

The Agreement was previously  
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Cm 9249 (2016)



Treaty Series No. 34 (2016)

# Agreement

between the Government of the Republic of Kenya and the Government  
of the United Kingdom of Great Britain and Northern Ireland  
Concerning Defence Cooperation

Nairobi, 9 December 2015

[The Agreement entered into force on 11 October 2016]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
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**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
KENYA AND THE GOVERNMENT OF THE UNITED KINGDOM OF  
GREAT BRITAIN AND NORTHERN IRELAND CONCERNING  
DEFENCE COOPERATION**

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## **Preamble**

The Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland (hereafter referred to jointly as the “Parties” and singularly as a “Party”):

**STRIVING** to strengthen the good and friendly relations between the Parties by means of close defence cooperation;

**WISHING** to acknowledge and demonstrate their mutual commitment to the continued development of their defence relationship;

**DESIRING** to draw the maximum benefit from their close defence cooperation;

**RECOGNISING** that such cooperation shall be in accordance with their respective national policies and international best practices and shall not conflict with the domestic law of their respective states nor impair the commitments undertaken by their countries in the international field;

**CONFIRMING** that the cooperation between the Parties promotes peace and stability and that this cooperation is not directed against any third country;

**IN CONSIDERATION OF** the needs of the Armed Forces of the United Kingdom of Great Britain and Northern Ireland and the Kenya Defence Forces regarding cooperation in military training, visits and technical assistance, the status of forces and other related matters,

**HAVE** agreed as follows:

## ARTICLE 1

### **Definitions**

In this Agreement, the following definitions apply:

- a. **Armed Forces.** Means the Kenya Defence Forces or the Armed Forces of the United Kingdom of Great Britain and Northern Ireland.
- b. **Authorised Service Organisation.** Means any organisation established and operated by the Service Authorities of a Party to provide services to its Armed Forces including welfare services.
- c. **Civilian Component.** Means the civilian personnel accompanying the Visiting Forces, who are employed in the service of the Visiting Forces or employed by an Authorised Service Organisation accompanying Visiting Forces who are not stateless persons or citizens of the Host Nation or persons ordinarily resident in the Host Nation.

- d. **Dependant.** Means a person who is not ordinarily resident in the Host Nation and who is the wife, husband or dependent child of a member of the Visiting Forces and is officially accompanying them.
- e. **Designated Training Areas.** Means private, public and/or communal land outside Gazetted Areas that the Visiting Forces may in conjunction with the Implementing Ministry procure through licences from local communities and/or private owners for use as a Training Area.
- f. **Duty.** Includes any cess, levy, imposition, tax, or surtax, imposed by any law of the Host Nation.
- g. **Exercises or Training.** Means bilateral and multilateral exercises or training activities involving units and individuals, short term training teams, advisory support, exchanges and attachment of units.
- h. **Gazetted Areas.** Means public land allocated and reserved for exclusive use by Kenya Defence Forces for setting up its establishments including but not limited to barracks, bases, camps, detachments and Training Areas.
- i. **Host Nation.** Means the State in the territory of which the Visiting Forces are located for the purposes of this Agreement.
- j. **Implementing Arrangement.** Means a follow-on arrangement to this Agreement which may be concluded in order to set out additional details and conditions or for specific activity in which case it shall detail the resources required to undertake that activity. The Implementing Arrangement shall be a document made under this Agreement and shall be interpreted consistently with its provisions. Either Party may propose an Implementing Arrangement.
- k. **Implementing Ministry.** Means the Ministry for the time being responsible for defence and nominated by a Party to be responsible for the implementation of this Agreement under Article 5.
- l. **Official Duty.** Means the performance of a function of duty.
- m. **Sending Nation.** Means the State which sends the Visiting Forces to the Host Nation for the purposes of this Agreement.
- n. **Service Authorities.** Means the authorities of the Host Nation or the Sending Nation empowered by the law of their respective States to exercise command or jurisdiction over the Armed Forces.

- o. **Service Establishments and Installations.** Means the designated base camps including the married quarters of the Visiting Forces.
- p. **Training Areas.** Means those areas on land, air and sea in the Host Nation in which Armed Forces shall be deployed for the purposes of conducting Exercises or Training and include Designated Training Areas and/or Gazetted Areas.
- q. **Visiting Forces.** Means the Armed Forces of the Sending Nation who for the time being are lawfully present in the Host Nation in time of peace under this Agreement.

## ARTICLE 2

### **Aim**

The aim of this Agreement is to enhance defence cooperation by identifying a framework for the exchange of experience and knowledge for the use and mutual benefit of the Parties.

## ARTICLE 3

### **Scope and Goals**

The Parties shall, in compliance with relevant domestic and international law, pursue the goal of defence cooperation in the following areas:

- a. Security and defence policy;
- b. Initial, advanced and follow-on training of military and Ministry of Defence civilian personnel;
- c. Defence administration and welfare matters of military personnel;
- d. Counter-piracy and other maritime security activities;
- e. Peacetime military activities;
- f. Protection of the environment;
- g. Military medical services;
- h. Military sports;
- i. Disaster relief and humanitarian operations by the Armed forces;

- j. Military exercises;
- k. Exchange visits of military personnel;
- l. Mapping/survey and exchange of geographic materials;
- m. Other areas of mutual interest which may be decided upon in future.

#### ARTICLE 4

##### **Forms of Cooperation**

Defence cooperation between the Parties shall be based on the principle of reciprocity and shall be implemented primarily along the following lines:

- a. Mutual visits by delegations of high-ranking representatives from the defence sector;
- b. Staff talks and technical meetings;
- c. Meetings between equivalent defence institutions;
- d. Exchange of teaching and training personnel as well as students from military training institutions;
- e. Participation in training courses, practical training, seminars, round-table discussions and symposia;
- f. Visits by Service personnel, warships and other Government ships and aircraft;
- g. Military exercises;
- h. Any other form of Military cooperation in areas agreed upon.

#### ARTICLE 5

##### **Implementation**

1. On entry into force of this Agreement both Parties shall take appropriate action to designate the other Party as a Visiting Force in accordance with its relevant laws.
2. All activities under this Agreement shall be implemented in conformity with the domestic law in force in the Host Nation. Implementation of some aspects of the Agreement may be covered by Implementing Arrangements.



3. The Parties shall designate an Implementing Ministry as the focal point of contact to implement this Agreement and coordinate the activities referred to herein; and may provide liaison officers to Visiting Forces. The Parties shall by 31<sup>st</sup> March of each year, negotiate and agree on the activities to be undertaken in that year.
4. Visiting Forces shall be treated, except as otherwise provided for in this Agreement, as members of the Armed Forces of the Host Nation of equivalent rank.
5. Visiting Forces shall 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 enforcement of law and order.
6. The Host Nation may provide assistance to the Visiting Forces from time to time as it may deem necessary, fit and expedient. Visiting Forces shall observe rules, orders and safety measures applied in the institution or establishment where activities take place, and shall abstain from infringing the laws of the Host Nation and from any political activities or any other activity that may be inconsistent with the spirit of this Agreement. The Service Authorities shall take such necessary precautions or measures for the proper observance of these provisions.
7. Visiting Forces deployed in training and advisory posts shall not be given operational responsibilities in the Armed Forces of the Host Nation.

## ARTICLE 6

### **Jurisdiction**

1. Visiting Forces shall be subject to, abide by and respect the Constitution, laws and regulations of the Host Nation at all times.
2. The relevant authorities of the Host Nation shall have jurisdiction over any member of the Visiting Forces, the Civilian Component or Dependents for any criminal offence committed in contravention of any law of the Host Nation, customary international law, treaty or any agreement to which the Host Nation's Government is a party, save for instances where under this Agreement such jurisdiction is expressly conferred on the Service Authorities of the Sending Nation.
3. The Service Authorities of the Sending Nation shall have the right to exercise within the territory of the Host Nation or on board any vessel or aircraft of the Host Nation all criminal and disciplinary jurisdiction conferred on them by the law of the Sending Nation over Visiting Forces.

4. The Service Authorities of the Sending Nation shall have jurisdiction over a member of the Visiting Forces if:

- a. The offence is solely against the property or security of the Visiting Forces or the Sending Nation;
- b. The offence is solely against the person or property of another member of the Visiting Forces, the Civilian Component or a Dependant; or
- c. The offence arises out of an act or omission done in the course of Official Duty by any member of the Visiting Forces. The Inter-Governmental Liaison Committee, established under Article 24, shall determine whether an offence arises out of an act or omission done in the course of Official Duty.

5. Any offence not arising in the course of Official Duty in accordance with paragraph 4(c) of this Article or that does not fall under paragraphs 4(a) and 4(b) of this Article shall be subject to the primary right of the Host Nation to exercise jurisdiction. For the avoidance of doubt the following offences are not to be considered offences arising out of an act or omission in the course of Official Duty:

- a. Sexual offences;
- b. Torture;
- c. Inhumane or degrading treatment of persons;
- d. Transnational organised crimes;
- e. Slavery;
- f. Offences against the Host Nation's security;
- g. Robbery;
- h. Attempting, aiding and abetting the commission of the aforementioned offences.

6. The relevant authorities of the Party having the primary right to exercise jurisdiction shall give sympathetic consideration to a request from the authorities of the other Party to waive that right in cases where that other Party considers such a waiver to be of particular importance and in cases of minor offences where the authorities of the Host Nation have the primary right and where the Service Authorities of the Sending Nation can impose a suitable punishment by disciplinary action without recourse to a trial. If the relevant authorities having the primary right decide not to exercise jurisdiction, they shall notify the appropriate authorities of the other Party as soon as practicable. The waiver by one Party of its primary right to exercise jurisdiction shall not preclude that Party from exercising its right to jurisdiction in matters where the other chooses not to exercise its own right to jurisdiction.

7. The Service Authorities of the Sending Nation shall consider waiving jurisdiction granted in paragraph 4(c) of this Article, in any incident where an offence arising out of an act or omission done in the course of Official Duty by a member of the Visiting Forces has caused the death of, or serious injury to, a person who is not a member of the Visiting Forces, the Civilian Component or a Dependant.

8. Notwithstanding paragraph 7, either Party shall have the right to refer any such incident, to the Inter-Governmental Liaison Committee which shall determine whether the Sending Nation shall waive jurisdiction in a particular case in accordance with Article 24.

9. The Attorney General or the Minister of Justice of the Host Nation may by certificate certify the existence of the public interest or the interest of administration of justice of the Host Nation which would in his/her opinion necessitate the exercise of the Host Nation jurisdiction. Such certificate shall be submitted to the Inter-Governmental Liaison Committee and the Sending Nation for consideration pursuant to Article 24 of this Agreement.

10. In the event of an incident involving Visiting Forces, including those that have caused the death of or serious injury to any person who is not a member of the Visiting Forces, the Civilian Component or a Dependant, the Sending Nation shall notify the Host Nation and the Inter-Governmental Liaison Committee of the incident within 7 days.

11. The relevant authorities of the Host Nation shall immediately notify the Visiting Forces' High Commission of the arrest of any member of the Visiting Forces, Civilian Component or a Dependant.

12. The relevant Authorities of the Parties shall assist each other in the carrying out of all necessary investigations into any offences, in collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence as well as the arrest and transfer of prisoners. The handing over of objects may, however, be subject to their return within the time specified by the authorities delivering them.

13. Any arrested member of the Visiting Forces, Civilian Component or Dependant shall be presented to a public court for arraignment or first appearance as soon as possible after their arrest, and, in any event, within 48 hours of their arrest.

14. Where an accused has been tried in accordance with the provisions of this Agreement by the authorities of one Party and has been acquitted or has been convicted and is serving or has served a sentence, or has been pardoned, he or she may not be tried again for the same offence within the territory of the Host Nation by the authorities of the other Party. However, nothing in this paragraph is to prevent the Service Authorities of the Sending Nation from trying a member of its Visiting Forces, Civilian Component or a Dependant for any violation of rules of discipline arising from an act or omission for which he or she was tried by the authorities of the Host Nation.

15. Whenever a member of the Visiting Forces, Civilian Component or a Dependant is prosecuted under jurisdiction exercised by the authorities of the Host Nation, he or she shall be entitled:

- a. To a prompt and speedy trial;
- b. To be informed, in advance of trial, of the specific charge or charges made against him or her;
- c. To be confronted with the witnesses against him or her;
- d. To have compulsory process for obtaining witnesses in his or her favour, if they are within the jurisdiction of the authorities of the Host Nation;
- e. To have legal representation of his or her own choice for his or her defence or to have free or assisted legal representation under the conditions prevailing for the time being in the Host Nation and to be granted private and unfettered access to the legal representative;
- f. If necessary, to have the services of a competent interpreter;
- g. To communicate with a representative of the Sending Nation, and, when the rules of the court permit, to have such a representative present at his or her trial; and
- h. To have any sentence of the death penalty or corporal punishment commuted to a prison sentence or fine.

16. In cases where the authorities of the Host Nation have the right to exercise jurisdiction over members of the Visiting Forces, that jurisdiction shall be exercised within the ordinary criminal justice system applicable to civilians and shall not be exercised within the criminal justice system applicable only to members of the Armed Forces of the Host Nation.

17. Whenever a member of the Visiting Forces is convicted and sentenced to imprisonment under jurisdiction exercised by the authorities of the Host Nation, the Host Nation shall give sympathetic consideration to any request from the Sending Nation that the prison sentence is served in the Sending Nation.

18. The Service Authorities of each Party shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

## ARTICLE 7

### **Uniform, Arms and Other Defence Articles**

1. The Visiting Forces shall, prior to entry into the Host Nation, submit through the Implementing Ministry a schedule detailing all cargo on board their vessels. Such cargo shall be subject to inspection and verification by the relevant authorities of the Host Nation.

2. Members of the Visiting Forces shall, where necessary and appropriate, wear the uniform and insignia of their parent units in the performance of their official duties. No uniform shall be worn if a member is not on duty. They may possess and carry arms and ammunition when authorised to do so by their Service Authorities after consultation with, and subject to any restrictions and direction imposed by the relevant authorities of the Host Nation through the Implementing Ministry.

3. The Visiting Forces may take such measures as they deem necessary to ensure the security of Service Establishments and Installations and of persons and property in them and official information.

4. Within Training Areas, the Armed Forces of the Host Nation and Visiting Forces shall jointly take such measures as are necessary to ensure the security of members of the Visiting Forces.

5. Units and members of the Visiting Forces shall be responsible for the safe custody of all arms, ammunitions, uniforms, explosives and other defence articles. Units and 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 shall either be destroyed or disposed of in accordance with Host Nation law and international practice and standards.

6. The Sending Nation shall ensure that their Visiting Forces comply with the provisions of this Article.

## ARTICLE 8

### **Environmental Protection**

1. **Environment.** The Host Nation and the Visiting Forces shall ensure protection, preservation and restoration of the environment comprising of the Training Areas and Service Establishments and Installations. The Visiting Forces shall avoid acts that negatively impact on human health and safety, property, flora and fauna and shall at all material times, comply with the Host Nation's directions, regulations and laws preserving the environment and Service Establishments and Installations.

2. **Inspection of Training Areas.** Visiting Forces shall refrain from such acts that would prejudice the Host Nation's laws and obligations under international law with respect to the preservation of the environment. The Host Nation's relevant authorities shall regularly inspect the Training Areas under use by the Visiting Forces to verify compliance with this Article.

3. **Infrastructure.** No permanent infrastructure shall be constructed in the Training Areas without the express consent of the Host Nation. In the event that such infrastructure is authorised and constructed, the ownership of the same shall be determined by the relevant authorities of the Host Nation through the Implementing Ministry. Any change of use of authorised infrastructure shall be subject to the express consent of the Host Nation.

4. **Waste management.** Disposal of waste shall be in accordance with international law and the Host Nation's laws on waste management.

## ARTICLE 9

### **Access to Facilities**

1. The Parties shall cooperate in the military and related technical fields of interest to both Parties for the mutual benefit of the Armed Forces as follows:

- a. Visiting Forces may use the Host Nation's civilian and military airfields, seaports and land-based facilities for visits, Exercises or Training, refueling, aircraft landing, berthing of ships, navigation and other mutually acceptable military purposes.

- b. The Host Nation shall permit visits to its establishments and facilities by Visiting Forces, provided that the personnel have the appropriate security clearances, and that visits have been authorised in advance by the Service Authorities of the Host Nation.
- c. Entry into the Host Nation by vessels including aircraft shall be subject to the payment of fees and charges levied in accordance with Host Nation's laws and regulations.
- d. Each Party shall be responsible for payment of any fees and any other charges relating to the use of such military facilities as shall be jointly determined. Such charges may also be paid in kind by agreement.
- e. Vessels including aircraft and vehicles which are the property of the Sending Nation and for the time being exclusively in service shall be exempt from any form of compulsory insurance, registration, licensing or compulsory testing.
- f. Use of facilities for aircraft Exercises or Training shall be subject to orientation requirements by the Host Nation's relevant civil aviation regulatory authority through the Implementing Ministry.

2. The Government of the Republic of Kenya grants the United Kingdom of Great Britain and Northern Ireland a licence to occupy and use the permanent infrastructures constructed by the United Kingdom of Great Britain and Northern Ireland Armed Forces at Laikipia Air Base and Kahawa Garrison during the validity of this Agreement. Construction of additional permanent infrastructures or modifications within or outside the aforesaid Kahawa Garrison or Laikipia Air Base shall be with the consent of the Government of the Republic of Kenya through the Implementing Ministry.

3. Authorised permanent infrastructures within the Training Areas shall be subject to the payment of licence fees as the Host Nation shall from time to time determine. For the avoidance of doubt, the Government of the United Kingdom of Great Britain and Northern Ireland shall pay Kenya Shillings Seven Million Two Hundred Thousand (Kshs. 7,200,000) and Kenya Shillings Nineteen Million Two Hundred Thousand (Kshs. 19,200,000) per calendar year for the licence granted for the permanent infrastructure at Laikipia Air Base and Kahawa Garrison respectively.

4. Permanent infrastructure constructed or installed by the Visiting Forces shall vest in the Host Nation upon the expiry of this Agreement and its non-renewal or at such earlier time as the Parties may mutually agree.

5. The Service Authorities of the Host Nation shall, in liaison with the Service Authorities of the Sending Nation or the local commander of the Visiting Forces, be at liberty to visit and inspect permanent infrastructures constructed or installed by the Visiting Forces within the Host Nation.

## ARTICLE 10

### **Provision of Training Areas**

1. The Sending Nation shall annually provide the Host Nation with a proposed schedule of exercises giving notice of at least one (1) year to each major exercise and specifying the units involved. The Sending Nation shall provide the Host Nation with staff tables of the units involved nine (9) months in advance, showing full details and numbers of personnel, numbers and types of weapons, ammunition, explosives, vehicles and major equipment that it intends to bring into the Host Nation.
2. The relevant authorities of the Host Nation may prohibit the entry of personnel or importation of military stores, provided that notification of such prohibition is given four (4) months in advance of the exercise. The precise numbers of personnel and equipment, which shall not differ significantly from original estimates, shall be confirmed by the Visiting Forces a minimum of four (4) weeks prior to the arrival of the Visiting Forces in the Host Nation.
3. Training in Training Areas in the Host Nation shall take place in accordance with the following provisions:
  - a. Bookings for training in Gazetted Areas are to be made nine (9) months in advance and guaranteed allocation shall be confirmed by the relevant authorities of the Host Nation through the Implementing Ministry six (6) months in advance including the limit on the number of the Visiting Forces to be allowed into the Host Nation.
  - b. Training in Designated Training Areas shall be permitted subject to the Visiting Forces:
    - i) Obtaining consent from the Implementing Ministry of the Host Nation prior to commencement of negotiations and procurement of licences;
    - ii) Involving the Implementing Ministry of the Host Nation in the negotiations and procurement process;
    - iii) Making full disclosure to the Implementing Ministry of the Host Nation on the licences procured to train on private, public and/or communal land;
    - iv) Paying all applicable taxes due from them to the relevant national and county/local governments as may be prescribed from time to time.



- c. Subject to the limitations set by the Host Nation, the booking shall specify duration, nature of training, equipment and number of personnel taking part.
- d. The Host Nation shall provide liaison staff and undertake combined training with the Visiting Forces throughout the military exercise period in the Training Areas, including the planning, execution and recovery stages within the Host Nation.
- e. The Host Nation and the Visiting Forces shall jointly take appropriate measures to warn against any form of interference prior to the commencement of or during any training activity.
- f. Military training involving live firing including high trajectory ammunition and parachuting shall require clearance from the relevant authorities of the Host Nation through the Implementing Ministry.
- g. Military training involving any firing at sea shall require clearance from the relevant authorities of the Host Nation through the Implementing Ministry.
- h. All training shall be regulated in strict compliance with both Parties' existing military safety and clearance procedures and rules.
- i. The Parties shall conduct a joint annual unexploded ordnance clearance validation exercise in order to prevent injury, death or other damage to persons and property.

## ARTICLE 11

### **Civil Claims and Liabilities**

1. The Host Nation shall have jurisdiction for civil claims and liabilities arising from activities in its territory under this Agreement. Each Party waives any claim it may have against the other Party or the Armed Forces personnel of the other Party for injury (including injury resulting in death) suffered by its Armed Forces personnel or for damage to or loss of property owned by the Armed Forces if such injury, death, damage or loss was caused by the acts or omissions of the other Party in the course of Official Duty in connection with this Agreement.

2. The relevant authorities of both Parties shall cooperate in the carrying out of all necessary investigations into all third party claims, and in the collection and production of evidence, including the seizure and the handing over of objects connected with such a claim.

3. Where it is established that the Visiting Forces, their members, Visiting Forces employees or agents are legally liable for such a claim, the relevant authorities of the Host Nation shall submit a report to the relevant authorities of the Sending Nation who shall pay prompt and adequate compensation to the claimants.

4. The Parties shall cooperate in the disposal of claims for which they are responsible.

## ARTICLE 12

### **Entry, Movement and Exit**

1. The Host Nation may allow Visiting Forces freedom of movement within its territory, including stopping and anchoring in its waters, and its air space, provided that a request to do so has been received within reasonable time.

2. A person who has been declared a prohibited immigrant shall not be allowed to enter the Host Nation. Any member of the Visiting Forces, Civilian Component or a Dependant who is declared a prohibited immigrant while in the Host Nation shall be repatriated or otherwise removed from the Host Nation by the Service Authorities of the Sending Nation at their expense.

3. The Service Authorities of the Sending Nation shall bear the cost or reimburse any cost necessarily incurred by the relevant authorities of the Host Nation resulting from the repatriation of any member of the Visiting Forces, Civilian Component or a Dependant in accordance with paragraph 2.

4. To obtain entry into the Host Nation, each member of the Visiting Forces shall be required to produce a Passport valid for at least six (6) months with a service identity card, be processed through the normal immigration screening and clearance including but not limited to finger printing whereupon they shall be issued with visas at a prescribed fee and a renewable visitors' pass for a period of three (3) months.

5. On arrival at the port of entry, the Visiting Forces shall be received by an officer to be designated by the Host Nation who shall facilitate the efficient and seamless immigration procedures at the port of entry.

6. The Service Authorities of the Sending Nation shall provide a list of the names of the Visiting Forces to the Implementing Ministry of the Host Nation for onward transmission to the Immigration Department at least two (2) weeks prior to the arrival of the Visiting Forces.

7. A member of the Visiting Forces who is resident in the Host Nation for at least six (6) months shall be required to apply for a work permit and pay the applicable fee. Dependants shall be required to apply for dependants' passes and if they wish to work, they shall apply for work permits in accordance with the Host Nation's immigration laws. All such applications for work permits shall be forwarded to the Immigration Department through the Implementing Ministry of the Host Nation.

8. Dependants and members of the Civilian Component shall be so described in their passports. The Civilian Component and Dependants shall be required to produce a passport valid for at least six (6) months and to pay, or have paid on their behalf, any applicable port of entry/exit visa fees.

9. After a member of the Visiting Forces is discharged from service, he or she shall be repatriated.

10. On completion of the tour of duty, the Visiting Forces, Civilian Component and their Dependants shall leave the Host Nation within fourteen (14) days.

## ARTICLE 13

### **Taxation, Importation and Exportation**

1. Direct taxation of pay, allowances, emoluments and benefits of the Visiting Forces and the Civilian Component in the Host Nation shall be dealt with in accordance with the Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains signed on 31 July 1973<sup>1</sup>.

2. The Parties will permit each other access to their duty free regime facilities in accordance with the laws and regulations applicable in the Host Nation. The Government of the Republic of Kenya shall permit members of the Armed Forces of the United Kingdom of Great Britain and Northern Ireland to import duty free household goods and one motor vehicle within ninety (90) days or in the case of motor vehicles, such further period not exceeding three hundred and sixty (360) days as may be specifically approved by the authorities of the Government of the Republic of Kenya, from the date of arrival into the Republic of Kenya. Goods and equipment owned by the Government of the United Kingdom of Great Britain and Northern Ireland for official use by its Armed Forces in the Republic of Kenya shall be imported duty free. The Government of the United Kingdom of Great Britain and Northern Ireland shall permit members of the Kenya Defence Forces personal import reliefs on temporary admission, transfer of residence and overseas student allowance.

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<sup>1</sup> Treaty Series No. 051 (1883) Cmnd 9024

3. If a member of the Visiting Forces intends to travel to the Host Nation on official business connected to the implementation of this Agreement and wishes to make use of the available tax reliefs under the Host Nation's laws, the Sending Nation shall notify the High Commission of the Host Nation in the Sending Nation at least one (1) month in advance of the intended date of travel. The notification should include an explanation of the purpose of travel, expected duration and the nature of the goods and equipment that shall be imported into the Host Nation.

4. For the purposes of paragraph 3, the High Commission of the Host Nation in the Sending Nation shall consult with the relevant authorities of the Host Nation and advise the Sending Nation on the appropriate procedure to obtain the most favourable arrangements in relation to Duty.

5. If the Service Authorities of the Sending Nation intend to import into the Host Nation vehicles, goods or other equipment for official use by the Visiting Forces, the Sending Nation shall notify the High Commission of the Host Nation in the Sending Nation at least one (1) month in advance of the intended date of arrival of the equipment, goods or vehicles into the Host Nation. The notification shall include an official accurate manifest of such items with sufficient details to enable inspection and proper account of the materials for disposal in the Host Nation or re-export.

6. If a financial security or undertaking is required on the importation of goods and equipment into the United Kingdom of Great Britain and Northern Ireland pursuant to paragraph 3, the Implementing Ministry of the Government of the United Kingdom of Great Britain and Northern Ireland shall provide the financial security provided that the member of the Kenya Defence Forces agrees to abide by any conditions that apply to the personal import relief. No financial undertaking shall be required for imports into the Republic of Kenya by members of the Armed Forces of United Kingdom of Great Britain and Northern Ireland pursuant to paragraph 2.

7. Postal articles may be imported into and exported from the Host Nation by authorised postal agencies subject to the production of such articles to the relevant authorities of the Host Nation for examination in order to ensure compliance with the relevant customs regulations.

8. The importation of equipment, materials, vehicles, provisions, supplies and other goods shall be subject to the Host Nation and applicable regional economic integration organisations' laws and regulations in relation to licences or permits. Where it is appropriate to do so, the Host Nation may provide further bilateral facilitations such as exemptions to certain licences and permits following any discussions and agreements for specific situations.

9. Items imported into the Host Nation pursuant to this Agreement shall, unless the relevant authorities of the Host Nation decide to the contrary, be subject to inspection at the port of entry in the presence of a member of the Visiting Forces. All imports into the Host Nation shall be done through the designated ports of entry. The Parties shall from time to time notify each other of their designated ports of entry.

10. Goods imported duty free may be re-exported freely and without payment of duty. Any disposal of duty free goods in the Host Nation by sale or transfer to a non-privileged person shall be subject to the payment of duty in accordance with existing Host Nation laws and regulations. Subject to approval of the relevant Host Nation's authorities and where the Host Nation's laws permit, duty free goods may be transferred to persons similarly privileged.

11. Vehicles and articles which are the property of the Sending Nation that are seized by the relevant authorities of the Host Nation in connection with an offence against the laws and regulations administered by the customs authorities of the Host Nation shall be handled in accordance with the laws of the Host Nation. Subject to the applicable laws and regulations of the Host Nation, the vehicles and articles seized shall be handed over to the Sending Nation after proper investigations and completion of any legal proceedings by the relevant authorities of the Host Nation.

12. The Parties shall co-operate in the exchange of information to facilitate the administration of the Host Nation's tax laws where tax is applicable.

13. Further arrangements under this Article may be covered by an Implementing Arrangement agreed upon by the Parties.

## ARTICLE 14

### **Finance**

1. The financial obligations of the Parties shall be subject to their respective national laws.

2. For any supplies or services which are not provided free of charge by mutual consent, the relevant authorities of the Host Nation and the Visiting Forces shall negotiate for payment either in cash or in kind.

- a. **Cash Payments.** The Visiting Forces shall pay outstanding balances after receipt of an invoice.
- b. **Payment in Kind.** The Visiting Forces may pay by transferring supplies or services that are equal in value to those received if satisfactory to the Host Nation.

3. The Host Nation shall not obtain services or commit to any commercial contracts on behalf of the Visiting Forces without prior authorisation.

4. The Visiting Forces shall pay for supplies, equipment or services from commercial sources such as food, vehicle hire, laundry, medical, prior to departure from the territory of the Host Nation, unless otherwise contractually determined or unless a dispute regarding cost or receipt of services exists. In case of the latter situation arising, every effort shall be made to resolve the dispute as soon as possible in order to expedite settlement of accounts.

5. Subject to availability, the Host Nation shall provide the Visiting Forces with messing and accommodation to the same standard as would be provided to members of the Host Nation's Armed Forces of equivalent rank.

6. The Visiting Forces shall not re-transfer logistic support, supplies or services, either temporarily or permanently, to another nation or organisation without written consent of the relevant authorities of the Host Nation.

## ARTICLE 15

### **Remittance of Funds**

Remittance between the territory of the Host Nation and the territory of the Visiting Forces shall be permitted in respect of:

- a. Funds derived by members of the Visiting Forces from services or employment in connection with their official duties in the Host Nation;
- b. Official funds of the Visiting Forces and Authorised Service Organisations accompanying them in the Host Nation;
- c. Funds derived by the Visiting Forces from sources outside the Host Nation subject to any Host Nation laws or regulations;
- d. Funds derived by the Visiting Forces arising from the disposal, in anticipation of departure from the Host Nation, of personal effects, furniture, motor vehicles and other property which, at the time of importation, were officially recorded with the Host Nation as being items for use by the Visiting Forces;
- e. Funds derived from the sale of locally acquired personal effects, furniture, motor vehicles and other property, purchased with funds from external sources, provided documentary proof of the acquisition and sale of such items is provided to the relevant authorities of the Host Nation.

## ARTICLE 16

### **Identification**

1. Visiting Forces shall carry passports and/or Service identity cards at all times. The Service Authorities of the Host Nation may issue such identity documents as they deem necessary for Visiting Forces training or otherwise in military establishments in the Host Nation.
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**

1. All vehicles belonging to the Visiting Forces in the Host Nation shall be registered by the Visiting Forces and a copy of the register made available on request to the relevant authorities of the Host Nation. Registration numbers are to be applied to all vehicles in accordance with each Party's practice.
2. The authorities of the Host Nation shall accept as valid current national driving licences, international driving licences or service driving licences issued by the Sending Nation to its Armed Forces, Civilian Component or Dependents in accordance with the Sending Nation's laws and regulations.

## ARTICLE 18

### **Training Costs and Salaries**

Both Parties may charge fees for training courses, which may include tuition, food, accommodation, training aids and transport. Such fees shall be determined between the Parties when places on training courses are applied for. The Sending Nation shall be responsible for paying the salaries of the Visiting Forces and Civilian Component in the Host Nation.

## ARTICLE 19

### **Investigation Procedures for Accidents**

1. Investigation of accidents or incidents including those involving military aircraft, missiles and/or unmanned aircraft systems of the Visiting Forces shall be the responsibility of the authorities of the Party in whose territory the accident or incident under investigation occurred. The Visiting Forces may provide expert advice, and shall, in the spirit of this Agreement, cooperate with requests for information and evidence, as may be made by the chairperson of any inquiry as part of their deliberations. The Visiting Forces shall be provided with a copy of the inquiry report.
2. The Visiting Forces shall 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 shall not have the freedom to cross-examine, or to participate in any other way and shall not be present when the Inquiry is deliberating on its findings and recommendations. The observer shall normally be no higher in corresponding rank than the chairperson of the inquiry.
3. Visiting Forces may conduct further investigations into an accident or incident in the territory of the Host Nation as may be required by the laws or regulations of the Sending Nation. Any requests for information for use in the pursuit of such investigations shall be given consideration by the Host Nation.

## ARTICLE 20

### **Medical, Optical and Dental**

1. At the time of their departure for the Host Nation, Visiting Forces shall be medically fit. The Sending Nation shall 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. The Host Nation may be requested to provide treatment where possible which may be subject to charges. However, any emergency medical treatment required by a member of the Visiting Forces shall be provided free of charge.
2. If Visiting Forces are engaged in joint training with the Armed Forces of the Host Nation, the medical facilities available to the Visiting Forces shall be extended to the participating Armed Forces of the Host Nation, where appropriate and necessary.



## ARTICLE 21

### **Death of a Member of the Visiting Forces**

1. The death of a member of the Visiting Forces in the Host Nation shall be reported to the relevant authorities of the Host Nation and Sending Nation. The death shall be certified by a medical practitioner of the Host Nation who is registered and current with the relevant regulatory authority of the Host Nation and who is authorised to issue the death notification or death certificate.
2. If the Host Nation authorities require that an autopsy be carried out on the deceased, this shall be done by a doctor of the Host Nation nominated for the purpose. The Host Nation shall notify the Commander of the Visiting Forces prior to an autopsy taking place. A doctor appointed by the Service Authorities of the Sending Nation may also attend the autopsy which shall take place at a time and location stipulated by the relevant authorities of the Host Nation.

## ARTICLE 22

### **Protection of Information**

Any classified information or material exchanged or generated in connection with this Agreement shall be used, transmitted, stored, handled and safeguarded in accordance with the Parties' applicable laws and regulations. There shall be no disclosure of such information to any third party without the prior written consent of the originating Party.

## ARTICLE 23

### **Community Relations**

1. The Visiting Forces shall respect and be sensitive to the traditions, customs and cultures of local communities of the places where they are deployed in the Host Nation.
2. The Service Authorities of the Sending Nation shall ensure that wherever deployed in the Host Nation, the Visiting Forces shall not harm vulnerable groups in particular the disabled, women and children.
3. The Sending Nation shall pay compensation within the framework of this Agreement where they are found liable for causing any death, injury, loss or damage to the persons and/or property of members of such local communities.
4. The Visiting Forces shall not enter into any memorandum of understanding or agreement with the local community or county/local government except with the consent and participation of the Host Nation.

## ARTICLE 24

### **Inter-Governmental Liaison Committee**

1. There is established an Inter-Governmental Liaison Committee.
2. The Parties shall each nominate not less than four (4) representatives to constitute the Inter-Governmental Liaison Committee. The Inter-Governmental Liaison Committee shall comprise of senior military officers not below the rank of colonel and at least two senior civilian government officers from each side.
3. The Inter-Governmental Liaison Committee shall meet at least two (2) times a year or when a request is made by either Party under Article 6 paragraph 8. The Inter-Governmental Liaison Committee shall meet within seven (7) days of such a request. It shall meet at such places as the Parties shall mutually agree provided that meetings to determine issues under Article 6, paragraph 8 shall be held in the Host Nation.
4. The Inter-Governmental Liaison Committee shall:
  - a. Administer and oversee the implementation of this Agreement;
  - b. Consider, recommend and oversee the resolution of any disputes referred to it as may arise under Articles 11 (Civil Claims And Liabilities) and 25 (Settlement Of Disputes) of the Agreement or in the implementation of this Agreement;
  - c. Consider and make recommendations to the Parties in relation to any matter referred to it;
  - d. Provide periodic review of the Agreement and make recommendations to the Parties for their consideration;
  - e. Refer unresolved civil claims against Visiting Forces for mediation and arbitration as it deems fit and expedient;
  - f. Facilitate service of process in accordance with this Agreement and any applicable law;
  - g. Undertake the functions set out in paragraphs 5 and 6 of this Article;
  - h. Perform any function it is empowered to perform under this Agreement;
  - i. Perform any other function assigned to it by the Parties.

5. On referral to it of an incident in accordance with Article 6, paragraph 8 , the Inter-Governmental Liaison Committee shall:

- a. Receive the initial decision of the Sending Nation whether the incident does or does not constitute an act or omission done in the course of Official Duty;
- b. Receive representations from the authorities of the Host Nation or any other person;
- c. In light of these representations determine whether the incident does or does not constitute an act or omission done in the course of Official Duty;
- d. Consider any certification of the public interest and the interests of justice from the Attorney General or the Minister of Justice of the Host Nation that would in his/her opinion necessitate the exercise of Host Nation jurisdiction;
- e. In the event of a certification of public interest by the Attorney General or the Minister of Justice determine whether the Sending Nation should waive jurisdiction;
- f. Facilitate co-operation with the investigations of the Party with jurisdiction by the other Party and ensure that the Party with jurisdiction keeps the other Party appropriately informed as to the progress of its investigations;
- g. Ensure that any necessary representations and evidence are made available to the prosecuting authorities of the Party exercising jurisdiction;
- h. Confirm that, when the Sending Nation exercises jurisdiction, any trial shall be held in the Host Nation and be open to the public with full access to observers and victims from the Host Nation, where the rules of the court permit;
- i. Ensure that the rights of victims are safeguarded;
- j. Ensure that the rights of the accused person are safeguarded and make recommendations to the Parties on the custody of the accused person.

6. In the circumstances where the Inter-Governmental Liaison Committee is unable to reach an agreed position on any issue, that issue shall be referred to diplomatic and political channels for determination. Such determination shall be made as soon as possible bearing in mind the rights of the accused person and the victim.

7. Subject to the provisions of this Agreement, the Inter-Governmental Liaison Committee shall regulate its own proceedings and may formulate rules or regulations to govern its work.

8. The Inter-Governmental Liaison Committee may establish sub-committees for the effective discharge of its functions.

9. The Inter-Governmental Liaison Committee may co-opt into the membership of the sub-committees, persons whose knowledge or skills are considered necessary for the functions of a sub-committee. Any person co-opted may attend a meeting of a sub-committee but shall not participate in the making of decisions.

10. The Inter-Governmental Liaison Committee shall submit annual reports to the Parties and may make such recommendations for the better implementation of the Agreement.

## ARTICLE 25

### **Settlement of Disputes**

1. All disputes related to the implementation and/or interpretation of this Agreement shall be resolved by consultation or negotiation between the Parties through the Inter-Governmental Liaison Committee.

2. Disputes not resolved by the Inter-Governmental Liaison Committee shall be resolved through diplomatic channels.

## ARTICLE 26

### **Entry into Force, Duration, Amendment and Termination**

1. This Agreement supersedes the Memorandum of Understanding between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland on Visiting Forces, signed in duplicate in Nairobi on 21 April 2010.

2. The Agreement shall enter into force on the date of receipt of the later written notification by which the Parties shall notify each other through diplomatic channels of the completion of their respective internal procedures required for the entry into force of the Agreement and shall remain in effect for a period of five (5) years, at the end of which it may be renewed for a further period, as agreed by the Parties.

3. Either Party wishing to renew this Agreement shall notify the other Party of its intention to renew the Agreement at least twelve (12) months prior to the expiry of this Agreement and the other Party shall consider the same.

4. This Agreement may be amended at any time, in writing, by mutual consent of the Parties. Agreed amendments shall enter into force in accordance with the procedure set out in paragraph 1.

5. This Agreement may be terminated by either Party by giving the other six (6) months written notice of termination. If the Agreement is terminated or it is not renewed, the provisions relating to jurisdiction, civil claims and liabilities, the protection of information and the financial arrangements between the Parties shall continue to apply for as long as necessary. In the event of termination, the Parties shall negotiate the costs arising from termination.

6. On the entry into force of this Agreement, the Visiting Forces shall be accorded a grace period of six (6) months to terminate all licences of the Designated Training Areas in order to comply with the provisions of Article 10 with the exception of the following two (2) existing licences:

- a. Mpala terminable on 30 June 2016.
- b. Lollidaiga terminable on 30 June 2016.

**In witness whereof the undersigned being duly authorised thereto by their respective Governments have signed this Agreement.**

Done in two originals at Nairobi this ninth day of December Two Thousand and Fifteen.

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF KENYA**

**RAYCHELLE OMAMO**

**FOR THE GOVERNMENT OF  
THE UNITED KINGDOM OF  
GREAT BRITAIN &  
NORTHERN IRELAND**

**NIC HAILEY**

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