions to the Committee noted the following as potential benefits of the Agreement:
 - a) The 1995 Agreement presented an annual rent increase from USD 50,000 to USD 150,000; 6 PhDs, 12 engineers, 24 Technicians trained; Kes. 240m spent on community development projects; and 180 Kenyans directly employed with a wage bill of Kes. 108 p.a.
 - b) The 2016 Agreement presented 15 scholarships guaranteed annually; 50% of profit plus USD 50,000 authorization fee from 3rd party; EUR 6.4m for community projects and EUR 5m for space Science programme in a Kenyan University; and License fees of Euros 250,000 revisable after five years.
 12. The Committee made the following observations, that:

- a) The implementation of the provisions in the agreement will enable Kenya to develop capacity for the local space sector, build capability in space science and technology and establish sustainable programs and applications to benefit the citizenry as opposed to the existing agreement ratified in 1964,
 - b) Neither the Government of Kenya nor the Italian Government has invested in the development of Human capacity to take over the management of the BSC,
 - c) The BSC has not effectively undertaken corporate social responsibility for the benefit of the local community,
 - d) The Kenya space agency is domiciled in the Ministry of Defence but international practice has shown that in most countries the Agency is domiciled in the Ministry of Education, Science and Technology.
13. The committee recommended that pursuant to section 8 of the Treaty Making and Ratification Act, the House approves the ratification of the Agreement.
14. Some of the policy aspects that can be deduced from the Agreement include:
- a) The establishment of a centre for earth observation and access to earth observation data as provided by the agreement will be critical for the development of Kenya's capacity in earth observation applications to provide decision support, early forecasting and predictions around agriculture and food security, climate change mitigation, disaster risk management and natural resource management among others.
 - b) Involvement of the Kenyan Government at both at the technical and managerial levels to ensure sufficient supervision of operations and management and maximum utilization of benefits at the Space Centre. This will help the Government enhance its oversight role in ensuring the facility maximizes its presence in Kenya by enhancement of the Government's development agenda in education, research, communication and information.
 - c) Equal sharing of revenue gained from commercial services provided to users of the Centre.
 - d) Formulation of Third-party usage stations so that the Kenyan Government will be aware of the third-party user of the stations and how much money is earned from these third-party agreements. Further, the Government should ensure that it is present at the signing of the third-party agreements for transparency purposes.
 - e) The agreement provides for the payment of compensation of USD 250,000 per year by the Government of Italy to the Government of Kenya for the use of the land which is supposed to be reviewed every five years with an increment of USD 50,000.
 - f) The agreement also provides that there is room for Kenyans to be seconded for training at the Space Centre through a Joint Management Board and the Deputy CEO.

Implementation Status of the Agreement

15. The Cabinet Secretary for the Ministry of Defence, Hon. Aden Duale, EGH, in a letter dated 9th March 2023 expressed the Republic of Kenya's concerns on the implementation of the Kenya -Italy bilateral Agreement on the Luigi-Brogolio Malindi Space Centre to Dr. Giorgio Saccoccia, the President of Agenzia Spaziale Italiana (ASI) in Rome Italy, ahead of the bilateral visit of the Italian President to Kenya H.E Sergio Mattarella between 13th to 17th march 2023.
16. The CS, while calling for addressing of critical issues in the implementation of the Agreement through commitments by the Italian Space Agency, noted that the current activities are almost exclusively only beneficial to Western partner agencies of ASI through tracking, telemetry, and Command Services and provision of space science and astronomical data to the Western scientific community.

17. He further noted that there was no single capacity-building project being undertaken, and that Kenya was yet to realize any tangible benefits from the service provided at the facility, despite the existence of bilateral agreements with clear deliverables over the 60-year cooperation period.
18. The CS observed that the Joint Management Board and Joint Technical Working Group meetings, which were intended to gain traction in the implementation of the agreement and derive some benefits for Kenya, have yet to get substantial decisions, with little progress being made, owing to apparent deliberate efforts to frustrate the implementation.
19. Little efforts have been made in recent months to address some of the provisions of the Agreement. Thus, the key concerns expressed by the Cabinet Secretary include:
 - a) Little progress in the establishment of a Centre for Earth Observation and access to observation Data, which is meant to provide decision support on early forecasting and predictions around agriculture and food security, climate change mitigation, disaster risk management and natural resources management, among others;
 - b) Lack of full Visibility in the operations of the Centre to KSA and other GOK staff, owing to reluctance by the Centre to provide adequate space for the Deputy CEO and termination of access to the centre of GOK technicians, contrary to provisions under Article VII, Clause 6 of the Agreement;
 - c) Reluctance to provide information about current commercial contracts with third parties entered into by the facility in accordance with the provisions of the agreement, contrary to provisions of Article VIII, Clause 5(f);
 - d) The facility has been engaging in collaborations with other institutions or individuals in Kenya on space matters without the involvement and/ or sanction by the Kenya Space Agency as the local implementing partner and focal point;
 - e) ASI is yet to make payments for Annual Authorization Fees in the amount provided for Article VIII, clause 5(g).
20. In conclusion, it can be deduced that the implementation of the Kenya-Italy Agreement on the Luigi Broglio Malindi Space Centre was slow coupled with frustrations from the management of the Malindi Space Centre. Further, it appears that Kenya had not benefited as intended in the Agreement. The Committee, therefore, can exercise its oversight mandate and engage the Ministry of Defence, and Luigi Broglio Malindi Space Centre to establish the implementation status of the Agreement.

MIN.NO. DDC/DIFR/213/2023:

**BRIEFING ON THE AGREEMENT
BETWEEN KENYA AND ITALY ON THE
LUIGI-BROGLIO MALINDI SPACE CENTER**

The Legal Counsel briefed the Committee as follows:

1. Article I contains definitions of terms used in the Agreement;
2. Article II outlines the extent and use of the Space Centre;
3. Article III provides for other areas of cooperation between the two governments;
4. Article IV provides for the establishment of a Joint Council of Ministers as the supreme organ responsible for strategic policy guidance for the operations of the Space Centre and identified areas of cooperation;
5. Article V establishes a Joint Steering Committee comprising Principal Secretaries of respective Ministries and Chief Executive Officers (CEOs) of the respective Space Agencies of the two countries. The Committee is charged with steering the implementation of the Agreement and considers and approves the programmes, plans and financial affairs of the Centre. The Committee also appoints the chair of the Joint Management Board of the Centre on a rotational

- basis and is charged with the approval of the possible engagement or involvement of third parties in the utilization of the Centre;
6. Article VI establishes a Joint Management Board comprising three technical persons designated by each country. The Board oversees the operations of the Space Centre and the welfare of its staff. It regulates its own procedure;
 7. Article VII governs the management of the Space Centre. The Chief Executive Officer (CEO) of the Centre is to be appointed by the Italian Government through its Space Agency. The CEO is to be in charge of the day-to-day management of the Centre and convening of Board meetings. The Deputy CEO of the Centre is to be appointed by the Government of Kenya to deputize the CEO in all aspects except the making of financial commitments for the Centre;
 8. Article VIII provides for the obligations of the Italian Government;
 9. Article IX of the Agreement provides for the obligations of the Government of Kenya;
 10. Article X contains provisions on the utilization of the Centre by third parties;
 11. Article XI governs the liability of the two parties under the Agreement;
 12. Article XII provides for the modalities of Verification and Inspection under the Agreement;
 13. Article XIII of the Agreement provides for the confidentiality of any material exchanged or generated in connection with the Agreement in line with each country's laws;
 14. Article XIV governs the settlement of disputes between the parties;
 15. Article XV provides for the vesting of the Centre's assets to the Kenyan Government upon the lapse of the Agreement or at such a lesser period formally agreed upon by the Council or upon the termination of the Agreement;
 16. Article XVI stipulates Kenyan law as the law applicable to all activities, operations, and incidental actions related to the functioning of the Centre;
 17. Article XVII provides for the mode of amendment, modification, and review of the Agreement;
 18. Article XVII provides for the modalities of its entry into force, duration, and termination;
 19. Annexed to the Agreement are five (5) implementing arrangements—
 - a) Implementing Arrangement on Support to the Kenya Space Agency
 - b) Implementing Arrangement on Access to Earth Observation and Space Science Data
 - c) Implementing Arrangement on Education and Training
 - d) Implementing Arrangement on Telemedicine
 - e) Implementing Arrangement on Establishment of a Regional Centre for Earth Observation
 20. He recommended that the Committee may invite:
 - a) the Cabinet Secretary for Defence to provide additional information on this matter and the progress made in addressing the concerns raised with the Italian Space Agency;
 - b) the Principal Secretary, who sits in the Joint Steering Committee (Article V) to provide information on the implementation status of the Agreement;
 - c) the Deputy CEO to provide more information on the operational challenges faced in the facility.

RESOLUTION

It was resolved that the secretariat invites the Cabinet Secretary for Defence, accompanied by the Deputy CEO of the centre, to brief the Committee on the implementation status of the Agreement on 22nd June, 2022.

Presentation by the Research Officer

The Research Officer briefed the Committee as follows:

1. The African Convention on Cross-Border Cooperation (the Niamey Convention) is a regional agreement aimed at promoting cooperation and integration among African countries. The Convention was adopted by the 23rd Ordinary Session of the AU Assembly of the Heads of State and Government on 27th June, 2014 to gear African States to cooperate towards the full realization of the benefits accruable through cross-border cooperation. It focuses on enhancing collaboration in various policy areas related to cross-border issues
2. The Niamey Convention was adopted to steer the African States towards the realization of the objectives and principles enshrined in the Constitutive Act of the African Union, 2000 and the Treaty establishing the African Economic Community, 1991, among them being:
 - a) the affirmation of a common identity and the process of attainment of African unity and the provision of a unique framework for the collective action in Africa and its relations with the rest of the world;
 - b) taking up multifaceted challenges that confront the African continent and people in light of social, economic and political challenges taking place in the world;
 - c) implementation of the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to effectively face the challenges posed by globalization;
 - d) the common vision of a united Africa and the need to build partnerships between governments and all segments of civil society in order to strengthen solidarity and cohesion among African people;
 - e) the fact that the scourge of conflict in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of African development and integration;
 - f) promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;
 - g) take all necessary measures to strengthen Africa's common institutions and provide them with the necessary powers and resources to enable the discharge of their mandate.
3. The Niamey Convention offers more opportunities for Kenya to improve the following cross-border initiatives, Trade and Economic Cooperation, Infrastructure Development, Border Management and Security, Environmental Protection and Natural Resource Management, and Social and Cultural Cooperation.
4. The convention promotes cultural exchanges, social integration, and people-to-people interactions across borders. It encourages member states to collaborate on issues related to education, healthcare, tourism, and cultural preservation to foster regional cohesion and understanding. Similarly, cross-border cooperation will also contribute to the development of the often-marginalized border areas and zones, which tend to be less economically developed, compared to other areas in the country.
5. While the Niamey Convention aims to foster cooperation and integration among African countries, there are some potential pitfalls and challenges associated with its implementation. These include: Limited Implementation Capacity, Political Will and Commitment, Uneven

Regional Integration, Border Disputes and Conflicts, Varying National Priorities and Policies, Limited Stakeholder Participation.

6. All the provisions of the Niamey Convention are clear for ratification within the meaning of Article 2 of the Constitution and Vienna Convention on the Law of Treaties, save for the provisions on settlement of disputes under the Convention. The Convention provides for resolution of disputes through direct negotiation between the State Parties concerned, and where dispute is not resolved through direct negotiation, the State Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the State Parties including the procedures and mechanisms for resolution of disputes established within the AU Framework.
7. Dispute resolution mechanisms within regional agreements are often designed to foster cooperation and integration. However, when states have extensive discretion in choosing mechanisms, they may opt for mechanisms that prioritize their individual interests over regional cooperation. This can undermine the spirit of collaboration and compromise spirit of regional integration. Allowing states wide discretion in dispute resolution mechanisms can lead to fragmentation and complexity within the regional legal framework. Different mechanisms operating concurrently can create overlapping jurisdictions, contradictory rulings, and legal uncertainties. This can impede the harmonization of laws, hinder compliance, and create challenges for businesses and individuals operating across borders.
8. To remedy these challenges, the Committee may approve the ratification of the Convention with a reservation recommending the establishment of guidelines or criteria for selecting dispute resolution mechanisms to ensure consistency, fairness, and efficiency. Alternatively, the Committee may recommend a clear reference to the African Court of Justice and Human Rights as the sole institution for settlement of disputes under the Convention.

Presentation by the Legal Counsel

The Legal Counsel briefed the Committee as follows:

1. Article 1 defines terms used in the convention;
2. Article 2 outlines the objectives of the Convention
3. Article 3 identifies the areas of cooperation
4. Article 4 requires State Parties to solve any legal, administrative, security, cultural or technical impediment likely to hamper the strengthening and smooth functioning of cross-border cooperation;
5. Article 5 provides the sharing of information and intelligence among State Parties with a view to facilitating the performance of the requesting State of its obligations under the convention;
6. Article 6 obligates State Parties to communicate to the African Union Commission, a list of competent authorities responsible for border issues under their domestic law, which shall serve as focal points;
7. Article 7 deals the requirement of domestication of the convention by the State Parties;
8. Article 8 provides for mechanisms for implementation of cross-border cooperation at the level of state parties;
9. Article 9 provides for mechanisms for implementation of cross border cooperation at the level of Regional Economic Communities;
10. Article 10 provides for mechanisms for implementation of cross-border cooperation at the continental level;

11. Article 11 provides for the establishment of a Border Programme Fund whose resources shall be provided through voluntary contributions of member states and miscellaneous income, including donations and grants.
12. Article 12 deals with safeguard provisions;
13. Article 13 deals settlement of disputes through direct negotiations between state parties;
14. Article 14 provides for signing, ratification or accession of the convention by member states;
15. Article 15 provides that the Convention shall enter into force thirty (30) days after the date of receipt of the fifteenth (15th) instrument of ratification by the Chairperson of the Commission of the African Union;
16. Article 16 provides for the amendment of the convention;
17. Article 17 provides that the instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union. A State Party may withdraw from the convention by giving a written notice of one (1) year in advance to the Chairperson of the Commission of the African Union.
18. The Cabinet Secretary, Ministry of Foreign Affairs, Hon. Alfred Mutua submitted a copy of the convention and a Memorandum dated 22nd March, 2023 to the National Assembly. Purpose of the Memorandum was to appraise the National Assembly on the Agreement and to seek approval for ratification.
19. The rationale for ratification is that the convention contributes to the development of the often-marginalized border area zones and allows for economic growth at the border through the creation of employment opportunities and infrastructure development. The ratification of the convention was approved by Cabinet on 12th May, 2022.
20. The Legal Counsel recommended that the convention is legally sound and therefore:
 - a) Subject to the provisions of Standing Order 170A (2), the committee should facilitate public participation on the convention.
 - b) the Committee may call for any additional information from the Cabinet Secretary for Foreign Affairs pursuant to the provisions of Standing Order 170A (3).

MIN.NO. DDC/DIFR/215/2023:

RESOLUTION

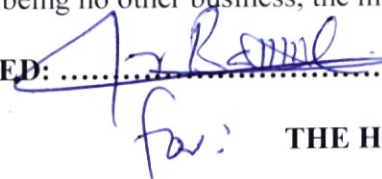
It was resolved that:

1. In compliance with Articles 118(1)(b) and 2(5) & (6) of the Constitution, Section 8 of the Treaty Making and Ratification Act, 2012, and Standing Order 170A (2), the Committee invites members of the public and stakeholders to submit memoranda on the Agreement.
2. The Committee secretariat invites the Cabinet Secretary for Foreign and Diaspora Affairs to brief the Committee on the Convention.

MIN.NO. DDC/DIFR/216/2023:

ADJOURNMENT

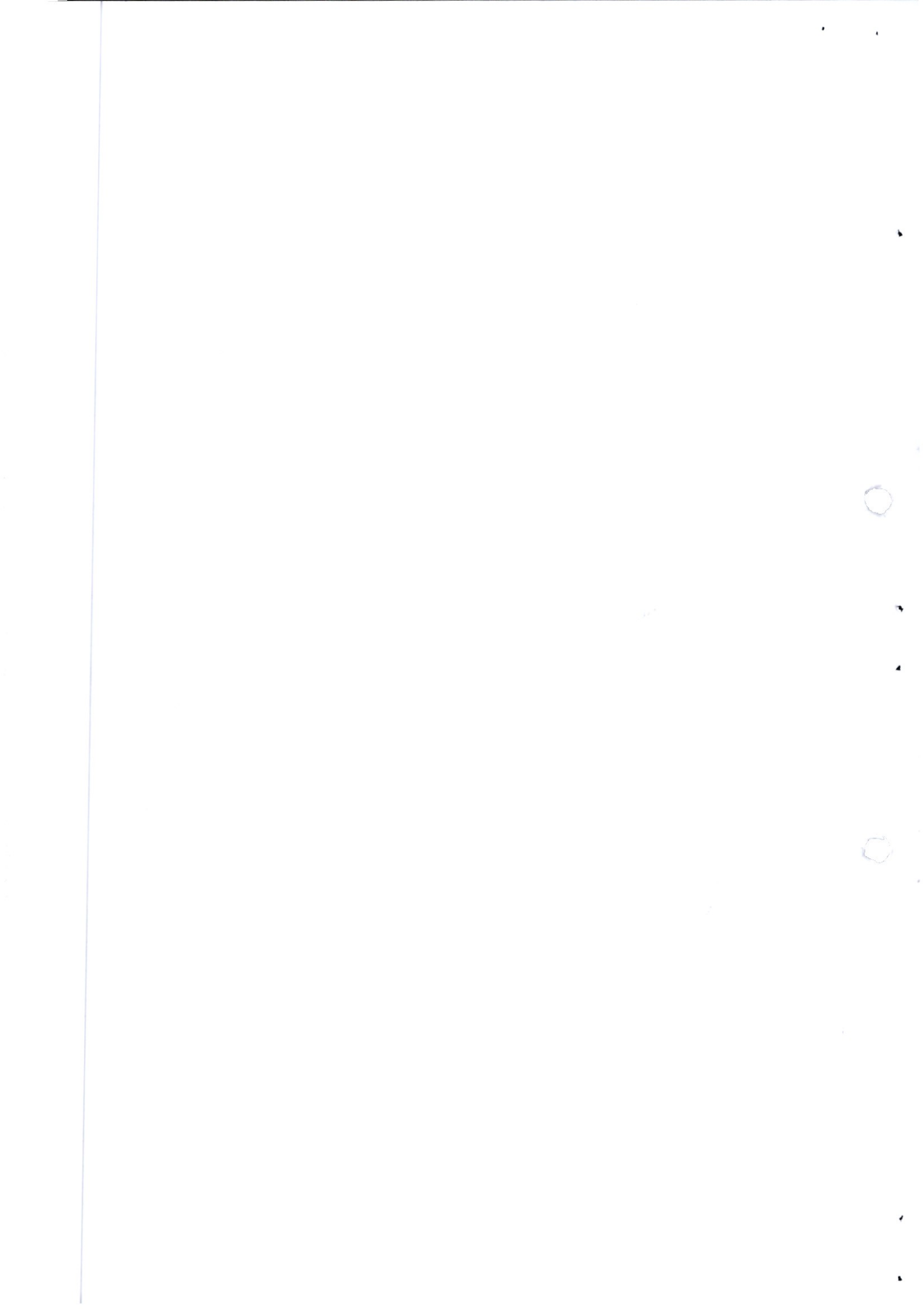
There being no other business, the meeting was adjourned at 12.38 pm.

SIGNED:  DATE: 14/03/2024

for: **THE HON. NELSON KOECH, M.P.**
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN RELATIONS

Annexure 3:

Copy of newspaper advertisement on public participation and submission of memoranda





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS

IN THE MATTER OF ARTICLES 2(5) & (6) AND 118 (1)(b) OF THE CONSTITUTION AND SECTION 8 OF THE TREATY MAKING AND RATIFICATION ACT, 2012
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF: -
THE AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION)

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the **African Union Convention on Cross-Border Cooperation (Niamey Convention)** was tabled in the House on 18th April, 2023 and committed to the Departmental Committee on Defence, Intelligence, and Foreign Relations for consideration and reporting to the House;

FURTHER, WHEREAS the **African Union Convention on Cross-Border Cooperation (Niamey Convention)** seeks to promote cross-border cooperation and peaceful resolution of border disputes by encouraging joint activities between neighboring countries and facilitating the development of borderlands to ease the free movement of persons and goods;

NOW THEREFORE, in compliance with Articles 118(1)(b) and 2(5) & (6) of the Constitution as well as section 8 of the Treaty Making and Ratification Act, 2012, the Departmental Committee on Defence, Intelligence, and Foreign Relations hereby invites members of the public and stakeholders to submit memoranda on the Agreement.

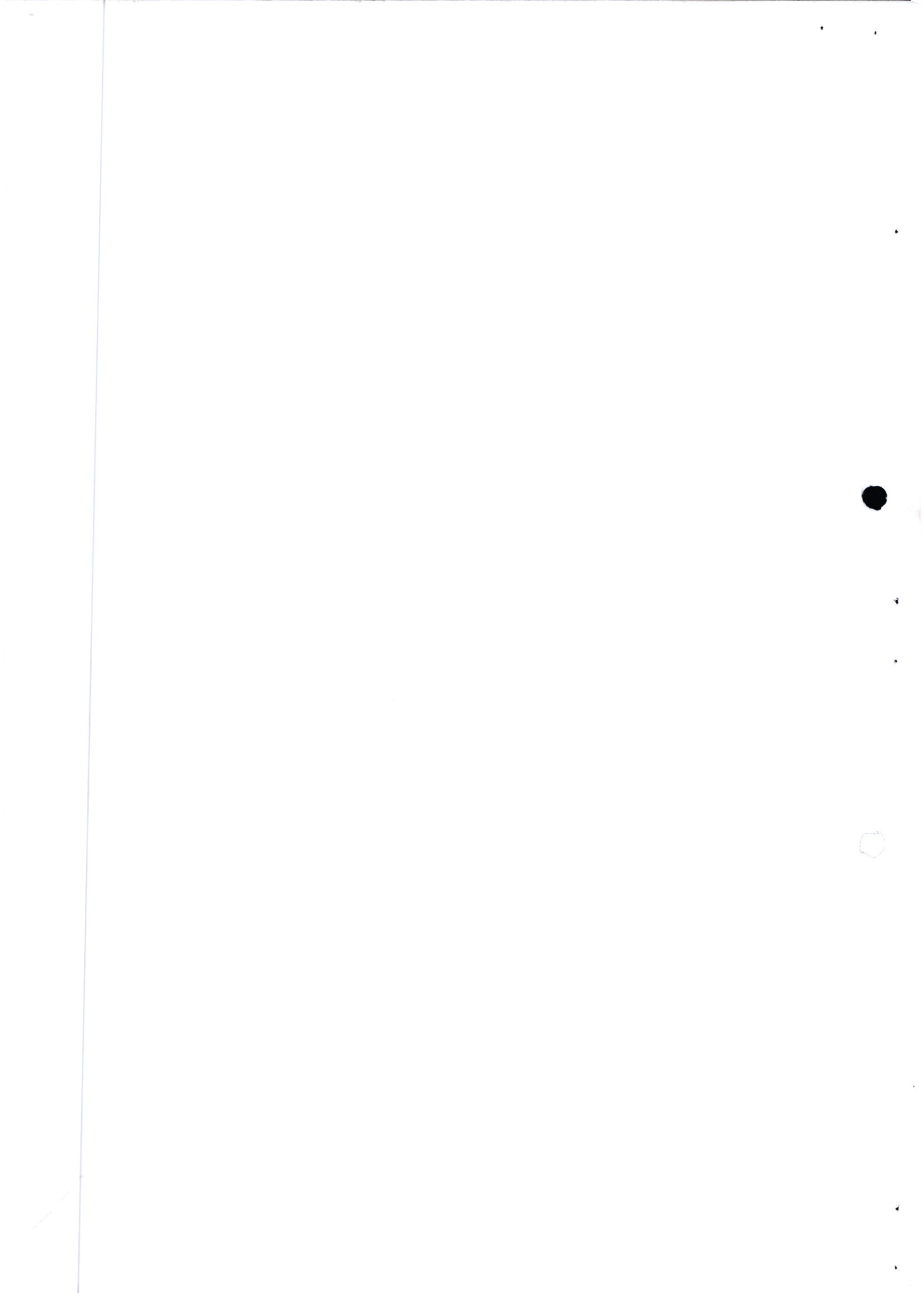
The full text of the Agreement and the accompanying Memoranda to Parliament may be accessed at www.parliament.go.ke/the-national-assembly/house-business/paper-laid.

The memoranda should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke; to be received **on or before Monday 3rd July, 2023 at 5.00 p.m.**

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

Wednesday 21st June, 2023

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



Annexure 4:

Copy of the African Union Convention on Cross-Border Cooperation (Niamey Convention)



AFRICAN UNION CONVENTION ON CROSS-BORDER
COÖPERATION
(NIAMEY CONVENTION)

PREAMBLE

We, Member States of the African Union,

Inspired by the objectives and principles enshrined in the Constitutive Act of the African Union, adopted in Lomé, Togo, on 11 July 2000, and the Treaty establishing the African Economic Community adopted in Abuja, Nigeria, on 3 June 1991;

Reaffirming our commitment to Resolution AHG/Res. 16(1) on the principle of the respect of borders existing at the time of accession to national independence, adopted by the 1st Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Cairo, Egypt, from 17 to 21 July 1964;

Mindful of Resolution CM/Res.1069 CXLIV on Peace and Security in Africa through Negotiated Settlement of Border Conflicts; adopted by the 44th Ordinary Session of the Council of Ministers of the Organization of African Unity held in Addis Ababa, Ethiopia, from 21 to 26 July 1986 ;

Recalling the relevant provisions of the Memorandum of Understanding on the Conference on Security, Stability, Development and Cooperation in Africa (GSSDCA), adopted by the 38th Ordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity, held in Durban, South Africa, on 8 July 2002;

Recalling further the Declarations on the African Union Border Programme, adopted by the Conferences of African Ministers in charge of Border Issues, held respectively in Addis Ababa, on 7 June 2007 and 25 March 2010, and in Niamey, Niger, on 17 May 2012;

Determined to give effect to the African Union decisions related to border issues, including Decisions EX.CL/370 (XI) and EX.CL/Dec.461 (XIV), adopted by the 11th and 14th Ordinary Sessions of the Executive Council of the African Union, held respectively in Accra, Ghana, from 25 to 29 June 2007, and in Addis Ababa, from 29 to 30 January 2009 ;

Recalling the international initiatives on the delimitation and delineation of maritime borders and the provisions of the United Nations Convention on the Law of the Sea;

Convinced that a legal framework for cross-border cooperation would accelerate integration in Africa and enhance prospects for the peaceful resolution of border disputes between Member States;

Desirous to implement effective cross-border cooperation, necessary for the transformation of border areas into zones of trade and cooperation;

Have agreed as follows:

Article 1 Definitions

For the purposes of this Convention:

"Border Area" means a geographical area straddling the border of two or more neighbouring States;

"Border Programme" means the African Union Border Programme, as defined in the Declarations adopted by the Conferences of African Ministers in charge of Border Issues, held in Addis Ababa, on 7 June 2007 and 25 March 2010, and in Niamey, on 17 May 2012, and subsequently endorsed by the Executive Council of the African Union;

"Commission" means the African Union Commission;

"Continental Border Consultative Committee" means the Committee set up by the African Union Commission and comprising representatives of the Regional Economic Communities, as the implementation mechanism for cross-border cooperation at continental level;

"Convention" means the African Union Convention on Cross-Border Cooperation;

"Cross-Border Cooperation" means any act or policy aimed at promoting and strengthening good-neighbourly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose;

"Local Border Consultative Committee" means a local border territorial administration or authority recognized as such under the domestic law of State Parties;

"Reaffirmation of Borders" means the reconstruction of degraded beacons into their original locations, in conformity with international norms;

"Regional Border Consultative Committee" means the body that facilitates dialogue and consultation between regional, bilateral and local border territorial administrations or authorities across borders;

"Regional Economic Communities" mean the regional integration blocs of the African Union;

"State Party" or "State Parties" means any Member State of the African Union which has ratified, or acceded to, this Convention and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

"Territorial Communities or Authorities" means communities, authorities, or bodies exercising local territorial functions and regarded as such under the domestic law of State Parties;

"Union" means the African Union.

Article 2 Objectives

The objectives of the present Convention are to:

1. promote cross-border cooperation, at local, sub-regional and regional levels;
2. seize the opportunities arising from shared borders and address the related challenges;
3. facilitate the delimitation, demarcation and reaffirmation of interstate borders, in conformity with mechanisms agreed upon by the parties concerned;
4. facilitate the peaceful resolution of border disputes;
5. ensure efficient and effective integrated border management;
6. transform border areas into catalysts for growth, socio-economic and political integration of the continent; and
7. promote peace and stability through the prevention of conflicts, the integration of the continent and the deepening of its unity.

Article 3 Areas of Cooperation

State Parties shall commit themselves to promote cross-border cooperation in the following areas:

1. mapping and geographical information, including survey;
2. socio-economic development, including transportation, communication, trade, agro-pastoral activities, handicrafts, energy resources, industry, health, sanitation, drinking water, education and environmental protection;
3. cultural activities and sports;
4. security, especially combating cross-border crime, terrorism, piracy and other forms of crime;
5. de-mining of border areas;
6. institutional development in all areas covered by the present Convention, including identification, formulation and execution of projects and programmes;
7. any other areas agreed upon by the State Parties.

Article 4 Facilitation of Cross-Border Cooperation

1. The State Parties shall endeavour to solve any legal, administrative, security, cultural or technical impediment likely to hamper the strengthening and smooth functioning of cross-border cooperation. In this respect, State Parties shall regularly consult with each other or with other interested parties.
2. State Parties shall, in accordance with the provisions of the present Convention, cooperate fully in the implementation of the Border Programme.

Article 5 Sharing of Information and Intelligence

1. Each State Party shall, as much as possible, provide information requested by another State Party, with a view to facilitating the performance by the requesting State of its obligations under this Convention.

2. Each State Party shall take the necessary steps to encourage, promote and facilitate information and intelligence sharing, as may be requested by another State Party on matters relating to the protection and security of border areas.

Article 6

Competent Authorities or Bodies responsible for Border Matters

Each State Party shall, either at the time of ratification of, or accession to, this Convention, or as soon as possible, thereafter, communicate to the Commission the list of competent authorities or bodies responsible for border issues under its domestic law, which shall then serve as focal points.

Article 7

Harmonisation of domestic law pertaining to Border Issues

States Parties are encouraged to harmonize their domestic law with this Convention and ensure that the local territorial administrations or authorities in border areas are duly informed of the opportunities available to them and their obligations under this Convention.

Article 8

Mechanisms for implementation of Cross-Border Cooperation at the level of State Parties

1. State Parties shall commit themselves to apply the provisions of the present Convention and to endeavour to attain its objectives, particularly by:
 - (a) establishing cooperation mechanisms, including legal frameworks;
 - (b) taking into account domestication of the provisions of the Convention in the development of their national policies and strategies;
 - (c) submitting, every two years, a report on the measures taken for the implementation of the present Convention.
2. Activities pertaining to cross-border cooperation shall be undertaken by local territorial communities or authorities as defined by the domestic law of State Parties.
3. The decentralized border territorial administrations or authorities established under the domestic law of State Parties shall exercise their powers, including the conclusion of cooperation agreements with

decentralized border territorial administrations or authorities of neighbouring State Parties, in conformity with the domestic law of their respective States.

4. State Parties may establish Border Consultative Committees comprising representatives of competent bodies to assist, in an advisory capacity, the border communities and authorities in the consideration of cross-border cooperation matters.

Article 9

Mechanisms for implementation of Cross-Border Cooperation at the level of the Regional Economic Communities

1. The Commission shall establish a framework for cooperation with the Regional Economic Communities on the implementation of the Border Programme, in conformity with the objectives of this Convention. In this regard, the Commission shall request the Regional Economic Communities to:
 - (a) encourage Member States to sign, ratify, or accede to, this Convention;
 - (b) designate focal points for coordination, evaluation and monitoring of the implementation of the commitments enshrined in this Convention.
2. The Commission shall encourage each Regional Economic Community to establish a Regional Border Consultative Committee.
3. The Regional Border Consultative Committees, composed of nominees of Member States of the Regional Economic Communities, shall assist the latter, in an advisory capacity, in the consideration of cross-border cooperation matters.
4. The Regional Border Consultative Committee shall:
 - (a) assist in the formulation of policies and activities for the promotion of cross-border cooperation in administrative, cultural, socio-economic and security areas in their respective regions;
 - (b) prepare road-maps outlining the actions necessary for enhancing cross-border cooperation;
 - (c) coordinate all the activities, as well as the mobilization of the required means for the attainment of the objectives stipulated in this Convention;

- (d) facilitate dialogue and consultation between regional and local authorities located on either side of border areas, when requested by the State Parties concerned;
- (e) recommend the adoption of best practices for the effective management and administration of border areas;
- (f) examine the problems faced by border populations and suggest solutions thereto, when requested by the State Parties concerned;
- (g) make recommendations on ways and means of promoting cross-border activities undertaken by the different entities located within border areas, when requested by the State Parties concerned.

Article 10
Mechanism for implementation of Cross-Border
Cooperation at the continental level

1. The Commission shall coordinate and facilitate the implementation of this Convention through the Border Programme. Accordingly, the Commission shall:
 - (a) act as the central coordinating structure for the implementation of this Convention;
 - (b) support State Parties in implementing this Convention;
 - (c) coordinate the evaluation of the implementation of the Convention with other appropriate organs of the Union, the Regional Economic Communities and competent national bodies;
 - (d) establish the Continental Border Consultative Committee;
 - (e) support the efforts of the State Parties for an effective sharing of information and intelligence.
2. The Continental Border Consultative Committee shall be composed of the representatives of the Regional Economic Communities and shall operate under the auspices of the Commission.
3. The Continental Border Consultative Committee shall be charged with the following tasks:
 - a) advise the Commission on cross-border cooperation matters;

- b) consider and propose general guidelines to promote cross-border cooperation in administrative, security, socio-economic, cultural and other areas identified in this Convention;
- c) identify priority actions and resources needed for the implementation of these guidelines;
- d) promote best practices relating to the development of border regions;
- e) examine problems faced by border populations and propose recommendations, in coordination with, and approval of, the State Parties concerned.

Article 11 Border Programme Fund

1. A Border Programme Fund shall be established and managed in accordance with the AU Financial Rules and Regulations.
2. The resources of the Border Programme Fund shall be provided through:
 - a) voluntary contributions of Member States; and
 - b) miscellaneous income, including donations and grants, in conformity with the principles and objectives of the Union.

Article 12 Safeguard provisions

1. The provisions of this Convention shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law.
2. None of the provisions of this Convention shall affect more favourable provisions relating to cross-border cooperation contained in the domestic law of State Parties or in any other regional, continental or international agreement applicable in these State Parties.
3. In the implementation of this Convention, the specificities and special needs of island states shall be taken into account.

Article 13
Settlement of Disputes

1. Any dispute relating to this Convention shall be amicably resolved through direct negotiations between the State Parties concerned.
2. Where the dispute is not resolved through direct negotiation, the State Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the State Parties. In this regard, the State Parties shall be encouraged to make use of the procedures and mechanisms for resolution of disputes established within the framework of the Union.

Article 14
Signature, Ratification or Accession

This Convention shall be open to all Member States of the Union, for signature, ratification or accession, in conformity with their respective constitutional procedures.

Article 15
Entry into Force

This Convention shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the African Union of the fifteenth (15th) instrument of ratification.

Article 16
Amendment

1. Any State Party may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission of the African Union, who shall transmit the same to State Parties within thirty (30) days of receipt thereof.
3. The Assembly of the Union, upon recommendation of the Executive Council of the Union, shall examine these proposals at its next session, provided all State Parties have been notified at least three (3) months before the beginning of the session.
4. The Assembly of the Union shall adopt the amendments in accordance with its Rules of Procedure.

5. The amendments or revisions shall enter into force in accordance with the provisions of Article 15 above.

Article 17
Depository

1. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union.
2. Any State Party may withdraw from this Convention by giving a written notice of one (1) year in advance to the Chairperson of the Commission of the African Union.
3. The Chairperson of the Commission of the African Union shall notify the Member States of any signature of this Convention, any deposit of an instrument of ratification or accession, as well as its entry into force.
4. The Chairperson of the Commission shall also notify the State Parties of the requests for amendments or withdrawal from the Convention, as well as reservations thereon.
5. Upon entry into force of this Convention, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.
6. This Convention, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit a certified true copy of the Convention to each Member State of the African Union in its official language.

ADOPTED BY THE TWENTY-THIRD ORDINARY SESSION OF
THE ASSEMBLY, HELD IN MALABO, EQUATORIAL GUINEA

27TH JUNE 2014



MINISTRY OF FOREIGN & DIASPORA AFFAIRS

THE NATIONAL ASSEMBLY	
DATE: 18 APR 2009	REV
TABLED BY:	
CLERK-AT THE TABLE:	

PARLIAMENTARY MEMORANDUM

ON THE

RATIFICATION OF THE

AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION

(NIAMEY CONVENTION)

MEMORANDUM ON THE RATIFICATION OF THE AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION)

1.0 OBJECTIVE OF THE MEMORANDUM

- 1.1 The objective of this Memorandum is to seek approval for Kenya's Ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention)
- 1.2 The ratification process was approved by the Cabinet during its meeting held on 12th May, 2022.

2.0 BACKGROUND

- 2.1 The African Union Convention on Cross-Border Cooperation (Niamey Convention) was adopted by the 23rd Ordinary Session of the African Union Assembly of Heads of State and Government, held in Malabo, Equatorial Guinea on the 27th June 2014.
- 2.2 The Niamey Convention defines Cross-Border Cooperation as "*any act or policy aimed at promoting and strengthening good-neighborly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose*".
- 2.3 The Niamey Convention was adopted with the aim of putting in place systems that will ensure that borders are not considered as barriers but are bridges to promote efforts to integrate the continent, strengthen its unity and promote peace, security and stability.
- 2.4 The Niamey Convention is therefore considered as an important legal instrument for the Continent which will not only promote African border governance but will foster peace and good neighborly relations between States. It addresses issues including border security, trade migration, infrastructure and communication, and the establishment of mechanisms for the implementation of cross-border cooperation at local, regional and continental levels.

2.5 The Niamey Convention requires ratification from Fifteen (15) Member States to enter into force. It has so far received six (6) ratifications¹ and seventeen (17) signatories².

3.0 OBJECT AND SUBJECT MATTER OF THE CONVENTION

3.1 The main objective of the Niamey Convention is to promote cross-border cooperation and peaceful resolution of border disputes. To achieve these objectives, the Convention encourages joint activities between neighboring countries to facilitate the development of borderlands and to ease the free movement of persons and goods.

3.2 Other objectives of the Niamey Convention are:

- i. Promotion of cross-border cooperation at local, sub-regional and regional levels;
- ii. Facilitation of delimitation, demarcation and reaffirmation of interstate boundaries, in conformity with mechanisms agreed upon by the parties concerned;
- iii. Facilitation of the peaceful resolution of border disputes;
- iv. Promotion of peace and stability through conflict prevention and continental integration, and finally; and,
- v. Transformation of border areas into catalysts for growth socio-economic and political integration of the continent.

4.0 OBLIGATIONS IMPOSED BY THE PROTOCOL

4.1 Upon ratification of the Convention, Kenya will be required commit to:

- a) Cross-border cooperation in surveying of boundaries, socioeconomic development of borderlands, promotion of Culture and sports across borders;
- b) Combating cross-border crime (border security);
- c) Cooperate fully in the implementation of the Border Programme;
- d) Encourage, promote and facilitate information and intelligence sharing;
- e) Communicate the institution in charge of border matters;

¹ Benin, Burkina Faso, Mali, Niger, Togo and Guinea

² Benin, Chad, Comoros, Congo, Gabon, Ghana, Guinea, Guinea Bissau, Mozambique, Mali, Niger, Togo, Mauritania, Namibia, Nigeria, Sao Tome & Principe, Zambia

- f) Harmonize its domestic law with the Convention; and
- g) Submit a report on the measures taken for the implementation of the Convention every two years.

4.2 Additionally, there is an obligation to Member States through their various Regional Economic Communities (RECs) to effectively coordinate with the African Union regarding the implementation of cross border activities within their regions which will further the principles of subsidiarity and complementarity within the Continent.

5.0 PROBLEM ANALYSIS

- 5.1 The founding African leaders had foreseen the potential risks that reopening up boundaries may have to the peace and security of the Continent. They, during the 1st Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU), held in Cairo in July 1964 adopted the principle of respect of existing borders on achievement of national independence. It is widely accepted that well-established border areas are a catalyst to economic growth, infrastructure development, ease movement of persons and goods, curbing of transnational crimes, established customs and enhance peace and security within the border areas among others.
- 5.2 It is unfortunate however, that since independence Africa is yet to fully realize the potential benefits that can be accrued through cross border cooperation. This realization has been hampered by challenges brought about by politics, cross border conflicts and lack of properly defined boundaries among others.
- 5.3 In addition, there are inadequate mechanisms within the Continent to meet the consistent demand for experience-sharing to inspire and duplicate successful practices and models being successfully implemented in other countries/ regions.
- 5.4 Further, to compound challenges being faced in borderlands is the general lack of dispute resolution mechanisms to resolve socio-cultural ethnic conflicts, resource-based conflicts, and boundary disputes among many others.
- 5.5 The Niamey Convention therefore, provides an opportunity for the Continent through regional and bilateral frameworks to find solutions that will address challenges that have

impeded the economic growth of borderlands in the Continent. It encompasses the vision of an integrated Africa with borders serving as bridges for peace, growth and development created as pivotal stepping stone towards increased demand for cross-border cooperation.

6.0 JUSTIFICATION FOR RATIFICATION

6.1 The importance of cross border cooperation particularly to border communities cannot be understated. It greatly contributes to the development of the often-marginalized border areas zones, which tend to be less economically developed, compared to other areas in the county.

6.2 The Convention allows for economic growth at the border through creation of employment opportunities and infrastructure development. Additionally, the Convention promotes economic development in terms of trade and cross-border cooperation is a driver for the development of infrastructure, trade, transportation and other sectors in border zones.

6.3 Kenya has put in place various policy, legislative and institutional frameworks on cross-border cooperation. This includes:

- a) The enactment of Security Laws (Amendment) Act 2014 that established Border Control & Operations Coordination Committee (BCOCC). This Committee facilitates the borders as bridges principles of AUBP by ensuring that there is cross-border development in an open and secure environment including facilitating cross border trade;
- b) There is in place the Joint Border Commissioners/ Administrative Committee with all the neighboring countries which meets regularly to discuss cross-border matters, including animal health, security issues, and maintenance of boundary infrastructure among others;
- c) Additionally, the Niamey Convention is consistent with the objectives of the East Africa Community (EAC) which has adopted and passed various economic cooperation agreements such as the customs union protocol, and common market protocol that have contributed to the growth and improvement of the region and more

specifically the growth of border towns such as Namanga, Busia, and Mandera, which has led to the creation of employment opportunities and provision of basic amenities among others;

- d) The EAC Protocol on Peace and Security greatly encourages Member States to implement African Union Conventions and other international instruments that promote peace and security; .
 - e) Further, Kenya has negotiated, agreed and signed a Memorandum of Understanding (MOU) on Demarcation and Re-affirmation of the boundary with Uganda, Tanzania and South Sudan. The reaffirmation and demarcation of the Kenya/ Tanzania boundary has already commenced with about 238km of the 760km well on its way to completion;
 - f) Kenya has signed various bilateral instruments with several neighboring countries to accord border communities opportunities for better cooperation and promote peaceful coexistence to improve their livelihood and socio-economic conditions. This is being actualized through the creation of joint peace committees, provision of basic social infrastructures like schools, watering points, cattle dips, joint animal vaccination points among others.
- 6.4 Whilst Kenya has made valiant efforts to promote cross border cooperation internally, the ratification of the Niamey Convention offers more opportunities for Kenya to improve cross border initiatives, by offering the chance to:
- a) Enhance the existing legal framework and mechanisms for cross-border cooperation initiatives;
 - b) Formalize the cooperation between countries that will create a basis for peer review of national efforts towards implementation of cross-border initiatives;
 - c) Institutionalize cross-border cooperation through a continentally accepted framework, e.g. by the creation of Joint Border Commissions.

d) Request for technical and financial assistance from the African Union and development partners with the aim of accelerating completion of the delimitation and demarcation of the country's International boundaries among other cross border initiatives; and,

e) Enhance the use of the dispute resolution mechanisms available within the African Union especially in the resolution of any boundary disputes.

6.5 Other auxiliary but equally important benefit for ratification is that because the uptake of the Niamey Convention has been slow in the Continent, our ratification will reaffirm the commitment by Kenya to the promotion of peace and security and particularly the borderlands which are often rife with conflicts.

6.6 It will also provide an opportunity for Kenya as a representative of the Continent to the United Nations Security Council (UNSC) and as a former member of the African Union Peace and Security Council (AUPSC), to champion for the respect of the principle of subsidiarity by using dispute resolution mechanisms available within the continent.

7.0 CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS.

7.1 The Convention is consistent with the Constitution and promotes constitutional values and objectives, it does not allude to an amendment of the Constitution or any other existing relevant legislation.

8.0 IMPLICATIONS RELATING TO COUNTIES

8.1 The obligations under the Niamey Convention are concurrent functions of both the National and County governments under the Constitution.

9.0 FINANCIAL IMPLICATIONS

9.1 Financial requirements for the implementation of the Niamey Convention will be provided for under normal budgetary estimates of the relevant institutions.

10.0 MINISTERIAL RESPONSIBILITY

10.1 The implementation of the Niamey Convention will be under the collective responsibility of the Ministry of Interior and Coordination of National Government, which

is the Ministry responsible for the maintenance of internal peace and security in border areas and the Ministry of East Africa Community and Regional Development, which is responsible for the promotion of cross border and regional matters.

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

11.0 RESERVATIONS

11.1 The Niamey Convention does not provide for reservations.

12.0 RECOMMENDATION TO THE NATIONAL ASSEMBLY

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

1. Note the contents of the Memorandum;
2. Consider and approve Kenya's Ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention); and
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the relevant instruments to the Depository, the Chairperson of the African Union Commission.

SIGNED.......... DATED..... 22nd..... MARCH, 2023

DR. ALFRED N. MUTUA, EGH
CABINET SECRETARY
MINISTRY OF FOREIGN & DIASPORA AFFAIRS



AFRICAN UNION CONVENTION ON CROSS-BORDER
COÖPERATION
(NIAMEY CONVENTION)

PREAMBLE

We, Member States of the African Union,

Inspired by the objectives and principles enshrined in the Constitutive Act of the African Union, adopted in Lomé, Togo, on 11 July 2000, and the Treaty establishing the African Economic Community adopted in Abuja, Nigeria, on 3 June 1991;

Reaffirming our commitment to Resolution AHG/Res. 16(1) on the principle of the respect of borders existing at the time of accession to national independence, adopted by the 1st Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Cairo, Egypt, from 17 to 21 July 1964;

Mindful of Resolution CM/Res.1069 (CXLIV) on Peace and Security in Africa through Negotiated Settlement of Border Conflicts, adopted by the 44th Ordinary Session of the Council of Ministers of the Organization of African Unity held in Addis Ababa, Ethiopia, from 21 to 26 July 1986 ;

Recalling the relevant provisions of the Memorandum of Understanding on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), adopted by the 38th Ordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity, held in Durban, South Africa, on 8 July 2002;

Recalling further the Declarations on the African Union Border Programme, adopted by the Conferences of African Ministers in charge of Border Issues, held respectively in Addis Ababa, on 7 June 2007 and 25 March 2010, and in Niamey, Niger, on 17 May 2012;

Determined to give effect to the African Union decisions related to border issues, including Decisions EX.CL/370 (XI) and EX.CL/Dec.461 (XIV), adopted by the 11th and 14th Ordinary Sessions of the Executive Council of the African Union, held respectively in Accra, Ghana, from 25 to 29 June 2007; and in Addis Ababa, from 29 to 30 January 2009 ;

Recalling the international initiatives on the delimitation and delineation of maritime borders and the provisions of the United Nations Convention on the Law of the Sea;

Convinced that a legal framework for cross-border cooperation would accelerate integration in Africa and enhance prospects for the peaceful resolution of border disputes between Member States;

Desirous to implement effective cross-border cooperation, necessary for the transformation of border areas into zones of trade and cooperation;

Have agreed as follows:

Article 1 Definitions

For the purposes of this Convention:

"Border Area" means a geographical area straddling the border of two or more neighbouring States;

"Border Programme" means the African Union Border Programme, as defined in the Declarations adopted by the Conferences of African Ministers in charge of Border Issues, held in Addis Ababa, on 7 June 2007 and 25 March 2010, and in Niamey, on 17 May 2012, and subsequently endorsed by the Executive Council of the African Union;

"Commission" means the African Union Commission;

"Continental Border Consultative Committee" means the Committee set up by the African Union Commission and comprising representatives of the Regional Economic Communities, as the implementation mechanism for cross-border cooperation at continental level;

"Convention" means the African Union Convention on Cross-Border Cooperation;

"Cross-Border Cooperation" means any act or policy aimed at promoting and strengthening good-neighbourly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose;

"Local Border Consultative Committee" means a local border territorial administration or authority recognized as such under the domestic law of State Parties;

"Reaffirmation of Borders" means the reconstruction of degraded beacons into their original locations, in conformity with international norms;

"Regional Border Consultative Committee" means the body that facilitates dialogue and consultation between regional, bilateral and local border territorial administrations or authorities across borders;

"Regional Economic Communities" mean the regional integration blocs of the African Union;

"State Party" or "State Parties" means any Member State of the African Union which has ratified, or acceded to, this Convention and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

"Territorial Communities or Authorities" means communities, authorities, or bodies exercising local territorial functions and regarded as such under the domestic law of States Parties;

"Union" means the African Union.

Article 2 Objectives

The objectives of the present Convention are to:

1. promote cross-border cooperation, at local, sub-regional and regional levels;
2. seize the opportunities arising from shared borders and address the related challenges;
3. facilitate the delimitation, demarcation and reaffirmation of interstate borders, in conformity with mechanisms agreed upon by the parties concerned;
4. facilitate the peaceful resolution of border disputes;
5. ensure efficient and effective integrated border management;
6. transform border areas into catalysts for growth, socio-economic and political integration of the continent; and
7. promote peace and stability through the prevention of conflicts, the integration of the continent and the deepening of its unity.

Article 3 Areas of Cooperation

State Parties shall commit themselves to promote cross-border cooperation in the following areas:

1. mapping and geographical information, including survey;
2. socio-economic development, including transportation, communication, trade, agro-pastoral activities, handicrafts, energy resources, industry, health, sanitation, drinking water, education and environmental protection;
3. cultural activities and sports;
4. security, especially combating cross-border crime, terrorism, piracy and other forms of crime;
5. de-mining of border areas;
6. institutional development in all areas covered by the present Convention, including identification, formulation and execution of projects and programmes;
7. any other areas agreed upon by the State Parties.

Article 4 Facilitation of Cross-Border Cooperation

1. The State Parties shall endeavour to solve any legal, administrative, security, cultural or technical impediment likely to hamper the strengthening and smooth functioning of cross-border cooperation. In this respect, State Parties shall regularly consult with each other or with other interested parties.
2. State Parties shall, in accordance with the provisions of the present Convention, cooperate fully in the implementation of the Border Programme.

Article 5 Sharing of Information and Intelligence

1. Each State Party shall, as much as possible, provide information requested by another State Party, with a view to facilitating the performance by the requesting State of its obligations under this Convention.

2. Each State Party shall take the necessary steps to encourage, promote and facilitate information and intelligence sharing, as may be requested by another State Party on matters relating to the protection and security of border areas.

Article 6

Competent Authorities or Bodies responsible for Border Matters

Each State Party shall, either at the time of ratification of, or accession to, this Convention, or as soon as possible, thereafter, communicate to the Commission the list of competent authorities or bodies responsible for border issues under its domestic law, which shall then serve as focal points.

Article 7

Harmonisation of domestic law pertaining to Border Issues

States Parties are encouraged to harmonize their domestic law with this Convention and ensure that the local territorial administrations or authorities in border areas are duly informed of the opportunities available to them and their obligations under this Convention.

Article 8

Mechanisms for implementation of Cross-Border Cooperation at the level of State Parties

1. State Parties shall commit themselves to apply the provisions of the present Convention and to endeavour to attain its objectives, particularly by:
 - (a) establishing cooperation mechanisms, including legal frameworks;
 - (b) taking into account domestication of the provisions of the Convention in the development of their national policies and strategies;
 - (c) submitting, every two years, a report on the measures taken for the implementation of the present Convention.
2. Activities pertaining to cross-border cooperation shall be undertaken by local territorial communities or authorities as defined by the domestic law of State Parties.
3. The decentralized border territorial administrations or authorities established under the domestic law of State Parties shall exercise their powers, including the conclusion of cooperation agreements with

decentralized border territorial administrations or authorities of neighbouring State Parties, in conformity with the domestic law of their respective States.

4. State Parties may establish Border Consultative Committees comprising representatives of competent bodies to assist, in an advisory capacity, the border communities and authorities in the consideration of cross-border cooperation matters.

Article 9

Mechanisms for implementation of Cross-Border Cooperation at the level of the Regional Economic Communities

1. The Commission shall establish a framework for cooperation with the Regional Economic Communities on the implementation of the Border Programme, in conformity with the objectives of this Convention. In this regard, the Commission shall request the Regional Economic Communities to:
 - (a) encourage Member States to sign, ratify, or accede to, this Convention;
 - (b) designate focal points for coordination, evaluation and monitoring of the implementation of the commitments enshrined in this Convention.
2. The Commission shall encourage each Regional Economic Community to establish a Regional Border Consultative Committee.
3. The Regional Border Consultative Committees, composed of nominees of Member States of the Regional Economic Communities, shall assist the latter, in an advisory capacity, in the consideration of cross-border cooperation matters.
4. The Regional Border Consultative Committee shall:
 - (a) assist in the formulation of policies and activities for the promotion of cross-border cooperation in administrative, cultural, socio-economic and security areas in their respective regions;
 - (b) prepare road-maps outlining the actions necessary for enhancing cross-border cooperation;
 - (c) coordinate all the activities, as well as the mobilization of the required means for the attainment of the objectives stipulated in this Convention;

- (d) facilitate dialogue and consultation between regional and local authorities located on either side of border areas, when requested by the State Parties concerned;
- (e) recommend the adoption of best practices for the effective management and administration of border areas;
- (f) examine the problems faced by border populations and suggest solutions thereto, when requested by the State Parties concerned;
- (g) make recommendations on ways and means of promoting cross-border activities undertaken by the different entities located within border areas, when requested by the State Parties concerned.

Article 10
Mechanism for implementation of Cross-Border
Cooperation at the continental level

1. The Commission shall coordinate and facilitate the implementation of this Convention through the Border Programme. Accordingly, the Commission shall:
 - (a) act as the central coordinating structure for the implementation of this Convention;
 - (b) support State Parties in implementing this Convention;
 - (c) coordinate the evaluation of the implementation of the Convention with other appropriate organs of the Union, the Regional Economic Communities and competent national bodies;
 - (d) establish the Continental Border Consultative Committee;
 - (e) support the efforts of the State Parties for an effective sharing of information and intelligence.
2. The Continental Border Consultative Committee shall be composed of the representatives of the Regional Economic Communities and shall operate under the auspices of the Commission.
3. The Continental Border Consultative Committee shall be charged with the following tasks:
 - a) advise the Commission on cross-border cooperation matters;

- b) consider and propose general guidelines to promote cross-border cooperation in administrative, security, socio-economic, cultural and other areas identified in this Convention;
- c) identify priority actions and resources needed for the implementation of these guidelines;
- d) promote best practices relating to the development of border regions;
- e) examine problems faced by border populations and propose recommendations, in coordination with, and approval of, the State Parties concerned.

Article 11 Border Programme Fund

1. A Border Programme Fund shall be established and managed in accordance with the AU Financial Rules and Regulations.
2. The resources of the Border Programme Fund shall be provided through:
 - a) voluntary contributions of Member States; and
 - b) miscellaneous income, including donations and grants, in conformity with the principles and objectives of the Union.

Article 12 Safeguard provisions

1. The provisions of this Convention shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law.
2. None of the provisions of this Convention shall affect more favourable provisions relating to cross-border cooperation contained in the domestic law of State Parties or in any other regional, continental or international agreement applicable in these State Parties.
3. In the implementation of this Convention, the specificities and special needs of island states shall be taken into account.

Article 13
Settlement of Disputes

1. Any dispute relating to this Convention shall be amicably resolved through direct negotiations between the State Parties concerned.
2. Where the dispute is not resolved through direct negotiation, the State Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the State Parties. In this regard, the State Parties shall be encouraged to make use of the procedures and mechanisms for resolution of disputes established within the framework of the Union.

Article 14
Signature, Ratification or Accession

This Convention shall be open to all Member States of the Union, for signature, ratification or accession, in conformity with their respective constitutional procedures.

Article 15
Entry into Force

This Convention shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the African Union of the fifteenth (15th) instrument of ratification.

Article 16
Amendment

1. Any State Party may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission of the African Union, who shall transmit the same to State Parties within thirty (30) days of receipt thereof.
3. The Assembly of the Union, upon recommendation of the Executive Council of the Union, shall examine these proposals at its next session, provided all State Parties have been notified at least three (3) months before the beginning of the session.
4. The Assembly of the Union shall adopt the amendments in accordance with its Rules of Procedure.

5. The amendments or revisions shall enter into force in accordance with the provisions of Article 15 above.

**Article 17
Depositary**

1. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union.
2. Any State Party may withdraw from this Convention by giving a written notice of one (1) year in advance to the Chairperson of the Commission of the African Union.
3. The Chairperson of the Commission of the African Union shall notify the Member States of any signature of this Convention, any deposit of an instrument of ratification or accession, as well as its entry into force.
4. The Chairperson of the Commission shall also notify the State Parties of the requests for amendments or withdrawal from the Convention, as well as reservations thereon.
5. Upon entry into force of this Convention, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations; in accordance with Article 102 of the Charter of the United Nations.
6. This Convention, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit a certified true copy of the Convention to each Member State of the African Union in its official language.

ADOPTED BY THE TWENTY-THIRD ORDINARY SESSION OF
THE ASSEMBLY, HELD IN MALABO, EQUATORIAL GUINEA

27TH JUNE 2014

Annexure 5:

Copy of a Memorandum of the Agreement



MINISTRY OF FOREIGN & DIASPORA AFFAIRS

THE NATIONAL ASSEMBLY	
DATE: 18 APR 2009	NO. 1
PARLIAMENTARY MEMORANDUM	
TABLED BY:	
CLERK-AT THE TABLE:	

PARLIAMENTARY MEMORANDUM

ON THE

RATIFICATION OF THE

AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION

(NIAMEY CONVENTION)

MEMORANDUM ON THE RATIFICATION OF THE AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION)

1.0 OBJECTIVE OF THE MEMORANDUM

- 1.1 The objective of this Memorandum is to seek approval for Kenya's Ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention)
- 1.2 The ratification process was approved by the Cabinet during its meeting held on 12th May, 2022.

2.0 BACKGROUND

- 2.1 The African Union Convention on Cross-Border Cooperation (Niamey Convention) was adopted by the 23rd Ordinary Session of the African Union Assembly of Heads of State and Government, held in Malabo, Equatorial Guinea on the 27th June 2014.
- 2.2 The Niamey Convention defines Cross-Border Cooperation as "*any act or policy aimed at promoting and strengthening good-neighborly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose*".
- 2.3 The Niamey Convention was adopted with the aim of putting in place systems that will ensure that borders are not considered as barriers but are bridges to promote efforts to integrate the continent, strengthen its unity and promote peace, security and stability.
- 2.4 The Niamey Convention is therefore considered as an important legal instrument for the Continent which will not only promote African border governance but will foster peace and good neighborly relations between States. It addresses issues including border security, trade migration, infrastructure and communication, and the establishment of mechanisms for the implementation of cross-border cooperation at local, regional and continental levels.

2.5 The Niamey Convention requires ratification from Fifteen (15) Member States to enter into force. It has so far received six (6) ratifications¹ and seventeen (17) signatories².

3.0 OBJECT AND SUBJECT MATTER OF THE CONVENTION

3.1 The main objective of the Niamey Convention is to promote cross-border cooperation and peaceful resolution of border disputes. To achieve these objectives, the Convention encourages joint activities between neighboring countries to facilitate the development of borderlands and to ease the free movement of persons and goods.

3.2 Other objectives of the Niamey Convention are:

- i. Promotion of cross-border cooperation at local, sub-regional and regional levels;
- ii. Facilitation of delimitation, demarcation and reaffirmation of interstate boundaries, in conformity with mechanisms agreed upon by the parties concerned;
- iii. Facilitation of the peaceful resolution of border disputes;
- iv. Promotion of peace and stability through conflict prevention and continental integration, and finally; and,
- v. Transformation of border areas into catalysts for growth socio-economic and political integration of the continent.

4.0 OBLIGATIONS IMPOSED BY THE PROTOCOL

4.1 Upon ratification of the Convention, Kenya will be required commit to:

- a) Cross-border cooperation in surveying of boundaries, socioeconomic development of borderlands, promotion of Culture and sports across borders;
- b) Combating cross-border crime (border security);
- c) Cooperate fully in the implementation of the Border Programme;
- d) Encourage, promote and facilitate information and intelligence sharing;
- e) Communicate the institution in charge of border matters;

¹ Benin, Burkina Faso, Mali, Niger, Togo and Guinea

² Benin, Chad, Comoros, Congo, Gabon, Ghana, Guinea, Guinea Bissau, Mozambique, Mali, Niger, Togo, Mauritania, Namibia, Nigeria, Sao Tome & Principe, Zambia

- f) Harmonize its domestic law with the Convention; and
- g) Submit a report on the measures taken for the implementation of the Convention every two years.

4.2 Additionally, there is an obligation to Member States through their various Regional Economic Communities (RECs) to effectively coordinate with the African Union regarding the implementation of cross border activities within their regions which will further the principles of subsidiarity and complementarity within the Continent.

5.0 PROBLEM ANALYSIS

- 5.1 The founding African leaders had foreseen the potential risks that reopening up boundaries may have to the peace and security of the Continent. They, during the 1st Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU), held in Cairo in July 1964 adopted the principle of respect of existing borders on achievement of national independence. It is widely accepted that well-established border areas are a catalyst to economic growth, infrastructure development, ease movement of persons and goods, curbing of transnational crimes, established customs and enhance peace and security within the border areas among others.
- 5.2 It is unfortunate however, that since independence Africa is yet to fully realize the potential benefits that can be accrued through cross border cooperation. This realization has been hampered by challenges brought about by politics, cross border conflicts and lack of properly defined boundaries among others.
- 5.3 In addition, there are inadequate mechanisms within the Continent to meet the consistent demand for experience-sharing to inspire and duplicate successful practices and models being successfully implemented in other countries/ regions.
- 5.4 Further, to compound challenges being faced in borderlands is the general lack of dispute resolution mechanisms to resolve socio-cultural ethnic conflicts, resource-based conflicts, and boundary disputes among many others.
- 5.5 The Niamey Convention therefore, provides an opportunity for the Continent through regional and bilateral frameworks to find solutions that will address challenges that have

impeded the economic growth of borderlands in the Continent. It encompasses the vision of an integrated Africa with borders serving as bridges for peace, growth and development created as pivotal stepping stone towards increased demand for cross-border cooperation.

6.0 JUSTIFICATION FOR RATIFICATION

6.1 The importance of cross border cooperation particularly to border communities cannot be understated. It greatly contributes to the development of the often-marginalized border areas zones, which tend to be less economically developed, compared to other areas in the county.

6.2 The Convention allows for economic growth at the border through creation of employment opportunities and infrastructure development. Additionally, the Convention promotes economic development in terms of trade and cross-border cooperation is a driver for the development of infrastructure, trade, transportation and other sectors in border zones.

6.3 Kenya has put in place various policy, legislative and institutional frameworks on cross-border cooperation. This includes:

- a) The enactment of Security Laws (Amendment) Act 2014 that established Border Control & Operations Coordination Committee (BCOCC). This Committee facilitates the borders as bridges principles of AUBP by ensuring that there is cross-border development in an open and secure environment including facilitating cross border trade;
- b) There is in place the Joint Border Commissioners/ Administrative Committee with all the neighboring countries which meets regularly to discuss cross-border matters, including animal health, security issues, and maintenance of boundary infrastructure among others;
- c) Additionally, the Niamey Convention is consistent with the objectives of the East Africa Community (EAC) which has adopted and passed various economic cooperation agreements such as the customs union protocol, and common market protocol that have contributed to the growth and improvement of the region and more

specifically the growth of border towns such as Namanga, Busia, and Mandera, which has led to the creation of employment opportunities and provision of basic amenities among others;

- d) The EAC Protocol on Peace and Security greatly encourages Member States to implement African Union Conventions and other international instruments that promote peace and security; .
- e) Further, Kenya has negotiated, agreed and signed a Memorandum of Understanding (MOU) on Demarcation and Re-affirmation of the boundary with Uganda, Tanzania and South Sudan. The reaffirmation and demarcation of the Kenya/ Tanzania boundary has already commenced with about 238km of the 760km well on its way to completion;
- f) Kenya has signed various bilateral instruments with several neighboring countries to accord border communities opportunities for better cooperation and promote peaceful coexistence to improve their livelihood and socio-economic conditions. This is being actualized through the creation of joint peace committees, provision of basic social infrastructures like schools, watering points, cattle dips, joint animal vaccination points among others.

6.4 Whilst Kenya has made valiant efforts to promote cross border cooperation internally, the ratification of the Niamey Convention offers more opportunities for Kenya to improve cross border initiatives, by offering the chance to:

- a) Enhance the existing legal framework and mechanisms for cross-border cooperation initiatives;
- b) Formalize the cooperation between countries that will create a basis for peer review of national efforts towards implementation of cross-border initiatives;
- c) Institutionalize cross-border cooperation through a continentally accepted framework, e.g. by the creation of Joint Border Commissions.

d) Request for technical and financial assistance from the African Union and development partners with the aim of accelerating completion of the delimitation and demarcation of the country's International boundaries among other cross border initiatives; and,

e) Enhance the use of the dispute resolution mechanisms available within the African Union especially in the resolution of any boundary disputes.

6.5 Other auxiliary but equally important benefit for ratification is that because the uptake of the Niamey Convention has been slow in the Continent, our ratification will reaffirm the commitment by Kenya to the promotion of peace and security and particularly the borderlands which are often rife with conflicts.

6.6 It will also provide an opportunity for Kenya as a representative of the Continent to the United Nations Security Council (UNSC) and as a former member of the African Union Peace and Security Council (AUPSC), to champion for the respect of the principle of subsidiarity by using dispute resolution mechanisms available within the continent.

7.0 CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS.

7.1 The Convention is consistent with the Constitution and promotes constitutional values and objectives, it does not allude to an amendment of the Constitution or any other existing relevant legislation.

8.0 IMPLICATIONS RELATING TO COUNTIES

8.1 The obligations under the Niamey Convention are concurrent functions of both the National and County governments under the Constitution.

9.0 FINANCIAL IMPLICATIONS

9.1 Financial requirements for the implementation of the Niamey Convention will be provided for under normal budgetary estimates of the relevant institutions.

10.0 MINISTERIAL RESPONSIBILITY

10.1 The implementation of the Niamey Convention will be under the collective responsibility of the Ministry of Interior and Coordination of National Government, which

is the Ministry responsible for the maintenance of internal peace and security in border areas and the Ministry of East Africa Community and Regional Development, which is responsible for the promotion of cross border and regional matters.

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

11.0 RESERVATIONS

11.1 The Niamey Convention does not provide for reservations.

12.0 RECOMMENDATION TO THE NATIONAL ASSEMBLY

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

1. Note the contents of the Memorandum;
2. Consider and approve Kenya's Ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention); and
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the relevant instruments to the Depository, the Chairperson of the African Union Commission.

SIGNED.......... DATED..... 22nd..... MARCH, 2023

DR. ALFRED N. MUTUA, EGH
CABINET SECRETARY
MINISTRY OF FOREIGN & DIASPORA AFFAIRS