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*16/10/19*

REPUBLIC OF KENYA

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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT  
THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN  
RELATIONS

REPORT ON THE CONSIDERATION OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH AFRICA ON DEFENCE CO-OPERATION

CLERK'S CHAMBERS,  
DIRECTORATE OF COMMITTEE SERVICES,  
PARLIAMENT BUILDINGS,  
NAIROBI.

OCTOBER, 2019

15 OCT 2019  
WEDNESDAY  
CHAIRPERSON,  
HON. KAPU DE MENTSA  
Assemble

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## **ABBREVIATIONS**

JDC	Joint Defence Committee
KDF	Kenya Defence Forces
UN	United Nations

## CHAIRPERSON'S FOREWORD

A Status of Forces Agreement is a legal framework that defines the position and the *modus operandi* of a foreign military force in a host state's territory. Often bilateral, it can also be of multilateral character. Such agreements are used to define the rights and obligations of militaries operating on foreign soil and the cooperation of the force or its members to the local law or to the authority of local officials.

Section 37 of the KDF Act 2012, on co-operation with other forces and forces visiting Kenya states that:

(1) Any treaty or agreement between the Government of Kenya and any other State or international institution or organization regarding the use or provision of military forces shall provide for the legal status of—

(a) Members of the Defence Forces placed at the disposal of the military authorities of such State, institution or organization;

(b) Foreign military personnel and their mission while the personnel are deployed in Kenya;

(c) The conditions of operation of the Defence Forces, and the foreign military personnel outside gazetted areas; or

(d) The compensation of local communities in the event of accidents in areas where the military is deployed.

(2) A treaty or agreement entered into under subsection (1) shall put in place mechanisms to protect the interests of the local community of the place where the foreign military forces are deployed and such treaty shall also provide that the foreign forces are subject to the Constitution and all the laws of Kenya.

The Defence Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa provides a framework for exchange, sharing and utilization of the respective State's experience, knowledge, military facilities and infrastructure. This will be instrumental in strengthening of bilateral relations between the two states. The Agreement will also provide for a framework for the parties to collaborate in the field of defence industries in a mutually beneficial manner.

The Agreement identifies its main objective as enhancing defence cooperation by identifying and providing a framework for cooperation for exchange of experiences and knowledge for the use and mutual benefit of the parties. The scope and goals of the defence cooperation areas include but are not limited to;

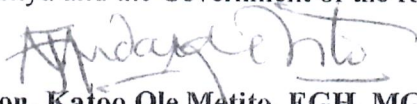
- a) The development and implementation of the security and defence policy



- b) Exchange of military information on matters agreed upon subject to any restrictions of national security
- c) The encouragement and facilitation of industrial cooperation between their respective industries in the fields of defence related research, development and procurement of defence equipment
- d) Military medical health service
- e) Counter-piracy and other maritime safety activities.

Negotiations between the two governments commenced in 2007. Kenya's Cabinet approved the signing of the Agreement on 11<sup>th</sup> October 2016. The Agreement was signed on 12<sup>th</sup> February 2019 and submitted the House for approval, pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012.

Pursuant to Standing Order 199, it is my pleasant duty to present the Report of the Departmental Committee on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.



**Hon. Kato Ole Metito, EGH, MGH, M.P.**  
**Chairperson**

## EXECUTIVE SUMMARY

This report is a record of the Committee's consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.

The Cabinet Secretary Ministry of Defence submitted a Memorandum to the National Assembly signed and dated 18<sup>th</sup> September 2019. The Memoranda and the text of the Agreement were tabled on the floor and committed to the Departmental Committee on Defence and Foreign Relations for processing.

In considering agreement, the Committee held a total of three (3) sittings, including a briefing on the Agreement from the Ministry of Defence.

Pursuant to Article 118 (1)(b) of the Constitution on Public Participation and Section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies, on 2<sup>nd</sup> October 2019, calling for submissions of memoranda on the subject matter. The Committee received no submission from the public.

The Committee observes that the Agreement adds to already existing bi- and multi-lateral agreements with other States and agencies. The country stood to benefit from expertise by the counterpart State.

The Committee recommends THAT, Pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the House approves **the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.**

## 1.0 PREFACE

The Departmental Committee on Defence and Foreign Relations is established under Standing Order No. 216. Its mandate pursuant to SO 216 (5) with the following terms of reference;

- i) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;*
- ii) study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;*
- iii) study and review all legislation after First Reading subject to the exemptions under Standing Order 101 A (4);*
- iv) study and review all legislation referred to it;*
- v) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;*
- vi) investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister; and*
- vii) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

### 1.1 Mandate of the Committee

The Committee is mandated to consider the following subjects:

- i) Defence
- ii) intelligence,
- iii) foreign relations
- iv) diplomatic and consular services,
- v) international boundaries,
- vi) international relations,
- vii) agreements,
- viii) treaties and
- ix) Conventions.

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i) Ministry of Defence
- ii) Ministry of Foreign Affairs
- iii) Ministry of East African Community & Regional Development
- iv) The National Intelligence Service

## 1.2 Membership of the Committee

### **Chairperson**

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

### **Vice-Chairperson**

Hon. Richard Tongi, MP  
MP for Nyaribari Chache Constituency  
**Jubilee Party**

### **Members**

Hon. Yusuf Hassan Abdi, MP  
MP for Kamukunji Constituency  
**Jubilee Party**

Hon. Charles Kilonzo, MP  
MP for Yatta Constituency  
**Independent**

Hon. Patrick Makau King'ola, MP  
MP for Mavoko Constituency  
**WDM-K Party**

The on. Dido Ali Raso, MP  
MP for Saku Constituency  
**Jubilee Party**

Hon. John Lodepe Nakara, MP  
MP for Turkana Central Constituency  
**ODM Party**

Hon. Peter Mungai Mwathi, MP  
MP for Limuru Constituency  
**Jubilee Party**

Hon. Beatrice Nkatha Nyaga, HSC,  
MP  
MP for Tharaka Nithi County  
**Jubilee Party**

Hon. Memusi Ole Kanchory, MP  
MP for Kajiado Central Constituency  
**ODM Party**

Hon. Martha Wangari Wanjira, MP

MP for Gilgil Constituency  
**Jubilee Party**

Hon. Major (Rtd.) Bashir Sheikh  
Abdullah, MP  
MP for Mandera North Constituency  
**Jubilee Party**

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

Hon. Nelson Koech, MP  
MP for Belgut Constituency  
**Jubilee Party**

Hon. Moses Nguchine Kirima, MP  
MP for Central Imenti Constituency  
**Jubilee Party**

Hon. Vincent Kipkurui Tuwei, MP  
MP for Mosop Constituency  
**Jubilee Party**

Hon. Ernest Ogesi Kivai, MP  
MP for Vihiga Constituency  
**ANC Party**

Hon. Caleb Amisi, MP  
MP for Saboti Constituency  
**ODM Party**

Hon. Asha Hussein Mohamed, MP  
MP for Mombasa County  
**ODM Party**



### 1.3 Committee Secretariat

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

Mr. Abdiaziz Shobay  
Third Clerk Assistant

Fiscal Analyst

Mr. Andrew Shangarai  
Senior Sergeant at- Arms

Mr. Ronald Walala  
Legal Counsel

Ms. Grace Karanja Wahu  
Research & Policy Analyst

Mr. Yaqub Ahmed  
Media Relations Officer

Mr. Edison Odhiambo

Mr. Rodgers Kilungya  
Audio-Recording Officer



## **2.0 ANALYSIS OF THE AGREEMENT**

### **2.1 Background**

Kenya and South Africa signed an Agreement for the establishment of a Joint Commission on 2<sup>nd</sup> October 2007.

Subsequently, the two countries signed this Agreement in Cape Town on 12<sup>th</sup> February, 2019.

### **2.2 Outline of the Convention**

**Article 1** contains the definitions of terms used within the Agreement.

**Article 2** outlines the aim of the Agreement as enhancement of defence cooperation between Kenya and South Africa.

**Article 3** outlines the Scope and Goals of the Agreement. Parties are, *inter alia*, to develop and implement a security and defence policy; procedures for military cooperation; promote training through exchange of trainees, instructors and observers; exchange military information; encourage and facilitate cooperation between their respective defence industries and military medical health services; exchange knowledge and training in peace support operations, maritime safety activities; and exchange personnel to enhance sporting and cultural links,

**Article 4** outlines the forms of cooperation between the two countries. These include visits, staff talks and technical meetings; meetings between equivalent defence institutions; exchange of teaching and training personnel and military students; visits by service personnel, warships and aircraft; and joint military exercises.

**Article 5** provides for the implementation of the Agreement. It is to be implemented in accordance with the domestic laws of both countries with the respective Cabinet Ministers for Defence charged with coordination efforts. They are both to designate a focal point in their ministries. Under the Agreement, Members of a Sending Nation shall be treated as members of the Host Nation of equivalent rank; shall not take part in any defence, security or law enforcement operations of the Armed Forces of the Host Nation; and must abide by the rules and safety regulations of a Host Institution and refrain from infringing local laws or participating in the political affairs of the Host Nation. Additionally, any Members of the Sending Nation employed in training or advisory posts shall not be given any operational responsibilities by the Host Nation.

**Article 6** outlines the applicable Criminal Law. Under the Agreement, the two countries must execute a specific agreement on the status of their Armed Forces each time they contemplate a joint operational deployment. Members of the Sending Nation are under an obligation to respect the laws of the Host Nation and the Courts of the Host Nation have primary jurisdiction over any criminal offence committed by a member of the Sending Nation outside the scope of his or her official duties. The Sending Nation retains jurisdiction over any criminal conduct by their member in the course of official duties.

Where the exercise of jurisdiction may lead to the imposition of a death sentence, the Agreement requires a Host Nation to either refrain from passing such a sentence or defer its jurisdiction over the matter to the Sending Nation. The Agreement additionally provides that any joint training exercises are to be undertaken in areas gazetted for that purpose.

**Article 7** establishes a Joint Defence Committee (JDC) to oversee the implementation of all arrangements arising out of the Agreement. It is to meet at least once every two years alternately between the two countries. Parties are to outline the JDC's Terms of Reference and establish its secretariat.

**Article 8** outlines matters to be adhered to with regard to community relations. Members of the Armed Forces of the Sending Nation are to respect the traditions, customs and culture of the communities adjacent to the Host Nation's Defence Institutions and their Service authorities are to ensure that they do not harm any vulnerable groups in the Host Nation. The Sending Nation must pay compensation for any death, injury, damage or loss caused to the local community where any Member of its Armed Forces is found culpable.

**Article 9** outlines the procedure applicable to any civil claims and liabilities. The laws of a Host Nation apply to any civil claim or liability arising within its territory. The two countries have agreed to waive any claims against each other or their personnel for injury to their personnel or damage or loss of property where such occurs in the course of official duty in connection to the Agreement. The waiver extends to injury causing death.

With regard to third party claims, the Parties agree to cooperate in the carrying out of any investigation and collection and adduction of evidence. Where a Member of the Sending Nation is found culpable for a civil claim or liability, the Host Nation is to report the finding to the Sending Nation which is obligated to pay prompt and adequate compensation to the claimants.

**Article 10** governs finances. Each country must bear all of its expenses arising from the Agreement. The Host Nation is only obligated to foot the cost of conference facilities and ground transport from the port of entry to the venue of the meeting.

**Article 11** requires the protection of information relating to the Agreement. Parties agree to guarantee the secure handling of classified material and information exchanged and to accord such material or information the same or a higher degree of protection as would be applicable to its own equivalent classified material or information. Any classified material or information exchanged is only to be used for the purpose for which it was obtained and may not be shared or transferred to a third party without written approval of the other Party or the conclusion of a separate security agreement relating to the information. Personnel visits that include access to classified material or information are to be conducted in a controlled manner and only involve persons with relevant security clearance.

**Article 12** outlines the medical procedures relating to the Agreement. The Host Nation is to provide medical support to Members of the Sending Party but the Sending Nation is liable for the costs of any private medical support for its Members. Each Party is responsible for all expenses relating to the treatment, removal or evacuation of its sick Members.

**Article 13** allows parties to enter into any supplementary arrangements to further the implementation of the Agreement.

**Article 14** provides for the amicable settlement of any disputes through consultation or negotiation between the Parties.

**Article 15** provides for the entry into force, duration, termination and amendment of the Agreement. The Agreement is to commence upon the receipt of notification indicating the completion of each countries' internal requirements with regard to the ratification of treaties. It is to remain in force for five years and is to be automatically renewed for additional five year periods unless terminated by the giving of six months' notice. Termination of the Agreement does not affect the Parties responsibilities with regard to the protection and

confidentiality of classified material or information exchanged, except the Parties agree, the termination shall not affect any other agreements or arrangements arising from the Agreement.

The Agreement may be amended through the exchange of notes between the Parties.

### **2.3 Financial Implication**

Each Party to the Agreement is to bear the expenses relating to the Members of its Armed Forces.

### **2.4 Legal Implication**

The Agreement will commence upon receipt of the final confirmation that each country's Parliament has ratified it. Upon ratification, the Agreement shall bind the country until it is terminated.

## **3.0 PUBLIC PARTICIPATION & STAKEHOLDER ENGAGEMENT**

### **3.1 Call for memoranda from the public**

The Committee called for interested members of the public to make written submissions for consideration. The advertisement was carried in the dailies of 2<sup>nd</sup> October 2019.

There were no submissions received from the public.

### **3.2 Meeting with the Cabinet Secretary, Ministry of Defence**

The Cabinet Secretary Ministry of Defence, Amb. Rachel Omamo appeared before the Committee on 3<sup>rd</sup> October 2019. She briefed the Committee on the contents of the Agreement and submitted that Kenya was bound to benefit from South Africa's superior competence in defence, especially in maritime and medical evacuation.

Negotiations between the two governments commenced in 2007. Kenya's Cabinet approved the signing of the Agreement on 11<sup>th</sup> October 2016. South Africa then requested for a re-execution of the Agreement due to non-compliance with some of their internal procedures. The Agreement was re-signed on 12<sup>th</sup> February 2019.

The Agreement provides a framework for exchange, sharing and utilization of the respective State's experience, knowledge, military facilities and infrastructure. This will be instrumental in strengthening of bilateral relations between the two states. The Agreement will also provide for a framework for the parties to collaborate in the field of defence industries in a mutually beneficial manner.

The Agreement identifies its main objective as enhancing defence cooperation by identifying and providing a framework for cooperation for exchange of experiences and knowledge for the use and mutual benefit of the parties. The scope and goals of the defence cooperation areas include but are not limited to;

**Report on the consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation**



- f) The development and implementation of the security and defence policy
- g) Exchange of military information on matters agreed upon subject to any restrictions of national security
- h) The encouragement and facilitation of industrial cooperation between their respective industries in the fields of defence related research, development and procurement of defence equipment
- i) Military medical health service
- j) Counter-piracy and other maritime safety activities.

She responded to various issues raised by Members, including;

- i. The agreement provided for only joint training between the two parties, unlike the agreement with the United Kingdom that allowed each party to conduct their own training activities;
- ii. The agreement was signed by herself on behalf on the Government of Kenya, and the South African Minister for Foreign Affairs, the latter being the reason for withdrawal of the initial agreement which was signed by the Minister for Defence, against South Africa's protocol;
- iii. The Attorney General had reviewed the agreement and gave it his approval vide a letter dated 1<sup>st</sup> July 2016;
- iv. The country had similar agreements with various entities and countries, including the East African Cooperation defence protocol, the Western Indian Ocean Maritime Agreement, Denmark, the United Kingdom and the San Marco agreement with Italy;
- v. The five year review period provided for in the agreement was standard, and was also in line with tenure of government;
- vi. The joint defence committee will be comprised of individuals nominated by the Ministries of Defence of both countries, and would be representative of all interests;
- vii. On deferment of capital punishment in cases of criminal nature, the agreement was in line with Kenya's Supreme Court ruling that rendered express capital punishment unconstitutional;
- viii. Reported cases of xenophobia in South Africa had no bearing on the agreement as this was not official South African policy, but sporadic episodes that were unrelated. The timing of ratifying the agreement amidst Kenya's push for support in pursuit of the UN Security Council seat was not an issue as the Ministry of Foreign Affairs had not advised so.

The Agreement was in line with the Kenya Defence Forces Act, whose Sections 37 and 283 contemplated a framework of cooperation between the KDF and a visiting force.

#### **4.0 COMMITTEE OBSERVATIONS**

The Committee observes THAT:

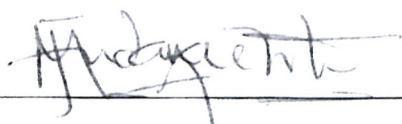
- 1. The country had other existing defence pacts with various countries and agencies, and this was an addition;
- 2. Defence Agreements are important to the country as they among others, enable knowledge transfer and capacity building, sharing of information in an increasingly complex global environment;

3. The Agreement with the Government of the Republic of South Africa provided for joint trainings, and as such activities of the foreign force will not be in isolation;
4. South Africa had an advanced defence capability, due to the size and nature of its economy, geo-political position, including its large coastline, and Kenya had much to learn from them;
5. While South Africa has abolished capital punishment, Article 26(3) of the Constitution permits the legal imposition of the death penalty in Kenya as noted by the Supreme Court in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR. Article 6 of the Agreement will therefore require Kenyan Courts to pass a sentence other than death where Kenya exercises primary criminal jurisdiction and convicts a visiting official covered by the Agreement.
6. Article 13 and 15 of the Agreement which provide for supplementary agreements or arrangements and amendments to the Agreement have the potential to commit the country to further obligations which shall require ratification by the House. The Committee observes that any further agreement or arrangement that departs from this Agreement and any proposed amendment to the Agreement must be brought before the National Assembly for ratification in line with the provisions of the Treaty Making and Ratification Act, 2012.
7. Article 15 of the Agreement provides for review of the Agreement with a six month written notice. The Agreement will also be subject to renewal after five years. This allows Kenya the latitude to opt out of the Agreement should interests change.
8. The Committee also noted that presently, the Agreement does not indicate the names of the signatories for the two countries. The names of the signatories ought to be reflected in the document for purposes of record and accountability.

## 5.0 COMMITTEE RECOMMENDATION

The Committee recommends:-

**THAT, Pursuant to Section 8 of the Treaty Making and Ratification Act, the House approves the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.**

Signed  Date 15/10/2019

Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)  
Chairperson, Departmental Committee on Defence & Foreign Relations



# MINUTES

**MINUTES OF THE SIXTY FIRST (61<sup>ST</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD IN THE GROUND FLOOR, PAVILLION SUITE, HILTON GARDEN INN ON SATURDAY, 12<sup>TH</sup> OCTOBER, 2019 AT 10.00 AM.**

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**PRESENT**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Richard Tong'i, MP (Vice Chairperson)
3. The Hon. Charles Kilonzo, MP
4. The Hon. Patrick Makau King'ola, MP
5. The Hon. Col (Rtd) Dido Ali Raso, MBS, MP
6. The Hon. Peter Mungai Mwathi, MP
7. The Hon. Memusi Ole Kanchory, MP
8. The Hon. John Lodepe Nakara, MP
9. The Hon. Nelson Koech, MP
10. The Hon. Moses Nguchine Kirima, MP
11. The Hon. Ernest Ogesi Kivai, MP
12. The Hon. Caleb Amisi, MP

**APOLOGIES**

1. The Hon. Beatrice Nkatha Nyagah, HSC, MP
2. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP

**ABSENT**

1. The Hon. Yusuf Hassan Abdi, MP
2. The Hon. Martha Wangari Wanjira MP
3. The Hon. (Dr.) Lilian Gogo, MP
4. The Hon. Vincent Kipkurui Tuwei, MP
5. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                           |   |                     |
|---------------------------|---|---------------------|
| 1. Mr. Abdiaziz Shobay    | - | Clerk Assistant III |
| 2. Mr. Ronald Walala      | - | Legal Counsel I     |
| 3. Ms. Grace Wahu Karanja | - | Research Officer    |
| 4. Mr. Edison Odhiambo    | - | Fiscal Analyst      |
| 5. Mr. Rodgers Kilungya   | - | Audio Officer       |

**MIN. NO.NA/DC.DFR/2019/267:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.10 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Patrick Makau King'ola, MP and seconded by The Hon. Nelson Koech, MP.

**AGENDA**

1. Prayers
2. Adoption of the agenda

3. Substantive agenda: **Consideration of the following business before the committee:-**
  - a) The revised schedule of projects site visits for budget oversight
  - b) Adoption of the draft report on the Agreement between The Government of the Republic of Kenya & the Government of the Republic of South Africa on Defence Cooperation
4. Any Other Business
5. Date of the Next sitting

**MIN. NO.NA/DC.DFR /2019/268:      THE REVISED SCHEDULE OF PROJECTS SITE VISITS FOR BUDGET OVERSIGHT**

The Committee reviewed the revised schedule of areas for inspection and chose the following capital projects that were being undertaken by the Military and Regional Development Authorities for 2018/19 and 2019/20 financial years and resolved to carry out inspection visits during the short recess as follows:-

- a) **Mombasa and Lamu Counties (28<sup>th</sup> - 29<sup>th</sup> October, 2019)**  
The construction of the 4,000 Ton Slipway at Mtongwe in Mombasa and the Linkspan Jetty at Manda Bay in Lamu.
- b) **Kerio-Valley Development Authority (1<sup>st</sup> – 3<sup>rd</sup> November, 2019)**  
The Napuu, Lomut and Lower Turkwel irrigation project and the Wei Wei phase III Integrated Development project.
- c) **Lake Basin Development Authority (1<sup>st</sup> – 3<sup>rd</sup> November, 2019)**  
The Lake Basin Development Authority Mall complex, the Lichota- Muhoroni-Alupe irrigation project and the construction of Nyakoe market.

Further, the Committee noted that the Agencies are expected to provide the following information during the visits:-

- a) Total budgetary allocation over the years since inception, for the projects and the exchequer issues attached to the same;
- b) The actual cumulative expenditure to date;
- c) The outstanding project costs;
- d) The expected outputs, key performance indicators and targets for the corresponding years.

The Secretariat was tasked to inform the MDA's in time on the same.

**MIN. NO.NA/DC.DFR /2019/269:      REPORT ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA & THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON DEFENCE COOPERATION**

The Committee considered the report on the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Cooperation and made the following observations and recommendations:

The Committee observed that:-



1. The country had other existing defence pacts with various countries and agencies, and this was an addition;
2. Defence Agreements are important to the country as they among others, enable knowledge transfer and capacity building, sharing of information in an increasingly complex global environment;
3. The Agreement with the Government of the Republic of South Africa provided for joint trainings, and as such activities of the foreign force will not be in isolation;
4. South Africa had an advanced defence capability, due to the size and nature of its economy, geo-political position, including its large coastline, and Kenya had much to learn from them;
5. While South Africa has abolished capital punishment, Article 26(3) of the Constitution permits the legal imposition of the death penalty in Kenya as noted by the Supreme Court in Francis Karioko Muruatetu & another v Republic [2017] eKLR. Article 6 of the Agreement will therefore require Kenyan Courts to pass a sentence other than death where Kenya exercises primary criminal jurisdiction and convicts a visiting official covered by the Agreement.
6. Article 13 and 15 of the Agreement which provide for supplementary agreements or arrangements and amendments to the Agreement have the potential to commit the country to further obligations which shall require ratification by the House. The Committee observes that any further agreement or arrangement that departs from this Agreement and any proposed amendment to the Agreement must be brought before the National Assembly for ratification in line with the provisions of the Treaty Making and Ratification Act, 2012.
7. Article 15 of the Agreement provides for review of the Agreement with a six month written notice. The Agreement will also be subject to renewal after five years. This allows Kenya the latitude to opt out of the Agreement should interests change.
8. The Committee also noted that presently, the Agreement does not indicate the names of the signatories for the two countries. The names of the signatories ought to be reflected in the document for purposes of record and accountability.

The Committee recommended that:-

**THAT, Pursuant to Section 8 of the Treaty Making and Ratification Act, the House approves the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.**

Subsequently the Committee unanimously adopted the report after having been proposed and seconded by Hon. Peter Mungai Mwathi, MP and Hon. Patrick Makau King'ola, MP respectively.

**MIN. NO.NA/DC.DFR /2019/270: ANY OTHER BUSINESS**

No other business arose

**MIN. NO.NA/DC.DFR /2019/271: ADJOURNMENT**

There being no other business, the meeting adjourned at 1.10 pm.

Signed.....

Hon. Katoo Ole Metito, M.P  
(CHAIRPERSON)

Date.....17/10/2019

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**MINUTES OF THE SIXTIETH (60<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD IN THE 9<sup>TH</sup> FLOOR BIG BOARDROOM, HARAMBEE SACCO PLAZA, PARLIAMENT BUILDINGS ON TUESDAY, 8<sup>TH</sup> OCTOBER, 2019 AT 11.30 AM.**

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**PRESENT**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Charles Kilonzo, MP
3. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
4. The Hon. Peter Mungai Mwathi, MP
5. The Hon. Beatrice Nkatha Nyagah, HSC, MP
6. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
7. The Hon. Memusi Ole Kanchory, MP
8. The Hon. John Lodepe Nakara, MP
9. The Hon. (Dr.) Lilian Gogo, MP
10. The Hon. Nelson Koech, MP
11. The Hon. Moses Nguchine Kirima, MP
12. The Hon. Vincent Kipkurui Tuwei, MP
13. The Hon. Ernest Ogesi Kivai, MP
14. The Hon. Caleb Amisi, MP

**APOLOGIES**

1. The Hon. Richard Tong'i, MP (Vice Chairperson)
2. The Hon. Asha Hussein Mohamed, MP

**ABSENT**

1. The Hon. Yusuf Hassan Abdi, MP
2. The Hon. Patrick Makau King'ola, MP
3. The Hon. Martha Wangari Wanjira MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                           |   |                     |
|---------------------------|---|---------------------|
| 1. Mr. Victor Weke        | - | Clerk Assistant I   |
| 2. Mr. Abdiaziz Shobay    | - | Clerk Assistant III |
| 3. Mr. Ronald Walala      | - | Legal Counsel I     |
| 4. Ms. Grace Wahu Karanja | - | Research Officer    |
| 5. Mr. Edison Odhiambo    | - | Fiscal Analyst      |
| 6. Mr. Rodgers Kilungya   | - | Audio Officer       |

**MIN. NO.NA/DC.DFR/2019/259:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 11.34 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Beatrice Nkatha, MP and seconded by The Hon. Charles Kilonzo, MP.

**AGENDA**

1. Prayers

2. Adoption of the agenda
3. Confirmation of minutes
4. Substantive agenda: **Consideration of the following business before the committee:-**
  - a) Report on the status of Kenyan Missions in Zambia and South Africa
  - b) Report on the Agreement between The Government of the Republic of Kenya & the Government of the Republic of South Africa on Defence Cooperation
  - c) Schedule of project site visits for budgetary oversight
5. Any Other Business
6. Date of the Next sitting

**MIN. NO.NA/DC.DFR /2019/260: CONFIRMATION OF MINUTES OF PREVIOUS SITTING**

Minutes of the 59<sup>th</sup> sitting held on 3<sup>rd</sup> October 2019 were confirmed as a true record of the proceedings after being proposed by The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP and seconded by The Hon. Ernest Ogesi Kivai, MP.

**MIN. NO.NA/DC.DFR /2019/261: MATTERS ARISING**

**Under Min.No.DC.DFR/2019/256**

The Committee noted that ratification of the agreement at this point would have no ramifications on Kenya's bid to the UN Security Council, and would as such be processed.

**MIN. NO.NA/DC.DFR /2019/262: REPORT ON THE STATUS OF KENYAN MISSIONS IN ZAMBIA AND SOUTH AFRICA**

The meeting was informed that the information submitted by the Ministry of Foreign Affairs regarding the construction of the Ambassador's residence in Pretoria was inadequate. The Committee resolved to invite the Principal Secretary for Foreign Affairs for a meeting on Tuesday 15<sup>th</sup> October, 2019 to provide the information requested by the delegation to complete its report. He would be accompanied by the head of asset management at the ministry.

**MIN. NO.NA/DC.DFR /2019/263: REPORT ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA & THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON DEFENCE COOPERATION**

The meeting resolved to consider the report in the retreat scheduled for Monday, 14<sup>th</sup> October 2019 at Hilton Garden Inn, Machakos County. The secretariat was instructed to obtain approval for the Committee to check in earlier, on Friday 11<sup>th</sup> October 2019 for this purpose.

**MIN. NO.NA/DC.DFR /2019/264: SCHEDULE OF PROJECT SITE VISITS FOR BUDGET OVERSIGHT**

The Committee reviewed the schedule of areas for inspection as agreed upon during the retreat held in Mombasa the previous week. The meeting noted that the Ministry of Defence didn't forward their projects as requested by the Committee.

The Secretariat was tasked to flag out three projects for each service of the military, and classify projects under regional development authorities in three clusters; 0-30%, 30-50% and

50% and above. The revised schedule would be examined during the upcoming retreat scheduled for 11<sup>th</sup> -14<sup>th</sup> October 2019.

**MIN. NO.NA/DC.DFR /2019/265: ANY OTHER BUSINESS**

1. The meeting was informed that the Speaker was yet to give direction on Hon. Rehema Jaldesa's letter urging the Committee to investigate a land dispute between KDF and residents of Isiolo;
2. Members were urged to turn up for the meeting with US Congressmen scheduled for Friday 11<sup>th</sup> October 2019 at 12 noon. The Committee resolved to meet an hour earlier to consider its position on various matters due for discussion;
3. The secretariat reported that they were in receipt of a statement tabled by Hon. Yusuf Hassan, MP Kamukunji Constituency regarding demolition of structures around the perimeter of Moi Air Base in Eastleigh, Nairobi by the Kenya Defence Forces. The Committee reiterated its earlier resolution to ask the KDF to provide an inventory of its total land acreage in the country.

**MIN. NO.NA/DC.DFR /2019/266: ADJOURNMENT**

There being no other business, the meeting adjourned at 1.12 pm.

Signed.....

Hon. Katoo Ole Metito, M.P  
(CHAIRPERSON)

Date.....17/10/2019

MINUTES OF THE FIFTY NINTH (59<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD IN THE 4<sup>TH</sup> FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS ON THURSDAY, 3<sup>RD</sup> OCTOBER, 2019 AT 11.00 AM.

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**PRESENT**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Richard Tong'i, MP (Vice Chairperson)
3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Charles Kilonzo, MP
5. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
6. The Hon. Peter Mungai Mwathi, MP
7. The Hon. Beatrice Nkatha Nyagah, HSC, MP
8. The Hon. Martha Wangari Wanjira MP
9. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
10. The Hon. Memusi Ole Kanchory, MP
11. The Hon. John Lodepe Nakara, MP
12. The Hon. Caleb Amisi, MP
13. The Hon. (Dr.) Lilian Gogo, MP
14. The Hon. Moses Nguchine Kirima, MP
15. The Hon. Vincent Kipkurui Tuwei, MP
16. The Hon. Ernest Ogesi Kivai, MP

**ABSENT**

1. The Hon. Patrick Makau King'ola, MP
2. The Hon. Asha Hussein Mohamed, MP
3. The Hon. Nelson Koech, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                           |   |                     |
|---------------------------|---|---------------------|
| 1. Mr. Victor Weke        | - | Clerk Assistant I   |
| 2. Mr. Abdiaziz Shobay    | - | Clerk Assistant III |
| 3. Mr. Ronald Walala      | - | Legal Counsel I     |
| 4. Ms. Grace Wahu Karanja | - | Research Officer    |
| 5. Mr. Edison Odhiambo    | - | Fiscal Analyst      |

**MINISTRY OF DEFENCE**

- |                      |   |                               |
|----------------------|---|-------------------------------|
| 1. Amb. Rachel Omamo | - | Cabinet Secretary             |
| 2. Brig. D.O Odeny   | - | Colonel, Kenya Defence Forces |
| 3. Mr. Gerald Sakwa  | - | Parliamentary Liaison, MOD    |
| 4. Maj. G.P Mosol    | - | Major, Kenya Defence Forces   |

**MIN. NO.NA/DC.DFR/2019/253:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 11.12 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by Hon. Beatrice Nkatha Nyagah,



HSC, MP and seconded by Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP. The meeting commenced with introductions of all present.

The Chairperson conveyed a request to reschedule the appearance of the Attorney General to a later date. Members resolved to determine the need to have him appear based on what the Cabinet Secretary Ministry of Defence would present.

#### **AGENDA**

1. Prayers
2. Adoption of the Agenda
3. Confirmation of the Minutes
4. Substantive Agenda: **Consideration of the following business before the committee:-**
  - a) Briefing by the Cabinet Secretary, Ministry of Defence on the Agreement between The Government of the Republic of Kenya & the Government of the Republic of South Africa on Defence Cooperation
  - b) Consideration of the Committee legacy report for the period between 1<sup>st</sup> January, 2018 – 30<sup>th</sup> June, 2019
5. Any Other Business
6. Date of the Next sitting

#### **MIN. NO.NA/DC.DFR /2019/254: CONFIRMATION OF MINUTES OF PREVIOUS SITTING**

Minutes of the 58<sup>th</sup> sitting held on 1<sup>st</sup> October 2019 were confirmed as a true record of the proceedings after being proposed by Hon. Charles Kilonzo, MP and seconded by Hon. Martha Wangari, MP.

#### **MIN. NO.NA/DC.DFR /2019/255: MATTERS ARISING**

**Under Min.No.DC.DFR/2019/251**

The meeting resolved to consider the legacy report during the retreat scheduled for 4<sup>th</sup> & 5<sup>th</sup> October 2019.

#### **MIN. NO.NA/DC.DFR /2019/256: BRIEFING BY THE CABINET SECRETARY ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA & THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON DEFENCE COOPERATION**

Amb. Rachel Omamo, the Cabinet Secretary Ministry of Defence, briefed Members on the Agreement between the Government of the Republic of Kenya & the Government of the Republic of South Africa on Defence Cooperation. Kenya was bound to benefit from South Africa's superior competence in defence, especially in maritime and medical evacuation. She responded to various issues raised by Members, including;

- i. The agreement provided for only joint training between the two parties, unlike the agreement with the United Kingdom that allowed each party to conduct their own training activities;

- ii. The agreement was signed by herself on behalf on the Government of Kenya, and the South African Minister for Foreign Affairs, the latter being the reason for withdrawal of the initial agreement which was signed by the Minister for Defence, against South Africa's protocol;
- iii. The Attorney General had reviewed the agreement and gave it his approval vide a letter dated 1<sup>st</sup> July 2016;
- iv. The country had similar agreements with various entities and countries, including the East African Cooperation defence protocol, the Western Indian Ocean Maritime Agreement, Denmark, the United Kingdom and the San Marco agreement with Italy;
- v. The five year review period provided for in the agreement was standard, and was also in line with tenure of government;
- vi. The joint defence committee will be comprised of individuals nominated by the Ministries of Defence of both countries, and would be representative of all interests;
- vii. On deferment of capital punishment in cases of criminal nature, the agreement was in line with Kenya's Supreme Court ruling that rendered express capital punishment unconstitutional;
- viii. Reported cases of xenophobia in South Africa had no bearing on the agreement as this was not official South African policy, but sporadic episodes that were unrelated. The timing of ratifying the agreement amidst Kenya's push for support in pursuit of the UN Security Council seat was not an issue as the Ministry of Foreign Affairs had not advised so.

**MIN. NO.NA/DC.DFR /2019/257: ANY OTHER BUSINESS**

1. The Committee raised serious concern on the country's state of disaster preparedness specifically the navy's apparent inability to rescue and retrieve bodies of passengers who had drowned in Mombasa from the ferry the previous week. The Cabinet Secretary observed that this was a matter of joint efforts by various government agencies, and not the navy's sole mandate. The Committee urged the Cabinet Secretary to be proactive in providing information to the public, and use the disaster as a lesson to identify gaps and capacity that needed to be addressed;
2. The Committee was informed of the upcoming annual Speaker's Roundtable with the Kenya Private Sector Alliance, in Mombasa on 17<sup>th</sup> – 19<sup>th</sup> October, 2019. Each Committee was requested to nominate five Members to attend. The following confirmed attendance;
  - i. The Hon. Katoo Ole Metito, EGH, MGH, MP
  - ii. Hon. Charles Kilonzo, MP
  - iii. Hon. Beatrice Nkatha, MP

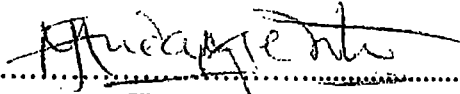
Members were urged to confirm their interest for the remaining two slots before the deadline of 8<sup>th</sup> October 2019.

MIN. NO.NA/DC.DFR /2019/258:

ADJOURNMENT

There being no other business, the meeting adjourned at 1.12 pm.

Signed.....



Hon. Katoo Ole Metito, M.P  
(CHAIRPERSON)

Date.....

8/10/2019



**MINUTES OF THE FIFTY EIGHTH (58<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD IN THE 9<sup>TH</sup> FLOOR BIG BOARDROOM, HARAMBEE SACCO PLAZA, PARLIAMENT BUILDINGS ON TUESDAY, 1<sup>ST</sup> OCTOBER, 2019 AT 11.30 AM.**

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**PRESENT**

1. The Hon. Richard Tong'i, MP (Vice Chairperson)
2. The Hon. Yusuf Hassan Abdi, MP
3. The Hon. Patrick Makau King'ola, MP
4. The Hon. Charles Kilonzo, MP
5. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
6. The Hon. Peter Mungai Mwathi, MP
7. The Hon. Beatrice Nkatha Nyagah, HSC, MP
8. The Hon. Martha Wangari Wanjira MP
9. The Hon. Memusi Ole Kanchory, MP
10. The Hon. John Lodepe Nakara, MP
11. The Hon. (Dr.) Lilian Gogo, MP
12. The Hon. Nelson Koech, MP
13. The Hon. Moses Nguchine Kirima, MP
14. The Hon. Vincent Kipkurui Tuwei, MP
15. The Hon. Ernest Ogesi Kivai, MP

**ABSENT WITH APOLOGY**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Caleb Amisi, MP

**ABSENT**

1. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
2. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                           |   |                     |
|---------------------------|---|---------------------|
| 1. Mr. Victor Weke        | - | Clerk Assistant I   |
| 2. Mr. Abdiaziz Shobay    | - | Clerk Assistant III |
| 3. Mr. Ronald Walala      | - | Legal Counsel I     |
| 4. Ms. Grace Wahu Karanja | - | Research Officer    |

**MIN. NO.NA/DC.DFR/2019/246:**

**PRELIMINARIES**

The Vice-chairperson called the meeting to order at 11.38 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by Hon. Col. (Rtd) Dido Ali Raso, MBS, MP and seconded by Hon. Martha Wangari Wanjira MP

**AGENDA**

1. Prayers
2. Adoption of the Agenda
3. Confirmation of the Minutes



4. Substantive Agenda: **Consideration of the following business before the committee:-**

- a) Briefing by Legal Counsel on the Agreement between The Government of the Republic of Kenya & the Government of the Republic of South Africa on Defence Cooperation
- b) Consideration of the Committee legacy report for the period between 1<sup>st</sup> January, 2018 – 30<sup>th</sup> June, 2019

5. Any Other Business

6. Date of the Next sitting

**MIN. NO.NA/DC.DFR /2019/247: CONFIRMATION OF MINUTES OF PREVIOUS SITTING**

Minutes of the 57<sup>th</sup> sitting held on 26<sup>th</sup> September 2019 were confirmed as a true record of the proceedings after being proposed by Hon. Charles Kilonzo, MP and seconded by Hon. Moses Nguchine Kirima, MP.

**MIN. NO.NA/DC.DFR /2019/248: MATTERS ARISING**

**Under Min.No.DC.DFR/2019/238**

On the matter of a land dispute involving residents of Burat in Isiolo and the KDF School of Infantry raised by Hon. Rehema Jaldesa, MP, the Committee was informed that the Speaker was yet to give direction.

**MIN. NO.NA/DC.DFR /2019/249: BRIEFING BY LEGAL COUNSEL ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA & THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON DEFENCE COOPERATION**

The Legal Counsel briefed Members on the Agreement between the Government of the Republic of Kenya & the Government of the Republic of South Africa on Defence Cooperation. The Committee raised concerns for clarification by the Ministry, specifically on duration and termination of the agreement and the handling of criminal matters.

The Committee was scheduled to meet the Ministry of Defence and the Attorney General on Thursday, 3<sup>rd</sup> October 2019 to be apprised on the Agreement, and the above concerns.

**MIN. NO.NA/DC.DFR /2019/250: CONSIDERATION OF THE COMMITTEE LEGACY REPORT FOR THE PERIOD BETWEEN 1<sup>ST</sup> JANUARY, 2018 – 30<sup>TH</sup> JUNE, 2019**

The agenda item was deferred to the next sitting.

**MIN. NO.NA/DC.DFR /2019/251: ANY OTHER BUSINESS**

1. The Hon. Yussūf Hassan, MP Kamukūnji Constituency reported that Kenya Defence Forces had demolished several structures around the perimeter of Moi Air Base in Eastleigh, Nairobi. The Member requested whether the Committee intervenes in the

matter. The Committee resolved to examine the land acreage inventory of the KDF to avert perpetual disputes;

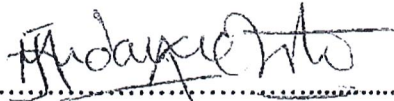
2. The Committee raised concern on the level of disaster preparedness by the Kenya Navy in regard to a mother and her daughter who drowned in their car off board the Likoni ferry. The Committee resolved to raise the matter with the Cabinet Secretary when she appears before the Committee on Thursday, 3<sup>rd</sup> October, 2019;
3. The meeting was also informed that Chief of Defence Forces General S.J Mwathethe had invited the Committee to a cocktail party to be held at Jamhuri Park Officers Mess on Tuesday, 1<sup>st</sup> October, 2019 at 19:00 hours. Members were urged to attend.

MIN. NO.NA/DC.DFR /2019/252:

ADJOURNMENT

There being no other business, the meeting adjourned at 12.50 pm. Next Sitting would be held on Thursday, 3<sup>rd</sup> October, 2019 at 11.00 am.

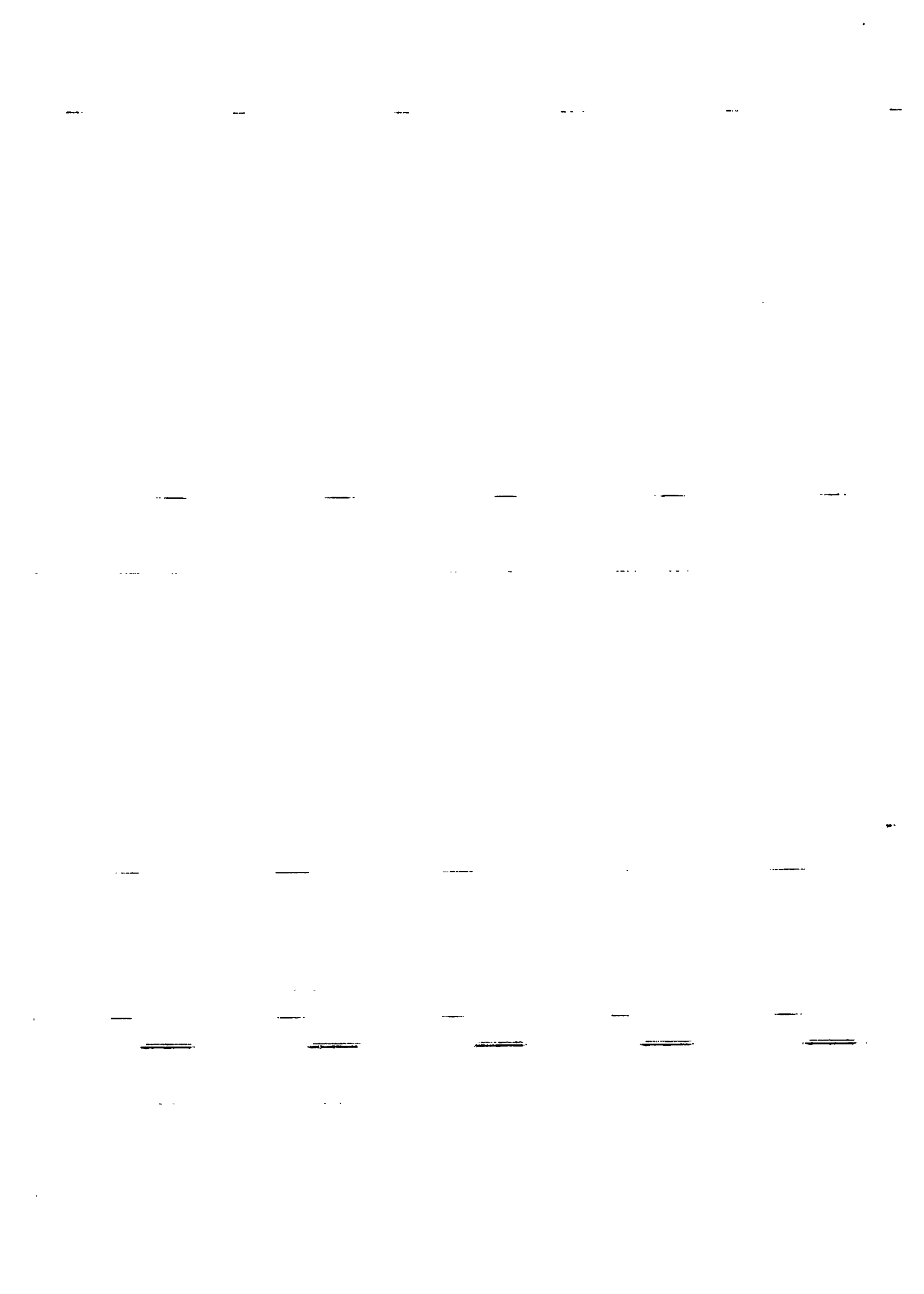
Signed.....



Hon. Katoo Ole Metito, M.P  
(CHAIRPERSON)

Date.....

3/10/19



# **AGREEMENT**





REPUBLIC OF KENYA

MINISTRY FOR DEFENCE

MEMORANDUM TO THE NATIONAL ASSEMBLY

ON

THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
KENYA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

ON

DEFENCE CO-OPERATION

# MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON DEFENCE CO-OPERATION

## 1.0 PURPOSE

1.1. The purpose of this Memorandum is to apprise the National assembly on the agreement signed between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation (hereinafter referred to as the Agreement) and to seek approval for its ratification.

## 2.0 BACKGROUND

2.1. Negotiations between the Government of Kenya and the Government of South Africa on the subject Agreement commenced in 2007. Previously, defence relations with the Republic of South Africa was limited to the reciprocal exchange of military students, lecturers and instructors under a Memorandum of Understanding.

2.2 The Cabinet approved the signing of the Agreement on 11 October 2016 and the Agreement was signed on the same date. However, the Republic of South Africa subsequently informed the Ministry that critical South Africa internal procedures had not been complied with hence the need to re-execute the Agreement. Subsequently, the Ministry recalled the initial Agreement that had been submitted to the National Assembly for ratification.

2.3 The Agreement was re-signed on 12 February 2019 after the Government of the Republic of South Africa confirmed that its internal procedures had been complied with.

2.4 The Agreement provides a 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 Republic of South Africa. The Agreement will also provide a framework for the Parties to collaborate in the field of defence industries in a mutually beneficial manner.

### 3.0 THE OBJECTIVES OF THE AGREEMENT

3.1. The Agreement identifies its main objective as enhancing defence co-operation by identifying and providing a framework for co-operation for exchange of experiences and knowledge for the use and mutual benefit of the parties.

3.2 The scope and goals of the defence co-operation areas include but are not limited to:

- a. The development and implementation of the security and defence policy.
- b. Exchange of military information on matters agreed upon subject to any restrictions of national security.
- c. The encouragement and facilitation of industrial co-operation between their respective industries in the fields of defence-related research, development and procurement of defence equipment.
- d. Military medical health service.
- e. Counter – piracy and other maritime safety activities.

### 4.0 CONTENTS OF THE AGREEMENT

4.1 The Agreement is divided into Fifteen (15) Articles as follows:

- a. Article 1 – Provides for the interpretation of terms.
- b. Article 2, 3, 4 & 5 – Provide for the aim, scope, forms of co-operation and implementation respectively.
- c. Article 6 – Provides for Criminal Jurisdiction primary conferring jurisdiction on the Host Nation.

d. Article 7 – Establishes the Joint Defence Committee responsible for oversight on the implementation of the Agreement. The Committee is required to meet once every two years alternatively in the two States.

e. Article 8 – Enumerates the obligations of both State Parties in the promotion of community relations.

f. Articles 9, 10, 11, 12 and 13 – Provide for handling of civil claims and liability, finances, protection of information, medical and supplementary arrangements for effective implementation of the Agreement respectively.

g. Article 14 and 15 – Provide for settlement of disputes and entry into force, duration, amendments, and termination of the Agreement respectively.

## **5.0 LEGAL CONSIDERATIONS**

5.1 Section 37 as read together with Section 283 of the Kenya Defence Forces Act contemplates that the framework of co-operation between the Kenya Defence Forces and a Visiting Force as well as matters pertaining to jurisdiction 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 provide for 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.

## **6.0 FINANCIAL IMPLICATIONS**

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

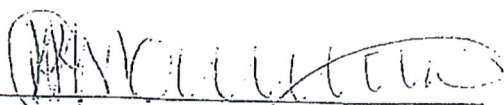


7.0 THE NATIONAL ASSEMBLY IS INVITED TO:

7.1 Take note of this Memorandum outlining the contents of the present Agreement.

7.2 Approve ratification of the Agreement.

Dated this 18<sup>th</sup> day of September 2019



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

Attachment

The Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE**  
**REPUBLIC OF KENYA**  
**AND**  
**THE GOVERNMENT OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
**ON**  
**DEFENCE COOPERATION**

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF  
KENYA

AND

THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA

ON

DEFENCE COOPERATION

## PREAMBLE

The Government of the Republic of Kenya and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Parties" and singularly as a "Party");

STRIVING to strengthen the good and friendly relations 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;

PURSUANT to the Agreement for the establishment of Joint Commission of Cooperation between the Parties signed on 2 October 2007;

IN CONSIDERATION OF the needs of the South African National Defence Force and the Kenya Defence Forces regarding cooperation in military training, visits and technical assistance and other related matters;

HAVE REACHED the following Agreement:



ARTICLE 1  
DEFINITIONS

In this Agreement, the following definitions apply:

- a) "Armed Forces" means the South Africa National Defence Force or Kenya Defence Forces.
- b) "Authorised Service Organisation" means any organization established and operated by the Service Authorities of a Party to provide services to its Armed Forces including welfare services.
- c) "Dependant" means a person who is not ordinarily resident in the Host nation and who is the wife, husband or child of a member of the Sending Nation.
- d) "Exercise or Training" means and includes bilateral exercises or training activities involving units and individuals, Short Term Training Teams, advisory support, exchanges and attachment of units.
- e) "Host Nation" means the Party receiving members from the Sending Nation for implementation of this Agreement.
- f) "Implementing Arrangement" means a follow-on arrangement to this Agreement which may be concluded for specific activities and which 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.
- g) "Sending Nation" means the Party sending members to the Host Nation for implementation of this Agreement.
- h) "Service Authorities" means the authorities of the Host Nation or the Sending Nation by the law of their respective States to exercise command or jurisdiction over the Defence Forces.

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) The development and implementation of the Security and defence policy;
- (b) The development and formulation of procedures for military cooperation between the Armed Forces;
- (c) The promotion of the training of military personnel through the exchange of trainees, instructors and observers;
- (d) The exchange of military information on matters agreed upon subject to any restrictions of national security;
- (e) The encouragement and facilitation of industrial cooperation between their respective industries in the fields of defence-related research, development and the procurement of defence equipment;
- (f) Military medical health services;
- (g) Cooperation in the exchange of knowledge and training in peace support operations;
- (h) Counter-piracy and other maritime safety activities;
- (i) The encouragement of the exchange of military personnel at all levels to enhance sporting and cultural links between the Armed Forces; and
- (j) Other areas of mutual interest which may be decided upon in the future.

ARTICLE 4  
FORMS OF CO-OPERATION

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; and
  - (h) Any other form of Military cooperation in areas agreed upon.

## ARTICLE 5 IMPLEMENTATION

- (1) 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 programmes may be covered by Implementing Arrangements.
- (2) The Competent Authorities responsible for implementation and coordination of the Agreement shall be the respective Cabinet Ministers of Defence/ Cabinet Secretaries of the Parties and the Parties shall designate a focal point of contact in their respective Ministries of Defence to implement this Agreement and coordinate the activities referred to herein.
- (3) Members of the Sending Nation shall be treated, except as otherwise provided for in this Agreement, as members of the Host Nation of equivalent rank.
- (4) Members of the Sending Nation 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 with the enforcement of law and order.
- (5) Members of the Sending Nation 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. South African and Kenyan Service Authorities shall.

respectively, take such necessary precautions or measures for the proper observance of these provisions.

- (6) Members of the Sending Nation employed in training and advisory posts shall not be given operational responsibilities in the Armed Forces of the Host Nation.

## ARTICLE 6 CRIMINAL JURISDICTION

- (1) Whenever operational deployment of any of the Nations' Armed Forces is contemplated, the Status of Forces for such operational activities must be determined in an agreement specifically for the purpose of that operational deployment.
- (2) For the purposes of general defence cooperation contemplated in this Agreement, members of the Sending Nation shall respect the domestic laws, customs and traditions of the Host Nation.
- (3) The relevant authorities of the Host Nation shall have primary jurisdiction over any member of the Sending Nation for any criminal offences committed in contravention of any laws of the Host Nation, save for instances where such offences are committed in the course and scope of performing their official duties, in which case the Sending Nation shall retain exclusive criminal jurisdiction.
- (4) When the exercise of primary criminal jurisdiction by the Host Nation may result in the imposition of Capital Punishment, the Host Nation shall refrain from imposing Capital Punishment, or decline to exercise jurisdiction in favour of the Visiting Nation's right to exercise secondary criminal jurisdiction.
- (5) Joint training activities and military exercises if any between the Parties' Armed Forces shall only take place in areas gazetted in the Host Nation as military training areas.



ARTICLE 7  
ESTABLISHMENT OF JOINT DEFENCE COMMITTEE

- (1) The Parties shall establish a Joint Defence Committee (hereinafter referred to as "JDC") which shall oversee the implementation of all agreements arising out of this Agreement.
- (2) Unless otherwise determined the JDC shall meet at least once every two years alternately in the Republic of South Africa and in the Republic of Kenya.
- (3) Terms of reference for the JDC shall be developed by the Parties in order to govern, provide guidance, and establish the secretariat of the JDC.

ARTICLE 8  
COMMUNITY RELATIONS

- (1) Members of the Armed Forces of the Sending Nation shall respect and be sensitive to traditions, customs, and cultures of the places where they reside in the Host Nation or within the locality of the defence institutions they are attached to within the Host Nation.
- (2) The Service Authorities of the Sending Nation shall ensure that its personnel present in the Host Nation 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 personnel are found liable for causing any death, injury, loss or damage to the persons and/or property of members of such local communities.

ARTICLE 9  
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 against the other Party or the personnel of the other Party for injury (including injury resulting in death) suffered by its personnel or for damage to or loss of property owned by the Armed Forces if such injury, death or damage or loss was caused by the acts or omissions of the other Party in the course of official duty in connecting to this Agreement.

- (2) The relevant authorities of both Parties shall cooperate in the carrying out of all the necessary investigations into all third party claims, and in the collection and production of evidence, including the seizure and handing over of objects connected with such a claim.
- (3) Where it is established that the Sending Nation, its members, 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 10

#### FINANCES

- (1) The financial implications with respect to the holding of meetings in terms of this Agreement shall be dealt with in accordance with the following principles:
  - (a) Each Party shall bear all its own expenses, including all expenses for meals, accommodation and costs of transportation to and from the port of entry of the Host Nation.
  - (b) The Host Nation shall bear the cost for conference facilities and ground transportation from the port of entry to the venue of the meeting.
- (2) In any other circumstances not otherwise provided for in this Agreement, the liability for costs and expenses as well as any financing procedure shall be as

agreed to in writing by the Parties.

**ARTICLE 11.  
PROTECTION OF INFORMATION**

(1) Each Party shall guarantee the secure handling of classified material, project drafts, technical specifications and any other classified information exchanged pursuant to this Agreement.

(2) The Parties shall in accordance with the domestic law of their countries, accord to all such classified material and information the same or higher degree of security protection as that accorded to its own material and information of equivalent classification.

(3) The corresponding degrees of security classification used by the Parties shall be as follows:

REPUBLIC OF SOUTH AFRICA	REPUBLIC OF KENYA
SECRET	SECRET
CONFIDENTIAL	CONFIDENTIAL
RESTRICTED	RESTRICTED

(4) The Parties shall ensure that classified material, project drafts, technical specifications and any other classified information exchanged pursuant to this Agreement shall be used only for the purposes for which it is obtained.

(5) Unless otherwise agreed by specific agreement between the Parties, the transfer to third parties of information, documents, technical data and materials, either classified or unclassified, obtained pursuant to this Agreement shall be subject to prior written approval of the party who disclosed it.

(6) Should classified information and material be subject to exchange pursuant to this Agreement, a separate security agreement shall be concluded between the Parties.

- (7) Visits of one Party's personnel to organizations and/or companies which involve access to classified information shall be controlled and take place according to procedures as stipulated in this Agreement. It shall be mutually certified that visitors have been security cleared.

## ARTICLE 12

### MEDICAL

- (1) The Host Nation agrees to provide any medical support needed by Members of the Sending Party, when in the territory of the Host Nation for the implementation of this Agreement, at the cost of the Receiving Party.
- (2) The Sending Nation shall be liable for all costs for any private medical support utilized by the members of the Sending Nation during the implementation of this Agreement.
- (3) Each Party shall assume responsibility for and bear all expenses relating to the treatment, removal or evacuation of its own sick, injured or deceased personnel.

## ARTICLE 13

### SUPPLEMENTARY ARRANGEMENTS

With regard to any particular matter contained in the provisions of this Agreement the Parties may enter into such further agreements/arrangements, of a general or specific nature, that will promote the effective implementation of this Agreement.

## ARTICLE 14

### SETTLEMENT OF DISPUTES

Any dispute between the Parties, arising from the interpretation or the implementation of this Agreement shall be resolved amicably through consultation or negotiation between the Parties.



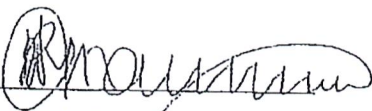
## ARTICLE 15

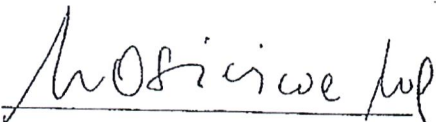
### ENTRY INTO FORCE, DURATION, AMENDMENT AND TERMINATION

- (1) This Agreement shall enter into force on the date of receipt of the later written notification by which the Parties notify each other through diplomatic channels of the completion of their respective internal procedures required for the entry into force of the Agreement.
- (2) This Agreement shall remain in force for a period of five (5) years and shall be automatically renewed for further periods of five (five) years unless terminated by either party giving six (6) months written notice of its intention to terminate the Agreement.
- (3) The termination of this Agreement shall not affect the implementation of any other agreement, convention or contract concluded under this Agreement, except where the Parties provide otherwise.
- (4) The provisions of Article 11 shall remain in force after the termination of this Agreement.
- (5) This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel. The amendment shall enter into force on receipt of the reply note confirming the proposed amendment.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed and sealed this Agreement in duplicate in the English language.

DONE AT Cape Town ON 12 DAY OF Feb IN  
THE YEAR 2019.

  
\_\_\_\_\_  
FOR THE GOVERNMENT OF  
THE REPUBLIC OF KENYA

  
\_\_\_\_\_  
FOR THE GOVERNMENT OF  
THE REPUBLIC OF  
SOUTH AFRICA

# **ADOPTION LIST**

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

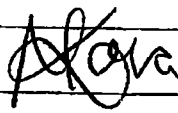
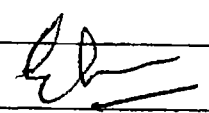
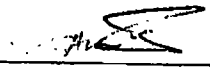
DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS  
Adoption Schedule

REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN  
RELATIONS ON CONSIDERATION OF THE AGREEMENT BETWEEN KENYA  
AND SOUTH AFRICA ON DEFENCE COOPERATION

We, the undersigned Members of the Departmental Committee on Defence & Foreign Relations, today 14<sup>th</sup> October, 2019 do hereby affix our signatures to this REPORT ON THE CONSIDERATION OF THE AGREEMENT BETWEEN KENYA AND SOUTH AFRICA ON DEFENCE COOPERATION to affirm our approval and confirm its accuracy, validity and authenticity:-

NO.	NAME	SIGNATURE
1.	The Hon. Katoo Ole Metito, EGH, MGH, M.P - Chairperson	
2.	The Hon. Richard Tong'i, M.P - Vice Chairperson	
3.	The Hon. Yusuf Hassan Abdi, M.P	
4.	The Hon. Charles Mutavi Kilonzo, M.P	
5.	The Hon. Patrick Makau, M.P	
6.	The Hon. Col. (Rtd) Dido Ali Raso, M.P	
7.	The Hon. Peter Mungai Mwachhi, M.P	
8.	The Hon. Martha Wangari Wanjira, M.P	
9.	The Hon. Major (Rtd.) Bashir Abdullahi, M.P	
10.	The Hon. Memusi Ole Kanchory, M.P	



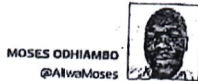
11.	The Hon. Beatrice Nkatha Nyagah, HSC, M.P	
12.	The Hon. John Lodepe Nakara, M.P	
13.	The Hon. Nelson Koech, M.P	
14.	The Hon. (Dr.) Lilian Gogo, M.P	
15.	The Hon. Vincent Kipkurui Tuwei, M.P	
16.	The Hon. Moses Nguchine Kirima, M.P	
17.	The Hon. Ernest Ogesi Kivai, M.P	
18.	The Hon. Caleb Amisi, MP	
19.	The Hon. Asha Hussein Mohamed, MP	

**NEWS GENERAL**

**WAR ON CONTRABAND**

**MPs to probe mystery release of unfit edible oil**

Kebs quotes a directive from a July 18 letter purported to be from Head of Public Service directing it to release the impounded cargo



**MOSES ODHIAMBO**  
@AlwaMoses

MPs have started investigations into circumstances under which 48 containers of edible oils that were declared unfit for consumption were released from a godown in Mombasa.

Trade committee chaired by Kieni MP Kanini Kega is probing how Kenya Bureau of Standards sanctioned the release of the cargo without the input of members of the multi-agency team dealing with contrabands and counterfeits.

Kebs, in a July 22 letter, quotes a directive from another July 18 letter purported to be from the Head of Public Service directing it to release

the impounded cargo. The letter to Trade Cabinet Secretary Peter Muriya sought concurrence from the ministry to allow the release of the oil for further fortification.

But MPs in the committee queried the move, saying they had a brief that the agency normally makes its decisions as a team and not unilaterally by a member.

Mwatate MP Andrew Mwandime, Cornelly Serem (Aldai), Jeremiah Lomoruai (Lolma), Alois Lentolmaga (Samburu North), Dan Maanzo (Makueni), and Jones Mloira (Voi) were present.

The lawmakers maintained that the letter quoting receipt of another from the head of civil service OB/CAB/9/383 July 18 signaled that Kebs was under pressure to release the oil.

Serem asked: "Isn't it true that your office (civil service) is putting pressure on Kebs to release the same oils?"

In response, Wanyama denied assertions that his team was under pressure from any quarters further saying he has not received calls with respect to the anti-counterfeit operation.

"I have not seen a copy of the letter. I don't think there is any pressure from the office of the public service. If there was pressure, why would I have the documents detailing the status of the oils," the officer said.

Kega ruled that they will give further directions since the committee is yet to be served with the letter said to be from the head of public service.



Parliamentary Committee on Trade and Industries chairman Kanini Kega, vice chairman Cornelly Serem and Makueni MP Daniel Maanzo look at imported edible oil at a CFS in Mombasa yesterday. Kega said the oil should not be distributed until thorough tests are done /JOHN CHESOLI

**MURDER IN THE MARKET**

**Trader on rampage stabs man to death, injures five**

Police boss says they are pursuing the assailant

GERALD MUTETHIA/Police in Meru have launched a manhunt for a trader who stabbed to death a man at Muriri market in Tigania East.

There is still tension at the market as the attacker, identified as Joshua Kleru, is still on the run.

He abandoned his car at Muriri market and started stabbing residents randomly with a knife.

Tigania East subcounty police commander Peter Karanja said they are pursuing the assailant and have launched investigations into the motive behind the attack.

He refuted claims on social media that Kleru killed seven people and

injured several others.

"We are still pursuing this person since yesterday. We had only one person dead and five injuries contrary to what we are seeing on social media that seven people were killed. Such information is misleading," Karanja said on the phone yesterday.

Samuel Gitonga said the assailant is said to have had a quarrel with his family.

He had also reportedly recently killed a camel with his vehicle and the owners were demanding compensation.

He claimed that the assailant may have been threatened by the owners.

**'WE HAD ONLY ONE PERSON DEAD AND FIVE INJURIES CONTRARY TO WHAT WE ARE SEEING ON SOCIAL MEDIA'**

**INTEREST OF JUSTICE**

**Court enjoins Garissa deputy governor in his boss's petition**

CAROLYNE KUBWA/ The High court has allowed Garissa Deputy Governor Abdi Daganne to be enjoined in a petition seeking the removal of his boss from office.

Judge James Makau ruled that Daganne gave sufficient reasons to be joined as an interested party since any decision made will affect him directly. In June, Daganne made an application saying the petition is likely to affect his position as it is tied to that of Governor Ali Korane.

"It is imperative and in the interest of justice that the court should hear and determine the application before any further proceedings are undertaken in the petition," he said.

The deputy governor says he has a legal interest in the suit due to the nature of his appointment and his position and will be affected by any negative outcome of the case.



Deputy Governor Abdi Daganne /FILE

**REPUBLIC OF KENYA**

**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION**

In the matter of consideration by the National Assembly:  
The Ratification of Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Cooperation

**SUBMISSION OF MEMORANDA**

Article 118 (1)(b) of the Constitution provides that "Parliament shall facilitate Public Participation and involvement in the legislation and other business of the Parliament and its Committee." Further, section 8 of the Treaty Making and Ratification Act, 2012 provides for the consideration and Ratification of Treaties by Parliament. Subsection (3) states, "The relevant Parliamentary Committee shall, during its consideration of the Treaty, ensure Public Participation in the ratification process in accordance with laid down parliamentary procedures."

The National Assembly is in receipt of the above mentioned Bilateral Agreement for approval for ratification by the Republic of Kenya. The main purpose of the Bilateral Agreement is to enhance defence cooperation by identifying and providing a framework for cooperation for exchange of experiences and knowledge for the use and mutual benefit of the parties.

The Bilateral Agreement has been committed to the Departmental Committee on Defence and Foreign Relations pursuant to Standing Order 216(5)(fa) for consideration and thereafter report to the House.

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

The representations or written submission may be forwarded to the Clerk of the National Assembly, P.O Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Tuesday, 8th October, 2019 at 5.00 pm.

**MICHAEL R. SIALA, EBS  
CLERK OF THE NATIONAL ASSEMBLY**





# Investigate lawmakers with dual nationality, urges lobby

Omtatah-led group wants legislators to submit to the same standards they have prescribed for diplomats

by Hilary Mageka  
@PeopleDailyKe

A lobby has petitioned the Ethics and Anti-Corruption Commission (EACC) to investigate at least 10 sitting and former MPs over dual citizenship allegations.

Kenya's for Justice and Development, in a letter dated October 1, wants National Assembly Leader of Majority Aden Duale and Nakuru Senator Susan Kihika, among other lawmakers, investigated on claims they hold dual nationality.

The group says the issue of dual citizenship was used to block Mwendu Mwinzi's appointment as Kenya's ambassador to South Korea. Further, the issue was challenged in the High Court following her vetting by the National Assembly.

In the period since, the lobbyists held that EACC has received instructions from National Assembly Speaker Justin Muturi to investigate Mwinzi on her citizenship and whether she had renounced her US citizenship.

"We draw your attention to the fact that on June 9, Hon Katoo ole Metito, the chair-

man of the National Assembly Committee on Defence and Foreign Relations called on EACC to initiate a probe into whether there are State officers bearing dual nationality," said Omtatah, the lobby's executive director.

### Give findings

"In the spirit of adhering to the rule of the law and applying the law consistently and equally to all, it is of overwhelming national importance and public interest that our legislators submit to the same standards they have set for our diplomats," he added in his letter addressed to the EACC chairperson Eliud Wabukala.

Omtatah says the Constitution expressly prohibits MPs from possessing dual nationality if it was acquired through naturalisation.

Other MPs on EACC's radar over nationality include Yusuf Hassan (Kamukunji), Safia Sheikh (Marsabit Woman Rep), Adan Haji (Mandera South), Mohammed Dahir (Dadaab), Mohammed Garane (Lagdera), Charles Ngusya (Mwingi West) and Jane Kihara (Naivasha).



OMTATAH

The Constitution expressly prohibits MPs from possessing dual nationality

## House team summons ex-KPA boss

by Sophie Njoka  
@PeopleDailyKe

Former Kenya Ports Authority (KPA) boss Gichiri Ndua (pictured) has been summoned to appear before the National Assembly's Public and Investment Committee over Sh3 billion cash deposited at Chase Bank, few days before it was put under receivership.

Also summoned were former KPA board members who held office during the time when the money was deposited. They are required to shed more light on the deposits made at the bank after fraudulent internal lending led to its collapse after posting a loss of at least Sh14.9 billion.

## Relief for Galgalo and Kambi as House gives NLC nomination nod

by Anthony Mwangi  
@PeopleDailyKe

MPs yesterday approved the nomination of former Isiolo Woman Rep Tiya Galgalo to serve in the National Land Commission.

Galgalo (pictured) survived by a whisker after members voted on an amendment seeking to remove her name for failing to produce a tax compliance certificate.

The National Assembly Committee on Lands had in its report last week rejected Galgalo's name on the basis she was not tax compliant.

While tabling the report, chairperson of the departmental committee on Land, Rachael Nyamae had said the vetting committee proposed rejection of Galgalo.



But the amendment was brought shortly before the report was passed, forcing Speaker Justin Muturi to call for a division. After the vote, 114 members voted for the amendment, 70 against it and two abstentions.

Hulufo MP Hassan Oda while moving the amendment,

said the tax man had since issued Galgalo with a genuine certificate.

Another move to reject former CS Kambi Kazungu also flopped after members rejected an amendment by some MPs from the Coast region.

The MPs wanted Kambi out over alleged integrity issues.

With this approval, President Uhuru Kenyatta's point man Gershon Otachi Omanwa will be taking over from Muhammad Swazuri as chairperson.

Other nominees are former Nyeri Town MP Esther Murugi, former Egerton University vice chancellor James Tuitok, Alistair Mutugi, Reginald Okumu and Gertrude Nduku.

### BRIEFLY

## Distiller seeks time to repair system

London Distillers Kenya has denied claims it has been discharging toxic waste into the Export Processing Zone Authority's sewage system.

The distiller has also urged the authority to grant it at least 30 days to repair its blocked manholes and vandalised

pipes in order to resume operations. In a letter dated September 25, the distiller said it has put up a plant at the factory to treat the effluent before discharging it to the authority's sewer line.

The spirits firm has insisted its end product is molasses

which is not toxic.

The authority has, however, said the company's licence to discharge any effluent to their sewer line shall remain suspended until experts are satisfied their effluent meets the required standards.

- Christine Musa

REPUBLIC OF KENYA

**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION**

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**MICHEAL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY**