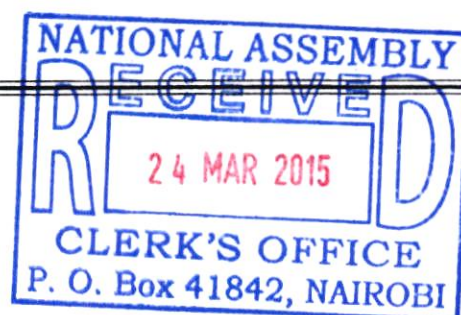




*Tabled by Hon. Aden Duale, MP  
Leader of the Majority  
On 25/3/15 Afternoon  
Sitting.  
J. Githoro*

**MEMORANDUM**  
**TO THE**  
**NATIONAL ASSEMBLY**  
**BY THE**  
**CABINET SECRETARY**  
**FOR DEFENCE**  
**ON THE RATIFICATION OF**  
**THE MUTUAL DEFENCE PACT**  
**BETWEEN KENYA, UGANDA**  
**AND RWANDA**



MEMORANDUM TO THE NATIONAL ASSEMBLY BY THE CABINET SECRETARY  
DEFENCE ON THE RATIFICATION OF THE MUTUAL DEFENCE PACT

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A. OBJECT OF THE MEMORANDUM

1. To submit to Parliament the Mutual Defence Pact between the Republics of Kenya, Uganda and Rwanda (hereinafter referred to as 'the Pact') for consideration and approval pursuant to section 8(1) of the Treaty Making and Ratification Act No. 45 of 2012 (hereinafter referred to as 'the TMRA'). *A copy of the Pact is annexed hereto and marked Annex A.*

B. BACKGROUND

2. Pursuant to the Memorandum of Understanding on Defence Co-operation signed between the said Republics, a Tripartite Initiative for fast tracking the East African Integration signed on the 28th day of October, 2013, (hereinafter called "the MOU") the Ministry of Defence negotiated the making of the Pact between the said Republics in accordance Section 4 of the TRMA.
3. Paragraph 8 of the said MOU provides that. "*the parties shall establish a Defence Pact and a collective defence territory*" and that *'the Summit of Heads of State shall be the supreme organ of the Common Defence Pact to be established by the end January 2014'*

In fulfillment of that stated objective, the Summit of Heads of State duly entered into the Pact and signed it on the 20<sup>th</sup> day of February, 2014.

C. OUTLINE OF THE PACT

The proposed Pact contains 20 (twenty) articles which are individually explained as follows:

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

**Article 1:** Defines specific terms used in the Pact, in particular important terms such as 'mutual defence', 'collective action' and threats to National Security and Regional Security' are explained;

**Article 2:** Explains the objectives of Pact and the intended areas of cooperation which include combating terrorism and the prevention of genocide;

**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 defense capability;

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

**Amended Article 6:** Declares the circumstances in which Partner States shall come to each others defence and undertake collective action in response to regional threats. The Amendment to Article 6 subjects the Pact to the Constitutions and National Laws of the Partner States thereby guaranteeing Parliamentary oversight over the Kenya Defence Forces;

**Amended Article 7:** Sets out the manner in which co-operation and interaction on matters of defence shall be take place. The Amendment to Article 7 ensures that any such defence co-operation is subject to the values, principles and provisions of the respective Partner States Constitutions and National Laws;

**Article 8:** Allows for the making of subsequent legal instruments, rules, procedures and policies and the establishment organs and other bodies to facilitate the implementation of the Pact;

**Article 9:** Provides for the funding by Partner States of the activities of the relevant organs of the Pact;

**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 12 months 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;

**Article 14:** Provides for the signing of the Pact;

**Article 15:** Makes provisions for accession and in particular allows any member state of the East African Community to join the Pact whenever they are ready to do so;

**Article 16:** Permits the amendments to the Pact by consensus;

**Article 17:** Provides for the review of the Pact every three years;

**Article 18:** Deals with breaches of the Pact;

**Article 19:** Makes provisions for the establishment of organs, structures, and policies necessary for the implementation of the Pact; and

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

**D. PARTICULARS PURSUANT TO SECTION 7 OF THE TMRA:**

1) **Object and Subject Matter of the Pact:**

a. Having regard to the imperatives of peace and security within the East Africa region and the stated intention of the Heads of States of Kenya, Rwanda and Uganda to accelerate East African integration, the Pact intends to operationalize a framework for mutual defence and to deepen defence co-operation between the partner states.

b. The Pact will foster collaboration and coordination in contending with threats to regional peace and security such as terrorism, piracy, the proliferation of illicit small and light weapons, cross-border crimes, and cattle rustling as well as facilitating joint training of military personnel, joint peace operations, disaster management, conflict resolution, the development of common defence policies, collective research, information and intelligence sharing and the synchronization of military operations.

2) **Constitutional implications:**

The Pact does not propose any amendments of the Constitution; instead, by virtue of Articles 6 (2) and 7 (as Amended) the Pact preserves the values, principles and provisions of the respective Member States Constitutions and national laws of each of the Partner States (including Kenya). The Pact is therefore consistent with the Constitution and promotes constitutional values and objectives.

3) **National security interests affected:**

The Pact facilitates the collective protection of the Northern Corridor integration Projects, enables the safe movement of people and goods across the borders of the Partner States and improves regional security through the collaboration of the defence forces of Partner States. The Pact therefore supports Kenya's economic, political and social interests in the region and augments the security of its citizens.

4) Obligations imposed on Kenya by the Pact:

The Pact requires Kenya to cooperate with Partner States in the areas set out in Article 2, 6 and 7 of the Pact and to take collective action (subject to its Constitution and national laws) in support of other Partner States in response to regional threats as defined by the Pact.

5) Requirements for Implementation of the Pact:

The Pact shall be implemented in accordance with an implementation framework devised by partner states.

6) Policy and Legislative implications:

The Pact falls squarely within Kenya's 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. Further legislation to operationalize the Pact is not necessary.

7) Financial implications:

The Partner States are required to fund the organs, meetings and activities of the Pact.

8) Ministerial Responsibility:

The Pact shall be administered through the Ministry of Defence of the Kenya.

9) Implication on matters relating to counties:

There are no implications regarding counties

10) Summary of process leading to the adoption of the Pact:

The adoption of the Pact was preceded by three Summit meetings of the Northern Corridor integration Projects held on the 25th of June 2013, in Kampala Uganda, the 28th of August, 2013 in Mombasa Kenya and the 28th October, 2013 in Kigali, Rwanda respectively at which the Heads of State of Kenya, Uganda and Rwanda expressed the wish to conclude a Mutual Defence Pact. Pursuant thereto negotiation teams from the Partner States were constituted and they finalized a draft in January, 2014. The draft was submitted to Heads of States at the 4th

Northern Corridor Integration Projects Summit, held in Kampala, Uganda on the 20th of February, 2014 and was duly adopted. The Pact has been approved by Cabinet for ratification by Parliament pursuant to section 7 of the TMRA.

11) The Date of signature:

- a. The Date of Signature of the Pact is the 20th of February, 2014.
- b. The Pact was subsequently amended on the 3rd of July, 2014.

12) Whether Pact permits ratification with reservation:

The Pact does not provide for ratification with reservations.

13) Proposed text of any reservations:

Not applicable.

14) Whether expenditure of public funds will be incurred in implementing the Treaty:

The implementation of the Pact will be managed in accordance with Annex B and the costs thereof will be borne by Partner states equally.

**E. RECOMMENDATIONS TO THE NATIONAL ASSEMBLY**

The National Assembly is requested to:

- i. Note the contents of the Memorandum and the Pact;
- ii. Approve ratification of the Pact;
- iii. Authorize the Cabinet Secretary of Defence and the Attorney General to take necessary action.

Dated this ..... 4<sup>th</sup> ..... day of ..... MARCH ..... 2015

  
Amos Raychelle Omamo SC  
Cabinet Secretary for Defence

# **ANNEX A**

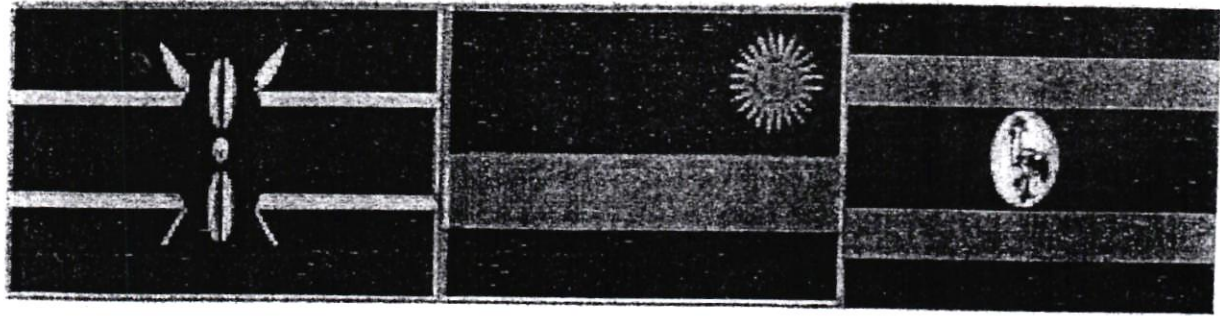
## **MUTUAL DEFENSE PACT**

AND

## **MUTUAL DEFENSE PACT (AMENDMENT)**

**INSTRUMENT NO. 1 OF 2014**

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MUTUAL DEFENSE PACT

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**PURSUANT TO** the decisions of the Heads of State and Government in the Tripartite Summits held in Entebbe, Uganda, on 25th June 2013, Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28<sup>th</sup> October 2013 in its paragraph 'j' of the Kigali communiqué on security cooperation. In compliance with article 8 of the MoU on fast tracking East African Integration signed on 28<sup>th</sup> October 2013 providing for a defense pact by end January 2014.

**RECOGNIZING** that various efforts have been made under the EAC in the defense and security sector;

**NOTING** that the ratification process of the EAC Protocol on Cooperation in Defense Affairs is ongoing

**AND WHEREAS** the partner states further agreed to encourage and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining to the prevention, better management and resolution of disputes and conflicts in the region;

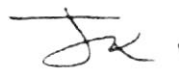
**AND WHEREAS** the Partner States agreed to enhance co-operation and mutual defense;

**IN COMPLIANCE** with the provisions of the MoU between Republic of Kenya, the Republic of Rwanda and the Republic of Uganda on the Tripartite Initiative for fast-tracking the East African Integration;

**AND IN COMPLIANCE** with the Integration Projects Summit Joint Communiqué held in Kigali, Rwanda on 28<sup>th</sup> October 2013;

**DO RESOLVE** to unite their efforts towards collective defense and the preservation of peace and stability;

Now, therefore, the Partner States hereby agree to conclude this Mutual Defense Pact (hereinafter referred to as "the Pact") as follows:



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ARTICLE I

Definitions

1. In this Pact, unless the context otherwise requires;
  - a. "AGGRESSION" means the use of military force in violation of the sovereignty, territorial integrity and independence of a Partner State.
  - b. "MUTUAL DEFENSE AND COLLECTIVE DEFENSE" means the measures undertaken collectively by the Partner States to ensure peace, stability and security of the Partner States.
  - c. "COLLECTIVE ACTION" means such action that Partner States may deem necessary including the use of armed force, in support of a Partner State
  - d. "THREAT TO NATIONAL SECURITY" means to instigate, plan, execute or assist in any of the following:
    - i. an armed attack against a Partner State;
    - ii. sabotage aimed at the people of a Partner State or an asset of a State Party, whether inside or outside the territory of the Partner State;
    - iii. any act or activity aimed at changing the constitutional order of a Partner State through unconstitutional means.
  - e. "PARTNER STATE" means a State signatory to this Pact.
  - f. "THREAT TO REGIONAL SECURITY" means any hostile action against a Partner State or Partner States.
  - g. "THIRD PARTY" means a State or entity which is not party to this Pact.
  - h. "COMMITTEE OF MINISTERS" means Ministers of Partner States responsible for defense.
  - i. "REGION" means territory of Partner States.



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ARTICLE 2

Objectives and areas of Cooperation

1. The Objectives of this Pact are to:

- a. Establish and operationalize a frame work for mutual defense.
- b. Develop, promote and pursue policies and programs aimed at widening and deepening cooperation among partner states in defense affairs for their mutual benefits.
- c. Promote peace, security and stability within and good neighbourliness among partner states in order to guarantee the protection and preservation of life and property, the wellbeing of the people in the community and their environment as well as the creation of conditions conducive to sustainable development.
- d. Anticipate and prevent conflicts. In circumstances where conflicts have occurred to undertake peace support operations and peace building functions for the resolution of such conflicts.
- e. Promote and implement peace building and post conflict reconstruction activities to consolidate peace and prevent the resurgence of violence.

2. Areas of cooperation are:

- a. Conflict prevention, management and resolution
- b. Prevention of genocide
- c. Combating terrorism
- d. Combating and suppressing piracy
- e. Peace support operations
- f. Disaster risk reduction, management and crisis response
- g. Control of proliferation of illicit small arms and light weapons
- h. Combating transnational and cross border crimes
- i. Addressing and combating cattle rustling
- j. Combating organized crimes;
- k. Collect, collate and share intelligence on emerging and existing threats

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**ARTICLE 3**

**Conflict Resolution**

Partner States shall settle any international dispute in which one or all members may be involved by peaceful means, in accordance with the principles of the Charter of the United Nations in such a manner that regional and international peace, security and justice are enhanced.

**ARTICLE 4**

**Military Preparedness**

In order to effectively achieve the objectives of this Pact, Partner States shall individually and collectively, by means of continuous coordination maintain and develop their individual and collective defense capability.

**ARTICLE 5**

**Consultation**

Any Partner State that, in its opinion, considers its political sovereignty, territorial integrity and security to be under threat from another Partner State, shall consult with such other Partner State first and then utilize the mechanism established under this pact. The procedure shall be specified in the Conflict resolution Mechanism.

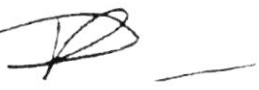
**ARTICLE 6**

**Mutual Defense**

1. Threats to national security including armed attacks against a Partner State shall be considered threats to regional security. Such threat shall be met with immediate collective action by all Partner States.
2. Collective action shall be defined and authorized by the Summit, which shall be convened by the Chairperson thereof.



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3. Such threats to national security including armed attacks, and measures taken in response thereto, shall immediately be reported to the African Union and the Security Council of the United Nations.

**ARTICLE 7**

**Defense Coordination and Cooperation**

In order to realise the objective of this Pact, the Partner States shall cooperate and coordinate in all defense matters and shall facilitate interaction among their armed forces and defense related industries in the following and any other areas of mutual interest:

- a. The training of military personnel in any field of military endeavour and, to that end, they may from time to time hold joint military exercises in each other's territory.
- b. Develop and coordinate common Defense Strategies/Policies, Mission of Forces, Doctrine and Readiness.
- c. Coordinate intelligence and information in all relevant matters.
- d. Coordinated research, development and production of military equipment, including weapons and munitions, and to facilitate the supply of, and/or the procurement of defense equipment and services among defense-related industries, defense research establishments and their respective Armed Forces.
- e. Coordination of Military operations.

**ARTICLE 8**

**Supplementary Legal Instruments**

The Partner States may, in respect of any particular issue covered by the provisions of this Pact, make such subsequent legal instruments and establish such policy organs and mechanisms of a specific or general nature, as would, in their opinion, enhance the effective implementation of this Pact.

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**ARTICLE 9**

**Funding**

The Partner States shall adequately finance the activities of the relevant organs, structures and operations.

**ARTICLE 10**

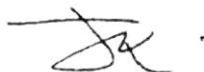
**Confidentiality**

1. The Partner States undertake not to disclose any classified information obtained in the implementation of this Pact, or any other related agreements, other than to their own staff, to whom such disclosure is essential for purposes of having effect to this Pact or such further agreements pursuant to this Pact.
2. The Partner States further undertake not to use any classified information obtained during any multilateral cooperation among them to the detriment of or against the interests of any Partner State.
3. Visiting personnel, in the implementation of this Pact, shall comply with the Security Regulations of the host Partner State. Any information disclosed or made available to such visiting personnel shall be treated in accordance with the provisions of this Article.

**ARTICLE 11**

**Settlement of Disputes**

Any dispute among the Partner States arising from the interpretation and/or implementation of this Pact shall be settled amicably. Where there is no resolution, the matter shall be referred to the EAC Court of Justice or any other mechanism agreed upon by the Partner States.



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**ARTICLE 12**

**Withdrawal**

Any Partner State may withdraw from this Pact upon the expiration of twelve (12) months from the date of giving written notice to that effect to the Summit and shall cease to enjoy all rights and benefits under this Pact.

**ARTICLE 13**

**Saving Provisions**

1. The Partner States shall:
  - a. Ensure that none of the international engagements between them and any Third Party or state is in conflict with the spirit and provisions of this Pact.
  - b. Recognize existing defense agreements, provided such agreements are not in conflict with the spirit and provisions of this Pact.
2. Where an existing agreement is inconsistent with this Pact, the Partner States concerned shall take steps to amend the agreement accordingly.
3. This Pact in no way derogates the Partner States' rights and obligations under the Charter of the United Nations and the Charter of the Organisation of African Unity/African Union.
4. Further, this Pact, in no way, derogates the responsibility of the United Nations Security Council for the maintenance of international peace and security.

**ARTICLE 14**

**Signature**

This Pact shall be signed by duly authorised representatives of the Partner States.

**ARTICLE 15**

**Accession**

1. Members of the EAC may join this Pact as and when they are ready to do so.
2. This Pact shall remain open for accession by any other State as shall be approved by the Partner States through the policy organs from time to time.

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**ARTICLE 16**

**Amendments**

1. Any Partner State may propose an amendment to this Pact.
2. Such proposals shall be made to the relevant organs which shall duly notify the Summit for consideration.
3. An amendment to this Pact shall be adopted by consensus of all the Partner States.

**ARTICLE 17**

**Review of the Pact**

This Pact shall be reviewed every three years.

**ARTICLE 18**

**Breach of the Pact**

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, report thereon and make recommendations back to the Summit.

**ARTICLE 19**

**Implementation**

The Chiefs of Defense are to develop such organs, structures and policies as shall be necessary for the implementation of this Pact by 30<sup>th</sup> March 2014 for subsequent approval by the Committee of Ministers for onward transmission to the Summit.

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ARTICLE 20  
Entry into Force

This Pact shall enter into force upon ratification by Partner States. Each Partner State shall individually take urgent measures within six months upon signature to ensure that the Pact is implemented.

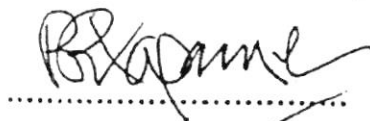
DONE at Kampala, Uganda this ..... 20<sup>th</sup> ..... day of February, 2014

IN WITNESS WHEREOF, WE, THE HEADS OF STATE OF PARTNER STATES HAVE SIGNED THIS PACT.



H.E. UHURU KENYATTA

PRESIDENT OF THE REPUBLIC OF KENYA



H.E. PAUL KAGAME

PRESIDENT OF THE REPUBLIC OF RWANDA

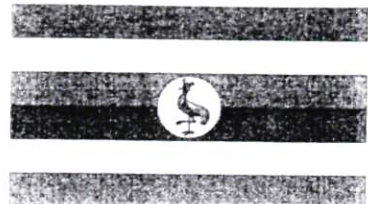
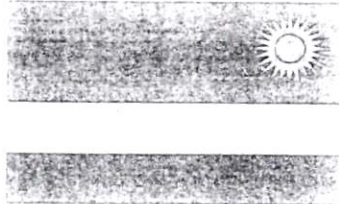
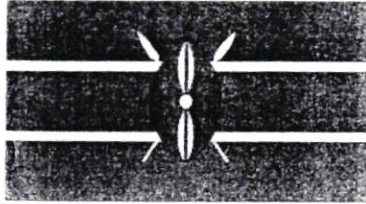


H.E. YOWERI KAGUTA MUSEVENI

PRESIDENT OF THE REPUBLIC OF UGANDA

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MUTUAL DEFENSE PACT (AMENDMENT)  
INSTRUMENT No.1 OF 2014

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MUTUAL DEFENSE PACT (AMENDMENT) INSTRUMENT No.1 OF 2014

Article 1: Amendment to Article 6(2)

Article 6(2) is amended as follows:

Collective action shall be defined and authorized by the Summit, which shall be convened by the Chairperson thereof. **'The Summit shall take into account the provisions of the respective Constitutions and national laws of all the Partner States'**.

Article 2: Amendment to Article 7

Article 7 is amended as follows:

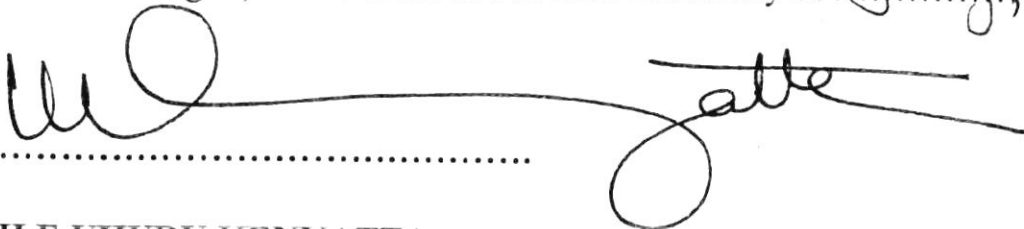
In order to realize the objectives of this Pact **'and always subject to the values, principles and provisions of their respective Constitutions and national laws'**, the Partner States shall cooperate and coordinate in all defense matters and shall facilitate interaction among their armed forces and defense related industries in the following and other areas of mutual interest:

- a. The training of military personnel in any field of military endeavour and, to that end, they may from time to time hold joint military exercises in each other's territory.
- b. Develop and coordinate common Defense Strategies/Policies, Mission of Forces, Doctrine and Readiness.
- c. Coordinate intelligence and information in all relevant matters.

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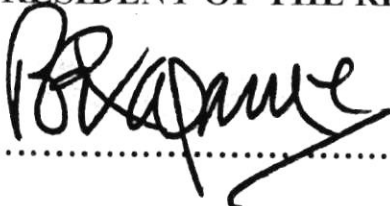
- d. Coordinate research, development and production of military equipment, including weapons and munitions, and to facilitate the supply of, and/or the procurement of defense equipment and services among defense-related industries, defense research establishments and their respective Armed Forces.
- e. Coordination of Military operations.

DONE at Kigali, Rwanda this..... 3<sup>rd</sup> .....day of July,.....2014



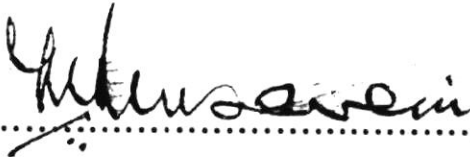
H.E UHURU KENYATTA

PRESIDENT OF THE REPUBLIC OF KENYA



H.E PAUL KAGAME

PRESIDENT OF THE REPUBLIC OF RWANDA



H.E YOWERI KAGUTA MUSEVENI

PRESIDENT OF THE REPUBLIC OF UGANDA