

# **THE TREATIES BILL, 2011**

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**THE TREATIES BILL, 2011**

**A Bill for**

**An Act of Parliament to provide for the ratification of treaties and related matters.**

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

	<b>PART I—PRELIMINARY</b>
Short title	<b>1.</b> This Act may be cited as the Treaties Act, 2011.
Interpretation	<b>2.</b> In this Act, unless the context otherwise requires—  “Bilateral Treaty” means an agreement concluded between Kenya and any other State.  “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to treaties and in the interim until after the first general elections as provided in the Constitution the Cabinet Secretary shall be construed to mean the Minister responsible for matters relating to foreign affairs;  “International organization” means an intergovernmental organization  “Lead Ministry” means the Ministry responsible for the subject matter of a treaty;  “Ministry” means the Ministry responsible for matters relating to treaties;  “Multilateral Treaty” means an agreement to which more than two States are party;  “Ratification” means the international act by which a State signifies its consent to be bound by a treaty and includes “acceptance”, “approval” and “accession” where the treaty so provides;  “Registrar” means the Registrar of Treaties appointed under section

	<p>10 of this Act;</p> <p>“Registry” means the Registry of Treaties established under section 11 of this Act;</p> <p>“Reservation” means a unilateral statement made by a State when signing, ratifying or acceding to a treaty, whereby it expresses its intention not to be bound by a particular treaty obligation;</p> <p>“Signature” means an act whereby the State expresses its willingness to consent to the text of a Treaty and has the effect of obligating the said State, even though it may not be a Party to the treaty, to refrain, in good faith, from acts that would defeat the object and purpose of the treaty;</p> <p>“Treaty” means an agreement concluded at the international, regional or sub-regional levels between or among States and/or international organisations in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;</p> <p>“Treaty Body” means conference of parties or committee of independent experts, established under a Treaty to monitor State implementation of the treaty provisions. “Treaty Bodies” shall be construed accordingly.</p>
<p>Purpose</p>	<p><b>3.</b> The purpose of the Act is to give effect to Article 2(6) of the Constitution as read together with Article 94(5) of the Constitution and to provide the procedure for ratification of international treaties by Kenya and related matters.</p>
<p>Application</p> <p>Section 8 (no. 5 of 2000)</p>	<p><b>4.</b> This act shall apply to:</p> <p>(1) All Multilateral Treaties including Acts of the East Africa Community.</p> <p>(2) All Bilateral Treaties which deal with—</p> <p style="padding-left: 40px;">(a) the security of Kenya, its sovereignty, independence, unity or territorial integrity;</p> <p style="padding-left: 40px;">(b) the rights and duties of Kenyan citizens;</p>

	<p>(c) the status of Kenya under international law or the maintenance or support of such status;</p> <p>(d) the relationship between Kenya and any international organisation or similar body; and</p> <p>(e) the environment and natural resources</p> <p>Shall be ratified in accordance with the provisions of this Act.</p> <p>(3) Any treaty relating to the adjustment, alteration variation of the present position of kenya on matters of sovereignty, independence and territorial integrity shall be subjected a referendum in accordance with Article 255 of the Constitution.</p> <p>(4) Save for those provided in subsection 4(2) and subject to the provisions of the constitution, the Executive may enter into other bilateral agreements necessary for the operationalisation of different matters relating to government business.</p>
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**PART II—RATIFICATION OF TREATIES**

<p>Cabinet approval</p>	<p><b>5.</b> (1) Before a Treaty is ratified, the Cabinet Secretary in the Lead Ministry shall present to the Cabinet a memorandum outlining the following:—</p> <ul style="list-style-type: none"> <li>(a) subject matter</li> <li>(b) an indication of the national interest involved;</li> <li>(c) obligations imposed on Kenya by the treaty;</li> <li>(d) requirements for implementation;</li> <li>(e) policy and legislative considerations;</li> <li>(f) financial implications;</li> <li>(g) ministerial responsibility;</li> <li>(h) implications on matters relating to counties;</li> <li>(i) the summary of the process leading to the adoption of the treaty; date of signature where Kenya is a signatory;</li> <li>(j) number of State parties;</li> <li>(k) any recommendations on reservations and</li> </ul>
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	<p>declarations,</p> <p>for Cabinet consideration within thirty (30) days and approval prior to submission to Parliament.</p>
Public participation	<p><b>6.</b> (1) After approval by Cabinet, the Cabinet Secretary in the Lead Ministry shall publish the treaty in the Gazette and publicise it widely through different mediums including the internet for a period of thirty (30) days.</p> <p>(2) The Cabinet Secretary in the Lead Ministry shall within the thirty (30) days stipulated in section 6(1) take measures to facilitate public awareness of the provisions of the treaty and participation at national and county levels.</p>
Approval by Parliament	<p><b>7.</b> (1) The Cabinet Secretary in the Lead Ministry together with the Cabinet Secretary shall submit the treaty and the Cabinet Memorandum to the Speaker of the National Assembly.</p> <p>(2) Where the subject matter of a treaty affects devolved powers vested on counties, such treaty and Cabinet Memorandum shall be concurrently submitted to the Speaker of the Senate.</p> <p>(3) The Speaker of the National Assembly and where applicable of the Senate, shall submit the treaty and the Cabinet memorandum to the respective parliamentary committees for scrutiny for a period of fourteen days.</p> <p>(4) The respective parliamentary committee may invite public comments on the treaty.</p> <p>(5) Upon expiry of the period prescribed under section 6, the respective Parliamentary Committees shall table the treaty and their respective reports before the National Assembly and the Senate for debate and approval.</p> <p>(6) The National Assembly and where applicable the Senate may –</p> <ul style="list-style-type: none"> <li>(a) approve the treaty; or</li> <li>(b) approve with reservations where the treaty permits; or</li> <li>(c) decline approval of the treaty.</li> </ul> <p>(6) Where the treaty is approved by the National Assembly and where applicable the Senate it shall be deemed to have been duly passed;</p> <p>(7) The National Assembly and where applicable the Senate</p>

	<p>shall not approve the ratification of a treaty whose provisions are contrary to the provisions of the Constitution.</p> <p>(8) Upon approval, the Speaker of the National Assembly and where applicable, the Speaker of the Senate, shall submit their notices of approval of the treaty to the Cabinet Secretaries of the lead Ministry and the ministry responsible for matters relating to treaties within fourteen days.</p> <p>(9) Where one house approves and the other declines approval of a treaty, it shall be referred to the mediation committee in accordance with article 112 of the Constitution.</p> <p>(10) Where the National Assembly and Senate decline to approve the treaty, it shall be taken to have been declined by both Houses of Parliament.</p> <p>(11) Where the National Assembly and Senate decline to approve the treaty, the Speakers of the two houses shall submit their decision to the Cabinet Secretaries of the lead Ministry and the Ministry responsible for matters relating to treaties within fourteen days.</p> <p>(12) Nothing in this Act precludes the resubmission of a treaty to National Assembly and where applicable the Senate where approval of the treaty had been declined.</p>
Ratification of the Treaty	<p><b>8.</b> (1) Upon approval by the National Assembly and where applicable the Senate, the Cabinet Secretary shall prepare and lodge the instruments of ratification, accession, acceptance or approval with the depository of the treaty within thirty (30) days.</p> <p>(2) A copy of the instruments of ratification shall be retained at the Treaties Registry.</p> <p>(3) Where a treaty which has been ratified under this Act is subsequently amended or modified, the amendment or modification shall be approved in accordance with sections (5), (6), (7), (8) of this Act.</p> <p>(4) The Lead Ministry shall ensure participation by Kenya in any negotiations on treaty amendments and shall, subject to subsection (3) of this Act, recommend any reservation/s or approval/s to the proposed amendments.</p> <p>(5) Any person who ratifies or purports to ratify a treaty in any manner that is contrary to this Act commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten</p>

	years or to a fine not exceeding ten million shillings or to both such fine and imprisonment.
Withdrawal and Denunciation	<p><b>9.</b> (1) Where Kenya wishes to withdraw from or denounce a treaty with sufficient reasons, the Cabinet Secretaries for the lead Ministry and the Ministry responsible for Treaties shall follow procedures similar to those set out in sections (5), (6) (7) and (8) with the necessary modifications .</p> <p>(2) The State shall not withdraw or denounce a treaty in contravention of its constitutional and international obligations.</p>
<b>PART III—THE REGISTRY OF TREATIES</b>	
Registrar of Treaties.	<p><b>10.</b> [1] There shall be a Registrar of Treaties who shall be the head of the Registry of Treaties</p> <p>[2] The office of the Registrar shall be an office in the public service.</p> <p>[3] A person shall be qualified to be appointed as Registrar if that person—</p> <p>(a) is a citizen of Kenya;</p> <p>(b) is a holder of a first degree in social sciences</p> <p>(c) has training and knowledge and at least three years experience in information science or a related field</p> <p>(d) meets the requirements of chapter 6 of the Constitution</p>
Establishment of a Registry of Treaties.	<p><b>11.</b> (1) There is established a Registry of Treaties which shall be in the Ministry.</p> <p>(2) The Registry of Treaties shall—</p> <p>(a) Maintain a record and a website of all treaties to which Kenya is a signatory;</p> <p>(b) Maintain a record of all treaties proposed for ratification by Kenya;</p> <p>(c) Maintain a record of all treaties that Kenya has ratified.</p> <p>(d) Maintain a record of Kenya’s reports to the Treaty Bodies.</p>

	<p>(e) Maintain a record of the recommendations and concluding observations from Treaty Bodies on Kenya’s reports</p> <p>Keep copies of the published reports of proceedings of the negotiations that led to the adoption of the Treaties ratified by Kenya.</p> <p>(f) Facilitate public access to treaties to which Kenya has ratified</p> <p>(g) Respond to public inquiries on treaty-related queries;</p> <p>(r) Perform such other functions as may be prescribed by the Cabinet Secretary</p>
<b>PART IV— GENERAL PROVISIONS</b>	
Public awareness.	<b>12.</b> Every Lead Ministry responsible for a treaty shall take measures to inform the public and create awareness on the contents of the treaty, the status of its implementation and any other relevant information including the appropriation of funds for the purposes of this Act.
Reporting in compliance with terms of treaties.	<p><b>13.</b> (1) Where a treaty provides for the submission of periodic reports as part of its monitoring mechanism, the Cabinet Secretary in the Lead Ministry shall, in consultation with other relevant State and non-state actors, facilitate the preparation and submission of such report within the prescribed period.</p> <p>[2] The Cabinet Secretary in the Lead Ministry shall put in place mechanisms to facilitate public participation at the national and county levels in the preparation of status reports and ensure dissemination of the reports and the concluding observations at both levels.</p>
Regulations.	<b>14.</b> The Cabinet Secretary may make Regulations for the better carrying out of the provisions of this Act.
Transition.	<p><b>15.</b> (1) Treaties signed and ratified by Kenya before the 27th August 2010 shall be deemed to have been ratified in accordance with the provisions of this Act.</p> <p>(2) All Bilateral agreements and treaties referred to in 4(4) and signed or ratified before the coming into force of this Act shall be deemed to have been properly signed and or ratified in accordance with the provisions of this Act.</p>