

MEMORANDUM OF UNDERSTANDING

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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REPUBLIC OF KENYA AND THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND CONCERNING DEFENCE
COOPERATION**

The Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland (hereafter referred to as the "Parties" and separately as a "Party"):

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

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

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

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

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

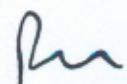
IN CONSIDERATION OF the needs of the Armed Forces of the United Kingdom and the Kenya Armed Forces regarding cooperation in military training, visits and technical assistance, the status of forces and other related matters;

HAVE REACHED the following understanding.

SECTION 1

AIM

1.1 The aim of this Memorandum of Understanding (hereafter referred to as "MoU") 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.



SECTION 2

SCOPE AND GOALS

2.1 The Parties will, 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 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 within the Armed Forces;
- g. Military medical services;
- h. Military sports;
- i. Disaster relief and humanitarian operations of the Armed forces;
- j. Military exercises;
- k. Exchange visits of personnel;
- l. Mapping/survey and exchange of geographic materials;
- m. Other areas of mutual interest which may be decided upon in future.

SECTION 3

FORMS OF COOPERATION

3.1 Defence cooperation between the Parties will be based on the principle of reciprocity and will 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.

SECTION 4

DEFINITIONS

4.1 In this MoU, the following definitions apply:

- a. **Visiting Forces.** Means personnel of the land, sea or air of United Kingdom Armed Forces and MOD Civilian employees in the Republic of Kenya or Kenya Armed Forces in the United Kingdom with the consent of the Host Government in connection with their official duties.
- b. **Kenyan Service Authorities.** Means the authorities of the Republic of Kenya empowered by the law of the Republic of Kenya to exercise command or jurisdiction over the Kenya Armed Forces.
- c. **British Service Authorities.** Means the authorities of the United Kingdom empowered by the law of the United Kingdom to exercise command or jurisdiction over the United Kingdom Armed Forces.
- d. **Civilian Component.** Means the civilian personnel accompanying the United Kingdom Armed Forces in Kenya or the Kenya Armed Forces in the United Kingdom who are employed by departments or authorities of the

Government of the Visiting Forces which have functions relating to armed forces or by an authorized service organization accompanying the Visiting Forces and who are not stateless persons, or nationals of the Host Nation.

e. **Dependant.** Means the spouse of a member of the United Kingdom Armed Forces in Kenya or the Kenya Armed Forces in the United Kingdom, or of their respective civilian components, who forms part of the accompanying family of such member.

f. **Duty.** Means custom duties and all other taxes and ad valorem registration fees payable on importation and exportation as the case may be, except dues and taxes which are no more than charges for services rendered.

g. **Authorized Service Organization.** Means an organization authorized by the United Kingdom or Kenyan Service Authorities to accompany Visiting Forces in order to provide for the needs of those forces.

h. **Exercises or Training.** Means and includes unilateral, bilateral and multilateral exercises or training activities involving both units and individuals, Short Term Training Teams, advisory support, exchanges and attachment of units.

i. **Training Areas.** Means those areas in the Host Nation in which armed forces will be deployed for the purposes of conducting exercises or training and which are designated and gazetted as Armed Forces training areas.

j. **Implementing Arrangement.** Means a follow-on arrangement to this MoU which may be concluded for specific activity and which will detail the resources required to undertake that activity. The Implementing Arrangement will be a document made under this MoU and will be interpreted consistently with its provisions, except as otherwise provided for by the Implementing Arrangement. Either Party may propose an Implementing Arrangement.

SECTION 5

IMPLEMENTATION

5.1 The Host Party may provide all assistance to the Visiting Forces from time to time as it may deem necessary, fit and expedient. Visiting Forces will observe rules, orders and safety measures applied in the institution or establishment where activities



take place, and will 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 MoU. The United Kingdom and Kenyan Service Authorities will, respectively, take such necessary precautions or measures for the proper observance of these provisions.

5.2 All activities under this MoU will be implemented in conformity with the domestic law in force in the Host Nation. Implementation of some aspects of the programme may be covered by Implementing Arrangements.

5.3 The Parties will designate a focal point of contact to implement this MoU and coordinate the activities referred to herein; and may provide liaison officers to Visiting Forces. The Parties will, by 31st March of each year, negotiate and agree on the activities to be undertaken in that year.

5.4 Visiting Forces will be treated, except as otherwise provided for in this MoU, as members of the Armed Forces of Kenya or of the United Kingdom Armed Forces, as the case may be, of equivalent rank.

5.5 Visiting Forces will not take part in hostilities or other operations of a warlike nature undertaken by the Armed Forces of the Host Nation, or in any operations of those forces which are concerned with the preservation of peace, internal security or with the enforcement of law and order.

5.6 Visiting Forces employed in training and advisory posts will not be given operational responsibilities in the Armed Forces of the Host Nation.

SECTION 6

JURISDICTION, PRIVILEGES AND IMMUNITY

6.1 Visiting Forces, their Civilian Component and dependants will respect the laws, regulations, customs and traditions of the Host Nation at all times. Whilst conducting activities in the Host Nation under this MoU, Visiting Forces their Civilian Component and dependants will be entitled to the protection of the law of the Host Nation.

6.2 Subject to the provisions of paragraph 6.5 below:

- a. British Service Authorities may exercise, within Kenya or on board any British ship or aircraft, all criminal and disciplinary jurisdiction conferred on them



by the law of the United Kingdom over members of the British Visiting Forces their Civilian Component and dependants.

b. Kenyan civil and British Service Authorities may exercise jurisdiction over members of the British Visiting Forces, their Civilian Component and dependants with respect to alleged offences committed in Kenya and punishable by the law of Kenya.

6.3 In cases where the right to exercise jurisdiction is concurrent, British Service Authorities will have the primary right to exercise jurisdiction if:

a. The alleged offence is against the property or security of the United Kingdom, or against the property or person of another member of the British Visiting Forces, their Civilian Component and dependants; or

b. The alleged offence arises out of an act or omission in the course of official duty.

6.4 In any other case, the Kenyan authorities will have the primary right to exercise jurisdiction with respect to alleged offences committed in Kenya and punishable by the laws of Kenya. If the Party having the primary right decides not to exercise jurisdiction, it will notify the authorities of the other Party in writing as soon as practicable. The authorities of the Party having the primary right may give sympathetic consideration to a request from the authorities of the other for a waiver of its right in cases where the other Party considers such waiver to be of particular importance.

6.5 The authorities of Kenya and the United Kingdom will assist each other:

a. In the arrest of members of the British Visiting Forces, their Civilian Component and dependants in the territory of Kenya for the purpose of handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions;

b. The Kenyan authorities will notify the British High Commissioner promptly of the arrest of a member of the British Visiting, Forces their Civilian Component and dependants;

c. A member of the British Visiting Forces, their Civilian Component and dependants in Kenya held in the custody of the Kenyan authorities may be released to British Service Authorities on the understanding that such a member



will be presented for investigations and trial as the Kenyan authorities may require. The Kenyan Service Authorities will use its Good Offices to assist in securing such a release.

d. The authorities of Kenya and the United Kingdom will assist each other in the investigation and obtaining of evidence in relation to alleged offences committed by members of the British Visiting Forces, their Civilian Component and dependants in the territory of Kenya;

e. The authorities of Kenya and the United Kingdom will notify each other of the disposition of all cases in which both the authorities of Kenya and the United Kingdom have the right to exercise jurisdiction.

6.6 Where an accused has been tried by the Kenyan or British Service Authorities and has been convicted or acquitted, which expression includes a charge being dismissed by the Commanding Officer of the accused after investigation, he or she may not be tried again for the same offence.

6.7 Whenever a member of the British Visiting Forces, their Civilian Component and dependants is prosecuted under the jurisdiction of Kenyan law, they will be entitled to:

a. A prompt and speedy trial;

b. Be informed in reasonable time of the trial of the specific charge or charges made against them;

c. Be confronted by the witnesses against them;

d. Have compulsory process for obtaining witnesses in their favour, if they are within the jurisdiction of Kenya;

e. Have legal representation of their own choice for their defence or to have free or assisted legal representation under the conditions prevailing for the time being in Kenya;

f. Have the services of a competent interpreter, if they consider it necessary;



g. Communicate with a representative of the Government of the United Kingdom, and, when the rules of the court permit, to have a representative of the Government of the United Kingdom present at their trial.

6.8 Jurisdictional arrangements for Kenyan Visiting Forces will be in accordance with the privileges, rights and immunities offered to the Visiting Forces under the Visiting Forces Act 1952 as amended.

SECTION 7

INVOLVEMENT OF THIRD COUNTRIES

7.1 If the Visiting Forces propose to include personnel from a third country's forces in exercise or training activities in the territory of the Host Nation under this MoU, the Visiting Forces will request during booking, approval to include third country forces and equipment in the British contingent. The Host Nation may at its discretion, exclude from its territory personnel from a third country's forces and such exclusion will be communicated to the Visiting Forces within a reasonable time. Where approval for inclusion of a third country's personnel has been granted, the Visiting Forces will not be responsible for arrangements and obligations concerning the status of the third country's personnel in the territory of the Host Nation.

SECTION 8

UNIFORM , ARMS AND OTHER DEFENCE ARTICLES

8.1 The Visiting Forces will, prior to entry into Kenya, submit a schedule detailing all cargo on board their vessels. Such cargo may be subject to inspection and verification by the relevant authorities of the Government of Kenya.

8.2 Members of the British Armed Forces in Kenya, and the Kenya Armed Forces in the United Kingdom may wear the uniform and insignia of their parent units in the performance of their official duties. They may possess and carry arms and ammunition when authorized to do so by their Service Authorities after consultation with, and subject to any restrictions and direction imposed by the Host Government.

8.3 Units and individual members of Visiting Forces will be responsible for the safe custody of all arms, ammunitions, uniforms, explosives and other defence articles. Units and individual members of the Visiting Forces shall under no circumstances sell or transfer possession to civilians of the Host Nation any arms, ammunitions, uniforms,

explosives and other defence articles no longer needed by the Visiting Forces. All arms, ammunitions, uniforms, explosives and other defence articles no longer required by the Visiting Forces will be either destroyed in accordance with international practice and standards or handed over to the Host Government at no cost.

8.4 The British Service Authorities will ensure that its service personnel, civilian component and civil contractors will comply with the provisions of this section.

SECTION 9

ENVIRONMENTAL PROTECTION

9.1 **Environment.** The Host Party and the Visiting Forces will cooperate to protect and preserve the environment comprising of the training areas. The Visiting Forces will desist from such acts or use of equipment, explosives, ammunition and arms that degrade/alter the environment whether permanently or temporarily. The Visiting Forces will take utmost care to avoid acts that negatively impact on the flora and fauna and will at all material times, comply with the Host Nation's directions, regulations and laws preserving the environment.

9.2 **Inspection of Training Areas** The Visiting Forces will refrain from such acts that would prejudice the Host Party's obligations under International Law with respect to the preservation of the environment. The Host Party may inspect the training areas under use by the Visiting Forces to verify compliance with this article.

9.3 **Infrastructure.** No unauthorized permanent structures will be erected in the designated and gazetted training areas. In the event that such structures are authorized and erected, the ownership and use of the same will be determined by the Host Party.

SECTION 10

ACCESS TO FACILITIES

10.1 The Parties will cooperate in the military and related technical fields of interest to both Parties for the mutual benefit of their armed forces as follows:

- a. Visiting Forces may use the Host Party'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;

