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TWELFTH PARLIAMENT - THIRD SESSION

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THE NATIONAL ASSEMBLY

REPORT OF  
THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN  
RELATIONS  
ON  
THE CONSIDERATION OF THE AGREEMENT BETWEEN THE GOVERNMENT  
OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE ITALIAN  
REPUBLIC ON THE LUIGI BROGLIO-MALINDI SPACE CENTRE

Directorate of Committee Services,  
Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI**

|   |                                      |
|---|--------------------------------------|
| <br>THE NATIONAL ASSEMBLY<br>PAPERS LAID |                                      |
| JUNE, 2019  |                                      |
| DATE: 26 JUN 2019   |                                      |
| TABLED BY:  | Hon. Katoo ole Mathu<br>Chair Person |
| CLERK-AT THE TABLE:   | M. Mathu                             |
| DAY: _____<br>WEEK: _____   |                                      |

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## LIST OF ABBREVIATIONS

|      |  |
|------|--|
| ISA  | Italian Space Agency                         |
| GMES | Global Monitoring for Environment & Security |
| RCEO | Regional Centre for Erath Observation        |
| JCM  | Joint Council OF Ministers                   |
| JMB  | Joint Management Board                       |
| MOD  | Ministries of Defence                        |
| SP   | Strategic Plan                               |
| GOK  | Government of Kenya                          |
| CEO  | Chief Executive Officer                      |
| DCEO | Deputy Chief Executive Officer               |
| TPA  | Third Party Agreement                        |
| ESA  | European Space Agency                        |
| BSC  | Broglio Space Center                         |

I

*Report of the Departmental Committee on Defence and Foreign Relations on the Consideration at Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre*

## CHAIRPERSON'S FOREWORD

The Luigi Broglio Malindi Space Centre formerly referred to as the San Marco Satellite Launching and Tracking Station is located at Ngomeni Village, Magarini Constituency in Kilifi County. It was established in 1962.

An initial Agreement was signed between the Royal Technical College of Nairobi (now the University of Nairobi) and the University of Rome on behalf of their respective Governments. The Agreement Was ratified by the two Kenyan and Italian Governments in 1964 and has subsequently been renewed as follows—

- (a) On 1<sup>st</sup> April 1987 to inform the establishment the National Space Secretariat under the Ministry of Defence.
- (b) On 14<sup>th</sup> March 1995, the Agreement was extended for a further period of fifteen (15) years which expired on 14<sup>th</sup> March 2010. The validity of the Agreement was extended to 31<sup>st</sup> December 2011 to allow for negotiations between the parties.
- (c) On 5<sup>th</sup> June 2012, the validity of the Agreement was further extended to allow the Parties conclude a new comprehensive Agreement for co-operation on space matters together with Implementing Arrangements. This is the Agreement that has now been submitted to the National Assembly for ratification.

The Committee is grateful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

On behalf of the Committee, it is therefore my pleasant duty and privilege, to lay this report on the Consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.



**THE HON. KATOO OLE METITO, EGH, MGH, M.P.**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN**  
**RELATIONS**

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*Report of the Departmental Committee on Defence and Foreign Relations on the Consideration at Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre*

## EXECUTIVE SUMMARY

The purpose of this report is to consider the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre pursuant to Section 8 of the Treaty Making and Ratification Act, 2012

In considering agreement, the Committee held a total of six (6) sittings. The Committee received briefs 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 Tuesday 19<sup>th</sup> of March, 2019 (see Annex) requesting for submissions of memoranda on the subject matter.** The Committee received memoranda from Prof. Paul Baki from the Union Space Working group, Technical University of Kenya; Kenyan staff at the Broglio Space Centre and Mr. Joseph Mutua Muvea from Green Kenya Investment Cooperation, a company dealing with environmental protection.

**The report concludes that the National Assembly approves the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre as it's in Kenya's national interest.**

## 1.0 PREFACE

### 1.1 Establishment and Mandate of the Committee

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.*

The Committee is mandated to consider the following subjects: -

- i. Defence
- ii. intelligence,
- iii. foreign relations
- iv. diplomatic and consular services,
- v. international boundaries,

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*Report of the Departmental Committee on Defence and Foreign Relations on the Consideration and Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre*



- vi. international relations,
- vii. agreements,
- viii. treaties and
- ix. Conventions.

### **1.2 Oversight**

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. The National Intelligence Service
- iv. The State Department for East African Community Integration.

### 1.3 Committee Membership

**Chairperson 1. The Hon. Katoo Ole Metito, M.P.**

**Vice Chairperson 2. The Hon. Richard Tongi, M.P.**

3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Charles Kilonzo, MP
5. The Hon. Patrick Makau, MP
6. The Hon. Dido Ali Raso, MP
7. The Hon. Peter Mungai Mwathi, MP
8. The Hon. Beatrice Nkatha Nyagah, HSC, MP
9. The Hon. Martha Wangari Wanjira, MP
10. The Hon. Memusi Ole Kanchory, MP
11. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
12. The Hon. (Dr.) Lillian Gogo, MP
13. The Hon. Nelson Koech, MP
14. The Hon. Moses Nguchine Kirima, MP
15. Hon. Vincent Kipkurui Tuwei, MP
16. The Hon. John Lodepe Nakara, MP
17. The Hon. Ernest Ogesi Kivai, MP
18. The Hon. Caleb Amisi, MP
19. Hon. Asha Hussein Mohamed, MP

#### 1.4 Committee Secretariat

|                                |                             |
|--------------------------------|-----------------------------|
| <b>Senior Clerk Assistant</b>  | Mr. Samuel Kalama           |
| <b>Third Clerk Assistant</b>   | Mr. Abdiaziz Shobay         |
| <b>Senior Sergeant-At-Arms</b> | <b>Mr. Andrew Shangarai</b> |
| <b>Legal Counsel I</b>         | Mr. Ronald Walala           |
| <b>Fiscal Analyst II</b>       | Mr. Edison Odhiambo         |
| <b>Research Officer III</b>    | Ms. Grace Wahu              |
| <b>Audio Officer</b>           | Rodgers Kilungya            |

## 2.0 INTRODUCTION

1. The Luigi Broglio Malindi Space Centre formerly referred to as the San Marco Satellite Launching and Tracking Station is located at Ngomeni Village, Magarini Constituency in Kilifi County. It was established in 1962.
2. An initial Agreement was signed between the Royal Technical College of Nairobi (now the University of Nairobi) and the University of Rome on behalf of their respective Governments. The Agreement was ratified by the two Kenyan and Italian Governments in 1964 and has subsequently been renewed as follows—
  - (d) On 1<sup>st</sup> April 1987 to inform the establishment the National Space Secretariat under the Ministry of Defence.
  - (e) On 14<sup>th</sup> March 1995, the Agreement was extended for a further period of fifteen (15) years which expired on 14<sup>th</sup> March 2010. The validity of the Agreement was extended to 31<sup>st</sup> December 2011 to allow for negotiations between the parties.
  - (f) On 5<sup>th</sup> June 2012, the validity of the Agreement was further extended to allow the Parties conclude a new comprehensive Agreement for co-operation on space matters together with Implementing Arrangements. This is the Agreement that has now been submitted to the National Assembly for ratification.

### 2.1 Outline and overview of the Agreement

3. **Article I** contains definitions of terms used in the Agreement.
4. **Article II** outlines the extent and use of the Space Centre. Under the Article, the Centre is defined as consisting of a mobile segment at sea for tracking and launching satellites and suborbital platforms and for space research at Ungwana Bay and a land based segment at Ngomeni. The Space Centre is to be used for aerospace science, space science and technology and research and applications as well as tracking and monitoring space vehicles,

navigation and any other activity mutually agreed upon by the parties. It is only to be used for peaceful purposes.

5. **Article III** of the Agreement provides for other areas of cooperation between the two governments. The Italian government commits to—
- (a) support the enhancement of the capacity of a Kenyan Space Agency;
  - (b) train Kenyan nationals identified by the Government of Kenya in aerospace, space science and technology; defence courses and scholarships for training in other disciplines;
  - (c) enhance the capacity of public institutions of higher learning in Kenya to train persons in space science and technology; and
  - (d) in conjunction with the Kenyan Government, support the development of the Ngomeni area of Kilifi County.
6. Mutually, the two governments commit to establish a Regional Centre for Earth Observation in Kenya to receive, store, process and disseminate remotely sensed data. The foregoing areas of cooperation are to be actualized through the signing of Implementing Agreements between the implementing agencies of the two countries. The Implementing Agreements are annexed to the Agreement.
7. **Article IV** provides for the establishment of a Joint Council of Ministers as the supreme organ responsible for strategic policy guidance for the operations of the Space Centre and identified areas of cooperation. The Council is to be comprised of Ministers designated by the Parties to the Agreement. The Council is to hold at least two (2) meetings in a year and may convene on the request of the Joint-Steering Committee. The Ministry of Education Research and University is the designated Ministry by the Italian Government while the Ministry of Defence is Kenya's designate
8. **Article V** of the Agreement establishes a Joint Steering Committee comprising Principal Secretaries of respective Ministries and Chief Executive Officers (CEOs) of the respective Space Agencies of the two countries. The Committee is charged with steering the

implementation of the Agreement and considers and approves the programmes, plans and financial affairs of the Centre. The Committee also appoints the chair of the Joint Management Board of the Centre on a rotational basis and is charged with the approval of the possible engagement or involvement of third parties in the utilization of the Centre. The Committee is to be chaired alternately by the representatives of both countries and is to meet in Kenya or Italy at least once a year.

9. **Article VI** of the Agreement establishes a Joint Management Board comprising three technical persons designated by each country. Each country may also coopt advisors into the Board. The Board is to meet at least three times in every financial year and it is to be chaired on a rotational basis between the countries every two (2) years. The Board oversees the operations of the Space Centre and the welfare of its staff. It regulates its own procedure.
10. **Article VII** of the Agreement governs the management of the Space Centre. The Chief Executive Officer (CEO) of the Centre is to be appointed by the Italian Government through its Space Agency. The CEO is to be in charge of the day-to-day management of the Centre and convening of Board meetings. The Deputy CEO of the Centre is to be appointed by the Government of Kenya to deputize the CEO in all aspects except the making of financial commitments for the Centre. Both Governments may second professional staff to the Centre in consultation with the Board in agreed capacities. Non-professional staffs are to be recruited from amongst qualified Kenyans.
11. **Article VIII** of the Agreement provides for the prerogatives and obligations of the Italian Government. The Italian Government commits to—

- (a) Undertake training programmes for Kenyan nationals in aerospace science, space science, technology and research;
- (b) Promote development projects for the community in Ngomeni area;
- (c) Nominate its representatives to the Council, the Committee and the Board;
- (d) appoint the CEO and professional staff of the Centre;

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**II**

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- (e) Cater for the operating costs on the day to day functioning of the Centre and its space activities and programs as approved;
- (f) Contribute to the costs of establishing and operating the Regional Centre for Earth Observation;
- (g) Pay the Kenyan Government USD 250,000 annually for the use of the land used by the Centre, subject to an increment of the sum by USD 50,000 every five years;
- (h) Pay compensation for any additional land acquired;
- (i) Remit to the Government of Kenya 50% of the profits of contracts with third parties for commercial services provided by the Centre with the exception of cooperation agreements in which there is no exchange of funds;
- (j) Collect and remit to the Government of Kenya an annual authorization fee of USD 50,000 from each third party for the use of the Centre which is to be reviewed every five years during the period of the Agreement;
- (k) Provide to the Government of Kenya the particulars of non-Kenyan personnel operating in Kenya with regard to activities related to the Centre and a list of all equipment destined for the Centre prior to their entry into the country;
- (l) Provide the Kenyan Government with annual progress reports on the activities concerning cooperation under the Agreement;
- (m) Apply to the Kenyan Government for the allocation of frequencies and licenses;
- (n) At least 60 days before any planned launch—
  - (i) submit to the Kenyan Government technical and administrative details of any orbital and suborbital planned launch, including contractual agreements, owners of a rocket and its nature and country of origin, satellite details, and the orbit path and period of stay in orbit;

(ii) inform the Kenya Civil Aviation Authority (KCAA) of the dates and time of launching of satellites and suborbital platforms; and

(o) In consultation with the Deputy CEO and the Board, assign duties to professional staff seconded by the Kenyan government.

12. **Article IX** of the Agreement provides for the prerogatives and obligations of the Government of Kenya. The Kenyan Government commits to—

- (a) Receive and consider within a reasonable time programs submitted by the Joint Committee and, where accepted, grant necessary authorizations;
- (b) Appoint a Deputy CEO;
- (c) In consultation with the Board, identify professional staff to be seconded to the Centre;
- (d) In consultation with the Italian Government, identify its training needs and personnel to undergo training;
- (e) Undertake all necessary measures to ensure the effective functioning of the Centre;
- (f) Consider and provide written authorization for launching of satellites and suborbital platforms;
- (g) Receive and consider for approval the use of all communications equipment, including allocation of licenses in accordance with its regulations and relevant International Telecommunications Union (ITU) radio regulations;
- (h) Facilitate the leasing of procuring of additional land for the purposes of expanding the Centre;
- (i) In consultation with the Italian Government, identify development projects to be realized within Malindi;



- (j) Within a reasonable timeframe inspect, verify and where satisfied, approve all the equipment to be used at the Centre;
- (k) Facilitate the issuance of necessary authorizations for import, export, transportation, installation and use of Centre equipment;
- (l) Facilitate the issuance of visas and work permits for non-Kenyan personnel in accordance with Kenyan law;
- (m) Nominate its representatives to the Council, the Committee and the Board;
- (n) Take all measures to facilitate entry, stay and exit from Kenya for the personnel of the Italian Government employed in Kenya for purposes related to the object of the Agreement;
- (o) Consider for approval all third party agreements for the utilization of the Centre within 30 days from the approval of the agreements by the Committee;
- (p) Provide the Italian Government with annual progress reports on the activities concerning cooperation under the Agreement; and
- (q) Undertake necessary administrative measures to ensure the full implementation of its obligations.

13. **Article X** contains provisions on the utilization of the Centre by third parties. Any agreements with third parties over the use of the Centre are to take into account the responsibilities and obligations of the two countries under the Agreement and programmes within the framework of the European and African space initiatives.

14. **Article XI** governs the liability of the parties under the Agreement. The Italian Government is to be liable for any damage caused to any property or person within or outside the Centre on account of the activities conducted pursuant to Article II of the Agreement. This liability is to be without prejudice to the right of the Italian Government to be indemnified by third parties who may occasion the damage. The Government of Kenya shall only become liable

where loss or damage is attributable to the gross negligence or deliberate act or omission of its employees or agents.

15. The Italian Government is obligated to take out individual policies with one or more companies authorized to operate in Kenya with respect to orbital and sub-orbital launch activities. The Insurance policy is to cover as joint insured, the Kenyan Government and the nationals and residents of the Kenya. The Italian Government undertakes to indemnify the Kenyan Government with respect to any suit, action or claim brought against it in relation to the activities carried out at the Centre.
16. **Article XII** provides for the modalities of Verification and Inspection under the Agreement. Both governments may request explanations from the Board on the operations of the Centre and inspect it, through authorized personnel, at any time subject to observance of relevant secrecy, confidentiality and data protection requirements.
17. **Article XIII** of the Agreement provides for the confidentiality of any material exchanged or generated in connection with the Agreement in line with each country's laws. Disclosure of information to third parties may only be done with prior consent.
18. **Article XIV** governs the settlement of disputes between the parties. It requires disputes to be primarily settle through consultation and negotiation through the framework of the Committee and the Council. Where a dispute that has been reduced into writing is not resolved by the Council within three months, the two governments re to meet to resolve the dispute within three months. Where Parties are unable to resolve the dispute, it is to be referred to International Arbitration.
19. **Article XV** provides for the vesting of the Centre's assets to the Kenyan Government upon the lapse of the Agreement or at such a lesser period formally agreed upon by the Council or upon the termination of the Agreement. Parties may agree to joint use of the Centre after the expiry of the Agreement.

20. The Assets of the Centre are not to be subject to expropriation by the Kenyan Government and are also to be immune from administrative or judicial orders unless the same are pursuant to the vesting of the assets to the Kenyan Government under the Agreement.
21. **Article XVI** of the Agreement stipulates Kenyan law as the law applicable to all activities, operations and incidental actions related to the functioning of the Centre. The implementation of the Agreement is to be done in accordance with the international obligations on the Parties, including obligations deriving from Italy's membership of the European Union.
22. **Article XVII** provides for the mode of amendment, modification and review of the Agreement. It may be amended at any time in writing by the mutual consent of parties. The amendments are to come into force on the date of receipt of the last written final approval. The Article also provides for a mid-term review of the functioning of the implementation of the Agreement.
23. **Article XVII** of the Agreement provides for the modalities of its entry into force, duration and termination. The Agreement is to come into force on the receipt of the last notification from the parties indicating the respective internal procedures have been complied with. In the case of Kenya, such a notification will be to the effect that the Agreement has been ratified by the National Assembly in line with the Treaty Making and Ratification Act, 2012. The Agreement is to remain in force for a period of fifteen (15) years and may be renewed through mutual agreement.
24. The Agreement may be terminated by either party serving written notice of not less than twelve (12) months. Termination of the Agreement is not to affect the payment of any debt, claims or compensation or excuse any party from its accrued liabilities.
25. Annexed to the Agreement are the following five (5) implementing arrangements—
- A. Implementing Arrangement on Support to the Kenya Space Agency in which the parties are to cooperate on—

- (a) legal and institutional support for the establishment of the Kenya National
  - (b) Space Agency;
  - (c) capacity building;
  - (d) management support for the development of short, medium and long term sustainable space programmes;
  - (e) human and infrastructure resources development;
  - (f) technical assistance in terms of personnel, software, equipment and by secondment of experts to each Party's National Space Agency;
  - (g) training and internship programmes to employees of the National Space Secretariat;
  - (h) organization of, and participation in, and hosting of international and national conferences and symposia on space science and technology and its attendant disciplines;
  - (i) organization of and participation in Space Policy courses;
  - (j) joint applications for European/International program funding;
  - (k) access to opportunities that ASI may have with other space agencies;
  - (l) development of short, medium and long-term sustainable space programmes; and
  - (m) any other form of cooperation that may be mutually agreed on by the Parties.
- B.** Implementing Arrangement on Access to Earth Observation and Space Science Data in which the parties are to cooperate on—
- (a) formulation of specific data access and value added products use policies;
  - (b) access and use of data from past, ongoing and future space programs;

- (c) access and use of all data from past, ongoing and future space programs from the San Marco program at the Luigi Broglio Space Center - Malindi;
- (d) human and infrastructure resources development;
- (e) wider dissemination of space programs value added products to mutually
- (f) agreed third parties;
- (g) know-how and technology transfer of data acquisition, processing,
- (h) dissemination and archiving;
- (i) research and development;
- (j) undertaking of a data user need assessment analysis;
- (k) development of data, products and services access and use policies, according to each specific mission data policy;
- (l) establishing and developing infrastructure for data, products and services access and use in the Republic of Kenya;
- (m) making available one national coverage of COSMO-Sky Med data to Kenya annually in an appropriate mode and making available Site specific COSMO-Sky Med for emergencies in Kenya in appropriate modes and to make available Site specific COSMO-SkyMed for pilot projects and scientific applications in Kenya in appropriate modes;
- (n) facilitating access to and use of Earth Observation data from past, ongoing and future space programs of ASI and its partners according to each specific mission data policy;
- (o) provision of training programs for selected Kenyan personnel on acquisition, processing, dissemination and archiving of data. software a d hardware development and other related fields;

- (p) undertaking joint research and development programs;
  - (q) undertaking joint applications for European and/or international Earth Observation program funding;
  - (r) promotion of joint activities and programs on Earth Observation and Space Science at national and international level;
  - (s) sharing of revenue generated from use of data by third parties and value added products;
  - (t) exchange visits of experts in Earth Observation and Space Science;
  - (u) establishment of focal points for access and use of Earth Observation and space science research data in Kenya; and
  - (v) any other form of cooperation that may be mutually agreed on by the Parties.
- C. Implementing Arrangement on Education and Training in which the parties are to cooperate on—
- (a) Aerospace Engineering and Technology;
  - (b) Earth Observation and Navigation;
  - (c) Space Science;
  - (d) Space Policy and International Space Law;
  - (e) Telemedicine;
  - (f) Telecommunications;
  - (g) Provision of annual scholarships and fellowships to fifteen (15) selected Kenyan nationals to the Italian Institutions of higher learning for undergraduate and post graduate degree programmes and short and long-term courses;
  - (h) Supporting research and development programs for Kenyan nationals;

- (i) Exchange visits for Kenyan and Italian nationals and Institutions;
  - (j) joint applications for European/International Education and Training program funding;
  - (k) enhancing capacity of the Kenyan Public Institutions of higher learning to undertake training in space science and technology;
  - (l) supporting outreach programmes in space science and technology at the elementary and high school levels in Kenya
  - (m) providing the Kenyan nationals accorded scholarship in Italy, full tuition including research fees, travelling expenses, medical insurance cover and adequate allowance for subsistence; and
  - (n) Any other form of cooperation that may be mutually agreed on by the Parties.
- D.** Implementing Arrangement on Telemedicine in which the parties are to cooperate on—
- (a) transfer of knowledge in telemedicine technology and provision of training for medical personnel in Kenya;
  - (b) information and communication technology infrastructure development in
  - (c) Kenya
  - (d) disease prevention and treatment;
  - (e) research and development;
  - (f) provision of medical equipment and applications;
  - (g) undertaking of a need assessment analysis;
  - (h) supporting the establishment of access points to the ASI-Net infrastructure in the Republic of Kenya;

- (i) establishing a satellite hub in Malindi to connect to access points in Kenya and in Rome;
- (j) supporting training programs of relevant Kenyan personnel;
- (k) establishment of telemedicine medical equipment and infrastructure in health institutions in Kenya;
- (l) equipping selected medical institutions in Kenya with telecommunication and **ECG** (Electro Cardio-Graph) tele-cardiology equipment;
- (m) joint research and development programs;
- (n) joint applications for European/International Telemedicine program funding;
- (o) exchange of expert visits;
- (p) assisting Kenyan national health care systems in sanitary planning and management;
- (q) promotion of joint activities and programs on telemedicine at national and international level;
- (r) supporting medical and telemedicine equipment operations; and
- (s) any other form of cooperation that may be mutually agreed on by the Parties.

**E. Implementing Arrangement on Establishment of a Regional Centre for Earth Observation in which the parties are to cooperate on—**

- (a) providing the requisite equipment and infrastructure for acquisition, processing, access, dissemination and archiving of Earth Observation data, products and services;
- (b) formulation of specific policies for Earth Observation data, products and
- (c) services access and use;
- (d) human and infrastructure resources development;



- (e) knowledge and technology transfer in data acquisition, processing, dissemination and archiving;
- (f) research and development;
- (g) undertaking of a feasibility and user need assessment analysis;
- (h) establishment of key infrastructure for acquisition, processing, access, dissemination and archiving of Earth Observation data, products and services in Kenya;
- (i) providing, maintaining and operating the facilities of the Regional Centre for Earth Observation in Malindi for the acquisition, first level processing, transfer and archiving of Earth Observation data, products and services;
- (j) development of the Regional Centre for Earth Observation for acquisition, high level processing, access, dissemination and archiving of Earth Observation data, products and services, and for its maintenance and operation in Nairobi or any other suitable location;
- (k) formulation of specific policies for Earth Observation data, products and services access and use;
- (l) assisting the Kenyan Government in user support activities;
- (m) planning and provision of training programs for Kenyan personnel;
- (n) joint research and development programs;
- (o) joint applications for European/International Earth Observation program funding;
- (p) promotion of joint activities and initiatives at national and international level;
- (q) exchange of expert visits; and
- (r) any other form of cooperation that may be mutually agreed upon by the Parties.

26. All the Implementing Arrangements are to be implemented by parties coming up with a Plan of Action and implementation plan within six (6) months from the date of the entry into force of the Agreement.

## 2.2 Signing

27. The Agreement was signed in Trento, Italy on **24<sup>th</sup> October 2016** on behalf of the Government of Kenya by the Cabinet Secretary for Defence.

## 2.3 Implementation of Previous Recommendations by the House on the Centre

28. In the 11<sup>th</sup> Parliament, a question by the Hon. (Dr.) Wilbur Ottichillo to the Minister of State for Defence in the House concerning the status of the San Marco Space Application Centre in Malindi was referred to a joint Committee of Energy, Communications and Information; and Education, Research and Technology to investigate and report to the House. The Committee recommended the following with regard to the Agreement then in place which is also still currently in force—

- (1) The Government should enhance its oversight role in ensuring that the San Marco Space Application Centre maximizes its presence in Kenya in the enhancement of the Government's development agenda in education, research, communication and information. The Kenyan Government should be involved both at the technical and managerial levels to ensure sufficient supervision of operations and management and maximum utilization of benefits at the Space Centre.
- (2) The new San Marco agreement under review and all future agreements should be approved by Parliament in line with the provisions of the Constitution of Kenya 2010. The new agreement should correct the anomalies existing in the previous agreements and ensure it includes among others—
  - (a) Joint management of the facility;

- (b) A clear framework for third party agreements and signing of third party agreements 'in the presence of the Kenyan Government;
  - (c) Provision for employment of Kenyans in senior managerial positions;
  - (d) Enhanced capacity building of Kenyans in space science technology;
  - (e) Sharing of revenue gained from commercial services provided to users of the Centre;
  - (f) Technology transfer and increased access to data collected;
  - (g) Use of satellite technology to address climate change, environmental risk factors and security; satellite-based research; and
  - (h) A clear exit strategy in the likelihood that Kenya would like to manage the San Marco Space Application Centre independently
- (3) A proper framework on third party usage of the station should be formulated so that the Kenyan Government will be aware of the third-party users of the station and how much money is earned from these third-party agreements. Further, the Kenyan Government should ensure that it is present at the signing of all third-party agreements.
- (4) Considering the importance of San Marco Space Application Centre to space science technology in the country and its establishment for peaceful uses, the National Council for Science and Technology under the Ministry of Higher Education, Science and Technology should take a lead role in the management and coordination of its activities. Other Government Ministries including the Ministry of Defence should play a supportive role in the management of-San Marco activities.
- (5) The Kenyan government should take an interest in the data/information gathered at the Centre and ensure that this data/information can be accessed by its agencies,

Universities and other institutions for use in research, education, disaster management, land use/land cover mapping, meteorology and maritime surveillance among others.

- (6) The Government should ensure that qualified Kenyans are competitively recruited in senior managerial positions at the Space Centre and offered competitive remuneration and requisite benefits. The management of the Centre should ensure that they adhere to the labour laws with regard to employee matters.

29. Under the Agreement now submitted to the House for ratification, the recommendations have been addressed as follows—

- (1) With regard to the enhancement of the oversight role of the Kenyan Government over the Centre, the Agreement has retained the Joint Organs to oversee the implementation of the Agreement and the programmes of the Centre, the Joint Council of Ministers and the Joint Steering Committee and established a Joint Management Board which is to be chaired on a rotational basis. The Agreement also establishes the position of Deputy Chief Executive Officer which is to be held by a Kenyan and allows parties the right to inspect the Centre at any time through authorized personnel.
- (2) The Agreement is subject to ratification by the National Assembly and has been so submitted.
- (3) The Kenyan Government is entitled to approve all third party agreements for the use of the Centre, payment of USD 50,000 authorization fee from each third party and 50% of the profits from any agreements with third parties for the use of the Centre.
- (4) The Kenyan Government is entitled to second professional employees to the Centre and participates in the oversight of any expatriates through the Joint Management Board and the Deputy CEO.

(5) The Agreement contains an Implementation arrangement on Education and Training of Kenyans where fifteen (15) scholarships are to be extended to Kenyans annually. The Agreement also contains an implementation arrangement on the Italian Governments support for the Kenyan Space Agency. The Agreement contains implementing arrangements on the establishment of a Regional Centre for Earth Observation and Access and use of Earth Observation and Space Science data.

(6) The Centre is to vest in the Kenyan Government after the lapse of its fifteen (15) year term or such lesser time as may be agreed upon. The Agreement may be terminated at the lapse of a twelve (12) month notice period.

#### **2.4 Financial Implication**

30. Kenya's contribution to the Agreement is the provision of land upon which the Centre is established. The Agreement provides for the payment of compensation of USD 250,000 per year by the Government of Italy to the Government of Kenya for the use of the land. The compensation is to be reviewed every five years with an increment of USD 50,000 (United States of America Dollars Fifty Thousand Only).

#### **2.5 Legal Implications**

31. Upon ratification, the Agreement shall bind the Government of Kenya.

### 3.0 SUBMISSION ON THE AGREEMENT BY THE MINISTRY OF DEFENCE

#### 3.1 Introduction

32. On Tuesday, 5<sup>th</sup> February, 2019, the Committee held a meeting with the Principal Secretary of Defence, Mr. Torome Saitoti, CBS and Major Gen. Adan Mulata, as representative from the Kenya Defence Forces to consider the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre
33. The meeting was interactive with the Committee members with an aim of having a better understanding of the Agreement and its benefit toward the country.

#### 3.2 Presentation by the Ministry of Defence

##### Introduction

34. Kenya-Italy signed MoU in 1964 (Agreement 1987, 1995). On 24 Oct 2016 the agreement signed with Italy pending ratification Agreement and was negotiated through a multi-agency approach with Italian Government. Further, Agreement subject to Consultation with National Assembly's Departmental Committee on Education, Research and Technology & Energy, Information and Communications Committee on Implementation

### 3.3 Stakeholders

35. The following stakeholders are involved:-

- (i) Ministry of Defence and National Security Organs
- (ii) Ministry of Education Science and Technology
- (iii) Ministry of Environment and Natural Resources
- (iv) Ministry of Lands, Housing & Urban Development
- (v) National Treasury
- (vi) Communications Authority of Kenya
- (vii) Directorate of Resource Surveys and Remote Sensing
- (viii) Kenya Meteorological Department
- (ix) Kenya Civil Aviation Authority
- (x) Survey of Kenya
- (xi) National Commission for Science Technology & Innovation

### 3.4 Policy and Legal Framework

36. Kenya Space Policy, Strategy and Kenya Space Agency Order was established to coordinate and regulate space related activities

- a) Drafting of the Agreement in 2014
- b) Public participation in June 2015
- c) Cabinet approval was done on 16<sup>th</sup> February 2016
- d) Establishment of the Kenya Space Agency by the President as State Corporation
- e) Board includes stake holder PS, CDF, AG, chairperson and three ID
- f) Inauguration of the Board inaugurated

### 3.5 Activities Conducted So far at the Centre

- a) Space science and technology
- b) Earth Observation, applications and services
- c) Support in surveillance services and use of platform
- d) Space communications
- e) Telemedicine
- f) Remote Sensing and Satellite data acquisition
- g) Tracking and telemetry services
- h) Launching and tracking of satellites and suborbital platforms
- i) Atmospheric research
- j) Navigation and positioning applications and services
- k) Education and training

### 3.6 Other Areas of Cooperation

- (i) Enhance capacity of Kenya Space Agency
- (ii) Establish a Regional Centre for Earth Observation
- (iii) Offer training in:
  - a. Aerospace, space science and technology
  - b. Defence courses
  - c. Scholarships in other disciplines including space law
- (iv) Enhance capacity of higher learning institutions
- (v) Support development of Ngomeni Area
- (vi) Development of Implementing Arrangements to govern the implementation of the areas of cooperation

### 3.7 Joint Management of the Facility

37. The Joint Management Board shall consider and recommend to the Joint Steering

Committee:

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- (i) Strategic plans and annual work plans and budget
- (ii) Staffing needs and terms and conditions of service for staff
- (iii) 3<sup>rd</sup> party contracts approval, renewal and profit sharing
- (iv) Data sharing policies
- (v) HR and service procurement plans

38. The Deputy CEO shall deputize the CEO in:

- (i) Day to day management of the activities
- (ii) Preparation of strategic and annual work plans
- (iii) Developing of data sharing policies

### 3.8 3<sup>rd</sup> Parties & Liability

- (i) The Committee and Board to approve use of Facility by 3<sup>rd</sup> parties and 3<sup>rd</sup> Party contracts
- (ii) 3<sup>rd</sup> Party contract not to exempt Parties from their primary obligation
- (iii) Annual USD 50,000 access fee plus 50% profit on 3<sup>rd</sup> Party contracts
- (iv) Insurance for 3<sup>rd</sup> Party Liability to be taken from a commercial insurer by the Italian Government

### 3.9 Benefits from Agreement

The 1995 Agreement had the following benefits to the country.:

- (i) Annual rent increased from USD 50,000 to 150,000
- (ii) 6 PhDs, 12 Engineers, (8+4) 24 Technicians trained to date
- (iii) KES 240 M spent on community development projects through CDA under 1995 Agreement
- (iv) 180 Kenyans directly employed: wage bill KES 108 M p.a.

39. The 2016 Agreement that is yet to be ratified has the following benefits:-

- (i) 15 scholarships guaranteed annually (~ €20,000 each/KES 2.6M)

- (ii) 50% of profit + USD 50,000 authorization fee from 3<sup>rd</sup> party
- (iii) EUR 6.4 M for community projects and EUR 5 M for space science programme in Kenyan university under Italian Cooperation guaranteed in 2016 Agreement
- (iv) License fees Euros 250,000 revisable after five years

**The project has the following implementing Arrangements**

- (i) Establishment of a Regional Centre for Earth Observation (acquisition, processing, archiving and distribution of data)
- (ii) Support to the Kenya Space Agency (expertise and technology transfer)
- (iii) Access to Earth Observation and Space Science Data (COSMO Sky Med )
- (iv) Telemedicine (tele cardiology, e-learning)

40. The Centre has a component of Education and Training (IKUNS development, scholarships and outreach programmes in schools)

| SNo. | GIUDANCE   | INCORPORATION  |
|------|--|--|
| 1.   | Government to enhance oversight role over the facility | <ul style="list-style-type: none"> <li>• Retention of JCM &amp; JSC</li> <li>• Creation of JMB</li> <li>• Establishment of Deputy CEO</li> <li>• Verification and Inspection</li> <li>• Requirement for reports and inspection of incoming equipment</li> <li>• Secondment of Italian Personnel in consultation with the JMB</li> <li>• (Art IV, VI, VI &amp; VII</li> </ul> |
| 2.   | Agreement to be approved by NA                         | <ul style="list-style-type: none"> <li>• Consultation with NA committees</li> </ul>  |

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|    |  |   |
|----|--|---|
|    |  | <ul style="list-style-type: none"> <li>• Current ratification process through' NA</li> </ul>  |
| 3. | Clear framework for 3 <sup>rd</sup> party Agreement  | <ul style="list-style-type: none"> <li>• Appointment of Dep CEO to provide continuous info</li> <li>• Approval of 3<sup>rd</sup> party contracts by JMB and JSC</li> <li>• Payment for USD 50,000 plus 50% profit</li> <li>• Definition of Third Parties</li> </ul> |
| 4. | Provision for employment of skilled Kenyan employees | <ul style="list-style-type: none"> <li>• Kenya can second skilled employees to facility</li> <li>• Oversight of JMB on expatriates</li> <li>• JMB to consider staffing needs of Facility</li> <li>• Art. VI (7) and Art VII(6)</li> </ul>                           |
| 5. | Enhanced capacity Building for Kenya                 | <ul style="list-style-type: none"> <li>• Implementation arrangement on Education and Training</li> <li>• Secondment of staff to facility</li> <li>• Implementation arrangement on support to KSA</li> </ul>   |
| 6. | Increased access to data collected                   | <ul style="list-style-type: none"> <li>• Implementing arrangement to establishment of Regional Centre for Earth Observation</li> <li>• Implementation arrangement for access and use of Earth Observation and Space Science data</li> </ul>                         |
| 7. | Clear exit strategy for Kenya                        | <ul style="list-style-type: none"> <li>• Facility to vest in Kenya after lapse of agreement</li> </ul>  |

|  |  |   |
|--|--|---|
|  |  | <ul style="list-style-type: none"><li>• Or such lesser time as may be agreed upon</li><li>• Termination clause on 12 months' notice</li><li>• Art. XV and XVIII (3)</li></ul> |
|--|--|---|

#### **4.0 PUBLIC PARTICIPATION- VIEWS AND COMMENTS ON THE AGREEMENT**

Article 118(1)(b) of the Constitution provides that, “*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees*”. Further, Section 8 of the Treaty Making and Ratification Act, 2012 provides for the consideration and Ratification of Treaties by Parliament and subsection (3) states that “*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*”.

Pursuant to the above provisions, the Clerk of the National Assembly placed an advert in the National Dailies on Tuesday, 19<sup>th</sup> March, 2019 calling for submission of memoranda. At the closure of the deadline for the submission of memoranda from the Public on 25<sup>th</sup> March, 2019, the Committee received memoranda from the following:-

- i. Prof. Paul Baki from the Union Space Working group, Technical University of Kenya
- ii. Kenyan staff at the Broglia Space Centre
- iii. Mr. Joseph Mutua Muvea from Green Kenya Investment Cooperation, a company dealing with environmental protection.

The summary and the justification of the submissions is as hereunder:-

#### **Preamble (15)**

41. Prof. Paul Baki submitted that space weather should not be limited to Earth Observation alone; Space Weather services must also be included as an essential area of cooperation.

42. The Ag. Director General for Kenya Space Agency, Dr. John Kimani responded that locally, the effect of Space Weather has not been given a lot of attention. However, this is an important area of meteorology that needs to be given more attention both by government and researchers.

### **Article II (1)**

43. Prof. Paul Baki submitted that as it is currently there is no such thing as mobile segment for launching of satellites in Malindi. If the intention is to establish a launch pad for cubesats or nanosatellites then that should be stated clearly as Kenyan Universities are now developing capabilities in this area and will need to launch locally produces satellites into space.

44. The Ag. Director General for the Kenya Space Agency, Dr. John Kimani responded that the mobile segment comprises of series of sea platforms (a launch platform, communications, tracking and command platform and power generation platform). From this segment, 9 satellites and 20 sounding rockets were launched between 1967 and 1988. Launch activities were stopped due to the fact that the Scout rockets were no longer in production and the size of satellite being developed became larger hence could not be launched from the Facility.

The United Nations Convention on the Law of the Sea proscribes that the sea vessel/platform cannot be abandoned and are therefore occupied and maintained to manage corrosion, retain structural integrity and for safety and security. Ideas for repurposing the sea segment within available resources are therefore welcome. Further, the agreement does not prevent Kenya from working with other nations or operators.

### **Article II(2)**

45. Prof Baki submitted that on areas of activities, there is need to include nano-satellite technology development as this is a low hanging fruit for Kenya.

46. Dr. Kimani was of the view that the Italian Space Agency is already supporting nano-satellite development in Kenya. The 1<sup>st</sup> Kenyan University Nano-Satellite project is a direct beneficiary of this project. This satellite was deployed from the International Space Station on 11 May 2018.

### **Article II(2)(h)**

47. The staff of the Broglio Space Centre submitted that the launch activity at the BSC is not foreseen in the near future and may not be of benefit to the agreement.

48. Dr Kimani informed the Committee that the resumption of launch activities at the BSC is still under feasibility study for research, commercial viability and capability development.

**Article III (3)**

49. The staff of the Broglio Space Centre submitted that this article envisages the establishment of a Regional Centre for Earth Observation. They were of the view that this should be dropped since there is already one called the Regional Centre for Resource Mapping for Development (RCMRD) in Kasarani, Nairobi. The proposed Centre will only compete with RCMRD, a regional body which Kenya co-owns with other countries. The proposed Centre will be counter-productive for Kenya.

50. Dr. Kimani responded as follows:-

- a. The Regional Centre for Mapping of Resources for Development mission is to promote sustainable development through generation, application and dissemination of Geo-Information and allied Information Communication Technology (ICT) services and products in the Member States and beyond. The data available at this facility is mainly obtained via the internet due to lack of high resolution data receiving antennas.
- b. This provision is further supported by the Implementing Arrangement of Establishment of a Regional Centre for Earth Observation. In particular, Article 2 on Areas of Cooperation.
- c. The Parties shall cooperate in the following areas:
  - a) to establish and develop a Regional Center for Earth Observation;
  - b) to provide the requisite equipment and infrastructure for acquisition, processing, access, dissemination and archiving of Earth Observation data, products and services;
  - c) formulation of specific policies for Earth Observation data, products and services access and use;
  - d) human and infrastructure resources development;

- e) knowledge and technology transfer in data acquisition, processing, dissemination and archiving;
- f) research and development; and
- g) any other area that may be mutually agreed on by the Parties.

d. The proposed Regional Centre for Earth Observation is so named because the BSC has an area of acquisition that covers the Eastern and Central African Region. In addition, Kenya has been lacking in capabilities for data processing and dissemination and this Centre will also enable revenue generation from sale of data.

### **Article III (4)**

51. The staff of the Broglio Space Centre had submitted that this Article was badly framed. "Training Scholarships in other disciplines" should not be part of the agreement. They were of the view that the article should be very specific so as to include rocket technology; cubesat technology and launching.
52. Dr. Kimani was of the view that this provision is supported by the Implementing Arrangement on Education and Training. In particular, Article 2 on Areas of Cooperation addresses the concerns raised as follows:

The Parties shall cooperate in the following training and education areas:

- a) Aerospace Engineering and Technology;
- b) Earth Observation and Navigation;
- c) Space Science;
- d) Space Policy and International Space Law;
- e) Telemedicine;
- f) Telecommunications; and
- g) any other disciplines that may be mutually agreed on by the Parties.



### Article III (4)

53. The staff of the Broglio Space Centre had submitted that Studies offered in the spheres of space science and technology should be specific e.g.

- i. Propulsion and rocket launch
- ii. Navigation, communications, guidance and control
- iii. Infrared, X and Gamma-ray Astronomy
- iv. Atmospheric and Solar physics (Space Weather)
- v. High speed computing and artificial intelligence
- vi. Space Law

54. Dr. Kimani on his part was of the view that the drafting of the agreement could only allow a specific level of detail that is subsequently captured in the Implementing Arrangements. The preceding section clearly contains the requested details on studies. Several Kenyan institutions already have access to High speed computing and offer artificial intelligence courses. This can still be offered under provisions in the Implementing Arrangement on Education and Training. The globally renowned institutions that train in air and space law are the Institutes of Air and Space Law at McGill University (Canada) for USA and Canada aviation industry and the Institute of Air and Space Law at Leiden University (Netherlands) for Europe. These two institutions offer unparalleled formation in Space Law

### Article III (7)

55. The staff of the Broglio Space Centre had submitted that the provision of this article needs to be revised to include, among others Support for Nano and Microsatellite Technology Development. They further submitted that the phrase "Access to Earth Observation Data and Space Science" should be deleted since such data would only be useful if they are to be used

for commercial purposes. If it is for research only, they would normally be provided free of charge and so they did not need the support of the Italian Space Agency in this.

56. Dr. Kimani was of the view that Article III (7) should be read in its entirety. It clearly defines the initial five Implementing Arrangements and makes provision for additional ones. Over the years, academia and the user community has been making reference to lack of access to data being acquired at BSC. The Implementing Arrangement on Access to Earth Observation and Space Science Data was specifically developed for the Purposes and Objectives captured under Article 2 as follows:

- a) provide a supplemental framework for cooperation between the Government of Kenya and the Italian Space Agency (ASI) for access and use of Earth Observation and Space Science data available to ASI and the Government of Kenya for use and distribution according to each specific mission data policy, for research and national development programs in Kenya and in Italy;
- b) promote access and use of data from past, ongoing and future space programs undertaken by ASI and its partners, as specified in paragraph (a) above;
- c) promote access and use of data from past, ongoing and future space programs undertaken by ASI and its partners from the San Marco program at the Luigi Broglio – Malindi Space Centre.

57. The staff of the Broglio Space Centre had submitted that the Republic of Kenya should also, like the Government of Italy appoint the ministry of Education Science and Technology as the designated authority responsible for the implementation of the present Agreement. Similarly Prof Baki submitted that the designation of the Ministry of Defence as the authority responsible for implementation of the Agreement is ill advised. He further proposed that an Implementation Committee be established under the Office of the President to oversee the implementation. Experts from Academia as well as private practitioners be included in this.

The Kenya Space Agency should be given vesting under either the Office of the President or some other ministry such as the ministry of Education.

58. Dr. Kimani responded that the Italian Space Agency and the Kenya Space Agency are the implementing agencies for their respective governments. The Italian Government implements dual use systems managed by the Italian Ministry of Defence and the Italian Space Agency. On behalf of the Ministry of Defence he informed the Committee that the Kenyan Cabinet deliberated this matter of domiciling the Agency and resolved that it shall be in the Ministry of Defence. Further, the Board of the Agency is representative of all stakeholders whose membership includes the following:

- i. Chairperson appointed by the President;
- ii. the Principal Secretary - Defence;
- iii. the Principal Secretary - National Treasury;
- iv. the Principal Secretary - University Education and Research;
- v. the Principal Secretary - Information, Communication Technology and Innovation;
- vi. the Principal Secretary – Environment and Forestry;
- vii. the Chief of the Defence Forces or his representative;
- viii. the Attorney-General or his representative;
- ix. three independent persons, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to defence, security, agriculture, mining, environmental management or space activities.

#### **Article V**

59. The staff of the BSC submitted that the council of Ministers and the Joint Steering Committee (Kenya) be competent and people with good knowledge in matters of Space Science and Technology and related specializations.

60. Dr. Kimani on behalf of the ministry of Defence informed the Committee that Article IV makes provisions for the Joint Council of Ministers which shall comprise of Ministers as designated by the Governments and shall meet at least once every two (2) years.

Article V makes provisions for the Joint Steering Committee which shall comprise of Principal Secretaries of respective Ministries and CEOs of respective National Space Agencies who shall meet at least once each calendar year.

Article VI makes provisions for the Joint Management Board which shall comprise of three technical persons designated by their respective governments who shall meet at least thrice each financial year and may co-opt advisors.

**Article VI (7)(i) and (m)**

61. The staff of the BSC submitted that when Articles (i) and (m) are implemented, remuneration and benefits should be commensurate with education, work and experience (comparable with our Italian counterparts and other cadre in the international system of equal standing)

62. The Kenya Space Agency through Dr. Kimani informed the meeting that Article VI (7) should be read in its entirety. The staffing needs shall address the requirement to employ foreigners in the absence of local capacity. It should however be understood that personnel working outside their countries of residence are entitled to mission allowance.

**Article VII (1)**

63. Prof. Baki submitted that this provision gives the Italian Government exclusive rights to appoint the CEO of the BSC Facility. He advised the Committee to reject this article and proposed that the position of the CEO on rotational occupancy with the office of the Deputy CEO coming from either side.

64. Dr. Kimani was of the view that the matter in question was extensively deliberated upon during negotiations. It was finally agreed that owing to the fact that the Italian Space Agency

was investing public funds in the facility, it was prudent that an employee of the Italian Government be responsible for the financial obligations.

**Article VII (3)**

65. The staff of the BSC submitted that the deputy CEO should be an expert in matters with the Spacecraft Ground Tracking facility like Broglio Space Centre. Possibly co-opt the Kenyans already working at the BSC.
66. Dr. Kimani was of the view that the position of the Deputy CEO should be competitively filled once the agreement is ratified.

**Article VIII (6)**

67. The staff of the BSC submitted that the Government of Kenya should absorb the existing technical staff already involved in the Tracking, Telemetry and Command stations. These should be trained, offered courses and their career progression validated.
68. Dr. Kimani was of the view that the facility shall be run under a joint management structure as a single entity. Therefore the existing technical staff shall be employed by the management of the facility under favourable terms.

**Article VIII (3)**

69. The staff of the BSC submitted that the Ngomeni road should be tarmacked in order to make the facility accessible by staff and other parties
70. Dr. Kimani informed the Committee that the 11.5 km road from Mjanaheri to Ngomeni is already earmarked for construction by the Italian Government.

Under the 1995 Agreement, the Government of Italy spent KShs 240M on community development projects under the management of Coast Development Authority. Under the 2016 Agreement, the proposal is to support these projects to a tune of Euro 6.4 M (Kshs 720M)

**Article VIII (5)(b)**

71. The staff of the BSC submitted that the Government of Kenya should own some of the infrastructure and key equipment and devices for example the Antennas, tracking system equipment including the networking infrastructure.

72. Dr. Kimani was of the view that the Government of Kenya has provided internet connectivity to the facility through optic fibre cable. Both governments benefit from utilization of the infrastructure and equipment at the facility and share the proceeds from third party contracts. The assets on the facility shall vest onto the Government of Kenya upon lapse of this agreement. With the establishment of the Kenya Space Agency, the Government of Kenya is free to invest in equipment and infrastructure to access Space resources in any region of the country.

**Article VIII (5)(d)**

73. Prof. Baki submitted that the Compensation figure stated herein is ridiculous. On what basis was this figure determined? How much does BSC make in a year? Kenyans will only get to know what is due to them if they are involved in the day to day operations of the BSC. The same argument applies to 5(g) as well.

74. Dr. Kimani responded that as an equal partner in the facility, Kenya should value the land contribution and forego the rent. However, the negotiations arrived at a settlement of USD 250,000 (Kshs 25M) annually for 3.5Ha with an increment of USD 50,000 every five years. The annual authorization fee of USD 50,000 (Kshs 5M) for third parties is in addition to the 50% profit from third party contracts. These amounts were arrived at based on the current market rates and the need to ensure the facility remains competitive globally

## Article VIII (5)(f)

75. The staff of the BSC submitted the particulars of the 50% profit to be revisited and relooked into.

76. Dr. Kimani responding on behalf of the Kenya Space Agency the Governments of Kenya and Italy shall approve the use of the Facility by third parties in accordance with the provisions of the Joint Management Board (Article VI.7 e) and the Joint Steering Committee (Article V. 1 e).

77. Mr. Joseph Muvea – Green Kenya Corporation made the following general comments on the agreement, that;

- i. The partnership should be of help to Kenyans in long run
- ii. Has all environmental tools been put in place to ensure the project is healthy to the people of Malindi and Kenya at large. i.e. Feasibility studies, Environmental Impact Assessment studies and Environmental Audit as a monitoring tool.
- iii. Being a project along the coast lines are its operations healthy to the ocean water quality?
- iv. Being aware that the project has existed for almost 50 years what are the benefits which we can say the project has contributed to Kenyans security, information, education and research?
- v. What are the measures put in place to ensure that in long run the project can be managed by the Kenyans.

78. Dr. Kimani responded to the issues as follows:-

Kenyans have been benefiting from the bilateral agreement through:

- a) 15 scholarships guaranteed annually (~ €20,000 each/KES 2.6M)
- b) Community development projects worth KES 240M (1995 Agreement) and KES 720M (2016 Agreement).

- c) Land rent of USD 250,000 revisable at 50,000 every five years.
- d) Employment of Kenyans (approx. 180).
- e) 50% of profit and USD 50,000 authorization fee from 3<sup>rd</sup> parties.
- f) Funds spent in local economy on procurement of goods and services.
- g) Research projects have been undertaken with Kenya Marine and Fisheries Research Institute, University of Nairobi among others.
- h) Access to Earth Observation and science data.

Collaboration in other social and development projects supported by the Italian Agency for Development Cooperation such as construction of sea wall and water pipeline.

79. The project complies with all Environmental regulations and Occupational Health and Safety requirements.

Measures put in place to ensure the project is managed by Kenyans include joint management of the facility, capacity building of Kenyans in space science and technology and vesting of assets.



#### 4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations: - **THAT**;

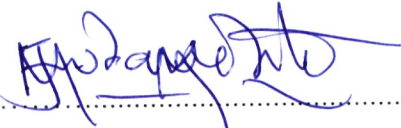
1. the implementation of the provisions in the agreement will enable Kenya develop capacity for the local space sector, build capability in space science and technology, and establish sustainable programmes and applications to benefit the citizenry as opposed to the existing agreement ratified in 1964;
2. neither the Government of Kenya or the Italian Government has not invested in the development of human capacity to take over the management of the BSC;
3. the BSC has not effectively undertaken corporate social responsibility for the benefit of the local community;
4. the Kenya Space Agency is domiciled in the Ministry of Defence but international practice has shown that in most countries the Agency is domiciled in the Ministry of Education, Science And Technology.

## 5.0 COMMITTEE RECOMMENDATIONS

82. 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 Italian Republic on the Luigi Broglio-Malindi Space Centre.**

Signed.....



Date.....

26/6/2019

**THE HON. KATOO OLE METITO, EGH, MGH, M.P.**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN**  
**RELATIONS**



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

**MINUTES OF THE 43<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
DEFENCE & FOREIGN RELATIONS HELD ON FRIDAY, 21<sup>ST</sup> JUNE, 2019 IN  
KARAHI CONFERENCE ROOM, ENGLISH POINT MARINA MOMBASA COUNTY  
AT 10.30 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, MP
6. The Hon. Peter Mungai Mwathi, MP
7. The Hon. Beatrice Nkatha Nyagah, HSC, MP
8. The Hon. John Lodepe Nakara, MP
9. The Hon. Memusi Ole Kanchory, MP
10. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
11. The Hon. Moses Nguchine Kirima, MP
12. The Hon. Ernest Ogesi Kivai, MP
13. The Hon. Asha Hussein Mohamed, M.P

**APOLOGY**

1. The Hon. Patrick Makau King'ola, MP
2. The Hon. Martha Wangari Wanjira, MP
3. The Hon.(Dr.) Lilian Gogo, MP
4. The Hon. Nelson Koech, MP
5. The Hon. Vincent Kipkurui Tuwei, MP
6. The Hon. Caleb Amisi, MP

## NATIONAL ASSEMBLY SECRETARIAT

|                         |   |                         |
|-------------------------|---|-------------------------|
| 1. Mr. Samuel Kalama    | - | Senior Clerk Assistant  |
| 2. Mr. Abdiaziz Shobay  | - | Third Clerk Assistant   |
| 3. Ms. Mercy Wanyonyi   | - | Legal Counsel I         |
| 4. Ms. Grace Wahu       | - | Research Officer III    |
| 5. Mr. Rodgers Kilungya | - | Audio Recording Officer |
| 6. Mr. Said Wako        | - | Sergeant At-Arm         |
| 7. Ms. Daphine Wambui   | - | Parliamentary Intern    |

## AGENDA

1. Preliminaries
  - (i) Prayers
  - (ii) Introductions
  - (iii) Communication from the Chair
  - (iv) Matters Arising
2. **Consideration of Memoranda on the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre**
3. Any Other Business

### MIN.NO.DC.DFR/2019/170: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at 10:15am and prayer was said by Hon. Charles Kilonzo, MP. The agenda of the meeting was adopted having been proposed and seconded by the Hon. Yusuf Hassan Abdi, MP and Hon. Asha Hussein Mohamed, MP respectively.

### MIN.NO.DC.DFR/2019/171: CONSIDERATION OF THE REPORT ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE LUIGI BROGLIO-MALINDI SPACE CENTRE

The Committee considered the report on the Consideration of Memoranda on the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre paragraph by paragraph and made the following observations and recommendations

#### Committee Observations

THAT;

1. the implementation of the provisions in the agreement will enable Kenya develop capacity for the local space sector, build capability in space science and technology, and

- establish sustainable programmes and applications to benefit the citizenry as opposed to the existing agreement ratified in 1964;
2. neither the Government of Kenya or the Italian Government has not invested in the development of human capacity to take over the management of the BSC;
  3. the BSC has not effectively undertaken corporate social responsibility for the benefit of the local community;
  4. the Kenya Space Agency is domiciled in the Ministry of Defence but international practice has shown that in most countries the Agency is domiciled in the Ministry of Education, Science And Technology.

### Committee Recommendations

The Committee recommends:-

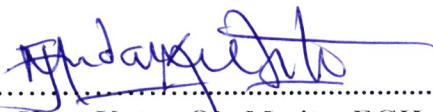
**THAT, Pursuant to Section 8 of the Treaty Making and Ratification Act, the House approves the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre.**

Subsequently the Committee unanimously adopted the report having been proposed and seconded by the Hon. Charles Kilonzo, MP and the Hon. Col. (Rtd) Dido Ali Raso, MP respectively.

### MIN.NO.DC.DFR/2019/172: ADJOURNMENT AND DATE OF NEEXT MEETING

The time being twenty five minutes past one o'clock the Chairperson adjourned the meeting and the next meeting shall be convened on notice.

Signed.....



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

Date.....

26/6/2019



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

**MINUTES OF THE 17<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
DEFENCE & FOREIGN RELATIONS HELD ON THURSDAY, 28<sup>TH</sup> MARCH, 2019 IN  
THE COMMITTEE ROOM, 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE PARLIAMENT  
BUILDINGS AT 11.45 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. Dido Ali Raso, MP
4. The Hon. Charles Kilonzo, MP
5. The Hon. Peter Mungai Mwathi, MP
6. The Hon. Memusi Ole Kanchory, MP
7. The Hon. Beatrice Nkatha Nyagah, HSC, MP
8. The Hon. John Lodepe Nakara, MP
9. The Hon. Martha Wangari Wanjira, MP
10. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
11. The Hon.(Dr.) Lilian Gogo, MP
12. The Hon. Ernest Ogesi Kivai, MP
13. The Hon. Caleb Amisi, MP
14. The Hon. Moses Nguchine Kirima, MP
15. The Hon. Nelson Koech, MP

## **APOLOGY**

1. The Hon. Yusuf Hassan Abdi, MP
2. The Hon. Patrick Makau King'ola, MP
3. The Hon. Asha Hussein Mohamed, M.P
4. The Hon. Vincent Kipkurui Tuwei, MP

## **NATIONAL ASSEMBLY SECRETARIAT**

- |                         |   |                         |
|-------------------------|---|-------------------------|
| 1. Mr. Samuel Kalama    | - | Senior Clerk Assistant  |
| 2. Mr. Abdiaziz Shobay  | - | Third Clerk Assistant   |
| 3. Ms. Grace Wahu       | - | Research Officer        |
| 4. Mr. Edison Odhiambo  | - | Fiscal Analyst          |
| 5. Mr. Rodgers Kilungya | - | Audio Recording Officer |
| 6. Mr. Said Wako        | - | Sergeant At-Arm         |

## **AGENDA**

1. Preliminaries
  - (i) Prayers
  - (ii) Introductions
  - (iii) Communication from the Chair
  - (iv) Matters Arising
2. Consideration of received memoranda on the Agreement between the Government of Kenya and the Government of Italy on the Malindi Space centre
3. Any Other Business

### **MIN.NO.DC.DFR/2019/065: PRELIMINARIES & ADOPTION OF AGENDA**

The Chairperson called the meeting to order at 11:45am and prayer was said. The agenda of the meeting was adopted having been proposed and seconded by the Hon. Beatrice Nkatha Nyaga, MP and Hon. Caleb Amisi, MP respectively.

### **MIN.NO.DC.DFR/2019/066: CONSIDERATION OF RECEIVED MEMORANDA ON THE AGREEMENT BETWEEN THE GOVERNMENT OF KENYA AND THE GOVERNMENT OF ITALY ON THE MALINDI SPACE CENTRE**

The Chairperson informed the meeting that at the close of the date of submission of memoranda in respect of the above agreement, on 25<sup>th</sup> March, 2019 the following memoranda were received:-

1. Prof. Paul Baki from the Union Space Working group, technical University of Kenya
2. Kenyan staff at the Broglio Space Centre

3. Mr. Joseph Mutua Muvea from Green Kenya Investment Cooperation, a company dealing with environmental protection.

The Chairperson invited the Legal Counsel to take the Committee through on the analysis of the memorandum. The Legal Counsel briefed the Committee as per the attached matrix. (See attached matrix)

Subsequently the Committee resolved that the following be invited for a meeting on Tuesday, 2<sup>nd</sup> April, 2019 to shed more light on their submissions.

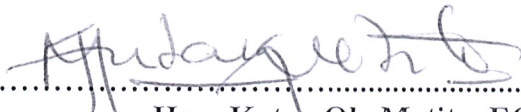
1. The Principal Secretary for the Ministry of Defence
2. Prof. Paul Baki from the Union Space Working group, Technical University of Kenya
3. Mr. Joseph Mutua Muvea from Green Kenya Investment Cooperation, a company dealing with environmental protection.

**MIN.NO.DC.DFR/2019/067: ANY OTHER BUSSINES**

1. The Chairperson reminded all members of the Committee to attend the training on Parliamentary Diplomacy organized by the Centre for Parliamentary Studies and Training (CPST) and the Institute of Development and International Studies (IDIS) scheduled from 28<sup>th</sup> – 31<sup>st</sup> March,2019.
2. The Chairperson informed the Committee that he had received a letter from the Chairperson of Departmental Committee on Administration and National Security, Hon. Paul Koinange, MP on alleged forced retirement of officers from the National Intelligence Service (NIS) by the NIS management. The Committee directed the Secretariat to advise the affected persons to file a petition to the National Assembly for presentation..

**MIN.NO.DC.DFR/2019/068 ADJOURNMENT AND DATE OF NEXT MEETING**

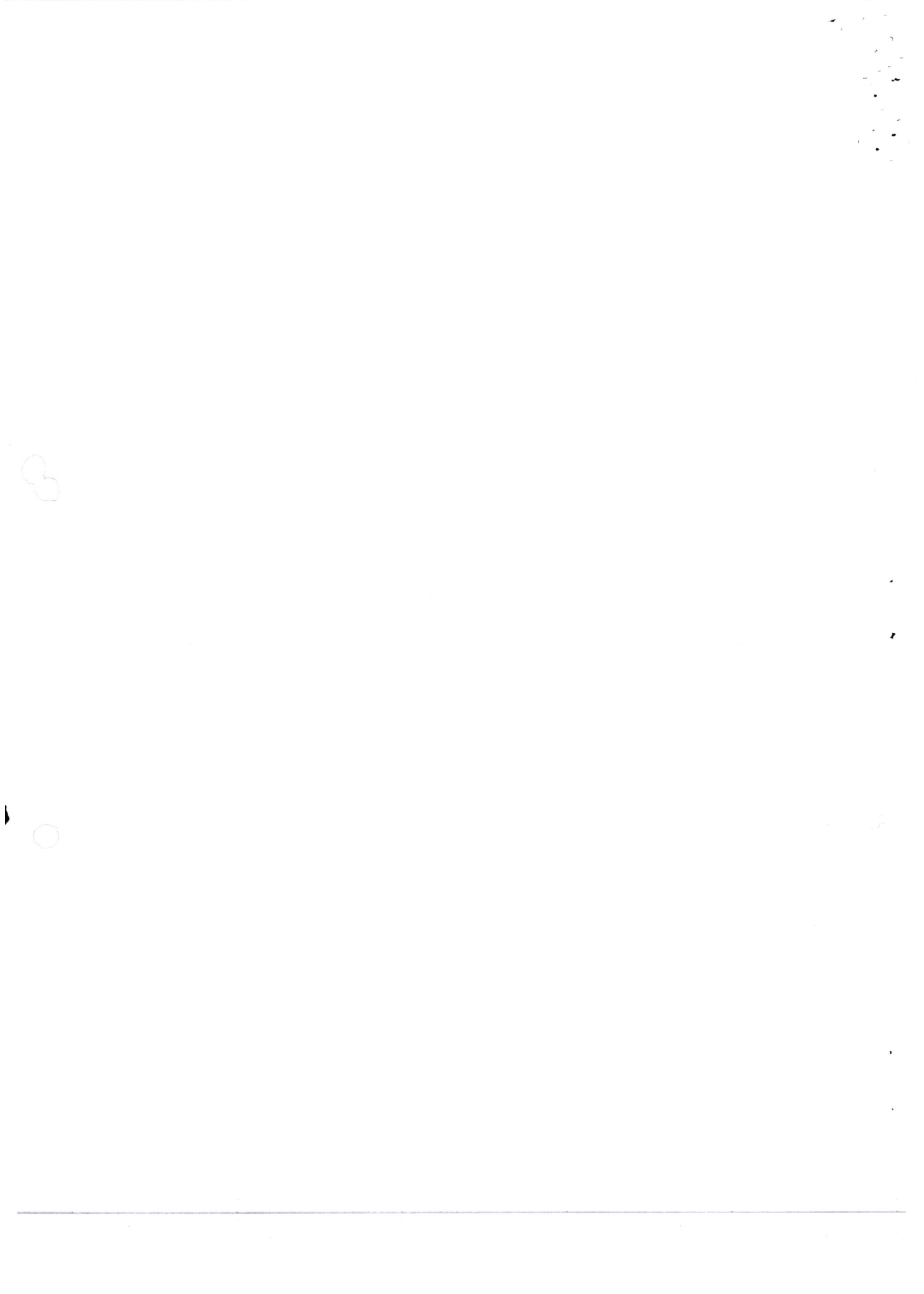
The time being Twenty Minutes to One O'clock the Chairperson adjourned the meeting and the next meeting shall be convened on notice.

Signed.....

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

Date.....





**MATRIX OF MEMORANDA RECEIVED ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE  
REPUBLIC OF KENYA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE LUIGI BROGLIO  
MALINDI SPACE CENTRE, KENYA**

| ARTICLE   | PROPOSAL   | RATIONALE   | PROPOSER  |
|-----------|--|---|---|
| I(15)     | This should not be limited to Earth Observation alone. Space Weather services must also be included as an essential area of cooperation.   | Space Weather services affect critical infrastructure such as power lines/grids, oil pipelines, electric railways, high frequency communications/military communication systems, Global Navigation Satellite Systems which aid in land, sea and air navigation as well as positioning applications in tracking, land surveying. | Technical University of Kenya (Prof. Paul Baki) |
| II(1)     | Currently there is no such thing as mobile segment for launching of satellites in Malindi. If the intention is to establish a launch pad for cubesats or nanosatellites then that should be stated clearly as Kenyan Universities are now developing capabilities in this area and will need to launch locally produced satellites into space. |   | Technical University of Kenya (Prof. Paul Baki) |
| II(2)     | On areas of activities, we should include nanosatellite technology development as this is a low hanging fruit for Kenya.   | This is the quickest and cost effective means to develop micro- and nano-satellite technology. Once developed the next level of cooperation is on launching, tracking, telemetry and command.   | Technical University of Kenya (Prof. Paul Baki) |
| I I(2)(h) | The launch activity at the BSC is not foreseen in the near future and may not be of benefit to the Agreement.  |   | Kenyan Staff at the Broglio Space Centre        |
| III(3)    | Envisages the establishment of a Regional Centre for Earth Observation. This should be dropped as we already have one  |   | Technical University of Kenya (Prof. Paul Baki) |

|        |  |  |  |
|--------|--|--|--|
|        | called the Regional Centre for Resource Mapping for Development (RCMD) in Kasarani, Nairobi. The proposed Centre will only compete with RCMD, a regional body which Kenya co-owns with other countries. The proposed Centre will be counterproductive for Kenya  |  |  |
| III(4) | <p>Badly framed. "Training Scholarships in Other disciplines" should not be part of this agreement. We should be very specific e.g. We should include rocket technology; cube-sat technology and launching.</p> <p>Studies offered in spheres of space science and technology should be specific e.g.—</p> <ul style="list-style-type: none"> <li>(a) Propulsion and rocket launch;</li> <li>(b) Navigation, communication, guidance and control;</li> <li>(c) Infrared, X and Gamma-ray Astronomy;</li> <li>(d) Atmospheric and Solar Physics (Space Weather);</li> <li>(e) High speed computing and Artificial Intelligence; and</li> <li>(f) Space Law</li> </ul> |  | <p>Technical University of Kenya (Prof. Paul Baki)</p> <p>Kenyan Staff at the Broglio Space Centre</p> |
| III(7) | Needs to be revised to include, among others Support for Nano and Micro-satellite Technology Development. We should leave out "Access to Earth Observation Data and Space Science", since such data would only be useful if they are to be used for commercial purposes. If it is for research only, they would normally be provided free of charge and so we do not need the support of the Italian Space Agency in this.   |  | <p>Technical University of Kenya (Prof. Paul Baki)</p>   |
| IV     | <ul style="list-style-type: none"> <li>• The Republic of Kenya should also, like the government of Italy appoint the ministry of Education Science and Technology as the designated authority responsible for the implementation of the present Agreement</li> <li>• The council of ministers and the joint steering committee (Kenya) be competent and people with good knowledge in</li> </ul>   |  | <p>Kenyan Staff at the Broglio Space Centre</p>  |

|                  |  |  |  |
|------------------|--|--|--|
|                  | <p>matters of Space Science and Technology and related specializations.</p> <p>The designation of the Ministry of Defence as the authority responsible for implementation of the Agreement is ill advised. I would propose that an Implementation Committee be established under the Office of the president to oversee this implementation. Experts from Academia as well as private practitioners be included in this. The Kenya Space Agency should be given vesting under either the Office of the President or some other Ministry (Education perhaps).</p> | <p>Kenya has already lost a great deal in terms of negotiations with the Italians over the BSC under the watch of the Ministry of Defence.</p> | <p>Technical University of Kenya (Prof. Paul Baki)</p> |
| V                | <p>The council of ministers and the joint steering committee (Kenya) be competent and people with good knowledge in matters of Space Science and Technology and related specializations.</p>   |  | <p>Kenyan Staff at the Broglio Space Centre</p>        |
| VI(7)(i) and (m) | <p>When articles (i) and (m) are implemented, remunerations and benefits should be commensurate with education, work and experience (comparable with our Italian counterparts and other cadre in the international system of equal standing)</p>   |  | <p>Kenyan Staff at the Broglio Space Centre</p>        |
| VII(1)           | <p>Gives the Italian Government exclusive rights to appoint the CEO of BSC Facility. This should be rejected, We must either insist on rotational occupancy of that office with a Deputy CEO coming from either side.</p>  |  | <p>Technical University of Kenya (Prof. Paul Baki)</p> |
| VII(3)           | <p>The deputy CEO should be an expert in matters with the Spacecraft Ground Tracking facility like the Broglio Space Centre. Possibly co-opt the Kenyans already working at the BSC.</p>   |  | <p>Kenyan Staff at the Broglio Space Centre</p>        |
| VII(6)           | <p>The Government of Kenya should absorb the existing technical staff already involved in the Tracking, Telemetry and Command stations. These should be trained, offered courses and their career progression validated.</p>   |  | <p>Kenyan Staff at the Broglio Space Centre</p>        |
| VIII(3)          | <p>Tarmac the Ngomeni road in order to make the facility</p>   |  | <p>Kenyan Staff at the Broglio</p>                     |

|                |   |  |  |
|----------------|---|--|--|
|                | accessible by staff, and other parties.   |  | Space Centre                                     |
| VIII(5)(b)     | The Government of Kenya should own some of the infrastructure and key equipment and devices for example the Antennas, Tracking system equipments including all the networking infrastructure.   |  | Kenyan Staff at the Broglio Space Centre         |
| VIII(5)(d))    | Compensation figure stated herein in ridiculous. On what basis was this figure determined? How much does BSC make in a year? Kenyans will only get to know what is due to them if they are involved in the day-to-day operations of the BSC. The same argument applies to 5 (g)) as well. |  | Technical University of Kenya ( Prof. Paul Baki) |
| VIII(5)(f)     | The particulars of the 50% profit to be revisited and re looked into.   |  | Kenyan Staff at the Broglio Space Centre         |
| <b>GENERAL</b> |   |  |  |
|                | The partnership should be of help to Kenyans in long run.   |  | Green Kenya Corporation Limited (Joseph Muvea)   |
|                | Has all environmental tools been put in place to ensure the project is healthy to the people of a Malindi and Kenya at large i.e. feasibility studies, Environmental Impact Assessment studies, and Environmental Audit as a monitoring tool.   |  | Green Kenya Corporation Limited (Joseph Muvea)   |
|                | Being a project along the coast lines are its operations healthy to ocean water quality?  |  | Green Kenya Corporation Limited (Joseph Muvea)   |
|                | Being aware that the project has existed for almost 50 years what are the benefits which we can say the project has contributed to Kenyans. security, information, education, and research?   |  | Green Kenya Corporation Limited (Joseph Muvea)   |
|                | What are the measures put in place to ensure that in long run the project can be managed by the Kenyans?  |  | Green Kenya Corporation Limited (Joseph Muvea)   |

REPUBLIC OF KENYA




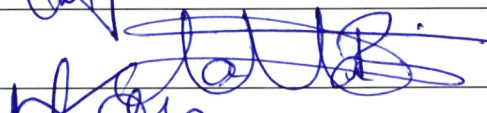



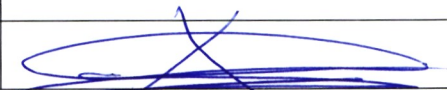
KENYA NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS  
Adoption Schedule

REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS ON THE CONSIDERATION OF AN AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE LUIGI BROGLIO - MALINDI CENTRE

We, the undersigned Hon. Members of the Departmental Committee on Defence & Foreign Relations, today 21<sup>st</sup> June, 2019 do hereby affix our signatures to this REPORT ON THE CONSIDERATION OF AN AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE LUIGI BROGLIO-MALINDI CENTRE to affirm our approval and confirm its accuracy, validity and authenticity:-

| NO. | NAME  | SIGNATURE |
|-----|---|-----------|
| 1.  | The Hon. Katoo Ole Metito, EGH, MGH, M.P - <b>Chairperson</b> |           |
| 2.  | The Hon. Richard Tong'i, M.P - <b>Vice Chairperson</b>        |           |
| 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. Dido Ali Raso, M.P                                   |           |
| 7.  | The Hon. Peter Mungai Mwathi, M.P                             |           |
| 8.  | The Hon. Martha Wangari Wanjira, M.P                          |           |

|     |  |  |
|-----|--|--|
| 9.  | The Hon. Major (Rtd.) Bashir Abdullahi, M.P                            |  |
| 10. | The Hon. <del>Memusi Ole Kanchory</del> , M.P<br>Eliza Memusi Kanchory |    |
| 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, M.P                                     |  |

AGREEMENT BETWEEN  
THE GOVERNMENT OF  
THE REPUBLIC OF KENYA  
AND  
THE GOVERNMENT OF  
ITALIAN REPUBLIC  
ON THE  
LUIGI BROGLIO-MALINDI  
SPACE CENTRE, KENYA



AGREEMENT BETWEEN THE GOVERNMENT OF  
THE REPUBLIC OF KENYA

AND

THE GOVERNMENT OF THE ITALIAN REPUBLIC

THE LUIGI BROGLIO - MALINDI SPACE CENTRE,  
KENYA

The Government of the Republic of Kenya and the Government of the Italian Republic, hereinafter called "the Parties":

1. RESOLVED to further strengthen bilateral relations and friendship between the two Countries;
2. DETERMINED to promote economic and social progress for people;
3. TAKING NOTE of the Economic, Technical and Development Cooperation Agreement between the Government of the Italian Republic and the Government of the Republic of Kenya, signed in Rome on November 19<sup>th</sup>, 1985;
4. TAKING NOTE of the Agreement for Cultural, Scientific and Technological Co-operation between the Government of the Italian Republic and the Government of the Republic of Kenya, signed in Rome on October 27<sup>th</sup>, 2006;
5. CONSIDERING the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, opened for signature in Moscow on January 27<sup>th</sup>, 1967, ratified by Kenya and Italy and all other United Nations space law Treaties to which Italy and Kenya are Parties to;
6. TAKING NOTE that the Italian Space Agency (ASI) is the national public entity in charge of elaborating and implementing the Strategic Vision document in which plans of the ASI activities are detailed;
7. TAKING NOTE of the Agreement between the Government of the Italian Republic and the Government of the Republic of Kenya on the San Marco - Malindi Launching and Tracking Station (referred to as Luigi Broglio - Malindi Space Centre, Kenya), signed in Nairobi on March 14<sup>th</sup>, 1995:

MAKING NOTE of the decisions reached by the Joint Council of Ministers of the San Marco Project, held in Rome, on October 14<sup>th</sup>, 2006, including the recommendation on the renewal of the Agreement between Kenya and Italy on the San Marco Malindi Launching and Tracking Station, and also taking note of the decisions reached by the Joint Council of Ministers of the San Marco Project, held in Nairobi, on January 14<sup>th</sup>, 2010, including an agreement to formally open as soon as possible the negotiations for the renewal of the Agreement;

MAKING NOTE of the decision to extend the validity of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the San Marco - Malindi Launching and Tracking Station (now referred to as Luigi E. Amadio - Malindi Space Centre, Kenya), signed in Nairobi, on March 14<sup>th</sup>, 1995, by means of several exchange of *Notes Verbales* to such time as the parties may agree;

RECOGNIZING the need to continue the peaceful use and exploration of outer space which entails the launching, tracking and studying into orbit of satellites and suborbital platforms from the territory of Kenya;

RECOGNIZING the need to develop a broad framework for cooperation in space science and technology.

RECOGNIZING the opportunity to offer renewed capacities of equatorial launch of small and micro satellites, with particular attention to the needs of European and African Countries;

CONSIDERING the importance of International Co-operation in the promotion of the exploration and use of outer space for peaceful purposes and desiring to continue the efforts to extend to all States the benefits derived there from;

CONSIDERING the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space

(UNISPACE III) held in Vienna, in July 1999, and the Miller Declaration adopted by the United Nations General Assembly Resolution n. 55/2 of September 8<sup>th</sup>, 2000;

15. CONSCIOUS of the important contribution that Earth Observation can give to the use of natural resources in Africa;
16. TAKING NOTE of the Lisbon Declaration on Global Monitoring for Environment and Security (GMES) and Africa signed December 7<sup>th</sup>, 2007, and the Maputo Declaration signed October 15<sup>th</sup>, 2006, both recognizing the important role that Earth Observation Services play in the sustainable development and security of Africa;
17. CONSIDERING the participation of the Government of the Italian Republic in the Galileo Program and the important benefits that may accrue from this program to African Countries;
18. RECOGNIZING the opportunity which co-operation between the two Countries provides for the transfer of technology and for the development of the human resources in the framework of science and technology for Kenya;
19. AND FURTHER RECOGNIZING the mutual scientific, technical and economic advantages arising from peaceful exploration and use of outer space, as well as from its applications;

HAVE AGREED as follows:

## ARTICLE I

### Definitions

“The Agreement” means the particulars of this document concluded by the Government of the Republic of Kenya and the Government of the Italian Republic.

the Italian Republic as may be amended from time to time by the  
es;

“Parties” means the Government of the Republic of Kenya and  
Government of the Italian Republic;

“Facility” means the Luigi Broglio - Malindi Space Centre as  
ified under Article II of this Agreement;

“Council” means designated Ministers from the Government of  
Republic of Kenya and the Government of the Italian Republic  
olished under Article IV of this Agreement;

“Committee” means designated Principal Secretaries or  
valent of the Parties relevant Ministries and Chief Executive  
cers of respective National Space Agencies established under  
le V of this Agreement;

“Board” means designated representatives of the Government  
the Republic of Kenya and the Government of the Italian  
ublic established under Article VI of this Agreement;

“Third Parties” shall mean any other institution, entity or person  
er than the Parties or their respective public authorities, space  
ncies and public institutions involved in space activities;

“Professional staff” means such persons engaged to work at the  
lity performing intellectual and specialised duties as opposed to  
ine mental, manual, mechanical or physical work;

“Non professional staff” means such persons other than professional  
as may be engaged to work at the Facility;

“Assets” means any infrastructure or equipment located at the  
lity;

“Implementing Arrangements” means instruments entered into to implement the areas of cooperation as stated in Article II(2) and Article III of the Agreement as negotiated under Article III(7).

## ARTICLE II

### The Facility

1. The Parties shall co-operate in the use of the Facility which consists of:
  - a) A mobile segment at sea, for tracking and launching satellite and suborbital platforms and for space research, presently located at Ungwana Bay;
  - b) A land based segment in Ngomeni, for tracking and supporting launching satellites and suborbital platforms, for communication acquisition, processing, archiving and dissemination and space research.

The critical infrastructure of the Facility is as described in Annex

2. The Facility shall be used for aerospace science, space science, technology and research and applications as well as tracking and monitoring space vehicles, navigation applications and any other activity mutually agreed upon by the Parties. Areas of activity include and are not limited to:
  - a) Space science and technology;
  - b) Earth Observation, applications and services;
  - c) Support in Surveillance services also using the mobile segment

Telemedicine;

Satellite data acquisition;

Tracking and telemetry services;

Launching and tracking of satellites and suborbital platforms;

Atmospheric research;

Navigation and positioning application and services;

Education and training;

Remote sensing.

The Parties commit themselves to utilize the Facility for peaceful purposes only.

### ARTICLE III

#### Other areas of co-operation

The Government of the Italian Republic through the Italian Space Agency commits to support the enhancement of the capacity of such agency that the Government of the Republic of Kenya seeks to establish to oversee matters pertaining to aerospace science, space science, technology, research and applications.

The Parties commit themselves to establish in Kenya a Regional Centre for Earth Observation dedicated to receiving, storing, processing and dissemination of remotely sensed data, including a mirror site for remote sensing applications. The terms and conditions for the establishing, managing and functioning of the

Centre shall form the subject of an Implementing Arrangement referred to in article III.7 below.

3. Taking into account the strategic partnership between Europe Africa, the Parties shall promote the role and activities of envisaged Regional Centre for Earth Observation in all initiatives related to the Earth Observation projects and services such as the "GMES and Africa" programme or any other programme that the Parties may mutually agree upon.
4. The Government of the Italian Republic shall train Kenyan nationals identified by the Government of the Republic of Kenya as will be mutually agreed upon on the following areas:
  - a) Aerospace, space science and technology;
  - b) Defence courses;
  - c) Training scholarships in other disciplines.
5. The Government of the Italian Republic shall enhance the capacity of public institutions of higher learning in the Republic of Kenya to undertake training in space science and technology as will be mutually agreed upon.
6. The Government of the Italian Republic in liaison with the Government of the Republic of Kenya shall support development of Ngomeni area (Kilifi County) as will be mutually agreed upon.
7. The Government of the Italian Republic and the Government of the Republic of Kenya shall negotiate and conclude, through their respective implementing agencies or ministries, the relevant Implementing Arrangements in order to govern the implementation of the aforementioned and other areas of operation as may be mutually agreed under this Agreement. The initial five Implementing Arrangements shall be:



Support to the Kenya Space Agency;

Access to Earth Observation and Space Science Data;

Education and Training;

Telemedicine; and

Establishment of a Regional Centre for Earth Observation.

## ARTICLE IV

### Joint Council of Ministers


The Parties shall establish a Joint Council of Ministers hereinafter referred to as "the Council" which shall be the supreme organ responsible for strategic policy guidance for the Facility as well as other areas of cooperation in space science and technology. It shall comprise of Ministers as may be designated by the Parties from time to time.

The functions of the Council shall be:

Policy formulation and guidance on the objectives of the Agreement;

) To consider and approve recommendations by the Joint Steering Committee;

) To consider and, where possible, settle disputes between the Parties which may arise during the implementation of this Article XIV hereinafter.


- 
3. The Council shall hold meetings at least once every two (2) years or on request by the Joint Steering Committee. The Council shall make decisions through exchange of notes if and when the need arises.
  4. For this purpose, the Government of the Italian Republic appoints the Ministry of Education, University and Research as the designated authority responsible for the implementation of the present Agreement.
  5. The Government of the Republic of Kenya appoints the Ministry of Defence as the designated authority responsible for the implementation of the present Agreement.

## ARTICLE V

### Joint Steering Committee

1. In order to facilitate the implementation of this Agreement the Parties agree to establish a Joint Steering Committee, herein referred to as "the Committee", comprising of Principal Secretaries or equivalent of respective Ministries and Chief Executive Officers of respective National Space Agencies. The Committee shall have the following functions:
  - a) Review the implementation of the provisions of this Agreement and, where necessary, recommend for approval by both Governments any amendment aimed at ensuring smoother implementation, in accordance with Article XV of this Agreement;
  - b) Determine and recommend for approval by both Governments programmes of cooperation in furtherance of the Agreement.

- c) Review progress on programmes and activities of co-operation being undertaken pursuant to this Agreement;
- d) Consider and, where possible, settle disputes which may arise during the implementation of this Agreement in accordance with Article XIV hereafter;
- e) Consider for approval the possible engagement and/or involvement of Third Parties in the utilization of the Facility and any agreements thereto in accordance with Article X of this Agreement;
- f) Appoint the chairperson of the Joint Management Board on rotational basis;
- g) Consider for approval launching programs as recommended by the Joint Management Board;
- h) Consider for approval data sharing policies as recommended by the Joint Management Board;
- i) Consider for approval recommendations by the Joint Management Board on financial performance of the Facility and any measures recommended by the Joint Management Board to ensure due fulfilment of commitments and obligations of the Facility;
- j) Consider any other proposal made by either Party within the framework of this Agreement;
- k) Consider for approval strategic plans and annual work plans as recommended by the Joint Management Board;
- l) Shall promote and ensure exchange of information between the parties.

- 
2. Representatives of the Government of the Republic of Kenya the Government of the Italian Republic will alternate the Chair of the Committee.
  3. The Committee shall meet in Kenya or in Italy as will be mutually agreed at least once each calendar year.

## ARTICLE VI

### Joint Management Board

1. The Parties shall jointly manage the Facility and shall for that purpose form a Joint Management Board hereinafter referred to as "the Board".
2. The Board shall comprise of such technical persons designated by the relevant Ministries, National Space Agencies and any other persons as each Party may designate. Each Party shall nominate (three) members to the Board and may co-opt advisors.
3. The Board shall meet as often as may be necessary for the dispatch of its business but shall hold at least three (3) meetings each financial year.
4. A special meeting of the Board may be convened by the Chairperson of the Board or on application by one third of the membership of the Board.
5. Unless the majority of the total membership of the Board otherwise agree, at least 14 days notice of every meeting of the Board shall be given to each member of the board.
6. The Parties shall designate the Board Chairperson and the

the functions of the Board shall include:

To consider and recommend to the Committee strategic plans and annual work plan for the Facility;

To consider and make observations on the Budget for the activities of the Facility;

To provide the Parties through the Committee with a comprehensive progress report every four months on all activities and progress of the Facility;

To consider and recommend to the Committee the approval of the launching programs from the Facility;

To consider and recommend for consideration by the Committee the possible engagement and/or involvement of Third parties in the utilization of the Facility in accordance with Article X of this Agreement;

to consider and recommend to the Committee data sharing policies taking into account existing data sharing and dissemination arrangements and intellectual properties and ensure the implementation of the same;

To review and recommend to the Committee areas of activity of the Facility as specified in Article II of the Agreement;

To consider the financial performance of the Facility and recommend to the Committee measures to ensure due fulfilment of commitments and obligations of the Facility;

To consider staffing needs of the Facility together with the terms and conditions of service for all its staff;

To perform any other function assigned by the Committee from time to time;

To consider applications for renewal of the existing contracts



- l) To review and restructure the management structure of the Marco facility;
  - m) To develop schemes of service for the staff;
  - n) To consider and recommend all human resource and service procurement plans for the facility.
8. Except as provided in this article, the Board may regulate its procedure.

## ARTICLE VII

### Management of the Facility

1. The Facility shall have a Chief Executive Officer who shall be appointed by the Government of the Italian Republic through the Italian Space Agency.
2. The Chief Executive Officer shall be responsible for:
  - a. Day to day management of the activities of the Facility;
  - b. The operational security and safety of the Facility;
  - c. Preparation of strategic and annual work plans for consideration by the Board;
  - d. Developing data sharing policies, taking into account existing data sharing and dissemination arrangements and intellectual property and implementation of the same;
  - e. Convening meetings of the Board in consultation with the Chairman of the Board;
  - f. Prudent financial management of the Facility and shall

identifying and presenting staffing needs of the Facility to the board;

participating in outreach activities to promote knowledge and use of space science applications in national planning and development in collaboration with the Kenya Space Agency or such other Agency as shall be nominated;

performing such other functions as may be assigned by the board from time to time.

The facility shall have a Deputy CEO who shall be appointed by the Government of the Republic of Kenya.

The Deputy CEO shall deputize the CEO in all the functions provided in Article VII (2), with the exception of making financial commitments for the facility.

The Government of the Italian Republic through the Italian Space Agency shall recruit and/or second professional staff to the Facility in consultation with the Board.

The Government of the Republic of Kenya shall second professional staff to the Facility in consultation with the Board in such capacities as the Parties may mutually agree.

The Parties agree that non professional staff will be recruited within the Republic of Kenya amongst qualified Kenyan nationals.

## ARTICLE VIII

### Prerogatives and obligations of the Government of the Italian Republic

1. The Government of the Italian Republic shall be responsible for obligations and for the activities conducted in the implementation of this Agreement.
2. The Government of the Italian Republic shall undertake training programmes for nationals of the Republic of Kenya in accordance with Article III as shall be mutually agreed upon.
3. The Government of the Italian Republic shall promote development projects for the community of Ngomeni area (County) in accordance with Article III as shall be mutually agreed upon.
4. The Government of the Italian Republic shall nominate representatives to the Council, the Committee and the Board referred to in Articles IV, V and VI respectively, including rotating Chairpersons.
5. The Government of the Italian Republic, through the Italian Space Agency:
  - a) Shall appoint the Chief Executive Officer and professional staff of the Facility in accordance with Article VII hereinbefore;
  - b) Shall be responsible for the operating costs of the day to day functioning of the Facility, infrastructures and connection to the international network and for the space activities programmes, according to the provisions of the Strategic Vision document of the Government of the Italian Republic as shall be approved:



shall contribute to the cost of the establishment and functioning of the Regional Centre for Earth Observation referred to in Article III, based on the Implementing Arrangement to be concluded by both Parties;

shall pay compensation to the Republic of Kenya the sum of JSD 250,000.00 (United States Dollars Two Hundred and Fifty Thousand) annually for the use of the land availed for the facility as it is at the beginning of this agreement; the amount of compensation shall be reviewed after every 5 (five) years by the Parties with an increment of 50,000 USD;

shall pay compensation for any additional land acquired;

shall remit to the Government of the Republic of Kenya 50% of the profit of contracts with Third Parties for commercial services provided by the Facility, including but not limited to launching services, satellite tracking and telemetry services, communication services, data acquisition, surveillance and navigation, with the exception of cooperation agreements in which there is no exchange of funds;

shall collect and remit to the Government of Kenya an annual authorisation fee of 50,000 USD from each Third Party for the use of the Facility; the said authorisation fee shall be reviewed every five (5) years during the period of the Agreement;

shall provide to the Government of the Republic of Kenya the particulars of non-Kenyan personnel operating in Kenya on activities related to the Facility and the list of all equipment destined for the Facility prior to their arrival in the Republic of Kenya;

shall provide the Government of the Republic of Kenya with progress reports, on annual basis, on the activities and progress concerning cooperation under this Agreement for consideration



- j) Shall apply to the Government of the Republic of Kenya for allocation of frequencies and licences and shall provide a technical information required for the release of frequencies
  - k) Shall at least sixty (60) days before any planned launch, submit in advance to the Government of the Republic of Kenya technical and administrative details of any orbital or suborbital planned launch. Such details shall include:
    - (i) information on contractual agreements;
    - (ii) owner and type of rocket, power propulsion, number of stages and country of origin;
    - (iii) satellite details to include the number of payload boards, their individual weight, instruments carried, type of data, their application and sponsors;
    - (iv) orbit path and period of stay in orbit; or
    - (v) any other details that may be required
  - l) Shall at least sixty (60) days before a launch, inform the Kenya Civil Aviation Authority (KCAA) of the Republic of Kenya the dates and time of launching of satellites and suborbital platforms;
  - m) Shall in consultation with the Deputy CEO and the Board assign duties to professional staff seconded by the Government of the Republic of Kenya in the activities of the Facility as may be mutually agreed.
6. The Government of the Italian Republic shall undertake necessary administrative measures to ensure the full implementation of the provisions of this Article.

## ARTICLE IX

### Responsibilities and obligations of the Government of the Republic of Kenya

The Government of the Republic of Kenya shall be responsible for the fulfilment of its obligations and for the activities conducted in the implementation of this Agreement.

The Government of the Republic of Kenya shall receive and consider within a reasonable timeframe, programs submitted by the Committee and, if accepted, shall take all necessary administrative measures and grant authorisations.

The Government of the Republic of Kenya shall:

Appoint a Deputy CEO in accordance with Article VII(3);

In consultation with the Board, identify professional staff to be seconded to the Facility in accordance with Article VII(6);

In consultation with the Government of the Italian Republic, identify its training needs and personnel to undergo training programmes in accordance with Article III.

The Government of the Republic of Kenya shall undertake all necessary measures, including internal controls and patrol of the territory under its sovereignty and jurisdiction, as it deems necessary to ensure the effective functioning of the Facility as well as the security of the property and people working therein.

The Government of the Republic of Kenya shall consider and provide written authorization for launching of satellites and sub-orbital platforms.

The Government of the Republic of Kenya shall receive and

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including allocation of frequencies and licences, in accordance with the existing Government of Kenya regulations and relevant International Telecommunications Union (ITU) radio regulations.

7. The Government of the Republic of Kenya will facilitate leasing or procuring of additional land for the purposes of expanding the base by the Government of the Italian Republic.
8. The Government of the Republic of Kenya shall in consultation with the Government of the Italian Republic identify development projects to be realized within Malindi area (Malindi County) in accordance with Article III.
9. The Government of the Republic of Kenya shall within a reasonable timeframe inspect, verify and if satisfied approve the equipment to be used at the Facility.
10. The Government of the Republic of Kenya shall facilitate issuance of the necessary authorizations for import, export, transportation, installation and use of equipment by the Facility including those utilized for a limited period of time in association with a specific project.
11. The Government of the Republic of Kenya shall facilitate issuance of the:
  - a) Visas for personnel involved in the operations of the facility in accordance with the laws of Kenya;
  - b) work permits for non-Kenyan staff employed in Kenya in accordance with the Immigration Act and other relevant statutes.
12. The Government of the Republic of Kenya shall nominate representatives to the Council, the Committee and the Board.

The Government of the Republic of Kenya shall take all measures to facilitate entry, stay and exit from Kenya, for the personnel of the Government of the Italian Republic employed in Kenya for the purpose of the activities related to the object of this Agreement.

The Government of the Republic of Kenya shall consider for its approval, all Third Party Agreements for the utilization of the Facility, within 30 days from the Joint Steering Committee approval of those agreements in compliance with Art. V.1 e) above.

The Government of the Republic of Kenya shall provide the Government of the Italian Republic with progress reports, on annual basis, on the activities and progress concerning operation under this Agreement for consideration by the Committee in accordance with Article V.


The Government of the Republic of Kenya shall undertake necessary administrative measures to ensure the full implementation of the provisions of this Article.

## ARTICLE X

### Use of the Facility by Third Parties

The Parties shall permit the use of the Facility by Third Parties in accordance with Articles V.1 e) and VI.7 e).

The activities and services carried out by and for Third Parties within or through the Facility will be regulated through the agreements approved as provided for in art. IX.14 above.

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3. Subject to agreements concluded pursuant to Article X (2), Parties shall not be exempted from their responsibilities referred to in Articles VIII and IX respectively.
  4. In considering applications submitted by either Party, the Parties shall take particularly into account programmes within the framework of European (European Space Agency and European Union) and African space initiatives.

## ARTICLE XI

### Liability

1. In the event of any damage being caused to any property or person within or outside the Facility by reason of activities referred to in Article II, the liability of the Government of Kenya shall be met by the Government of the Italian Republic. The Government of the Italian Republic shall be liable to compensate for the damage, without prejudice to the right of the Government of the Italian Republic to be indemnified by third parties where the damage is occasioned by act or omission of third parties. The Government of the Republic of Kenya shall be liable where loss or damage has been caused by gross negligence, or deliberate act or omission of its employees or agents.
2. a) In respect to activities related to orbital and sub-orbital launching, the Government of the Italian Republic through the Italian Space Agency shall subscribe individual insurance policies with one or more Insurance Companies authorised in Kenya and approved by the Kenyan Insurance Regulatory Authority.

of 29th March 1972, the insurance policy shall cover as joint insured the Government of the Republic of Kenya, the nationals and residents of the Republic of Kenya.

In the event any suit, action or claim is brought against the Government of the Republic of Kenya in respect of, or in relation to the activities carried out at the Facility, the Government of the said Republic shall indemnify and hold harmless the Government of the Republic of Kenya against losses and claims in respect of injuries or damages, costs, charges and expenses, or in relation thereto, except where the suit, action or claim arises due to gross negligence, or deliberate act or omission of the Government of the Republic of Kenya or a person acting on its behalf.

## ARTICLE XII

### Verification and inspection

In order to ensure compliance with the purpose, objectives and provisions of this Agreement, the Government of the Republic of Kenya shall have the right to:

1. Request explanations from the Board on current activities of the Facility;
2. Enter, inspect and examine at any time the Facility, the inventory register and the equipment of the Facility and any other connected premises situated in Kenya;
3. Be regularly informed on the stage of the planning, preparation and execution of the projects and programmes by the Facility.

Subject to the provisions of Article XIII. inspections. visits.

out by personnel explicitly authorized by the Government of Republic of Kenya in full respect of secrecy, confidentiality data protection.

### ARTICLE XIII

#### Confidentiality

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

### ARTICLE XIV

#### Settlement of Disputes

1. Any dispute between the Parties concerning the interpretation and implementation of this Agreement shall be resolved, as far as possible, through consultation and negotiation in the framework of the Committee and the Council established under Articles III and IV of this Agreement.
2. In the event of a dispute declared by either Party in writing between the Government of the Republic of Kenya and the Government of the Italian Republic, and that within three months the Council, acting in accordance with Article IV, has not been able to settle the dispute, the two Governments will immediately attempt to resolve the matter within three months.



termination of the Agreement (or any terms thereof), which the Parties are unable to resolve between themselves, shall be referred to and finally settled by International Arbitration.

## ARTICLE XV

### Vesting of Assets to the Government of the Republic of Kenya

In accordance with the Agreement signed by the Parties on 14th March 1995 concerning the satellite tracking and launching Station at the San Marco Station in Malindi, the Government of the Italian Republic shall transfer all its rights and properties at the Facility upon the lapse of this Agreement or at such lesser period formally agreed by the Council or upon termination in accordance with article XVIII (3). The Parties may agree to a joint use of the Facility after the expiry of this Agreement.

Without prejudice to the provisions of Article XV(1), the Government of the Italian Republic shall during the existence of this agreement retain full ownership of assets, equipment and installations of the Facility except the land designated for the use and operations of the facility which shall continue to be owned by the Government of the Republic of Kenya. The Government of Kenya shall retain full ownership of any assets, equipment and installation that it acquires during the period of the Agreement.

The assets of the Facility shall not be subject to any form of seizure, requisition or confiscation by the Government of the Republic of Kenya and shall be immune from any form of administrative or judicial constraint unless vesting has occurred in accordance with Article XV (1) hereinabove.

## ARTICLE XVI

### Governing/ Applicable Law

All activities, operations and incidental actions related to functioning of the Facility shall be done in accordance with the Law of the Republic of Kenya.

The Agreement shall be implemented in accordance with international obligations of the Parties including, for the Italian Party, those deriving from its membership to the European Union.

## ARTICLE XVII

### Amendment, Modification and Review

1. The present Agreement may be amended at any time, in writing by mutual consent by the Parties, which shall be by way of exchange of notes upon fulfilment of the legal requirements of each party.
2. The amendments shall enter into force on the date of the receipt of the last of the two notifications by which the Parties shall formally have communicated to each other that their respective internal procedures have been complied with.
3. The Parties shall conduct a mid-term review of the functioning and implementation of the Agreement. The parameters of the review will be mutually agreed upon by the Parties.

## ARTICLE XVIII

### Entry into Force, Duration and Termination

This Agreement shall enter into force on the date of the receipt of the last of the two notifications by which the Parties shall formally have communicated to each other that their respective internal procedures have been complied with.

This Agreement shall remain effective for a period of fifteen (15) years and may be renewed for such period as the Parties may mutually agree.

Without prejudice to the provisions of Article XIV, this Agreement may be terminated at any time by either Party after serving notice of not less than twelve (12) months in writing of such intention and the Agreement shall lapse at the expiry of the notice. Such notification or termination shall not affect the payment of any debt, claims or compensation or operate to discharge either Party from any liabilities hitherto accrued against it in pursuance of this Agreement.

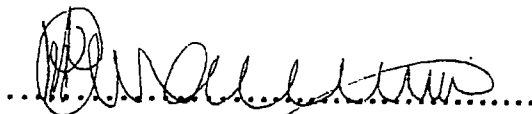
Notice for termination may be issued upon the mid-term review where either party is fundamentally in breach of their obligations under this Agreement.



In witness whereof the undersigned, duly authorised thereto, have signed the present Agreement.

Done in <sup>Trento</sup>....., on <sup>24 OCT 16</sup>....., in two originals, both in English and Italian language, all texts being equally authentic. In case of divergence of interpretation or application the English text shall prevail.

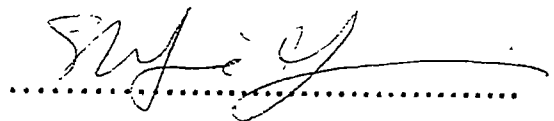
For and on behalf of the  
Government of the Republic  
of Kenya

  
.....

Cabinet Secretary

Ministry of Defence

For and on behalf of the  
Government of the Italian  
Republic

  
.....

Minister

Ministry of Education,  
University and Research

IMPLEMENTING  
ARRANGEMENTS

NOS. 1 - 5

IMPLEMENTING ARRANGEMENT

To the Agreement between the Government of the Republic of Kenya and the  
Government of the Italian Republic for the San Marco Program  
At the Luigi Broglio Space Centre –Malindi, Kenya,

ON

SUPPORT TO THE KENYA SPACE AGENCY



**THIS IMPLEMENTING ARRANGEMENT** is made between the Government of Republic of Kenya on the one part and the Italian Space Agency (ASI) on behalf of Government of the Italian Republic, on the other part, herein after referred to singularly as "Party" and collectively as "Parties" (which expression shall where context so admits include its successors or assigns).

### Preamble

**WHEREAS** the Government of the Republic of Kenya and the Government of the Italian Republic have signed the Agreement for the San Marco Program at the LUIGI BROGI SPACE CENTRE – MALINDI, hereinafter also referred to as the "Agreement";

**TAKING NOTE THAT** Article III (7) of the Agreement provides for the conclusion of Implementing Arrangements for the purposes of the implementation of the Agreement

**CONSIDERING THAT** support and enhancement of the capacity of the Kenya Space Agency or such other Agency as shall be established by the Government of Kenya recognized as an area of cooperation in Article III (1) of the Agreement;

**RECOGNIZING** the desire of the Government of the Republic of Kenya to establish and operationalize the Kenya Space Agency;

### THE PARTIES AGREE AS FOLLOWS

#### Article 1 Purposes and Objectives

The purpose of this Implementing Arrangement is to provide a framework for cooperation between the Government of the Republic of Kenya and the Italian Space Agency, relating to the assistance for:

The establishment and operationalisation of the Kenya Space Agency.

#### Article 2 Areas of Cooperation

2.1 The Parties shall cooperate in the following areas:

- a) legal and institutional support for the establishment of the Kenya National Space Agency;
- b) capacity building;
- c) management support for the development of short, medium and long term sustainable space programmes;
- d) human and infrastructure resources development

- e) any other area that may be mutually agreed on by the Parties.

### Article 3 Forms of Cooperation

The Parties shall cooperate through the following:

- a) technical assistance in terms of personnel, software, equipment and by secondment of experts to each Party's National Space Agency;
- b) training and internship programmes to employees of the National Space Secretariat;
- c) organization of, and participation in, and hosting of international and national conferences and symposia on space science and technology and its attendant disciplines;
- d) organization of and participation in Space Policy courses;
- e) joint applications for European/International program funding;
- f) access to opportunities that ASI may have with other space agencies;
- g) development of short, medium and long-term sustainable space programmes;
- h) any other form of cooperation that may be mutually agreed on by the Parties.

### Article 4 Implementation of the Arrangement

1. The Parties shall jointly identify key priority areas and come up with a Plan of action and implementation plan within six (6) months from the date of the entry into force of this Arrangement.

2. The Parties shall conduct an evaluation of the implementation of this Arrangement after its entry into force, every two years for continued improvement.

### Article 5 Implementing Agencies

5.1 For the purposes of implementing this Arrangement on the Italian side, the implementing agency shall be:

- Italian Space Agency.

5.2 For the purposes of implementing this Arrangement on the part of the Government of the Republic of Kenya, the implementing agency shall be:

- Ministry of Defence or such other Agency as shall be nominated.





## Article 6 Intellectual Property Rights

6.1 Any intellectual property right related to, or interest in, any innovation or work made in the performance of this Arrangement solely by one Party or any of its Related Entities (e.g. contractors or subcontractors) shall be owned by such Party or its Related Entity. Allocation of Intellectual Property rights between such Party and its Related Entities shall be determined by such Party's laws, regulations and applicable contractual obligations.

6.2 If any research jointly conducted by the Parties, produces an invention, innovation or work, which incorporates intellectual property rights, the Parties shall in good faith, consult and agree as to the allocation of Intellectual Property rights to, and interest in, such joint innovation or work and the responsibilities, costs, and actions to be taken to establish and maintain those intellectual property rights.

## Article 7 Amendment

This present Implementing Arrangement may be amended by mutual written consent of the Parties. The amendments shall enter into force on the date of the receipt of the second of the two notifications by which the Parties shall formally communicate to each other that their respective internal procedures have been complied with.

## Article 8 Dispute Resolution

For any dispute between the Parties relating to the interpretation and/or implementation of this Implementing Arrangement the rules and provisions established by article XIV of the bilateral Agreement shall apply.

## Article 9 Entry into force, duration and termination

9.1 This Implementing Arrangement shall be executed by both Parties and produce legal effects on the date of the entry into force of the bilateral Agreement.

9.2 This Implementing Arrangement shall remain in force for the duration of the international governmental bilateral Agreement between the Italian Republic and the Republic of Kenya.

9.3 Either of the Parties may terminate this Implementing Arrangement at any time by giving a twelve (12) months prior written notice through the established diplomatic channels and the Implementing Arrangement shall lapse automatically at the expiry of the notice. The termination of this Implementing Arrangement shall not absolve the Parties of their obligations commenced before the termination of the Arrangement except as otherwise agreed in writing by the Parties.

10 Interpretation

For all matters not expressly treated or provided for by this Implementing Arrangement, the rules and provisions established in the bilateral Agreement shall apply.

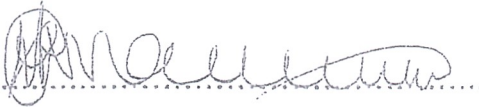
In case of conflicts between the provisions of this Implementing Arrangement and the provisions of the bilateral Agreement, the latter shall prevail.

11 Signature

IN WITNESS WHEREOF THE undersigned, duly authorized thereto by their respective Government and constitutive instrument respectively, have signed the present Implementing Arrangement.

at *Trento*... , on this *24<sup>th</sup>* day of *Oct*... 2016, in four originals, two in the English and two in the Italian language, all texts being equally authentic. In case of divergence on interpretation or application the English text shall prevail.

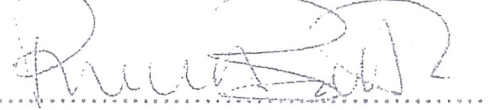
For and on behalf of the Government  
of the Republic of Kenya



Cabinet Secretary

Ministry of Defense

For and on behalf of the  
Government of the Italian Republic



President

Italian Space Agency

IMPLEMENTING ARRANGEMENT

To the Agreement between the Government of the Republic of Kenya and the  
Government of the Italian Republic for the San Marco Program  
At the Luigi Broglio Space Centre – Malindi, Kenya,

ON

ACCESS TO EARTH OBSERVATION AND SPACE SCIENCE DATA

**THIS IMPLEMENTING ARRANGEMENT** is made between the Government of the Republic of Kenya on the one part and the Italian Space Agency (ASI) on behalf of the Government of the Italian Republic, on the other part, herein after referred to separately as "Party" and collectively as "Parties" (which expression shall where the context admits include its successors or assigns).

#### Preamble

**WHEREAS** the Government of the Republic of Kenya and the Government of the Italian Republic have signed the Agreement for the San Marco Program at the LUIGI BRUNO SPACE CENTRE – MALINDI, hereinafter also referred to as the "Agreement";

**TAKING NOTE THAT** article III (7) of the Agreement provides for the conclusion of Implementing Arrangements for purposes of the implementation of the Agreement;

**CONSIDERING THAT** the cooperation on Earth Observation, applications and services, Satellite data acquisition, Tracking and Telemetry services, Atmospheric research, Navigation and positioning application and services is recognized in Article III paragraphs (b), (f), (g), (i) and (j) of the Agreement;

**RECOGNIZING** the desire of the Government of the Republic of Kenya to promote and prioritise resource sensitive and context specific applications, education, research and technologies through access and use of Earth Observation and Space Science data in Kenya;

#### THE PARTIES AGREE AS FOLLOWS

##### Article I Definitions

- 1.1 "COSMO-SkyMed" or "Constellation of small Satellites for the Mediterranean basin Observation" is an Italian constellation of 4 medium-size satellites, equipped with a microwave high-resolution synthetic aperture radar.
- 1.2 "MODIS" or "Moderate Resolution Imaging Spectroradiometer" is a instrument aboard the Terra (EOS AM) and Aqua (EOS PM) Earth Observing satellites.
- 1.3 "Terra" is a multi-national NASA scientific research satellite launched in December 1999 that carries five sensors that have been studying the interactions among Earth's atmosphere, lands, oceans, and radiant energy.

“Aqua” is a multi-national NASA scientific research satellite launched in May 2004 that carries six sensors to study precipitation, evaporation, and cycling of water.

“ERS” or “European Remote Sensing satellite” is a satellite launched in April 1995 for measuring ozone content of the atmosphere and monitor vegetation cover. The science mission ended on 4<sup>th</sup> July 2011 and the satellite subsequently de-orbited.

“Landsat” is a series of Earth-observing satellite missions jointly managed by NASA and the U.S. Geological Survey since 1972. The latest satellite, Landsat 7, launched in April 1999 has the primary goal to refresh the global archive of satellite photos, providing up-to-date and cloud-free images.

“ENVISAT” or “Environmental Satellite” is a European Space Agency Earth observing satellite launched in March 2002 with the objective to service the continuity of European Remote-Sensing Satellite missions, providing additional observational parameters to improve environmental studies. Contact with the satellite was lost on 8<sup>th</sup> April 2012.

## Article 2 Purposes and Objectives

The purpose of this Implementing Arrangement is to:

provide a supplemental framework for cooperation between the Government of Kenya and the Italian Space Agency (ASI) for access and use of Earth Observation and Space Science data available to ASI for use and distribution according to each specific mission data policy, for research and national development programs in Kenya;

promote access and use of data from past, ongoing and future space programs undertaken by ASI and its partners, as specified in paragraph (a) above;

promote access and use of data from past, ongoing and future space programs undertaken by ASI and its partners from the San Marco program at the Luigi Broglio Space Center – Malindi.

## Article 3 Areas of Cooperation

The Parties shall cooperate in the following areas:

- a) formulation of specific data access and value added products use policies;
- b) access and use of data from past, ongoing and future space programs, including but not limited to, COSMO-SkyMed, MODIS, Terra & Aqua, LANDSAT, ERS2, ENVISAT according to each specific mission data policy;

- c) access and use of all data from past, ongoing and future space programs from the San Marco program at the Luigi Broglio Space Center – Malindi;
- d) human and infrastructure resources development;
- e) wider dissemination of space programs value added products to mutually agreed third parties;
- f) know how and technology transfer of data acquisition, processing, dissemination and archiving;
- g) research and development;
- h) any other area that may be mutually agreed on by the Parties.

#### Article 4 Forms of Cooperation

4.1 The Parties shall cooperate through the following:

- a) undertaking of a data user need assessment analysis;
- b) development of data, products and services access and use policies, according to each specific mission data policy;
- c) to establish and develop infrastructure for data, products and services access and use in the Republic of Kenya, including but not limited to COSMO-SkyMed;
- d) making available one national coverage of COSMO-SkyMed data of Kenya annually in an appropriate mode and making available Site specific COSMO-SkyMed for emergencies in Kenya in appropriate modes and to make available Site specific COSMO-SkyMed for pilot projects and scientific applications in Kenya in appropriate modes;
- e) facilitating access to and use of Earth Observation data from past, ongoing and future space programs of ASI and its partners according to each specific mission data policy;
- f) provision of training programs for selected Kenyan personnel on acquisition, processing, dissemination and archiving of data, software and hardware development and other related fields;
- g) undertake joint research and development programs;
- h) undertake joint applications for European and/or international Earth Observation program funding;
- i) promotion of joint activities and programs on Earth Observation and Space Science at national and international level;
- j) sharing of revenue generated from use of data by third parties and value added products;
- k) exchange visits of experts in Earth Observation and Space Science;
- l) establishment of focal points for access and use of Earth Observation and space science research data in Kenya;
- m) any other form of cooperation that may be mutually agreed on by the Parties.

## 5 Implementation of the Arrangement

The implementation of this Arrangement shall be based on joint data access and policies.

The parties shall jointly identify key priority areas and come up with a Plan of and implementation plan within six (6) months from the date of the entry into of this Arrangement.

The Parties shall conduct an evaluation of the implementation of this Arrangement its entry into force every two years for continued improvement.

## 6 Implementing Agencies

For the purposes of implementing this Arrangement on the Italian side, the implementing agency shall be:

- Italian Space Agency.

For the purposes of implementing this Arrangement on the part of the Government of the Republic of Kenya, the implementing agency shall be:

- Ministry of Defence or such other agency as shall be nominated.

## 7 Intellectual Property Rights

Any intellectual property right related to, or interest in, any innovation or work in the performance of this Arrangement solely by one Party or any of its Related Parties (e.g. contractors or subcontractors) shall be owned by such Party or its Related Party. Allocation of Intellectual Property rights between such Party and its Related Parties shall be determined by such Party's laws, regulations and applicable contractual provisions.

If any research jointly conducted by the Parties, produces an invention, an innovation or work, which incorporates intellectual property rights, the Parties shall, in good faith, consult and agree as to the allocation of Intellectual Property rights to, or interest in, such joint innovation or work and the responsibilities, costs, and actions to be taken to establish and maintain those intellectual property rights.

## Article 8 Amendment

The present Implementing Arrangement may be amended by mutual written consent of the Parties. The amendments shall enter into force on the date of the receipt of notifications by which the Parties shall formally communicate to each other that their respective internal procedures have been complied with.

## Article 9 Dispute Resolution

For any dispute between the Parties relating to the interpretation and/or implementation of this Implementing Arrangement the rules and provisions established by Article 10 of the bilateral Agreement shall apply.

## Article 10 Entry into force, duration and termination

10.1 This Implementing Arrangement shall be executed by both Parties and produce legal effects on the date of the entry into force of the bilateral Agreement .

10.2 This Implementing Arrangement shall remain in force for the duration of the bilateral Agreement.

10.3 Either of the Parties may terminate this Implementing Arrangement at any time by giving a twelve (12) months prior written notice through the established diplomatic channels and the Implementing Arrangement shall lapse automatically at the expiry of the notice. The termination of this Implementing Arrangement shall not absolve the Parties of their obligations commenced before the termination of the Arrangement except as otherwise agreed in writing by the Parties

## Article 11 Interpretation

11.1 For all matters not expressly treated or provided for by this Implementing Arrangement, the rules and provisions established in the bilateral Agreement shall apply.

11.2 In case of conflicts between the provisions of this Implementing Arrangement and the provisions of the bilateral Agreement, the latter shall prevail.

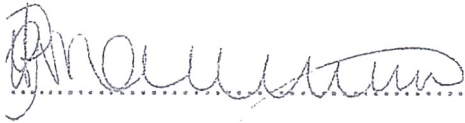
## Article 12 Signatures

**IN WITNESS WHEREOF THE** undersigned, duly authorized thereto by their respective governments and constitutive instrument respectively, have signed the present Implementing Arrangement.



at Trento, on this 24<sup>th</sup> day of Oct 2016, in four originals, two in the English  
two in the Italian language, all texts being equally authentic. In case of divergence on  
interpretation or application the English text shall prevail.


and on behalf of the  
Government of the Republic of  
Italy



Minister Secretary

Ministry of Defence

For and on behalf of the Government  
of the Italian Republic



President

Italian Space Agency

IMPLEMENTING ARRANGEMENT

To the Agreement between the Government of the Republic of Kenya and the  
Government of the Italian Republic for the San Marco Program  
At the Luigi Broglio – Malindi Space Centre, Kenya,

ON

EDUCATION AND TRAINING

**THIS IMPLEMENTING ARRANGEMENT** is made between the Government of the Republic of Kenya on the one part and the Italian Space Agency (ASI) on behalf of the Government of the Italian Republic, on the other part, herein after referred to singly as "Party" and collectively as "Parties" (which expression shall where the context admits include its successors or assigns).

### Preamble

**WHEREAS** the Government of the Republic of Kenya and the Government of the Republic have signed the Agreement for the San Marco Program at the LUIGI BRUCCARELLI - MALINDI SPACE CENTRE, hereinafter also referred to as the "Agreement";

**TAKING NOTE THAT** article III (7) of the Agreement provides for the conclusion of Implementing Arrangements for the purposes of the implementation of the Agreement;

**CONSIDERING THAT** education and training is recognized as an area of cooperation under Article II (2) (k) of the Agreement;

**RECOGNIZING** the need for continued cooperation in training, education and technology transfer;

### THE PARTIES AGREE AS FOLLOWS

#### Article 1 Purposes and Objectives

To provide a supplemental framework for cooperation between the Government of the Republic of Kenya and the Italian Space Agency, on training and education program activities.

#### Article 2 Areas of Cooperation

The Parties shall cooperate in the following training and education areas:

- a) Aerospace Engineering and Technology;
- b) Earth Observation and Navigation;
- c) Space Science;
- d) Space Policy and International Space Law;
- e) Telemedicine;
- f) Telecommunications;
- g) any other disciplines that may be mutually agreed on by the Parties.

### Article 3 Forms of Cooperation

Parties shall cooperate through the following:

Provision of annual scholarships and fellowships to fifteen(15) selected Kenyan nationals to the Italian Institutions of higher learning for undergraduate and post graduate degree programmes and short and long-term courses;

Supporting research and development programs for Kenyan nationals;

Exchange visits for Kenyan and Italian nationals and Institutions;

Joint applications for European/International Education and Training program funding;

enhancing capacity of the Kenyan Public Institutions of higher learning to undertake training in space science and technology;

supporting outreach programmes in space science and technology at the elementary and high school levels in Kenya

Any other form of cooperation that may be mutually agreed on by the Parties.

To provide the Kenyan nationals accorded scholarship in Italy, full tuition including research fees, travelling expenses, medical insurance cover and adequate allowance for subsistence.

### Article 4 Implementation of the Arrangement

4.1 Kenyan nationals accorded scholarship in Italy shall be provided by the Government of the Italian Republic, full tuition including research fees, travelling expenses, medical insurance cover and adequate allowance for subsistence;

4.2 The Arrangement will be implemented taking into consideration the Government of the Republic of Kenya priorities and requirements.

4.3 The Parties shall jointly identify key priority areas and come up with a Plan of Action and implementation plan within six (6) months from the date of the entry into force of this Arrangement.

4.4 The Parties shall conduct an evaluation of the implementation of the Plan of Action of this Arrangement after its entry into force, every two years for continued improvement.

### Article 5 Implementing Agencies

For the purposes of implementing this Arrangement on the Italian side, the implementing agency shall be:

- Italian Space Agency.

- 6.2 For the purposes of implementing this Arrangement on the part of the Government of the Republic of Kenya, the implementing agency shall be:
- Ministry of Defence or such other agency as shall be nominated

#### **Article 6 Intellectual Property Rights**

- 6.1 Any intellectual property right related to, or interest in, any innovation or made in the performance of this Arrangement solely by one Party or any Related Entities (e.g. contractors or subcontractors) shall be owned by such or its Related Entity. Allocation of Intellectual Property rights between such and its Related Entities shall be determined by such Party's laws, regulatory applicable contractual obligations.
- 6.2 If any research jointly conducted by the Parties, produces an invention innovation or work, which incorporates intellectual property rights, the Parties shall, in good faith, consult and agree as to the allocation of Intellectual Property rights to, or interest in, such joint innovation or work and the responsibilities costs, and actions to be taken to establish and maintain those intellectual property rights.

#### **Article 7 Amendment**

This present Implementing Arrangement may be amended by mutual written consent of the Parties. The amendments shall enter into force on the date of the receipt of the two notifications by which the Parties shall formally communicate to each other that their respective internal procedures have been complied with.

#### **Article 8 Dispute Resolution**

For any dispute between the Parties relating to the interpretation and/or implementation of this Implementing Arrangement the rules and provisions established by article 8 of the bilateral Agreement shall apply.

#### **Article 9 Entry into force, duration and termination**

- 9.1 This Implementing Arrangement shall be executed by both Parties and shall produce its effects on the date of the entry into force of the bilateral Agreement.
- 9.2 This Implementing Arrangement shall remain in force for the duration of the bilateral Agreement.

Either of the Parties may terminate this Implementing Arrangement at any time by giving a twelve (12) months prior written notice through the established diplomatic channels and the Implementing Arrangement shall lapse automatically at the expiry of the notice. The termination of this Implementing Arrangement shall not absolve the Parties of their obligations commenced before the termination of the Arrangement except as otherwise agreed in writing by the Parties.

e 10 Interpretation

For all matters not expressly treated or provided for by this Implementing Arrangement, the rules and provisions established in the bilateral Agreement shall apply.

In case of conflicts between the provisions of this Implementing Arrangement and the provisions of the bilateral Agreement, the latter shall prevail.

e 11 Signatures

WITNESS WHEREOF THE undersigned, duly authorized thereto by their government constitutive instrument respectively, have signed the present Implementing Arrangement.

Done at Trento, on this 24<sup>th</sup> day of Oct, 2016, in four originals, two in the English and two in the Italian language, all texts being equally authentic. In case of divergence on interpretation or application the English text shall prevail.

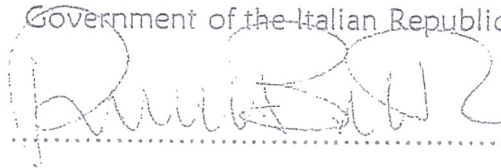
For and on behalf of the Government  
of the Republic of Kenya



Cabinet Secretary

Ministry of Defense

For and on behalf of the  
Government of the Italian Republic



President

Italian Space Agency

IMPLEMENTING ARRANGEMENT

To the Agreement between the Government of the Republic of Kenya and the  
Government of the Italian Republic for the San Marco Program  
At the Luigi Broglio Space Centre – Malindi, Kenya,

ON

TELEMEDICINE

**THIS IMPLEMENTING ARRANGEMENT** is made between the Government Republic of Kenya on the one part and the Italian Space Agency (ASI) on behalf Government of the Italian Republic, on the other part, herein after referred singularly as "Party" and collectively as "Parties" (which expression shall wh context so admits include its successors or assigns).

### Preamble

**WHEREAS** the Government of the Republic of Kenya and the Government of the Republic have signed the Agreement for the San Marco Program at the LUIGI BRC SPACE CENTRE – MALINDI, hereinafter also referred to as the "Agreement";

**TAKING NOTE THAT** Article III (7) of the Agreement provides for the conclusi Implementing Arrangements for the purposes of the implementation of the Agreem

**CONSIDERING THAT** the cooperation on telemedicine is recognized in Article II ( of the Agreement;

**RECOGNIZING** the desire of the Government of the Republic of Kenya to promot prioritise resource sensitive and context specific research and technologies to addre burden of several non-communicable diseases in Kenya;

### THE PARTIES AGREE AS FOLLOWS

#### Article 1 Purposes and Objectives

The objective of the present Implementing Arrangement is to:

- 1.1 provide a supplemental framework for the cooperation between the Partic promotion, support and sustained research to inform policy and emp programs for prevention and control of non-communicable diseases in Kenya;
- 1.2 promote accessibility of medical services to remote areas in the Republic of Ker
- 1.3 promote the use of telemedicine technology in health institutions in Kenya.

#### Article 2 Areas of Cooperation

2.1 The Parties shall cooperate in the following areas:

- a) transfer of knowledge in telemedicine technology and provision of trainin medical personnel in Kenya;



- b) information and communication technology infrastructure development in Kenya;
- c) disease prevention and treatment;
- d) research and development;
- e) provision of medical equipment and applications;
- f) any other field that may be mutually agreed on by the Parties.

### Article 3 Forms of Cooperation

The Parties shall cooperate through the following:

- a) undertaking of a need assessment analysis;
- b) supporting the establishment of access points to the ASI-Net infrastructure in the Republic of Kenya;
- c) establishing a satellite hub in Malindi to connect to access points in Kenya and in Rome;
- d) supporting training programs of relevant Kenyan personnel;
- e) establishment of telemedicine medical equipment and infrastructure in health institutions in Kenya;
- f) equipping selected medical institutions in Kenya with telecommunication and ECG (Electro Cardio Graph) tele-cardiology equipment;
- g) joint research and development programs;
- h) joint applications for European/International Telemedicine program funding;
- i) exchange of expert visits;
- j) assisting Kenyan national health care systems in sanitary planning and management;
- k) promotion of joint activities and programs on telemedicine at national and international level;
- l) supporting medical and telemedicine equipment operations
- m) any other form of cooperation that may be mutually agreed on by the Parties.

### Article 4 Implementation of the Arrangement

The Parties shall jointly identify key priority areas and come up with a Plan of action and implementation plan within six (6) months from the date of the entry into force of this Arrangement.

There shall be a Telemedicine Joint Committee to manage the telemedicine programme. The Committee shall comprise of such persons designated by the national implementing agencies in the number of two members per Party which shall report to Joint Steering Committee established under Article V(c) of the Agreement.

The Parties shall conduct an evaluation of the implementation of this Arrangement from its entry into force, every two years for continued improvement.

## Article 5 Implementing Agencies

5.1 For the purposes of implementing this Arrangement on the part of the Italian Government, the implementing agency shall be:

- Italian Space Agency.

5.2 For the purposes of implementing this Arrangement on the part of the Government of the Republic of Kenya, the implementing agency shall be:

- Ministry of Defence or such other agency as shall be nominated.

## Article 6 Intellectual Property Rights

6.1 Any intellectual property right related to, or interest in, any innovation or work made in the performance of this Arrangement solely by one Party or any of its Related Entities (e.g. contractors or subcontractors) shall be owned by such Party or its Related Entity. Allocation of Intellectual Property rights between such Party and its Related Entities shall be determined by such Party's laws, regulations and applicable contractual obligations.

6.2 If any research jointly conducted by the Parties, produces an invention, innovation or work, which incorporates intellectual property rights, the Parties shall, in good faith, consult and agree as to the allocation of Intellectual Property rights and their interest in, such joint innovation or work and the responsibilities, costs, and actions taken to establish and maintain those intellectual property rights.

## Article 7 Amendments

The present Implementing Arrangement may be amended by mutual written consent of the Parties. The amendments shall enter into force on the date of the receipt of the two notifications by which the Parties shall formally communicate to each other that their respective internal procedures have been complied with.

## Article 8 Dispute Resolution

For any dispute between the Parties relating to the interpretation and/or implementation of this Implementing Arrangement the rules and provisions established by Article X of the bilateral Agreement shall apply.

## Article 9 Entry into force, duration and termination

9.1 This Implementing Arrangement shall be executed by both Parties and produce its effects on the date of the entry into force of the bilateral Agreement.

This Implementing Arrangement shall remain in force for the duration of the bilateral Agreement.

Either of the Parties may terminate this Implementing Arrangement at any time by giving a twelve (12) months prior written notice through the established diplomatic channels and the Implementing Arrangement shall lapse automatically at the expiry of notice. The termination of this Arrangement shall not absolve the Parties of their obligations commenced before the termination of the Arrangement, except as otherwise provided in writing by the Parties.

#### Article 10 Interpretation

For all matters not expressly treated or provided for by this Implementing Arrangement, the rules and provisions established in the bilateral Agreement shall apply.


In case of conflicts between the provisions of this Implementing Arrangement and the provisions of the bilateral Agreement, the latter shall prevail.

#### Article 11 Signatures

WITNESS WHEREOF THE undersigned, duly authorized thereto by their respective Government and constitutive instrument respectively, have signed the present Implementing Arrangement.

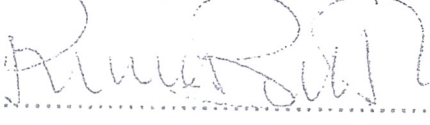
Done at Trento on this 24<sup>th</sup> day of Oct 2016, in four originals, two in the English and two in the Italian language, all texts being equally authentic. In case of divergence on interpretation or application the English text shall prevail.

For and on behalf of the Government  
of the Republic of Kenya

  
Cabinet Secretary

Ministry of Defence

For and on behalf of the  
Government of the Italian Republic

  
President

Italian Space Agency

IMPLEMENTING ARRANGEMENT

To the Agreement between the Government of the Republic of Kenya and the  
Government of the Italian Republic for the San Marco Program  
At the Luigi Broglio Space Centre – Malindi, Kenya,

ON

ESTABLISHMENT OF A REGIONAL CENTRE FOR EARTH OBSERVATION

**THIS IMPLEMENTING ARRANGEMENT** is made between the Government Republic of Kenya on the one part and the Italian Space Agency (ASI) on behalf Government of the Italian Republic, on the other part, herein after referred singularly as "Party" and collectively as "Parties" (which expression shall wh context so admits include its successors or assigns).

#### **Preamble**

**WHEREAS** the Government of the Republic of Kenya and the Government of the Republic have signed the Agreement for the San Marco Program at the LUIGI BRC SPACE CENTRE – MALINDI (BSC), hereinafter also referred to as the "Agreement";

**TAKING NOTE THAT** Article III (7) of the Agreement provides for the conclus Implementing Arrangements for the purposes of the implementation of the Agree

**CONSIDERING THAT** the cooperation on the establishment of a Regional Cen Earth Observation is recognized in Article III paragraphs (2) and (3) of the Agree

**CONSIDERING** the importance of Earth Observations applications in various eco sectors;

#### **THE PARTIES AGREE AS FOLLOWS**

##### **Article 1 Purposes and Objectives**

The purpose of this Implementing Arrangement is to provide a framework cooperation between the Government of the Republic of Kenya and the Italian Agency, relating to the assistance for:

- 1.1 Establishment of a Regional Center for Earth Observation in Kenya;
- 1.2 provision of requisite infrastructure for acquisition, processing, access, dissemin and archiving of Earth Observation data, products and services;
- 1.3 promotion of access to and use of Earth Observation data, products and servi end users in Kenya , Eastern and the Central East Africa region;
- 1.4 promote research and applications development in the Earth Observation field.

##### **Article 2 Areas of Cooperation**

2.1 The Parties shall cooperate in the following areas:

- a) to establish and develop a Regional Center for Earth Observation;

- b) to provide the requisite equipment and infrastructure for acquisition, processing, access, dissemination and archiving of Earth Observation data, products and services;
- c) formulation of specific policies for Earth Observation data, products and services access and use;
- d) human and infrastructure resources development;
- e) knowledge and technology transfer in data acquisition, processing, dissemination and archiving;
- f) research and development;
- g) any other area that may be mutually agreed on by the Parties.

### 3 Forms of Cooperation

The Parties shall cooperate through the following:

- a) undertaking of a feasibility and user need assessment analysis;
- b) establishment of key infrastructure for acquisition, processing, access, dissemination and archiving of Earth Observation data, products and services in Kenya;
- c) providing, maintaining and operating the facilities of the Regional Centre for Earth Observation in Malindi - BSC for the acquisition, first level processing, transfer and archiving of Earth Observation data, products and services;
- d) development of the Regional Centre for Earth Observation for acquisition, high level processing, access, dissemination and archiving of Earth Observation data, products and services, and for its maintenance and operation in Nairobi or any other suitable location;
- e) formulation of specific policies for Earth Observation data, products and services access and use;
- f) assisting the Kenyan Government in user support activities;
- g) planning and provision of training programs for Kenyan personnel;
- h) joint research and development programs;
- i) joint applications for European/International Earth Observation program funding;
- j) promotion of joint activities and initiatives at national and international level;
- k) exchange of expert visits;
- l) any other form of cooperation that may be mutually agreed upon by the Parties.

### 4 Implementation of the Arrangement

The Parties shall jointly identify key priority areas and come up with a Plan of Action implementation plan within six (6) months from the date of the entry into force of the arrangement.

4.2 There shall be a Joint Management Committee to oversee the establishment and operations of the Regional Center for Earth Observation. The Committee shall consist of such persons designated by the national implementing agencies in the number of members per Party which shall report to the Joint Steering Committee provided in Article V (c) of the Agreement.

4.3 The Parties shall conduct an evaluation of the implementation of this Arrangement after its entry into force, every two years for continued improvement.

#### **Article 5 Implementing Agencies**

5.1 For the purposes of implementing this Arrangement on the Italian side, the implementing agency shall be:

- Italian Space Agency

5.2 For the purposes of implementing this Arrangement, on the part of the Government of the Republic of Kenya, the implementing agency shall be:

- Ministry of Defence or such other agency as shall be nominated

#### **Article 6 Intellectual Property Rights**

6.1 Any intellectual property right related to, or interest in, any innovation or work in the performance of this Arrangement solely by one Party or any of its Related Entities (e.g. contractors or subcontractors) shall be owned by such Party or its Related Entities. The allocation of Intellectual Property rights between such Party and its Related Entities shall be determined by such Party's laws, regulations and applicable contractual obligations.

6.2 If any research jointly conducted by the Parties, produces an invention, innovation or work, which incorporates intellectual property rights, the Parties shall, in good faith, consult and agree as to the allocation of Intellectual Property rights and their interest in, such joint innovation or work and the responsibilities, costs, and actions to be taken to establish and maintain those intellectual property rights.

#### **Article 7 Amendment**

The present Implementing Arrangement may be amended by mutual written agreement of the Parties. The amendments shall enter into force on the date of the receipt of two notifications by which the Parties shall formally communicate to each other that their respective internal procedures have been complied with.

Article 8 Dispute Resolution

Any dispute between the Parties relating to the interpretation and/or implementation of this Implementing Arrangement shall be governed by the rules and provisions established by article XIV of the bilateral Agreement shall apply.

Article 9 Entry into force, duration and termination

This Implementing Arrangement shall be executed by both Parties and produce its effects from the date of the entry into force of the bilateral Agreement.

This Implementing Arrangement shall remain in force for the duration of the bilateral Agreement.

Either of the Parties may terminate this Implementing Arrangement at any time by giving a twelve (12) months prior written notice through the established diplomatic channels and the Implementing Arrangement shall lapse automatically at the expiry of the notice. The termination of this Implementing Arrangement shall not absolve the Parties of their obligations commenced before the termination of the Arrangement, except as otherwise agreed in writing by the Parties.

Article 10 Interpretation

For all matters not expressly treated or provided for by this Implementing Arrangement, the rules and provisions established in the bilateral Agreement shall apply.

In case of conflicts between the provisions of this Implementing Arrangement and the provisions of the bilateral Agreement, the latter shall prevail.

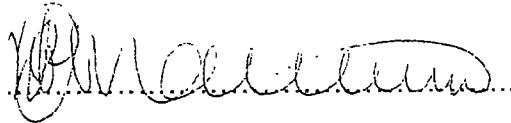
Article 11 Signatures

IN WITNESS WHEREOF THE undersigned, duly authorized thereto by their respective governments and constitutive instrument respectively, have signed the present Implementing Arrangement.

Done at Trento, on this 24<sup>th</sup> day of Oct, 2016, in four originals, two in the English language and two in the Italian language, all texts being equally authentic. In case of divergence on interpretation or application the English text shall prevail.



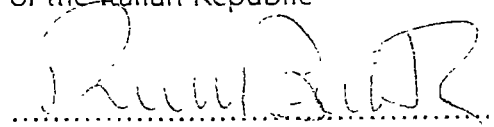
For and on behalf of the Government  
of the Republic of Kenya



Cabinet Secretary

Ministry of Defence

For and on behalf of the Governr  
of the Italian Republic



President

Italian Space Agency

REPUBLIC OF KENYA



MINISTRY OF DEFENCE

MEMORANDUM TO THE NATIONAL ASSEMBLY

ON

THE AGREEMENT BETWEEN THE GOVERNMENT OF THE  
REPUBLIC OF KENYA AND THE GOVERNMENT OF THE ITALIAN  
REPUBLIC ON THE LUIGI BROGLIO - MALINDI SPACE CENTRE  
KENYA

1  
CONFIDENTIAL

## OBJECTIVES

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 Italian Republic on the Luigi Broglio - Malindi Space Centre (hereinafter referred to as the Agreement) and to seek approval for its ratification.

## BACKGROUND

2.1 The Luigi Broglio - Malindi Space Centre, formerly referred to as the San Marco Satellite Launching and Tracking Station, (hereinafter referred to as the Facility) located at Ngomeni Village, Magarini District in Kilifi County, was established in 1962.

2.2 An initial Agreement was signed between the Royal Technical College of Nairobi (now the University of Nairobi) and the University of Rome on behalf of their respective Governments. The said Agreement was ratified by the two Governments in 1964 through exchange of notes and has subsequently been renewed as follows:

- a. 1<sup>st</sup> April 1987 - The Agreement was reviewed informing the establishment of the National Space Secretariat under the Ministry of Defence.
- b. 14<sup>th</sup> March 1995 - The Agreement was extended for a further period of fifteen (15) years that expired on the 14<sup>th</sup> March 2010. The validity was extended to 31<sup>st</sup> December 2011 to allow time for negotiations between the parties.
- c. 5<sup>th</sup> June 2012 - The agreement's validity was further extended to allow the Parties to conclude a new comprehensive Agreement for co-operation on space matters together with the Implementing Arrangements.

2.3 The Agreement together with the Implementing Arrangements was signed on behalf of the Government of the Republic of Kenya and Government of Italian Republic on 24<sup>th</sup> October 2016 following Cabinet approval.

2.4 Space applications are invariably dual use. Space applications can be exploited for security purposes and for non-security use. His Excellency the President and Commander-in-Chief of the Defence Forces has established the Kenya Space Agency as a state corporation under the Ministry of Defence to coordinate the Government's exploitation of space.

## OBJECTS OF THE AGREEMENT

3.1 The agreement establishes a framework for the Parties to cooperate in the peaceful use of the Facility. The Facility consists of:

a. A mobile segment at sea, for tracking and launching rockets and suborbital platforms and for space research.

b. A land based segment for tracking rockets and satellites and suborbital platforms, for data acquisition, processing, archiving and dissemination and for space research.

3.2 The Facility is used for aerospace science, space science technology and research applications. The Facility also tracks and monitors space vehicles, navigation applications and any other activity mutually agreed upon by the Parties. The scope of activities being undertaken in the Facility include but are not limited to:

a. Space science and technology.

b. Earth observation, applications and services.

c. Support for surveillance services using the mobile segment.

- d. Space communications.
- e. Telemedicine.
- f. Satellite data acquisition.
- g. Tracking and telemetry services.
- h. Launching and tracking of satellites and suborbital platforms.
- i. Atmospheric research.
- j. Navigation and positioning application and services.
- k. Education and training.
- l. Remote sensing.

#### CONTENTS OF THE AGREEMENT

- 1.1 The Agreement is divided into eighteen articles as follows:
  - a. Article I - Provides for the interpretation of terms.
  - b. Article II & III - Describe the Facility and define the areas of co-operation respectively.
  - c. Article IV, V, VI & VII - Establish the organs responsible for oversight and management of the Facility as follows:
    - i. Joint Council of Ministers - Drawn from the responsible Ministries of the two State Parties. The Council is responsible for strategic guidance and policy formulation. The Council is required to meet once every

two years and may take decisions through exchange of notes.

ii. Joint Steering Committee - Comprises of Principal Secretaries or equivalent from the Ministries responsible as well as Chief Executive Officers of National Space Agencies. They are responsible for oversight on implementation and progress monitoring of programmes as well as dispute resolutions. They will also consider and approve applications from third parties to access the Facility and/or its services.

iii. Joint Management Board - Comprises of technical executives from the Ministries and National Space Agencies of the respective State Parties. The Joint Management Board oversees the management of the Facility as well as receiving and considering strategic plans, work plans and budgets and recommending the same for approval to the Joint Steering Committee.

iv. Executive - Led by a Chief Executive Officer appointed by the Italian Government and a Deputy appointed from the Government of Kenya responsible for the day to day management of the activities of the facility.

c. Article VIII & IX - Enumerates the prerogatives and obligations of both state parties. The Italian Government is amongst other duties obligated to report on all its undertakings in the Facility, promoting development projects for the community in Ngomeni Kilifi and paying compensation to the Government of Kenya for the land upon which the Facility rests. The Government of Kenya on the other hand is responsible for providing the requisite approvals and liaisons to facilitate operation of the Facility.

- d. Article X - Provides for admission of third parties in accessing the Facility upon approval by the joint parties to the Agreement.
- e. Article XI - Provides for liability and compensation for damages or loss that may be occasioned as a result of the activities of the Facility by the Italian Government.
- f. Article XII - Provides for verification and inspection of the activities of the Facility by the Government of Kenya through full disclosure.
- g. Article XIII - Provides for confidentiality of any information emanating from the Facility.
- h. Article XIV - Provides for settlement of disputes through amicable negotiations failing to which the parties may resort to international arbitration.
- i. Article XV - Provides for the vesting of assets to the respective parties.
- j. Article XVI - Provides for the governing Law as the Laws of the Republic of Kenya.
- k. Article XVII & XVIII - Provides for Amendments, entry into force and termination of the Agreement.

### **IMPLEMENTING ARRANGEMENTS**

1. Article III (7) of the Agreement provides for the conclusion of implementing arrangements for purposes of better carrying out and efficient implementation of the aforesaid objectives. The implementing arrangements that form part of this agreement are as follows:

- a. Education and Training - Outlines the framework for training and education programmes in space science and technology. The Italian Government will provide fifteen (15) scholarships annually to selected Kenyans to be trained in Italian institutions.
- b. Telemedicine - Provides the framework for co-operation for promotion, support and sustained research to inform policy development for the use of Telemedicine.
- c. Access to Earth Observation and Space Research Data - Establishes the Framework for co-operation in accessing data from the Italian Space Agency's Constellation of small Satellites for the Mediterranean basin Observation comprising a constellation of 4 medium-size satellites, each equipped with a microwave high-resolution synthetic aperture radar. The earth observation data will be key undertaking research and national development programmes.
- d. Establishment of a Regional Centre for Earth Observation - Provides the framework for the development of infrastructure of the Centre for acquiring, processing and archiving system that will also disseminate the data as well as promote research and applications development for earth observation.
- e. Support to the Kenya National Space Agency - Provides the framework for co-operation in operationalization of the Kenya National Space Agency through capacity building as well as infrastructure and human resources development.

### FINANCIAL IMPLICATION

1. Kenya's contribution to the Agreement is the provision of and upon which the Facility is established. The mobile segment is



located at sea in order to ensure the safety of the local population during launch activities.


5.2 Article VIII 5 (d) of the Agreement provides for the payment of compensation of USD 250,000 (United States of America Dollars Two Hundred and Fifty Thousand Only) per year by the Government of Italy to the Government of Kenya for the use of the and availed for the facility. The compensation is to be reviewed every five years with an increment of USD 50,000 (United States of America Dollars Fifty Thousand Only).

### RECOMMENDATIONS

The National Assembly is invited to:

1. Take note of this Memorandum outlining the contents of the present Agreement and the constituent five Implementing Arrangements.
2. Approve ratification of the Agreement.

this ..... 22<sup>nd</sup> ..... day of ..... February ..... 2019

  
RAYCHELLE OMAMO, SC, EGH  
DEPUTY SECRETARY FOR DEFENCE

### REMARKS

signed Agreement and the five Implementing Arrangements.

