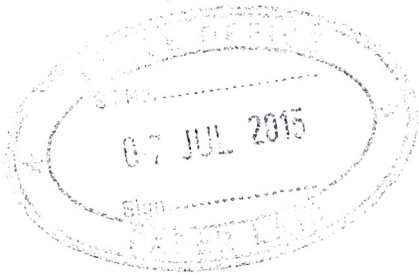


Approved for tabling.

REPUBLIC OF KENYA



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By the champion for
Defence and Foreign
Relations, N. Mungu
Gukenya
Tuesday 7/7/15
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ELEVENTH PARLIAMENT - THIRD SESSION

DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS

REPORT ON: -

1. THE EAST AFRICAN COMMUNITY PROTOCOL ON COOPERATION IN DEFENCE AFFAIRS;
2. THE MUTUAL DEFENCE PACT BETWEEN THE REPUBLIC OF KENYA, UGANDA AND RWANDA; AND
3. THE AGREEMENT ON THE ESTABLISHMENT OF THE EASTERN AFRICA STANDBY FORCE

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI-KENYA

JUNE 2015

1 Report on the EAC Protocol on cooperation in Defence Affairs, the Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda and the Agreement on the establishment of the Eastern Africa Standby Force.

Contents

LIST OF ABBREVIATIONS.....	4
1.0 PREFACE.....	5
1.1 Establishment and Mandate of the Committee	5
1.2 Committee Membership.....	5
1.3 Subject Matter before the Committee	6
1.4 Committee Proceedings.....	7
1.5 Adoption	7
1.6 Acknowledgement.....	8
2.0 THE EAST AFRICAN COMMUNITY PROTOCOL ON COOPERATION IN DEFENCE AFFAIRS (EAC PROTOCOL).....	9
2.1 Background	9
2.2 ANALYSIS OF THE EAC PROTOCOL ON CO-OPERATION IN DEFENCE AFFAIRS	10
2.2.1 Outline of the Protocol on Cooperation in Defence Affairs.....	10
Institutional Coordination organs under the protocol	11
2.2.2 Constitutional Implications of the Protocol	13
2.2.3 Implications on matters relating to counties.....	13
2.2.4 Policy and Legislative Implications.....	13
2.2.5 National Security Interests affected	13
2.2.6 Requirements for the implementation of the Protocol	13
2.3 MEETING WITH STAKEHOLDERS.....	13
2.3.1 Submissions from the Ministry of Defence	13
2.4 Committee's Observations	15
2.5 Committee Recommendations	16
3.0 THE MUTUAL DEFENCE PACT (MDP).....	16
3.1 Background	16
3.2 ANALYSIS OF THE MUTUAL DEFENCE PACT (MDP)	17
3.2.1 Outline of the Pact.....	17
3.2.2 Constitutional Implications of the Pact.....	19
3.2.3 Implications on matters relating to counties.....	19
3.2.4 Policy and Legislative Implications.....	19
3.2.5 National Security Interests affected.....	19

3.2.6	Requirements for the implementation of the Pact.....	20
3.3	MEETING WITH STAKEHOLDERS.....	20
3.3.1	Submission from the Ministry	20
3.4	Committee's Observations	22
3.5	Committee Recommendations	22
4.0	THE AGREEMENT ON THE ESTABLISHMENT OF THE EASTERN AFRICA STANDBY FORCE	22
4.1	Background	22
4.2	ANALYSIS OF THE AGREEMENT THE ESTABLISHMENT OF THE EASTERN AFRICA STANDBY FORCE.....	23
4.2.1	Outline of the Agreement	23
	Institutional Framework of the Eastern Africa Standby Force (EASF)	24
4.2.2	Constitutional Implications of the Agreement.....	28
4.2.3	Implications on matters relating to counties.....	28
4.2.4	Policy and Legislative Implications.....	28
4.2.5	National Security Interests affected.....	28
4.2.6	Requirements for the implementation of the Agreement	28
4.2.7	Obligations imposed on Kenya by the Agreement	29
4.3	MEETINGS WITH STAKEHOLDERS.....	29
4.3.1	Submissions from the Ministry	29
4.4	Committee's Observations	29
4.5	Committee Recommendations	30

LIST OF ABBREVIATIONS

APSA	-	African Peace and Security Architecture
AU	-	African Union
EAC	-	East African Community
EACP	-	East African Community Protocol on Cooperation in Defence Affairs
EASF	-	Eastern Africa Standby Force
EASF	-	Eastern Africa Standby Force
ECCAS	-	Economic Community of Central African States
ECOWAS	-	Economic Community of West African States
IGAD	-	Inter-Governmental Agency on Development
KDF	-	Kenya Defence Forces
MDP	-	Mutual Defence Pact
MOD	-	Ministry of Defence
MOU	-	Memorandum of Understanding
SADC	-	Southern African Development Community
SOFA	-	Status of Force Agreement
TMRA	-	Treaty Making and Ratification Act
UN	-	United Nations

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

The Departmental Committee on Defence and Foreign Relations is constituted under Standing Order 216(1) and mandated to inter-alia, *“investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House”*. Further, pursuant to the Second Schedule of the Standing Orders, the Committee is mandated to deal with matters relating to *“defence, intelligence, foreign relations, diplomatic and consular services, international boundaries, international relations, agreements, treaties and conventions”*.

1.2 Committee Membership

Mr. Speaker, Sir

The Departmental Committee on Defence and Foreign Relations was constituted by the House on Thursday 2nd May, 2013 and comprises of the following members:

1. The Hon. Ndung'u Gethengi, M.P. – **Chairperson**
2. The Hon. Elias Bare Shill, M.P. – **Vice Chairperson**
3. The Hon. Jakoyo Midiwo, EGH, M.P.
4. The Hon. Katoo Ole Metito, M.P.
5. The Hon. Christantus Wamalwa, M.P.
6. The Hon. Col. (Rtd) Ali Dido Rasso, MBS, M.P.
7. The Hon. David Pkosing, M.P.
8. The Hon. Adan Keynan, M.P.
9. The Hon. Wafula Wamunyinyi, M.P.
10. The Hon. Nyiva Mwendwa, M.P.
11. The Hon. Beatrice Nyaga, M.P.
12. The Hon. Gonzi Rai, M.P.
13. The Hon. Joel Onyancha, M.P.

14. The Hon. Joseph Kiuna, M.P.
15. The Hon. Yusuf Hassan, M.P.
16. The Hon. Abass Mohammed, M.P.
17. The Hon. Richard Onyonka, M.P.
18. The Hon. Lekuton Joseph, M.P.
19. The Hon. John Lodepe Nakara, M.P.
20. The Hon. Annah Nyokabi Gathecha, M.P.
21. The Hon. David Wafula, M.P.
22. The Hon. Elisha Busienei, M.P.
23. The Hon. Ibrahim Sane, M.P.
24. The Hon. Dennitah Ghati, M.P.
25. The Hon. Elijah Memusi, M.P.
26. The Hon. Roselinda Soipan, M.P.
27. The Hon. Joyce Wanjaloh Lay, M.P.
28. The Hon. Joseph Gitari, M.P.

1.3 Subject Matter before the Committee

Mr. Speaker Sir,

On 25th March, 2015 the Leader of the Majority Party in the National Assembly tabled on the floor of the House a Cabinet Memoranda on The East African Community Protocol on Cooperation in Defence Affairs, The Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda, and The Agreement on the Establishment of the Eastern Africa Standby Force pursuant to section 8 of the Treaty Making and Ratification Act, 2012.

The three documents mentioned above were subsequently committed to the Departmental Committee on Defence and Foreign Relations for consideration and report to the House. Once ratified, the Protocol, the Pact and the Agreement shall become part of our Kenyan laws as provided for in Article 2(6) of the Constitution which provides that *“any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution”*.

6 | Report on the EAC Protocol on cooperation in Defence Affairs, the Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda and the Agreement on the establishment of the Eastern Africa Standby Force.

It is good for this House to note that Rwanda and Uganda have already signed for the Mutual Defence Pact. On the other hand Rwanda, Burundi and Uganda have signed the East African Community Protocol on Cooperation in Defence Affairs while Ethiopia, Rwanda, Burundi, Djibouti and Uganda have already signed The Agreement on the Establishment of the Eastern Africa Standby Force.

1.4 Committee Proceedings

Mr. Speaker, Sir,

During the consideration of the East African Community Protocol on Cooperation in Defence Affairs, the Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda and, the Agreement on the Establishment of the Eastern Africa Standby Force the Committee held a total of six (6) sittings. Pursuant to section 8(3) of the Treaty Making and Ratification Act, 2012 on Public Participation, the Committee placed advertisements in two local dailies, on the 21st and 22nd of April 2015, (see Annex IV) requesting for submissions of memoranda on the subject matter. There were no any submissions from the public on any of the three (3) documents. However, the Committee held sittings with representatives from the Ministry of Defence as a key stakeholder in these matters, as part of Public Participation.

1.5 Adoption

The Committee therefore during its retreat held from June 19 to 20, 2015 at the Sarova Whitesands Hotel in Mombasa adopted the report on the East African Community Protocol on cooperation in Defence Affairs, the Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda and the Agreement on the establishment of the Eastern Africa Standby Force. Subsequently, the Committee recommends that pursuant to Article 241 (3) (b) of the Constitution and Articles

7 | Report on the EAC Protocol on cooperation in Defence Affairs, the Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda and the Agreement on the establishment of the Eastern Africa Standby Force.

38 – 40 of the KDF Act, 2012 the National Assembly approves the ratification of East African Community Protocol on cooperation in Defence Affairs, the Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda and the Agreement on the establishment of the Eastern Africa Standby Force.

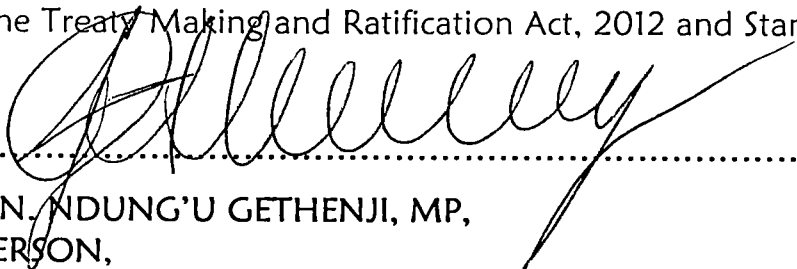
1.6 Acknowledgement

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitation. Further, the Committee is indebted to the staff of the National Assembly and the Ministry of Defence for the services they rendered. It is their commitment and dedication to duty that made the work of the Committee and production of this report possible. I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

Mr. Speaker, Sir,

On behalf of the Committee, it is therefore my pleasant duty and privilege, to table this Report on The East African Community Protocol on Cooperation in Defence Affairs; The Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda and the Agreement on the Establishment of the Eastern Africa Standby Force for consideration and approval by the House pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

Signed


THE HON. NDUNG'U GETHENJI, MP,
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS

Date: 07/07/2015

2.0 THE EAST AFRICAN COMMUNITY PROTOCOL ON COOPERATION IN DEFENCE AFFAIRS (EAC PROTOCOL).

2.1 Background

The East African Community (EAC) is a regional inter-governmental organization established under Article 2 of the Treaty for the Establishment of the East African Community that came into force in July 2000. The EAC is made up of five Partner States namely; the United Republic of Tanzania, the Republic of Uganda, the Republic of Rwanda, the Republic of Kenya and the Republic of Burundi. The East African Community Protocol on Cooperation in Defence Affairs (hereinafter referred to as the “EAC Protocol”) was drafted in line with Article 125 of the Treaty for the Establishment of the EAC (hereinafter referred to as “the Treaty”) which commits the EAC Partner States to promote close cooperation in defence affairs and provides for the establishment of a framework for Defence cooperation. In accordance with the Treaty provisions, the EAC Heads of State signed a Memorandum of Understanding (MOU) on cooperation in defence on 30th November, 2001 as a framework to guide the collaboration. At the 10th Extraordinary Summit held on 24th April, 2012, the Heads of State of Partner States signed the Protocol to solidify defence cooperation within the EAC. The Protocol shall enter into force upon ratification and deposit of instruments with the Secretary General of the EAC by all Partner States.

2.2 ANALYSIS OF THE EAC PROTOCOL ON CO-OPERATION IN DEFENCE AFFAIRS

2.2.1 Outline of the Protocol on Cooperation in Defence Affairs

The proposed Protocol contains twenty eight (28) clauses together with an annex as follows:

Preamble: sets out the reasons and aspirations for which the Protocol is made, particularly the need to establish a framework for defence cooperation.

Article 1: Is an interpretation clause defining key terms in the Protocol.

Article 2: Outlines the scope of cooperation. The areas of cooperation are:

- (a) military training
- (b) joint operation
- (c) technical cooperation; and
- (d) Visits and exchange of information among other areas.

Article 3: Sets out the objectives of the Protocol which include promotion of policies aimed at ensuring cooperation on defence affairs, promotion of peace and security; anticipation and prevention of conflicts and promotion of peace building activities among others.

Articles 4 and 5: Allude to the principles governing the Partner States in the achievements of the objectives of the Protocol.

Articles 6, 7, 8 and 9: Elaborate on trainings, technical and joint operations and visits that Partner States may undertake.

Articles 10-15: Describe the institutional coordination mechanisms and the powers of the organs established under the Protocol. These are: -

Institutional Coordination organs under the protocol

(i) The Sectoral Council on Cooperation in Defense Affairs

The council shall consist of the Ministers of the Partner States responsible for defense affairs. The functions of the Council shall be to make decisions and develop policies as directed by the Summit, implement the policies of the Summit, review and consider reports of the Consultative Committee and coordinate their activities.

(ii) The Consultative Committee

The Committee shall consist of the Principal (Permanent) Secretaries of the Partner States responsible for defense affairs and Chiefs of Defense.

The functions of the Committee shall be to-

- (a) Monitor and constantly review the implementation of the decisions of the Council;
- (b) Review and consider reports of the Sectoral Committee and coordinate their activities.

(iii) The Sectoral Committee

It consists of senior officers of the Armed Forces and such other officers as each Partner State may determine. The functions of Sectoral Committee shall be to-

- (a) Prepare comprehensive implementation of programmes and set out priorities with respect to cooperation in defence affairs;
- (b) Submit from time to time reports and recommendations to the consultative committee on the implementation of the Protocol.

(iv) Defence Experts Working Groups

The Defence Experts Working groups may be formed from time to time by the Sectoral Council to perform such duties as may be assigned to them by the Council. The need for the Defence Experts Working Groups may arise in the area of training or logistics or any other area, whereby Partner States would contribute personnel to the group.

(v) Coordinating Offices

The Coordinating Offices shall consist of the Defence Liaison Office and the EAC Desk in each Armed Forces Headquarters.

(vi) Liaison Office

The Liaison Office shall be manned by senior officers not below the rank of Colonel and form the secretariat of the East Africa Community based in Arusha and shall serve for a renewable term of three years.

Article 16: provides for cooperation in the movement of troops;

Article 17: provides that Partner States shall undertake to negotiate and conclude a Mutual Defence Pact within one year upon entry into force of this Protocol;

Article 18-22: Covers issues pertaining to the implementation of the Protocol, including supporting financial arrangements, dispute resolutions and amendments.

Article 23-28: provides for issues regarding annexes, ratification and relationships with other agreements that Partner States may already have.

Annex A: Sets out the provisions of the Status of Force Agreement (SOFA) between the Partner States of the EAC. For example where two States have common expectations in the line of assignments and agree on common sanctions on troops serving in those assignments.

2.2.2 Constitutional Implications of the Protocol

The Protocol does not propose any amendments to the Constitution. It preserves the values, principles and provisions of the respective Member States' Constitutions and National laws.

2.2.3 Implications on matters relating to counties

There is no implication regarding counties.

2.2.4 Policy and Legislative Implications

The Protocol falls squarely within the Kenya EAC integration policy as expressed in the EAC Treaty and the MOU which seeks to fast track such integration. In addition, the Protocol conforms to the Kenya Defence Forces Act.

2.2.5 National Security Interests affected

The Protocol furthers EAC integration and augments the security of the citizens of Kenya.

2.2.6 Requirements for the implementation of the Protocol

The Protocol has replicated mechanisms and organs already existing under the MOU on cooperation in defense affairs. As such, no expenditure on public funds will be incurred in implementing the Protocol given that the existing structures established by the preceding MOU will be merely formalized and will function in the same manner.

2.3 MEETING WITH STAKEHOLDERS

2.3.1 Submissions from the Ministry of Defence

The Protocol has been subjected to Public Participation in accordance with section 8(3) of the Treaty Making and Ratification Act and the following were the submissions from the Ministry of Defence (MOD). That:-

- i. Security challenges to Kenya are mainly transnational and internal security challenges are exacerbated by trans-boundary factors such as proliferation

of arms. The pursuit of Kenya's National Security must therefore be done in co-operation with neighboring countries in the region. This has necessitated the conclusion of various defence and security instruments with these countries.

- ii. The EAC Protocol on Co-operation in Defence was made pursuant to Article 125 of the Treaty for the Establishment of East African Community (the Treaty) that permits EAC States to establish a framework for co-operation in defence. It was signed by Heads of States on 28th April 2012 and all EAC States are signatories. The protocol will replace the existing MOU on Co-operation in Defence that was signed on 30th November, 2001.
- iii. The EAC protocol provides a framework for co-operation in: Military training, Joint Operations, Technical Co-operation, Visits and Exchange of information. It further creates institutional co-ordination mechanisms for defence co-operation and contains a Status of Forces Agreement (SOFA) as per section 37(2) of KDF Act, 2012.
- iv. Major issues dealt with in SOFA are criminal jurisdiction of EAC forces in a Partner State; Settlement of claims against Visiting Forces as per section 37(1)(d) of KDF, Act 2012; and Exemption of Taxation on Visiting Forces salary.
- v. Article 17 on the Status of the EAC Protocol on Co-operation in Defence requires conclusion of a Mutual Defence Pact (MDP) within one year of entry into force of the Protocol whereas paragraph 8 of the MoU on the Tripartite Initiative for Fast-tracking the East African Integration requires: Establishment of a Defence Pact with the Summit as the supreme organ, and also Establishment of a collective defence territory.
- vi. The MDP signed by Kenya, Uganda and Rwanda on 20th February, 2014 was open to signature by other EAC countries to provide a framework for

collective action against threats to the national security of Partner State(s). The Collective Action is to be determined by the Summit convened by the chairperson and may include use of armed forces and thereafter to be reported to the African Union and the UN Security Council.

- vii. The MDP further provides practical framework for pursuit of common Defence and joint operations and also consolidates EAC integration by solidifying co-operation on security and defence.

2.4 Committee's Observations

Having subjected the Protocol to Public Participation and deliberated on the same, the Committee observed that:-

- (i) The main security challenges facing Kenya are transnational and as such, Kenya's national security must be pursued in cooperation with neighbouring countries. It is therefore critical that the Protocol is ratified for purposes of fostering cooperation in defence affairs in the region.
- (ii) The Protocol does not violate nor contravene the Constitution of Kenya, 2010 and the KDF Act, 2012.
- (iii) It creates institutional coordination mechanism for the Defence Forces of the Partner States and fosters cooperation through military training, joint operations, technical cooperation, visits and exchange of information. The protocol also contains the aspect of the status of Force Agreement to allow seamless cooperation of forces in the Partner States.
- (iv) The protocol has structured architecture in the form of committees namely the Consultative committee, the Sectoral Council on Cooperation in Defence Affairs, the Sectoral Committee, Defence Experts Working Groups, Coordinating Offices and Liaison Office to ensure matters of defence affairs are addressed rapidly in the best interest of partner states.

- (v) The establishment of Standing Liaison Committee in Arusha staffed by Senior Officers of the partner states is a strong means of building confidence, mutual trust, information sharing and cooperation among the partner states.

2.5 Committee Recommendations

The Committee recommends that the National Assembly approves the ratification of the EAC Protocol on Cooperation in Defence Affairs.

3.0 THE MUTUAL DEFENCE PACT (MDP)

3.1 Background

Pursuant to the Memorandum of Understanding on Defence Cooperation signed between the Republics of Kenya, Uganda and Rwanda, the MDP is a Tripartite Initiative for fast tracking the East African Integration that was signed on 28th October, 2013. The Ministry of Defence negotiated the making of the Pact between the Republics of Kenya, Uganda and Rwanda pursuant to paragraph 8 of the MOU which provides that “*the parties shall establish a Defence Pact and a collective defence territory*” and that the “*the Summit of Heads of State shall be the supreme organ of the Common Defence Pact to be established by the end of January, 2014*”. In fulfillment of this objective, the Summit of Heads of State duly entered into the Pact and signed it on the 20th day of February, 2014.

3.2 ANALYSIS OF THE MUTUAL DEFENCE PACT (MDP)

3.2.1 Outline of the Pact

The proposed Pact contains twenty clauses as follows:

Preamble: Sets out the reasons and aspirations for which the Pact is made.

Article 1: Is an interpretation clause defining key terms in the Pact.

Article 2: Outlines the objectives and areas of cooperation of the Pact.

These objectives include:

- (a) Promotion of peace and security;
- (b) Anticipation and prevention of conflicts;
- (c) Promotion of policies aimed at ensuring cooperation on defence affairs;
and
- (d) Promotion of peace building activities among others.

The areas of cooperation include:

- (1) Conflict prevention;
- (2) Prevention of genocide;
- (3) Combating piracy;
- (4) Peace support operations;
- (5) Disaster risk reduction and crisis response;
- (6) Control of proliferation of illicit small arms;
- (7) Combat cross border crimes;
- (8) Combat cattle rustling; and
- (9) Collect and share intelligence, among other things.

Article 3: Stipulates the manner in which international disputes shall be settled by the Partner States.

Article 4: Enjoins Partner States to retain high levels of military preparedness to enhance individual and collective defence capability.

Article 5: Makes provision for the amicable settlement and resolution of inter-Partner States disputes regarding sovereignty, territorial integrity and security.

Article 6: Provides that threats to national security including armed attacks against a Partner State shall be considered threats to regional security. Such threats shall be met with collective action by all Partner States. The Summit shall take into account the provisions of the respective Constitutions and national laws. Further, it provides that such threats to national security shall be reported to the AU and the UN Security Council.

Article 7: Provides that the Partner States shall cooperate and coordinate in all defence matters subject to their Constitutions and national laws. The areas of cooperation shall include- training of military personnel, development of common defence strategies, coordination of intelligence, coordination research and production of military equipment including weapons and coordination of military operations.

Article 8: Allows Partner States to make subsequent legal instruments and establish policy organs for purposes of enhancing effective implementation of the Pact.

Article 9: Provides that the Partner States shall adequately finance the activities of the relevant organs, structures and operations.

Article 10: Places restrictions on the disclosure and use of classified information.

Article 11: Makes provisions for the settlement of disputes.

Article 12: Allows for the withdrawal from the Pact by a Partner State upon the expiry of a 12 month notice.

Article 13: Preserves existing agreements entered into by Partner States and asserts the rights and obligations of the Partner States under the UN Charter and the Constitutive Act of the AU.

Articles 14-17: Makes provision for signing, accession and review of the Pact.

Article 18: Provides that any Partner State may report an alleged breach of the Pact to the Summit which shall instruct the relevant organs to carry out an investigation, make a report and recommendations to the Summit.

Article 19: Makes provision for the establishment of organs, structures and policies necessary for the implementation of the Pact.

Article 20: Stipulates that the Pact shall come into force upon ratification by the Partner States.

3.2.2 Constitutional Implications of the Pact

The Pact does not propose any amendments to the Constitution. It preserves the values, principles and provisions of the respective Member States' Constitutions and national laws.

3.2.3 Implications on matters relating to counties

There is no implication regarding counties.

3.2.4 Policy and Legislative Implications

The Pact falls squarely within the Kenya EAC integration policy as expressed in the EAC Treaty and the MOU which seeks to fast track such integration. In addition, the Pact conforms to the Kenya Defence Forces Act.

3.2.5 National Security Interests affected

The Pact furthers EAC integration and augments the security of the citizens of Kenya.

3.2.6 Requirements for the implementation of the Pact

The Pact shall be implemented in accordance with an implementation framework devised by the Partner States.

3.3 MEETING WITH STAKEHOLDERS

3.3.1 Submission from the Ministry

The Cabinet Secretary of the Ministry of Defence made the following the submissions. That:

- i. Article 17 of EAC Protocol requires conclusion of a Mutual Defence Pact (MDP) within one year of entry into force of the Protocol. Paragraph 8 of the MoU on the Tripartite Initiative for Fast Tracking the East African Integration requires establishment of a Defence Pact with the Summit as the supreme organ and establishment of a collective defence territory.
- ii. The MDP was signed by Kenya, Uganda and Rwanda on February 20th, 2014. The Pact, which is still open to signature by other EAC countries, provides a framework for collective action to threats to national security against Partner State(s).
- iii. The use of Collective action is to be determined by the Summit convened by the Chairperson and may include use of armed forces. According to the Pact, threats to national security and collective action are to be reported to the African Union and the UN Security Council which provides a practical framework for pursuit of common defence and joint operations. This Consolidates EAC integration by solidifying co-operation on security and defence. It also provides a framework for tackling transnational threats such as terrorism, epidemics and protection of critical infrastructure and

investment e.g. Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) corridor project. It also facilitates sharing of intelligence, eliminates mutual suspicion and avoids costly arms race. It also provides a framework for peaceful settlement of disputes. Parliamentary oversight is retained by the Mutual Defence Pact (Amendment) Instrument No. 1 of 2014 which requires the Summit to take into account the provisions of respective Constitutions and National Laws of Partner States- Article 240 (8) of the Constitution of Kenya provides that Parliament must approve deployment of Forces in Kenya and KDF for regional peace support operations.

- iv. The Amendment Instrument subordinates the Pact to the Constitutions of Partner States.
- v. The purpose of the Pact is to safeguard the freedom and security of its members through political and military means. An armed attack against a member is considered an armed attack against all members and liable to collective security action. The MDP is modeled along the Southern African Development Community (SADC) Mutual Defence Pact which was developed pursuant to the SADC Protocol on Politics Defense and Security Co-operation. The SADC Protocol considers an armed attack against a Member State as a threat to regional peace and security and thus can be the subject of collective action if approved by the SADC Summit. (The difference being that under the MDP, collective action is not automatic but requires the decision of the Summit of the Heads of State).

3.4 Committee's Observations

The Committee made the following observations:-

- (i) The Pact would play a critical role in fostering security in the EAC region and is of great importance to Kenya as a country which is being faced by multiple security threats and challenges.
- (ii) The MDP does not contravene the Constitution and is in line with the KDF Act, 2012.
- (iii) The Pact will also build confidence in regional integration as Partner States train their troops together, share military resources, and exchange intelligence.

3.5 Committee Recommendations

The Committee recommends that National Assembly approves the ratification of the Mutual Defence Pact (MDP).

4.0 THE AGREEMENT ON THE ESTABLISHMENT OF THE EASTERN AFRICA STANDBY FORCE

4.1 Background

The Eastern Africa Standby Force (EASF) is a regional organization whose mandate is to enhance peace and security in the Eastern Africa region. It is one of the five regional multidimensional Forces of the African Standby Force (ASF) which form part of the African Peace and Security Architecture (APSA). The EASF was established as a regional mechanism to provide capability for rapid deployment of forces to carry preventive deployment, rapid intervention and peace support. It was also established following the decision of the Summit of the African Union

held in 2004 in Ethiopia. A Memorandum of Understanding on the Establishment of the Eastern African Standby Force was subsequently signed in 2005.

Pursuant to recommendations made by a Panel of Experts appointed by the African Union, the Council of Ministers of Defence authorized the strategic and structural reframing of the EASF to enable it achieve rapid deployment capability by 2014 in readiness for the full operational capability of the ASF by 2015. As part of the reorientation of the EASF, the Council of Ministers of Defence recommended the development of a new EASF policy and the replacement of the Memorandum with a formal agreement to facilitate the pledging of forces by Member States. On 26th June, 2014 the Heads of State adopted and signed the Agreement on EASF. The Agreement contains twenty seven (27) articles.

4.2 ANALYSIS OF THE AGREEMENT THE ESTABLISHMENT OF THE EASTERN AFRICA STANDBY FORCE

4.2.1 Outline of the Agreement

The proposed Agreement contains twenty seven clauses as follows:

Preamble: sets out the reasons and aspirations for which the Agreement is made.

Parties to the Agreement are:

- (1) Kenya
- (2) Ethiopia
- (3) Rwanda
- (4) Uganda
- (5) Sudan
- (6) Somalia
- (7) Comoros
- (8) Burundi

(9) Djibouti.

Article 1: Is an interpretation clause defining key terms in the Agreement.

Article 2: Establishes the EASF and provides that the Eastern African Standby Force is part of the African Peace and security Architecture as a regional mechanism for conflict prevention, management and resolution in the Eastern Africa region.

Article 3: Stipulates the objective of the EASF which is to carry out in a timely manner the functions of maintenance of peace, security and stability as authorized by the EASF Assembly and mandated by the Peace and Security Council of the African Union.

Article 4: Defines the values and principles of EASF which are derived from the UN Charter and the Universal Declaration of Human Rights and the Constitutive Act of the African Union.

Article 5: Outlines the functions of the EASF which are conflict prevention, management and resolution in the context of the African Peace and Security Architecture.

Articles 6-14: Outline the institutional framework of EASF as follows:

Institutional Framework of the Eastern Africa Standby Force (EASF)

(a) The Assembly of Heads of States and Government;

The Assembly shall consist of the Head of States and Government of Member States party to the Agreement. The Assembly is the supreme authority of the EASF. The Assembly formulates policy and directs the functioning of EASF. It shall also consider requests for membership to the EASF among other things.

(b) The Council of Ministers of Defence and Security

The Council shall comprise of the Ministers of Defence and Security of EASF Member States that are party to this Agreement. The role of the Council shall be to set up the structure of the EASF and manage all aspects relating to EASF.

(c) The Committee of Chiefs of Defence Staff

The Committee consists of the Chiefs of Defence of EASF Member States. The functions of the Committee shall be to serve as an advisory Military Committee of the Council and the Assembly. The Committee shall also oversee and provide guidance to the Secretariat in the performance of its functions.

(d) Secretariat

Provides that the Secretariat shall be composed of a Director, who shall head the EASF Secretariat assisted by Heads of department and necessary support staff. The Secretariat shall be located in Nairobi, Kenya.

(e) Standby Force Headquarters

The Force shall be composed of regional military and civilian staff on secondment from Member States. The functions of the Standby Force Headquarters shall be to serve as a headquarters for force preparation and provide operational command headquarters of a deployed force. The Headquarters shall be Addis Ababa, Ethiopia.

(f) Planelm (Planning Element)

PLANELM shall be composed of regional military and civilian staff on secondment from Member States. The function of PLANELM shall be to

serve as multinational full time planning headquarters among others. PLANELM shall be located in Nairobi.

(g) The Logistics Base

It shall be composed of a multidimensional regional military and civilian staff on secondment from Member States. It shall serve as the central regional logistics base for stocking mission startup kit. It shall also manage the logistics infrastructure of EASF among other things. It shall be located in Ethiopia.

Article 15: Provides that in order to realize the objectives of EASF, Member States undertake to pledge forces and requisite equipment to EASF.

Article 16: It provides that the collective training of formed units pledged to the EASF shall be the responsibility of each Member State.

Article 17: Provides that Member States shall agree to extend to the EASF and its personnel immunities and privileges as may be necessary for carrying out their tasks within their respective national territories as are accorded to personnel of the other regional or international organizations.

Article 18: The EASF has a Fund which is for general use of the organization. It consists of contributions from all Member States, Grants & Donations of Member states and other sources. There is also a special Fund known as EASF Peace Fund which is used for peace support operations. The Peace Fund is generated from:

1. 12% annual budget;
2. Surplus accrued from arrears;
3. Voluntary contributions of Member States;

4. Grant and donations from external sources

5. Other sources.

Article 19: Provides that the Assembly shall determine the appropriate sanctions to be imposed on a Member State that defaults on payment of its contribution to the budget. The sanctions include:

1. Denial of right to speak at meetings;
2. Denial of right to vote;
3. Denial to present candidates for any position within EASF;
4. Or any other sanction the Assembly may deem necessary.

Article 20: Provides that any state from the Eastern Africa Region may submit a request in writing to the Chairperson of the Assembly through the Secretariat to be admitted as a Member State of the EASF.

Article 21: The official languages of the EASF shall be English, Arabic and French.

Article 22: Makes provision for signing, ratification and accession by Member States.

Article 23: Stipulates that the Agreement shall enter into force upon deposit of instruments of ratification by a simple majority of Member States.

Article 24: Makes provision for the amendment of the Agreement.

Article 25: Provides that any member may withdraw from the Agreement by giving twelve months written notice to the Chairperson of the Assembly of its intention to withdraw.

Article 26: Makes provision for the settlement of disputes.

Article 27: Provides for the conclusion of other legal instruments by Member States to accomplish the aims and objectives of the Agreement.

4.2.2 Constitutional Implications of the Agreement

The Agreement does not propose any amendments to the Constitution. It embraces international and regional treaties already ratified by Kenya, namely the UN Charter and the Universal Declaration of Human and Peoples Rights and the Protocol relating to the establishment of the Peace and Security Council of the African Union.

4.2.3 Implications on matters relating to counties

There is no implication regarding counties.

4.2.4 Policy and Legislative Implications

The pact falls squarely within the Kenya EAC integration policy as expressed in the EAC Treaty. In addition, the Pact conforms to the Kenya Defence Forces Act.

4.2.5 National Security Interests affected

The Agreement furthers EAC integration, greater cooperation in the IGAD region and augments the security of the citizens of Kenya. It will also foster durable regional peace, stability and security.

4.2.6 Requirements for the implementation of the Agreement

The Agreement shall be administered through the existing EASF Policy.

4.2.7 Obligations imposed on Kenya by the Agreement

The agreement requires Kenya to host the Secretariat of the EASF and its Planning Element (PLANELM) and cooperate with Partner States in conflict prevention, management and resolution in the context of the ASF.

4.3 MEETINGS WITH STAKEHOLDERS

4.3.1 Submissions from the Ministry

The Cabinet Secretary of the Ministry of Defence submitted that the Agreement was signed on 24th June 2014 by Kenya and other 9 Eastern Africa Countries. It creates a solid commitment by States to EASF and regional defence and security.

The EASF is part of African Peace and Security Architecture and is mandated to maintain peace and security as a rapid deployment force as may be authorized by EASF Assembly.

The EASF attained Full Operational Capability (FOC) in December 2014.

Member states have validated their forces for EASF: - Rwanda has ratified EASF agreement and Kenya validated its forces for EASF in Sept 2014.

4.4 Committee's Observations

Having subjected the Agreement to Public Participation and deliberated on the same, the Committee observed the following, that:-

- (i) The Agreement empowers the countries of Eastern Africa to contribute to decisions regarding which conflicts they will engage in and ensures the commitment of Member States to respond to a request by the African Union and UN Security Council for deployment of troops.

- (ii) The EASF Agreement does not contravene the Constitution of Kenya.
- (iii) The resulting Peace and Security will foster economic growth and encourage investments within the region.
- (iv) The EASF Agreement will create better cooperation in matters of security in the greater Eastern Africa region and further the achievement of IGAD objectives.
- (v) It will enhance regional integration as troops of the Partner States train together and share military equipment.
- (vi) The EASF is one of the five regional arrangements of the AU Security Architecture that operates under the AU Peace and Security Council. The others are; the North African Regional Capacity (NARC), the ECOWAS, SADC and ECCAS Standby Forces.

4.5 Committee Recommendations

The Committee recommends that the National Assembly approves the ratification of the Agreement on the Establishment of the Eastern Africa Standby Force (EASF).
