

REPUBLIC OF KENYA



MINISTRY OF DEFENCE

MEMORANDUM TO THE NATIONAL ASSEMBLY

ON

**THE AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF KENYA AND THE GOVERNMENT OF THE KINGDOM
OF DENMARK**

ON

DEFENCE CO-OPERATION

1.0 PURPOSE

- 1.1 The purpose of this Memorandum to apprise the National Assembly on the signed Agreement between the Government of the Republic of Kenya and the Government of the Kingdom of Denmark on Defence Co-operation and seek approval for its ratification.

2.0 BACKGROUND

- 1.2 The bilateral co-operation on defence between the Republic of Kenya and the Kingdom of Denmark is currently by a Defence Co-operation Agreement dated 17th day of September 2013.
- 1.3 The initial Agreement was approved by Cabinet at a meeting held on 13 August 2013. The initial Agreement was to remain in force for a period of five (5) years, lapsing on 16 September 2018. Owing to ongoing projects under the initial Agreement, the parties, by mutual consent agreed to renew the Agreement.
- 1.4 The Attorney General considered the text of the Agreement and approved the same. He further advised that despite having operated the Agreement for the last five years, the proposed renewal text ought to be subjected to ratification under the sections 3, 7, 8 and 9 of the Treaty Making and Ratification Act. A copy of the Attorney general's advisory opinion is at **Annex A**.
- 1.5 The Cabinet approved the renewal and execution of the Agreement on 22nd November 2018. The Agreement was signed on 17 July 2020 when the Kingdom of Denmark confirmed the text of the Agreement. A copy of the signed Agreement is at **Annex B**.

3.0 ACHIEVEMENTS UNDER THE 2013 AGREEMENT

- 3.1 The gains made under the Agreement include:
- a. Improved maritime domain awareness for the Kenya Navy.

- b. Operationalization of the Kenya-Denmark Maritime Co-operation Programme 2015-2017 that funded various projects as follows:
 - (1) Construction of a state of the art Full Bridge Simulator and Trainer at Kenya Navy Training School at Kenya Navy Base Mtongwe.
 - (2) Modification of the ship engine test cell at Kenya Navy Base Mtongwe.
 - (3) Training for officers, both locally and abroad.
- c. Co-operation in governance, oversight, financial support and administration of the International Peace Support Training Centre in Karen.

3.2 Future co-operation initiatives that will be undertaken include upgrading of the Kenya Navy Training School to a Regional Centre of Excellence for training of maritime security personnel.

4.0 CONTENTS OF THE AGREEMENT

4.1 The Agreement is divided into Twenty-Five (25) Articles as follows:

- a. Article 1 - Provides for the objective of the Agreement.
- b. Article 3, 4, 5 & 6 - Provide for the scope, areas of co-operation implementation and responsibilities of the Host and Sending nations respectively.
- c. Article 7 & 8 - Provides for monitoring, evaluation and auditing and procurement and reports.
- c. Article 9 – Provides for Criminal Jurisdiction, privileges an immunity in respect of Visiting Forces.
- d. Article 10 – provides for the uniforms, arms and other defence articles.
- e. Article 11, 12, 13, 14 & 15 - Provide for access to facilities of the Host Nation, claims and liabilities, entry, residence and exit of members of the Visiting Nation, imports and exports and taxation.

- f. Article 16, 17 & 18 – Provide for identification of members of the Visiting Forces, vehicle registration and driving licences and training costs and salaries respectively.
- g. Article 19 & 20 – Provide for investigation procedures in case of accidents involving members of the Visiting Forces and medical care.
- h. Article 21 & 22 – Provide for procedure handling the death of a member of the Visiting Forces and protection of classified information respectively.
- e. Article 23, 24 & 25 - Provide amendments to the Agreement, settlement of disputes and, entry into force, duration and termination of the Agreement respectively.

5.0 LEGAL CONSIDERATIONS

- 5.1 Section 37 of the Kenya Defence Forces Act as read together with Section 283 contemplates that the framework of co-operation between the Kenya Defence Forces and a Visiting Force as well as matters pertaining to jurisdiction are to be regulated by an agreement.
- 5.2 It is envisaged that during the implementation of the Agreement, it will be necessary to exchange personnel hence the need to identify their status while in the territory of the other party for purposes of application of criminal jurisdiction in accordance with section 37 of the Kenya Defence Forces Act.
- 5.3 The co-operation framework for exchange, sharing and utilization of the respective State's experience, knowledge, military facilities and infrastructure will be instrumental in strengthening bilateral relations between the Republic of Kenya and the Kingdom of Denmark while promoting the capacity and capability of the Kenya Defence Forces to fulfil their Constitutional mandate.
- 5.4 Further, the growing concerns on security challenges such as terrorism, organized international crimes such as piracy, human and drug trafficking and the instability in Somalia necessitate collaboration and co-operation between States. The proposed Agreement will provide a framework for addressing these challenges through collaboration and with the Kingdom of Denmark.

5.5. Kenya will benefit from the bilateral relations with the Kingdom of Denmark which is a leading Maritime State. The Kingdom of Denmark continues to support the Kenya Defence Forces to build and enhance their capacity and capability.

6.0 FINANCIAL IMPLICATIONS

The implementation of the Agreement is not envisaged to have any financial implications.

7.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is invited to approve the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Kingdom of Denmark on Defence Co-operation.

Dated this day of 2020

Dr. Monica K Juma (Oxon), CBS
Cabinet Secretary
Ministry of Defence

ANNEX A

ADVISORY OPINION BY THE HONOURABLE ATTORNEY GENERAL



OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE



Your Ref: MOD.08/40A

6th September, 2018

Our Ref: AG/CONF/3B/734 VOL I (15)

Amb. Raychelle Omamo, SC, EGH
Cabinet Secretary
Ministry of Defence
NAIROBI

DEFENCE COOPERATION AGREEMENT BETWEEN THE REPUBLIC OF KENYA AND THE
KINGDOM OF DENMARK

The above matter and your letter bearing the above reference and dated the 1st of September, 2018 refer.

We have reviewed the above draft Agreement and wish to advise as follows:

We shall seek to first dwell with the issue of ratification since the same may have an impact on the body of the Agreement.

Section 3 (2) of the Treaty Making and Ratification Act (TMRA) provides as follows:

This Act shall apply to

- (a) multilateral treaties*
- (b) bilateral treaties which deal with*
 - (i) the security of Kenya, its sovereignty, independence, unity or territorial integrity;*
 - (ii) the rights and duties of citizens of Kenya;*
 - (iii) the status of Kenya under international law and the maintenance or support of such status;*
 - (iv) the relationship between Kenya and any international organisation or similar body; and*

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(v) the environment and natural resources.

Sub-section 4 of the same section provides as follows:

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

(a) necessary for matters relating to government business;

or

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

In our view, the test of determining whether a bilateral agreement should be subjected to ratification lies with the above provisions. A bilateral agreement that should not be subjected to the ratification process must satisfy that:

- a. It involves matters relating to government business or matters that are purely technical, administrative or executive in nature; and
- b. Further satisfy that it does not in any manner involve itself with the matters under section 3(2)(b) of the TMRA.

We note your concern that the envisaged cooperation does not involve the use or provision of military forces. This aspect however was not well incorporated upon and seems not to be in tandem with Article 2.21 of the Agreement which provides for "military exercises" as one of the aspects within the scope of the Agreement. The same therefore, in our view, cannot be used to make any necessary inference on the matter.

We note that Article 9 of the Agreement provides for circumstances where the jurisdictional authority of the Host State may be exercised by the Service Authorities of the Sending State. Article 159 of the Constitution provides that judicial authority is derived from the people and vests in, and shall be exercised by the courts and tribunals established by or under the Constitution.

Conferring such jurisdictional authority therefore to any other institution, or in essence limiting such jurisdictional authority in any manner amounts to the Hosting State ceding its sovereignty in jurisdictional matters to the extent contemplated in the Agreement. This thus calls for the Agreement to be subjected to the ratification process in order for the Host State - which is the custodian of such authority - to commit itself to such an obligation.

The following comments relate to the text of the Agreement:

1. The defined terms in the Definition Article should be re-arranged alphabetically to comply with the best standard drafting practices.
2. The chapeau of Article 3 should be redrafted properly for ease of flow.
3. Article 5.2 provides for the provision of the work space to the Danish Liaison Officer only and to that extent conflicts with the principle of reciprocity in international relations. The Article should be redrafted to provide for reciprocity.

4. Article 8 has used the abbreviation "HN" which is not defined nor used in any other Article. The same should be replaced with the relevant specific words.
5. Article 12.2 is non-reciprocal in nature and as such should be re-drafted to make it reciprocal to both Parties.
6. Articles 14 and 15 seek to provide certain duty exemptions in certain instances. This provisions call for the concurrence of the National Treasury and The Customs Department and the Ministry should adhere to seek such concurrence.
7. The word "Chairperson" in Article 19 is capitalized even though the same is not definitive in nature. The same should be decapitalized.
8. Articles 22.1 and 22.2 make references to an MOU rather than the Agreement. The word "MOU" should be replaced with the word "Agreement".
9. Subject to the opinion above on ratification of the Agreement, if the parties so wish to retain the article on jurisdiction and as such subject the Agreement to ratification, the following wording should replace Article 25,1:

The Contracting Parties shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement.

Save for the above highlighted issues, the Agreement is in our view sound from a legal point of view and parties may execute upon considering our comments.



KENNEDY OGETO EBS
SOLICITOR GENERAL

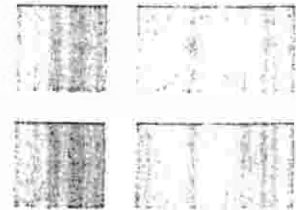
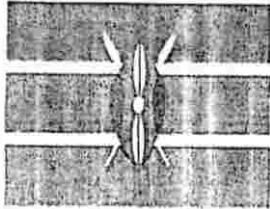
Copy to: Hon. P. Kihara Kariuki
Attorney General

ANNEXB

**THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF
KENYA AND THE GOVERNMENT OF
THE KINGDOM OF DENMARK**

ON

DEFENCE CO-OPERATION



AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF
KENYA

AND

THE GOVERNMENT OF THE KINGDOM OF
DENMARK

ON

DEFENCE CO-OPERATION

PREAMBLE

The Government of the Republic of Kenya and the Government of the Kingdom of Denmark (here in after jointly referred to as "Parties" and separately as the "Party").

Taking into account the aim to strengthen the understanding between the two countries and to contribute towards peace, stability, security and mutually beneficial cooperation;

Taking into account that the cooperation in the field of defence and the related capacity building will contribute to further strengthening of the existing friendly relations and solidarity between the Parties;

Taking into account the commitment to international law and the rule of law, and accountability will constitute fundamental principles of this Agreement;

Reaffirming the principles of mutual respect for sovereign equality, territorial integrity and political independence;

Desiring to promote and strengthen closer bilateral relations and to further strengthen ties of friendship and fraternity between their Defence Forces;

Recognizing the Defence Co-operation between the Parties is essential for the promotion of peace, stability and wellbeing of their Countries;

Further recognizing that the parties will formulate mutually agreed bilateral co-operation programmes;

Emphasizing the principle of reciprocity to foster bilateral military relations between the parties;

Have reached the following understanding:

DEFINITIONS

In this AGREEMENT, the following definitions apply:

- a. **Armed Forces.** Means the Kenya Defence Forces or the Danish Armed Forces.
- b. **Bi-lateral Cooperation Programme.** Means a supplementary arrangement to this Agreement which may be concluded for specific activity and which will detail the resources required to undertake that activity. The Bi-lateral cooperation programme will be a document made under this Agreement and will be interpreted consistently with its provisions.
- c. **Classified information.** Means information in any form or nature which requires protection in the interests of national security.
- d. **Duty.** Means custom duties and all other taxes and ad valorem registration fees payable on importation and exportation as the case may be, except dues and taxes which are no more than charges for services rendered.
- e. **Host Nation.** Means the Party for the time being hosting the Armed forces of the other Party in its territory in connection with this Agreement.
- f. **Sending Nation.** Means the Party whose Armed Forces is in the territory of the other Party in connection with this Agreement.
- g. **Service Authorities.** Means the authorities of the Republic of Kenya or the Kingdom of Denmark empowered by their respective laws to exercise command or jurisdiction over their respective Armed Forces.
- h. **Visiting Forces.** Means personnel of the land, sea or air of the Kenya Defence Forces or Kingdom of Denmark and their dependents in the territory of the other Party with the consent of that Party in connection with their official duties.

ARTICLE 1

OBJECTIVE

The objective of this Agreement is to provide a framework for cooperation between the Parties on defence cooperation, regulate the status of visiting forces, enhance and strengthen the bilateral military cooperation and relations between the Parties in accordance with the domestic laws of the Parties and applicable standards of international law.

ARTICLE 2

SCOPE

The Parties will, in compliance with relevant domestic and international law, pursue the goal of defence cooperation in areas of defense related issues such as:

- 2.1 Operations and training, including joint maritime operations;
- 2.2 Technical and logistic support, including donation of spare parts, tools, containers and other relevant technical equipment;
- 2.3 Equipment and technical assistance mutually identified;
- 2.4 Surveys necessary to support areas of cooperation;
- 2.5 Security and Defence policy;
- 2.6 Counter-piracy and other maritime security activities;
- 2.7 Peacetime military activities;
- 2.8 Protection of the environment within the Armed Forces;
- 2.9 Military medical services;
- 2.10 Military sports;

- 2.11 Disaster relief and humanitarian operations of the Armed forces;
- 2.12 Military exercises;
- 2.13 Exchange visits of personnel;
- 2.14 Mapping/survey and exchange of geographic materials;
- 2.15 Exchange of information, experiences, views and ideas on areas indicated in Article 3 of this Agreement and;
- 2.16 Other related fields and technical arrangements to be determined by subsequent Agreement within the framework of this Agreement.

ARTICLE 3

AREAS OF COOPERATION

Pursuant to this Agreement, the activities the Parties undertake to facilitate, shall include:

- 3.1 Mutual visit by Officials of the respective defence establishments. Sustaining of contacts and relations between their defence establishments by means of exchange of official military delegations;
- 3.2 Communicate and cooperate with a view to ensure that the objectives of the cooperation are realized;
- 3.3 Exchange of teaching and training personnel as well as students from military training institutions;
- 3.4 Participation in training courses, practical training, seminars, round-table discussions and symposia;
- 3.5 Visits by Service personnel, warships and other Government ships and aircraft;
- 3.6 Exchange visits, consultations, exchange of views, seminars, conferences and workshops;

- 3.7 Joint evaluation of the bi-lateral cooperation programme by the Kenya Ministry of Defence and Danish Ministry of Defence;
- 3.8 Annual reviews of the bi-lateral cooperation programme.

ARTICLE 4

IMPLEMENTATION

- 4.1 The Parties shall establish a liaison mechanism to promote, coordinate and facilitate the implementation of this Agreement.
- 4.2 The Parties shall mutually frame terms of reference and the modus operandi (mode of operation) of the liaison office and for personnel assigned in implementing this Agreement.
- 4.3 Visiting Forces will not take part in hostilities or other operations of a warlike nature undertaken by the Armed Forces of the Host Nation, or in any operations of those forces which are concerned with the preservation of peace, internal security or with the enforcement of law and order in the Host Nation.
- 4.4 On the basis of this Agreement, the Parties will prepare an Action Plan/Bi-lateral cooperation programme which will be approved by the authorized representatives of the Parties.
- 4.5 The Action Plan / Bi-lateral cooperation programme will specify the areas of cooperation, which have been jointly identified. The Parties can make proposals, which will be exchanged through the appropriate channels. Specific project documents will be developed and agreed prior to commencement of each area of cooperation.
- 4.6 Danish personnel will be assigned to the bi-lateral cooperation programme and its implementation.

ARTICLE 5

RESPONSIBILITIES OF THE HOST NATION

In implementing this Agreement, the Host Nation parties will perform the following responsibilities:

- 5.1 To provide in country transport for the Sending Nation representatives while in the course of official duty;
- 5.2 To provide work space for the designated Liaison Officer and/or assigned personnel with internet access, telephone and locker facilities necessary for the implementation of this Agreement and the specified area of cooperation;
- 5.3 To provide a liaison officer;
- 5.4 To submit annual progress and financial reports. The reports will be based on the agreed work plans by the parties;
- 5.5 To acknowledge receipt of donations and material;
- 5.6 To facilitate the issuance of work permits and other necessary documentation.

ARTICLE 6

RESPONSIBILITIES OF THE SENDING NATION

In implementing the Agreement, the Sending Nation will perform the following responsibilities:

- 6.1 To pay monthly salaries, allowances and Insurance costs and costs associated with preparing personnel for the activities concerned to all personnel from the Sending Nation;

- 6.2 To make transport arrangements not otherwise specified in this Agreement;
- 6.3 To cater for messing and accommodation for its own personnel;
- 6.4 All cost related to the use of internet, telephone and other administration cost will be paid for by the sending nation;
- 6.5 To pay for the appropriate visa and work permit fees;
- 6.6 To pay for any additional administrative cost related to the expenses of the sending nation.

ARTICLE 7

MONITORING, EVALUATION AND AUDITING

- 7.1 The overall management responsibility of the bi-lateral cooperation programme rests with the Parties, who during the annual meetings or by exchange of letters will agree on issues related to approval of/changes to work plans, budgets, reviews and audits.
- 7.2 The Parties will exchange views and provide data, documentation and information for the smooth implementation of this Agreement.
- 7.3 Joint reviews will be done by the Parties.
- 7.4 After completion of each sub element of the bi-lateral cooperation programme, the parties will carry out evaluation of the sub element.
- 7.5 The parties will carry out technical mission to monitor the implementation of the overall bi-lateral cooperation programme.
- 7.6 The Parties may carry out any technical or financial mission that is considered necessary to monitor the implementation of the Programme.

- 7.7 After the termination of any bi-lateral cooperation programme a final evaluation will be carried out by the Parties.

ARTICLE 8

PROCUREMENT AND REPORTS

- 8.1 Host Nation shall, acknowledge receipt of funds, donations and material.
- 8.2 Sending Nation will in full transparency in relations to the Host Nation manage the funds assigned to the bi-lateral programme. The Parties procedures for financial management are used, as they comply with International Public Sector Accounting Standards, IPSAS.
- 8.3 Procedures for procurement shall follow Host Nation applicable procurement law. No offer, payment, consideration or benefit of any kind to either party, which could be regarded as an illegal or corrupt practice, shall be made, promised, sought or accepted - neither directly nor indirectly - as an inducement or reward in relation to activities funded under any agreed bi-lateral programme.

ARTICLE 9

JURISDICTION, PRIVILEGES AND IMMUNITY

- 9.1 Visiting Forces will respect the Constitution laws, regulations, customs and traditions of the Host Nation at all times. Whilst conducting activities in the Host Nation under this Agreement, Visiting Forces will be entitled to the protection of the laws of the Host Nation.
- 9.2 Subject to the provisions of this article:
- a. Service Authorities of a Visiting Force may exercise within the Host Nation or on board any ship or aircraft, all criminal and disciplinary jurisdiction conferred on them by the law of the Sending Nation over members of the Visiting Force.

- b. The Host Nation may exercise jurisdiction over members of the Visiting Forces with respect to offences committed in the Host Nation and punishable by the laws of the Host Nation.
- 9.3 Subject to the Law of the Sending Nation, in cases where the right to exercise jurisdiction is concurrent, the Sending Nation will have the primary right to exercise jurisdiction in relation to:
 - a. Offences against the property or security of the Visiting Forces, or against the property or person of another member of the Visiting Forces.
 - b. Offences arising out of any act or omission done in the performance of official duty.
- 9.4 In any other case, the authorities of the Host Nation will have the primary right to exercise jurisdiction with respect to offences committed in the Host Nation and punishable by the laws of the Host Nation. If the Party having the primary right decides not to exercise jurisdiction, it will notify the authorities of the other Party in writing as soon as practicable.
- 9.5 The authorities of the Parties will assist each other:
 - a. In the arrest of members of the Visiting Forces in the territory of the Host Nation for the purpose of handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions;
 - b. The Host Nation authorities shall notify promptly the Service authorities of the Visiting Force of the arrest of a member of the Visiting Forces;
 - c. A member of the Visiting Forces held in the custody of the Host Nation Authorities may be released to the Service authorities of the Visiting Forces on the understanding that such a member will be presented for investigations and trial as the Host Nation authorities may require. The Host Nation will use its Good Offices to assist in securing such a release;
 - d. The Parties will assist each other in the investigation and obtaining of evidence in relation to alleged offences

committed by members of the Visiting in the territory of the Host Nation;

- e. The Parties will notify each other of the disposition of all cases in which they have concurrent jurisdiction.

9.6 Whenever a member of the Visiting Force is prosecuted under the jurisdiction of the Host Nation, he/she will be entitled to:

- a. A prompt and speedy trial;
- b. Be informed in reasonable time of the trial of the specific charge or charges made against them;
- c. Be confronted by the witnesses against them;
- d. Have compulsory process for obtaining witnesses in their favour, if they are within the jurisdiction of the Host Nation;
- e. Have legal representation of their own choice under the conditions prevailing for the time being in the Host Nation;
- f. Have the services of a competent interpreter, if they consider it necessary;
- g. Communicate with a representative of the Sending Nation, and, when the rules of the court permit, to have a representative of the Sending Nation present at their trial.

ARTICLE 10

UNIFORMS, ARMS AND OTHER DEFENCE ARTICLES

10.1 The Visiting Forces will, prior to entry into the Host Nation submit through the implementing ministry a schedule detailing all cargo on board their vessels. Such cargo may be subject to inspection and verification by the relevant authorities of the Host Nation.

10.2 Members of the Visiting Force may wear the uniform and insignia of their parent units in the performance of their official duties. They may possess and carry arms and ammunition when authorized to do so by their Service Authorities after

consultation with, and subject to any restrictions and direction imposed by the Host Nation.

- 10.3 Units and individual members of Visiting Forces will be responsible for the safe custody of all arms, ammunitions, uniforms, explosives and other defence articles. Units and individual members of the Visiting Forces shall under no circumstances sell or transfer possession to civilians of the Host Nation any arms, ammunitions, uniforms, explosives and other defence articles no longer needed by the Visiting Forces. All arms, ammunitions, uniforms, explosives and other defence articles no longer required by the Visiting Forces will be either destroyed in accordance with international practice and standards or handed over to the Host Government at no cost.
- 10.4 The Sending Nation will ensure that its service personnel comply with the provisions of this section.

ARTICLE 11

ACCESS TO FACILITIES

- 11.1 The Parties will cooperate in the military and related technical fields of interest to both Parties for the mutual benefit of their armed forces as follows:
- a. Visiting Forces may use the Host Nations civilian and military airfields, seaports and land-based facilities for visits, exercises or training, refuelling, aircraft landing, berthing of ships, navigation and other mutually acceptable military purposes;
 - b. Access to either Party's facilities will be subject to clearance through normal diplomatic channels;
 - c. Access by aircraft and vessels will be subject to the payment of fees and charges levied in accordance with existing laws and regulations as amended from time to time;

d. Each party shall be responsible for payment of any fees, rent and any other charges relating to the use of the facilities as the Parties shall mutually agree;

e. The use of civilian and military airfields by aircrafts of the Visiting Force shall be subject to orientation by the relevant civilian civil aviation authority.

ARTICLE 12

CLAIMS AND LIABILITIES

- 12.1 Each Party waives any claim it may have against the other Party for injury (including injury resulting in death) suffered by its forces or personnel, or for damage to or loss of property owned by it if such injury, death, damage or loss was caused by the acts or omissions of the other Party in the performance of official duties in connection with this arrangement.
- 12.2 For purposes of implementing this article in respect of third party claims, the authorities of the host and sending parties will assist each other in carrying out of all necessary investigations and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with such a claim. Where it is established that the Sending Party or its personnel are legally liable for such a claim, the authorities of the Host Party will submit a report to the authorities of the Sending Party who will make a prompt and adequate compensation to the victims.
- 12.3 The two Parties will cooperate in the procurement of evidence for the examination and disposal of claims for which they are responsible.

ARTICLE 13

ENTRY, RESIDENCE AND EXIT

The entry, residence and exit in the Host nation shall be in accordance with the immigration laws of the Host Nation.

ARTICLE 14

IMPORTS AND EXPORTS

- 14.1 The Visiting Forces may import free of duty, license or other permit, equipment, material, provisions, supplies, mail and other goods required by them or required for the personal use and consumption of these forces.
- 14.2 Items so imported shall be subjected to inspection at the port of entry in the presence of the Visiting Forces concerned or an authorized representative of the Visiting Forces. Such inspection will be conducted expeditiously by the Authorities of the Host Nation so as not to unnecessarily delay the movement of essential supplies required by the Visiting Forces.
- 14.3 Official Armed Forces couriers shall not import or export documents and articles without submitting them for examination by customs authorities and other inspection provided that a declaration is made in sufficient time to those authorities of the type and nature of the documents and articles.
- 14.4 Goods imported duty free may be re-exported freely and without payment of duty. Any disposal of these goods in the territories of the Parties by sale or otherwise, unless to a person similarly privileged, will be subject to the payment of duty in accordance with existing regulations.
- 14.5 Vehicles and articles which are the property of the Visiting Forces and do not belong to a member of the Visiting Forces, seized by the Kenyan authorities in connection with an offence against the laws and regulations administered by the Host Nation customs authorities will be handled in

accordance with the laws of the Host Nation and, if possible will be handed over to the Service Authorities of the Sending Nation after proper investigations have been carried out by the Host Nation authorities.

- 14.6 Any weapons, ammunition, explosives, vehicles and major equipment which a Sending Nation wishes to import, it will notify the Host Nation within a reasonable time. The Host Nation may prohibit the entry of personnel or importation of military stores as specified in this sub-paragraph.

ARTICLE 15

TAXATION

- 15.1 Subject to Article 14, taxes, customs, duties and similar charges levied in connection with this Agreement will be paid in accordance with the applicable taxation laws in the Host Nation.
- 15.2 Members of the Visiting Force in the Host Nation will be exempt from local income tax and any form of direct taxation or National Insurance contributions on their pay, allowances and other emoluments and benefits (whether in cash or in kind) paid to them as such members. They will also be exempt from any other form of direct taxation by the Host Nation authorities. They will not be exempt from user charges for public utilities or from charges for other services rendered. Liability to taxation may arise in respect of income from private investments or enterprises undertaken in the Host Nation according to Host Nation laws and regulations.
- 15.3 Members of visiting forces will be taxed on other personal income such as working in host nation or by independent business operations.

ARTICLE 16

IDENTIFICATION

- 16.1 Visiting Forces must carry passports and/ or service identity cards with them at all times. The host nation authorities may issue such identity documents as they deem necessary for Visiting Forces training or otherwise in military establishments.
- 16.2 Visiting Forces' ships, aircraft, vehicles, stores, equipment, weapons and provisions may carry distinctive identification such as their national flag and markings such as military insignia, titles and official symbols.

ARTICLE 17

VEHICLE REGISTRATION AND DRIVING LICENCES

- 17.1 All vehicles belonging to the Visiting Forces in the Host Nation will be registered with the Sending Nation and a copy of the registration will be made available on request to the relevant Host Nation Service and Civilian authorities. Registration numbers are to be applied to all vehicles in accordance with the Host nation and Sending Nation Armed Forces practice.
- 17.2 The authorities of the Parties will accept as valid current national driving licenses, international driving licenses or service driving licenses issued by each respective Party to its Armed Forces in accordance with its domestic laws.

ARTICLE 18

TRAINING COSTS AND SALARIES

- 18.1 The Parties may charge fees for training courses, to include tuition, food, accommodation, training aids and transport. Such fees will be determined between the two Parties when places on training courses are applied for.
- 18.2 Each Party will be responsible for paying the salaries of its military personnel in the other's country.

ARTICLE 19

INVESTIGATION PROCEDURES FOR ACCIDENTS

- 19.1 Investigation of an accident or incident involving the Visiting Forces is the responsibility of the authorities of the Host Nation. The Sending Nation will, in the spirit of this Agreement, cooperate with requests for information and evidence, as may be made by the chairperson of the inquiry as part of their deliberations. The Visiting Forces will be provided with a copy of the Inquiry report.
- 19.2 The Visiting Forces will be entitled to have an observer present at any Inquiry carried out by the Service Authorities of the Host Nation. Except when requested to do otherwise by the Host Nation, the observer will not have the freedom to cross-examine, or to participate in any other way and will not be present when the Inquiry is deliberating on its findings and recommendations. The observer will normally be no higher in corresponding rank than the Chairperson of the Inquiry.
- 19.3 The Sending Nation may conduct further investigations into an accident or incident in the territory of the Host Nation as may be required by its laws or regulations. Any requests for information for use in the pursuit of such investigations will be given sympathetic consideration by the Host Nation.

ARTICLE 20

MEDICAL, OPTICAL AND DENTAL

- 20.1 At the time of their departure for the Host Nation, Visiting Forces personnel will be medically and dentally fit. The Sending Nation will be responsible for arranging the provision, and for meeting the cost of, medical, optical and hospital treatment (including the provision of spectacles and dentures) of Visiting Forces, and for arranging evacuation in the event that suitable treatment is not available locally.
- 20.2 The Host Nation may be requested to provide treatment where possible. Charges may be payable for such treatment.

ARTICLE 21

HANDLING THE DEATH OF A MEMBER OF THE VISITING FORCES

- 21.1 The death of a member of the Visiting Forces in the Host Nation will be reported to the relevant Host Nation and Visiting Forces authorities. The death will be certified by an accredited doctor of the Host Nation who will issue the death certificate.
- 21.2 If the Host Nation authorities require that an autopsy be carried out on the deceased, this will be done by a doctor of the Host Nation nominated for the purpose. The Host Nation will notify the Commander of the Visiting Forces prior to an autopsy taking place.
- 21.3 A doctor appointed by the Visiting Forces authorities may also attend the autopsy which will take place at a time and location stipulated by the Host Nation.

ARTICLE 22

PROTECTION OF CLASSIFIED INFORMATION

- 22.1 The Parties undertake not to disclose any classified information obtained, as a result of the implementation of this Agreement.
- 22.2 Classified information can only be disclosed to pertinent members of military staff of the Parties, to whom such disclosure is absolutely essential for the implementation of this Agreement and only; after all preventive measures have been taken to ensure that such members of staff will not disclose such information.
- 22.3 There is to be no disclosure of such information to any third party without prior written consent of the Originating Nation.
- 22.4 Each Party undertakes not to use any classified information obtained in the process of implementation of this bilateral Agreement to the detriment of the other Party, or against the national interests of the other Party.

- 22.5 The prohibitions referred under this Article shall remain in force irrespective of the termination of this Agreement.

ARTICLE 23

AMENDMENT

- 23.1 This Agreement may be amended or revised by mutual consent of the Parties.
- 23.2 Amendments made shall enter into force on the last date of signature on the deed of amendment.
- 23.3 In mutual Agreement and with the aim of supporting the bi-lateral cooperation between the Parties, a third Party nation or partner can be invited to take part in the bi-lateral cooperation programme.

ARTICLE 24

SETTLEMENT OF DISPUTES

Any dispute arising from the interpretation and/or application of this Agreement shall be settled amicably through negotiation between the Parties, and will not be referred to any domestic or international tribunal or third party for settlement.

ARTICLE 25

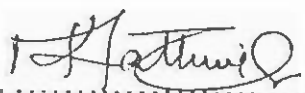
ENTRY INTO FORCE, DURATION AND TERMINATION

- 25.1 The parties shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement.
- 25.2 This Agreement shall remain in force for a period of five (5) years and will be automatically extended, each time for five (5) more years, unless either Party notifies the other Party in writing, at least six (6) months before the expiry of its term, about its intention to terminate the Agreement.

25.3 The termination of this Agreement shall not affect the completion of any project undertaken by the Parties prior to the termination thereof, or the full execution of any cooperative activity that has not been fully executed at the time of termination, unless otherwise agreed upon in writing by the Parties.

IN WITNESS WHEREOF, the Undersigned, being duly authorized by their respective Governments, have signed this Agreement in two originals, in English language, both texts being equally authentic.

Signed at Nairobi this 17 day of July in the year 2020



Dr. Monica Juma (Oxon), CBS
Cabinet Secretary for Defence
For The Government of The
Republic of Kenya



Mette Knudsen
Danish Ambassador to Kenya
For The Government of
The Kingdom of Denmark