

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. OF 2023

IN THE MATTER OF: THE ENFORCEMENT OF THE BILL OF RIGHTS
UNDER ARTICLE 22(1) OF THE CONSTITUTION;
AND
IN THE MATTER OF: ARTICLES 1, 2, 3, 4, 5, 10, 19, 20, 21, 22, 23, 24, 25, 35, 47,
73, 75, 93, 94, 95, 96, 118, 129, 130, 131, 132, 152, 153, 159,
165, 232, 238, 239, 240, 241, 243, 244, 245, 246, 258 AND
259 OF THE CONSTITUTION OF KENYA 2010;
AND
IN THE MATTER OF: NATIONAL POLICE SERVICE ACT NO.11 (A) OF 2011;
AND
IN THE MATTER OF: UNLAWFUL/ILLEGAL/UNCONSTITUTIONAL
DEPLOYMENT OF KENYA POLICE OFFICERS TO THE
REPUBLIC OF HAITI;
AND
IN THE MATTER OF: INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT, CHAPTER 7A OF THE LAWS OF
KENYA.

BETWEEN

EKURU AUKOT.....1ST PETITIONER
MIRURU WAWERU.....2ND PETITIONER
THIRDWAY ALLIANCE KENYA.....3RD PETITIONER

AND

THE NATIONAL SECURITY COUNCIL.....1ST RESPONDENT
THE INSPECTOR-GENERAL
OF THE NATIONAL POLICE SERVICE.....2ND RESPONDENT
THE CABINET SECRETARY, MINISTRY OF INTERIOR
AND NATIONAL ADMINISTRATION.....3RD RESPONDENT
THE SPEAKER OF THE NATIONAL ASSEMBLY.....4TH RESPONDENT
THE HON. ATTORNEY GENERAL.....5TH RESPONDENT
WILLIAM SAMOEI RUTO.....6TH RESPONDENT

PETITION

To: The Registrar,
High Court of Kenya
Constitutional & Human Rights Division
NAIROBI

THE HUMBLE PETITION OF THE PETITIONERS WHOSE ADDRESS OF SERVICE
FOR THE PURPOSE OF THIS PETITION IS CARE OF MESSRS MIDENGA &
COMPANY ADVOCATES, AGIP HOUSE, 6TH FLOOR - WING B, FLAT NO.8,
HAILE SELASSIE AVENUE, P.O. BOX 42724 - 00100, NAIROBI; IS AS FOLLOWS:

A. THE PARTIES.

1. The Petitioners are adults male of sound mind, citizens of the Republic of Kenya and a duly registered political party respectively. The Petitioners' address of service for the purposes of this Petition shall be care of *Messrs Midenga & Company Advocates, Agip House, 6th Floor - Wing B, Flat No.8, Haile Selassie Avenue, P.O. Box 42724 - 00100, Nairobi.*
2. The 1st Respondent is a constitutional body established under Article 240 of the Constitution and charged, *inter alia*, with supervisory control over national security organs and may perform any other functions prescribed by national legislation.
3. The 2nd Respondent is a constitutional body established under Article 245 of the Constitution and charged, *inter alia*, with exercising independent command over the National Police Service, and may perform any other functions prescribed by national legislation.
4. The 3rd Respondent is a constitutional body established under Article 152 of the Constitution and charged, *inter alia*, with ensuring peace and security to the people of Kenya.
5. The 4th Respondent is a constitutional body established under Article 106 of the Constitution and presides in the sittings of the National Assembly.
6. The 5th Respondent is established under Article 156 of the Constitution and is the principal legal advisor to the Government.
7. The 6th Respondent is the President of the Republic of Kenya, and who upon duly declared the president, took oath of office under the Constitution, to *inter alia*, protect, respect and uphold the Constitution. He is also a member of the 1st Respondent.

B. BRIEF OVERVIEW OF THE RELEVANT LAW AND THE SALIENT GROUNDS OF THE PETITION.

8. Sometimes in July, 2023 the Respondents offered to send 1,000 police officers to the Republic of Haiti, ostensibly, to curb the rising insecurity in the said Republic.
9. On 2.10.2023 the United Nations Security Council approved the deployment of international forces led by Kenya to curb escalating gang violence in the said Republic.
10. On 3.10.2023, just few hours upon the said approval by the United Nations Security Council the 6th Respondent, in a televised address, welcomed the approval and reiterated Kenya's readiness for deployment of police officers to Haiti as he had earlier offered.

11. There was no Cabinet meeting and a resultant Cabinet Memo/resolution to evince that due process was followed.
12. The Petitioners contend that the impugned act of unilaterally offering police officers for deployment to Haiti is not only nonsensical and irrational but unconstitutional and contravenes Articles 240 (8) and 243 (3) of the Constitution which provide respectively that only Kenya Defence Forces can be deployed out of Kenya and that the National Police Service is a national service and shall only function throughout Kenya.
13. The Petitioners further aver that in fulfilling their respective mandates, the Respondents are obligated to be guided by the national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in article 232(1) of the Constitution.
14. Specifically, Article 10 (2) (c) and (d) of the Constitution behoves the Respondents to uphold the national values and principles of governance, which include good governance, integrity, transparency and accountability and sustainable development.
15. On its part, the 1st Respondent is bound by the principles of national security as provided under Article 238 of the Constitution, *inter alia*, that the national security is the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.
16. The 4th Respondent is specifically imbued by the constitutional dictates of Article 118 which provides that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
17. Article 232 (e) on the other hand imbues the 1st and 2nd Respondents while exercising their respective mandates to have regard to accountability for administrative acts.
18. To the contrary, as already demonstrated hereinabove, the Respondents have blatantly violated the foregoing provisions of the Constitution.
19. The Petitioners are cognizant of the material provisions of *the National Police Service Act, No.11A of 2011* which was enacted to give effect to Articles 243, 244 and 245 of the Constitution.
20. The Petitioners contend that the Constitution does not envisage the deployment of the service outside Kenya.
21. The Petitioners note that section 6 of the Act provides for deployment of the service within Kenya in two instances as follows:
 - i) deployment in Kenya for the performance of the functions specified in the Constitution, the Act or any other law (section 6 (1); and

- ii) deployment of the service, in case of an emergency, in the defence of Kenya (section 6 (2) in which case the procedure as enunciated under Article 58 of the Constitution must apply.
22. The Petitioners aver that to the extent that sections 107, 108 and 109 of the *National Police Service Act, No.11A of 2011* provide for deployment of the service under reciprocal arrangements with reciprocating countries, the said sections are unconstitutional since they offend Articles 240 (8) and 243 (3) of the Constitution which provide respectively that only Kenya Defence Forces can be deployed out of Kenya and that the National Police Service is a national service and shall function throughout Kenya as already stated hereinabove.
 23. In any event, there was no request from the government of Haiti as a prerequisite for deployment of the Kenyan service to Haiti hence there is no justification for the impugned decision. As a matter of international notoriety, there is currently no elected government in Haiti. Kenya does not even have an Embassy in Haiti.
 24. There is also great doubt whether the Respondents ascertained whether the laws of the Republic of Haiti contains provisions reciprocal to sections 107, 108 and 109 of the Act to justify deployment of the service to Haiti.
 25. It is also the Petitioners' respectful position that deployment of police officers or the forces outside Kenya is a matter of great public interest and importance and can only be done in accordance with the provisions of the Constitution; and not capriciously at the whims of the Respondents as purported.
 26. The Respondents have proceeded with their impugned conducts aforementioned with reckless abandon and in total disregard of the Constitution and the relevant laws.
 27. As a result of the foregoing, there is real danger that the Respondents will proceed to deploy the police to Haiti without following the law and the Constitution and without conducting public participation which is a mandatory ingredient in governance.

C. GROUNDS AND ARGUMENTS ON VIOLATION OF THE CONSTITUTION.

- a) Violation of the provisions on national values and principles of governance.
28. Under Article 10 (2) of the Constitution, national values and principles of governance include:
 - (a) *patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*
 - (b) *human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;*

- (c) *good governance, integrity, transparency and accountability; and*
 - (d) *sustainable development.*
29. Article 118 (1) (b) on the other hand provides that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
 30. However, the Petitioners contend, that there is no iota of public participation, good governance, integrity, transparency and accountability on the part of the Respondents in arriving at the impugned decision.
 31. The process of deploying the service to Haiti is at an advanced stage where the United Nations Security Council has already approved Kenya's request to deploy the service to Haiti.
 32. There was no public participation and or any meaningful participation prior to Kenya's request which ought to have come first.
 33. The Petitioners are reasonably apprehensive that since the impugned decision has already been made, there will be no lawful and/or meaningful public participation and if one were to be conducted by the Respondents then the same would be a charade for a predetermined outcome to achieve an intended outcome.
 34. The Petitioners aver that the Respondents are playing with the sensitive and serious matters of security and behaving in a manner that suggests that they are not accountable to the people of Kenya for their decisions.

b) Violation of 232 of the Constitution.

35. Article 232 (1) on the other hand adumbrates the values and principle of public service to include:
 - (a) *high standards of professional ethics;*
 - (b) *efficient, effective and economic use of resources;*
 - (c) *responsive, prompt, effective, impartial and equitable provision of services;*
 - (d) *involvement of the people in the process of policy making;*
 - (e) *accountability for administrative acts;*
 - (f) *transparency and provision to the public of timely, accurate information;*
 - (g) *subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;*
 - (h) *representation of Kenya's diverse communities; and*

- (i) *affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—*
 - (i) *men and women;*
 - (ii) *the members of all ethnic groups; and*
 - (iii) *persons with disabilities.*
36. Article 232 (2) further provides that the values and principles of public service apply to public service in all State organs in both levels of government and all State corporations.
37. However, the Respondents in purporting to deploy the service to Haiti have violated the foregoing provisions of the Constitution.
38. Firstly, the impugned decision does not promote efficient, effective and economic use of resources and leaves serious doubts on the priority of the Respondents; the Petitioners invite the Honourable court to take judicial notice of inflation and high cost of living in the country where majority of Kenyans are unable to fend for themselves.
39. Secondly, there was no involvement of the people at the first instance.
40. Demonstrably therefore, the impugned decision does not promote public interest and the interest of the Kenyans at large.

c) Violation of Article 238 on principles of national security.

41. Article 238 provides as follows regarding national security:

"238. Principles of national security

(1) National security is the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.

(2) The national security of Kenya shall be promoted and guaranteed in accordance with the following principles –

(a) national security is subject to the authority of this Constitution and Parliament;

(b) national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;

(c) in performing their functions and exercising their powers, national security organs shall respect the diverse culture of the communities within Kenya; and

(d) recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions."

42. The impugned decision impugned the foregoing principles. Chiefly, the impugned decision has not been made in compliance with the Constitution and respect for the rule of law.

d) Violation of the Petitioners' right to fair administrative action

43. The Petitioners further aver that the Respondents herein have at all material times relevant to the matters herein acted in a manner that are inconsistent to the Constitution and abused their constitutionally mandated powers, acted improperly and in *mala fide* and as a direct consequence violated the Petitioners' right to fair administrative action as provided for under Article 47 of the Constitution of Kenya.
44. In an unprecedented manner, the Respondents have acted in an extremely casual and unprofessional manner in arriving at the impugned decision.
45. The Respondents have prejudiced and compromised the Petitioners' right to fair administrative action by rushing to deploy the service outside Kenya without due regard to the mandatory constitutional provisions aforesated.
46. The Respondents have in effect acted in a manner tantamount to miscarriage of justice and due process.
47. In consequence of the Respondent's actions complained of hereinabove, the Petitioners' rights to secure protection of the law and constitutional entitlement to fair administrative action will continue to be violated through the actions herein; and through the threatened actions.
48. It therefore fair and just that this Petition be heard as a matter of urgency and the orders sought herein granted to vindicate the Petitioners' rights and to secure protection of the law.

D. RELIEFS SOUGHT

49. YOUR HUMBLE PETITIONERS therefore humbly pray for judgment against the Respondents as follows:
 - a. AN ORDER OF DECLARATION declaring that the act of deploying police officers to Haiti is unconstitutional and therefore illegal and void.
 - b. AN ORDER OF DECLARATION declaring that police officers cannot be deployed outside Kenya.
 - c. AN ORDER OF DECLARATION declaring that sections 107, 108 and 109 of the *National Police Service Act, No.11A of 2011* which provide for deployment of the service under reciprocal arrangements with reciprocating countries, the said sections are unconstitutional since they offend Articles 240 (8) and 243 (3) of the Constitution which provide respectively that only Kenya Defence Forces can be deployed out of Kenya and that the National Police Service is a national service and shall function throughout Kenya.

- d. AN ORDER OF PROHIBITION prohibiting the Respondents from in any way deploying police officers to Haiti or any other country other than within the boundaries of Kenya.
- e. Costs of the Petition.
- f. Any other orders that the Honourable court may deem just and fit to grant as the justice of this case may permit.

WHICH PETITION is grounded on the Supporting Affidavit of Ekuru Aukot and on such other or further grounds as may be adduced at the hearing hereof.

DATED at NAIROBI this 6th day of October, 2023

Midenga & Company
ADVOCATES FOR THE PETITIONERS
(Charles Midenga, Practice No. LSK/2023/09066)

DRAWN AND FILED BY:

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2. The Cabinet Secretary, Ministry Of Interior and
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Harambee House
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NAIROBI
3. The Speaker of the National Assembly
National Assembly
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4. The Hon. Attorney General
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5. William Samoei Ruto
NAIROBI

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THE HON. ATTORNEY GENERAL.....5TH RESPONDENT
WILLIAM SAMOEI RUTO.....6TH RESPONDENT

AFFIDAVIT IN SUPPORT

I, Ekuru Aukot, a citizen of Kenya and of P.O. Box 4781 - 00100, Nairobi, within the Republic of Kenya, do make oath and state as follows:

1. That I am the 1st Petitioner in this matter well conversant with the facts giving rise to this case and duly authorised by my Co-Petitioners herein hence competent to swear this affidavit.
2. That I am an Advocate of the High Court and former Chief Executive Officer of the defunct Committee of Experts, the former Chairperson of IEC Selection Panel, the party leader and a founder member of the 3rd Petitioner, a fully registered political party and I swear this affidavit on my behalf and on behalf of my Co-Petitioners herein.

3. That I bring this Petition on my behalf, on behalf of my Co-Petitioners in defence of this constitution and in public interest.
4. That Article 3 of the Constitution of Kenya provides in mandatory terms that every person has an obligation to respect, uphold and defend this Constitution. This provision binds both the Attorney General and the President of the Republic of Kenya.
5. That I am aware that sometimes in July, 2023 the Respondents offered to send 1,000 police officers to the Republic of Haiti, ostensibly, to curb the rising insecurity in the said Republic.
6. That on 2.10.2023 the United Nations Security Council approved the deployment of international forces led by Kenya to curb escalating gang violence in the said Republic.
("Annexed hereto and marked "EA - 1" is the Resolution).
7. That on 3.10.2023, just few hours upon the said approval by the United Nations Security Council the 6th Respondent, in a televised address, welcomed the approval and reiterated Kenya's readiness for deployment of police officers to Haiti as he had earlier offered.
("Annexed hereto and marked "EA - 2" is the 6th Respondent's speech).
8. That there was no Cabinet meeting and a resultant Cabinet Memo/resolution to evince that due process was followed.
9. That the impugned act of unilaterally offering police officers for deployment to Haiti is not only nonsensical and irrational but unconstitutional and contravenes Articles 240 (8) and 243 (3) of the Constitution which provide respectively that only Kenya Defence Forces can be deployed out of Kenya and that the National Police Service is a national service and shall only function throughout Kenya.
10. That in fulfilling their respective mandates, the Respondents are obligated to be guided by the national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232(1) of the Constitution.
11. That specifically, Article 10 (2) (c) and (d) of the Constitution behoves the Respondents to uphold the national values and principles of governance, which include good governance, integrity, transparency and accountability and sustainable development.
12. That on its part, the 1st Respondent is bound by the principles of national security as provided under Article 238 of the Constitution, *inter alia*, that the national security is the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.
13. That the 4th Respondent is specifically imbued by the constitutional dictates of Article 118 which provides that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees.

14. That Article 232 (e) on the other hand imbues the 1st and 2nd Respondents while exercising their respective mandates to have regard to accountability for administrative acts.
15. That to the contrary, as already demonstrated herein-above, the Respondents have blatantly violated the foregoing provisions of the Constitution.
16. That the 6th Respondent herein, who is the substantive president of the republic of Kenya has single-handedly and without public participation entered into an agreement with the US and the United Nations to deploy at least 1,000 police officers in Haiti.
17. That the National Police Service is established under Article 243 Part 4 of Chapter 4 of the Constitution.
18. That Article 243 (3) expressly stipulates that the National Police Service will operate within the Republic of Kenya.

“The National Police Service is a national service and shall function throughout Kenya.”

19. That a purposeful reading of this clause shows that the police service operations are restricted to be within the borders of the Republic of Kenya.
20. That to purport to deploy the members of the National Police Service is a blatant violation of Article 243(3) by the Respondents.
21. That section 6 of the *National Police Service Act No. 11 of 2014* (hereinafter referred to as “the Act”) states as follows:
 - “Deployment of the Service*
 - (1) The Service shall be deployed in Kenya for the performance of the functions Specified in the Constitution, this Act or any other law.*
 - (2) The National Security Council may, in case of an emergency, deploy the Service or any part thereof in the defence of Kenya.*
 - (3) For purposes of deploying the Service in case of an emergency under Subsection (2), the procedure under Article 58 of the Constitution shall apply”*
22. That a clear reading of section 6 of the Act shows that Kenyan police can only be deployed outside the country in defence of Kenya and during a state of emergence contemplated under Article 58 of the Constitution.
23. That deploying members of the National Police Service to Haiti is a clear contravention of section 6 of the Act as Kenya is not at war with Haiti and is not in a state of emergency.
24. That it is a matter of international notoriety that many countries, including the United States of America and France, have deployed armed forces to Haiti before, resulting in regrettable consequences and tears.
25. That it is an established fact that Haiti is a banana republic controlled by over 200 armed gangs and the Kenyan police men and women are been offered recklessly as cannon fodder.

26. That Haiti is currently run by an interim government that has not been able to restore the rule of law and marauding gangs are controlling large swathes of the country.
27. That it leaves much to be desired why the United States Government has offered to fund the Kenya police operations in Haiti with over United States Dollars one Hundred million but they are not ready and willing to deploy any of their security forces in Haiti.
28. That there are security concerns and lawlessness in the northern counties and in Lamu county where members of a certain tribe are being targeted for slaughter but the government led by H. E William Ruto are without regard to the atrocities being committed on the Kikuyu community in Lamu, instead deploying at least 1000 police officers to Haiti.
29. That there is no law or treaty that Kenya has ratified through her parliament to authorise the deployment of Kenyan police to Haiti or anywhere else outside Kenya and in any case, except for the circumstances contemplated under Article 8 of the Constitution, parliament does not have power to ratify such treaties as they would be in contravention of Article 243 of the constitution.
30. That Haiti is not a "reciprocating country" as per the definition provided under section 107 of the Act.
31. That even if Haiti was a reciprocating country, which is vehemently denied, Haiti has not made any application for deployment of Kenyan Police Service to their country and the deployment is based on a UN Security Council resolution passed on 2.10.2023, which in any case cannot supersede the provisions of the Constitution and the Act.
32. That to the extent that sections 107, 108 and 109 of the Act provide for deployment of the service under reciprocal arrangements with reciprocating countries, the said sections are unconstitutional since they offend Articles 240 (8) and 243 (3) of the Constitution which provide respectively that only Kenya Defence Forces can be deployed out of Kenya and that the National Police Service is a national service and shall function throughout Kenya.
33. That deployment of police officers or the forces outside Kenya is a matter of great public interest and importance and can only be done in accordance with the provisions of the Constitution; and not capriciously at the whims of the Respondents as purported.
34. That the Respondents have proceeded with their impugned conducts aforementioned with reckless abandon and in total disregard of the Constitution and the relevant laws.
35. That as a result of the foregoing, there is real danger that the Respondents will proceed to deploy the police to Haiti without following the law and the Constitution and without conducting public participation which is a mandatory ingredient in governance.

36. That the Respondents have prejudiced and compromised our right to fair administrative action by rushing to deploy the service outside Kenya without due regard to the mandatory constitutional provisions aforesated.
37. That in consequence of the Respondents' actions complained of hereinabove, our rights to secure protection of the law and constitutional entitlement to fair administrative action will continue to be violated through the actions herein; and through the threatened actions.
38. That it therefore fair and just that this Petition be heard as a matter of urgency and the orders sought herein granted to vindicate our rights and to secure protection of the law.
39. That all that I have deposed to herein is well within my knowledge and belief save where the same is based on information sources and grounds whereof I have disclosed.
40. That all that I have deposed to herein is well within my knowledge and belief save where the same is based on information sources and grounds whereof I have disclosed.

SWORN at NAIROBI
By Ekuru Aukot

This 6th day of July, 2023 Deponent
BEFORE OMWENZA J. NYAMWEYA
Advocate & Commissioner for Oaths
P. 106/14812/18
COMMISSIONER FOR OATHS
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5. William Samoei Ruto
NAIROBI



Security Council

Distr.: General
2 October 2023

This is the exhibit marked "EA-1"
referred to in the annexed affidavit declaration
of Erwan MUCOT
sworn declared before me this 6th
day of October 2023

Resolution 2699 (2023)

Commissioner For Oaths

**Adopted by the Security Council at its 9430th meeting, on
2 October 2023**

The Security Council,

Recalling all its previous resolutions and press statements, and *reaffirming* resolution 2692 (2023), on the situation in Haiti,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and unity of Haiti,

Emphasizing that the Government of Haiti has the primary responsibility for the provision of security, ensuring stability and respect for the rule of law and human rights, and for the protection of civilians across the territory of Haiti, and *expressing great concern* at the increasingly violent actions taken by armed groups and criminal networks,

Reaffirming the importance of a professional, self-sustaining, fully functioning Haitian National Police of adequate size, structure and equipment, able to conduct the full spectrum of police functions, for the maintenance of public safety, respect for human rights, consolidation of democracy and the revitalization of Haiti's system of justice and *encouraging* Haiti to pursue actively its plans in these respects,

Condemning in the strongest terms the increasing violence, criminal activities, and human rights abuses and violations which undermine the peace, stability, and security of Haiti and the region, including kidnappings, sexual and gender-based violence, trafficking in persons and the smuggling of migrants, homicides, extrajudicial killings, as well as arms smuggling,

Strongly condemning and expressing deep concern over the gravity and numbers of violations and abuses committed against children in Haiti; and *urging all* actors, especially gangs and criminal networks, to immediately end and prevent all violations and abuses against children, including those involving killing and maiming, recruitment and use, rape and other forms of sexual and gender-based violence, particularly against girls, attacks on schools and hospitals, abduction, and denial of humanitarian access,

Urging all actors, including Haitian gangs and their supporters, to cease their destabilizing and criminal activities, and further urging those with the ability to influence the gangs to act to stop the blocking of roads required for the supplying of and access to local markets and the damaging of sources of food, including crops and



livestock, as well as medical, and humanitarian supplies, and highlighting the link between violence and food insecurity, that has reached unprecedented levels,

Stressing the need to create a safe and secure environment in Haiti and the region that enables respect for human rights, in particular women's rights, and the protection of children, is conducive to the rule of law, functional state institutions and an effective judicial system, and facilitates the humanitarian delivery of life-sustaining water, fuel, food, and medical supplies,

Recalling its resolution 2653 (2022), which established sanctions measures in response to the threat to international peace and security in the region posed by the high levels of gang violence and other criminal activities, as well as of illicit arms and financial flows, and *further recalling* resolution 2664 (2022) which supersedes the asset freeze exception set forth in paragraph 10 of resolution 2653,

Reaffirming the commitment of the international community to address the security and humanitarian needs in Haiti, including through offering continued support to the United Nations Integrated Office in Haiti (BINUH),

Stressing that addressing the root causes of instability in Haiti requires political solutions, and in this regard *further emphasizing* the urgent need to encourage wider participation and forge the broadest possible consensus in the political process, with, as soon as necessary security conditions are met, a view to holding transparent, inclusive, and credible electoral processes and free and fair elections, and restoring democratic institutions,

Reiterating the need for all Haitian stakeholders, including with BINUH's support, to continue to facilitate a Haitian-led, Haitian-owned political process to permit the organization of free and fair legislative and presidential elections, with the full, equal, meaningful, and safe participation of women and the engagement of youth, civil society, and other relevant stakeholders through an inclusive inter-Haitian national dialogue, and further requests all Haitian stakeholders to urgently reach an agreement on a sustainable, time-bound and commonly accepted roadmap for elections,

Taking note of the recent visits by the Eminent Persons Group of Caribbean Community (CARICOM) to Haiti and welcoming its continued commitment to supporting the political dialogue,

Recognizing the key role of countries in the region, as well as regional and subregional organizations such as the Caribbean Community (CARICOM), and other international partners, in particular the key role of CARICOM and its Eminent Persons Group in facilitating the political dialogue, and *calling on* the international community to remain committed to Haiti's efforts in overcoming the ongoing political stalemate and security and humanitarian situation,

Taking note of the direct appeal of 6 October 2022 of Haiti's Council of Ministers for the deployment of a specialized international force and technical assistance to support the Haitian National Police's efforts to address high levels of gang violence and re-establish security, further taking note of the letter dated 8 October 2022 of the Secretary-General (S/2022/747), the report of the Secretary-General (document S/2023/274) dated 14 April 2023, and Jamaican statement on behalf of CARICOM before the Security Council on 6 July 2023 to authorize multinational security efforts with the appropriate mandate to support the Haitian National Police,

Gravely concerned by the continued and significant deterioration of the humanitarian situation in Haiti, including the forced displacement of persons, and urging all parties to immediately cease violations and abuses,

Taking note of the need to coordinate, as appropriate, with BINUH and UNODC to reduce gang and community violence, as well as to ensure respect for human rights and build child protection capacity, and the need to further strengthen training efforts by BINUH and international partners to expand the overall capacities of the national police beyond security operations, including expanding the number of national police officers, continued vetting, enhancing community-oriented policing skills, strengthening capacity to prevent and respond to sexual and gender-based violence, ensuring the full, equal, and meaningful involvement and representation of women at all levels, ensuring respect for the rule of law, and restoring police stations that have been destroyed in gang-controlled areas,

Underscoring the need for broader efforts beyond the work of the Multinational Security Support (MSS) mission to sustainably address the root causes of gang violence, which emanate from political, institutional, and socio-economic instability and, in this regard, reiterating its call to the international community, including international financial institutions, to enhance support for long-term economic, social and institutional development in Haiti even after its stability is restored,

Underscoring the need for the international community to work with the people of Haiti in a long-term effort to promote the rebuilding of democratic institutions, including the organization of free and fair elections,

Welcoming the announcement of 29 July by the Government of Kenya to positively consider leading a multinational mission at the invitation of Haiti and in response to the appeal by the UN Secretary-General, following consultations with Haiti and the unanimous encouragement of security support to Haiti by the Security Council in resolution [2692 \(2023\)](#), and further welcoming the positive responses to participate made by several Member States,

Taking note of the letter dated 26 September 2023 from the Secretary-General addressed to the President of the Security Council ([S/2023/726](#)), strongly expressing the desire to obtain authorization from the Security Council under Chapter VII, and which expresses hope, following an assessment visit by a Kenyan delegation, that the Multinational Security Support mission would help ensure the security of the country's critical infrastructure and would be able to carry out targeted operations, in close collaboration with the Haitian National Police,

Recognizing the importance and urgency of curbing the illicit trafficking of arms and ammunition to Haiti to the creation of a safe operating environment for international security support, including the deployment of a multinational security support mission,

Taking note of the call made by the Government of Kenya on 21 September 2023 urging the United Nations to urgently deliver an appropriate framework to facilitate the deployment of Multinational Security Support as part of a holistic response to Haiti's challenges, calling on the Security Council to approve a resolution under Chapter VII that tailors the security support mission to the specific needs of Haiti and its people,

Determining that the situation in Haiti continues to constitute a threat to international peace and security and to stability in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Authorizes* Member States that have notified the Secretary-General of their participation to form and deploy a Multinational Security Support (MSS) mission with a lead country, in close cooperation and coordination with the Government of Haiti, for an initial period of twelve months following the adoption of this resolution, to be reviewed nine months after the adoption of this resolution, on the understanding

that the cost of implementing this temporary operation will be borne by voluntary contributions and support from individual Member States and regional organizations, and in strict compliance with international law, including, international human rights law, as applicable, to support the efforts of the Haitian National Police to re-establish security in Haiti and build security conditions conducive to holding free and fair elections, by:

(a) providing operational support to the Haitian National Police, including building its capacity through the planning and conduct of joint security support operations, as it works to counter gangs and improve security conditions in Haiti, characterized by kidnappings, sexual and gender-based violence, trafficking in persons and the smuggling of migrants and arms, homicides, extrajudicial killings, and recruitment of children by armed groups and criminal networks; and

(b) providing support, to the Haitian National Police, for the provision of security for critical infrastructure sites and transit locations such as the airport, ports, schools, hospitals and key intersections;

2. *Calls on* the MSS, through its support to the Haitian National Police outlined in paragraph 1, to help ensure unhindered and safe access to humanitarian aid for the population receiving assistance;

3. *Decides* that the Multinational Security Support mission, as requested by Haiti in its letter dated 22 September 2023, in coordination with the Haitian National Police, may, to prevent the loss of life and within the limits of its capacities and areas of deployment, adopt urgent temporary measures on an exceptional basis, which are limited in scope, time bound, proportionate and consistent with the objectives set forth in paragraph 1 above, to help the Haitian National Police maintain basic law and order and public safety, including through arrest and detention, as necessary and in full compliance with international law, including international human rights law, as applicable; and requests the leadership of the Multinational Security Support mission to update the Security Council any measures that may be adopted on this basis;

4. *Calls on* Member States and regional organizations to contribute personnel, equipment, and necessary financial and logistic resources based upon the urgent needs of the Multinational Security Support mission and *invites* contributing Member States to inform in writing the leadership of the Multinational Security Support mission, the Security Council and the Secretary-General of their intent to participate in the mission, and further requests Haiti and the leadership of the Multinational Security Support mission to update regularly the Security Council and the Secretary-General of the progress of deployment of relevant personnel and equipment;

5. *Authorizes* the Member States participating in the Multinational Security Support mission in Haiti to take all necessary measures to fulfil its mandate, strictly adhering to all international law, including international human rights law, as applicable;

6. *Requests* the Multinational Security Support mission to take fully into account child protection and the protection of other vulnerable groups as a cross-cutting issue throughout its mandate in all the planning and conduct of its operations;

7. *Requests* Member States participating in the Multinational Security Support mission in Haiti to include dedicated expertise in anti-gang operations, community-oriented policing, children and women's protection, and preventing and responding to sexual and gender-based violence in a victim-centred manner, and to take necessary action to ensure appropriate conduct and discipline and to prevent sexual exploitation and abuse, including vetting of all personnel and other safe hiring practices, encouraging women's representation at all levels of the MSS, and

predeployment and in-mission awareness training on human rights, child protection, and sexual and gender based violence, and to detect incidents when they occur and ensure a safe survivor- and victim-centred response in cases of such conduct involving their personnel, including through providing safe and accessible complaint mechanisms and timely investigations of all allegations of misconduct, to hold perpetrators accountable, and to repatriate units when there is credible evidence of misconduct, including widespread or systemic sexual exploitation and abuse, by those units;

8. *Requests* the leadership of the Multinational Security Support mission, in coordination with the government of Haiti and Member States participating in the MSS, to inform the Council, prior to the mission's full deployment, on information including but not limited to the concept of operations developed in consultations and cooperation with the government of Haiti and Member States participating in the MSS, sequencing of deployment, mission goals and end state, rules of engagement, as well as indicative financial needs to be funded by voluntary contributions, and number of personnel to be deployed;

9. *Reaffirms* that the rules of engagement and any directives on the use of force are to be developed by the leadership of the Multinational Security Support mission in consultation with Haiti and other Member States participating in the MSS and should be in full respect of Haiti's sovereignty and in strict compliance with international law, including, international human rights law, as applicable;

10. *Requests* the Member States participating in the Multinational Security Support mission in Haiti to ensure the highest standards of transparency, conduct and discipline for their contingents operating in the framework of the Multinational Security Support mission in Haiti, to establish a robust compliance mechanism to prevent, investigate, address and publicly report violations or abuses of human rights related to the Multinational Security Support mission in Haiti;

11. *Calls on* the Multinational Security Support mission to establish an oversight mechanism to prevent human rights violations or abuses, in particular sexual exploitation and abuse as well as to ensure that the planning and conduct of operations during deployment will be in accordance with applicable international law;

12. *Requests* Member States participating in the Multinational Security Support mission in Haiti to adopt appropriate wastewater management and other environmental controls to guard against the introduction and spread of water-borne diseases, in accordance with The World Health Organization Water Quality: Guidelines, Standards, and Health publication on Assessment of Risk and Risk Management for Water-related infectious diseases from 2001, and in cooperation with Haitian authorities, which bear shared responsibility for guarding against water-borne disease;

13. *Requests* the Multinational Security Support mission to cooperate with BINUH and relevant UN agencies, including but not limited to UNODC and the Office of the High Commissioner for Human Rights, to support the efforts of the Haitian National Police to re-establish security in Haiti, including efforts by the Haitian National police to combat illicit trafficking and diversion of arms and related materiel and to enhance management and control of borders and ports;

14. *Decides* that paragraph 11 of resolution [2653 \(2022\)](#) shall be replaced by the following:

“Decides that, for an initial period of one year from the date of adoption of this resolution, all Member States shall take the necessary measures to prevent the direct or indirect supply, sale, or transfer to Haiti, from or through their territories or by their nationals, or using their flag vessels or aircraft of

small arms, light weapons, and ammunition, and *further decides* that this measure shall not apply to:

a. The supply, sale, or transfer of small arms, light weapons, or ammunition to the UN or a UN-authorized mission or to a security unit that operates under the command of the Government of Haiti, intended to be used by or in coordination with those entities and intended solely to further the objectives of peace and stability in Haiti;

b. Other supplies, sales, or transfers of small arms, light weapons, and ammunition to Haiti as approved in advance by the Committee established pursuant to resolution 2653 (2022) to further the objectives of peace and stability in Haiti;”

15. *Calls on* all parties in Haiti to cooperate fully with the Multinational Security Support mission in the execution of its mandate and to respect the security and freedom of movement of the Multinational Security Support mission;

16. *Requests* the Secretary-General to establish a trust fund as a mechanism that can facilitate voluntary contributions to the Multinational Security Support mission to enable and operationalize the mandate;

17. *Affirms* the Secretary-General may provide logistical support packages to the MSS, when requested by the MSS and MSS donors, subject to the full financial reimbursement to the United Nations through available voluntary contributions, and in full respect of the United Nations Human Rights Due Diligence Policy (HRDDP);

18. *Requests* the leadership of the Multinational Security Support mission to ensure the highest standards of transparency and conduct, and to report every three months once the MSS is operational on the ground, as a part of regular reporting to the Security Council, through the Secretary-General, on the implementation of the resolution, including but not limited to composition of the mission, measures to ensure appropriate conduct and discipline, and to prevent sexual exploitation and abuse; and on investigations of allegations of misconduct and excessive use of force;

19. *Requests* the Secretary-General to provide as part of the Secretary-General’s regular reporting to the Security Council, no later than nine months following adoption of this resolution, recommendations on possible adaptation of the mandate of the Multinational Security Support mission or its transformation as needed;

20. *Requests* the leadership of the Multinational Security Support mission to develop a strategy for mission conclusion and withdrawal and include information on that matter in regular reporting to the Security Council;

21. *Emphasizes* the need for Member States, United Nations organs, bodies and agencies, and other international organizations, including international financial institutions, to redouble their efforts to promote the institutional, social, and economic development of Haiti, in particular for the long-term, in order to achieve and sustain stability and combat poverty;

22. *Strongly urges* the Haitian authorities and other stakeholders to cooperate fully with the good offices of CARICOM and BINUH to reach compromise for the broadest possible consensus as soon as possible;

23. *Decides* to remain actively seized of the matter.



REPUBLIC OF KENYA

**STATEMENT BY H.E. WILLIAM S. RUTO PHD, C.G.H, PRESIDENT
AND COMMANDER-IN-CHIEF OF THE KENYA DEFENCE FORCES
WELCOMING THE UNSC RESOLUTION AUTHORISING THE
MULTINATIONAL SECURITY SUPPORT MISSION TO HAITI**

1. On 21st of September, I stood before the General Assembly of the United Nations to press the case for the United Nations Security Council to deliver a framework that would facilitate the deployment of a multinational security support mission to Haiti, as part of a holistic multilateral response to the challenges faced by that nation. Specifically, I pleaded for a resolution under Chapter 7 of the Charter, with appropriate provisions to facilitate support for the Haiti National Police in enhancing its capacity to effectively provide security to the people of Haiti, their infrastructure and property.
2. I am delighted that today, the Security Council has directly answered this call with UNSC Resolution 2699 (2023), which mandates the Multinational Security Support Mission to reinforce the Haiti National Police with operational support and other joint interventions, to enhance its institutional capacity, with the aim of increasing its effectiveness in defeating the onslaught of criminal gangs, and the rampant violent crime, human, arms and drugs trafficking, as well as other atrocities.
3. The mission is also mandated to secure the country's critical infrastructure including air and seaports as well as other vital transit arteries and intersections.

This is the exhibit marked "EA-2"
referred to in the annexed affidavit declaration
of: Erwin Pulco
sworn declared before me this 5th
day of October 2023


.....
Commissioner For Oaths

4. I welcome the resolution as an overdue and critical instrument to define the multinational mission. The mission is a foundational intervention, to provide the necessary conditions for Haiti to consolidate its development and governance. It is therefore absolutely essential that resources as well as operational scope available to the UN team, as well as other humanitarian and development actors on the ground in Haiti, be appropriately reinforced.
5. The situation in Haiti demands, as a matter of humanitarian consideration, moral responsibility and fundamental justice, that actions be scaled up significantly to meet the demands of emergency relief, humanitarian aid, support for livelihoods and major interventions in public health and environmental protection.
6. As we look forward to the imminent COP28, I also call the attention of states, international organisations, philanthropies and other institutions to attend to the severe environmental degradation in Haiti, which calls out for the urgent mobilisation of collective action.
7. We express our determination that this mission will provide a different footprint in the history of international interventions in Haiti, and emphasize that it is aimed solely at providing an appropriate environment for the leadership, both of the political and civil society sectors to usher in stability, development and democratic governance, through a political framework owned and driven by the people of Haiti.
8. The resolution marks an important moment in the history of global multilateralism, as we engage international collective action that places human security and dignity at the same level as state security and sovereignty, and enables the nations of the world to discharge a collective moral duty of securing justice and security for all peoples of all nations.
9. This is a mission for humanity, which connects boldly and directly with the founding principles of the United Nations, and affirms our shared hope that justice is finally coming to the people of Haiti, who have borne the brunt of colonial plunder and repression, as well as post-colonial retaliation and exploitation, leaving them vulnerable to geological, climatic and epidemic calamities.



10. This moment also affirms the Pan-African commitment to our continent's unity together with the African Union's policy of solidarity with the African Diaspora in observance of our sacred duty towards our own flesh and blood, carried into captivity to suffer in chains, in a world far away from home, and punished most severely over the centuries for claiming for themselves freedom - the most basic right of every human being.
11. When newly independent states were investing in the future by building infrastructures, setting up systems of self-governance and developing capacity to flourish in freedom, Haitians were being forced to invest in a cruel past by being made to pay for refusing to be slaves. As a result of this injustice, perpetrated by colonialists with the silent connivance of international institutions, Haiti lost decades of development opportunity, and became vulnerable to calamities. It has endured devastating geological and extreme weather disasters which have left the state and its economy strained to the utmost and unable to cope with the challenge of providing basic services.
12. For us in Kenya, this mission is of special significance and critical urgency. We experienced the harrowing brunt of colonialism, as well as the long, difficult and frustrating struggle for freedom against those that can influence international institutions to frustrate justice. In our struggle, we always had friends, not an overwhelming multitude of powerful allies, yet nevertheless true, loyal and determined friends. The people of Haiti, our dear friends, today stand in need. It is our fundamental moral obligation to be their friend indeed, by standing with them.
13. Our nation possesses excellent international peace-mediating, peace-making, peace-building and peace-keeping credentials. From East Timor and the former Yugoslavia to Eritrea and Angola all the way to Sierra Leone, we have always stood ready and willing to do our part to bring peace, security and stability.
14. This is why we cannot turn away from Haiti. Doing nothing in the face of human suffering is therefore absolutely out of the question.



15. Our firm position as African peoples has been for the international community to rally together in global collective action in pursuit of just and positive ends. For this reason, we must never forget that Haiti's troubles were inflicted through the improvident policies of colonial retaliation, which underpinned the continuity of atrocities spanning slave trade, to colonialism, post-colonial crimes and outright injustice.
16. We, therefore stand in solidarity with the Caribbean Community's Reparations Commission in their pursuit of accountability for the evil and cruel actions against African populations, including enslaved persons, together with their children and are confident that today, we stand at the threshold of a sequence of reparative measures including debt cancellation to free Haiti from shackles of an ugly past that bind them even now. If any peoples ever deserved a break, they must be the people of Haiti.
17. We are delighted for the support this mission has attracted globally, because it makes us stronger and success feasible. I commend the Security Council for making this moment possible, and extend special appreciation to the United States and Ecuador for the consultative, inclusive and focused endeavour, which has proved critical to the outcome.
18. I also take this opportunity to extend a warm “thank you” to our African compatriots in the Security Council: Gabon, Ghana, and Mozambique, for their stewardship of the process, and all other members of the UN Security Council for their support which yielded a resolution that is aligned with the principles and values of the AU's constitutive Act.
19. I also extend deep gratitude to the Caribbean Community's Eminent Persons Group of The Rt. Hon Perry Christie, The Hon. Bruce Golding and The Hon. Dr. Kenny D Anthony, for making available the good offices of CARICOM to the government and people of Haiti, and express my great admiration for their steadfast commitment to this cause. We shall succeed in Haiti. We must not fail the people of Haiti.

Thank you.

3RD OCTOBER 2023

STATE HOUSE, NAIROBI.

