



MINISTRY OF FOREIGN & DIASPORA AFFAIRS

THE NATIONAL ASSEMBLY	
DATE: 18 APR 2023	DAY: Tuesday
TABLED BY: Hon. Owen Baya, MP Deputy leader Majority	
CLERK-AT THE TABLE: Ann Shibuko	

PARLIAMENTARY MEMORANDUM

ON THE

RATIFICATION OF THE

AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION

(NIAMEY CONVENTION)

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

1.0 OBJECTIVE OF THE MEMORANDUM

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

2.0 BACKGROUND

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

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

3.0 OBJECT AND SUBJECT MATTER OF THE CONVENTION

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

3.2 Other objectives of the Niamey Convention are:

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

4.0 OBLIGATIONS IMPOSED BY THE PROTOCOL

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

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

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

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

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

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

5.0 PROBLEM ANALYSIS

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

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

6.0 JUSTIFICATION FOR RATIFICATION

- 6.1 The importance of cross border cooperation particularly to border communities cannot be understated. It greatly contributes to the development of the often-marginalized border areas zones, which tend to be less economically developed, compared to other areas in the county.
- 6.2 The Convention allows for economic growth at the border through creation of employment opportunities and infrastructure development. Additionally, the Convention promotes economic development in terms of trade and cross-border cooperation is a driver for the development of infrastructure, trade, transportation and other sectors in border zones.
- 6.3 Kenya has put in place various policy, legislative and institutional frameworks on cross-border cooperation. This includes:
- a) The enactment of Security Laws (Amendment) Act 2014 that established Border Control & Operations Coordination Committee (BCOCC). This Committee facilitates the borders as bridges principles of AUBP by ensuring that there is cross-border development in an open and secure environment including facilitating cross border trade;
 - b) There is in place the Joint Border Commissioners/ Administrative Committee with all the neighboring countries which meets regularly to discuss cross-border matters, including animal health, security issues, and maintenance of boundary infrastructure among others;
 - c) Additionally, the Niamey Convention is consistent with the objectives of the East Africa Community (BAC) which has adopted and passed various economic cooperation agreements such as the customs union protocol, and common market protocol that have contributed to the growth and improvement of the region and more

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

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

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

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

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

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

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

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

7.0 CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS

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

8.0 IMPLICATIONS RELATING TO COUNTIES

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

9.0 FINANCIAL IMPLICATIONS

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

10.0 MINISTERIAL RESPONSIBILITY

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

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

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

11.0 RESERVATIONS

11.1 The Niamey Convention does not provide for reservations.

12.0 RECOMMENDATION TO THE NATIONAL ASSEMBLY

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

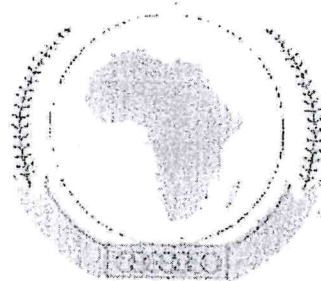
1. Note the contents of the Memorandum;
2. Consider and approve Kenya's Ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention); and
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the relevant instruments to the Depository, the Chairperson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

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

DR. ALFRED N. MUTUA, EGH

CABINET SECRETARY

MINISTRY OF FOREIGN & DIASPORA AFFAIRS



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

PREAMBLE

We, Member States of the African Union,

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

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

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

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

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

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

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

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

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

Have agreed as follows:

Article 1 **Definitions**

For the purposes of this Convention:

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

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

"Commission" means the African Union Commission;

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

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

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

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

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

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

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

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

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

"Union" means the African Union.

Article 2 Objectives

The objectives of the present Convention are to:

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

Article 3 Areas of Cooperation

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

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

Article 4 Facilitation of Cross-Border Cooperation

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

Article 5 Sharing of Information and Intelligence

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

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

Article 6

Competent Authorities or Bodies responsible for Border Matters

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

Article 7

Harmonisation of domestic law pertaining to Border Issues

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

Article 8

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

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

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

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

Article 9

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

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

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

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

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

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

Article 11 **Border Programme Fund**

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

Article 12 **Safeguard provisions**

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

Article 13 Settlement of Disputes

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

Article 14 Signature, Ratification or Accession

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

Article 15 Entry into Force

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

Article 16 Amendment

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

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

Article 17 Depository

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

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

27TH JUNE 2014
