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TWELFTH PARLIAMENT - FOURTH SESSION

THE NATIONAL ASSEMBLY

REPORT OF  
THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS  
ON  
KENYA'S ACCESSION TO THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS  
AND GOVERNANCE

THE NATIONAL ASSEMBLY  
PAPERS LAID

DATE: 1 NOV 2020

TUESDAY

CHAIR, DEFENCE & FR  
Hon. KATOO OLE METITO

*[Signature]*

Directorate of Departmental Committees,  
Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI.**

November, 2020

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## **ABBREVIATIONS**

AGA	African Governance Architecture
AU	African Union
ACDEG	African Charter on Democracy, Elections and Governance
APRM	African Peer Review Mechanism
AfCFTA	African Continental Free Trade Agreement
CAS	Chief Administrative Secretary
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
NCIC	National Cohesion and Integration Commission
PWD	Persons with Disabilities
TFTA	Tripartite Free trade Agreement

## **CHAIRPERSON'S FOREWORD**

The Cabinet Secretary, Ministry of Foreign Affairs, submitted a Memorandum to the National Assembly signed and dated 24<sup>th</sup> June, 2020. The Memoranda and text of the Agreement were committed to the Departmental Committee on Defence and Foreign Relations for processing.

Kenya signed the Charter on 28<sup>th</sup> June, 2008 and the commencement of the accession process of the Charter was approved by Cabinet during its meeting of 19<sup>th</sup> March, 2020.

In considering the Charter, the Committee held a total of three sittings including a comprehensive briefing session by the Ministry of Foreign Affairs.

Pursuant to Article 118 (1)(b) of the Constitution on Public Participation and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies, on 2<sup>nd</sup> October 2020 requesting for submissions of memoranda on the subject matter. A total of four (4) memoranda **in support** of the Charter were submitted by;

- a) Lawyers Hub
- b) Mr. Wilson Kimutai Kipchumba
- c) Youth4ACDEG Kenya Chapter & National Youth Serving Organizations
- d) National Gender and Equality Commission

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199, it is my pleasant duty to present the Report of the Departmental Committee on its consideration of the African Charter on Democracy, Elections and Governance.

**Hon. Katoo Ole Metito, EGH, MGH, M.P**  
**(CHAIRPERSON)**

## **1.0 PREFACE**

### **1.1 Establishment of the Committee**

The Departmental Committee on Defence and Foreign Relations is established pursuant to Standing Order 216.

### **1.2 Mandate of the Committee**

The Committee is mandated under Standing Order 216 (4) and (5) to inter alia-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation and effectiveness of the implementation;
- c) study and review all legislation referred to it;
- d) study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
- g) examine treaties, agreements and conventions;**
- h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i) consider reports of Commissions and independent offices submitted to the house pursuant to the provisions of Article 254 of the Constitution; and
- j) examine any questions raised by Members on a matter within its mandate.

In executing its mandate, the Committee oversees the following Ministries and Departments:

- i. Ministry of Defence;
- ii. Ministry of Foreign Affairs;
- iii. Ministry of East African Community and Regional Development; and
- iv. National Intelligence Service.

According to Schedule II of the Standing Orders, the Committee is mandated to consider the following subjects:

- i. Defence;
- ii. Intelligence;
- iii. Foreign Relations;
- iv. Diplomatic and Consular Services;
- v. International Boundaries including territorial waters and international Relations; and
- vi. Agreements, Treaties and Conventions.

### 1.3 Committee Membership

The Committee comprises the following nineteen (19) Members;

#### **Chairperson**

Hon. Katoo Ole Metito, EGH, MGH, MP  
MP for Kajiado South Constituency

#### **Jubilee Party**

#### **Vice- Chairperson**

Hon. Richard Tongi, MP  
MP for Nyaribari Chache Constituency

#### **Jubilee Party**

Hon. Yusuf Hassan Abdi, MP  
MP for Kamukunji Constituency

#### **Jubilee Party**

Hon. Charles Kilonzo, MP  
MP for Yatta Constituency

#### **Independent**

Hon. Richard Maore Maoka, CBS, MP  
MP for Igembe North Constituency

#### **Jubilee Party**

Hon. Dido Ali Raso, MP  
MP for Saku Constituency

#### **Jubilee Party**

Hon. Caleb Amisi, MP  
MP for Saboti Constituency

#### **ODM Party**

Hon. Zachary Kwenya, MP  
MP for Kinangop Constituency

#### **Jubilee Party**

Hon. Gideon Konchela, MP  
MP for Kilgoris Constituency

#### **Jubilee Party**

Hon. Memusi Ole Kanchory, MP  
MP for Kajiado Central Constituency

#### **ODM Party**

Hon. Martha Wangari Wanjira, MP  
MP for Gilgil Constituency

#### **Jubilee Party**

Hon. Maj. (Rtd.) Bashir Abdullah, MP  
MP for Mandera North Constituency

#### **Jubilee Party**

Hon. (Dr.) Lilian Gogo, MP  
MP for Rangwe Constituency

#### **ODM Party**

Hon. Irene Kasalu, MP  
MP for Kitui County

#### **WDM-K Party**

Hon. Moses Nguchine Kirima, MP  
MP for Central Imenti Constituency

#### **Jubilee Party**

Hon. Vincent Kipkurui Tuwei, MP  
MP for Mosop Constituency

#### **Jubilee Party**

Hon. Ernest Ogesi Kivai, MP  
MP for Vihiga Constituency

#### **ANC Party**

Hon. Stephen M. Mule, MP  
MP for Matungulu Constituency

#### **WDM-K Party**

Hon. Asha Hussein Mohamed, MP  
MP for Mombasa County

#### **ODM Party**



#### 1.4 Committee Secretariat

The Committee secretariat is composed of the following technical staff;

Mr. Victor Weke  
First Clerk Assistant  
**Lead Clerk**

Mr. Abdiaziz Shobay  
Clerk Assistant III

Mr. Edison Odhiambo  
Fiscal Analyst

Mr. Ronald Walala  
Legal Counsel

Mr. Yakub Ahmed  
Media Relations Officer

Ms. Grace Wahu  
Research Officer

Mr. Nimrod Ochieng  
Audio Officer

## 2.0 ANALYSIS OF THE AGREEMENT

### 2.1 Background

1. The African Charter on Democracy, Elections and Governance is an initiative by African leaders to provide African solutions to African challenges and a component of the African Governance Architecture (AGA). The principle objective of AGA is the implementation of African Union (AU) *Shared Values* and in particular the African Charter on Democracy, Elections and Governance (ACDEG).
2. The Charter expounds upon the Constitutive Act of the AU committing Member States to the adherence of universal values and principles of democracy and respect for human rights. It promotes the respect of the rule of law, periodic free and fair elections, consolidation of democratic institutions and the rejection of unconstitutional changes of government.
3. It was adopted by the Assembly of Heads of State and Government of the AU on 30<sup>th</sup> January, 2007 as the AU's main normative instrument to set standards for better governance across the continent and entered into force on 15<sup>th</sup> February, 2012 after ratification by fifteen (15) States. As of March 2020, thirty-four (34) and forty-six (46) States had ratified and signed the Charter respectively.
4. Kenya signed the Charter on 28<sup>th</sup> June, 2008 and the commencement of the accession process of the Charter was approved by Cabinet during its meeting of 19<sup>th</sup> March, 2020.

### 2.2 Outline of the Charter

5. **Article 1** provides for the definitions in the Charter.
6. **Article 2** provides for the objectives of the Charter.
7. **Article 3** provides for the principles of the Charter.
8. **Articles 4, 5, 6, 7, 8, 9 & 10** outline declarations by State Parties of their intention to promote democracy, rule of law and human rights; ensure constitutional rule and transfer of power; ensure the full enjoyment of human rights; strengthen the human rights Organs of the African Union; eliminate all forms of discrimination; promote sustainable development in their policies and programmes; and entrench the principle of the supremacy of the Constitutions in their jurisdictions, respectively.
9. **Articles 11, 12 and 13** contain undertakings by State Parties to promote a culture of democracy and peace within their respective jurisdictions, including by ensuring transparent and accountable administration, strengthening political institutions; creating conducive conditions for civil society organizations to exist and operate within the law; and integrating

civic education in educational curricula.

10. **Articles 14, 15 & 16** contain undertakings by State Parties to build democratic institutions with adequate independence, accountability and funding.
11. **Articles 17, 18, 19, 20, 21 & 22** contain undertakings by State Parties to hold regular, transparent, free and fair democratic elections and to—
  - (a) establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
  - (b) establish and strengthen national mechanisms that redress election related disputes in a timely manner;
  - (c) ensure fair and equitable access by contesting parties and candidates to state controlled media during elections; and
  - (d) ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections.
12. **Articles 23, 24, 25 & 26** outline an agreement by State Parties on various acts which constitute an unconstitutional change of government that may attract sanctions from the African Union. Under the provisions, State Parties agree to not harbour or give sanctuary to perpetrators of unconstitutional changes of government and to bring perpetrators of such changes to justice or take necessary steps to effect their extradition.
13. **Articles 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 & 43** contain undertakings by State Parties to advance political, economic and social governance by—
  - (a) collaborating with the civil society and the private sector;
  - (b) promoting the active participation of women, youth and persons with disabilities in development and governance;
  - (c) promoting citizen participation in the development process;
  - (d) institutionalizing good political governance
  - (e) institutionalizing good economic and corporate governance
  - (f) decentralizing power to democratically elected local authorities as provided in national laws;
  - (g) integrating traditional authorities, particularly in rural communities within the larger democratic system;
  - (h) promoting and deepening democratic governance;
  - (i) pursuing sustainable development and human security;

- (j) promoting amicable mitigation of conflicts, political stability and security;
- (k) adopting and implementing measures to generate productive employment, mitigate the impact of diseases; alleviate poverty and eradicate extreme poverty and illiteracy;
- (l) providing and enabling access to basic social services to the people;
- (m) implementing policies and strategies to protect the environment to achieve sustainable development for the benefit of the present and future generations; and
- (n) endeavouring to provide free and compulsory basic education.

14. **Articles 44 and 45** contains provisions outlining measures to give effect to the undertakings made by State Parties in the Charter at the national, regional and continental level including through legislation and the development of appropriate benchmarks.

15. **Articles 46, 47, 48, 49, 50, 51, 53 & 53** are the Final Provisions of the Charter. Under the provisions—

- (a) the Peace and Security Council of the African Union is mandated to determine the appropriate measures to be imposed on any State Party that violates the Charter;
- (b) designate the Chairperson of the African Union Commission as the depository of instruments relating to the Charter;
- (c) Outline the date of the commencement of the Charter as thirty (30) days after the receipt of fifteen (15) instruments of ratification;
- (d) Require State Parties to submit a report to the African Union Commission every two (2) years on the measures taken to implement the undertakings made in the Charter;
- (e) Amendment of the Charter by a two-thirds majority vote of State Parties;
- (f) Outlines the principal languages of the text of the Charter as Arabic, English, French and Portuguese languages, all four (4) being equally authentic.

### **2.3 Obligations imposed by the Charter**

16. The Charter calls for transparency and accountability in government and provides for the independence of the Judiciary.

17. It further provides for implementation of programmes that promote democratic principles and practices, adopt legislative & administrative measures that guarantee the rights of women, ethnic minorities and migrants, persons with disabilities, refugees and displaced persons including marginalized and vulnerable social groups and set up institutions to fight corruption.

18. It condemns the unconstitutional change of government and provides for possible framework

Report by the Departmental Committee on Defence & Foreign Relations on Kenya's Accession to the

for international prosecution of people who forcefully take over government through domestic legal channels. Allows for regional mechanisms to be invoked if domestic mechanisms fail to prosecute such individuals.

#### **2.4 Constitutional implications**

19. The Charter is not in conflict with any provisions of Kenya's the Constitution. It is consistent with Kenya's constitutional values and objectives and various statutes enacted to implement the Constitution

#### **2.5 Policy and legislation considerations**

20. The Charter's provisions are consistent with the Constitution. State obligations have been domesticated through various laws and institutions in Kenya such as the Elections Act, 2011, the Political Parties Act, 2011, the Independent Electoral and Boundaries Commission Act, 2011, and the County Governments Act, 2012. Kenya holds periodic elections as provided for in the Charter.
21. Kenya has ratified and domesticated various treaties that have a bearing on the obligations enshrined in the Charter such as the promotion and protection of human rights among them being the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

#### **2.6 Financial Implications**

22. Provisions of the Charter have been domesticated within the domestic legal framework therefore financial obligations will continuously be catered for through normal budgetary estimates of the relevant institutions.

#### **2.7 Ministerial Responsibility**

23. The implementation of the Charter will be under the collective responsibility of the Office of the Attorney General and the Department of Justice, the Ministry of Foreign Affairs and the Ministry of Interior and Coordination of National Government.

### 3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT

#### 3.1 Call for memoranda from the public

24. Pursuant to Article 118 (1)(b) of the Constitution on Public Participation and Section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies, on 2<sup>nd</sup> October 2020, calling for submissions of memoranda on the subject matter. The Committee received four (4) submissions in support to the Charter from the following;

- i. Lawyers Hub
- ii. Mr. Wilson Kimutai Kipchumba
- iii. Youth4ACDEG Kenya Chapter & National Youth Serving Organizations
- iv. National Gender

#### 3.2 Submissions

##### 3.2.1 Lawyers Hub

25. The entity was in support of the Charter and recommended that the National Assembly approves the ratification of the Charter without reservation to any specific provision. However, they suggested that the following additions ought to be considered; **THAT** Kenya:

- i) Recognizes that respect for human rights includes digital rights;
- ii) Takes active measures for the protection of digital rights like the Right to Privacy by hastening the operationalization of the Office of the Data Protection Commissioner;
- iii) Takes active measures to make contracts for the procurement of digital technologies such as BVR kits more accessible and transparent in line with the Right to Access to information and principles of transparency and accountability. Information should be easily accessed through Kenya's public procurement information portal;
- iv) Adopt policies and projects in taxation, energy and universal access funds that promote access to the internet in unserved and underserved areas. Universal internet access ensures each voter can exercise the political rights and increases robustness of vote transmission;
- v) Take affirmative measures against dangerous speech made on online platforms particularly social media that may result in offline violence. This can be made by strengthening the capacity of the National Cohesion and Integration Commission. (NCIC);

- vi) Ensures proper funding and oversight of electoral dispute resolution institutions;
- vii) National Human Rights Institution, Kenya National Commission on Human Rights should prioritize and address online violence that particularly limits the participation of women, female journalists and marginalized communities in the electoral process;
- viii) Expands laws on finance in political campaigns to include amounts spent on digital campaigns;

### **3.2.2 Mr. Wilson Kimutai Kipchumba**

26. Mr. Kipchumba supported the ratification of the Charter with the following justifications:

- i. The Charter's provisions are in conformity to the prevailing legal framework on democracy, elections and governance in Kenya;
- ii. The Charter is premised on global best practice standards that guarantee political, social and economic prosperity;
- iii. The Charter is compatible with the Constitution of Kenya.

### **3.2.3 Youth4ACDEG Kenya Chapter & National Youth Serving Organizations**

27. The organization appreciated the principally good intentions of the commencement of the treaty-making and ratification process of the Charter by the Kenyan Parliament upon approval by the Cabinet. The submission had the following in support for ratification: -

- i) Accession to the Charter will build up on Kenya's adherence to regional democratic and human rights principles and eliminate the risk of unconstitutional changes of government;
- ii) It will cement Kenya's democratic credentials, demonstrate its Afro-centric foreign policy and support of the AU Agenda 2063 in particular Aspiration 3 which aims for an Africa of good governance, democracy and respect for human rights and the rule of law;
- iii) Media should be allowed to play an oversight role by exposing and whistleblowing the inadequacies of the government;
- iv) Parliament should consider enacting necessary legislations that protect the independent observer mission teams so that they can be allowed to oversee elections whenever there is one. The role of observer mission teams should not be limited to general elections, but it should be extended to the whole electoral process.

### **3.2.4 National Gender and Equality Commission**

28. The Commission supported the Government's decision to ratify the Charter. It believed that the Charter would go a long way in improving Kenya's standards of governance, expand the democratic space, facilitate special interest groups to participate more effectively in elections and support elimination of violence against women, and Persons with Disabilities (PWD) in politics and elections.
29. Moreover, the Charter had introduced a new and wide range of obligations, therefore, the government may be required to review some of the existing legal frameworks particularly those not aligned to the Constitution of Kenya, 2010 as well as review existing policies to facilitate the fulfilment of the commitments presented in the Charter.

### **3.3 Meeting with the Ministry of Foreign Affairs**

30. The Committee met with officials from the Ministry of Foreign Affairs led by the Chief Administrative Secretary (CAS) and the Principal Secretary.
  31. The ministry submitted that the African Charter on Democracy, Elections and Governance was adopted on 30<sup>th</sup> January 2007, and came into force five years later on 15<sup>th</sup> February 2012. Kenya signed the Charter on 28<sup>th</sup> June, 2008. Accession was approved by the Cabinet on 19<sup>th</sup> March 2020.
  32. The Committee noted with concern that African countries had taken time to adopt the Charter. In addition, they questioned whether Article 23(3) and Article 25(4) on censuring the replacement of a regime by rebels and excluding the participation in the elections of those involved in the unconstitutional change of government, respectively, would empower an oppressive regime to hold onto the reins of power such as some oppressive dictatorships in Africa.
  33. In their response, the officials from the Ministry of Foreign Affairs stated that a number of countries in the region such as Rwanda, Ethiopia, and South Sudan had ratified the Charter while countries such as Uganda and Burundi were yet to ratify the Charter. They also highlighted that the Charter is supportive and not intrusive on the sovereignty of African States. It is meant to provide certainty and predictability to the constitutional order of the Member States and set minimum standards for the observance of States. Moreover, the officials stated that the Charter provided clarity on instances of intervention.
  34. On matters free trade within Africa, it was submitted that the Shared Values of the Charter are important in the promotion of free trade in the implementation of the African Continental Free Trade Agreement (AfCFTA) and the Tripartite Free trade Agreement (TFTA).
  35. The Committee was also informed that Kenya has domesticated the Charter in its entirety and therefore not much legislation will be taken into consideration into domesticating the Charter. The provisions of the Charter are enshrined in Constitution of Kenya 2010, The Elections Act, 2011, The Political Parties Act, 2011, The Independent Electoral and
- Report by the Departmental Committee on Defence & Foreign Relations on Kenya's Accession to the



Boundaries Commission Act, 2011 and the County Governments Act, 2012 and the Independent Electoral and Boundaries Commission and an Independent Judiciary.

36. The Charter is consistent with the Constitution of Kenya, our National Values and principles of Governance and the imperatives of Kenya's constitutional order. Ratification shall promote and support democracy and adherence to the constitutional order while strengthening public institutions.

#### **4.0 COMMITTEE OBSERVATIONS**

37. The Committee having considered the Agreement observed, **THAT-**

- i) Provisions of the Charter are already majorly reflected in the laws of Kenya through the Constitution, relevant Acts and independent institutions. In fact, Kenya was steps ahead in implementation of provisions of the Charter;
- ii) The Charter will cement Kenya's democratic credentials, demonstrate its afro-centric foreign policy and support the AU Agenda 2063 to attain an integrated, prosperous and peaceful Africa, driven by its own citizens;
- iii) The Charter encourages Member States to promote and deepen democratic governance by implementing the principles and core values of the African Peer Review Mechanism (APRM) where applicable. Kenya is a main supporter of APRM and the Ratification of the Charter will demonstrate support for the same;
- iv) Kenya will benefit from the Democracy and Electoral Assistance Fund and the Democracy Assistance Unit platforms mandated to assist State parties in the strengthening of electoral institutions;
- v) The periodic reporting of two (2) years as enshrined in the Charter will provide an opportunity for Kenya to continually improve its legal framework, strengthen the institutional capacity of democratic institutions as well as implement programmes meant to achieve optimum levels of democracy, respect to human rights and good governance;
- vi) Accession to the Charter will build up on Kenya's adherence to regional democratic and human rights principles and eliminate the risk of unconstitutional changes of government.

## 5.0 COMMITTEE RECOMMENDATION

The Committee recommends: -

**THAT, Pursuant to Section 8 of the Treaty Making and Ratification Act, the House APPROVES the Ratification of The African Charter on Democracy, Elections and Governance.**

Signed.......... Date: 17/11/2020  
Hon. Katoo Ole Metito, EGH, MGH, M.P  
(CHAIRPERSON)

## **ANNEXURES**




MINISTRY OF FOREIGN AFFAIRS

PARLIAMENT MEMORANDUM

ON

KENYA'S ACCESSION TO  
THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS  
AND GOVERNANCE

 THE NATIONAL ASSEMBLY PAPERS Laid	
DATE:	15 JUL 2020
	DAY: WEDNESDAY
TABLED BY:	Hon (S.P.) James KIMWANI (MEMBER OF MAJORITY)
CLERK-AT THE-TABLE:	11-20721 MWALE

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**MEMORANDUM ON THE ACCESSION TO THE AFRICAN CHARTER ON  
DEMOCRACY, ELECTIONS AND GOVERNANCE**

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**1. OBJECTIVE OF THE MEMORANDUM**

- 1.1 The purpose of this Memorandum is seek Parliament's approval for Kenya's accession to the African Charter on Democracy, Elections and Governance (ACDEG), *hereinafter referred to as the Charter*, pursuant to Section 8 of the Treaty Making and Ratification Act No 45 of 2012 ( Rev. 2018).
- 1.2 The commencement of the treaty-making and ratification process of the Charter was approved by Cabinet during its **2nd Meeting of 2020**, held on **19<sup>th</sup> March 2020**.

**2. BACKGROUND**

- 2.1 The Charter was adopted on **30<sup>th</sup> January, 2007** as the African Union's (AU) main normative instrument to set standards for better governance across the Continent.
- 2.2 The Charter, an initiative by African leaders to provide African solutions to African challenges, is a component of The African Governance Architecture (AGA). The principle objective of AGA is the implementation of AU Shared Values and in particular the African Charter on Democracy, Elections and Governance (ACDEG). Shared Values are a means of accelerating Africa's integration agenda through values and principles that are embodied in the various instruments, decisions and declarations that have been adopted by the Union.
- 2.3 The Charter expounds upon the Constitutive Act of the AU by committing Member States to the adherence of universal values and principles of

democracy and respect for human rights. It promotes the respect of the rule of law, periodic free and fair elections, consolidation of democratic institutions and the rejection of unconstitutional changes of government.

2.4 The Charter came into force on **15<sup>th</sup> February 2012** after ratification by fifteen (15) States. As of March 2020, **thirty-four (34)** and **forty-six (46)** States had ratified and signed the Charter, respectively. Kenya signed the Charter on **28<sup>th</sup> June 2008**.


2.5 The commencement of the accession process of the Charter was approved by Cabinet during its **2nd Meeting of 2020**, held on **19<sup>th</sup> March 2020**.

### **3. OBLIGATIONS IMPOSED BY THE CHARTER**

3.1 The Charter combines, in a holistic manner, the key elements of democracy, human rights and governance. Additionally, it is a yardstick that measures the democratic governance progress of Member States.

3.2 The Charter restates the principle of transparency and accountability in government and provides for the independence of the judiciary.

3.3 The Charter requires State Parties to implement programmes that promote democratic principles and practices, adopt legislative and administrative measures that guarantee the rights of women, ethnic minorities and migrants, persons with disabilities, refugees and displaced persons including marginalized and vulnerable social groups and set up institutions to fight corruption.



3.4 The Charter condemns the unconstitutional change of government and provides for possible framework for international prosecution of people who forcefully take over government through domestic legal channels. Regional mechanisms to prosecute such individuals may be invoked upon the failure of domestic judicial mechanisms to prosecute such individuals.



#### 4. JUSTIFICATION FOR RATIFICATION

- 4.1 Kenya has made tremendous strides in establishing a mature democracy by adherence to universal values and principles of democracy, respect for human rights, the establishment of an independent judiciary and democratic institutions, enactment of electoral legislation, the respect for the rule of law and separation of powers.
- 4.2 The ratification of the Charter would therefore cement Kenya's democratic credentials, demonstrate its Afro-centric foreign policy and support of the AU Agenda 2063, in particular **Aspiration 3** which aims for an Africa of good governance, democracy, and respect for human rights and the rule of law.
- 4.3 The Charter encourages Member States to promote and deepen democratic governance by implementing the principles and core values of the African Peer Review Mechanism (APRM) where applicable. Kenya is a main supporter of the APRM and has played an active role in the APRM under the leadership of H.E. President as Chairman of the APR Forum from January 2015 to January 2018. Additionally, it is on record that Kenya was the first country to have a second APRM review in 2017. Ratification will therefore enunciate Kenya's support for the APRM.
- 4.9 Upon accession, Kenya will benefit from the Democracy and Electoral Assistance Fund and the Democracy Assistance Unit, platforms mandated to assist State Parties in the strengthening of electoral institutions. Such assistance would be vital in ensuring that Kenya remains progressive in its efforts to provide democratic leadership within the Continent.
- 4.10 The periodic reporting of two (2) years as enshrined in the Charter will provide an opportunity for Kenya to continually improve its legal framework, strengthen the institutional capacity of democratic institutions as well as



implement programmes meant to achieve optimum levels of democracy respect to human rights and good governance.

- 4.12 Accession to the Charter will build up on Kenya's adherence to regional democratic and human rights principles and eliminate the risk of unconstitutional changes of government.
- 4.13 The provisions of the Charter including any mechanisms/remedies provided therein remain subordinate to the provisions of the Kenyan Constitution.

## **5. CONSTITUTIONAL IMPLICATIONS**

- 5.1 The Charter does not propose any amendment to the Constitution. It also contains provisions which are consistent with constitutional values and objectives.

## **6. POLICY AND LEGISLATION CONSIDERATIONS**

- 6.1 State Obligations as enshrined in the Charter have been domesticated by various Laws and Institutions in Kenya, notably; The Constitution of Kenya 2010, The Elections Act, 2011, The Political Parties Act, 2011, The Independent Electoral and Boundaries Commission Act, 2011 and the County Governments Act, 2012 and the Independent Electoral and Boundaries Commission and an Independent Judiciary. In addition, Kenya holds periodic elections as provided for in the Charter.
- 6.2 To further supplement domestic legislation on democracy and human rights, Kenya has ratified and domesticated various treaties that have a bearing on the obligations enshrined in the Charter such as the promotion and protection of human rights. Among such treaties are the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

- 6.3 Kenya has also adopted and institutionalized a decentralized governance structure of County Governments, an obligation imposed on State Parties by the Charter.

## **7. PUBLIC PARTICIPATION**

- 7.1 The Charter was subjected to public participation by the Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs. Additional public participation will be conducted by Parliament in accordance with the Treaty Making and Ratification Act.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 Since provisions of the Charter have been domesticated within the domestic legal framework, financial obligations will continuously be catered for through normal budgetary estimates of the relevant institutions.

## **9. MINISTERIAL RESPONSIBILITY**

- 9.1 Implementation of the Charter will be under the collective responsibility of the Office of the Attorney General and Department of Justice, the Ministry of Foreign Affairs and the Ministry of Interior and Coordination of National Government.

## **10. IMPLICATIONS ON MATTERS RELATING TO COUNTIES**

- 10.1 The Charter mandates State Parties to decentralize power to democratically elected local authorities as provided for in national laws. The ratification and implementation of the Charter will, therefore, enhance and strengthen devolution in Kenya.

## **11. RESERVATIONS**

- 11.1 The Charter does not permit reservations. However, Member States can propose amendments to any provision of the Charter through the laid down procedures of the African Union.

**12. RECOMMENDATION TO PARLIAMENT**

In consideration of the aforementioned facts, Parliament is invited to:

1. Note the contents of the Memorandum;
2. Consider and approve Kenya's accession to the African Charter on Democracy Elections and Governance; and
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the instrument of ratification to the relevant depository.

SIGNED..........DATED 24<sup>th</sup>..... JUNE, 2020

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



**AFRICAN CHARTER ON DEMOCRACY, ELECTIONS  
AND GOVERNANCE**

## AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

### PREAMBLE

We, the Member States of the African Union (AU);

**Inspired** by the objectives and principles enshrined in the Constitutive Act of the African Union, particularly Articles 3 and 4, which emphasise the significance of good governance, popular participation, the rule of law and human rights;

**Recognising** the contributions of the African Union and Regional Economic Communities to the promotion, nurturing, strengthening and consolidation of democracy and governance;

**Reaffirming** our collective will to work relentlessly to deepen and consolidate the rule of law, peace, security and development in our countries;

**Guided** by our common mission to strengthen and consolidate institutions for good governance, continental unity and solidarity;

**Committed** to promote the universal values and principles of democracy, good governance, human rights and the right to development;

**Cognizant** of the historical and cultural conditions in Africa;

**Seeking** to entrench in the Continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies;

**Concerned** about the unconstitutional changes of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa;

**Determined** to promote and strengthen good governance through the institutionalization of transparency, accountability and participatory democracy;

**Convinced** of the need to enhance the election observation missions in the role they play, particularly as they are an important contributory factor to ensuring the regularity, transparency and credibility of elections;

**Desirous** to enhance the relevant Declarations and Decisions of the OAU/AU (including the 1990 Declaration on the political and socio-economic situation in Africa and the fundamental changes taking place in the world, the 1995 Cairo Agenda for the Re-launch of Africa's Economic and Social Development, the 1999 Algiers Declaration on Unconstitutional Changes of Government, the 2000



Lomé Declaration for an OAU Response to Unconstitutional Changes of Government, the 2002 OAU/AU Declaration on Principles Governing Democratic Elections in Africa, the 2003 Protocol Relating to the Establishment of the Peace and Security Council of the African Union);

**Committed** to implementing Decision EX.CL/Dec.31(III) adopted in Maputo, Mozambique, in July 2003 and Decision EX.CL/124(V) adopted in Addis Ababa, Ethiopia, in May 2004 respectively, by the adoption of an African Charter on Democracy, Elections and Governance;

**HAVE AGREED AS FOLLOWS:**

## **Chapter 1 Definitions**

### **Article 1**

In this Charter, unless otherwise stated, the following expressions shall have the following meaning:

"AU" means the African Union;

"African Human Rights Commission" means the African Commission on Human and Peoples' Rights;

"African Peer Review Mechanism" APRM means the African Peer Review Mechanism;

"Assembly" means the Assembly of Heads of State and Government of the African Union;

"Commission" means the Commission of the Union;

"Constitutive Act" means the Constitutive Act of the Union;

"Charter" means the African Charter on Democracy, Elections and Governance;

"Member States" means the Member States of the African Union;

"National Electoral Body" means a competent authority, established by the relevant legal instruments of a State Party, responsible for organizing and supervising elections;

"NEPAD" means the New Partnership for Africa's Development;

"Peace and Security Council" means the Peace and Security Council of the African Union;

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

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

"Union" means the African Union.



## **Chapter 2 Objectives**

### **Article 2**

The objectives of this Charter are to:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights;
2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political arrangements of the State Parties;
3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;
4. Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development;
5. Promote and protect the independence of the judiciary;
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance;
7. Encourage effective coordination and harmonization of governance policies amongst State Parties with the aim of promoting regional and continental integration;
8. Promote State Parties' sustainable development and human security;
9. Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003;
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;
11. Promote gender balance and equality in the governance and development processes;
12. Enhance cooperation between the Union, Regional Economic Communities and the International Community on democracy, elections and governance; and
13. Promote best practices in the management of elections for purposes of political stability and good governance.



### **Chapter 3 Principles**

#### **Article 3**

State Parties shall implement this Charter in accordance with the following principles:

1. Respect for human rights and democratic principles;
2. Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law;
3. Promotion of a system of government that is representative;
4. Holding of regular, transparent, free and fair elections;
5. Separation of powers;
6. Promotion of gender equality in public and private institutions;
7. Effective participation of citizens in democratic and development processes and in governance of public affairs;
8. Transparency and fairness in the management of public affairs;
9. Condemnation and rejection of acts of corruption, related offenses and impunity;
10. Condemnation and total rejection of unconstitutional changes of government;
11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

### **Chapter 4 Democracy, Rule of Law and Human Rights**

#### **Article 4**

1. State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights.





2. State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people.

#### **Article 5**

State Parties shall take all appropriate measures to ensure constitutional rule, particularly constitutional transfer of power.

#### **Article 6**

State Parties shall ensure that citizens enjoy fundamental freedoms and human rights taking into account their universality, interdependence and indivisibility.

#### **Article 7**

State Parties shall take all necessary measures to strengthen the Organs of the Union that are mandated to promote and protect human rights and to fight impunity and endow them with the necessary resources.

#### **Article 8**

1. State Parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance.
2. State Parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups.
3. State Parties shall respect ethnic, cultural and religious diversity, which contributes to strengthening democracy and citizen participation.

#### **Article 9**

State Parties undertake to design and implement social and economic policies and programmes that promote sustainable development and human security.



### **Article 10**

1. State Parties shall entrench the principle of the supremacy of the constitution in the political organization of the State.
2. State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.
3. State Parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society.

## **Chapter 5 The Culture of Democracy and Peace**

### **Article 11**

The State Parties undertake to develop the necessary legislative and policy frameworks to establish and strengthen a culture of democracy and peace.

### **Article 12**

State Parties undertake to implement programmes and carry out activities designed to promote democratic principles and practices as well as consolidate a culture of democracy and peace.

To this end, State Parties shall:

1. Promote good governance by ensuring transparent and accountable administration.
2. Strengthen political institutions to entrench a culture of democracy and peace.
3. Create conducive conditions for civil society organizations to exist and operate within the law.
4. Integrate civic education in their educational curricula and develop appropriate programmes and activities.

### **Article 13**

State Parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace.



**Chapter 6  
Democratic Institutions**

**Article 14**

1. State Parties shall strengthen and institutionalize constitutional civilian control over the armed and security forces to ensure the consolidation of democracy and constitutional order.
2. State Parties shall take legislative and regulatory measures to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.
3. State Parties shall cooperate with each other to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.

**Article 15**

1. State Parties shall establish public institutions that promote and support democracy and constitutional order.
2. State Parties shall ensure that the independence or autonomy of the said institutions is guaranteed by the constitution.
3. State Parties shall ensure that these institutions are accountable to competent national organs.
4. State Parties shall provide the above-mentioned institutions with resources to perform their assigned missions efficiently and effectively.

**Article 16**

State Parties shall cooperate at regional and continental levels in building and consolidating democracy through exchange of experiences.

**Chapter 7  
Democratic Elections**

**Article 17**

State Parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa.



To this end, State Parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
2. Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.
3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.
4. Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels.

#### **Article 18**

1. State Parties may request the Commission, through the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund, to provide advisory services or assistance for strengthening and developing their electoral institutions and processes.
2. The Commission may at any time, in consultation with the State Party concerned, send special advisory missions to provide assistance to that State Party for strengthening its electoral institutions and processes.

#### **Article 19**

1. Each State Party shall inform the Commission of scheduled elections and invite it to send an electoral observer mission.
2. Each State Party shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission.

#### **Article 20**

The Chairperson of the Commission shall first send an exploratory mission during the period prior to elections. This mission shall obtain any useful information and documentation, and brief the Chairperson, stating whether the necessary conditions have been established and if the environment is conducive to the holding of transparent, free and fair elections in conformity with the principles of the Union governing democratic elections.



### **Article 21**

1. The Commission shall ensure that these missions are independent and shall provide them with the necessary resources for that purpose.
2. Electoral observer missions shall be conducted by appropriate and competent experts in the area of election monitoring, drawn from continental and national institutions such as, but not limited to, the Pan-African Parliament, national electoral bodies, national legislatures and eminent persons taking due cognizance of the principles of regional representation and gender equality.
3. Electoral observer missions shall be conducted in an objective, impartial and transparent manner.
4. All electoral observer missions shall present the report of their activities to the Chairperson of the Commission within a reasonable time.
5. A copy of the report shall be submitted to the State Party concerned within a reasonable time.

### **Article 22**

State Parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.

### **Chapter 8**

#### **Sanctions in Cases of Unconstitutional Changes of Government**

### **Article 23**

State Parties agree that the use of, *inter alia*, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. Any putsch or coup d'Etat against a democratically elected government.
2. Any intervention by mercenaries to replace a democratically elected government.
3. Any replacement of a democratically elected government by armed dissidents or rebels.
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or



5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

#### **Article 24**

When a situation arises in a State Party that may affect its democratic political institutional arrangements or the legitimate exercise of power, the Peace and Security Council shall exercise its responsibilities in order to maintain the constitutional order in accordance with relevant provisions of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, hereinafter referred to as the Protocol.

#### **Article 25**

1. When the Peace and Security Council observes that there has been an unconstitutional change of government in a State Party, and that diplomatic initiatives have failed, it shall suspend the said State Party from the exercise of its right to participate in the activities of the Union in accordance with the provisions of articles 30 of the Constitutive Act and 7 (g) of the Protocol. The suspension shall take effect immediately.
2. However, the suspended State Party shall continue to fulfill its obligations to the Union, in particular with regard to those relating to respect of human rights.
3. Notwithstanding the suspension of the State Party, the Union shall maintain diplomatic contacts and take any initiatives to restore democracy in that State Party.
4. The perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their State.
5. Perpetrators of unconstitutional change of government may also be tried before the competent court of the Union.
6. The Assembly shall impose sanctions on any Member State that is proved to have instigated or supported unconstitutional change of government in another state in conformity with Article 23 of the Constitutive Act.
7. The Assembly may decide to apply other forms of sanctions on perpetrators of unconstitutional change of government including punitive economic measures.



8. State Parties shall not harbour or give sanctuary to perpetrators of unconstitutional changes of government.
9. State Parties shall bring to justice the perpetrators of unconstitutional changes of government or take necessary steps to effect their extradition.
10. State Parties shall encourage conclusion of bilateral extradition agreements as well as the adoption of legal instruments on extradition and mutual legal assistance.

#### **Article 26**

The Peace and Security Council shall lift sanctions once the situation that led to the suspension is resolved.

### **Chapter 9 Political, Economic and Social Governance**

#### **Article 27**

In order to advance political, economic and social governance, State Parties shall commit themselves to:

1. Strengthening the capacity of parliaments and legally recognised political parties to perform their core functions;
2. Fostering popular participation and partnership with civil society organizations;
3. Undertaking regular reforms of the legal and justice systems;
4. Improving public sector management;
5. Improving efficiency and effectiveness of public services and combating corruption;
6. Promoting the development of the private sector through, inter alia, enabling legislative and regulatory framework;
7. Development and utilisation of information and communication technologies;
8. Promoting freedom of expression, in particular freedom of the press and fostering a professional media;
9. Harnessing the democratic values of the traditional institutions; and
10. Preventing the spread and combating the impact of diseases such as Malaria, Tuberculosis, HIV/AIDS, Ebola fever, and Avian Flu.



**Article 28**

State Parties shall ensure and promote strong partnerships and dialogue between government, civil society and private sector.

**Article 29**

1. State Parties shall recognize the crucial role of women in development and strengthening of democracy.
2. State Parties shall create the necessary conditions for full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.
3. State Parties shall take all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all levels, including legislatures.

**Article 30**

State Parties shall promote citizen participation in the development process through appropriate structures.

**Article 31**

1. State Parties shall promote participation of social groups with special needs, including the Youth and people with disabilities, in the governance process.
2. State Parties shall ensure systematic and comprehensive civic education in order to encourage full participation of social groups with special needs in democracy and development processes.

**Article 32**

State Parties shall strive to institutionalize good political governance through:

1. Accountable, efficient and effective public administration;
2. Strengthening the functioning and effectiveness of parliaments;
3. An independent judiciary;
4. Relevant reforms of public institutions including the security sector;
5. Harmonious relationships in society including civil-military relations;
6. Consolidating sustainable multiparty political systems;





7. Organising regular, free and fair elections; and
8. Entrenching and respecting the principle of the rule of law.

### **Article 33**

State Parties shall institutionalize good economic and corporate governance through, inter alia:

1. Effective and efficient public sector management;
2. Promoting transparency in public finance management;
3. Preventing and combating corruption and related offences;
4. Efficient management of public debt;
5. Prudent and sustainable utilization of public resources;
6. Equitable allocation of the nation's wealth and natural resources;
7. Poverty alleviation;
8. Enabling legislative and regulatory framework for private sector development;
9. Providing a conducive environment for foreign capital inflows;
10. Developing tax policies that encourage investment;
11. Preventing and combating crime;
12. Elaborating and implementing economic development strategies including private-public sector partnerships;
13. An efficient and effective tax system premised upon transparency and accountability.

### **Article 34**

State Parties shall decentralize power to democratically elected local authorities as provided in national laws.

### **Article 35**

Given the enduring and vital role of traditional authorities, particularly in rural communities, the State Parties shall strive to find appropriate ways and means to increase their integration and effectiveness within the larger democratic system.

### **Article 36**

State Parties shall promote and deepen democratic governance by implementing the principles and core values of the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance and, where applicable, the African Peer Review Mechanism (APRM).



**Article 37**

State Parties shall pursue sustainable development and human security through achievement of NEPAD objectives and the United Nations Millennium Development Goals (MDGs).

**Article 38**

1. State Parties shall promote peace, security and stability in their respective countries, regions and in the continent by fostering participatory political systems with well-functioning and, if need be, inclusive institutions;
2. State Parties shall promote solidarity amongst Member States and support the conflict prevention and resolution initiatives that the Union may undertake in conformity with the Protocol establishing the Peace and Security Council.

**Article 39**

State Parties shall promote a culture of respect, compromise, consensus and tolerance as a means to mitigate conflicts, promote political stability and security, and to harness the creative energies of the African peoples.

**Article 40**

State Parties shall adopt and implement policies, strategies and programmes required to generate productive employment, mitigate the impact of diseases and alleviate poverty and eradicate extreme poverty and illiteracy.

**Article 41**

State Parties shall undertake to provide and enable access to basic social services to the people.

**Article 42**

State Parties shall implement policies and strategies to protect the environment to achieve sustainable development for the benefit of the present and future generations. In this regard, State Parties are encouraged to accede to the relevant treaties and other international legal instruments.



**Article 43**

1. State Parties shall endeavour to provide free and compulsory basic education to all, especially girls, rural inhabitants, minorities, people with disabilities and other marginalized social groups.
2. In addition, State Parties shall ensure the literacy of citizens above compulsory school age, particularly women, rural inhabitants, minorities, people with disabilities, and other marginalized social groups.

**Chapter 10  
Mechanisms for Application**

**Article 44**

To give effect to the commitments contained in this Charter:

**1. Individual State Party Level**

State Parties commit themselves to implement the objectives, apply the principles and respect the commitments enshrined in this Charter as follows:

- (a) State Parties shall initiate appropriate measures including legislative, executive and administrative actions to bring State Parties' national laws and regulations into conformity with this Charter;
- (b) State Parties shall take all necessary measures in accordance with constitutional provisions and procedures to ensure the wider dissemination of the Charter and all relevant legislation as may be necessary for the implementation of its fundamental principles;
- (c) State Parties shall promote political will as a necessary condition for the attainment of the goals set forth in this Charter;
- (d) State Parties shall incorporate the commitments and principles of the Charter in their national policies and strategies.

**2. Commission Level**

**A. At Continental Level**

- (a) The Commission shall develop benchmarks for implementation of the commitments and principles of this Charter and evaluate compliance by State Parties;
- (b) The Commission shall promote the creation of favourable conditions for democratic governance in the African



Continent, in particular by facilitating the harmonization of policies and laws of State Parties;

- (c) The Commission shall take the necessary measures to ensure that the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund provide the needed assistance and resources to State Parties in support of electoral processes;
- (d) The Commission shall ensure that effect is given to the decisions of the Union in regard to unconstitutional change of government on the Continent.

#### **B. At Regional Level**

The Commission shall establish a framework for cooperation with Regional Economic Communities on the implementation of the principles of the Charter. In this regard, it shall commit the Regional Economic Communities (RECs) to:

- a) Encourage Member States to ratify or adhere to this Charter.
- b) Designate focal points for coordination, evaluation and monitoring of the implementation of the commitments and principles enshrined in this Charter in order to ensure massive participation of stakeholders, particularly civil society organizations, in the process.

#### **Article 45**

The Commission shall:

- (a) Act as the central coordinating structure for the implementation of this Charter;
- (b) Assist State Parties in implementing the Charter;
- (c) Coordinate evaluation on implementation of the Charter with other key organs of the Union including the Pan-African Parliament, the Peace and Security Council, the African Human Rights Commission, the African Court of Justice and Human Rights, the Economic, Social and Cultural Council, the Regional Economic Communities and appropriate national- level structures.



**Chapter 11  
Final Clauses**

**Article 46**

In conformity with applicable provisions of the Constitutive Act and the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, the Assembly and the Peace and Security Council shall determine the appropriate measures to be imposed on any State Party that violates this Charter.

**Article 47**

1. This Charter shall be open for signature, ratification and accession by Member States of the Union in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

**Article 48**

This Charter shall enter into force thirty (30) days after the deposit of fifteen (15) Instruments of Ratification.

**Article 49**

1. State Parties shall submit every two years, from the date the Charter comes into force, a report to the Commission on the legislative or other relevant measures taken with a view to giving effect to the principles and commitments of the Charter;
2. A copy of the report shall be submitted to the relevant organs of the Union for appropriate action within their respective mandates;
3. The Commission shall prepare and submit to the Assembly, through the Executive Council, a synthesized report on the implementation of the Charter;
4. The Assembly shall take appropriate measures aimed at addressing issues raised in the report.



**Article 50**

1. Any State Party may submit proposals for the amendment or revision of this Charter;
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit same to State Parties within thirty (30) days of receipt thereof;
3. The Assembly, upon the advice of the Executive Council, shall examine these proposals at its session following notification, provided all State Parties have been notified at least three (3) months before the beginning of the session;
4. The Assembly shall adopt amendments or revisions by consensus or failing which, by two-thirds majority;
5. The amendments or revisions shall enter into force when approved by two-thirds majority of State Parties.

**Article 51**

1. The Chairperson of the Commission shall be the depository of this Charter;
2. The Chairperson of the Commission shall inform all Member States of the signature, ratification, accession, entry into force, reservations, requests for amendments and approvals thereof;
3. Upon entry into force of this Charter, 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.

**Article 52**

None of the provisions of the present Charter shall affect more favourable provisions relating to democracy, elections and governance contained in the national legislation of State Parties or in any other regional, continental or international conventions or agreements applicable in these State Parties.



**Article 53**

This Charter, drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified copies of same to all Member States and the United Nations General Secretariat.

**ADOPTED BY THE EIGHTH ORDINARY SESSION OF THE  
ASSEMBLY, HELD IN ADDIS ABABA, ETHIOPIA,  
30 JANUARY 2007**

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# National News

## Politics They vow to go to court to block move as female senator's throw weight behind the CJ Parliament fights Maraga advisory

### Petition to dissolve National Assembly and Senate is ill-advised, premature and unconstitutional, warns PSC

BY NATION TEAM

Parliament yesterday launched a scathing attack against Chief Justice David Maraga and the Judiciary over the petition to dissolve the House for failing to operationalise the two-thirds gender rule.

From moving to court, to finding fault in Justice Maraga's decision, to verbal attacks and even summoning Kenya's top judge to explain why the Supreme Court has not attained gender parity, lawmakers were firing from all cylinders as they trained their guns on the man they claimed was out to cut short their term.

National Assembly Speaker Justin Muturi directed the Parliamentary Service Commission (PSC) to challenge Justice Maraga's petition in court, saying it was ill-advised, premature and unconstitutional.

"We must not lose sight of the real challenges in implementing this matter and turn Parliament into a punching bag on account of gender parity. The PSC is convinced that the matter shall



National Assembly Speaker Justin Muturi (second left) during a press briefing at Parliament Buildings yesterday. He is flanked by members of the Parliamentary Service Commission. JEFF ANGOTE/ NATION

be resolved lawfully and calls for calm and sobriety in order to avert the kind of national anxiety and despondency that the action of the CJ could elicit," Mr Muturi said.

The commission accused the chief justice of ignoring the "fundamental issues that go to the root of the fabric and structure of our constitution" in advising the President to dissolve parliament.

It cited the fact that there are two High Court petitions set for hearing on October 7, 2020.

The petitions seek the determi-

nation of the court over whether the order made by Justice Mativo on March 29, 2017, during the tenure of the 11th Parliament is applicable to the 12th Parliament that was elected in August 2017.

Justice Mativo had ordered that Parliament passes the law within 60 days from the judgment date or risk having someone going to court to petition for the dissolution of Parliament.

"It is therefore premature for the Chief Justice to take this action while the High Court is yet to de-

termine this matter."

Among the arguments PSC will be presenting to the High Court is that the term of that Parliament expired upon the general elections in August 2017 and a new 12th Parliament, the current one, assumed office.

The Speaker noted that the 5th schedule makes no mention of any legislation to be passed by Parliament "arising from article 27 of the Constitution upon which Parliament has been blamed so harshly"

This came as MPs summoned the Chief Justice to explain why the Supreme Court has failed to achieve the two-thirds gender rule.

Chairman of Constitutional Implementation Oversight Committee (CIOC) Jeremiah Kioni said they want the CJ to account before Parliament why the institution he has not implemented the gender balance principle.

The attacks were extended into the sittings of both the Senate and the National Assembly, with senators and MPs taking issue with Justice Maraga's petition.

In the National Assembly, MPs Amos Kimunya (Kippiriri), Aden Duale (Garissa Township), Oluoch Aluoch (Kisumu Town West), Otieno Amollo (Narinda), John Mboi (Suba South), Jeremiah Kioni (Ndaragwa) and Adan Keynan said that CJ Maraga's advice to the President was ill advised.

However, only Suba North MP Millie Odhiambo spoke in support of CJ Maraga. "Let us stop personalising attacks against the CJ. The matter has now gone to the President who will decide to dissolve or

We must not lose sight of the real challenges in implementing this matter and turn Parliament into a punching bag.

Speaker Justin Muturi

choose to dilly dally and save Parliament," said Ms Odhiambo.

At the Senate, in a debate that exposed the sharp differences between male and female senators, the lawmakers accused the CJ of being a lone ranger and playing to the gallery.

"Mr Maraga acted prematurely and in a hurry," Makeni senator Mutula Kilongo Jr said in reference to the advisory, adding that the CJ should have exercised extreme caution because an appeal on the issue could end up in the Supreme Court.

However, nominated senator Abshiro Halake, Farhiya Ali, Millicent Omanga, Sylvia Kassangi threw their support behind Maraga, saying his advisory had not only brought back the gender debate on the table, but also created a constitutional moment to ensure that the necessary laws are enacted to emancipate women.

Reported by David Mwero, Ibrahim Oduko and Samuel Owino

REPUBLIC OF KENYA

**NATIONAL ASSEMBLY**  
TWELFTH PARLIAMENT - FOURTH SESSION

In matter of consideration by the National Assembly:-  
The African Charter on Democracy, Elections and Governance

**SUBMISSION OF MEMORANDA**

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". Further, Section 8 of the Treaty Making and Ratification Act, 2012 provides for the consideration and ratification of Treaties by Parliament. Subsection (3) states that, "the relevant Parliamentary Committee shall during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures".

The National Assembly is in receipt of the African Charter on Democracy, Elections and Governance for approval for ratification by the Government of the Republic of Kenya. The main purpose of the Charter as adopted by the African Union is to be the main normative instrument to set standards for better governance across the Continent. The Charter expounds upon the Constitutive Act of the African Union by committing member states to the adherence of universal values and principles of democracy and respect for human rights. The Charter also promotes the respect of the rule of law, periodic free and fair elections, consolidation of democratic institutions and the rejection of unconstitutional changes of government.

Pursuant to Section 8 of the Treaty Making and Ratification Act, 2012 and Standing Order 216(5)(fa), the Charter has been committed to the Departmental Committee on Defence and Foreign Relations for consideration and thereafter reporting to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the Committee invites interested members of the public to submit any presentations they may have on the said Charter. The full text of the Charter and its accompanying Memorandum to Parliament may be accessed at parliamentary website: [www.parliament.go.ke](http://www.parliament.go.ke).

The presentations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Wednesday, 30<sup>th</sup> September, 2020 at 5:00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

**COUNTY GOVERNMENT OF KAKAMEGA**

**KAKAMEGA COUNTY ASSEMBLY**  
OFFICE OF THE CLERK OF THE COUNTY ASSEMBLY

**PUBLIC NOTICE**  
FINANCE BILL FINANCIAL YEAR 2020/2021  
PUBLIC PARTICIPATION

Article 196(1) (b) of the Constitution of Kenya, 2010 provides "A County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees." Standing Order No. 120 (3) of Kakamega County Assembly Standing Orders states that "the Sectoral Committees to which Bills are committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the County Assembly."

**SUBMISSION OF MEMORANDA/PUBLIC PARTICIPATION**

The aforementioned Bill having been introduced in the house and subsequently committed to the Finance and Economic Planning Committee for consideration and thereafter submission of report to the County Assembly.

Pursuant to the Constitution of Kenya Chapter 12, Article 201 (e), and Public Finance Management Act 2012, the Finance and Economic Planning Committee of Kakamega County Assembly hereby publish to the general public the public participation forum on the Finance Bill Financial Year 2020/2021 shall be conducted as per the schedule below:

DAY	DATE	SUB-COUNTY	TIME	VENUE
Friday	25/09/2020	Lurambi	9:30AM	Sub-County Social Hall

Members of the public i.e Civil Societies, NGOs, Professional Groups, Youths, Women groups, Persons with Disabilities Traders and Faith-based organizations are encouraged to participate.

Copies of the Bill can either be obtained from the Office of the Clerk or downloaded from the website: [www.kakamegaassembly.go.ke](http://www.kakamegaassembly.go.ke).

Views or memoranda should be hand delivered to the office of the Clerk of County Assembly (former County Court of Kakamega offices) next to the County Commissioner's Office or email to [kakamegacountyassembly@gmail.com](mailto:kakamegacountyassembly@gmail.com) to be received on or before Monday 28<sup>th</sup> September, 2020 at 5:00pm.

CPA Laban M. Atamba  
Clerk of County Assembly

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REPUBLIC OF KENYA





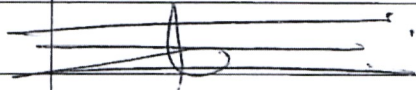
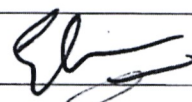
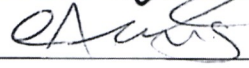
KENYA NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS  
Adoption Schedule

REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN  
RELATIONS ON KENYA'S ACCESSION TO THE AFRICAN CHARTER ON  
DEMOCRACY, ELECTIONS AND GOVERNANCE

We, the undersigned Members of the Departmental Committee on Defence & Foreign Relations, today 14<sup>th</sup> November, 2020 do hereby affix our signatures to this REPORT ON KENYA'S ACCESSION TO THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE to affirm our approval and confirm its accuracy, validity and authenticity:-

NO.	NAME	SIGNATURE
1.	The Hon. Katoo Ole Metito, EGH, MGH, M.P - <b>Chairperson</b>	
2.	The Hon. Richard Tong'i, M.P - <b>Vice Chairperson</b>	
3.	The Hon. Col. (Rtd.) Gideon S. Konchela, EGH, OGW, 'psc' (UK), M.P	
4.	The Hon. Yusuf Hassan Abdi, M.P	
5.	The Hon. Charles Mutavi Kilonzo, M.P	
6.	The Hon. Col. (Rtd.) Dido Ali Raso, MBS, M.P	
7.	The Hon. Richard Maore Maoka, CBS, M.P	
8.	The Hon. Martha Wangari Wanjira, M.P	
9.	The Hon. Elijah Memusi Kanchory, M.P	

10.	The Hon. Stephen Mutinda Mule, M.P	
11.	The Hon. Major (Rtd.) Bashir Sheikh Abdullahi, M.P	
12.	The Hon. (Dr.) Lilian Gogo, M.P	
13.	The Hon. (Dr.) Irene Muthoni Kasalu, M.P	
14.	The Hon. Moses Nguchine Kirima, M.P	
15.	The Hon. Vincent Kipkurui Tuwei, M.P	
16.	The Hon. Ernest Ogesi Kivai, M.P	
17.	The Hon. Caleb Amisi, MP	
18.	The Hon. Asha Hussein Mohamed	
19.	The Hon. Zachary Kwenya Thuku, M.P	