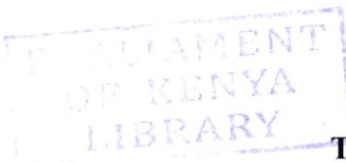




*Approval  
SNA  
28/11/24*




REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

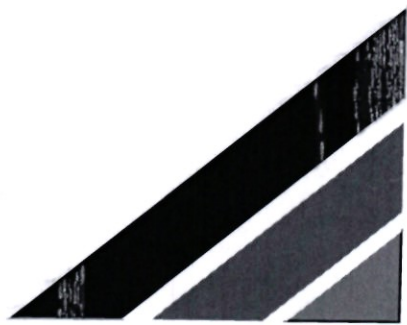
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**THIRTEENTH PARLIAMENT – THIRD SESSION – 2024**  
**DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN**  
**RELATIONS**  
.....

**REPORT ON THE CONSIDERATION OF THE TREATY MAKING AND RATIFICATION  
(AMENDMENT) (NO. 2) BILL, (NATIONAL ASSEMBLY BILL NO. 9 OF 2024).**

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

NOVEMBER, 2024

	
<b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE:</b> 28 NOV 2024	<b>DAY:</b> Thur
<b>TABLED BY:</b>	Hon. Nelson Koech, MP Chairperson
<b>CLERK-AT THE-TABLE:</b>	Vivian Wambui



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## LIST OF ABBREVIATIONS AND ACRONYMS

ANC	Amani National Congress
CAP	Chapter
EAC	East African Community
LSK	Law Society of Kenya
MDAs	Ministries, Departments and Agencies
MF&DA	Ministry of Foreign and Diaspora Affairs
MP	Member of Parliament
NIS	National Intelligence Service
OAG	Office of the Attorney General
ODM	Orange Democratic Movement
UDA	United Democratic Alliance
UDM	United Democratic Movement
WDM-K	Wiper Democratic Movement- Kenya

## LIST OF ANNEXURES

- Annexure 1: Signed list of Members who attended the sitting which considered and adopted the Report
- Annexure 2: Minutes on sittings of the Committee on consideration of the Bill
- Annexure 3: The Treaty Making and Ratification (Amendment) Bill, 2024
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## CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Defence Intelligence and Foreign Relations on the consideration of the Treaty Making and Ratification (Amendment) Bill, 2024 (National Assembly Bill No. 9 of 2024) which was published on 26th February, 2024 and sponsored by Hon. George Murugara, Chairperson, Justice and Legal Affairs Committee, National Assembly.

Pursuant to Standing Order 127 (1) of the National Assembly Standing Orders, the Speaker of the National Assembly directed that the Bill be referred to the Departmental Committee on Defence Intelligence and Foreign Relations to facilitate public participation.

The Bill seeks to amend the Treaty Making and Ratification Act, Cap 4D (the principal Act) to incorporate a special enactment procedure for economic treaties, strengthen the participation of the National Assembly in the treaty-making process and to generally enhance the efficiency in the treaty-making process.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Wednesday 10<sup>th</sup> April 2024 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Committee sought the views of stakeholders including the Office of the Attorney General, the Kenya Law Reform Commission, the Ministry of Foreign Affairs and the Law Society of Kenya. The Committee received responses from the Ministry of Foreign Affairs, the Office of the Attorney General and the Law Society of Kenya.

I take this opportunity to thank and commend Committee Members for their devotion and commitment to duty, the Speaker and the Clerk of the National Assembly for providing leadership and direction and finally the Committee Secretariat for exemplary performance in providing technical and logistical support.

Hon. Speaker, on behalf of the Departmental Committee on Defence Intelligence and Foreign Relations and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present the Report of the Committee on its Consideration of the Treaty Making and Ratification (Amendment) Bill, 2024 (National Assembly Bill No. 9 of 2024).

**Hon. Nelson Koech, M.P.**

**Chairperson, Departmental Committee on Defence, Intelligence and Foreign Relations**

## PART I

### 1.0 PREFACE

#### 1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Defence Intelligence and Foreign Relations is one of twenty departmental committees of the National Assembly established under Standing Order 216 whose mandate, among others, is **“to study and review all legislation referred to it”**.

#### 1.1 Mandate of the Committee

2. 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

3. 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, and the National Intelligence Service (NIS).

## 1.4 Committee Membership

4. The Departmental Committee on Defence, Intelligence and Foreign Relations was constituted by the House on 27<sup>th</sup> 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. Hassan Abdi Yusuf, MP  
Kamkunji Constituency

**Jubilee Party**

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

**ODM Party**

Hon. Kanchory Elijah Memusi, MP  
Kajiado Central Constituency

**ODM Party**

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

**WDM-K**

Hon. Kirima Moses Nguchine, MP  
Imenti Central Constituency

**UDA Party**

Hon. Luyai Caleb Amisi, MP  
Saboti Constituency

**ODM Party**

Hon. Joshua Kandie, MP

Baringo Central Constituency

**UDA Party**

Hon. Kwenya Thuku Zachary, MP  
Kinangop Constituency

**Jubilee Party**

Hon. Logova Sloya Clement, MP  
Sabatia Constituency

**UDA Party**

Hon. Ikana Fredrick Lusuli, MP  
Shinyalu Constituency

**ANC Party**

Hon. Mohamed A. Hussein, MP  
Lagdera Constituency

**ODM Party**

Hon. Teresia Wanjiru Mwangi, MP  
Nominated Member

**UDA Party**



## 1.5 Committee Secretariat

5. The Committee is facilitated by the following technical 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 Chelangat  
**Media Relations Officer I**

Mr. Lenny Muchangi  
**Legal Counsel II**

Mr. John Nganga  
**Audio Officer**

Mr. Daniel Ominde  
**Research Officer III**



## PART II

### 2.0 OVERVIEW OF THE TREATY MAKING AND RATIFICATION (AMENDMENT) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2024)

#### 2.1 Background

6. The Bill which is sponsored by Hon. George Murugara, Chairperson, Justice and Legal Affairs Committee was published on 26<sup>th</sup> February 2024 and read a First Time in the House on 20<sup>th</sup> March, 2024. It was thereafter referred to the Departmental Committee on Defence Intelligence and Foreign Relations for consideration in line with the provisions of Standing Order 127 (3).

#### 2.2 Summary of Legal Provisions

7. **CLAUSE 1** of the Bill provides for the short title.
8. **CLAUSE 2** of the Bill provides for the amendment of section 2 of the principal Act to—
  - (a) insert the following new definitions:
    - “Accession” means the consent by Kenya to be bound by a previously ratified agreement
    - “economic treaty” means a treaty relating to taxation, trade or investment
  - delete subsection (2).
9. **CLAUSE 3** of the Bill provides for the amendment of section 3 of the principal Act in subsection (2) by—
  - (a) deleting paragraph (a) and substituting it with the following:
    - “(a) multilateral treaties including treaties which deal with trade agreements where Kenya undertakes to engage in fewer trade protections with other countries to promote more trade”
  - (b) by inserting new subparagraphs in paragraph (b):
    - “(vi) taxation, trade or investment;
    - (vii) unilateral trade agreements between Kenya and any other country involving a one-sided arrangement in which Kenya benefits from lower trade barriers from the other country”.
10. **CLAUSE 4** of the Bill provides for the amendment of section 5 of the principal Act by inserting the following section after section 5—

**5A.** (1) Within fourteen days of commencing negotiations for a treaty, the Cabinet Secretary responsible for matters relating to the treaty shall notify the National Assembly of—

  - (a) the negotiation objectives;
  - (b) the proposed heads of agreement;
  - (c) the need for the treaty;
  - (d) the potential benefits of the agreement to Kenya;
  - (e) implications of the agreement on—

- (i) the economy;
- (ii) existing agreements;
- (iii) laws; and
- (iv) taxes.

(2) The relevant Cabinet Secretary shall notify the National Assembly of any changes to information relating to the negotiation of a treaty within seven days of such change.

(3) The relevant Committee of the National Assembly may, in so far as is practically possible, confer with the responsible Cabinet Secretary on areas that may attract reservations by the National Assembly.

(4) The relevant Cabinet Secretary shall table an annual report to the National Assembly on the status of on-going negotiation of treaties.

11. **CLAUSE 5** of the Bill provides for the amendment of section 6 of the principal Act by inserting a new subsection after subsection (1)—

**(1A)** In negotiating an economic treaty, the national executive or the relevant State department shall ensure that the terms of the treaty do not adversely affect—

- (a) the ability of country to mobilise domestic revenue;
- (b) the food security of the country;
- (c) the establishment and growth of local industries; and
- (d) the ability of the government to regulate an industry in the public interest.

12. **CLAUSE 6** of the Bill provides for the amendment of section 6 of the principal Act by inserting new sections immediately after section 6—

**6A.** (1) The relevant Cabinet Secretary shall, prior to signing an economic treaty, prepare a regulatory impact statement.

(2) A regulatory impact statement shall contain information in respect to the proposed economic treaty in clear and precise language including —

- (a) a statement of the objectives of the proposed treaty and the reasons for it;
- (b) a statement explaining the effect of the proposed treaty on the Kenyan economy;
- (c) a statement of other practicable means of achieving the objectives of the proposed treaty;
- (d) an assessment of the costs and benefits of the proposed treaty and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

(3) The assessment of the costs and benefits shall specify an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.



(4) The relevant Cabinet Secretary shall ensure that independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact statement is obtained and considered.

(5) The responsible Cabinet Secretary shall before an economic treaty is signed, give a certificate in writing specifying that—

- (a) the requirements relating to regulatory impact statements in this Act have been complied with; and
- (b) in the Cabinet Secretary's opinion, the regulatory impact statement adequately assesses the likely impact of the proposed treaty.

(6) The relevant Cabinet Secretary shall ensure that a copy of the regulatory impact statement and the certificate is tabled in the National Assembly with the economic treaty.

**6B.** (1) Preparation of a regulatory impact statement for an economic treaty shall be notified in the Gazette and in a newspaper likely to be read by people particularly affected by the proposed treaty.

(2) If the proposed treaty is likely to have a significant impact on a particular group of people, the notice shall be published in a way likely to ensure members of the group understand the purpose and content of the notice.

(3) The notice shall—

- (a) include a brief statement of the policy objectives sought to be achieved by the proposed treaty;
- (b) state where copies of the regulatory impact statement may be obtained or inspected;
- (c) state that anyone may comment on the proposed treaty;
- (d) state how and when comments may be made; and
- (e) state how consultation about the proposed treaty will take place.

(4) The notice shall allow at least fourteen days from publication of the notice for the making of comments.

(5) A copy of the regulatory impact statement may be available free, or on payment of a reasonable price, at the place, or each of the places, stated in the notice.

6) The responsible Cabinet Secretary shall ensure that—

- (a) all comments and submissions are considered before an economic treaty is made; and
- (b) a copy of all comments and submissions is submitted to the National Assembly as soon as practicable after the economic treaty is tabled or when requested by the relevant Committee.

13. **CLAUSE 7** of the Bill provides for the amendment of section 8 of the principal Act by deleting subsection (5) and substituting with the following subsections—

“(5) The National Assembly may introduce any reservations as a provision into a treaty.

(5A) Where the National Assembly introduces a reservation under this section, the Clerk of the National Assembly shall indicate, in writing, to the relevant Cabinet Secretary the specific clause or

clauses of a treaty for which the National Assembly proposes to make reservations and shall specify the reasons for which the reservations are made.

14. **CLAUSE 8** of the Bill provides for the amendment of section 9 of the principal Act by inserting the following new section immediately after section 9—

9A. (1) A treaty submitted to the National Assembly for ratification shall be laid on the Table of the House and shall upon being laid, stand committed to the relevant Committee for consideration.

(2) A committee to which a treaty is committed for consideration, shall undertake public participation before submitting its report to the House.

(3) In addition to the information required to be submitted to the National Assembly under written law, the committee may require the relevant Cabinet Secretary to submit further information, including—

(a) the social and environmental impact of the treaty in the short-term, medium-term and long-term; and

(b) the nature and evidence of any public participation conducted on the treaty.

(4) The report of the committee to the House shall include—

(a) information on the views of the people on the ratification of the treaty emanating from public participation conducted by the committee;

(b) the findings of the committee on the treaty and any other information the committee may deem necessary; and

(c) a recommendation that the House—

(i) approves the ratification of the treaty;

(ii) approves the ratification of the treaty with reservations, or;

(iii) rejects the ratification of the treaty.

(5) In approving ratification of a treaty with reservations, the House shall specify the affected provisions of the treaty and the proposed text of each reservation, which may include prescription of timelines within which an obligation is to be fulfilled before implementation of the treaty.

(6) Where the House makes a resolution in respect to a particular treaty, the Clerk of the National Assembly shall, within seven days, notify the relevant Cabinet Secretary and shall enter the information in the register of treaties.

15. **CLAUSE 9** of the Bill provides for the amendment of section 10 of the principal Act to inserting a new subsection immediately after subsection (1)—

“(1A) The relevant Cabinet Secretary may at the point of ratifying a treaty under this Act, be accompanied by the Leader of the Majority Party or the Leader of the Minority Party of the Party forming the Government, or a representative.



## PART III

### 3.0 PUBLIC PARTICIPATION/STAKEHOLDER ENGAGEMENT ON THE BILL

#### 3.1 Legal Framework on Public Participation

16. Article 118 (1)(b) of the Constitution provides that:  
“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”
17. The National Assembly Standing Order 127 (3) and (3A) stipulates that:  
“(3) The Departmental Committee to which a Bill is committed shall facilitate **public participation** on the Bill through an appropriate mechanism including-
  - (a) inviting submission of memoranda;
  - (b) holding public hearings;
  - (c) consulting relevant stakeholders in a sector; and
  - (d) consulting experts on technical subjects.  
(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”
18. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Wednesday 10<sup>th</sup> April 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee invited key stakeholders to submit views on the Bill.
19. The Committee received submissions from Hon. George Murugara who was in support of the Bill. Further, the Committee received submission from the Ministry of Foreign Affairs, the Office of the Attorney General and the Law Society of Kenya which were largely in agreement with the Bill and made further comments as follows:

#### 3.2 Submission from Hon. George Murugara, Chairperson Departmental Committee on Justice and Legal Affairs, National Assembly

20. Hon. George Murugara sent his written submission to the Committee on 12<sup>th</sup> November 2024 in support of the Bill.
21. He stated that the Bill seeks to include a special procedure for negotiating economic treaties by providing that National Executive or the relevant State department shall, in negotiating an economic treaty, verify that the treaty does not negatively affect the following principles—
  - (a)ability to mobilize domestic revenue
  - (b)food security
  - (c)establishment and growth of local industries; and
  - (d)the ability of the government to regulate an industry in the public interest.
22. The Bill defines an economic treaty as a treaty that relates to taxation, trade and investment. An example of an economic treaty is the economic partnership agreement between Kenya and the European Union signed on 18<sup>th</sup> December 2023. Once the agreement is ratified by both parties, it



will result in Kenyan goods gaining immediate duty and quote free access to the European market, whereas European goods will gain preferential access to the Kenyan market introduced over time.

23. The Bill seeks to strengthen the participation of the National Assembly in the treaty-making process by making it an obligation of the relevant national executive or relevant State Department to notify the National Assembly within 14 days on the initiation of the treaty-making process. This amendment seeks to ensure that the National Assembly is seized of treaty matters at the initial stages of the treaty-making process leading to enhanced transparency and accountability.
24. Finally, the Bill seeks to enhance the efficiency of the treaty-making process by empowering the relevant committee to seek from the Cabinet Secretary responsible for matters relating to foreign affairs further information such as the social and environmental impact of the treaty and report of public participation conducted on the making of the treaty.

### **3.3 Submission from the Office of the Attorney General**

25. The Office of the Attorney General responded vide letter Ref: AG/LDD/237/1/93 dated 29<sup>th</sup> April, 2024. The Office submitted that the Bill did not raise any constitutional issues. However, the Office noted that the arrangement proposed in Clause 3 paragraph (b) seems to be a bilateral agreement rather than a unilateral agreement.

#### **Committee Observation**

According to the European Union, Unilateral trade agreements are one-sided, non-reciprocal trade preferences granted by developed countries to developing ones, with the goal of helping them to increase exports and spur economic development. Therefore, there is a difference between unilateral agreements and unilateral trade agreements. However, the Committee proposes a definition of unilateral trade agreement to avoid this ambiguity.

### **3.4 Submission from the Law Society of Kenya**

26. The Law Society of Kenya submitted a memorandum to the National Assembly dated 29<sup>th</sup> April 2024. It supported clauses 2 and 8 of the Bill in their entirety. However, it submitted several comments on the rest of the clauses.
27. On Clause 3 of the Bill, LSK submitted that given the importance and centrality of these types of treaties to Kenya's economy, and given that the ultimate beneficiaries of the new markets opened by these treaties are the Kenyan traders represented by their MPs in parliament, there is need for the relevant parliamentary committees to interact with such economic treaties before they are signed or ratified by the other partners. An example can be cited of the Kenya -EU EPA Agreement in which the National Assembly Departmental Committee on Trade, Industries and Co-operatives conducted public participation for ratification way after the EU parliament had ratified the Agreement making the ratification process a mere academic process.

#### **Committee Observation**

This Committee notes that it is not possible to synchronize the ratification of a treaty with other parties to the treaty and therefore, there will always be instances where one party may ratify its treaties before other parties.

28. On Clause 4 of the Bill, LSK appreciates the noble intentions of this proposal which is aimed at eliminating the existing problems where the National Assembly only becomes seized of treaty matters at the tail-end of the treaty-making process. LSK however feels that the proposed section



5A (3) should make it mandatory for the relevant committee to conduct public participation and stakeholder engagement at this point.

#### **Committee Observation**

The Committee notes that conducting public participation for a draft treaty document which is still at the negotiation stage will be premature. Therefore, this proposal should not be adopted.

29. On Clause 5 of the Bill, LSK supports the spirit of this Amendment as it seeks to ventilate the Government's responsibility to its citizenry under the Constitution of Kenya, 2010. LSK however proposes that the language of the Amendment be changed to have the effect of annulling any treaty that adversely affects paragraph (a) to (d).

#### **Committee Observation**

The Committee notes that the executive does not have the power to annul a treaty at the negotiation stage. It is only the National Assembly that can do so at the point of approval of ratification of a Treaty. Therefore, this proposal should not be adopted.

30. On Clause 6 of the Bill, LSK submitted that whereas it supports the requirement for regulatory impact assessment, it proposes that in addition to the gazette requirement, this assessment report should be tabled before the relevant departmental committee for public participation. LSK also proposes that Section 6B (5) be amended to make access to the regulatory impact statement absolutely free to the public.

#### **Committee Observation**

The Committee notes that the Bill, under clause 6, already requires the Cabinet Secretary to submit the regulatory impact statement to the National Assembly together with the economic treaty. Therefore, this is already covered in the Bill.

Further, the Bill already provides that the regulatory impact statement may be available for free.

31. On Clause 7 of the Bill, LSK recommends that the language of the amendment be changed to expressly preclude the Executive from concluding any treaty without affecting any reservation made by the National Assembly.

#### **Committee Observation**

The Committee agrees with the submission by the Law Society of Kenya, however, it notes that the proposed provision is already drafted in mandatory terms. Further, the Executive is legally bound to ratify the treaty as approved by the National Assembly.

32. On Clause 9 of the Bill, LSK opines that the language of this proposed amendment is ambiguous. This is because the ratification process is done in the National Assembly and not by the Cabinet Secretary. If the intention of the amendment is to accompany the Cabinet Secretary during depositing of instruments of ratification (which is the subject matter of section 10 of the principal Act), then the provision needs to be amended to say so. LSK, however, feels that it is superfluous to have the Leader of Majority Party or Leader of Minority accompany the Cabinet Secretary as proposed since this does not add material value to the ratification process but is only a waste of taxpayers' money.

#### **Committee Observation**



The Committee agrees with this opinion by the Law Society of Kenya and opines that the proposal may be adopted as a deletion.

### **3.5 Submission from the Ministry of Foreign and Diaspora Affairs**

33. The Ministry of Foreign and Diaspora Affairs submitted their views on the Bill vide a letter Ref. MFA.LEG/163 VOL. IV dated 11<sup>th</sup> June 2024.
34. The Ministry submitted that clause 3 of the Bill proposes to amend section 3 of the Treaty Making and Ratification Act by isolating economic treaties in the list of treaties to which the Act is applicable. Notably, section 3 of the Act as presently drafted, already includes such treaties in its application. It is therefore unclear, why the amendment Bill seeks to isolate economic treaties and prescribe further legislative provisions for ratification thereof.

#### **Committee Observation**

The Committee observes that under section 3 of the principal Act, the scope of application of the Act does not extend to treaties relating to trade, taxation or investment therefore the amendment Bill seeks to introduce something new.

35. The Ministry further submitted that clause 4 of the Bill seeks to introduce a new provision requiring the Cabinet Secretary responsible for matters relating to a Treaty, to engage the National Assembly upon commencement of negotiations. Notably, however, section 8 (3) of the Act presently contains a provision that requires the National Assembly to conduct public participation in accordance with laid down Parliamentary procedures.

#### **Committee Observation**

The Committee notes that proposed clause 4 of the amendment Bill seeks to keep the National Assembly informed of negotiations conducted on a treaty. This precedes the approval of the treaty by the Cabinet as contemplated under section 8 of the Act.

36. The Ministry further submitted that clause 5 of the Bill seeks to amend section 6 of the Act regarding the values and principles in negotiating treaties by introducing a new provision on considerations to be taken in negotiating economic treaties. Notably, however, the section as drafted, requires the National Executive or relevant State Department to abide by the values and principles of the Constitution, notwithstanding the kind of Treaty under negotiation.

#### **Committee Observation**

Clause 5 of the Bill mandates the relevant State Department which negotiates an economic treaty to consider several key factors that affect the country. This does not usurp the principles and values provided for under the Constitution but actually implements Article 10 of the Constitution.

37. The Ministry also submits that clause 6 of the Bill seeks to introduce a regulatory impact assessment which is to be availed by the relevant Cabinet Secretary prior to execution of an economic Treaty. The Bill indicates that the regulatory impact assessment will be tabled before the National Assembly, and the general public. The Memorandum of Objects and Reasons for the Bill, indicates that this procedure will provide clarity on the specific procedure for public participation, which presently leaves room for error as it is unclear what quantum of public participation is sufficient. Notably, however, the Office of the Attorney General has tabled before the House a public participation policy, and at the same time, a public participation Bill is under consideration.



The concerns being raised by the presently proposed Bill should be adequately catered for under either of these two instruments, without the need for amendment of the Act.

### **Committee Observation**

The committee notes that Public participation is a constitutional requirement under Article 118 when Parliament is conducting its business. Therefore, the National Assembly cannot wait for the passing of the Bill on public participation for it to be guided on conducting public participation on treaties. The National Assembly is guided by the Supreme Court guidelines on public participation and its own standing orders.

38. The Ministry submits that clause 7 of the Bill seeks to amend section 8 of the Act by inter alia precluding the National Executive from concluding a Treaty without effecting a reservation made by the National Assembly. This proposal may present a limitation to Treaty negotiations, bearing in mind negotiation of bilateral agreements, is conducted in a win-win/give-take manner. In addition, the National Assembly has an opportunity to raise reservations during the public participation process conducted by the Executive.

### **Committee Observation**

Clause 7 of the amendment Bill indicates that the National Assembly **may** introduce reservations. This is purely discretionary and therefore the National Assembly is not bound to conclude treaties with reservations.

39. On Clause 8, the Ministry submits that the Bill seeks to provide for a procedure of ratification at the National Assembly including a requirement for public participation conducted by a relevant House Committee. As indicated herein above, two instruments on public participation are presently under consideration and the procedures for public participation will be clearly set out thereunder. It would be prudent to await the outcome of these instruments rather than over-legislating on a common issue. In addition, it may not be procedurally feasible to allow the National Assembly leeway to conduct public participation, once negotiations between parties have been concluded, as this would mean re-opening negotiations on matters which have already been settled. Moreover, as Treaty partners submit the negotiated instruments to their internal ratification processes immediately negotiations have concluded, if the National Assembly's public participation process as proposed results in a need to re-open negotiations, the same would occasion diplomatic complications for this office.

### **Committee Observation**

Article 94 of the Constitution provides that Parliament is the only law-making body and in doing so it is required under Article 118 to facilitate public participation. Therefore, the Ministry may renegotiate the terms of the Treaties if need be since it must adopt the national values and principles of good governance and participation of the people provided under Article 10 of the Constitution. Public participation cannot be an inconvenience to diplomatic relations.

40. The ministry further submits that on the definition of economic treaty to mean a treaty relating to taxation, trade, and investment, there is a need to consult the National Treasury. This is informed by the fact that the National Treasury had by a letter Ref. AG/LDD/237/1/93 dated 27th February 2024 proposed an amendment of section 3 of the Treaty Making and Ratification Act to exclude the application of the Act on 'Special arrangements for relief from double taxation entered by the Government under section 41 of the Income Tax Act.'

### **Committee Observation**

The committee opines that the alleged proposed amendments by the National Treasury were not received by the committee during the invitation of submissions and memoranda. Further, the Ministry did not submit a copy of the proposed amendments. In any case, the proposal can be introduced as a separate amendment following the normal channels.

41. The Ministry has also proposed further amendments to the Treaty Making and Ratification Act that do not fall within the subject matter of the Bill.

### **Committee Observation**

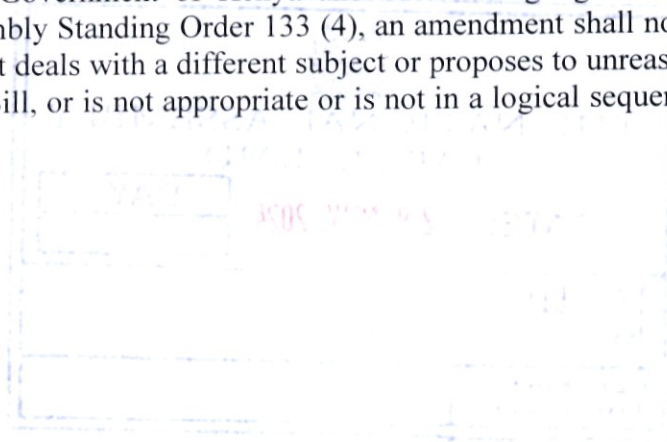
Pursuant to Standing Order 133 (4), no amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in a logical sequence to the subject matter of the Bill. Therefore, these amendments should be pursued as separate amendments.



## PART IV

### 4.0 COMMITTEE OBSERVATIONS

42. Upon reviewing the Bill and the submissions received, the Committee made the following observations:
- a) The Bill seeks to incorporate a special enactment procedure for economic treaties, to strengthen the participation of the National Assembly in the treaty-making process and to generally enhance the efficiency of the treaty-making process.
  - b) Article 95 of the Constitution mandates the National Assembly to make laws. Article 2 (6) of the Constitution incorporates ratified treaties or conventions under the laws of Kenya, therefore the National Assembly should be involved in the law-making process. This Bill enables the National Assembly to effectively and efficiently discharge this constitutional mandate.
  - c) The term “accession” is already included within the definition of ratification under section 2 of the Treaty Making and Ratification Act.
  - d) Clause 9 of the Bill proposes that the Leader of the Majority Party and the Leader of the Minority Party may accompany the Cabinet Secretary at the point of ratifying the treaty. This may violate the constitutional doctrine of separation of powers.
  - e) The Ministry of Foreign and Diaspora Affairs submitted proposed amendments to the Treaty Making and Ratification Act relating to providing a reporting mechanism on the implementation of MOUs signed by the Government of Kenya and other foreign governments. However, pursuant to National Assembly Standing Order 133 (4), an amendment shall not be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in a logical sequence to the subject matter of the Bill.




PART V

5.0 COMMITTEE RECOMMENDATION

43. The Committee having considered the Treaty Making and Ratification (Amendment) Bill 2024 (National Assembly Bill No. 9 of 2024) recommends that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Part Six of this report:

SIGNED: .....  ..... DATE: 22/11/24 .....

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

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 28 NOV 2024	
DAY: Thur	
TABLED BY:	Hon. Nelson Koech, MP Chairperson
CLERK-AT THE-TABLE:	Vivian Wambui



## PART VI

### 6.0 SCHEDULE OF AMENDMENTS

44. In view of the observations made, the Committee proposes the following amendments to the Bill—

#### CLAUSE 2

**THAT**, Clause 2 of the Bill be amended by—

(a) deleting the proposed new definition of “accession”; and

**Rationale:** The term “accession” is already captured under the definition of “ratification”.

(b) inserting the following new definition in its proper alphabetical sequence—  
“unilateral trade agreement” means one-sided, non-reciprocal trade preferences granted by developed countries to developing ones, to help them to increase exports and spur economic development.

**Rationale:** The definition of “unilateral trade agreement” provides clarify on the proposed amendments in the Bill and removes ambiguity.

#### CLAUSE 9

**THAT**, the Bill be amended by deleting Clause 9.

**Rationale:** The proposed amendment may infringe on the constitutional principle of separation of powers.

# ANNEXURE 1

## ADOPTION LIST





REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
13<sup>TH</sup> PARLIAMENT – THIRD SESSION-2024

DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND  
FOREIGN RELATIONS.

REPORT ADOPTION LIST

REPORT ON THE CONSIDERATION OF THE TREATY MAKING AND  
RATIFICATION (AMENDMENT) BILL, 2024 (*NATIONAL ASSEMBLY BILL NO. 9  
OF 2024*).

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, **Thursday 14<sup>th</sup> NOVEMBER, 2024.**

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

# ANNEXURE 2

MINUTES





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

**MINUTES OF THE 63<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS HELD ON TUESDAY 12<sup>TH</sup>  
NOVEMBER, 2024 AT 10:00 AM IN BUNGE TOWER, 2<sup>ND</sup> FLOOR, ROOM 11,  
PARLIAMENT BUILDINGS.**

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**PRESENT**

- |  |                      |
|--|----------------------|
| <b>1. The Hon. Koech Nelson, M.P.</b>          | <b>- Chairperson</b> |
| 2. The Hon. Wanjira Martha Wangari, C.B.S, M.P |                      |
| 3. The Hon. Odhiambo Millie Grace Akoth, M.P.  |                      |
| 4. The Hon. Kandie Joshua Chepyegon, M.P.      |                      |
| 5. The Hon. Kwenya Thuku Zachary, M.P.         |                      |
| 6. The Hon. Luyai Caleb Amisi, M.P.            |                      |
| 7. The Hon. Ikana Fredrick Lusuli, M.P.        |                      |
| 8. The Hon. Mohamed Abdikadir Hussein, M.P.    |                      |

**APOLOGIES**

- |  |                           |
|--|---------------------------|
| <b>1. The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.</b> | <b>- Vice Chairperson</b> |
| 2. The Hon. Yusuf Hassan Abdi, C.B.S, M.P.                   |                           |
| 3. The Hon.(Dr.) Kasalu Irene Muthoni, M.P.                  |                           |
| 4. The Hon. Kirima Moses Nguchine, M.P                       |                           |
| 5. The Hon. Kanchory Elijah Memusi, M.P.                     |                           |
| 6. The Hon. Teresia Wanjiru Mwangi, M.P.                     |                           |
| 7. The Hon. Logova Sloya Clement, M.P.                       |                           |

**THE NATIONAL ASSEMBLY**

- |                         |   |                               |
|-------------------------|---|-------------------------------|
| 1. Mr. Dennis M. Ogechi | - | Clerk Assistant I             |
| 2. Mr. Bernard Njeru    | - | Clerk Assistant II            |
| 3. Mr. Abdi Salat       | - | Principal Serjeant at Arms II |
| 4. Ms. Noelle Chellagat | - | Media Relations Officer II    |
| 5. Mr. Daniel Ominde    | - | Research Officer III          |
| 6. Mr. Lenny Muchangi   | - | Legal Officer II              |
| 7. Mr. Nephath Githinji | - | Intern                        |

8. Ms. Lovin Wambwire

- Intern

## **AGENDA**

1. Preliminaries – Prayers, Adoption of the Agenda
2. Confirmation of minutes of previous meeting
3. **Consideration and adoption of reports on: The Consideration of the Treaty-Making and Ratification (Amendment) Bill, 2024 (National Assembly Bill No. 9 of 2024) and the participation in the Mobile Consular Services Exercise in Texas, USA from 4<sup>th</sup> to 7<sup>th</sup> April, 2024.**
4. Any Other Business
5. Adjournment/Date of the next Sitting

### **MIN.NO. DDC/DIFR/351/2024: PRELIMINARIES.**

The meeting was called to order at 10:10 a.m., prayer was said and the agenda above was unanimously adopted having been proposed by the Hon. Wanjira Martha Wangari, C.B.S, M.P. and seconded by the Hon. Kandie Joshua Chepyegon, M.P.

### **MIN.NO. DDC/DIFR/352/2024: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS.**

Confirmation of minutes of previous sittings was deferred to a later date.

### **MIN.NO. DDC/DIFR/353/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE TREATY-MAKING AND RATIFICATION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 9 OF 2024).**

The report on the consideration of the Treaty-Making and Ratification (Amendment) Bill, 2024 (National Assembly Bill No. 9 Of 2024) Sponsored by Hon. George Murugara, M.P. was unanimously having been proposed by Hon. Ikana Fredrick Lusuli, M.P. and seconded by Hon. Mohamed Abdikadir Hussein, M.P.

The report was adopted with the following observations and recommendations.

### **COMMITTEE OBSERVATIONS**

The Committee observed that:

- a) The Bill seeks to incorporate a special enactment procedure for economic treaties, to strengthen the participation of the National Assembly in the treaty-making process and to generally enhance the efficiency of the treaty-making process.
- b) Article 95 of the Constitution mandates the National Assembly to make laws. Article 2 (6) of the Constitution incorporates ratified treaties or conventions under the laws of Kenya, therefore the National Assembly should be involved in the law-making process. This Bill enables the National Assembly to effectively and efficiently discharge this constitutional mandate.



- c) The term “accession” is already included within the definition of ratification therefore the proposed amendment to introduce it as a new definition is obsolete.
- d) The amendment enabling the Leader of the Majority Party and the Leader of the Minority Party to accompany the Cabinet Secretary at the point of ratifying the treaty may violate the constitutional doctrine of separation of powers since the mandate of ratification of a treaty is purely an executive function not upon the National Assembly.
- e) Pursuant to Standing Order 133 (4), an amendment shall not be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in a logical sequence to the subject matter of the Bill.

### **COMMITTEE RECOMMENDATIONS**

The Committee having considered the Treaty Making and Ratification (Amendment) Bill 2024 (*National Assembly Bill No. 9 of 2024*) recommends that the House approves the Bill with the following amendments:

#### **CLAUSE 2**

**THAT**, Clause 2 of the Bill be amended by—

- (a) deleting the proposed new definition of “accession”; and

**Rationale:** The term “accession” is already captured under the definition of “ratification”.

- (b) inserting the following new definition in its proper alphabetical sequence—  
“unilateral trade agreement” means one-sided, non-reciprocal trade preferences granted by developed countries to developing ones, to help them to increase exports and spur economic development.

**Rationale:** The definition of “unilateral trade agreement” provides clarity on the proposed amendments in the Bill and removes ambiguity.

#### **CLAUSE 9**

**THAT**, the Bill be amended by deleting Clause 9.

**Rationale:** The proposed amendment may infringe on the constitutional principle of separation of powers.

**MIN.NO. DDC/DIFR/354/2024:**

**CONSIDERATION AND ADOPTION OF THE  
REPORT ON THE PARTICIPATION IN THE  
MOBILE CONSULAR SERVICES EXERCISE  
IN TEXAS, USA FROM 4<sup>TH</sup> TO 7<sup>TH</sup> APRIL,  
2024.**

The report on the participation in the Mobile Consular Services Exercise in Texas, USA from 4<sup>th</sup> to 7<sup>th</sup> April, 2024 was unanimously adopted having been proposed by Hon. Ikana Fredrick Lusuli, M.P. and seconded by the Hon. Ikana Fredrick Lusuli, M.P.

The report was adopted with the following observations and recommendations

**COMMITTEE OBSERVATIONS**

The Committee observed that:

- 1) During the exercise the E-Citizen portal encountered challenges causing inconveniences;
  - a) The E-citizen portal requires individuals to have a Kenyan phone number to enable them to log in. Many Kenyan Diaspora members do not have a Kenyan phone number, making it impossible for them to log in.
  - b) The E-Citizen portal experienced software bugs. The issue affected users who had registered on the platform using their email addresses, as they were unable to receive the One Time Password (OTP) necessary to access, pay, and download the documentation required for passport applications.
  - c) Difficulties in uploading documents on the requisite portals.
- 2) Passports and National identification cards were the most sought-after documents.
- 3) Volunteers' inconsistent availability led to planning gaps and required the MCS team and embassy staff to work late due to the Kenyan Diaspora's significant turnout.
- 4) A large majority of the Kenyan diaspora did not receive enough information about the requirements for registering for consular services. Additionally, many were unaware of the availability of the Mobile Consular Services programme.
- 5) The National Registration Bureau was still using manual ink-rolled fingerprint capture for ID card applications which is old-fashioned.
- 6) There was inadequate facilitation of volunteers.
- 7) Many Kenyans arrived at the MCS exercise unprepared, failing to complete the necessary forms and bring copies of their documents. This causes delays and prevents some individuals from accessing the services they require.
- 8) The Kenyan Diaspora expressed concerns regarding data privacy, particularly the use of mail addresses and phone numbers required for e-citizen accounts. Some individuals requested the deletion of their photographs, which impeded data collection efforts and reflected a lack of trust in government-led initiatives.
- 9) Limited digital literacy among a specific group of Kenyans resulted in their inability to apply for passports online, necessitating assistance from the on-the-ground team.



**MIN.NO. DDC/DIFR/355/2024:**

**ANY OTHER BUSINESS**

1. The Chairperson notified the Committee of the following:
  - i. An invitation to a High-Level Consultative Forum on the Review of Kenya Foreign Policy to be held on 20<sup>th</sup> November, 2024 in KICC by the Ministry of Foreign and Diaspora Affairs, State Department for Foreign Affairs.
  - ii. Questions by the True North Society regarding the operationalization of the Military Veteran's Act, 2022.
  - iii. Invitation by the State Department for Diaspora Affairs in collaboration with the International Organization for Migration for a stakeholder engagement on the Draft Diaspora Policy 2024, and International Jobs Placement in Mombasa County from 17<sup>th</sup> to 23<sup>rd</sup> November, 2024.
  - iv. Chairperson's invitation to a cocktail reception by the Italian Ministry of Foreign Affairs and International Cooperation on November, 22<sup>nd</sup> at 18:30 at the Italian residence.
  - v. Courtesy call by the Ambassador/permanent representative of the Swiss Confederation to Kenya

**COMMITTEE RECOMMENDATIONS**

1. The delegation recommends the following:
  - 1) The Mission should be properly involved from the inception stage to the execution of the program.
  - 2) Deployment of more officers from the National Registration Bureau (NRB) to cater for the large number of Kenyans who turn up for the services in future.
  - 3) The State Department should conduct thorough sensitization for Kenyans on how to fill out E-Citizen forms online, the MCS dates, and venues to avoid unnecessary inconveniences and delays.
  - 4) Enhancement of the E-Citizen platform to make it more user-friendly for the diaspora community in terms of payments and uploading required documents.
  - 5) The Diaspora should create a requisition register before the MCS exercise. This will help the implementation team to plan and allocate resources based on reliable information.
  - 6) Financing of the MCS exercise is a key determinant for progress. The State Department should ensure availability of funds before commencement of the outreach programme.
  - 7) Prior preparation of the MCS exercise Stations with clearly labeled workstations.
  - 8) Adequate facilitation of the MCS team and volunteers with relevant requirements including live fingerprint capture for Identity Card applications for accuracy and speedy service delivery, branded t-shirts and caps for easier identification.

**MIN. NO. DDC/DIFR/356/2024:**

**ADJOURNMENT AND DATE OF NEXT MEETING.**

The meeting was adjourned at 11:10 a.m. The next meeting will be held on notice.

SIGNED: .....  ..... DATE: 23/11/24 .....

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



# ANNEXURE 3

TREATY MAKING AND RATIFICATION (AMENDMENT) BILL, 2024

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 37 (National Assembly Bills No. 9)*

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2024**

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**NAIROBI, 26th February, 2024**

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**THE TREATY MAKING AND RATIFICATION  
(AMENDMENT) (No. 2) BILL, 2024.**

**A Bill for**

**AN ACT** of Parliament to amend the Treaty Making and Ratification Act and for connected purposes

**ENACTED** by the Parliament of Kenya, as follows —

1. This Act may be cited as the Treaty Making and Ratification (Amendment) (No. 2) Act, 2024. Short title.

2. Section 2 of the Treaty Making and Ratification Act, 2012, (in this Act referred to as the “principal Act”), is amended by— Amendment of section 2 of No. 45 of 2012.

(a) inserting the following new definitions in their proper alphabetical sequence —

“accession” means the consent by Kenya to be bound by a previously ratified agreement;

“economic treaty” means a treaty relating to taxation, trade or investment;

(b) deleting subsection (2).

3. Section 3 of the principal Act is amended in sub section (2) — Amendment of section 3 of No. 45 of 2012.

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) multilateral treaties including treaties which deal with trade agreements where Kenya undertakes to engage in fewer trade protections with other countries to promote more trade.

(b) in paragraph (b) by inserting the following new subparagraphs immediately after subparagraph (v)—

“(vi) taxation, trade or investment;

(vii) unilateral trade agreements between Kenya and any other country involving a one-sided arrangement in which Kenya benefits from lower trade barriers from the other country”.



4. The principal Act is amended by inserting the following new section immediately after section 5—

Insertion of new section 5A in No. 45 of 2012.

Notification to the National Assembly.

5A. (1) Within fourteen days of commencing negotiations for a treaty, the Cabinet Secretary responsible for matters relating to the treaty shall notify the National Assembly of—

- (a) the negotiation objectives;
- (b) the proposed heads of agreement;
- (c) the need for the treaty;
- (d) the potential benefits of the agreement to Kenya;
- (e) implications of the agreement on—
  - (i) the economy;
  - (ii) existing agreements;
  - (iii) laws; and
  - (iv) taxes.

(2) The relevant Cabinet Secretary shall notify the National Assembly of any changes to information relating to the negotiation of a treaty within seven days of such change.

(3) The relevant Committee of the National Assembly may, in so far as is practically possible, confer with the responsible Cabinet Secretary on areas that may attract reservations by the National Assembly.

(4) The relevant Cabinet Secretary shall table an annual report to the National Assembly on the status of on-going negotiation of treaties.

5. Section 6 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of section 6 of No. 45 of 2012.

(1A) In negotiating an economic treaty, the national executive or the relevant State department shall ensure that the terms of the treaty do not adversely affect—

- (a) the ability of country to mobilise domestic revenue;
- (b) the food security of the country;
- (c) the establishment and growth of local industries; and
- (d) the ability of the government to regulate an industry in the public interest.

6. The principal Act is amended by inserting the following new sections immediately after section 6—

Insertion of new sections 6A and 6B in No. 45 of 2012.

Regulatory impact statement.

**6A.** (1) The relevant Cabinet Secretary shall, prior to signing an economic treaty, prepare a regulatory impact statement.

(2) A regulatory impact statement shall contain information in respect to the proposed economic treaty in clear and precise language including —

- (a) a statement of the objectives of the proposed treaty and the reasons for it;
- (b) a statement explaining the effect of the proposed treaty on the Kenyan economy;
- (c) a statement of other practicable means of achieving the objectives of the proposed treaty;
- (d) an assessment of the costs and benefits of the proposed treaty and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

(3) The assessment of the costs and benefits shall specify an assessment of the economic, environmental and social impact

and the likely administration and compliance costs including resource allocation costs.

(4) The relevant Cabinet Secretary shall ensure that independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact statement is obtained and considered.

(5) The responsible Cabinet Secretary shall before an economic treaty is signed, give a certificate in writing specifying that—

- (a) the requirements relating to regulatory impact statements in this Act have been complied with; and
- (b) in the Cabinet Secretary's opinion, the regulatory impact statement adequately assesses the likely impact of the proposed treaty.

(6) The relevant Cabinet Secretary shall ensure that a copy of the regulatory impact statement and the certificate is tabled in the National Assembly with the economic treaty.

Notification of  
regulatory impact  
statements.

**6B.** (1) Preparation of a regulatory impact statement for an economic treaty shall be notified in the *Gazette* and in a newspaper likely to be read by people particularly affected by the proposed treaty.

(2) If the proposed treaty is likely to have a significant impact on a particular group of people, the notice shall be published in a way likely to ensure members of the group understand the purpose and content of the notice.

(3) The notice shall—

- (a) include a brief statement of the policy objectives sought to be achieved by the proposed treaty;



- (b) state where copies of the regulatory impact statement may be obtained or inspected;
- (c) state that anyone may comment on the proposed treaty;
- (d) state how and when comments may be made; and
- (e) state how consultation about the proposed treaty will take place.

(4) The notice shall allow at least fourteen days from publication of the notice for the making of comments.

(5) A copy of the regulatory impact statement may be available free, or on payment of a reasonable price, at the place, or each of the places, stated in the notice.

(6) The responsible Cabinet Secretary shall ensure that—

- (a) all comments and submissions are considered before an economic treaty is made; and
- (b) a copy of all comments and submissions is submitted to the National Assembly as soon as practicable after the economic treaty is tabled or when requested by the relevant Committee.

7. Section 8 of the principal Act is amended by deleting subsection (5) and substituting therefor the following new subsections—

Amendment of  
section 8 of No.  
45 of 2012

“(5) The National Assembly may introduce any reservations as a provision into a treaty.

(5A) Where the National Assembly introduces a reservation under this section, the Clerk of the National Assembly shall indicate, in writing, to the relevant Cabinet Secretary the specific clause or clauses of a treaty for which the National Assembly proposes to make reservations and shall specify the reasons for which the reservations are made.

8. The principal Act is amended by inserting the following new section immediately after section 9 —

Insertion of a new section 9A in No. 45 of 2012.

Procedure during the ratification process at the National Assembly.

**9A.** (1) A treaty submitted to the National Assembly for ratification shall be laid on the Table of the House and shall upon being laid, stand committed to the relevant Committee for consideration.

(2) A committee to which a treaty is committed for consideration, shall undertake public participation before submitting its report to the House.

(3) In addition to the information required to be submitted to the National Assembly under written law, the committee may require the relevant Cabinet Secretary to submit further information, including —

(a) the social and environmental impact of the treaty in the short-term, medium-term and long-term; and

(b) the nature and evidence of any public participation conducted on the treaty.

(4) The report of the committee to the House shall include—

(a) information on the views of the people on the ratification of the treaty emanating from public participation conducted by the committee;

- (b) the findings of the committee on the treaty and any other information the committee may deem necessary; and
- (c) a recommendation that the House—
  - (i) approves the ratification of the treaty;
  - (ii) approves the ratification of the treaty with reservations, or;
  - (iii) rejects the ratification of the treaty.

(5) In approving ratification of a treaty with reservations, the House shall specify the affected provisions of the treaty and the proposed text of each reservation, which may include prescription of timelines within which an obligation is to be fulfilled before implementation of the treaty.

(6) Where the House makes a resolution in respect to a particular treaty, the Clerk of the National Assembly shall, within seven days, notify the relevant Cabinet Secretary and shall enter the information in the register of treaties.

9. Section 10 of the principal Act is amended by inserting the following new subsection immediately after subsection (1) —

Amendment of  
section 10 of No.  
45 of 2012.

“(1A) The relevant Cabinet Secretary may at the point of ratifying a treaty under this Act, be accompanied by the Leader of the Majority Party or the Leader of the Minority Party of the Party forming the Government, or a representative.



## MEMORANDUM OF OBJECTS AND REASONS

### Statement of objects and reasons for the Bill

The principal object of this Bill is to amend the Treaty Making and Ratification Act, 2012 to incorporate a special enactment procedure for economic treaties, strengthen the participation of the National Assembly in the treaty making process and to generally enhance efficiency in the treaty making process.

**Clause 2** of the Bill seeks to amend section 2 of the Act to define the terms “accession” and “economic treaty”. It also seeks to delete section 2(2) which makes reference to the first elections under the Constitution as the same has been spent.

**Clause 3** of the Bill proposes to amend section 3 of the Act to include economic treaties in the list out of treaties that the Act applies to under the section. This will extend the application of the Act to treaties relating to taxation, trade and investment matters. A special enactment procedure for this type of treaties is required due to their significant economic and social impacts on various sectors of the economy. The additional procedures and mechanisms for scrutinizing economic treaties is aimed at complying with the principles and values of the Constitution on public consultation, sustainable development, robust representation and promotion of social and economic rights.

**Clause 4** of the Bill seeks to amend the Act to introduce a new section 5A requiring the Executive to engage the National Assembly upon commencing negotiations of a treaty. This is aimed at eliminating the existing problem where the National Assembly only becomes seized of treaty matters at the tail end of the treaty making process. The active participation of the National Assembly in the Treaty Making process will not only enhance transparency and accountability in the process but it will also mitigate against risks attendant to the structure of treaties that regulate the flow of investment.

**Clause 5** of the Bill seeks to amend section 6 of the Act to ensure that the Kenya does not enter into treaties that jeopardize the ability of the country to mobilize tax resources domestically. It is further intended that no agreement which has the effect of undermining national food security should be concluded by the Executive. The amendment is also intended to ensure that treaties concluded by government do not undermine the establishment and growth of local industries or the ability of the government to regulate any particular industry in public interest by limiting the ability to pass laws or regulations for matters such as protection of the environment.

**Clause 6** of the Bill seeks to amend the Act to insert a new section 6A and 6B. The new sections require the Executive to have undertaken a regulatory impact assessment prior to the initiation of the treaty making process. This will ensure that a proper cost-benefit analysis is carried out before the government enters into negotiations for a treaty. It will also foster stakeholder participation in the treaty-making process as a copy of the regulatory impact statement, is supposed to be made available to the general population, who may then make relevant comments on the documents. A proposal has also been made in the amendment that the public comments are supposed to be submitted to the National Assembly by the Cabinet Secretary for consideration. The amendment further seeks to solve the existing problem in section 6(1) of the Act which does not provide the specific procedure for public participation. The section leaves room for error as it is unclear what quantum of public participation is sufficient. The amendment therefore seeks to create a greater sense of accountability in the treaty making process.

**Clause 7** of the Bill seeks to amend section 8 of the Act to outline the procedure for making reservations to a treaty. The amendment requires the National Assembly to indicate to the national executive the specific clause or clauses of a treaty for which it proposes to make a reservation and the reason for which the reservation is made. The amendment further precludes the national executive from concluding any treaty without effecting a reservation made by the National Assembly.

**Clause 8** of the Bill seeks to insert a new section 9A to provide for the procedure during the ratification process at the National Assembly. It provides for committal to the relevant Committee, submission of further information by the Cabinet Secretary and the contents of the report of the Committee.

**Clause 9** of the Bill provides for the amendment of section 10 of the Act to allow the Leader of Majority Party or Minority Party or their representatives to accompany the Cabinet Secretary at the point of treaty ratification.

#### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

This Bill does not delegate any legislative powers or limit any fundamental rights or freedoms.

#### **Statement on whether the Bill concerns county governments.**

The Bill does not concern county government as treaty-making and ratification falls under the functions of foreign affairs, foreign policy, and



international trade, which are functions of the national government under paragraph 1 of Part I of the Fourth Schedule to the Constitution.

**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 26th February, 2024.

GEORGE GITONGA MURUGARA,  
*Chairman, Justice and Legal Affairs  
Committee, National Assembly.*



*Section 2 of Cap 4D which it is proposed to amend*

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“bilateral treaty” means an agreement concluded between Kenya and any other State or between Kenya and an international organisation;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to foreign affairs.

“full powers” means all those powers conferred, by way of a legal document, to a person or persons designated by a competent state authority, to represent the State for negotiating, adopting, or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect of a treaty;

“international organization” means an intergovernmental organization;

“ratification” means 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;

“Registrar” means the Registrar of Treaties appointed under section 14;

“Registry” means the Registry of Treaties established by section 10;

“relevant Cabinet Secretary” means the Cabinet Secretary for the time being responsible the subject matter of the treaty;

“relevant state department” means the state department responsible for the subject matter of the treaty to be approved for ratification;

“reservation” means a unilateral statement made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State;

“signature” means an act whereby the State expresses its willingness to consent to the text of a treaty and has the effect of obligating the said State, even though it may not be a party to the treaty, to refrain, in good faith, from acts that would defeat the object and purpose of the treaty;

“treaty” means 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.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” and “State Department” shall be construed to mean “Minister” and “Ministry” respectively.

*Section 3 of Cap 4D which it is proposed to amend*

3. Application

(1) This Act applies to treaties which are concluded by Kenya after the commencement of this Act.

(2) This Act shall apply to—

(a) multilateral treaties;

(b) bilateral treaties which deal with—

(i) the security of Kenya, its sovereignty, independence, unity or territorial integrity;

(ii) the rights and duties of citizens of Kenya;

(iii) the status of Kenya under international law and the maintenance or support of such status;

(iv) the relationship between Kenya and any international organisation or similar body; and

(v) the environment and natural resources.

(3) A treaty relating to the adjustment, alteration or variation of the present position of Kenya on matters of sovereignty, independence and territorial integrity shall be approved in a referendum in accordance with Article 255 of the Constitution:

Provided that the process of ensuring that the boundaries are correctly marked on the ground in accordance with the instruments establishing them shall not be deemed to amount to adjustment, variation or alteration under this section.

(4) Notwithstanding subsection (2)(b), the Government may enter into bilateral agreements—

(a) necessary for matters relating to government business; or

(b) relating to technical, administrative or executive matters.



*Section 6 of Cap 4D which it is proposed to amend*

6. Values and principles in negotiating treaties

(1) In negotiating treaties, the national executive or the relevant State department shall be bound by the values and principles of the Constitution; and shall take into account the regulatory impact of any proposed treaty.

(2) When appointing persons to negotiate a treaty, the national executive or the relevant State department shall appoint persons who are competent to undertake such negotiations in the interest of the people of Kenya.

*Section 8 of Cap 4D which it is proposed to amend*

8. Consideration by Parliament

(1) Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of National Assembly.

(2) Deleted by Act No. 18 of 2014, Sch.

(3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

(4) The National Assembly may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.

(5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.

(6) Deleted by Act No. 18 of 2014, Sch.

(7) Where the National Assembly refuses to approve the ratification of a treaty, the Clerk of the National Assembly shall submit the resolution of the House to the relevant Cabinet Secretary within fourteen days of the resolution.

(8) Deleted by Act No. 18 of 2014, Sch.

(9) The National Assembly shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.



*Section 10 of Cap 4D which it is proposed to amend*

## 10. Ratification of Treaty

(1) All instruments of ratification of a treaty shall be signed, sealed and deposited by the Cabinet Secretary at the requisite international body and a copy thereof shall be filed with the Registrar.

(2) Where a treaty ratified under this Act is subsequently amended or modified, the amendment or modification shall be ratified only after compliance with the procedure set out in this Part.

(3) The provisions of subsection (2) shall apply similarly to protocols signed under a treaty.

# ANNEXURE 4

ADVERTISEMENT INVITING THE PUBLIC TO SUBMIT  
MEMORANDA ON THE BILL





**COUNTY GOVERNMENT OF TANA RIVER**

Email Address: [tanarivercg@gmail.com](mailto:tanarivercg@gmail.com)  
 Telephone number 0466260000,  
 P.O. BOX 29-70101, HOLA



## ADDENDUM TENDER NOTICE

THIS IS TO NOTIFY ALL INTERESTED SUPPLIERS IN THE TENDERS ADVERTISED ON THE WEDNESDAY OF 27<sup>TH</sup> MARCH 2024 OF THE DAILY NEWSPAPER FOR THE PROPOSED COVER FOR COUNTY STAFF, TENDER NUMBER TRCG/OT/PSM/50/2023-2024, NEGOTIATION NO. 1447209-2/2023-2024 THAT THE DATES FOR TENDER OPENING HAVE BEEN EXTENDED TO TUESDAY 16<sup>TH</sup> APRIL 2024, CONSEQUENTLY, INTERESTED BIDDERS ARE ADVISED TO CHECK ON OUR COUNTY WEBSITE FOR THE REVISED TENDER DOCUMENT. THE WEBSITES ARE [www.tanarivercounty.go.ke](http://www.tanarivercounty.go.ke) OR [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke)


SORRY FOR ANY INCONVENIENCE CAUSED.

**CHIEF OFFICER FINANCE**  
**COUNTY GOVERNMENT OF TANA RIVER**  
**DIRECTOR SUPPLY CHAIN MANAGEMENT FUNCTION,**  
**COUNTY GOVERNMENT OF TANA RIVER.**




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**DIGGER CLASSIFIEDS**

 **ROLEX BUILDING - MOI AVENUE,  
 OPPOSITE EBRAHIM'S MALL**

**BUSINESS HOURS:**  
**Monday - Friday: 8am - 5pm**  
**Saturday: 9am - 1.30pm**

**KINDLY REACH US ON**  
 **0719-012555 OR 0719012910**



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**  
**THIRTEENTH PARLIAMENT - THIRD SESSION (2024)**

IN THE MATTER OF ARTICLES 118(1)(b) & 132(2)(a) OF THE CONSTITUTION

AND

IN THE MATTER OF THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL) ACT (NO 33 OF 2011)

AND

IN THE MATTER OF APPROVAL BY THE NATIONAL ASSEMBLY OF PERSONS NOMINATED FOR APPOINTMENT AS AMBASSADORS, HIGH COMMISSIONERS, PERMANENT REPRESENTATIVES AND CONSULS-GENERAL

### RESCHEDULING OF APPROVAL HEARINGS

WHEREAS, in accordance with the provisions of Article 132(2)(a) of the Constitution, H.E. the President is empowered to nominate and, with the approval of the National Assembly, appoint High Commissioners, Ambassadors, Diplomatic and Consular representatives; H.E. the President nominated twenty-seven (27) persons for approval by the National Assembly for appointment as Ambassadors, High Commissioners, Permanent Representatives and Consuls-General of the Republic.

AND WHEREAS, the Clerk of the National Assembly placed advertisements in local dailies on Saturday, 23<sup>rd</sup> March 2024 notifying the public of the Approval Hearings (Vetting) by the Departmental Committee on Defence, Intelligence and Foreign Relations from 4<sup>th</sup> to 11<sup>th</sup> April, 2024 and inviting submission of memoranda in line with the provisions of Article 118(1)(b) of the Constitution of Kenya and Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011).

IT IS NOTIFIED that following the declaration of Wednesday, 10<sup>th</sup> April 2024 as a Public Holiday to mark Idd-ul-Fitr, the approval hearings that were to take place on this day have been rescheduled to **Thursday, 11<sup>th</sup> April 2024 from 9.00 a.m. in the Mini Chamber, County Hall, Parliament Buildings** as per the Schedule below-

No.	NOMINEE	STATION	TIME
1.	Ms. Grace Atieno Okara	UN HABITAT, Nairobi	09.00 a.m.
2.	Dr. Fancy Too	Geneva, Switzerland	10.00 a.m.
3.	Mr. Ekitela Erastus Lokaale	UN, New York, USA	11.00 a.m.
4.	Mr. Ezra Chiloba	Los Angeles, USA	12.00 noon
5.	Mr. Charles Githinji Keiru	Goma, DRC	02.00 p.m.
6.	Amb. Moi Lemoshira	Tokyo, Japan	03.00 p.m.
7.	Mr. David Iboko Lokemer	Dubai, UAE	04.00 p.m.

**S. NJOROGE, CBS**  
**CLERK OF THE NATIONAL ASSEMBLY**  
 Wednesday 10<sup>th</sup> April 2024

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



**REPUBLIC OF KENYA**  
**THIRTEENTH PARLIAMENT - THIRD SESSION (2024)**  
**THE NATIONAL ASSEMBLY**

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE TREATY MAKING AND RATIFICATION (AMENDMENT) (NO. 2) BILL, 2024

### INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS the Treaty Making and Ratification (Amendment) (No.2) Bill, 2024 was read a First Time on 20<sup>th</sup> March 2024 and referred to the Departmental Committee on Defence, Intelligence and Foreign Relations for consideration and reporting to the House;

IT IS NOTIFIED that the **Treaty Making and Ratification (Amendment) (No. 2) BILL, 2024**, is a Bill sponsored by **Hon. George Gitonga Murugara, MP**. It seeks to amend the Treaty Making and Ratification Act, 2012, to incorporate a special enactment procedure for economic treaties, strengthen the National Assembly's participation in the treaty-making process, and enhance efficiency in the treaty-making process.

**NOW THEREFORE**, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill to the Departmental Committee on Defence, Intelligence and Foreign Relations.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on [www.parliament.go.ke/the-national-assembly/our-business/bills](http://www.parliament.go.ke/the-national-assembly/our-business/bills)

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842- 00100, Nairobi**; hand-delivered to the **Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi**; or emailed to [caa@parliament.go.ke](mailto:caa@parliament.go.ke) to be received on or before **Wednesday, 24<sup>th</sup> April 2024 at 5.00 p.m.**

**S. NJOROGE, CBS**  
**CLERK OF THE NATIONAL ASSEMBLY**  
 10<sup>th</sup> April 2024

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





REPUBLIC OF KENYA THIRTEENTH PARLIAMENT- THIRD SESSION (2024) THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE TREATY MAKING AND RATIFICATION (AMENDMENT) (NO. 2) BILL, 2024

INVITATION TO SUBMIT MEMORANDA

WHEREAS Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS the Treaty Making and Ratification (Amendment) (No.2) Bill, 2024 was read a First Time on 20th March 2024 and referred to the Departmental Committee on Defence, Intelligence and Foreign Relations for consideration and reporting to the House;

IT IS NOTIFIED that the Treaty Making and Ratification (Amendment) (No. 2) Bill, 2024, is a Bill sponsored by Hon. George Gitonga Murugara, MP. It seeks to amend the Treaty Making and Ratification Act, 2012, to incorporate a special enactment procedure for economic treaties, strengthen the National Assembly's participation in the treaty-making process, and enhance efficiency in the treaty-making process.

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Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke to be received on or before Wednesday, 24th April 2024 at 5.00 p.m.

S. NJOROGE, CBS CLERK OF THE NATIONAL ASSEMBLY

10th April 2024

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

REPUBLIC OF KENYA IN THE HIGH COURT OF KENYA AT NAIROBI MILIMANI LAW COURTS COMMERCIAL AND TAX DIVISION INSOLVENCY CAUSE NO. OF 2023 IN THE MATTER OF: WINA TRADING CO. LIMITED AND IN THE MATTER OF: INSOLVENCY ACT NO 18 OF 2015 CREDITORS PETITION

TO: THE HIGH COURT OF KENYA MILIMANI LAW COURTS COMMERCIAL & TAX DIVISION NAIROBI

THE HUMBLE PETITION OF CHEMWOTEI EVANS KIPROTICH (hereinafter referred to as the Petitioner) of P.O.Box 68969-00200 Nairobi in the republic of Kenya states as follows:

- 1. THAT WINA TRADING CO. LTD (hereinafter called the company) is a limited liability company incorporated under the Companies Act Cap 486 Laws of Kenya (repealed)
2. THAT the registered head office of the company is at PLOT NO 209-7846 DUBOIS ROAD, NAIROBI. The registered postal address of the company is P.O. Box 76293-00509 Nairobi
3. THAT the nominal capital of the company and the amount of the capital paid up or credited as prescribed in the Company's statement of nominal capital.
4. THAT the objects for which the company was established are as prescribed in the Company's Memorandum and Articles of Association.
5. THAT Between April 2018 and May 2019, I entered into a contract with the company to supply the computers and computer accessories on credit and was issued with the relevant delivery note and invoices.
6. The good supplied by the petitioner pursuant to the said invoices were for the sum of Kshs.200,000,000/=
7. THAT the company is indebted to the petitioner in the sum of Ksh.200,000,000/= being the balance of the agreed contractual sum for supply of assorted computers and computer accessories provided to the company by the petitioner.
8. THAT the petitioner has made several requests and demands to the company for payment of the outstanding amount but the company has failed to / neglected to pay or satisfy the same.
9. THAT on 13th November 2023, the petitioner caused to be served upon the company a demand letter requiring the company to pay their aforesaid of Ksh.200,000,000/=
10. More than Twenty-One (21DAYS) have now elapsed since the petitioner caused to be served the demand on the company but the company has not failed to pay or satisfy the said sum of Ksh.200,000,000/= which is the sum due and owing by the company to the petitioner
11. The several reminders, the company has neglected to pay the aforesaid sum and it is therefore deemed to be insolvent/unable to pay per section 384 of the Insolvency Act No 18 of 2015
12. The circumstances it is just and equitable that the company should be liquidated.
13. THAT a continuation in the present circumstances will serve to injure the petitioner.

The Petitioner therefore humbly prays as follows:-

- a) WINA TRADING CO LIMITED be liquidated by an order of the court pursuant to the provisions of the Insolvency Act No 18 of 2015
b) That the official receiver be appointed as the provisional liquidator.
c) Such orders be made in the premises as shall be fair and equitable
d) That the costs of this proceedings be provided to the petitioner in any event DATED at NAIROBI this 19th day of December 2023

CHEMWOTEI EVANS KIPROTICH THE PETITIONER

Note: It is intended to serve this petition on WINA TRADING CO Ltd. P.O.Box 76293-00509 Nairobi

DRAWN AND FILED BY: CHEMWOTEI EVANS KIPROTICH P.O. Box 68969-00200 NAIROBI

TO BE SERVED UPON WINA TRADING CO LIMITED PLOT NO 209-7846, DUBOIS ROAD, P.O. Box 76293-00509 NAIROBI

It is directed that this petition will be heard by the High Court of Kenya sitting at Nairobi on the ..... Day of ..... 2023 at am or in the forenoon.

The seal of this Honourable Court was affixed hereunto at Nairobi this day of 2023 DEPUTY REGISTRAR HIGH COURT OF KENYA, NAIROBI

READERS ARE ADVISED

To make appropriate enquiries and take appropriate advice before sending money, incurring any expense or entering into binding commitment in relation to an advertisement.

NATION MEDIA GROUP shall not be liable to any person for loss or damage incurred or suffered as a result of his/her accepting or offering to accept an invitation contained in any advertisement published in the Nation.

CLASSIFIEDS RATES

Beauty/Medical/Health/Entertainment/Herbal & Acupuncture Sections All Days 750/= per line per day

ALL OTHER SECTIONS: VAT inclusive All Days 450/= per line per day

SEMI DISPLAY BLACK & WHITE (Boxed Classified) +VAT 1,400/= per centimetre

SEMI DISPLAY COLOR (Boxed Classified) All Days 1,500/= per centimetre +VAT

Beauty/Medical/Health/Herbal & Acupuncture Sections - Black & White All Days 1,500/= per centimetre +VAT

Beauty/Medical/Health/Herbal & Acupuncture Sections - Color All Days 1,600/= per centimetre +VAT

NB: Minimum size on boxed ads is 4cm²

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KISUMU Tuffon Mail, 2nd Floor Jomo Kenyatta Highway Tel: 0719 038 930

KAKAMEGA OFFICE Mega Mail, 2nd Floor opposite NHIF Tel: 0719 038 980

KISII OFFICE Royal Towers, 1st Floor Tel: 0719 038 974

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For further enquiries, call: 0719 038 661/2/3/4/6 or email adcentre@ke.nationmedia.com

NAIROBI & UP COUNTRY

PERSONAL NOTICES

A109 Lost

LOSS of title deed No. 615 Magui for Peter Mustafa

LOSS of title Ngobit supuka/block-1/2764

LOSS of title NO. Donyo Sabuk/Komarock block 1/36894 for Brian Mbuvi Mutiso

LOSS of title No. KJD/ Nasharu/9930

LOST T/Deed: Kanyadi/ Kanyango/ Kalanya/ 8040 & 8041, Anne Buore Othiga

LOST Title Deed Bukhaya/Lupida/1139

LOST Title Deed Kibwezi/Kinyambu/1024 for Patrick Mutua Mule

LOST Title Deed L.R. No. 7785/94 (L.R. 33637)

LOST Title Deed Mwimi /C.Magunui/ 1051 of Lucy Ikuu Mutwin

LOST Title Deed Ndvisu/Mihuu/592

LOST Title Deed Ngandori/Kiari/4333 Of Bernard Njiru Njiru

LOST Title Deed No. Mavoko Town Block 2/8733 Thomas Mutiso Mutunga

LOST Title Deeds - Kine/Rukanga/2345 for Wanja Munene, David Gitari Munene, Purty Wangui, Faith Muringo and Anne Micher

LOST title KJD/Kitengela /15200, 0714056300

LOST Title No. Nakuru Municipality block 17/122 for Joseph Muriuki Ndegwa

LOST title no Ngenda / kimunyu/1298

LOST Title No. Shava/Gicheha, block 1/40 Belbur for Andrew Kiptani Ruto

LOST Title No. Thika/ Municipality Block 12/62 Of Thuo Ngumbu

LOST Title No. Thika/ Municipality Block 12/63 Of Thuo Ngumbu

LOST title Tigithi Naromoru West Bk 4/126(Nyaki)of Erustus Muthee Kabui.

PERSONAL SERVICES

A167 Acupuncture

MEN'S Vitality Clinic 0722-242243

PAIN Relief Clinic 0724-044383

A279 Notices

Appendix A Substituted Service by Advertisement (O.S. s. 17):

PLAINT NOTICE

TO: EMILY WATHERERO

TAKE NOTICE that a claim has been filed in the SENIOR PRINCIPAL MAGISTRATES COURT at RUIRU in Civil Suit No E.L.C. NO. 187 of 2023 in which you are named as defendant. Service of the summons on you has been ordered by means of this advertisement. A copy of the summons and the claim may be obtained from the court at ruirocourt@gmail.com. And further take notice that, unless you enter an appearance within 15 days, the case will be heard in your absence.

DATED AT NAIROBI this 8th day of April, 2024

KIMANI KAHETE & CO. ADVOCATES ADVOCATES FOR THE PLAINTIFF

DRAWN AND FILED BY: KIMANI KAHETE & CO. ADVOCATES TEMANI'S CENTRE, 5TH FLOOR NEXT TO CO-OPERATIVE BANK, RUIRU P.O. BOX 4699-00200, NAIROBI Email address: kimani.kaheteadvocates@yahoo.com Tel No: 0721 428 308

PUBLIC NOTICE Physical and Land Use Planning Act No. 13 of 2019 EXTENSION OF USE

The Registered owner (s) of L.R. No. 3146 (Plot No. 3146/24), situated within Lucky Summer Area, is proposing to Extend Use of the Property to include A Telecommunication ( GSM Base Station), subject to approval by the Nairobi City County. Any individual (s), institution (s) and organization (s) with objection (s) to the proposal are hereby requested to forward them in writing within 14 Days of publication of this notice to: The CECM Built Environment & Urban Planning, Nairobi City County, P.O. Box 30075-00100, Nairobi.

PUBLIC NOTICE

The registered owner of Plot No. Kisumu/ Wathorego/ 0048 located off Kisumu-Miwani Road to Wathorego within Kisumu East Sub County Proposes to Change its use from Agricultural to Residential (Multi dwelling flat) subject to approval by the County Government of Kisumu. Any Institutions, organizations or individuals with complaints to forward them in writing within fourteen days from the day of this publication to: CECM Lands, Housing, Physical Planning and Urban Development County Government of Kisumu P.O. Box 2738-40100 Kisumu

PUBLIC NOTICE

Physical and Land Use Planning Act (2019) NOTIFICATION FOR PROPOSED EXTENSION OF USE The registered owner (s) of L.R. No. 205/00, located off Riverside Drive in Westlands, Nairobi City County, wish to extend its use from Residential to include Offices, subject to approval by the Nairobi City County Government. Individuals, institutions or organizations etc. with objections or comments to the proposal are requested to forward the same in writing within 14 Days of this publication to: The CECM Built Environment & Urban Planning, Nairobi City County, P.O. Box 30075-00100, Nairobi. Registered Planner: Betty Wangui Othiga | Reg. No: RPP248

PUBLIC NOTICE FORM PLUPA/DC/3

PHYSICAL AND LAND USE PLANNING ACT NO. 13 OF 2019 NOTIFICATION FOR PROPOSED CHANGE OF USER The owner of the Parcel Title Number: Nairobi /Block 18/428 located off Garden Estate Road Marua area, Nairobi County wishes to Change the use of the parcel currently under Residential to Mixed Use (Restaurant cum Professional Office) subject to approval by Nairobi City County. Individuals, Institutions, Organizations and other (s) etc. with objections or comments to the proposal should submit them in writing within fourteen (14) days from the date of this advertisement to: The CECM Urban Planning, Lands and Housing Nairobi City County P.O. BOX 30075-00100, NAIROBI. PHYSICAL PLANNER: John Thomas Ngugi Mbe - REG. NO. RPP 0284

FORM PLUPA/DC/3 (1-31/3)(1)

PHYSICAL AND LAND USE PLANNING ACT No. 13 OF 2019 DENOTIFICATION OF USE The registered owner of Plot No. NAKURU MUNICIPALITY BLOCK 18/428 situated within Nakuru County is applying for Denotification of use from Residential Single Dwelling use to Residential Multi Dwelling use subject to approval by the County Government of Nakuru. Any Individuals, Institutions, Organizations etc. with substantive comments or objections to the proposal should forward them in writing within fourteen (14) days of this Advertisement to: CECM Lands, Physical Planning, Housing and Urban Development, County Government of Nakuru, P.O. Box 2879-20100, Nakuru. ONESMUS MUSTOLA, REG. NO. 0229.

PUBLIC NOTICE

PHYSICAL AND LAND USE PLANNING ACT, 2019 EXTENSION OF USE The Registered Owner (s) of Plot L.R. No. 4279/131 (Original No. 4279/160) located along Riverside Drive within Kileleshwa proposes to Extend Use of the land to include ATC Kenya Operations Ltd 658M Base Transceiver Station subject to approval by the Nairobi City County Government. Any Individual(s), Institution(s) or Organizations with Objection(s) and/or Comments are hereby requested to forward them in writing within 14 days of publication of this notice to: The CECM in Charge of Physical and Land Use Planning, Nairobi City County Government, P.O. Box 30075-00100, Nairobi. Plan. Betty A. Ong'oro Reg. No. 00248

WHERE TO STAY

A571 Hotels

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# ANNEXURE 5

**LETTER FROM THE CLERK OF THE NATIONAL ASSEMBLY  
INVITING STAKEHOLDERS TO SUBMIT VIEWS ON THE BILL**



**THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK**

P. O. Box 41842-00100  
Nairobi, Kenya  
Main Parliament Buildings

Telephone: +254202848000 ext. 3300  
Email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)  
[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

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When replying, please quote

**Ref: Ref: NA/DDC/DIFR/2024 (058)**

**23<sup>rd</sup> April, 2024**

**Dr. Korir Sing'oei, PhD., C.B.S.**  
Principal Secretary  
State Department for Foreign Affairs  
Ministry of Foreign and Diaspora Affairs  
Harambee Avenue  
**NAIROBI.**

**Hon. Shadrack John Mose**  
Solicitor General  
Office of the Attorney-General and Department of Justice  
Sheria House, Harambee Avenue  
**NAIROBI.**

**Mr. Joash Dache, MBS**  
Chief Executive Officer/Commission Secretary  
Kenya Law Reform Commission  
Reinsurance Plaza, 3<sup>rd</sup> Floor  
Taifa Road  
**NAIROBI.**

**Ms. Florence Muturi**  
Chief Executive Officer  
Kenya Society of Kenya (LSK)  
Lavington, Opposite Valley Arcade, Gitanga Road  
Taifa Road  
**NAIROBI.**

Dear

*Dr. Sing'oei.*

**REF: STAKEHOLDER ENGAGEMENT ON THE TREATY MAKING AND  
RATIFICATION (AMENDMENT) (NO.2) BILL, 2024 BY THE  
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND  
FOREIGN RELATIONS.**

---

The Departmental Committee on Defence, Intelligence and Foreign Relations is established pursuant to National Assembly Standing Order 216 and is mandated *inter alia* 'to study and review all legislation referred to it'.



The Committee is in the process of considering the Treaty Making and Ratification (Amendment) (No.2) Bill, 2024 (*copy attached*). The Bill seeks to amend the Treaty Making and Ratification Act, 2012 to incorporate a special enactment procedure for economic treaties, strengthen the National Assembly's participation in the treaty-making process and enhance efficiency in the treaty-making process.

In compliance with the provisions of Article 118(1)(b) of the Constitution and Standing Order 12(3) on public participation, the Committee invites you for a meeting to discuss the said Bill. The meeting will be held on **Tuesday, 30<sup>th</sup> April, 2024 at 10.00 am** in the **Mini Chamber, County Hall, Parliament Buildings**.

We request that you submit electronic copies of your comments on the Bill to the Committee by Monday, 29th April 2024, via email address: [cna@parliament.go.ke](mailto:cna@parliament.go.ke) and avail fifteen (15) hard copies during the meeting.

The liaison officers on this subject are **Mr. Dennis Mogare**, who may be contacted on Tel No. **0721479162** or email [dennis.ogechi@parliament.go.ke](mailto:dennis.ogechi@parliament.go.ke) and **Mr. Bernard Njeru**, Tel No. **0729953014** or email [bernard.njeru@parliament.go.ke](mailto:bernard.njeru@parliament.go.ke).

Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to:

**Hon. Musalia Mudavadi, EGH**  
Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs  
Office of the Prime Cabinet Secretary and Ministry of Foreign and Diaspora Affairs  
Harambee Avenue  
**NAIROBI.**

**Hon. Justin B.N. Muturi, EGH**  
The Attorney-General of the Republic of Kenya  
Office of the Attorney-General and Department of Justice  
Sheria House, Harambee Avenue  
**NAIROBI.**

# ANNEXURE 6

SUBMISSIONS FROM THE OFFICE OF THE ATTORNEY  
GENERAL

D/DC  
Please deal  
06/05/24



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

07 MAY 2024

Our Ref: AG/LDD/237/1/93

29<sup>th</sup> April, 2024

Mr. Samuel Njoroge, CBS  
The Clerk of the National Assembly  
Clerk's Chambers, Parliament Buildings  
P. O. Box 41842-00100  
**NAIROBI**

② Mr. Dennis Ogechi  
PK TNA. DM 07/05/24

**RE: STAKEHOLDER ENGAGEMENT ON THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL, 2024**

Reference is made to your letter dated the 23<sup>rd</sup> April, 2024 and referenced NA/DDC/DIFR/2024 (058) requesting this Office for submissions on the proposed Treaty Making and Ratification (Amendment) Bill, 2024, by the Departmental Committee on Defence, Intelligence and Foreign Relations and inviting the Solicitor-General to attend a meeting in Parliament to discuss the Bill.

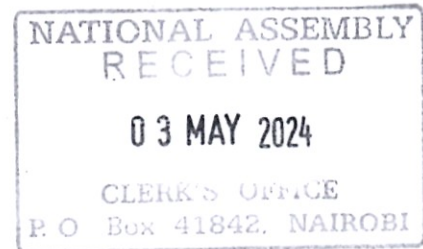
We regret to inform you that the Solicitor-General will not be able to attend the meeting as he will be attending the launch of the Twenty-Fourth Annual Supplement to the laws of Kenya which will be done by His Excellency **Hon. Dr. William Samoei Ruto, PhD, C.G.H.**

However, we have scrutinized the constitutionality of the proposed Bill and whether it contravenes existing legislation. We note that the Bill does not raise constitutional issues, however we note the following statutory issue on the proposed legislation—

Clause	Comments
3	Paragraph (b) of Clause 3 of the Bill proposes for unilateral trade agreements between Kenya and any other country involving a one-sided arrangement in which Kenya benefits from lower trade barriers from the other country. Section 2 of the Treaty Making and Ratification Act (Cap. 4D) defines a bilateral treaty to mean an agreement concluded between Kenya and any other State or between Kenya and an international organization. The arrangement proposed in Clause 3 paragraph (b) seems to be a bilateral agreement rather than a unilateral agreement.

**HON. SHADRACK J. MOSE**  
**SOLICITOR-GENERAL**

Copy to: **Hon. J. B.N. Muturi, KCH**  
**Attorney-General**



SHERIA HOUSE, HAILLE SELLASIE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

ISO 9001:2008 Certified





# ANNEXURE 7

**SUBMISSION FROM THE LAW SOCIETY OF KENYA**

② Ahmed Salim  
consult the committee  
and draft a response  
for signature  
26/4/24

DDC  
8  
26/04

# Law Society of Kenya



The Office of the Clerk,  
The National Assembly,  
P.O Box 41842-00100,  
Main Parliament Buildings,  
Nairobi, Kenya.

Lavington, opp Valley Arcade, Gitanga Road  
P.O Box 72219-00200 Nairobi, Kenya  
Tel: +254 111 045 300  
Website: [www.lsk.or.ke](http://www.lsk.or.ke)  
Email: [lsk@lsk.or.ke](mailto:lsk@lsk.or.ke)

Our Ref: S/24

Your Ref: TBA

Date: 24<sup>th</sup> April, 2024

Dear Sir,

**RE: REQUEST FOR EXTENSION OF TIME FOR SUBMISSION ON THE TREATY  
MAKING AND RATIFICATION (AMENDMENT) (NO.2) BILL, 2024.**

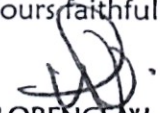
We refer to the call on the subject matter, which was published in the Daily Nation newspaper dated 10<sup>th</sup> April 2024 contents of which we have noted.

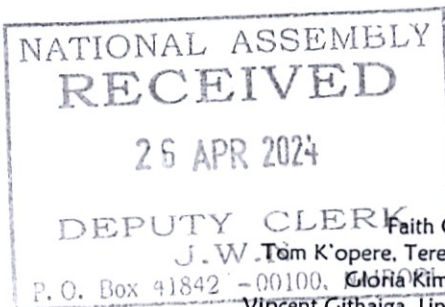
We note that these presentations were to be submitted on or before **Wednesday, 24<sup>th</sup> April, 2024**. Being a member institution, we have informed our members of the Treaty Making and Ratification (Amendment) (No.2) Bill, 2024 and we are currently awaiting their input and feedback to inform our position of the same.

We therefore request for an extension of time for submission of the memorandum with our proposals as we purpose to submit the same on or before **3<sup>rd</sup> May, 2024**.

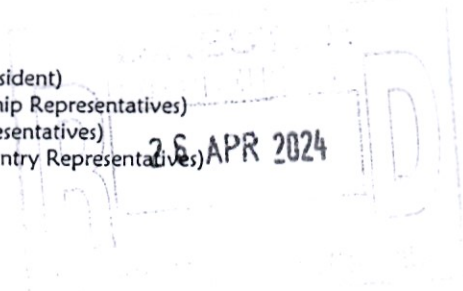
The Society appreciates the continued collaboration.

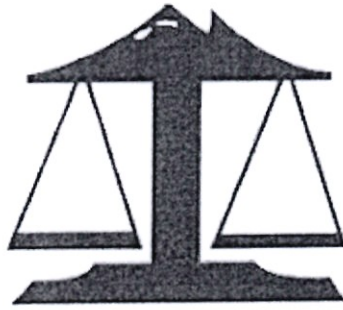
Yours faithfully,

  
FLORENCE W. MUTURI  
SECRETARY/ CEO



Faith Odhiambo (President), Mwaura Kabata (Vice-President)  
J. W. Tom K'opere, Teresia Wavinya, Hosea Manwa, (General Membership Representatives)  
Clara Kimani, Irene Otto, Stephen Mbugua (Nairobi Representatives)  
Vincent Githaiga, Lindah Kiome, Hezekiah Areso, Zulfa Roble (Upcountry Representatives)





**LAW SOCIETY OF KENYA**

**MEMORANDUM TO THE NATIONAL ASSEMBLY DEPARTMENTAL  
COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN RELATIONS ON  
THE TREATY MAKING AND RATIFICATION (AMENDMENT) (NO.2) BILL, 2024**

**SUBMITTED ON BEHALF OF THE LAW SOCIETY OF KENYA BY:  
MS. CAROLINE ODUOR, DR. DANIEL ACHACH AND MR. PATRICK ANAM**

**TO**

**MR. SAMWEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY OF KENYA**

**29<sup>TH</sup> APRIL 2024**





## **Introduction**

- The Law Society is a Statutory body created under the Law Society Act, Cap 18 Laws of Kenya with the mandate, *inter alia*, to assist the government and the courts in all matters affecting legislation and the administration and practice of the law in Kenya and to protect and assist the public in Kenya in all matters touching, ancillary or incidental to the law section 4(e).
- By dint of article 2(6) of the Constitution of Kenya 2010, any Treaty or Convention ratified by Kenya shall form part of the law of Kenya. The LSK is therefore not only an essential player in the process of negotiating and ratification of international agreements but is statutorily obligated to participate in the process.
- The Law Society of Kenya (LSK) is in receipt of a letter dated 23<sup>rd</sup> April 2024, received on 26<sup>th</sup> April 2024 by the Clerk of the National Assembly inviting the Society to submit a memorandum on the Treaty Making and Ratification (Amendment) Bill, 2024 to the Assembly's Departmental Committee on Defence, Intelligence and Foreign Relations, and attend a meeting to discuss the said Bill on Tuesday, 30<sup>th</sup> April, 2024 at 10:00am in the Mini Chamber, County Hall, Parliament Buildings.
- The stakeholder meeting is scheduled pursuant to Article 118(1) of the Constitution and Standing Order No. 12(3) that obligates the Committee to undertake public participation during legislation process.
- Owing to the urgent nature of the invitation and limited time, LSK appointed Ms. Caroline Oduor, Dr. Daniel Achach and Mr. Patrick Anam, both advocates of the High Court of Kenya and with vast experience and expertise in the subject area to present LSK's Memorandum before the Committee.
- The LSK wishes to sincerely thank the Committee for the invitation to submit this Memorandum.

## **Background to Treaty Making and Ratification;**

- The purpose of the 1969 Vienna Convention on the Law of Treaties was to articulate the framework for treaty making, codify the comprehensive set of principles and rules governing significant aspects of Treaty Law.
- In breaking away from the older unanimity rule, Article 19 of the Vienna Convention allows states to include reservations in the acceptance of treaty obligations unless



treaty itself forbids reservations or the reservation is incompatible with the objects of the treaty.

- Although it is possible to object to a State's reservation under the Vienna Convention, an objection to a reservation does not preclude entry into force of the treaty between the two States.
- In Kenya, the treaty making and ratification process is codified under Article 2(6) of the Constitution of Kenya, 2010 and The Treaty-Making and Ratification Act, CAP 4D
- The Treaty Making and Ratification (Amendment) (No. 2) Bill, 2024 seeks to amend various provisions of The Treaty-Making and Ratification Act, CAP 4D.

**Comments on the Proposed Amendments;**

<b>Proposed Amendment</b>	<b>Comments</b>
<p>Amendment to Section 2 of the Act by introducing definition of ‘accession’ and ‘economic treaty’ to the definitions section and deleting Section 2(2) of the Act</p>	<p>This Amendment seeks to differentiate treaties relating to taxation, trade and investments from other treaties and also to bring within the purview of the statute treaties to which Kenya becomes bound by way of accession. It also seeks to delete Section 2 (2) of the Principal Act which makes reference to the first elections under the Constitution of Kenya, 2010 which is now redundant. This Amendment is supported by LSK.</p>
<p>Amendment to Section 3 of the Act which seeks to include economic treaties within the purview of the Act</p>	<p>This Amendment will ensure that the Act applies to treaties relating to taxation, trade and investment matters. LSK however feels that given the importance and centrality of these types of treaties to Kenya’s economy, and given that the ultimate beneficiaries of the new markets opened by these treaties are the Kenyan traders represented by their MPs in parliament, there is need for the relevant parliamentary committees to interact with such economic treaties before they are signed or ratified by the other partners. An example can be cited of the Kenya-EU EPA Agreement in which the national assembly departmental committee on Trade, Industries and Co-operatives conducted public participation for ratification way after the EU parliament had ratified the Agreement making the ratification process a mere academic process.</p>



<p>Introduction of Section 5A requiring the Executive to engage the National Assembly on commencing negotiations on treaties.</p>	<p>LSK appreciates the noble intentions of this proposal which is aimed at eliminating the existing problems where the National Assembly only becomes seized of treaty matters at the tail-end of the treaty making process. LSK however feels that the proposed Section 5A (3) should make it mandatory for the relevant committee to conduct public participation and stakeholder engagement at this point.</p>
<p>Amendment to Section 6 of the Act by introducing a new sub-section (1A) to ensure that the country does not enter into treaties that adversely affect her ability to mobilize domestic revenue, food security, growth of local industries and public interest.</p>	<p>LSK supports the spirit of this Amendment as it seeks to ventilate the Government's responsibility to its citizenry under the Constitution of Kenya, 2010. LSK however proposes that the language of the Amendment be changed to have the effect of annulling any treaty that adversely affect paragraphs (a) to (d).</p>
<p>Insertion of a new Sections 6A and 6B which require the Executive to have undertaken a regulatory impact assessment prior to the initiation of the treaty making process.</p>	<p>Whereas LSK supports the requirements for regulatory impact assessment, LSK proposes that additional to the gazette requirement, this assessment report should be tabled before the relevant departmental committee for public participation.</p> <p>LSK also proposes that Section 6B (5) be amended to make access to the regulatory impact statement absolutely free to the public.</p>
<p>Amendment to Section 8 of the Act by requiring that the National Assembly may introduce any reservations as a provision to the treaty.</p>	<p>This Amendment is in line with the Vienna Convention which allows states to include reservations in the acceptance of treaty obligations unless the treaty itself forbids reservations or the reservation is incompatible with the objects of the treaty.</p>

	<p>LSK recommends that the <u>language</u> of the Amendment be changed to expressly preclude the Executive from concluding any treaty without effecting any <u>reservation</u> made by the National Assembly.</p>
<p>Amendment by introducing a new Section 9A which provides for the ratification process at the National Assembly.</p>	<p>LSK supports this Amendment.</p>
<p>Amendment of Section 10 of the Act by introducing a new Sub-section (1A) requiring the Cabinet Secretary to be accompanied by the Leader of Majority or Leader of Minority in the National Assembly at the point of ratifying a treaty.</p>	<p>LSK opines that the language of this proposed Amendment is <u>ambiguous</u>. This is because the ratification process is done in the National Assembly and not by the Cabinet Secretary. If the intention of the Amendment is to accompany the Cabinet Secretary during depositing of instruments of ratification (which is the subject matter of Section 10 of the principal Act), then the provision needs to be amended to say so.</p> <p>LSK however feels that it is superfluous to have the Leader of Majority or Leader of Minority accompany the Cabinet Secretary as proposed since this does not add any material value to the ratification process but only a waste of taxpayers' money.</p>

### Concluding Remarks

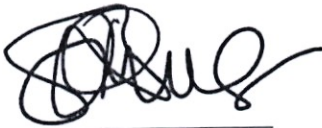
- The LSK has established an *ad hoc* committee on International Trade and Regional Integration that comprises of eminent experts and practitioners in the area. The LSK has members who have vast experience and expertise spanning different areas of international trade law and policy.
- LSK decries lack of an engagement framework with the government and the Committee on negotiating trade deals, signing and ratification of trade agreements. The LSK recommends a deeper engagement and invites both the government and the National Assembly to take advantage of the vast experience and expertise that lies within the LSK's membership.
- LSK supports the government's initiative to amend the Treaty Making and Ratification Act by bestowing more powers on the National Assembly during the treaty making process. The legal framework obtaining currently only involves the National Assembly at the tail end of the process when the other party to the agreement may have already signed and ratified it. This clips the wings of the National Assembly as any amendments can only come in as reservations and not substantive amendments to the treaty. Given the political economy of treaty making process, this may not be advisable. LSK therefore urges the departmental committee to proceed with the proposed amendments subject to the proposals made by LSK herein.

-END-

\_\_\_\_\_  
C.O

MS. CAROLINE ODUOR  
ADVOCATE  
[carol@coduoradvocates.co.ke](mailto:carol@coduoradvocates.co.ke)  
+254722553891

  
\_\_\_\_\_  
DR. DANIEL ACHACH  
ADVOCATE  
[daniel@achachllp.co.ke](mailto:daniel@achachllp.co.ke)  
+254723432150

  
\_\_\_\_\_  
MR. PATRICK ANAM  
ADVOCATE  
[songianam@gmail.com](mailto:songianam@gmail.com)  
+254720756343



# ANNEXURE 8

SUBMISSION FROM THE MINISTRY OF FOREIGN AND  
DIASPORA AFFAIRS

Telephone: +254-20-318888  
Fax: +254-20-2240066/341935/344333  
Email: communication@mfa.go.ke  
Website: www.mfa.go.ke  
When replying please quote Ref. No. and date



① DDC  
18/06

HARAMBEE AVENUE  
P.O. Box 30551-00100  
NAIROBI, KENYA

② Ogechi  
Boris  
Beal  
18/06

**MINISTRY OF FOREIGN AFFAIRS AND DIASPORA AFFAIRS  
STATE DEPARTMENT OF FOREIGN AFFAIRS**

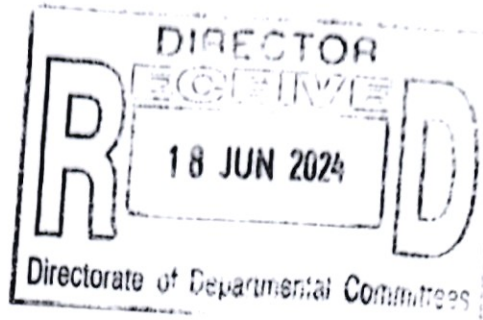
**MFA.LEG/163 VOL. IV**

Ref. No. ....

11<sup>th</sup> June 2024

Date: .....

**Mr. Samuel Njoroge, C.B.S**  
Clerk of the National Assembly  
The Clerk's Chambers  
Parliament Buildings  
P.O. Box 41842 - 00100  
**NAIROBI**



Dear *Sir,*

**STAKEHOLDER ENGAGEMENT ON THE TREATY MAKING AND RATIFICATION (AMENDMENT) (NO.2) BILL, 2024 BY THE DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN RELATIONS**

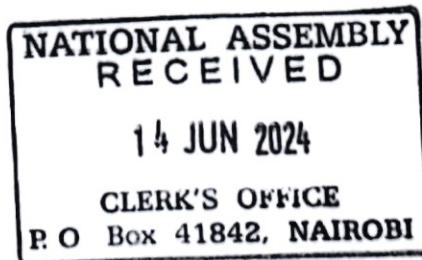
We make reference to the above matter, your letter under reference NA/DDC/DIFR/2024 (058) of 23<sup>rd</sup> April 2024, and our reply thereto under even reference dated 29<sup>th</sup> April 2024.

The Ministry has reviewed the Treaty Making and Ratification (Amendment) (No.2) Bill, 2024 and taken into consideration the Memorandum of Objects and Reasons attached thereto. The Ministry has identified and hereby wishes to submit comments on the Bill, attached herewith for your consideration.

Yours *Sincerely*

**DR. A. KORIR SINGOEI**  
**PRINCIPAL SECRETARY**

Ends.





## Comments on the Treaty Making and Ratification (Amendment) (No.2) Bill, 2024

1. In the Memorandum of Objects and Reasons for the Bill, the object thereof is indicated as "to amend the Treaty Making and Ratification Act to incorporate a special enactment procedure for economic treaties, strengthen the participation of the National Assembly in the Treaty making process and to generally enhance efficiency in the Treaty making process".
2. Clause 3 of the Bill proposes to amend Section 3 of the Treaty Making and Ratification Act, by isolating economic treaties in the list of treaties to which the Act is applicable. Notably, Section 3 of the Act as presently drafted, already includes such treaties in its application. It is therefore unclear, why the amendment Bill seeks to isolate economic treaties, and prescribe further legislative provisions for ratification thereof.
3. Clause 4 of the Bill seeks to introduce a new provision requiring the Cabinet Secretary responsible for matter relating to a Treaty, to engage the National Assembly upon commencement of negotiations. Notably however, Section 8 (3) of the Act presently contains a provision that requires the National Assembly to conduct public participation in accordance with laid down Parliamentary procedures.
4. Clause 5 of the Bill seeks to amend Section 6 of the Act regarding the values and principals in negotiating treaties, by introducing a new provision on considerations to be taken in negotiating economic treaties. Notably however, the Section as drafted, requires the National Executive or the relevant State Department to abide by the values and principles of the Constitution, notwithstanding the kind of Treaty under negotiation.
5. Clause 6 of the Bill seeks to introduce a "regulatory impact assessment" which is to be availed by the relevant Cabinet Secretary prior to execution of an economic Treaty. The Bill indicates that the regulatory impact assessment will be tabled before the National Assembly, and the general public.
6. The Memorandum of Objects and Reasons for the Bill, indicates that this procedure will provide clarity on the specific procedure for public participation, which presently leaves room for error as it is unclear what quantum of public participation is sufficient. Notably however, the Office of the Attorney General has tabled before the House a public participation policy, and at the same time, a public participation Bill is under consideration. The concerns being raised by the presently proposed Bill, should be adequately catered for under either of these two instruments, without need for amendment of the Act.
7. Clause 7 of the Bill, seeks to amend Section 8 of the Act by *inter alia* precluding the National Executive from concluding a Treaty without effecting a reservation made by the National Assembly. This proposal may present a limitation to Treaty negotiators, bearing in mind negotiation of bilateral agreements, is conducted in a win-win / give-take manner. In addition, the National Assembly has an opportunity to raise reservations during the public participation process conducted by the Executive.
8. Clause 8 seeks to provide for a procedure of ratification at the National Assembly, including a requirement for public participation conducted by a relevant House Committee. As indicated



herein above, two instruments on public participation are presently under consideration, and the procedures for public participation will be clearly set out thereunder. It would be prudent to await the outcome of these instruments rather than over legislating on a common issue.

9. In addition, it may not be procedurally feasible to allow the National Assembly leeway to conduct public participation, once negotiations between parties have concluded, as this would mean re-opening negotiations on matters which have already been settled. Moreover, as Treaty partners submit the negotiated instruments to their internal ratification processes immediately negotiations have concluded, if the National Assembly's public participation process as proposed results in a need to re-open negotiations, the same would occasion diplomatic complications for this office.
10. The Ministry would also require input from the National Treasury and the Ministry of Investments, Trade and Industry, which are the Ministries mandated to negotiate /implement the economic treaties that the Bill seeks to isolate.
11. On the definition of 'economic treaty' to mean a treaty relating to taxation, trade, and investment, there is a need to consult the National Treasury. This is informed by the fact that the National Treasury had by a letter Ref. AG/LDD/237/1/93 dated 27<sup>th</sup> February 2024 proposed an amendment of Section 3 of the Treaty Making and Ratification Act to exclude the application of the Act on '*Special arrangements for relief from double taxation entered by the Government under section 41 of the Income Tax Act*'.
12. Beside the above comments, the Ministry is proposing the following amendments to the Treaty Making and Ratification Act. The amendments are aimed at providing a reporting mechanism on the implementation of MOUs signed by the Government of Kenya with foreign Governments, which are implemented by the relevant line MDAs.

#### PROPOSED AMENDMENTS TO THE TMRA 2012

Section 13 Registry of Treaties	<p>Section 13(2)(a) add the words '<i>Memorandum of Understanding</i>' after the word 'treaties'.</p> <p>Section 13(2)(c) add the words the word '<i>Memorandum of Understanding</i>' after the word 'treaties'.</p>
Section 14 Registrar	<p>Section 14 (a)(i) add the words the word '<i>Memorandum of Understanding</i>' after the word 'treaties'</p> <p>Section 14 (b) add a new (b) bis to read '<i>Coordinate the reporting on the implementation of Memorandum of Understanding signed by Kenya</i>'.</p>

	<p>Section 16 bis Reporting on the implementation of Agreements and Memorandum of Understanding</p>	<p>Insert a new Section 16 (1) bis to read as follows: The Cabinet Secretary shall in conjunction with the relevant State Departments facilitate the preparation and submission to the Cabinet of periodic reports on the implementation of the Memorandum of Understanding.</p> <p>Section 16 (2) bis The Cabinet Secretary shall through Gazette notice appoint a Committee comprising focal points from relevant State Departments to be responsible for the preparation of the periodic reports on the implementation of the treaties to which Kenya is a state party and the signed Memorandum of Understanding.</p>
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13. Further, since the Treaty Making and Ratification Act touches on matters falling within the purview of the State Department of Foreign Affairs, the Parliamentary Committee on Defence, Intelligence, and Foreign Relations is requested to allow its Parliamentary Legal team to work closely with the Legal Directorate and Office of the Registrar of Treaties to ensure harmony and beneficial consensus on the proposed amendments.

MAY 2024  
MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

# ANNEXURE 9

SUBMISSION BY HON. GEORGE GITONGA MURUGARA, CBS, M.P.





*Hon. George Gitonga Murugara, CBS, M.P.*  
Tharaka Constituency  
Chairperson of The Justice & Legal Affairs Committee

P. O. Box 41842 - 00100  
Bunge Tower  
Nairobi, Kenya

Telephone: +254 202 848 000  
Mobile: +254 721 725 345  
Email: tharakaconstituency013@gmail.com

12<sup>th</sup> November, 2024

**The Honourable Chairperson**  
Departmental Committee on  
Defence, Intelligence and Foreign Relations  
Parliament Buildings  
**NAIROBI**

**RE: THE TREATY-MAKING AND RATIFICATION (AMENDMENT) (NO. 2) BILL,  
2024**

**Introduction**

The principal object of the Treaty-Making and Ratification (Amendment) (No. 2) Bill (hereby referred to as “the Bill”) is to amend the Treaty-Making and Ratification Act (Cap. 4D) (hereby referred to as “the Act”) to include a special enactment procedure for economic treaties; to strengthen the participation of the National Assembly in the treaty making process; and to enhance efficiency in the treaty making process.

The Bill was read a First Time in the House on 20<sup>th</sup> March, 2024 and thereafter committed to the Departmental Committee on Defence, Intelligence and Foreign Relations to facilitate public participation on the Bill in accordance with Standing Order 127.

**Analysis of the Bill**

The Bill seeks to include a special procedure for negotiating economic treaties by providing that national executive or the relevant State department shall, in negotiating an economic treaty, verify that the treaty does not negatively affect the following principles—

- (a) ability to mobilise domestic revenue;
- (b) food security;
- (c) establishment and growth of local industries; and
- (d) the ability of the government to regulate an industry in the public interest.



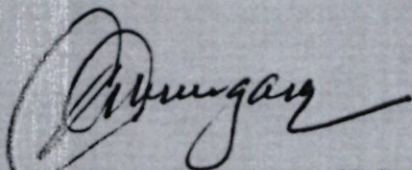
The Bill defines an economic treaty as a treaty that relates to taxation, trade and investment. An example of an economic treaty is the economic partnership agreement between Kenya and European Union signed on 18<sup>th</sup> December, 2023. Once the agreement is ratified by both parties, it will result in Kenyan goods gaining immediate duty and quote free access to the European market, whereas European goods will gain preferential access to the Kenyan market introduced over time.

The Bill seeks to strengthen the participation of the National Assembly in the treaty making process by making it an obligation of the relevant national executive or relevant State Department to notify the National Assembly within 14 days on the initiation of the treaty-making process. This amendment seeks to ensure that the National Assembly is seized of treaty matters at the initial stages of the treaty making process leading to enhanced transparency and accountability.

Finally, the Bill seeks to enhance the efficiency in the treaty-making process by empowering the relevant Committee to seek from the Cabinet Secretary responsible for matters relating to foreign affairs further information such as the social and environmental impact of the treaty and report of public participation conducted on the making of the treaty.

Submitted for your consideration.

Yours faithfully,



**Hon. George Gitonga Murugara, CBS, MP**

Chairperson, Departmental Committee of Justice and Legal Affairs