




*Approved  
SNA  
21/3/23*

REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023


DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN  
RELATIONS

REPORT ON THE CONSIDERATION OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON DEFENCE CO-  
OPERATION

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 21 MAR 2023	DAY: TUE
TABLED BY:	HON NELSON KOECH (CHAIRPERSON)
CLERK-AT THE-TABLE:	INZOFU MWALE

CLERK'S CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

MARCH, 2023

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1. Signed list of Members who attended the sitting which considered and adopted the Report
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## CHAIRPERSON'S FOREWORD

This report details the consideration by the Departmental Committee on Defence, Intelligence and Foreign Relations of the Agreement Between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland on Defence Cooperation.

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

The Agreement Between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland on Defence Cooperation was signed on 27<sup>th</sup> July 2021 and replaces the previous Defence Cooperation Agreement signed in 2015 and which expired on 6<sup>th</sup> October 2021.

Through a letter dated 6<sup>th</sup> September 2021, then Cabinet Secretary for Defence, Dr Monica Juma, submitted to the House for approval, a copy of the agreement. It was subsequently committed to the then Committee on Defence and Foreign Relations on 8<sup>th</sup> September, 2021. The Committee was expected to consider the Agreement and recommend its approval by the House with or without reservations pursuant to section 8(4) of the Treaty Making and Ratification Act (No. 45 of 2012).

While the then Committee on Defence and Foreign Relations of the 12<sup>th</sup> Parliament was considering the Agreement with a view to facilitating ratification, the County Government of Laikipia, where the British Army Training Unit Kenya (BATUK) is based, submitted a memorandum raising serious concerns on the defence cooperation between Kenya and the UK.

The County government stated that since the beginning of their activities in Kenya, and despite the presence of binding agreements, BATUK had committed several atrocities to the people of the Republic of Kenya and to the environment in general. The County Government of Laikipia cited the following examples: Lolldaiga Hills Conservancy fire incident, the Murder of Agnes Wanjiku Wanjiru allegedly by BATUK soldiers, Blast Injury Upon 10-Year-Old Lisoka Lesasuyan on or about 7<sup>th</sup> November 2015.

Due to the above-mentioned concerns, among others, at the end of the 12<sup>th</sup> Parliament, the processing of the Agreement hadn't been concluded. A draft report was prepared but was yet to be tabled, debated and adopted by the House.

Through a letter dated 22<sup>nd</sup> November, 2022, the Agreement was resubmitted by the Cabinet Secretary for Defence, Hon. Aden Bare Duale, EGH. It was consequently Tabled in the House on 24<sup>th</sup> November, 2022 and Committed to the Departmental Committee on Defence, Intelligence and Foreign Relations for consideration.

The Committee was expected to consider the Agreement and recommend its adoption and approval by the National Assembly with or without reservations pursuant to section 8(4) of the Treaty Making and Ratification Act (No. 45 of 2012).

In considering the Agreement, the Committee held a total of eleven (11) Sittings. The sittings were with the Ministry of Defence and other stakeholders.

Pursuant to Article 118(1)(b) of the Constitution on Public Participation and Section 8(3) of the Treaty Making and Ratification Act, 2012, the Committee placed advertisements in two local dailies, on 20<sup>th</sup> October 2021, calling for submissions of Memoranda on the subject matter. By the close of the deadline, the Committee had not received any Memorandum for or against the ratification of the Agreement. However, the Committee received submissions from the County Government of Laikipia on 31<sup>st</sup> March, 2022 long after the close of the deadline for submissions which was on 5<sup>th</sup> November, 2021.

The Memorandum from the County Government of Laikipia raises concerns over claims of deaths, injuries and other forms of suffering arising from the activities related to the British Army Training Unit, Kenya (BATUK). The Memo further avers that no form of compensation has been forthcoming to settle the claims. Despite the late submission of the Memorandum, the Committee considered the prayers of the County Government and noted that while the claims made were weighty, the issues raised were being addressed by the relevant National Government agencies in conjunction with BATUK.

The Committee observed that the Agreement adds to the already existing bi- and multi-lateral agreements with other States and agencies. The country stood to benefit from the expertise held by the Counterpart State. The Committee further noted that Article 6 (5) provides for various offences which are not to be considered as arising out of official duty and therefore triable by the Host Nation. However, murder was not listed as one of the offences thereby allowing cases similar to the Agnes Wanjiru one (mentioned in the report) to occur in the future. The Committee further noted that Article 23 of the agreement obligates visiting forces to respect and be sensitive to traditions, customs and culture of the local communities of the places they are deployed. However, the agreement does not provide for Corporate Social Responsibility.

The Committee recommends that, pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the House adopts and approves the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and the Northern Ireland on Defence Co-operation with reservations that:

- a) Article 6 (5) of the agreement should be amended by inserting a new paragraph immediately after paragraph (h) to include murder as one of the offences which are under the jurisdiction of the Host Nation; and
- b) Article 23 of the agreement to include Corporate Social Responsibility.

Pursuant to Standing Order 199(6), it is my pleasant duty to present to the House the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom of Great Britain and the Northern Ireland on Defence Co-operation.

**Hon. Nelson Koech, M.P.**

**Departmental Committee on Defence, Intelligence and Foreign Relations**

## PART I

### 1.0 PREFACE

#### 1.1 Introduction

1. This report details the consideration by the Departmental Committee on Defence, Intelligence and Foreign Relations of the Agreement Between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland on Defence Cooperation.
2. The Defence Agreement provides a framework for exchange, sharing and utilization of the respective State's experience, knowledge, military facilities and infrastructure. This will be instrumental in strengthening of bilateral relations between the two states. The Agreement will also provide for a framework for the parties to collaborate in the field of defence industries in a mutually beneficial manner.

#### 1.2 Mandate of the Committee

3. The Departmental Committee on Defence, Intelligence and Foreign Relations is established under the National Assembly Standing Order No. 216. The functions and mandate of the Committee include, among others, **“to examine treaties, agreements and conventions”**.
4. The subject matter of the Departmental Committee on Defence, Intelligence and Foreign Relations are stated in the Second Schedule of the National Assembly Standing Orders as follows: **Defence, intelligence, foreign relations, diplomatic and consular services, international boundaries including territorial waters, international relations, and veteran affairs.**

#### 1.3 Oversight

5. In executing its mandate, the Committee oversees the following MDAs: The Ministry of Defence, the Ministry of Foreign and Diaspora Affairs, the State Department for East African Community (EAC) Affairs, the National Intelligence Service (NIS).

## 1.4 Committee Membership

6. The Departmental Committee on Defence, Intelligence and Foreign Relations was constituted by the House on 27<sup>th</sup> October, 2022 and comprises the following Members:

### **Chairperson**

**Hon. Koech Nelson, M.P.**

Belgut Constituency

**UDA Party**

### **Vice-Chairperson**

**Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.**

Mandera North Constituency

**UDM Party**

### **Members**

Hon. Wanjira Martha Wangari, M.P,  
Gilgil Constituency

**UDA Party**

Hon. Joshua Kandie, MP  
Baringo Central Constituency

**UDA Party**

Hon. Hassan Abdi Yusuf, MP  
Kamkunji Constituency

**Jubilee Party**

Hon. Kwenya Thuku Zachary, MP  
Kinangop Constituency

**Jubilee Party**

Hon. Odhiambo Millie G. Akoth,MP  
Suba North Constituency

**ODM Party**

Hon. Logova Sloya Clement, MP  
Sabatia Constituency

**UDA Party**

Hon. Kanchory Elijah Memusi, MP  
Kajiado Central Constituency

**ODM Party**

Hon. Ikana Fredrick Lusuli, MP  
Shinyalu Constituency

**ANC Party**

Hon. (Dr.) Kasalu Irene Muthoni,MP  
Kitui County

**WDM-K**

Hon. Mohamed A. Hussein, MP  
Lagdera Constituency

**ODM Party**

Hon. Kirima Moses Nguchine, MP  
Imenti Central Constituency

**UDA Party**

Hon. Teresia Wanjiru Mwangi, MP  
Nominated Member

**UDA Party**

Hon. Luyai Caleb Amisi, MP  
Saboti Constituency

**ODM Party**

## 1.5 Committee Secretariat

7. The Committee is facilitated by the following staff:

Mr. Dennis M. Ogechi  
**Second Clerk Assistant/Head of Secretariat**

Ms. Clarah Kimeli  
**Principal Legal Counsel II**

Dr. Donald Manyala, PhD  
**Research Officer II**

Ms. Roselyne Ndegi  
**Senior Serjeant-at-Arms**

Mr. Murimi Mwangi  
**Media Relations Officer**

Ms. Winfred Kambua Kilonzo  
**Clerk Assistant III**

Mr. Edwin Machuki  
**Fiscal Analyst III**

Mr. Lenny Muchangi  
**Legal Counsel II**

Mr. Kelvin Ng'ang'a  
**Research Officer III**

## PART II

### 2.0 BACKGROUND

8. The Agreement Between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland on Defence Cooperation was signed on 27<sup>th</sup> July 2021 and replaces the previous Defence Cooperation Agreement signed in 2015 and which expired on 6<sup>th</sup> October 2021.
9. In 2016, the House approved the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defence Cooperation.
10. The Kenya Defence Forces has been cooperating with the United Kingdom of Great Britain and Northern Ireland Defence Forces primarily in the defence industry, training support and exchange of students in military institutions.
11. An Inter-Ministerial Committee comprising of representatives of the Ministries of Defence, Foreign Affairs and Interior and Coordination of National Government and the State Law Office was convened to consider and identify the Republic of Kenya's strategic interest in the bilateral cooperation with the Government of the Republic of the United Kingdom of Great Britain and Northern Ireland on defence and to further develop a draft agreement setting out the framework of cooperation.
12. A delegation from the Republic of the United Kingdom of Great Britain and Northern Ireland was received at the Defence Headquarters in Nairobi to discuss and settle the terms of the draft Agreement.
13. The draft Agreement was subsequently submitted to the State Law Office for clearance and legal advice. The draft Agreement was cleared by State Law Office and the National Security Council and was accordingly signed by the parties on 27<sup>th</sup> July 2021 during the Head of State Visit to the United Kingdom.
14. Through a letter dated 6<sup>th</sup> September 2021, then Cabinet Secretary for Defence, Dr Monica Juma, submitted to the House for approval, a copy of the agreement. It was subsequently committed to the then Committee on Defence and Foreign Relations on 8th September, 2021. The Committee was expected to consider the Agreement and recommend its approval by the House with or without reservations pursuant to section 8(4) of the Treaty Making and Ratification Act (No. 45 of 2012).
15. The Agreement identifies its main objective as enhancing defence cooperation by identifying and providing a framework for cooperation for the exchange of experiences and knowledge for the use and mutual benefit of the parties. In particular, the agreement provides a framework for the exchange, sharing and utilization of the respective State's experience, knowledge,

military facilities and infrastructure. The Agreement will also provide a framework for the parties to collaborate in the field of defence industries in a mutually beneficial manner.

16. While the then Committee on Defence and Foreign Relations in the 12<sup>th</sup> Parliament was considering the Agreement with a view to facilitating ratification, the County Government of Laikipia, where the British Army Training Unit Kenya (BATUK) is based, submitted a memorandum raising serious concerns on the defence cooperation between Kenya and the UK.
17. The County government stated that since the beginning of their activities in Kenya, and despite the presence of binding agreements, BATUK had committed several atrocities to the people of the Republic of Kenya and to the environment in general. The County Government of Laikipia cited the following examples: Lolldaiga Hills Conservancy fire incident, the Murder of Agnes Wanjiku Wanjiru allegedly by BATUK soldiers, Blast Injury Upon 10-Year-Old Lisoka Lesasuyan on or about 7<sup>th</sup> November 2015.
18. Due to the above-mentioned concerns, among others, at the end of the 12<sup>th</sup> Parliament, the processing of the Agreement hadn't been concluded. A draft report was prepared but was yet to be tabled, debated and adopted by the House.
19. Through a letter dated 22<sup>nd</sup> November, 2022, the Agreement was resubmitted by the Cabinet Secretary for Defence, Hon. Aden Bare Duale, EGH. It was consequently Tabled in the House on 24<sup>th</sup> November, 2022 and Committed to the Departmental Committee on Defence, Intelligence and Foreign Relations for consideration.
20. The Committee was expected to consider the Agreement and recommend its adoption and approval by the National Assembly with or without reservations pursuant to section 8(4) of the Treaty Making and Ratification Act (No. 45 of 2012).

## **2.1 Outline of the Agreement**

21. Article 2 of the Agreement identifies its objective as enhancing bilateral cooperation on defence by identifying a framework for the exchange of experience and knowledge for the use and mutual benefit of the Republic of Kenya and the United Kingdom of Great Britain and Northern Ireland. The Agreement will regulate cooperation in the following areas:
  - a) Security and defence policy;
  - b) Initial, advanced and follow-on training of military and Ministry of Defence civilian personnel;
  - c) Defence administration and welfare matters of military personnel;
  - d) Counter-piracy and other maritime security activities;
  - e) Peacetime military activities;
  - f) Protection of the environment;
  - g) Military medical services including research and development;
  - h) Military sports;

- i) Disaster relief and humanitarian operations by the Armed Forces;
- j) Military exercises;
- k) Counter-terrorism;
- l) Information operations training;
- m) Defence civilian component;
- n) Exchange visits of military personnel;
- o) Mapping/survey and exchange of geographic materials;
- p) Other areas of mutual interest which may be decided upon in future.

22. Article 6 of the Agreement prescribes the legal status of the visiting forces. The draft Agreement while subjecting the visiting forces to the laws of the host nation, it grants the authorities of the visiting forces primary jurisdiction to try offences arising out of official duty.

23. Article 24 of the Agreement establishes the Inter-Governmental Liaison Committee comprising of the representatives of the Republics of Kenya and the United Kingdom of Great Britain and Northern Ireland to oversee the implementation of the Agreement. The Inter-Governmental Liaison Committee is also empowered to administer and implement the Agreement and to settle all disputes and misunderstandings arising out of the implementation of the Agreement.

24. The Agreement contains 26 (Twenty-Six) Articles as follows:

Preamble	Preamble	It sets out the reasons and aspirations for which the DCA is made particularly the need to enhance defence cooperation between the Kenya Defence Forces and the Armed Forces of the United Kingdom and Northern Ireland.
Parties	Parties	(1) Kenya; (2) United Kingdom of Great Britain and Northern Ireland.
Article 1	Definition	Defines key terms as used in the Agreement.
Article 2	Aim	Provides the aim of the DCA being to enhance defence cooperation between the Republic of Kenya and the United Kingdom.
Article 3	Scope and Defence	Provides that the parties shall pursue cooperation in; <ul style="list-style-type: none"> <li>a) Security and defence policy;</li> <li>b) Initial, advanced and follow-on training of military and ministry of defence civilian personnel;</li> <li>c) Defence administration and welfare matters of military personnel;</li> <li>d) Counter-piracy and other maritime security activities;</li> <li>e) Peacetime military activities;</li> <li>f) Protection of the environment;</li> </ul>

		<ul style="list-style-type: none"> <li>g) Military medical services including research and development;</li> <li>h) Military sports;</li> <li>i) Disaster relief and humanitarian operations by the Armed Forces;</li> <li>j) Military exercises;</li> <li>k) Counter-terrorism;</li> <li>l) Information operations training;</li> <li>m) Defence civilian component;</li> <li>n) Exchange visits of military personnel;</li> <li>o) Mapping/survey and exchange of geographic materials; and</li> <li>p) Other areas of mutual interest which may be decided upon in future.</li> </ul>
Article 4	Forms of cooperation	Provides that the cooperation shall be based on the principal of reciprocity and provides the forms it would take e.g. mutual visits, training and joint exercises etc.
Article 5	Implementation	Provides how the agreement is to be implemented. Paragraph 3 sets out the need to set up a designator or a focal point of contact. It also states that the parties need to agree on the activities to be undertaken during the year.
Article 6	Jurisdiction	Provides instances when the Hosting Nation and the Sending Nation may exercise jurisdiction over Visiting Forces, the Civilian Component or Dependents for any criminal offences committed.
Article 7	Uniform, Arms and other Defence Articles	Regulates the usage of Uniform, Arms and other Defence Articles by visiting Forces while in the Host Nation.
Article 8	Environmental Protection	Provides for measures to ensure the protection of environment.
Article 9	Access to facilities	Provides for access to Host Nations defence facilities by the Visiting Forces.
Article 10	Provision of Training Areas	Provides for provision and regulation of training areas by the Host Nation.
Article 11	Civil Claims and Liabilities	Provides a framework under which civil claims may be pursued against the Visiting Forces in the interest of justice.
Article 12	Entry, Movement and Exist	Provides for entry and exist of visiting forces in the Host Nation.
Article 13	Taxation, Importation and Exportation	Provides for terms under which the Visiting Forces may import and export goods while at the Host Nation.

Article 14	Finance	Provides for financial obligations of the parties.
Article 15	Remittance of Funds	Provides for regulation of remittance of funds between the territory of the Host Nation and that of the Visiting Forces.
Article 16	Identification	It provides for use of identification documents by the Visiting Forces and usage of distinctive identification in their ships, vehicles, aircrafts, stores, equipment, weapons etc.
Article 17	Vehicle registration and driving licences	Provides registration of vehicles and acceptance of visiting forces driving licences as valid national driving licences in accordance with the Sending Nations laws.
Article 18	Training costs and salaries.	Provides that both parties may charge fees for training courses whereas the Sending Nation shall be responsible for paying of salaries of the Visiting forces.
Article 19	Investigation Procedures for Accidents.	Provides that the investigation of accidents or incidents including those involving military aircraft, missiles and/or unmanned aircraft systems of the Visiting Forces shall be the responsibility of the authorities of the Party in whose territory the accident or incident under investigation occurred.
Article 20	Medical, Optical and Dental	Provides for provision of medical care for visiting forces. The sending nation shall be responsible for arranging the provision, and meeting the medical costs of visiting forces including providing for evacuation where treatment is not available locally.
Article 21	Death of a Member of the Visiting Forces	Provides for procedure in case of death of a member of the Visiting Force. The death shall be reported the relevant authorities for the Host Nation and that of the Sending Nation.
Article 22	Protection of Information.	Provides for protection of information or material exchanged or generated in connection with the Agreement. The information is to be safeguarded in accordance with the party's applicable laws and regulations.
Article 23	Community Relations	Regulates the interaction between Visiting Forces and local communities of the Host Nation. Visiting Forces shall respect customs and traditions of local communities not harm or injure vulnerable groups. It further provides for compensation where they are found liable.
Article 24	Inter-Governmental Liaison Committee	Provides for the establishment of an Inter-Governmental Liaison Committee providing its functions. It further provides for procedure to be followed in cases of a referral on matters dealing with jurisdiction.
Article 25	Settlement of disputes	All disputes arising from the Agreement shall be resolved by consultation or negotiations between parties through

		Inter-Governmental Liaison Committee. Disputes not resolved by Inter-Governmental Liaison Committee shall be resolved through diplomatic channels.
Article 26	Entry into force, duration, amendment and termination	<p>The Agreement supersedes the Defence Cooperation Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Defence Cooperation, signed in duplicate in Nairobi on December 2015 and which entered into force on 11 October 2016.</p> <p>The Agreement shall enter into force on the date of receipt of later written notification by which the parties shall notify each other through diplomatic channels of completion of their respective internal procedures required for the entry into force of the Agreements.</p> <p>The agreement remains in effect for a period of five years and may be renewed for a further period as agreed by parties. Either party wishing to renew the agreement shall issue a 12months renewal notice prior to expiry of the agreement.</p> <p>The agreement may be amended at any time, in writing by mutual consent of parties.</p> <p>The agreement may be terminated by either party giving 6 months written notice of termination.</p>

## 2.2 Memorandum by the Ministry of Defence

25. The Ministry of Defence, through a letter dated 6<sup>th</sup> September 2021, submitted its memorandum on the Agreement. The Ministry submitted that the bilateral cooperation in defence between the Republic of Kenya and the Republic of the United Kingdom of Great Britain and Northern Ireland has been limited to exchange of students in military institutions, training support and cooperation in the defence industry. The Ministry indicated that this was observed to be narrow and does not exploit all the potential areas of cooperation. Therefore, the draft Agreement expands the potential areas of cooperation to include security and defence policy, peacetime military activities, environmental protection, military sports, military medicine and research and development. The draft Agreement also expands cooperation in military training to include military exercises, staff talks and technical meetings and exchange of teaching and training personnel as well as students from military institutions.
26. The Ministry further submitted that the draft Agreement provides a formal framework for bilateral cooperation in defence between the Republics of Kenya and the United Kingdom of Great Britain and Northern Ireland in conformity with section 37 of the Kenya Defence Forces Act, 2012 (revised 2018) as read together with section 283 requires that cooperation in defence be regulated by an agreement which should also provide for the legal status of the visiting

forces while in the Republic of Kenya. The draft Agreement at Article 6 prescribes the legal status of the visiting forces.

27. The Ministry submitted that contemporary security challenges such as terrorism, organised crime and human and drug trafficking are transnational and necessitate collaboration and cooperation between States. The proposed Agreement will provide a framework for collaboration between the Republics of Kenya and the United Kingdom of Great Britain and Northern Ireland to address the contemporary security challenges.
28. The Ministry submitted that the Defence Council has considered the draft Agreement and approved the same. The Ministry has recommended that the National Assembly approves its ratification in accordance with the Treaty Making and Ratification Act.
29. On the financial implications, the Ministry submitted that the implementation of the Agreement will occasion additional expenditure which will be defrayed from the budget voted to the Ministry of Defence.

## PART III

### 3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

#### 3.1 Call for Memoranda from the Public

30. Pursuant to Article 118(1)(b) of the Constitution on Public Participation and Section 8(3) of the Treaty Making and Ratification Act, 2012, the Committee placed advertisements in two local dailies, on 20<sup>th</sup> October 2021, calling for submissions of memoranda on the subject matter. By the close of the deadline, the Committee had not received any Memorandum for or against the Agreement. However, the Committee received submissions from the County Government of Laikipia on 31<sup>st</sup> March, 2022 long after the close of the deadline for submission which was on 5<sup>th</sup> November, 2021.

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

31. The Cabinet Secretary Ministry of Defence, Hon. Eugene Wamalwa, EGH appeared before the Committee on 16th November, 2021. He briefed the Committee on the action the Ministry of Defence had taken to address the murder of Ms. Agnes Wanjiru by a British soldier based in Nanyuki, as follows: -

- i) He had held bilateral talks with British High Commissioner Jane Marriott over the matter;
- ii) The British government had committed to cooperate in the country's effort to ensure the suspected soldiers who murdered Agnes Wanjiru are brought to book;
- iii) That the Kenyan authorities will invoke provisions of the Defence Cooperation Agreement with the British to prosecute the soldiers involved and accord the victim justice;
- iv) The country had the legal and the institutional framework to deal with the case because of the Defence Cooperation Agreement between the two States;
- v) The Directorate of Criminal Investigations will reopen the case and compile all available evidence and witness accounts to ensure the case is concluded before a court of law.

#### 3.3 Meeting with the British High Commissioner to Kenya

32. The British High Commissioner to Kenya Ms. Jane Marriot appeared before the Committee on Thursday, 21<sup>st</sup> October 2021. She briefed the Committee on the contents of the Agreement as follows:

- a) The cooperation shall be based on the principal of reciprocity and provides the forms it would take e.g. mutual visits, training and joint exercises etc;
- b) The Agreement provides instances when the hosting nation and the sending nation may exercise jurisdiction over Visiting Forces, the Civilian Component or Dependents for any criminal offences committed;

- c) The Agreement Regulates the usage of uniform, arms and other Defence Articles by visiting forces while in the host nation;
- d) The Agreement provides for measures to ensure the protection of environment;
- e) The Agreement also provides for provision and regulation of training areas by the Host Nation;
- f) There is a framework under which civil claims may be pursued against the visiting Forces in the interest of justice;
- g) It provides for entry and exit of visiting forces in the host nation;
- h) Provides for financial obligations of the parties;
- i) The investigation of accidents or incidents including those involving military aircraft, missiles and/or unmanned aircraft systems of the Visiting Forces shall be the responsibility of the authorities of the Party in whose territory the accident or incident under investigation occurred;
- j) The Agreement also regulates the interaction between Visiting Forces and local communities of the Host Nation. Visiting Forces shall respect customs and traditions of local communities not harm or injure vulnerable groups. It further provides for compensation where they are found liable;
- k) All disputes arising from the Agreement shall be resolved by consultation or negotiations between parties through Inter-Governmental Liaison Committee. Disputes not resolved by Inter-Governmental Liaison Committee shall be resolved through diplomatic channels;
- l) The Agreement shall enter into force on the date of receipt of later written notification by which the parties shall notify each other through diplomatic channels of completion of their respective internal procedures required for the entry into force of the Agreements;
- m) The agreement remains in effect for a period of five years and may be renewed for a further period as agreed by parties;
- n) Either party wishing to renew the agreement shall issue a 12months renewal notice prior to expiry of the agreement;
- o) The Agreement may be amended at any time, in writing by mutual consent of parties.
- p) The Agreement may be terminated by either party giving 6 months' written notice of termination.

### **3.4 Meeting with the Director of Criminal Investigations (DCI)**

33. Mr. Joseph Ashimala, the Deputy Director, Directorate of Criminal Investigations submitted the following regarding the alleged murder of Ms. Agnes Wanjiru by British soldiers based in Nanyuki:

- i) Agnes Wanjiru, 21, was reportedly partying with British soldiers on 31<sup>st</sup> March, 2012 at a hotel in the central Kenyan town of Nanyuki, Laikipia County;
- ii) She was later found dead in a septic tank within the premises of the hotel;

- iii) Nanyuki Police investigated the incident and gave an opinion that the deceased was murdered;
- iv) After findings of the inquest, the homicide team from the Directorate of Criminal Investigations took over the matter and have since been on the ground conducting investigations;
- v) The Directorate of Criminal Investigations will compile all the available evidence and witness accounts and ensure the case is concluded before a court of law;
- vi) The UK government had been collaborating to conclude the case and administer justice and always worked in partnership with Kenyan police and its assistance has been forthcoming where needed.

### **3.5 Meeting with the Director of Public Prosecutions (DPP)**

34. Mr. Noordin Haji, the Director of Public Prosecutions (DPP), submitted the following on the alleged murder of Ms. Agnes Wanjiru by British soldiers based in Nanyuki:
- a) Agnes Wanjiru (Deceased) was last seen alive on 31st March, 2012 at the Lions Court Hotel at around 10:00 pm allegedly in the company of British Army Soldiers who were in uniform;
  - b) The deceased was later found dead in a septic tank on 5th June, 2012, by a grounds man who was cleaning manholes in the hotel;
  - c) A postmortem report was conducted by one Dr. Obiero Okoth on 13th June, 201. The doctor opined that the cause of death was chest and abdominal injuries;
  - d) The deceased had a stab wound on her right chest area and her lungs had collapsed;
  - e) In addition, the doctor in his report dated 12th July, 2012 noted that the deceased may have been placed in the septic tank alive as the injuries she had sustained were not fatal;
  - f) The matter was first referred to the ODPP complaints division through a letter dated 12th June, 2012 by Social Watch, an NGO based in Nyeri;
  - g) In their letter, it was stated that a security guard at the hotel had noticed a fight between a girl and a British soldier in a room they were occupying;
  - h) The Social Watch NGO the ODPP to call for investigations and CCTV footage of the matter;
  - i) On 13th July, 2012, the ODPP wrote to the DCI requesting for a progress report on the investigation into the matter and the duplicate investigation file;
  - j) Various correspondence was later exchanged between the ODPP and the DCI with advice by the ODPP on necessary areas to be covered during the investigations;
  - k) On 6th October, 2016, the DCI through a letter to the ODPP Nanyuki County Office, submitted the file for direction, and the same was forwarded to ODPP for directions;
  - l) On 1st December, 2012, ODPP headquarters wrote a letter to the Nanyuki Office directing that the matter be referred for inquest;
  - m) A public inquest was carried out before Hon. Njeri Thuku, Principal Magistrate and an opinion delivered on 5th November, 2019;
  - n) A total of 13 witnesses testified during the inquest proceedings and the learned magistrate formed the opinion that Agnes Wanjiku Wanjiru was murdered by British soldiers;

- o) On 10th June, 2020, the ODPP received a letter from the Ministry of Defence requesting for guidance from the DPP on the outcome of the inquest;
- p) On receipt of the said letter, the ODPP called for a certified copy of the proceedings and opinion of the Hon. Magistrate as well as the investigation's files;
- q) Upon review of the file, the office established that there were critical areas that required to be covered by the DCI before the matter is admitted for prosecution;
- r) On 2nd November, 2021, the office received another letter from the Ministry of Defence requesting for the status of the proposed prosecution;
- s) In this regard, the office, vide a letter dated 10th November, 2021 responded to the same, indicating that upon review of the opinion of the learned magistrate, the file had been forwarded to the DCI for further investigations;
- t) The ODPP will expeditiously review the investigation file once received and make a decision in line with article 157 of the constitution, 2010;
- u) Further, the office will initiate extradition proceedings for the persons found culpable of the heinous murder of Agnes Wanjiru;
- v) The ODPP was the office mandated to pursue mutual legal assistance, as affirmed by the Supreme Court, and the office of the Attorney General was a mere conduit of the same.

### **3.6 Memorandum by the County Government of Laikipia**

- 35. The County Government of Laikipia submitted as follow on the Agreement between the Government of the Republic of Kenya & the Government of the Republic of United Kingdom of Great Britain & Northern Ireland on Defence Cooperation:
- 36. The Government of the Republic of Kenya entered into an Agreement with the United Kingdom of Great Britain and Northern Ireland (UKGBNI) concerning Defence Cooperation. Under the Agreement, the parties agreed to implement all activities in conformity with the domestic law in force in the Host Nation.
- 37. Since the beginning of their activities in Kenya, and despite the presence of a binding agreement, the BATUK have committed several unspeakable atrocities to the people of the Republic of Kenya and to the environment in general. Some of the atrocities include:

#### **3.6.1 Lolldaiga Hills Conservancy**

- 38. Under Article 26 (6)(b) of the Agreement, the Visiting Forces (BATUK) were required to terminate their use of Lolldaiga Hills Conservancy (The Conservancy) with effect from 30<sup>th</sup> June 2016. Despite this requirement, and in utter disregard of the environmental rights of the people of Kenya, and further with utter disregard of the safety of Kenya's ecological system, the BATUK undertook military training activities within the Conservancy, occasioning fire incidences between 20<sup>th</sup> and 24<sup>th</sup> of March 2021. This caused outrageous losses to the people of Kenya, the biodiversity and ecological system of the conservancy, and particularly to the Kenyan population surrounding the conservancy.
- 39. Pursuant to the laws of Kenya, the Agreement, and following the destruction by fire, the African Centre for Corrective and Preventive Action lodged before The Environment and Land

Court of Kenya at Nyeri, a Constitutional Petition against the BATUK at the 3<sup>rd</sup> Respondent, and its Commander as the 2<sup>nd</sup> Respondent.

40. Despite clear provisions of the Defence Corporation Agreement, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents approached the Honourable Court through a Notice of Motion application dated April 2021, and sought to have the petition struck out, and that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be struck out of the Petition on the premises that the Government of the UKGBNI does not submit to the jurisdiction of the Kenyan Court.

### **3.6.2 The Murder of Agnes Wanjiku Wanjiru**

41. Agnes Wanjiku Wanjiru was a Kenyan citizen, residing in Kenya, and working for gain in Laikipia, within the Republic of Kenya. She was last seen on 31<sup>st</sup> March 2012, dancing with British soldiers at Lions Court Hotel. She later on went into a room with one of the soldiers in the same hotel. In June, 2012, a grounds man at the hotel was asked to clear an apparent blockage in a septic tank. He uncovered the lid and saw a woman's body. The police retrieved the body, and transported the same to the mortuary at Nanyuki Teaching and Referral Hospital. The body was identified by her friends and family.

42. According to the Post Mortem report, Agnes met her horrific death in the hands of one of the nine British Soldiers who had booked rooms in the hotel on the fateful night of 31<sup>st</sup> March 2012: She had a stab wound, 2 cm long on the right side; her lungs collapsed and she had bleeding in her chest; she had an injury of the covering on her small intestine. In the pathologist's opinion therefore, the cause of death was chest and abdominal injuries due to blunt hit on the chest as well as sharp injuries (stab wounds).

43. Due to the continuous interruption by the BATUK, Agnes Wanjiku Wanjiru, who was also the mother of a 4-year-old child at the time of her death, is yet to obtain redress from our justice system. Her right to life, as guaranteed to her by our Constitution, was abused by the BATUK, despite being bound by an Agreement to obey the laws and regulations of our country.

### **3.6.3 Blast Injury Upon 10-Year-Old Lisoka Lesasuyan**

44. On or about 7<sup>th</sup> November 2015, the BATUK were undertaking a training exercise in open grounds within Laikipia County after which they left an unutilized explosive. Lisoka Lesasuyan, being a minor, found the explosive, and unknown to him of the dangers it could cause, started playing with it. The explosive exploded, causing multiple injuries upon him.

45. Upon filing of Miscellaneous Civil Application No. 1 of 2018 in the High Court of Kenya at Nanyuki, an ex gratia settlement was awarded in the sum of KSHs. 10,108,500.00/-

### **3.6.4 Unethical Business Practices by the Defence Infrastructure Organization and the BATUK**

46. The Defence Infrastructure Organization (DIO) and the BATUK have also taken part in several unethical business practices, which have had the effect of acute economic sabotage on the people of Kenya, particularly Laikipia. They induce developers to build houses on the promise that they will lease the houses and subsequently renege.
47. One of the companies which have fallen victim to this unfortunate practice is Maiyan Holdings Limited. The company was induced to building 34 custom built house units which would form the Swara Ranch Estate. The houses were built as a cost of KSHs. 400,000,000.00/-. The construction commenced in March 2019, and were built for a period of 4 months under constant and consistent supervision and follow-up by the DIO and the BATUK

### **3.6.5 Recommendations by the County Government of Laikipia**

48. Due to the above acts, the County Government recommended the following for the Committee's review and action-
- a) That the current agreement as entered into on 11<sup>th</sup> October 2016 between the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of Kenya be terminated immediately, as the Government of the United Kingdom of Great Britain and Northern Ireland is in contractual breach of its fundamental terms;
  - b) That the Agreement being deliberated upon, dated 27<sup>th</sup> July 2021, be subjected to a rigorous process of public participation, especially within Laikipia County, before further deliberations and approvals;
  - c) That the Government of the United Kingdom of Great Britain and Northern Ireland do unequivocally declare that the Visiting Forces under the Agreement being deliberated upon are under and subject to the jurisdiction of Kenyan Authorities for all illegal acts committed towards the people of the Republic of Kenya, and their properties, for the duration of the Agreement;
  - d) That full compensation for the illegalities committed by the BATUK and by extension the DIO be provided for before renewal of the Agreement under deliberation;
  - e) That trainings by the BATUK be restricted to designated and enclosed areas, to ensure safety and security upon the Kenyan population; and
  - f) That all future Agreements between Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Kenya be availed to the general public for purposes of ensuring the Kenyan population is aware of their rights under the Agreement.

### **3.7 UK Visit on the Defence Cooperation Agreement**

49. The Committee travelled to the United Kingdom between 6th – 15th June, 2022. Top of the Committee's agenda was to explore ways through which the Kenya – UK DCA could

be fast tracked for ratification by both countries.

50. The defence partnership was governed through the Defence Cooperation Agreement (DCA), which provides the framework for the exchange of experience and knowledge, as well as setting the conditions for UK activity in Kenya. The DCA was signed by Secretary of State (SoS) and Kenya's former Cabinet Secretary for Defence Amb. (Dr.) Monica Juma in July 2021. It has now successfully passed through UK Parliament.
51. The new DCA, if ratified by the Kenyan and UK Parliaments, would allow both Parties to continue to share expertise, experience, and techniques and to deepen cooperation, making both forces more effective.
52. The UK Government was then operating in Kenya under a DCA bridging agreement. The DCA bridging arrangements were set out by an exchange of Notes Verbales between the Ministry of Foreign Affairs and the British High Commission Nairobi. They confirm the Agreement to extend the application of the existing DCA until the national ratification procedures in both countries have been completed to enable the new one to enter into force. The bridging arrangement sets no deadline for its termination, allowing the bridge to persist until DCA ratification. It also clearly states that any disputes over the bridging arrangement are to be settled amicably based on mutual consultations.

#### **Ms. Agnes Wanjiru Case**

53. The Committee and Hon. James Heapey, Minister for Armed Forces discussed the positive cooperation between the UK and Kenya in relation to this case and the desire of both nations to ensure that a full and robust investigation is carried out and Ms Wanjiru and her family receive justice. The UK is conscious that there is an active criminal investigation and has limited the disclosure of details of this investigation.
  - i) RMP Activity - RMP have worked closely with the Kenyan authorities to support access to the UK system and share intelligence.
  - ii) Mutual Legal Assistance (MLA) Request - The UK could neither confirm nor deny policy in relation to the receipt of Mutual Legal Assistance requests.

#### **UK-Kenya Defence Partnership**

54. The defence partnership that exists between UK and Kenya is built up over many years of cooperation, shared training experiences and a deep and long history. UK troops have trained in Kenya for decades, and the UK has a long-standing relationship with the Kenya Defence Forces (KDF), which the UK has come to regard as its Defence partner of first choice in Eastern Africa.
55. The priorities set by Secretary of State for Defence and former Cabinet Secretary for Defence, Amb. (Dr.) Monica Juma, agreed closer co-operation across:
  - a) counter-terrorism;
  - b) joint training and readiness;
  - c) the development of lasting institutions in the land, air, maritime and cyber domains;
  - d) information operations;

- e) command, leadership, and management, and;
  - f) dialogue on international security dynamics.
56. Both States' defence cooperation is wide and deep and it extends from land to sea. Every year, over 1,100 KDF soldiers are trained by the British Military either on UK based courses or by UK military training teams in Kenya. Much of this is mission specific training to help prepare KDF soldiers before deployment to Somalia.
57. This includes maritime security training to assist the Kenyan Navy and Coast Guard Service to protect Kenya's 'blue economy' and enable maritime access to international markets. In June 2021, the UK handed over a multipurpose training facility with firefighting equipment alongside the Danish government and this year they are delivering a damage control training unit. Both facilities will give realistic training environments for Kenya Navy which will enhance capability in maritime security. The facility will be available to other maritime agencies to conduct their firefighting and sea survival training, which is essential for deployment at sea. This will go a long way in helping the Kenyan Navy progress towards becoming a centre of excellence in maritime safety.
58. UK has training exercises on Counter-IED, people and vehicle searching, and some infantry tactics. They also have the UK supported infrastructure projects at KDF's school of infantry which include an urban village, a Forward Operating Base (FOB), and an assault course all of which prepare more than 600 KDF personnel for deployment in the African Union Mission in Somalia (AMISOM) and now its successor the African Union Transition Mission in Somalia (ATMIS).
59. The UK has been supporting AMISOM Troop Contributing Countries since 2010 and they do this through the Short Term Training Teams (STTTs) from the British Army, which costs Kshs. 43M annually as well as funding stipends via the African Union for all AMISOM Troop Contributing Countries.

### **Maritime Engagement**

60. Kenya's Blue Economy: Kenya's coastline is 640 km long and she has 9700 km<sup>2</sup> of TTW and has a 142,400 km<sup>2</sup> EEZ. The British Government recognizes the potential of this maritime resource to boost the country's economic outlook and has made 'Blue Economy' part of the economic pillar in its development blueprint.
61. Kenya Navy: The Kenya Navy consists of 3 fighting squadrons who are supported by the Special Operations Squadron, the Fleet Maintenance Unit, and the newly formed elite Marine Ranger Regiment. The Kenya Navy is the leading regional maritime power with a very public commitment to supporting the Blue Economy and maritime security.
62. Maritime Engagement to date: To date, engagement with the Kenya Navy has been through the Kenya Navy Training College with which has a good working relationship and some

effective interventions. Royal Navy frigate, HMS Kent, visited in November 2021 and conducted on shore training. The Kenya Navy has requested and UK Minister for Armed Forces agreed to, a broader and deeper maritime relationship. Meanwhile, the Royal Marines have developed a capability development plan to build up the capacity of the Kenya Marines.

### **Defence Cooperation Agreement**

63. The new DCA is not a step change, but a broadening, tightening, and fresh commitment to a mutually valuable relationship. Valuable for the Parties national securities, but also for local economies. It's essential the Agreement receives appropriate scrutiny, and that Kenya's citizenry feel like they have been listened to.

### **DCA Headlines**

64. Since the first DCA was signed in 2016, the relationship has progressed well and they have not had to change much in the new Agreement. It can be seen as a renewal of vows rather than a step change. The latest version was signed by Defence Secretaries on 27<sup>th</sup> July 2021.

65. It will provide status of forces arrangements for deployed service personnel and their dependants to each other's country to conduct defence cooperation activity. It includes detail on the carriage of arms, wearing of uniform, environmental protection, tax status, liability, movement, investigations, and medical provision.

66. It provides for the establishment and operation of a permanent training unit in Kenya and the use of private and gazetted land for training. The Agreement covers exchanges, training, staff talks and meetings, courses, visits, and exercises. It explicitly limits its scope and does not cover Visiting Forces taking part in hostilities or other operations of the Host Nation's armed forces or security forces or activities with police or other security forces.

### **Changes to 2012 Text**

67. The new DCA is broader and reflects a richer relationship. For example, the two countries included a mechanism for multilateral activity that they would both like to do more together. There's a commitment to continue the most important aspects of Kenya/UK relationship, for example the support they provide to the Counter IED facility.

68. The Agreement has enriched provision on environmental monitoring, increased license fees for use of the facilities on KDF land (which will be increased in line with inflation) and ensured that vehicle registration and the importation of personal effects have come in line with developments in Kenyan law.

### **Member's Concerns**

#### ***What economic benefit will the DCA bring to Kenya?***

69. BATUK is a huge contributor to the UK-Kenya defence partnership and to the local community. It permanently employs 550 local civilians and has contributed Kshs. 5.8 billion to the local economy since 2016.

***How can the British Army better use Kenyan community lands?***

70. Having listened to the local communities, some of whom have said that they would welcome training in community conservancies and other local land, the UK Government is looking at options to do so. Any such arrangements need to be made through the Kenyan Ministry of Defence and this is on the agenda for the next Intergovernmental Liaison Committee due to be held on 24th June, 2022.

***What about cases where one is neither a soldier nor an employee?***

71. Community engagements projects are central to BATUK's work. The local communities in Isiolo, Laikipia and Samburu counties where the trainings take place have benefitted from the Kshs. 101 Million investments in BATUK's community engagement activities.

72. BATUK supports the counties in enhancing educational environments (through provision of desks and other classroom improvements), provide water harvesting (through guttering and water tanks); and facilitate with sanitation (build new toilets).

73. BATUK employs both casual staff and contracts locally employed civilians. All job requirements are sent to the relevant Civil Labour Offices in Nanyuki, Archers Post and Nairobi, who then advertise the post and collate all applicants.

74. All casual labour is recruited from the local labour offices. No individual employed as Casual Labour is employed for longer than eight weeks in a financial year under casual terms. This meets Kenyan Employment Law and ensures maximum opportunities for all registered.

75. BATUK always reviews its hiring practices to ensure they are fair, transparent and can work to suit the local community.

***Why do British Soldiers break the military code of conduct when they are in Kenya?***

76. The UK greatly values the opportunity for British troops to train in Kenya alongside their partners in the Kenya Defence Force. In every situation, whether on or off duty, UK Service Personnel are expected to uphold the values and high standards of their services, no less so when deployed overseas. The UK-Kenya Defence Cooperation Agreement includes a clear framework for jurisdiction to ensure that any allegations of disciplinary failures are investigated and pursued as appropriate.

***What is being done regarding paternity of Kenyan children who have British Service persons as their father?***

77. The British Army enforces Kenyan Child Welfare Agency rulings and there are a small number of British soldiers currently paying maintenance to Kenyan mothers. As soon as any children are brought to the CWA attention, BATUK has a process to ensure correct accountability is enforced. BATUK is in regular contact with the Child Welfare Agencies in Laikipia and Samburu Counties to determine whether they are aware of any children of British soldiers.

Anyone who believes that the father of their child is a British Soldier is encouraged to raise this with the Child Welfare Agency.

***Lolldaiga court case - What assurances could be given that there isn't a repeat of the Lolldaiga fire?***

78. The fire damaged around 7,000 acres of private land. No local or community land was directly affected. KWS confirmed publicly that no elephants or wildlife died in the fire. Lessons have been learned with revised procedures and protocols in place for all future training to prevent similar accidents, including: an update of procedures for planning and conducting training during the dry season, adapting fire risk management training to all troops, and the commission of a specialist report from the UK Defence Fire Risk Management Organization.
79. A local community fire prevention and containment group is now established to enhance coordination for any future incidents, working with community leaders, conservation groups and land managers. Given fires of all kinds are common during dry season; this will help mitigate the risks.
80. The actions of those responsible for a post on social media have been investigated and appropriate and proportionate sanctions applied. The risks to reputation of the British Army and the inappropriate use of social media have been a crucial aspect of the investigation.

**Unexploded Ordnance (UXO)**

81. In 2001 Leigh Day & Co raised an action case on behalf of residents who said that they had been harmed or had relatives killed by unexploded ordnances left by British troops exercising. The MOD conducted an investigation into 173 injuries and deaths caused by unexploded ordnances left in training areas. An extensive investigation was conducted on behalf of the MOD and found that the majority of the UXO were of Kenyan Army and Air Force origin. A settlement was made following a mediation session in 2002.
82. In 2015 a child was seriously injured when he handled an unexploded fuse. The incident was investigated by the Kenyan Police Service, assisted by the Kenyan Defence Forces and British Army Training Unit Kenya (BATUK). The investigation was unable to conclusively establish whether the unexploded ammunition that caused the child's injuries was of Kenyan or British origin. An agreed settlement was reached without admission of liability and a payment made to the family of the injured child in June, 2018.
83. BATUK had a relationship with the family of the injured boy and based on this, due to the possibility that it was British Army unexploded ordnance which had injured him and on the unlikelihood that he would receive significant support from other sources, a decision was made to offer a settlement through the Kenyan court system without accepting liability but calculated on the same basis as if it had been British-originated ordnance which had caused his injuries.
84. In addition to the settlement, additional sums of money to support the injured boy were raised by service personnel and dependents at BATUK.

85. The victim through his father received legal representation and the settlement was ratified by a Kenyan court in accordance with Kenyan law.
86. The UK annually deploys a Royal Engineer squadron to conduct unexploded ordnance disposal at Archers Post Training Area to ensure the area used by British units is safe to train in. This is a partnered activity with Kenyan Army Engineers and includes community outreach and training on how to identify, avoid and report UXO. This activity is included in the Defence Cooperation Agreement and has been ongoing for a number of years.

## PART IV

### 4.0 COMMITTEE OBSERVATIONS

87. Having considered the Agreement and analyzed the submissions made, the Committee observed THAT:

- a) The Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland was one of the many existing Defence Cooperation Agreements that Kenya had ratified with other countries and agencies. The legal instrument was geared towards improving Defence Cooperation between the member States.
- b) Defence Agreements are important to the country as they, among others, enable knowledge transfer and capacity building; and sharing of information in an increasingly complex global environment.
- c) The Agreement with the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland provided for joint trainings and as such, activities of the Foreign Forces will not be in isolation.
- d) The Memorandum by the County Government of Laikipia was submitted way past the deadline of 5<sup>th</sup> November, 2021 as had been prescribed in the newspaper advertisement. However, owing to the public interest on the issues, the Committee resolved to consider the prayers of the County Government.
- e) The United Kingdom has an advanced defence capability due to the size and nature of its economy, geo-political position, including its large coastline hence there is a lot of military lessons that Kenya can learn from the latter.
- f) The fire which had destroyed about 12,000 acres of land at Lolldaiga conservancy was as a result of the military exercise in the area.
- g) The Directorate of Criminal Investigations had commenced investigations in the case of the murder of Ms. Agnes Wanjiru Wanjiku by the British Soldiers; while the Office of the Director of Criminal Investigations had initiated talks on Mutual Legal Assistance (MLA) with the UK Government.
- h) The trainings by BATUK had failed to adhere to Kenya's laws and obligations under international law with respect to the preservation of the environment pursuant to Article 8 of the Agreement.
- i) The ratification of the Defence Cooperation Agreement between Kenya and the United Kingdom and Northern Ireland would greatly enhance intelligence sharing to tackle

security challenges facing the member countries given the security threats facing the Horn of Africa region.

- j) The Committee reviewed Article 6 (5) of the agreement which enumerates several offences that are not considered to arise from official duties of the visiting forces and are therefore subject to trial by the Host Nation. However, the committee noted that the offence of murder was not included as one of those offences.
- k) The Committee examined Article 23 of the agreement and noted that, while the visiting forces are required to respect and be sensitive to traditions, customs and culture of the local communities of the places they are deployed, the agreement does not provide for Corporate Social Responsibility.

PART V

5.0 COMMITTEE RECOMMENDATION


88. The Committee, having reviewed the Agreement and considered the submissions made, recommends THAT:

Pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the House adopts and approves the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and the Northern Ireland on Defence Co-operation, with reservations that:

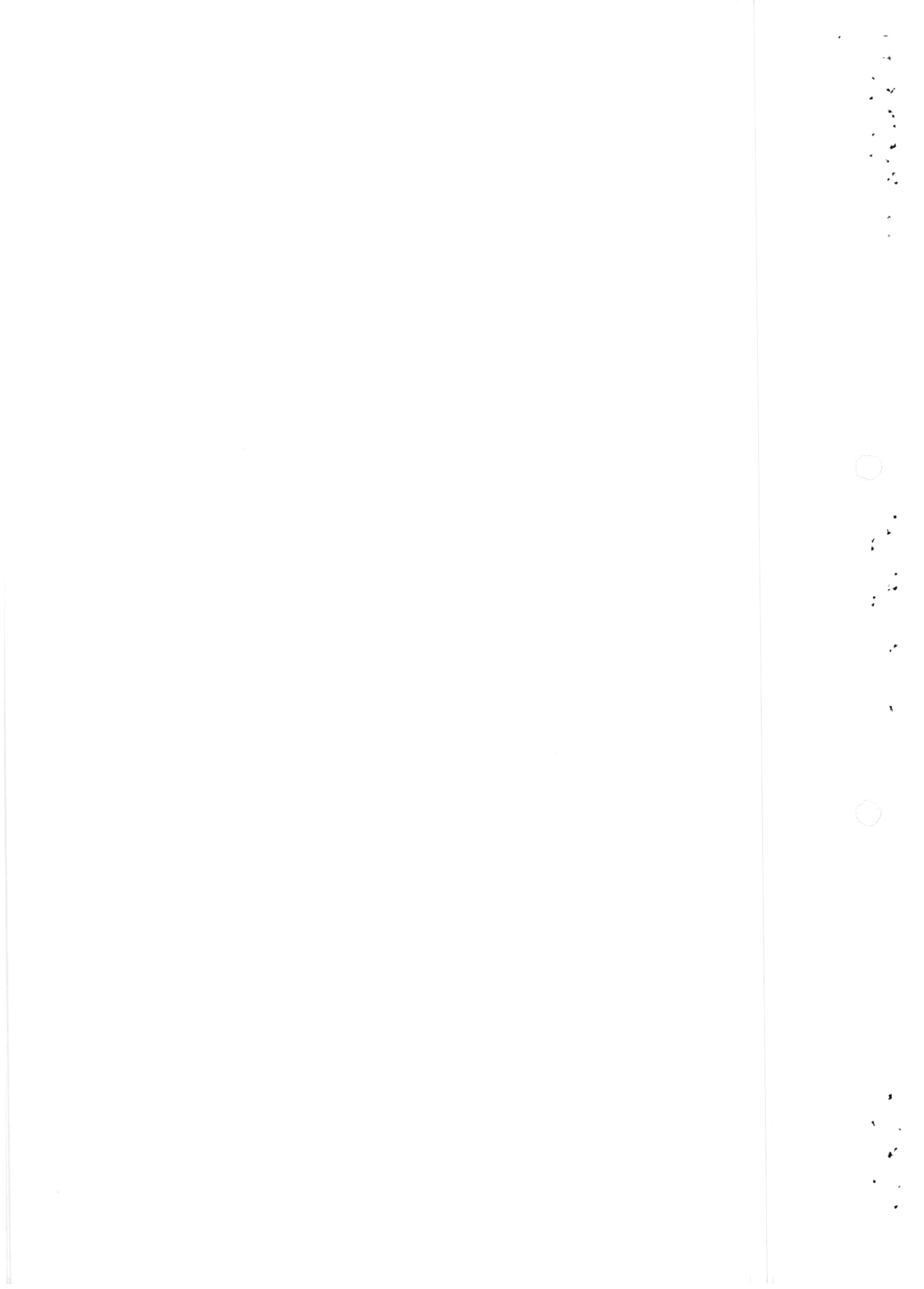
- a) Article 6 (5) of the agreement should be amended by inserting a new paragraph immediately after paragraph (h) to include murder as one of the offences which are under the jurisdiction of the Host Nation; and
- b) Article 23 of the agreement to include Corporate Social Responsibility.

SIGNED: .....  ..... DATE: 17/03/2023.....

HON. NELSON KOECH, M.P.  
CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN  
RELATIONS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 21 MAR 2023	
DAY: TUE	
TABLED BY:	HON NELSON KOECH (CHAIRPERSON)
CLERK-AT THE-TABLE:	INZOFU MWALE

# **ADOPTION LIST**





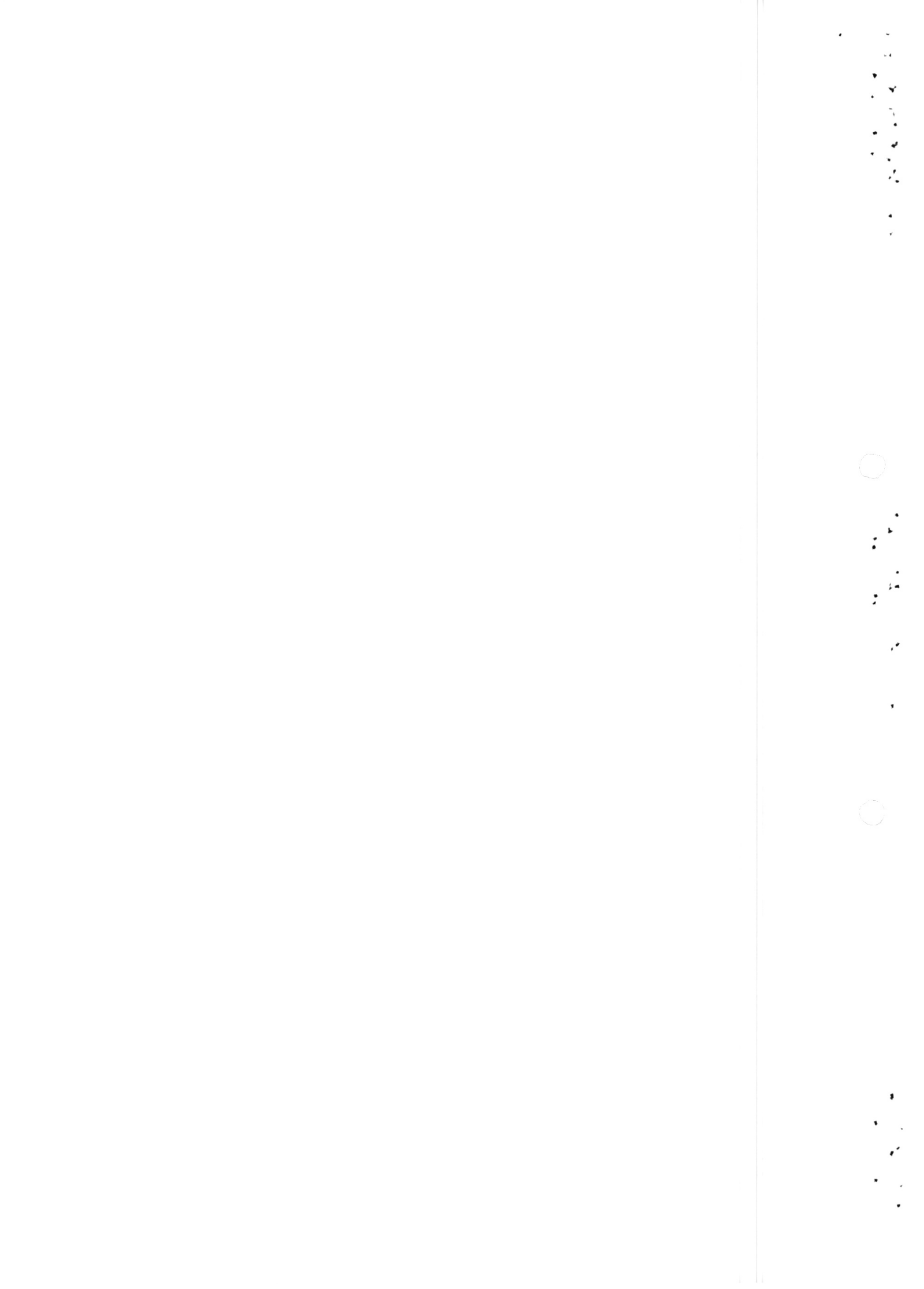
**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**  
**13<sup>TH</sup> PARLIAMENT - SECOND SESSION - 2023**  
**DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE,**  
**AND FOREIGN RELATIONS.**

**REPORT ADOPTION LIST**

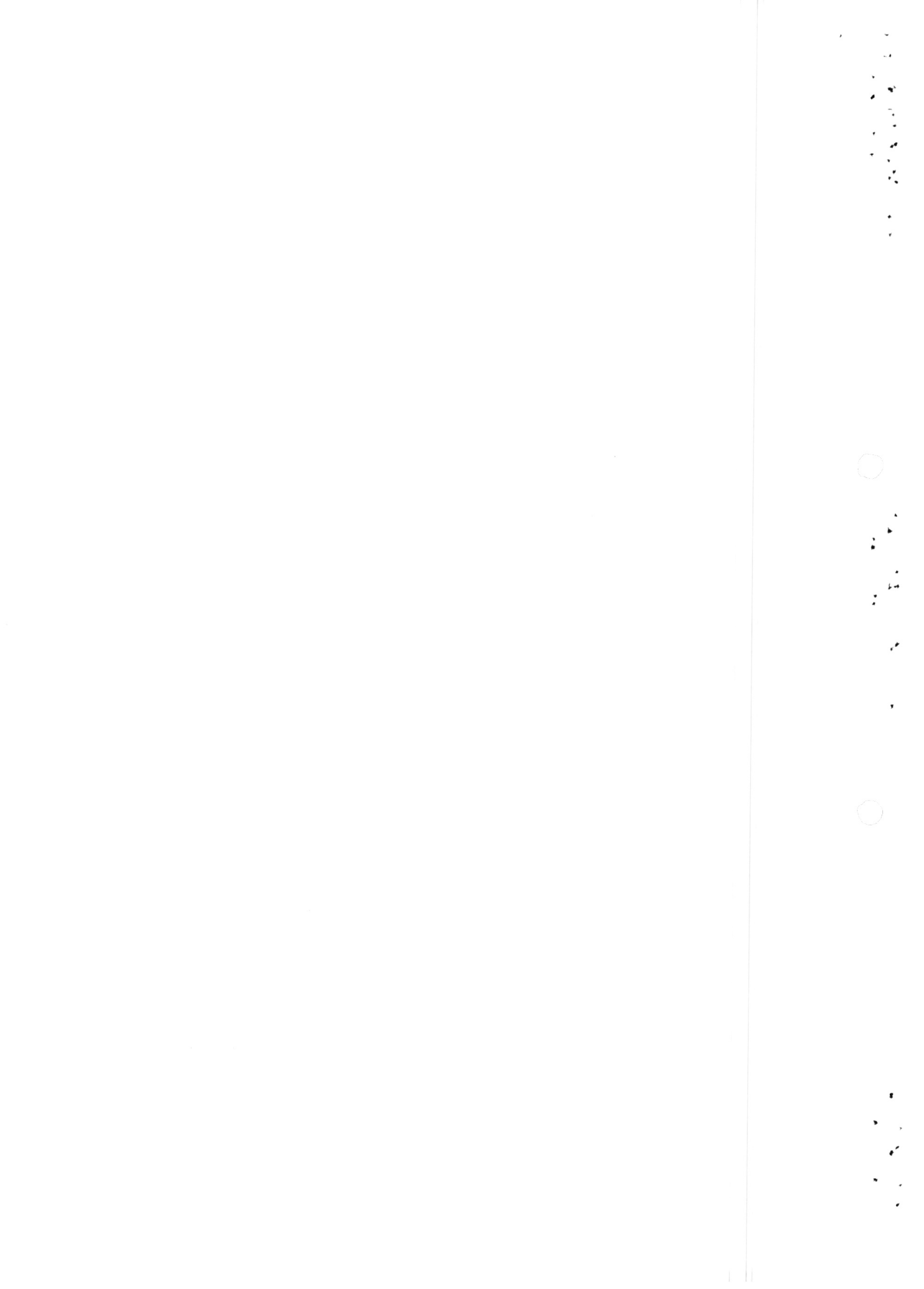
**REPORT ON CONSIDERATION OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF  
THE REPUBLIC OF UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN  
IRELAND ON DEFENCE CO-OPERATION**

We, the Members of the Departmental Committee on Defence, Intelligence, And Foreign Relations, have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Tuesday 14<sup>th</sup> March, 2023.**

	NAME	SIGNATURE
1.	The Hon. Koech Nelson, M.P. (Chairperson)	
2.	The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P. (Vice Chairperson)	
3.	The Hon. Wanjira Martha Wangari, M.P	
4.	The Hon. Hassan Abdi Yusuf, M.P	
5.	The Hon. Odhiambo Millie Grace Akoth, MP	
6.	The Hon. Kanchory Elijah Memusi, MP	
7.	The Hon. (Dr.) Kasalu Irene Muthoni, M.P	
8.	The Hon. Kirima Moses Nguchine, M.P	
9.	The Hon. Kandie Joshua Chepyegon, M.P	
10.	The Hon. Kwenya Thuku Zachary, M.P	
11.	The Hon. Luyai Caleb Amisi, M.P	
12.	The Hon. Teresia Wanjiru Mwangi, M.P	
13.	The Hon. Logova Sloya Clement, M.P	
14.	The Hon. Ikana Fredrick Lusuli, M.P	
15.	The Hon. Mohamed Abdikadir Hussein, M.P	



# **COMMITTEE MINUTES**



**MINUTES OF THE 15<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS HELD ON TUESDAY 14<sup>TH</sup> MARCH, 2023 AT 10.30 AM AT OLE SERENI HOTEL.**

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**PRESENT**

1. **The Hon. Koech Nelson, M.P.** - **Chairperson**
2. **The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.** - **Vice Chairperson**
3. The Hon. Hassan Abdi Yusuf, M.P
4. The Hon. Wanjira Martha Wangari, M.P
5. The Hon. Kanchory Elijah Memusi, MP
6. The Hon. Luyai Caleb Amisi, M.P
7. The Hon. Logova Sloya Clement, M.P
8. The Hon. Kwenya Thuku Zachary, M.P
9. The Hon. Ikana Fredrick Lusuli, M.P
10. The Hon. Kirima Moses Nguchine, M.P
11. The Hon. Mohamed Abdikadir Hussein, M.P

**APOLOGIES**

1. The Hon. Odhiambo Millie Grace Akoth, MP
2. The Hon. (Dr.) Kasalu Irene Muthoni, M.P
3. The Hon. Kandie Joshua Chepyegon, M.P
4. The Hon. Teresia Wanjiru Mwangi, M.P

**IN ATTENDANCE**

**THE NATIONAL ASSEMBLY**

1. Mr. Dennis Mogare Ogechi - Clerk Assistant II
2. Ms. Winfred Kambua Kilonzo - Clerk Assistant III
3. Dr. Donald Manyala - Research Officer II
4. Mr. Lenny Kabinga - Legal Counsel II
5. Ms. Rhoda Muchori - Hansard Reporter III
6. Mr. Murimi Mwangi - Media Relations Officer III

**AGENDA**

1. Prayers
2. Preliminaries
3. **Consideration and Adoption of a Report on the Committee's Consideration of the Agreement Between the Government of the Republic of Kenya and the Government of the Republic of United Kingdom of Great Britain and Northern Ireland on Defence Co-Operation.**
4. Any Other Business
5. Adjournment/Date of the next Sitting

**MIN.NO. DDC/DIFR/79/2023:**

**PRELIMINARIES**

The meeting was called to order at 10:45 a.m. and commenced with prayers. Thereafter, the Chairperson stated that the main agenda of the meeting was consideration and adoption of a Report on the Committee's Consideration of the Agreement Between the Government of the Republic of

Kenya and the Government of the Republic of United Kingdom of Great Britain and Northern Ireland on Defence Co-Operation.

The agenda was unanimously adopted.

**MIN.NO. DDC/DIFR/80/2022:**

**CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING**

Confirmation of the Minutes for the previous Sitting was deferred to the next Sitting.

**MIN.NO. DDC/DIFR/81/2022:**

**CONSIDERATION AND ADOPTION OF A REPORT ON THE COMMITTEE'S CONSIDERATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON DEFENCE CO-OPERATION.**

A Report on the Committee's Consideration of the Agreement Between the Government of the Republic of Kenya and the Government of the Republic of United Kingdom of Great Britain and Northern Ireland on Defence Co-Operation was adopted after being proposed by Hon. Wanjira Martha Wangari, M.P. and seconded by Hon. Ikana Fredrick Lusuli, M.P. It was adopted with the following observations and recommendations:

**MIN.NO. DDC/DIFR/82/2022:**

**OBSERVATIONS**

The Committee observed as follows:

1. The Agreement between the Government of the Republic of Kenya and the Government of the Republic of United Kingdom of Great Britain and Northern Ireland was one of the many existing Defence Cooperation Agreements that Kenya had ratified with other countries and agencies. The legal instrument was geared towards improving Defence Cooperation between the member States.
2. Defence Agreements are important to the country as they, among others, enable knowledge transfer and capacity building; and sharing of information in an increasingly complex global environment.
3. The Agreement with the Government of the Republic of Kenya and the Government of the Republic of United Kingdom of Great Britain and Northern Ireland provided for joint trainings and as such, activities of the Foreign Forces will not be in isolation.
4. The Memorandum by the County Government of Laikipia was submitted way past the deadline of 5<sup>th</sup> November, 2021 as had been prescribed in the newspaper advertisement. However, owing to the public interest on the issues, the Committee resolved to consider the prayers of the County Government.
5. The United Kingdom has an advanced defence capability due to the size and nature of its economy, geo-political position, including its large coastline hence there is a lot of military lessons that Kenya can learn from the latter.

6. The fire which had destroyed about 12,000 acres of land at Lolldaiga conservancy was as a result of the military exercise in the area.
7. The Directorate of Criminal Investigations had commenced investigations in the case of the murder of Ms. Agnes Wanjiru Wanjiku by the British Soldiers; while the Office of the Director of Criminal Investigations had initiated talks on Mutual Legal Assistance (MLA) with the UK Government.
8. The trainings by BATUK had failed to adhere to Kenya's laws and obligations under international law with respect to the preservation of the environment pursuant to Article 8 of the Agreement.
9. The ratification of the Defence Cooperation Agreement between Kenya and the United Kingdom and Northern Ireland would greatly enhance intelligence sharing to tackle security challenges facing the member countries given the security threats facing the Horn of Africa region.
10. The Committee reviewed Article 6 (5) of the agreement which enumerates several offences that are not considered to arise from official duties of the visiting forces and are therefore subject to trial by the Host Nation. However, the committee noted that the offence of murder was not included as one of those offences.
11. The Committee examined Article 23 of the agreement and noted that, while the visiting forces are required to respect and be sensitive to traditions, customs and culture of the local communities of the places they are deployed, the agreement does not provide for Corporate Social Responsibility.

**MIN.NO. DDC/DIFR/83/2022:**

**RECOMMENDATION**

The Committee, having reviewed the Agreement and considered the submissions made, recommended that pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the House adopts and approves the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom of Great Britain and the Northern Ireland on Defence Co-operation with reservations that:

- a) Article 6 (5) of the agreement should include murder as one of the offences which are not to be considered as arising from official duties and are therefore under the jurisdiction of the Host Nation; and
- b) Article 23 of the agreement to include Corporate Social Responsibility.

**MIN.NO. DDC/DIFR/84/2022:**

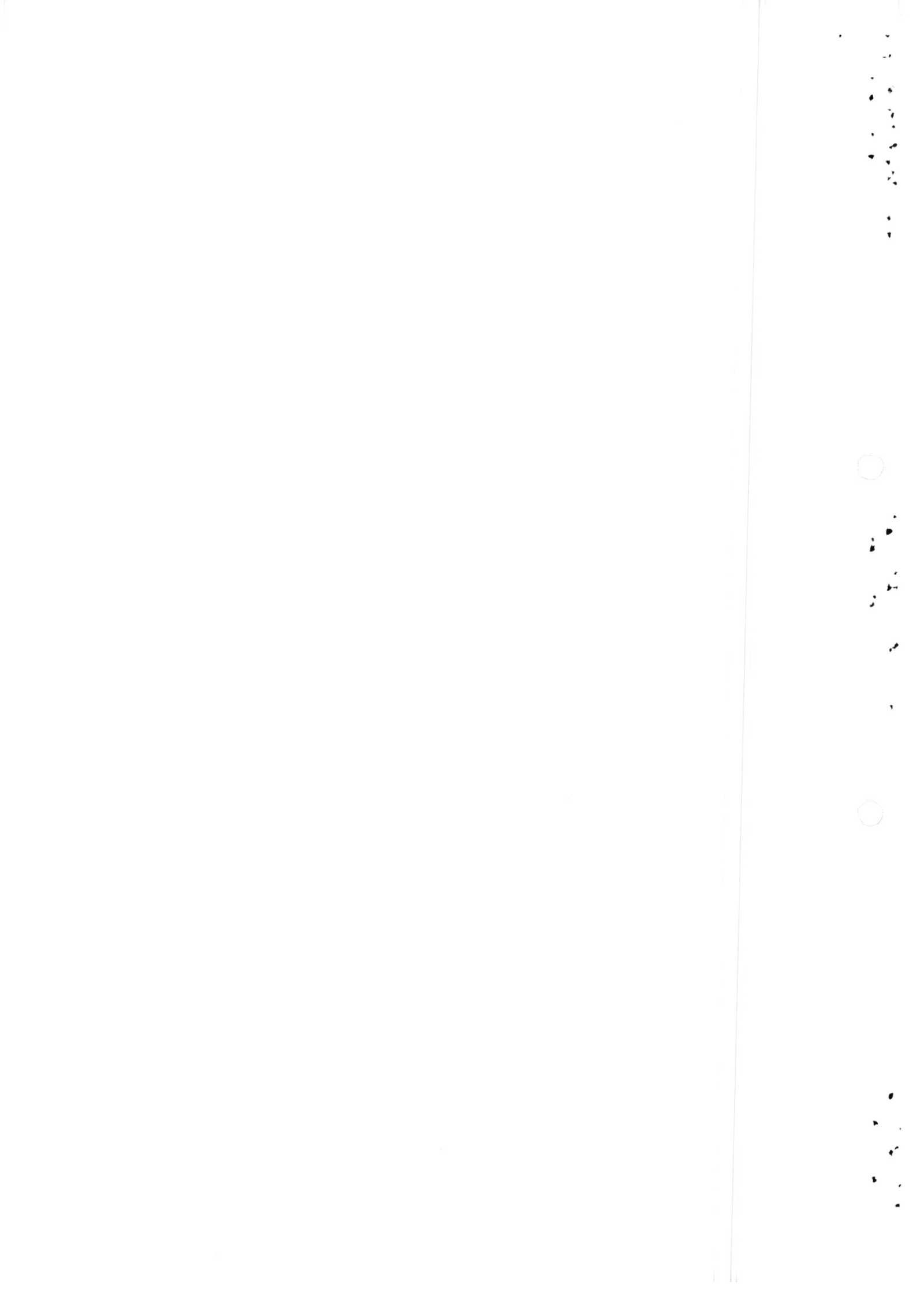
**ADJOURNMENT**

There being no other business the meeting was adjourned at 12.55 pm.

SIGNED: .....  .....

**THE HON. NELSON KOECH, M.P.  
CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN  
RELATIONS**

DATE: ..... 17/03/23 .....



**MINUTES OF THE ONE HUNDRED AND THIRTY SIXTH (136<sup>TH</sup>) SITTING OF  
THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS  
HELD AT 4<sup>TH</sup> FLOOR CONTINENTAL HOUSE, ON THURSDAY, 7<sup>TH</sup> OCTOBER,  
2021 AT 12.00 PM**

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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. Gideon Sitelu Konchela, MP EGH, OGW, 'psc' (UK), MP (Virtually)
4. The Hon. Charles Kilonzo, MP
5. The Hon. Martha Wangari Wanjira, MP
6. The Hon. Memusi Ole Kanchory, MP (Virtually)
7. The Hon. Stephen Mutinda Mule, MP
8. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP (Virtually)
9. The Hon. (Dr.) Irene Muthoni Kasalu, MP (Virtually)
10. The Hon. (Dr.) Lilian Gogo, MP (Virtually)
11. The Hon. Vincent Kipkurui Tuwei, MP (Virtually)
12. The Hon. Ernest Ogesi Kivai, MP (Virtually)
13. The Hon. Asha Hussein Mohamed, MP (Virtually)
14. The Hon. Caleb Amisi, MP

**APOLOGIES**

1. The Hon. Richard Maore Maoka, CBS, MP
2. The Hon. Yusuf Hassan Abdi, MP
3. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
4. The Hon. Moses Nguchine Kirima, MP
5. The Hon. Zachary Kwenya Thuku, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY**

- |                        |   |                        |
|------------------------|---|------------------------|
| 1. Mr. Abdiaziz Shobay | - | Second Clerk Assistant |
| 2. Mr. Salem Lorot     | - | Legal Counsel          |
| 3. Mr. John Ngang'a    | - | Audio Officer          |

**MIN. NO.NA/DDC.DFR/2021/111:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 12.15 pm and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Charles Kilonzo, MP and seconded by The Hon. Caleb Amisi, MP.

**AGENDA**

1. Prayers
2. Adoption of the agenda
3. Confirmation of minutes of previous sittings
4. Matters arising
5. Substantive agenda: **Briefing by the legal Counsel on the Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom of Great Britain and Northern Ireland on Defence Cooperation.**
6. Any Other Business

**MIN. NO.NA/DDC.DFR/2021/112: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

**135<sup>th</sup> Sitting**

Minutes of the 135<sup>th</sup> sitting held on 28<sup>th</sup> September, 2021 were read and confirmed as a true record of proceedings as proposed by Hon. Martha Wangari Wanjira, MP and seconded by Hon. Stephen Mutinda Mule, MP.

**MIN. NO.NA/DDC.DFR/2021/113: MATTER ARISING**

**MIN. NO.NA/DDC.DFR/2021/107: Field Visits to Regional Development Authorities**

The Committee resolved to visit projects being implemented by the Coast Development Authority in Kilifi and Tana River Counties between 14<sup>th</sup> and 17<sup>th</sup> October, 2021. Specifically, the Committee will visit the Integrated Fruit & Honey processing, Boji Farmers Irrigation Project, and Wananchi Cottages in Kilifi and Tana-River Counties respectively.

**MIN. NO.NA/DDC.DFR/2021/108: Meeting with the British High Commissioner**

The meeting noted that the High Commissioner requested the meeting with the Committee regarding the Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom of Great Britain and Northern Ireland on Defence Cooperation be rescheduled to a later date. However, The Committee resolved to undertake the proposed field visit to Nanyuki for its public participation exercise on the said agreement from 21<sup>st</sup> – 24<sup>th</sup> October, 2021.

**MIN. NO.NA/DDC.DFR/2021/109: Statement on issuance of visas to Kenyans travelling to the Peoples Republic of China**

The meeting was informed that both the Cabinet Secretary and Principal Secretary for Foreign Affairs will be away on official duties on the proposed dates of the meeting, however, the Ministry provided a Comprehensive Ministerial Statement on the subject matter including Comments from the State Department for Immigration and Citizen Services and the Kenya Revenue Authority (KRA). The secretariat was directed to share the response with Hon. Kimani Ichungw'a, MP who had requested for the statement.

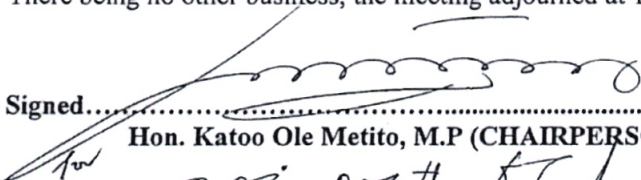
**MIN. NO.NA/DDC.DFR/2021/114: BRIEFING BY THE LEGAL COUNSEL ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON DEFENCE COOPERATION**

The legal counsel gave a brief overview of the Agreement, and confirmed that they were supported by the Ministry of Defence, as well as being in harmony with domestic laws. The Committee resolved to invite the Cabinet Secretary for Defence and the Attorney General to be apprised on the Agreement. Further, the secretariat was tasked to process newspaper advertisements for call for public participation.

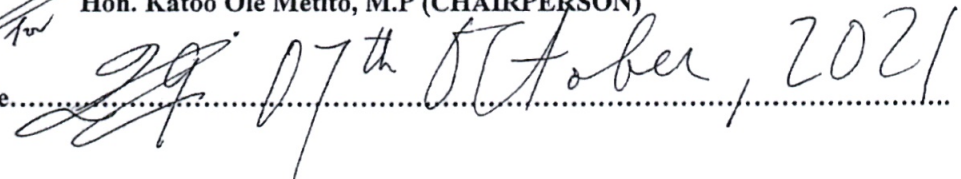
In the same breath, The Committee noted that the Agreement was bulky and required adequate time for their perusal, article by article. It was resolved that the secretariat arranges for a retreat in Mombasa for that purpose after the end of the call for public participation.

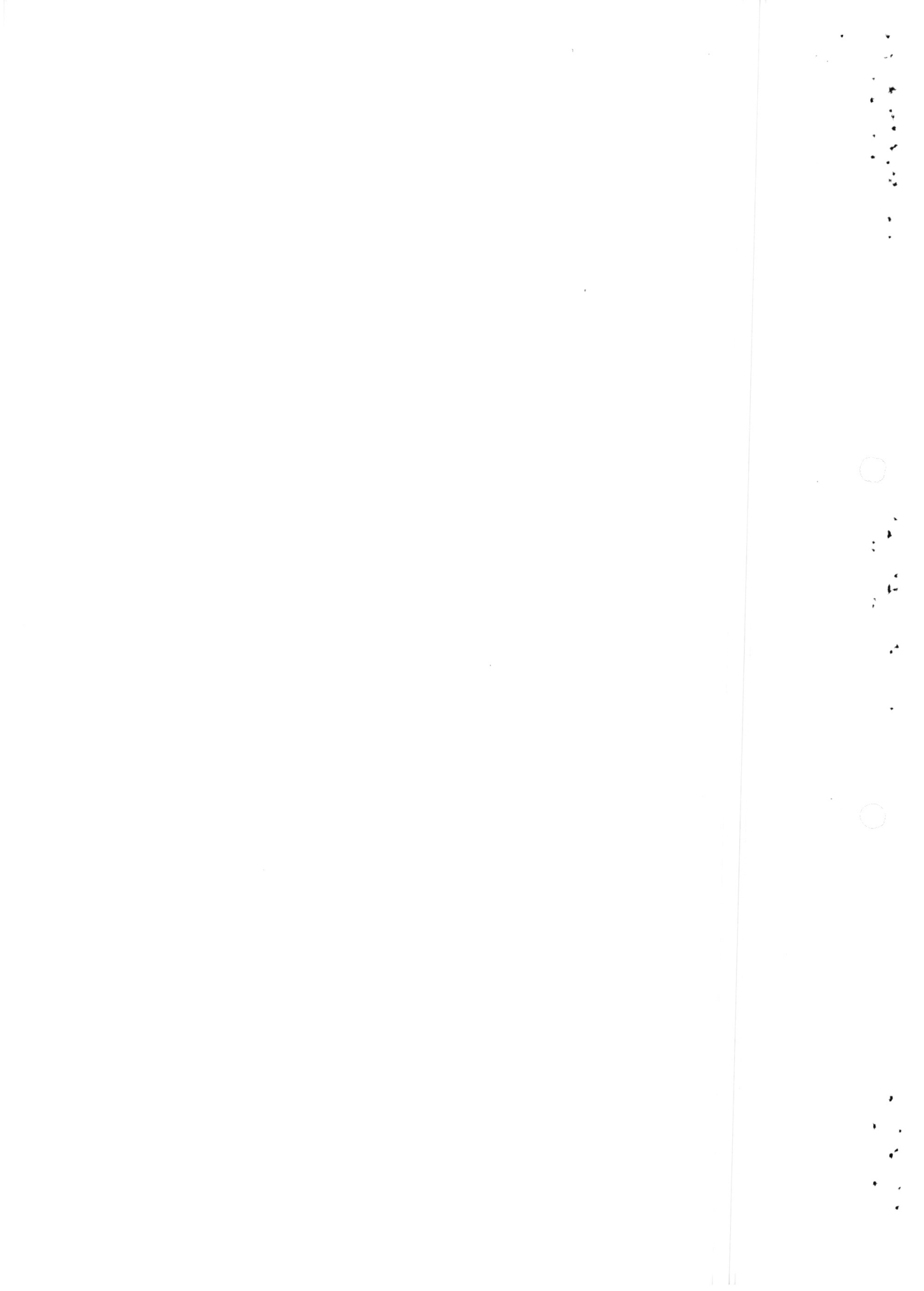
**MIN. NO.NA/DDC.DFR /2021/115:      ADJOURNMENT**

There being no other business, the meeting adjourned at 1.15 pm.

Signed.....

Hon. Katoole Metito, M.P (CHAIRPERSON)

Date.....



**MINUTES OF THE ONE HUNDRED AND THIRTY SEVENTH (137<sup>TH</sup>) SITTING OF  
THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS  
HELD AT 2<sup>ND</sup> FLOOR CONTINENTAL HOUSE, ON THURSDAY, 21<sup>ST</sup> OCTOBER,  
2021 AT 10.00 AM**

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**PRESENT**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson) *(Virtually)*
2. The Hon. Yusuf Hassan Abdi, MP
3. The Hon. Charles Kilonzo, MP (Chairing)
4. The Hon. Martha Wangari Wanjira, MP *(Virtually)*
5. The Hon. Stephen Mutinda Mule, MP
6. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
7. The Hon. (Dr.) Irene Muthoni Kasalu, MP *(Virtually)*
8. The Hon. (Dr.) Lilian Gogo, MP *(Virtually)*
9. The Hon. Ernest Ogesi Kivai, MP
10. The Hon. Caleb Amisi, MP
11. The Hon. Zachary Kwenya Thuku, MP

**APOLOGIES**

1. The Hon. Richard Tong'i, MP (Vice Chairperson)
2. The Hon. Gideon Sitelu Konchela, MP EGH, OGW, 'psc' (UK), MP
3. The Hon. Richard Maore Maoka, CBS, MP
4. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
5. The Hon. Memusi Ole Kanchory, MP
6. The Hon. Vincent Kipkurui Tuwei, MP
7. The Hon. Moses Nguchine Kirima, MP
8. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY**

- |                        |   |                        |
|------------------------|---|------------------------|
| 1. Mr. Victor Weke     | - | First Clerk Assistant  |
| 2. Mr. Abdiaziz Shobay | - | Second Clerk Assistant |
| 3. Mr. Salem Lorot     | - | Legal Counsel          |
| 4. Mr. John Ngang'a    | - | Audio Officer          |
| 5. Mr. Bernard Omondi  | - | Sergeant At-Arm        |

**UK HIGH COMMISSION**

- |                         |   |                                    |
|-------------------------|---|------------------------------------|
| 1. Ms. Jane Marriot     | - | UK High Commissioner to Kenya      |
| 2. Mr. Charles Henin    | - | UK High Commission                 |
| 3. Ms. Ronnie Westerman | - | UK High Commission Defence Advisor |

**MIN. NO.NA/DDC.DFR/2021/116:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.15 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Yusuf Hassan Abdi, MP and seconded by The Hon. Zachary Kwenya Thuku, MP.

**AGENDA**

1. Prayers
2. Adoption of the agenda
3. Confirmation of minutes of previous sittings
4. Matters arising
5. Substantive agenda: **Meeting with the British High Commissioner to Kenya on the Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom of Great Britain and Northern Ireland on Defence Cooperation.**
6. Any Other Business

**MIN. NO.NA/DDC.DFR/2021/117: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

**136<sup>th</sup> Sitting**

Minutes of the 136<sup>th</sup> sitting held on 7<sup>th</sup> October, 2021 were read and confirmed as a true record of proceedings as proposed by Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP and seconded by Hon. Ernest Ogesi Kivai, MP.

**MIN. NO.NA/DDC.DFR/2021/118: MATTER ARISING**

**MIN. NO.NA/DDC.DFR/2021/107: Field Visits to LBDA Projects in Homa-Bay, Kisumu and Busia Counties on 5<sup>th</sup> & 6<sup>th</sup> November,**

The meeting was informed that the activity has been rescheduled to **Thursday 25<sup>th</sup> – 28<sup>th</sup> November, 2021** due to lack of funds. The secretariat was directed inform Lake Basin Development Authority (LBDA) on the same.

**MIN. NO.NA/DDC.DFR/2021/119: SUBMISSION BY THE BRITISH HIGH COMMISSIONER TO KENYA ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON DEFENCE COOPERATION**

The British High Commissioner to Kenya Ms. Jane Marriot gave a brief overview of the Agreement and informed the Committee that;

1. The cooperation shall be based on the principal of reciprocity and provides the forms it would take e.g mutual visits, training and joint exercises etc;
2. The Agreement provides instances when the hosting nation and the sending nation may exercise jurisdiction over Visiting Forces, the Civilian Component or Dependents for any criminal offences committed;
3. The Agreement Regulates the usage of uniform, arms and other Defence Articles by visiting forces while in the host nation;
4. The Agreement provides for measures to ensure the protection of environment;
5. The Agreement also provides for provision and regulation of training areas by the Host Nation;
6. There is a framework under which civil claims may be pursued against the visiting Forces in the interest of justice;
7. It provides for entry and exit of visiting forces in the host nation;
8. Provides for financial obligations of the parties;

9. The investigation of accidents or incidents including those involving military aircraft, missiles and/or unmanned aircraft systems of the Visiting Forces shall be the responsibility of the authorities of the Party in whose territory the accident or incident under investigation occurred;
10. The Agreement also regulates the interaction between Visiting Forces and local communities of the Host Nation. Visiting Forces shall respect customs and traditions of local communities not harm or injure vulnerable groups. It further provides for compensation where they are found liable;
11. All disputes arising from the Agreement shall be resolved by consultation or negotiations between parties through Inter-Governmental Liaison Committee. Disputes not resolved by Inter-Governmental Liaison Committee shall be resolved through diplomatic channels;
12. The Agreement shall enter into force on the date of receipt of later written notification by which the parties shall notify each other through diplomatic channels of completion of their respective internal procedures required for the entry into force of the Agreements;
13. The agreement remains in effect for a period of five years and may be renewed for a further period as agreed by parties;
14. Either party wishing to renew the agreement shall issue a 12months renewal notice prior to expiry of the agreement;
15. The Agreement may be amended at any time, in writing by mutual consent of parties.
16. The Agreement may be terminated by either party giving 6 months written notice of termination.

#### **Committee Concerns**

- (i) Members were concerned with the recent fire, which has been blamed on the military exercise which has destroyed about 12,000 acres of land at the privately owned conservancy in central Kenya;
- (ii) Members were also concerned about the Kenya/UK double taxation agreement signed on 31<sup>st</sup> July, 1973 and amended by a protocol signed on 20<sup>th</sup> January, 1976 and further notes dated 8<sup>th</sup> February, 1977 which entered into force on 30<sup>th</sup> September, 1977 effective in united kingdom from 1<sup>st</sup> April, 1976 for corporation tax and from 6<sup>th</sup> April, 1976 for income tax and capital gains tax;
- (iii) Members noted that Kenya and the United Kingdom should enhance intelligence sharing to tackle security challenges facing both countries given the security threats facing the region.


#### **Committee Resolutions**

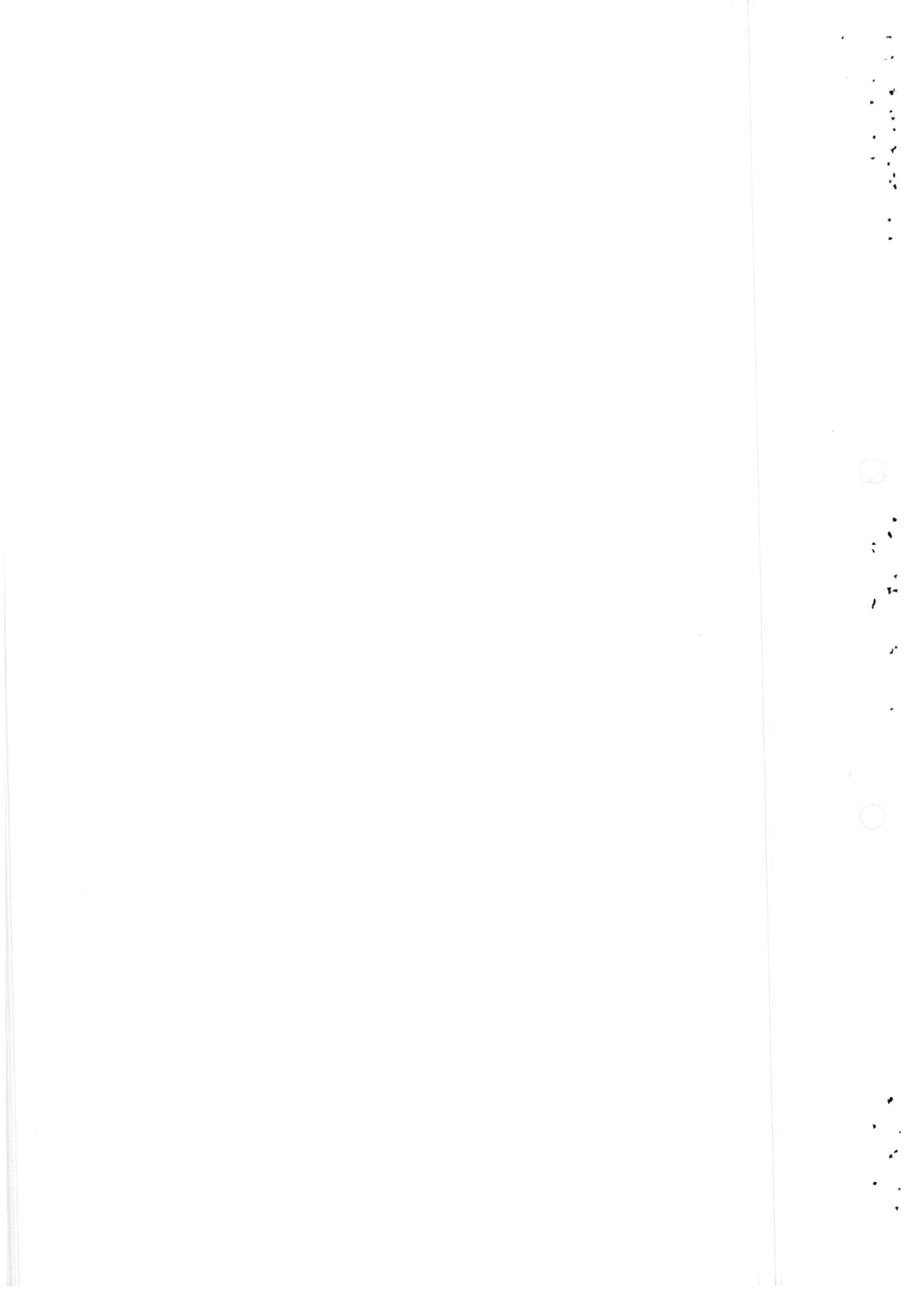
The Committee resolved to deliberate on the Agreement further for its consideration and meet the Cabinet Secretary for Defence and the Attorney-General of the Republic of Kenya to be briefed on the memorandum before it reports to the House and approval for ratification.

**MIN. NO.NA/DDC.DFR /2021/120:      ADJOURNMENT**

There being no other business, the meeting adjourned at 11.45 am.

Signed.....  
  
 Hon. Kator Ole Metito, M.P (CHAIRPERSON)

Date.....  
  
 28<sup>th</sup> October, 2021



139<sup>th</sup>

**MINUTES OF THE ONE HUNDRED AND THIRTY EIGHTH (138<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD AT 2<sup>ND</sup> FLOOR CONTINENTAL HOUSE, ON THURSDAY, 28<sup>TH</sup> OCTOBER, 2021 AT 10.00 AM**

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**PRESENT**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson) (Virtually)
2. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP (Chairing)
3. The Hon. Charles Kilonzo, MP
4. The Hon. Gideon Sitelu Konchela, MP EGH, OGW, 'psc' (UK), MP (Virtually)
5. The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP
6. The Hon. Martha Wangari Wanjira, MP (Virtually)
7. The Hon. Memusi Ole Kanchory, MP (Virtually)
8. The Hon. Caleb Amisi, MP (Virtually)

**APOLOGIES**

1. The Hon. Richard Tong'i, MP (Vice Chairperson)
2. The Hon. Richard Maore Maoka, CBS, MP
3. The Hon. Stephen Mutinda Mule, MP
4. The Hon. (Dr.) Lilian Gogo, MP
5. The Hon. Yusuf Hassan Abdi, MP
6. The Hon. (Dr.) Irene Muthoni Kasalu, MP
7. The Hon. Vincent Kipkurui Tuwei, MP
8. The Hon. Moses Nguchine Kirima, MP
9. The Hon. Ernest Ogesi Kivai, MP
10. The Hon. Asha Hussein Mohamed, MP
11. The Hon. Zachary Kwenya Thuku, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY**

- |                        |   |                       |
|------------------------|---|-----------------------|
| 1. Mr. Victor Weke     | - | First Clerk Assistant |
| 2. Mr. Edison Odhiambo | - | Fiscal Analyst        |
| 3. Mr. John Ngang'a    | - | Audio Officer         |

**MINISTRY OF DEFENCE**

- |                              |                                  |
|------------------------------|----------------------------------|
| 1. Hon. Eugene Wamalwa, EGH- | Cabinet Secretary                |
| 2. Hon. Peter Odoyo          | - Chief Administrative Secretary |
| 3. Lt. Gen. Francis Ogolla   | - Vice Chief of Defence Forces   |
| 4. Brig. Yvonne K. Kirvi     | - Chief of Legal                 |
| 5. Col. Godfrey Ndiga        | - Policy Officer                 |
| 6. Mr. Gerald Sakwa          | - Parliamentary Liaison Officer  |

**MIN. NO.NA/DDC.DFR/2021/125:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 2.33 pm and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Charles Kilonzo, MP and seconded by The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP.

## AGENDA

1. Prayers
2. Adoption of the agenda
3. Confirmation of minutes of previous sittings
4. Matters arising
5. Substantive agenda:
  - i. Response by CS Defence to Question No. 9/21, asked by Hon. Abdikhaim Osman, MP
  - ii. Briefing by CS Defence on the Defence Cooperation Agreement with UK
6. Any Other Business

**MIN. NO.NA/DDC.DFR/2021/126: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

**138<sup>th</sup> Sitting**

Minutes of the 138<sup>th</sup> sitting held on 28<sup>th</sup> October, 2021 were read and confirmed as a true record of proceedings as proposed by Hon. Gideon Konchela, MP and seconded by Hon. Caleb Amisi, MP.

**MIN. NO.NA/DDC.DFR/2021/127: MATTERS ARISING**

The secretariat reported that they were yet to receive responses from the Attorney General's office, the Kenya Law Reform Commission and State Department for Regional & Northern Corridor Development, on the Lake Turkana Development Bill, 2021 proposed by Hon. Christopher Doye Nakuleu, M.P.

**MIN. NO.NA/DDC.DFR/2021/128: RESPONSE BY CABINET SECRETARY, MINISTRY OF DEFENCE TO QUESTION NO. 9/21 BY HON. ABDIKHAIM OSMAN, MP**

The Cabinet Secretary requested for more time to provide a comprehensive response to the question asked by Hon. Abdikhaim Osman, MP regarding shooting of herders and cattle in Ras Kamboni.

Hon. Osman, and the Committee acceded to this request and directed that a written response be availed by Tuesday 9<sup>th</sup> November 2021.

**MIN. NO.NA/DDC.DFR/2021/129: BRIEFING BY CABINET SECRETARY, MINISTRY OF DEFENCE ON THE DEFENCE COOPERATION AGREEMENT WITH THE UK**

The Chairperson invited the Cabinet Secretary to provide a status update of the matter of murder of a Ms. Agnes Wanjiru by a British soldier, before delving into the new Defence Cooperation Agreement.

The Cabinet Secretary, Hon. Wamalwa submitted as follows;

1. He noted the importance of the Defence Cooperation Agreement in strengthening our military cooperation with the United Kingdom;

2. He acknowledged the findings of the inquest of the murder of Ms. Wanjiru and assured the Committee that the previous agreement gave Kenya jurisdiction to deal with the matter. Kenya would therefore invoke provisions of the Agreement;
3. Earlier in the morning, he had hosted the British Minister of Defence, Mr. James Hhipie, accompanied by the High Commissioner, Ms. Jane Marriot who assured him that the UK government was ready to cooperate in accordance with the Agreement to prosecute those liable for the death;
4. The jurisdiction to prosecute was however in the hands of civilian authorities including the Director of Public Prosecutions and the Inspector General of Police. The latter had indeed issued a statement on the same;
5. He expressed regret at the delay of investigations and justice to the victim and her family.

The Committee was not satisfied with assurances and demanded concrete action and timelines. The Defence Cooperation Agreement no matter how beneficial, could not be at the expense of Kenyan lives. Members noted other cases in the visiting military areas of operations including children sired and abandoned by the soldiers, environmental degradation and brawls with residents, which needed to be wholesomely addressed.

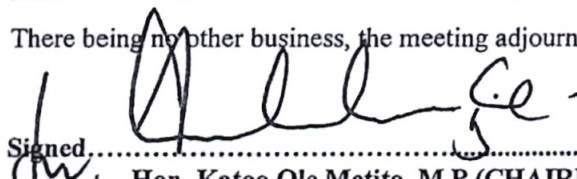
The Committee further put the Cabinet Secretary to task over the possibility of local accomplices to the cover-up and demanded that they be exposed and punished.

The Cabinet Secretary responded that the government's cardinal duty was to protect the lives of Kenyans and could not be involved in any cover-up, but could be attributable to unintentional delays.

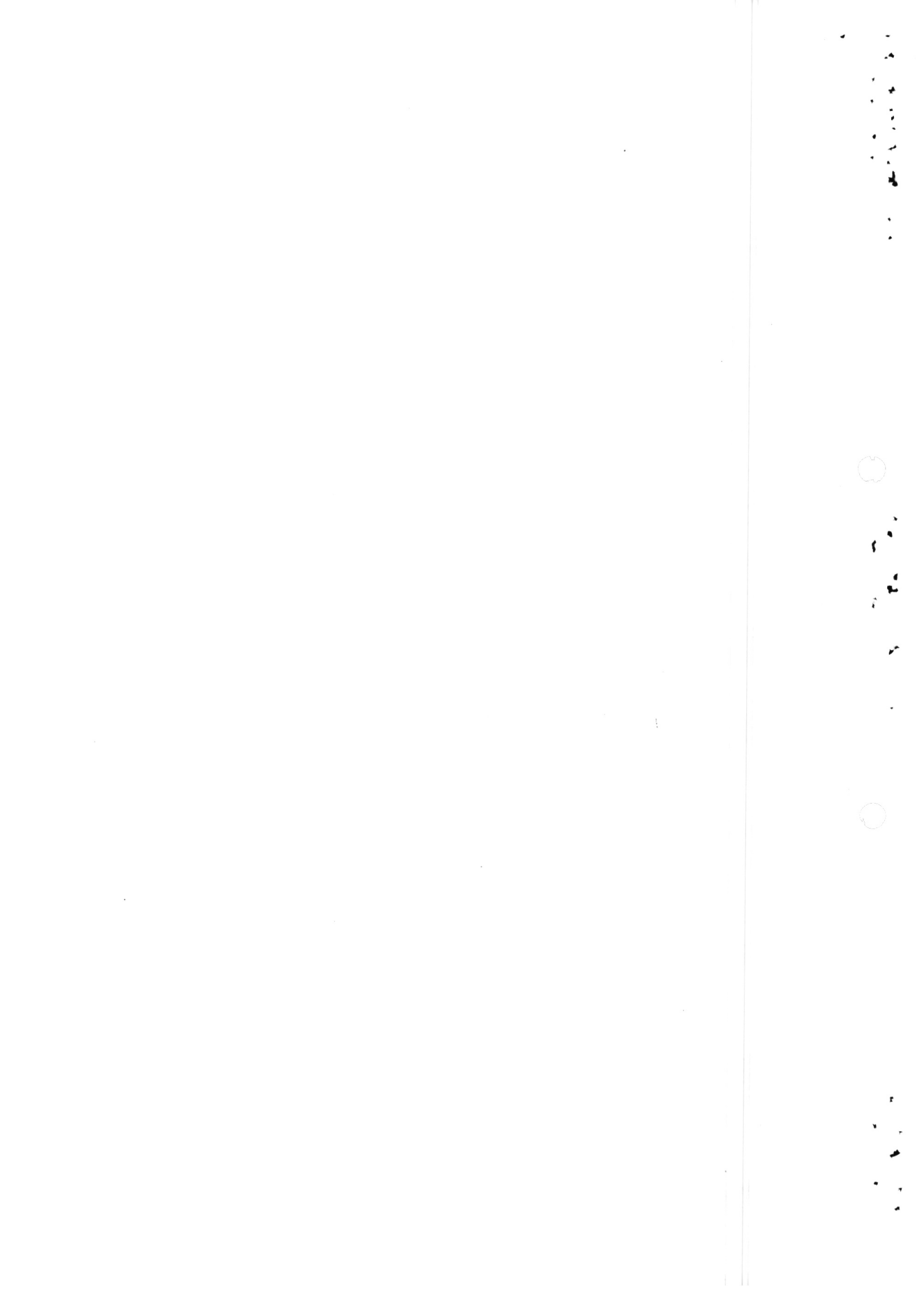
The Committee resolved that the Cabinet Secretary liaise with other agencies of government and provide concrete measures undertaken to ensure justice, and provide this information on Tuesday 16<sup>th</sup> November 2021. It is then that the contents of the new Agreement will be discussed.

MIN. NO.NA/DDC.DFR /2021/130:      ADJOURNMENT

There being no other business, the meeting adjourned at 4.05 pm.

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

Date.....16/11/2021.....



**MINUTES OF THE ONE HUNDRED AND FORTIETH (140<sup>TH</sup>) SITTING OF THE  
DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD  
AT 2<sup>ND</sup> FLOOR CONTINENTAL HOUSE, ON TUESDAY, 16<sup>TH</sup> NOVEMBER, 2021  
AT 10.00 AM**

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**PRESENT**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Richard Tong'i, MP (Vice Chairperson) (*Virtually*)
3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
5. The Hon. Charles Kilonzo, MP
6. The Hon. Martha Wangari Wanjira, MP (*Virtually*)
7. The Hon. Stephen Mutinda Mule, MP (*Virtually*)
8. The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP
9. The Hon. (Dr.) Lilian Gogo, MP (*Virtually*)
10. The Hon. (Dr.) Irene Muthoni Kasalu, MP (*Virtually*)
11. The Hon. Ernest Ogesi Kivai, MP
12. The Hon. Caleb Amisi, MP
13. The Hon. Zachary Kwenya Thuku, MP

**APOLOGIES**

1. The Hon. Richard Maore Maoka, CBS, MP
2. The Hon. Gideon Sitelu Konchela, MP EGH, OGW, 'psc' (UK), MP
3. The Hon. Memusi Ole Kanchory, MP
4. The Hon. Vincent Kipkurui Tuwei, MP
5. The Hon. Moses Nguchine Kirima, MP
6. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Hon. Abdikhaim Osman, MP - Member for Fafi Constituency
2. Hon. Rashid Amin, MP - Member for Wajir East Constituency
3. Hon. Fatuma Gedi, MP - Women Representative, Wajir County

**SECRETARIAT**

1. Mr. Victor Weke - Clerk Assistant I
2. Mr. Abdiaziz Shobay - Clerk Assistant II
3. Mr. Eric Kariuki - Research Officer
4. Mr. John Ngang'a - Audio Officer

**MINISTRY OF DEFENCE**

1. Hon. Eugene Wamalwa, EGH - Cabinet Secretary
2. Brig. Yvonne K. Kirvi - Chief of Legal
3. Mr. Gerald Sakwa - Parliamentary Liaison Officer

The Chairperson called the meeting to order at 10.10 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Yusuf Hassan Abdi, MP and seconded by The Hon. Caleb Amisi, MP.

AGENDA

1. Prayers
2. Adoption of the agenda
3. Confirmation of minutes of previous sittings
4. Matters arising
5. Substantive agenda: Meeting with the Cabinet Secretary for Defence on the following:-
  - a) **The alleged murder of Ms. Agnes Wanjiru by British soldiers based in Nanyuki;**
  - b) **Response by CS Defence to Question No. 9/2021, asked by Hon. Abdikhaim Osman, MP;**
  - c) **Response by CS Defence to Question No. 463/2021, asked by Hon. Emmanuel Wangwe, MP.**
6. Any Other Business

**139<sup>th</sup> Sitting**

Minutes of the 139<sup>th</sup> sitting held on 2<sup>nd</sup> November, 2021 were read and confirmed as a true record of proceedings as proposed by Hon. Gideon Konchela, MP and seconded by Hon. Caleb Amisi, MP.

*Under: MIN. NO.NA/DDC.DFR/2021/127:* The secretariat reported that they had received responses/views from the Kenya Law Reform Commission, (KLRC) and The State Department for Regional & Northern Corridor Development on the Lake Turkana Development Bill, 2021 proposed by Hon. Christopher Doye Nakuleu, M.P. The Committee resolved to look into their views in subsequent sittings.

Hon. Eugene Wamalwa, Cabinet Secretary submitted the following in response to the Question No. 463/2021 asked by Hon. Emmanuel Wangwe, MP regarding discharge of one Barasa Bob Marvin, EX-159544 recruit from KDF while undergoing training at the Recruits Training School in Eldoret;

- i) Section 255 (1) (e) of the Kenya Defence Forces Act, 2012 (revised 2018) provides that a service Member may be discharged at any time during the Member's period of colour service if the Member is pronounced by a Medical Officer to be mentally and physically unfit for further Service;
- ii) On 3<sup>rd</sup> June, 2021, the Ex-Recruit collapsed during a physical exercise training session;
- iii) He was attended to at the RTS Medical Reception Station and later referred to a Physician at Defence Memorial Hospital on 4<sup>th</sup> June, 2021 where he remained on admission until 14<sup>th</sup> July, 2021;

- iv) Medical Board rendered the Ex-Recruit medically unfit for the mandatory basic military training;
- v) Section 6 (1) (i) of the Access to information Act provides for the limitation of right to access information;
- vi) In this case, the medical report and/or records of the Ex-Recruit are confidential personal information obtained in the course of professional medical duty;
- vii) As such the report cannot be disclosed and/or availed without valid consent of the individual or a court order;
- viii) The discharge benefits due to a Service Member retiring for any reason other than dismissal include one-way travel expenses and service gratuity which was calculated as informed by the Pension regulations based on the 95-day period he was in Service.

**MIN. NO.NA/DDC.DFR/2021/135:    RESPONSE BY CABINET SECRETARY,  
MINISTRY OF DEFENCE TO QUESTION NO.  
009/21 BY HON. ABDIKHAIM OSMAN, MP**

The Cabinet Secretary submitted the following in response to the Question No. 009/2021 asked by Hon. Abdikhaim Osman, MP on why KDF based at Raskamboni KDF Military camp sprayed pastoralist herding animals in Raskamboni areas on Sunday 17<sup>th</sup> October, 2021 instantly killing over 40 herds of cattle and killing of Mr. Maulid Jirow of ID No. 35122734;

- i) The Ministry of Defence was sympathetic to the family of the late Mr. Arab Maulid Jirow of ID No. 35122734;
- ii) KDF was not responsible for the death of the herder, Mr. Arab Maulid Jirow and the cattle he was herding as alleged, based on findings made after preliminary investigations carried out by the Headquarters of the proximal Forward Operating Bases (FOBs) and further investigation by the Ministry's standing complaints committee;
- iii) KDF has deployed its personnel in four (4) FOBs in the proximal area of the alleged accident. The FOBs are Hulugho, Kolbio, Border Point (BP) 27 and Raskamboni, the latter FOB is inside Somalia and under the Mandate of AMISOM;
- iv) The area is prone to IEDs planted by the enemy aimed at disrupting border securitization efforts;
- v) Locals on both sides of the border have been cautioned against grazing in the area until when the area shall be cleared and absolutely secured;
- vi) The death is likely to have been caused by enemy fire and the alleged heads of cattle may have died from the effects of drought;
- vii) Ideally, this matter should have been dealt with by the Somalia authorities considering that Raskamboni lies within the Sovereign jurisdiction of the federal Republic of Somalia;
- viii) The Ministry and KDF is seized of the matter and shall provide any information that might help in the case as and when the same is available.

**MIN. NO.NA/DDC.DFR/2021/136:    BRIEFING BY THE CABINET SECRETARY  
FOR DEFENCE ON THE ALLEGED MURDER  
OF MS. AGNES WANJIRU BY BRITISH  
SOLDIERS BASED IN NANYUKI**

The Chairperson invited the Cabinet Secretary to provide a status update on the alleged murder of a Ms. Agnes Wanjiru by a British soldier based in Nanyuki. The Cabinet Secretary, Hon. Wamalwa submitted as follows:-

- i) Held bilateral talks with British High Commissioner Jane Marriott over the matter;

- ii) The British government had committed to cooperate in the country's effort to ensure the soldiers who murdered Agnes Wanjiru are brought to book;
- iii) That the Kenyan authorities will invoke provisions of the Defence Cooperation Agreement with the British to prosecute the soldiers involved and accord the victim justice;
- iv) The country had the legal and the institutional framework to deal with the case because of the Defence corporation agreement between the two;
- v) The Directorate of Criminal Investigations will reopen the case and compile all available evidence and witness accounts to ensure the case is concluded before a court of law.

**Committee Resolutions**

The Committee resolved to invite the Director of Public Prosecutions (DPP), the Attorney General (AG), and the Inspector General of Police, (IG) to a meeting on Thursday, 25<sup>th</sup> November 2021 to be apprised on the next course of action by the Kenyan Government law enforcement agencies in ensuring justice for the family of Ms. Agnes Wanjiru.

**MIN. NO.NA/DC.DFR/2021/137:      AOB**

During the meeting, the Hon. Rashid Amin, MP who appeared as a friend of the Committee raised issues of discrimination regarding the ongoing recruitment of Kenya Defence Forces in Wajir East Constituency. The Cabinet Secretary informed the Committee that:-

- i) The Kenya Defence Forces' recruitment drive is open to all eligible candidates;
- ii) The recruitment was done at the sub-county level, and therefore the issue of discrimination cannot arise as long as the Sub-Counties got their fair share of allocations in the recruitment exercise as guided by the existing KDF strength in that particular Sub-County;
- iii) That, the general academic and physical qualifications notwithstanding, there are considerations made and provided for in the recruitment policy to ensure fair and equitable opportunities;
- iv) Further, the C.S noted that the recruitment had just started, and the Ministry couldn't provide satisfactory answers on the actual numbers recruited from Wajir East Sub County, until returns were filed.

The Cabinet Secretary submitted that the matter was crosscutting in all the constituencies and requested more time to coordinate with the recruitment officers and submit a comprehensive response in due course. The Committee acceded to this request.

**MIN. NO.NA/DDC.DFR /2021/138:      ADJOURNMENT**

There being no other business, the meeting adjourned at 12.05 pm.

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

Dated.....  
 25/11/2021

**MINUTES OF THE ONE HUNDRED AND FORTY-FIRST (141<sup>ST</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD AT 5<sup>TH</sup> FLOOR CONTINENTAL HOUSE, ON THURSDAY, 25<sup>TH</sup> NOVEMBER, 2021 AT 10.00 AM**

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**PRESENT**

1. The Hon. Katoole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Richard Tong'i, MP (Vice Chairperson)
3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
5. The Hon. Charles Kilonzo, MP
6. The Hon. Martha Wangari Wanjira, MP
7. The Hon. Moses Nguchine Kirima, MP
8. The Hon. Ernest Ogesi Kivai, MP
9. The Hon. Caleb Amisi, MP
10. The Hon. Zachary Kwenya Thuku, MP
11. The Hon. (Dr.) Irene Muthoni Kasalu, MP (*Virtually*)

**APOLOGIES**

1. The Hon. Richard Maore Maoka, CBS, MP
2. The Hon. Gideon Sitelu Konchela, MP EGH, OGW, 'psc' (UK), MP
3. The Hon. Memusi Ole Kanchory, MP
4. The Hon. Stephen Mutinda Mule, MP
5. The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP
6. The Hon. (Dr.) Lilian Gogo, MP
7. The Hon. Vincent Kipkurui Tuwei, MP
8. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                        |   |                    |
|------------------------|---|--------------------|
| 1. Mr. Victor Weke     | - | Clerk Assistant I  |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Mr. Eric Kariuki    | - | Research Officer   |
| 4. Mr. John Ngang'a    | - | Audio Officer      |

**INSPECTOR GENERAL OF POLICE, DPP AND ATTORNEY GENERAL**

- |                             |   |  |
|-----------------------------|---|--|
| 1. Mr. Noordin Mohamed Haji | - | Director of Public Prosecutions        |
| 2. Ms. Jacinta Nyamai       | - | Office of Director Public Prosecutions |
| 3. Ms. Winnie Kibinga       | - | Office of Director Public Prosecutions |
| 4. Ms. Lilian Obuo          | - | Office of Director Public Prosecutions |
| 5. Mr. Victor Mule          | - | Office of Director Public Prosecutions |
| 6. Mr. Joseph Ashimala      | - | Deputy Director, DCI                   |
| 7. Mr. Gikui Gichuhi        | - | Legal Officer, DCI                     |
| 8. Mr. Titi Ayiera          | - | National Police Service                |
| 9. Ms. Afande Olando        | - | State Law Office                       |
| 10. Ms. Elizabeth Wamocho   | - | State Law Office                       |

The Chairperson called the meeting to order at 10.15 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Martha Wangari Wanjira, MP and seconded by The Hon. Moses Nguchine Kirima, MP.

**AGENDA**

1. Prayers
2. Adoption of the agenda
3. Confirmation of minutes of previous sittings
4. Matters arising
5. Substantive agenda: **Meeting with the Director of Public Prosecutions, the State Law Office and the Inspector General of Police on the slow pace of action by the Kenyan Government law enforcement agencies regarding the alleged murder of Ms. Agnes Wanjiru by British soldiers based in Nanyuki.**
6. Any Other Business

MIN. NO.NA/DDC.DFR/2021/140: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

**140<sup>th</sup> Sitting**

Minutes of the 140<sup>th</sup> sitting held on 16<sup>th</sup> November, 2021 were read and confirmed as a true record of proceedings as proposed by Hon. Charles Kilonzo, MP and seconded by Hon. Ernest Ogesi, MP. There were no matters arising.

MIN. NO.NA/DDC.DFR/2021/141: SUBMISSIONS BY ODPP, DCI AND STATE LAW OFFICE ON INVESTIGATIONS ON THE ALLEGED MURDER OF MS. AGNES WANJIRU BY BRITISH SOLDIERS BASED IN NANYUKI

**Mr. Joseph Ashimala, Deputy Director, Directorate of Criminal Investigations** submitted the following in response to the alleged murder of Ms. Agnes Wanjiru;

- i) Agnes Wanjiru, 21, was reportedly partying with British soldiers on 31<sup>st</sup> March, 2012 at a hotel in the central Kenyan town of Nanyuki, Laikipia County;
- ii) She was later found dead in a septic tank within the premises of the hotel;
- iii) Nanyuki Police investigated the incident and gave an opinion that the deceased was murdered;
- iv) After findings of the inquest, the homicide team from the Directorate of Criminal Investigations took over the matter and have since been on the ground conducting investigations;
- v) The Directorate of Criminal Investigations will compile all the available evidence and witness accounts and ensure the case is concluded before a court of law;
- vi) The UK government has been collaborating to conclude the case and administer justice and always worked in partnership with Kenyan police and its assistance has been forthcoming where needed.

**The Committee observed that the police had been an impediment to ensuring justice by taking inordinately long to conclude investigations.**

**The Director of Public Prosecutions Mr. Noordin Haji** submitted the following;

- i) Agnes Wanjiru (Deceased) was last seen alive on 31<sup>st</sup> March, 2012 at the Lions Court Hotel at around 10:00 pm allegedly in the company of British Army Soldiers who were in uniform;
- ii) The deceased was later found dead in a septic tank on 5<sup>th</sup> June, 2012, by a grounds man who was cleaning manholes in the hotel;
- iii) A postmortem report was conducted by one Dr. Obiero Okoth on 13<sup>th</sup> June, 2012. The doctor opined that the cause of death was chest and abdominal injuries;
- iv) The deceased had a stab wound on her right chest area and her lungs had collapsed;
- v) In addition the doctor in his report dated 12<sup>th</sup> July, 2012 noted that the deceased may have been placed in the septic tank alive as the injuries she had sustained were not fatal;
- vi) The matter was first referred to the ODPP complaints division through a letter dated 12<sup>th</sup> June, 2012 by Social Watch, an NGO based in Nyeri;
- vii) In their letter, it was stated that a security guard at the hotel had noticed a fight between a girl and a British soldier in a room they were occupying;
- viii) The Social Watch NGO the ODPP to call for investigations and CCTV footage of the matter;
- ix) On 13<sup>th</sup> July, 2012, the ODPP wrote to the DCI requesting for a progress report on the investigation into the matter and the duplicate investigation file;
- x) Various correspondence were later exchanged between the ODPP and the DCI with advice by the ODPP on necessary areas to be covered during the investigations;
- xi) On 6<sup>th</sup> October, 2012, the DCI through a letter to the ODPP Nanyuki County Office, submitted the file for direction, and the same was forwarded to ODPP for directions;
- xii) On 1<sup>st</sup> December, 2012, ODPP headquarters wrote a letter to the Nanyuki Office directing that the matter be referred for inquest;
- xiii) A public inquest was carried out before Hon. Njeri Thuku, Principal Magistrate and an opinion delivered on 5<sup>th</sup> November, 2012;
- xiv) A total of 13 witnesses testified during the inquest proceedings and the learned magistrate formed the opinion that Agnes Wanjiru was murdered by British soldiers;
- xv) On 10<sup>th</sup> June, 2020, the ODPP received a letter from the Ministry of Defence requesting for guidance from the DPP on the outcome of the inquest;
- xvi) On receipt of the said letter, the ODPP called for a certified copy of the proceedings and opinion of the Hon. Magistrate as well as the investigation's files;
- xvii) Upon review of the file, the office established that there were critical areas that required to be covered by the DCI before the matter is admitted for prosecution;
- xviii) On 2<sup>nd</sup> November, 2021, the office received another letter from the Ministry of Defence requesting for the status of the proposed prosecution;
- xix) In this regard, the office, vide a letter dated 10<sup>th</sup> November, 2021 responded to the same, indicating that upon review of the opinion of the learned magistrate, the file had been forwarded to the DCI for further investigations;
- xx) The ODPP will expeditiously review the investigation file once received and make a decision in line with article 157 of the constitution, 2010;
- xxi) Further, the office will initiate extradition proceedings for the persons found culpable of the heinous murder of Agnes Wanjiru;
- xxii) The ODPP was the office mandated to pursue mutual legal assistance, as affirmed by the Supreme Court, and the office of the Attorney General was a mere conduit of the same.

**Committee Resolution**

The Committee observed that the DCI had particularly failed to respond to a letter by the DPP of 7<sup>th</sup> December 2020 asking them to address certain matters of the investigation. This had posed a major obstacle in resolving the matter.

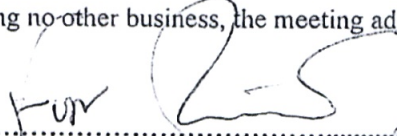
The Committee therefore resolved to invite the Inspector General of Police (IG) and the Director of Criminal Investigations to personally attend a meeting on Thursday, 2<sup>nd</sup> December, 2021 to provide complete and comprehensive responses on issues raised by the DPP in his letter of 7<sup>th</sup> December 2020 and chronology of concrete action taken since the murder.

**MIN. NO.NA/DC.DFR/2021/142: AOB**

1. The meeting was informed that the Ministry of Defence had invited six members of the Committee to attend the Commissioning parade of KDF Cadets at Kenya Military Academy, Lanet on Friday, 26<sup>th</sup> November, 2021. Members not scheduled to travel to LBDA projects inspection visits in Kisumu and Homabay Counties were requested to attend the pass out parade.
2. The secretariat reported that they had received a letter from the Commission on Administrative Justice (CAJ) inviting members of the Committee for a meeting to discuss 'Complaints Management within the military'. The meeting will be held on 29<sup>th</sup> – 30<sup>th</sup> November, 2021 at the Sarova Panafric Hotel, Nairobi. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP and Hon. Charles Kilonzo, MP were proposed to represent the Committee.
3. Members were reminded of a retreat with the Ministry of Foreign Affairs on 5<sup>th</sup> – 11<sup>th</sup> December 2021 to consider the Asset acquisition and maintenance policy that guides property management in missions abroad and findings of foreign oversight inspection visits. The meeting would be held in Mombasa County.

**MIN. NO.NA/DDC.DFR /2021/144: ADJOURNMENT**

There being no other business, the meeting adjourned at 12.10 pm.

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

Dated.....  


**MINUTES OF THE ONE HUNDRED AND FORTY SECOND (142<sup>ND</sup>) SITTING OF  
THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS  
HELD AT 4<sup>TH</sup> FLOOR CONTINENTAL HOUSE, ON THURSDAY, 2<sup>ND</sup> DECEMBER,  
2021 AT 12.00 PM**

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**PRESENT**

1. The Hon. Richard Tong'i, MP (Vice Chairperson)
2. The Hon. Gideon Sitelu Konchela, MP EGH, OGW, 'psc' (UK), MP (Virtually)
3. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP (Chairing)
4. The Hon. Charles Kilonzo, MP
5. The Hon. Memusi Ole Kanchory, MP
6. The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP
7. The Hon. (Dr.) Irene Muthoni Kasalu, MP (Virtually)
8. The Hon. Vincent Kipkurui Tuwei, MP (Virtually)
9. The Hon. Caleb Amisi, MP
10. The Hon. Zachary Kwenya Thuku, MP

**APOLOGIES**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Richard Maore Maoka, CBS, MP
3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Martha Wangari Wanjira, MP
5. The Hon. Stephen Mutinda Mule, MP
6. The Hon. (Dr.) Lilian Gogo, MP
7. The Hon. Moses Nguchine Kirima, MP
8. The Hon. Ernest Ogesi Kivai, MP
9. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                        |   |                    |
|------------------------|---|--------------------|
| 1. Mr. Victor Weke     | - | Clerk Assistant I  |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Mr. Eric Kariuki    | - | Research Officer   |

**OFFICE OF INSPECTOR GENERAL OF POLICE**

- |                      |   |  |
|----------------------|---|--|
| 1. Mr. George Kinoti | - | Director of Criminal Investigations    |
| 2. Mr. Edward Mbugua | - | Deputy Inspector General KPS           |
| 3. Mr. Victor Mule   | - | Office of Director Public Prosecutions |

**MIN. NO.NA/DDC.DFR/2021/145: PRELIMINARIES**

The Chairperson called the meeting to order at 12.10 pm and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Charles Kilonzo, MP and seconded by The Hon. Zachary Kwenya Thuku, MP.

## AGENDA

1. Prayers
2. Adoption of the agenda
3. Confirmation of minutes of previous sittings
4. Matters arising
5. Substantive agenda: **Meeting with the Inspector General of Police and the Director of Criminal Investigations to provide comprehensive response on the issues raised by the Director of Public Prosecutions and actions taken on the alleged murder of Ms. Agnes Wanjiru by British soldiers based in Nanyuki.**
6. Any Other Business

### MIN. NO.NA/DDC.DFR/2021/146: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

#### **141<sup>st</sup> Sitting**

Minutes of the 141<sup>st</sup> sitting held on 25<sup>th</sup> November, 2021 were read and confirmed as a true record of proceedings as proposed by Hon. Charles Kilonzo, MP and seconded by Hon. Caleb Amisi, MP. There were no matters arising.

### MIN. NO.NA/DDC.DFR/2021/147: SUBMISSIONS BY THE DIRECTOR OF CRIMINAL INVESTIGATIONS AND THE INSPECTOR GENERAL OF POLICE ON INVESTIGATIONS ON THE ALLEGED MURDER OF MS. AGNES WANJIRU BY BRITISH SOLDIERS BASED IN NANYUKI

**Mr. George Kinoti, Director of Criminal Investigations** on behalf of the team submitted the following in response to the alleged murder of Ms. Agnes Wanjiru;

- i) The deceased person herein Agnes Wanjiru Wanjiku then aged 21 years old was last seen alive on the night of 31<sup>st</sup> March, 2012 with a British Army Soldier in uniform at Lions Court Lodge in Nanyuki Town, Laikipia East sub county, Laikipia County. Her body was discovered and subsequently retrieved from a septic tank at the said hotel on the 5<sup>th</sup> June, 2012;
- ii) After investigations by Nanyuki Police Station, an inquest was conducted at Nanyuki Law Court where the presiding Principal Magistrate Hon. Njeri Thuku opined in her decision dated 5<sup>th</sup> November, 2019 that an offence of murder was committed against the deceased by the British Army Soldiers and therefore called for further investigations for the prosecution of the culpable party;
- iii) That upon receipt of the above opinion of the court, the Director of Criminal Investigations, instructed the Homicide team to take over and carryout fresh investigations. They established the following;
- iv) On the 31<sup>st</sup> day of March, 2012 at about 20:00 hours, the deceased herein Agnes Wanjiru Wanjiru went out with her friends Florence Nyaguthii Mugo and Susan Nyambura at Lions Court Lodge. Being a weekend there were several revelers at the hotel including British soldiers some in their uniform and others in ordinary clothing. While seated in the bar area, a British Army soldier in uniform approached the deceased and started engaging each other. Few minutes thereafter, the deceased and the British soldier in uniform went to the dancing floor and the two had a good time dancing;
- v) On 1<sup>st</sup> April, 2012 at 2:00am or thereabout, Susan Nyambura stepped out of the bar to get some fresh air leaving the deceased and the British Army Soldiers on the dancing floor still having their good time. While outside, Susan Nyambura saw the deceased and a British Soldier in uniform going towards the guest room direction within the precincts of the Lions Court Lodge;

- vi) When the deceased spotted her friend Susan, she stopped and shortly engaged her before proceeding with the British Army Soldier towards the guest room's direction never to be seen again, this was the last time the deceased was seen alive by a known person
- vii) By the time Florence and Susan were leaving, the deceased had not returned, they assumed that the deceased was having her good time with the British Soldier in uniform they had seen her last with;
- viii) On the 1<sup>st</sup> April, 2012, the deceased never returned home, therefore efforts to trace her whereabouts commenced in earnest since she had left behind five month old infant;
- ix) Florence, Susan and Rose the deceased's sister went back to Lions Court Lodge and the British Army Soldiers Camp among other places in search of the deceased but their efforts were futile;
- x) On the 5<sup>th</sup> June, 2012, John Gichuki who worked at the Lions Court Lodge as a gardener and in the maintainace section was instructed by his Manager, George Njuguna Wangari to clean the man holes and waste disposal pipes as there was a foul smell. In the process of cleaning, he lifted the grate of the septic tank and saw human legs floating on the sewage while the remainder of the body was submerged. He alerted his Manager who came and confirmed the same;
- xi) The police visited the scene after being alerted by the Hotel Manager George Njuguna Wangari and with the help of the then Nanyuki Municipal Council Fire Brigade Personnel, a body of an unknown African female adult was retrieved. The body was dressed only in a bra and had a packet of unused condoms tucked inside the bra. The body was moved to Nanyuki Teaching and Referral Hospital mortuary awaiting identification and autopsy;
- xii) The body was later positively identified as that of Agnes Wanjiku Wanjiru the deceased person herein who was lastly seen alive in company of a British Army Soldier in uniform on the night of 31<sup>st</sup> March, 2012 at Lions Court Lodge;
- xiii) On the 13<sup>th</sup> June, 2012 the autopsy was conducted by Dr. Obiero Okoth who opined that the cause of the death was due to chest and abdominal injuries. He further observed that the deceased could have been placed in the septic tank alive as injuries sustained were not fatal enough to kill her;
- xiv) Efforts by the initial investigators to interview the British Army Soldiers who were at the Lions Court on the night of 31<sup>st</sup> March, 2012 were futile as they had already left the country;
- xv) The Lions Court Hotel provided a list of British Army Soldiers who had booked into the hotel on the 31<sup>st</sup> March, 2012 when the deceased went missing. The initial investigators subsequently wrote to the then BATUK Camp Manager requesting to be provided with more details of the soldiers as per the hotels list;
- xvi) The soldiers were confirmed as follows' 30102814 Kgn Hendry Liam Robert, 30045162 Kgn Redford James Williams, 30116151Kgn Sons Ryan Paul, 30090677 Sgt Creighton Daniel, 30045162 Kgn Thornton Daniel John and 30101570 Kgn Smith Karl Eric
- xvii) According to the Royal Military Police, the above identified witnesses have information to link and identify the soldier who killed the deceased person;

#### **Committee Resolution**

**The Committee gave the Director of Criminal Investigations three months to expedite collaboration with UK authorities towards recording of statements from the perpetrators and eventual extradition.**

MIN. NO.NA/DDC.DFR /2021/148:

ADJOURNMENT

There being no other business, the meeting adjourned at 1.55 pm.

Signed..... *For Kato* .....  
Hon. Katoole Metito, M.P (CHAIRPERSON)

Dated..... 27/1/22 .....

**MINUTES OF THE ONE HUNDRED AND FIFTY FIRST (151<sup>ST</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD AT COMMITTEE ROOM, 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON THURSDAY, 24<sup>TH</sup> MARCH, 2022 AT 12.00 PM.**

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**PRESENT**

1. The Hon. Richard Tong'i, MP (Chairperson)
2. The Hon. Col. (Rtd.) Gideon S. Konchela, EGH, OGW, 'psc' (UK), MP
3. The Hon. Charles Kilonzo, MP
4. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
5. The Hon. Martha Wangari Wanjira, MP (*Virtually*)
6. The Hon. Stephen Mutinda Mule, MP (*Virtually*)
7. The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP (*Virtually*)
8. The Hon. (Dr.) Lilian Gogo, MP
9. The Hon. (Dr.) Irene Muthoni Kasalu, MP (*Virtually*)
10. The Hon. Moses Nguchine Kirima, MP
11. The Hon. Ernest Ogesi Kivai, MP
12. The Hon. Vincent Kipkurui Tuwei, MP (*Virtually*)
13. The Hon. Caleb Amisi, MP (*Virtually*)
14. The Hon. Zachary Kwenya Thuku, MP (*Virtually*)

**APOLOGIES**

1. The Hon. Elijah Memusi Kanchory, MP (Vice-Chairperson)
2. The Hon. (Dr.) Adan Keynan Wehliye, CBS, MP
3. The Hon. Richard Maore Maoka, CBS, MP
4. The Hon. Yusuf Hassan Abdi, MP
5. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                        |   |                    |
|------------------------|---|--------------------|
| 1. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 2. Ms. Brigitta Mati   | - | Legal Counsel      |
| 3. Mr. Eric Kariuki    | - | Research Officer   |
| 4. Mr. John Ngang'a    | - | Audio Officer      |
| 5. Mr. Said Wako       | - | Serjeant At-Arm    |

**MIN. NO.NA/DDC.DFR/2022/056:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 12.15 pm and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP and seconded by The Hon. Col. (Rtd.) Gideon S. Konchela, EGH, OGW, 'psc' (UK), MP

**AGENDA**

1. Prayers
2. Adoption of the agenda
3. Confirmation of minutes of previous sittings
4. Substantive agenda: Briefing by Legal Counsel on the Military Veterans Bill, 2022
5. Any Other Business

**MIN. NO.NA/DDC.DFR/2022/057: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

**150<sup>th</sup> Sitting**

Minutes of the 150<sup>th</sup> sitting held on 15<sup>th</sup> March, 2022 were read and confirmed as a true record of proceedings as proposed by Hon. Caleb Amisi, MP and seconded by Hon. Zachary Kwenya Thuku, MP. There were no matters arising.

**MIN. NO.NA/DDC.DFR/2022/058: BRIEFING BY LEGAL COUNSEL ON THE MILITARY VETERANS BILL, 2022**

The Committee was taken through the Military Veterans Bill, 2022 as follows: -

- i) The Bill seeks to establish a regulatory and institutional framework for the management of military veterans' affairs; for the provision of benefits to military veterans and military veterans' dependants; to establish the Dependants' Education Fund; to establish the Defence Forces Retirement Home;
- ii) It is to be noted that the Kenya Defence Forces Act (No. 25 of 2012) provides for the functions, organization and administration of the Kenya Defence Forces pursuant to Articles 232 and 239(6) of the Constitution; gives effect to Article 241 and other relevant Articles of the Constitution, provides for disciplinary matters, among other things. However, it does not address what the Bill seeks to achieve;
- iii) Clause 1 of the Bill contains the short title;
- iv) Clause 2 of the Bill contains definitions of key terms used in the Bill;
- v) Clause 3 of the Bill provides for the principal objects of the Act including the management of military veterans' affairs; the provision of benefits to military veterans and military veterans' dependants; the establishment of the Dependants' Education Fund; and the establishment of the Defence Forces Retirement Home;
- vi) Clause 4 of the Bill provides for the guiding principles of the Act including principles relating to military veterans; policies relating to military veterans and principles for the management of funds relating to military veterans;
- vii) Clause 5 of the Bill provides that the benefits conferred under the Act shall not be conferred on a person merely because that person is a military veteran as defined under the Act;
- viii) Clause 6 of the Bill provides for the meaning of "military veteran", that is, a person who has retired from military service and who had served in the Kenya Defence Forces, the Kenya Armed Forces after 1963, or in the Kings African Rifles before 1963; has completed service in the Armed Forces or Kenya Defence Forces, receives a military pension and who was not dishonorably discharged from military service;
- ix) Clause 6 also provides that a person who was discharged or retired from the Armed Forces or Kenya Defence Forces on medical grounds shall, whether or not that person receives a pension, be regarded as a military veteran except if the person suffers from a physical or mental disability that was self-inflicted or occasioned by the use of narcotic drugs or psychotropic substances;
- x) Clause 7 of the Bill provides for the benefits conferred under the Act to military veterans and military veterans' dependants; the role of the Defence Council in the provision of those benefits; the obligations of Government ministries, the departments and agencies; and the role of the Principal Secretary in the ministry responsible for military veterans;
- xi) Under clause 7, the benefits that may be conferred on a military veteran are Counseling and treatment for post-traumatic stress or related conditions, Physical rehabilitation for any condition arising out of military service, Honoring and memorializing fallen military veterans, Education, training and skills development,

- Facilitation or advice on employment placement and Facilitation or advice on business opportunities;
- xii) Under clause 7, the following benefits may be conferred on a military veterans' dependants: Counseling and treatment for post-traumatic stress or related conditions, Facilitation or assistance in education placement for children of military veterans, Facilitation or advice on employment placement and Facilitation or advice on business opportunities;
  - xiii) Clause 8 of the Bill provides for the powers of the Defence Council under the Act;
  - xiv) Clause 9 of the Bill establishes the office of the Director of Military Veterans and places it under the supervision of the Chief of Defence Forces;
  - xv) Clause 10 of the Bill provides for the functions of the Director;
  - xvi) Clause 11 of the Bill provides for the establishment of the Advisory Committee on Military Veterans, its membership and the appointment of its members;
  - xvii) Clause 12 of the Bill provides for the qualifications of the members of the Advisory Committee;
  - xviii) Clause 13 of the Bill provides for the procedure for the filing of vacancies in the Advisory Committee;
  - xix) Clause 14 of the Bill provides for the tenure of the members of the Advisory Committee;
  - xx) Clause 15 of the Bill provides for the determination of the remuneration and allowances of the members of the Advisory Committee;
  - xxi) Clause 16 of the Bill provides for the procedure for the removal from office of a member of the Advisory Committee;
  - xxii) Clause 17 of the Bill provides for the manner in which a vacancy may arise in the Advisory Committee including notice periods in case a member wishes to resign from office;
  - xxiii) Clause 18 of the Bill provides for the functions of the Advisory Committee;
  - xxiv) Clause 19 of the Bill provides for the reports of the Advisory Committee to the Defence Council;
  - xxv) Clause 20 of the Bill provides for the procedure for the convening of the meetings of the Advisory Committee and the obligation to declare conflicts of interest regarding any matter being considered by the Advisory Committee;
  - xxvi) Clause 21 of the Bill provides for the establishment of the Dependants' Education Fund to provide scholarships for the children of members of the Kenya Defence Forces, military veterans or deceased service members or deceased veterans;
  - xxvii) Clause 22 of the Bill provides for the establishment of the Kenya Defence Forces Retirement Home to provide residential and other services to military veterans;
  - xxviii) Clause 23 of the Bill provides for the making of Regulations by the Cabinet Secretary for the better carrying out of the provisions of the Act.

### **Committee Resolution**

The meeting noted that the bill was bulky and required adequate time for its perusal, article by article. The committee resolved to undertake a retreat with the Ministries of Defence and East African Community & Regional Development in Mombasa County from 31<sup>st</sup> to 4<sup>th</sup> March, 2022, to consider the Military Veterans Bill, 2022 and the Regional Development Authorities Bill, 2021. During the said retreat the Committee will also meet with the Ministry of Foreign Affairs on the Asset Acquisition and Maintenance Policy and the operationalization of the Foreign Service Act.

MIN. NO.NA/DDC.DFR/2022/059:

ANY OTHER BUSSINES (AOB)

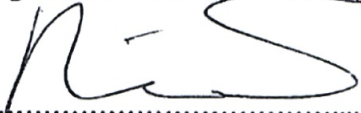
1. The meeting was informed that the Ministry of Defence had invited seven members of the Committee to attend the pass out graduation for Cadets at the Kenya Military Academy, Nakuru on Thursday, 31<sup>st</sup> March, 2022. Members were requested to confirm attendance with the secretariat.
2. The secretariat reported that they had received letters from both the Director of Criminal Investigations (DCI) and the Inspector General of National Police Service (NPS) apprising the Committee on the steps taken to ensure justice for Ms. Agnes Wanjiru, allegedly murdered by the British soldier(s) based in Nanyuki. The letter indicated as follows:-
  - i) That the homicide detectives have concluded investigations in Kenya and the remaining bit was both Kenya and the United Kingdom teams to get information from the witnesses in the United Kingdom for harmonization of the revised Mutual Legal Assistance guidelines (MLA);
  - ii) The DCI team investigating the matter has been in contact with the Royal Military Police of the United Kingdom of Great Britain informally to establish the all Mutual Legal Assistance issues are well addressed and properly identified;
  - iii) The United Kingdom Authorities have already identified the residential mapping of all the possible witnesses and the suspect in the United Kingdom for logistical and operation purposes;
  - iv) The Mutual Legal Assistance has already been forwarded to the Hon. Attorney General for onward transmission to the United Kingdom, Central Authority and waiting for their consent for the DCI team to travel to the United Kingdom to finalize the investigation and commence extradition process of the suspects.

MIN. NO.NA/DDC.DFR/2022/060:

ADJOURNMENT

There being no other business, the meeting adjourned at 1.35 pm.

Signed.....

  
Hon. Richard Tong'i, M.P  
(CHAIRPERSON)

Date.....

05/04/2022

**MINUTES OF THE ONE HUNDRED AND FIFTY FOURTH (154<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD AT 2<sup>ND</sup> FLOOR CONTINENTAL HOUSE, ON TUESDAY, 5<sup>TH</sup> APRIL, 2022 AT 10.00 AM.**

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**PRESENT**

1. The Hon. Richard Tong'i, MP (Chairperson)
2. The Hon. Elijah Memusi Kanchory, MP (Vice-Chairperson)
3. The Hon. Richard Maore Maoka, CBS, MP
4. The Hon. Charles Kilonzo, MP
5. The Hon. Martha Wangari Wanjira, MP (*Virtually*)
6. The Hon. (Dr.) Lilian Gogo, MP
7. The Hon. (Dr.) Irene Muthoni Kasalu, MP (*Virtually*)
8. The Hon. Caleb Amisi, MP (*Virtually*)
9. The Hon. Zachary Kwenya Thuku, MP (*Virtually*)

**APOLOGIES**

1. The Hon. (Dr.) Adan Keynan Wehliye, CBS, MP
2. The Hon. Col. (Rtd.) Gideon S. Konchela, EGH, OGW, 'psc' (UK), MP
3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
5. The Hon. Stephen Mutinda Mule, MP
6. The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP
7. The Hon. Moses Nguchine Kirima, MP
8. The Hon. Ernest Ogesi Kivai, MP
9. The Hon. Vincent Kipkurui Tuwei, MP
10. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                        |   |                           |
|------------------------|---|---------------------------|
| 1. Mr. Daniel Mutunga  | - | Principal Clerk Assistant |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II        |
| 3. Ms. Brigitta Mati   | - | Legal Counsel             |
| 4. Mr. Eric Kariuki    | - | Research Officer          |
| 5. Mr. John Ngang'a    | - | Audio Officer             |
| 6. Mr. Mohamed Said    | - | Serjeant At-Arm           |

**MIN. NO.NA/DDC.DFR/2022/070:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.25 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Richard Maore Maoka, CBS, MP and seconded by The Hon. Caleb Amisi, MP.

**AGENDA**

1. Prayers
2. Adoption of the agenda
3. Substantive agenda: **Consideration of Memorandum by the County Government of Laikipia on the Agreement between the Government of the Republic of Kenya and the Government of the Republic of United Kingdom of Great Britain and Northern Ireland on Defence Cooperation**

#### 4. Any Other Business

**MIN. NO.NA/DDC.DFR/2022/071: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

**151<sup>st</sup> Sitting**

Minutes of the 150<sup>th</sup> sitting held on 24<sup>th</sup> March, 2022 were read and confirmed as a true record of proceedings as proposed by Hon. Charles Kilonzo, MP and seconded by Hon. Caleb Amisi, MP. There were no matters arising.

**MIN. NO.NA/DDC.DFR/2022/072: CONSIDERATION OF MEMORANDUM BY THE COUNTY GOVERNMENT OF LAIKIPIA ON THE AGREEMENT BETWEEN KENYA AND UK ON DEFENCE COOPERATION**

The legal Counsel took through members the submission on the memorandum by the County Government if Laikipia.

- i) The Government of the Republic of Kenya entered into an Agreement with the United Kingdom of Great Britain and Northern Ireland (UKGBNI) concerning Defence Cooperation;
- ii) Under the Agreement, the parties agreed to implement all activities in conformity with the domestic law in force in the Host Nation;
- iii) Since the beginning of their activities in Kenya, and despite the presence of a binding agreement, the BATUK have committed several unspeakable atrocities to the people of the Republic of Kenya and to the environment in general;
- iv) Under Article 26 (6)(b) of the Agreement, the Visiting Forces (BATUK) were required to terminate their use of Lolldaiga Hills Conservancy (The Conservancy) with effect from 30<sup>th</sup> June 2016;
- v) The African Centre for Corrective and Preventive Action lodged before The Environment and Land Court of Kenya at Nyeri, a Constitutional Petition against the BATUK at the 3<sup>rd</sup> Respondent, and its Commander as the 2<sup>nd</sup> Respondent;
- vi) The murder of Agnes Wanjiku Wanjiru a Kenyan citizen, residing in Kenya, and working for gain in Laikipia, within the Republic of Kenya. She was last seen on 31<sup>st</sup> March 2012, dancing with British soldiers at Lions Court Hotel. She later on went into a room with one of the soldiers in the same hotel;
- vii) In June, 2012, a grounds man at the hotel was asked to clear an apparent blockage in a septic tank;
- viii) Due to the continuous interruption by the BATUK, Agnes Wanjiku Wanjiru, who was also the mother of a 4-year-old child at the time of her death, is yet to obtain redress from our justice system;
- ix) Further, blast injury upon 10 year old Lisoka Lesasuyan on or about 7<sup>th</sup> November 2015, the BATUK were undertaking a training exercise in open grounds within Laikipia County after which they left an unutilized explosive;
- x) Lisoka Lesasuyan, being a minor, found the explosive, and unknown to him of the dangers it could cause, started playing with it. The explosive exploded, causing multiple injuries upon him;
- xi) Upon filing of Miscellaneous Civil Application No. 1 of 2018 in the High Court of Kenya at Nanyuki, an ex gratia settlement was awarded in the sum of KShs. 10,108,500.00/-;
- xii) Unethical Business Practices by the Defence Infrastructure Organisation (DIO) and the BATUK have also taken part in several unethical business practices, which have had the effect of acute economic sabotage on the people of Kenya, particularly Laikipia;

- xiii) They induce developers to build houses on the promise that they will lease the houses and subsequently renege;
- xiv) One of the companies which have fallen victim to this unfortunate practice is Maiyan Holdings Limited.
- xv) The company was induced to building 34 custom built house units which would form the Swara Ranch Estate.
- xvi) The houses were built at a cost of KSHs. 400,000,000.00/-. The construction commenced in March 2019, and were built for a period of 4 months under constant and consistent supervision and follow-up by the DIO and the BATUK

**Recommendations by the County Government of Laikipia**


1. That the current agreement as entered into on 11<sup>th</sup> October 2016 between the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of Kenya be terminated immediately,
2. That the Agreement being deliberated upon, dated 27<sup>th</sup> July 2021, be subjected to a rigorous process of public participation;
3. That the Government of the United Kingdom of Great Britain and Northern Ireland do unequivocally declare that the Visiting Forces under the Agreement being deliberated upon are under and subject to the jurisdiction of Kenyan Authorities for all illegal acts committed;
4. That full compensation for the illegalities committed by the BATUK and by extension the DIO be provided for before renewal of the Agreement under deliberation;
5. That trainings by the BATUK be restricted to designated and enclosed areas, to ensure safety and security upon the Kenyan population; and
6. That all future Agreements between Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Kenya be availed to the general public for purposes of ensuring the Kenyan population is aware of their rights under the Agreement.

**Way Forward**

The Committee resolved to visit the British Army Training Unit (BATUK) in Nanyuki from 28<sup>th</sup> – 30<sup>th</sup> April, 2022 before it concludes on the consideration of the said agreement. The Committee expects to be briefed on challenges facing the community including but not limited to; the actions taken to resolve the murder of Ms. Agnes Wanjiru, and other cases of breach of conduct by the visiting British soldiers.

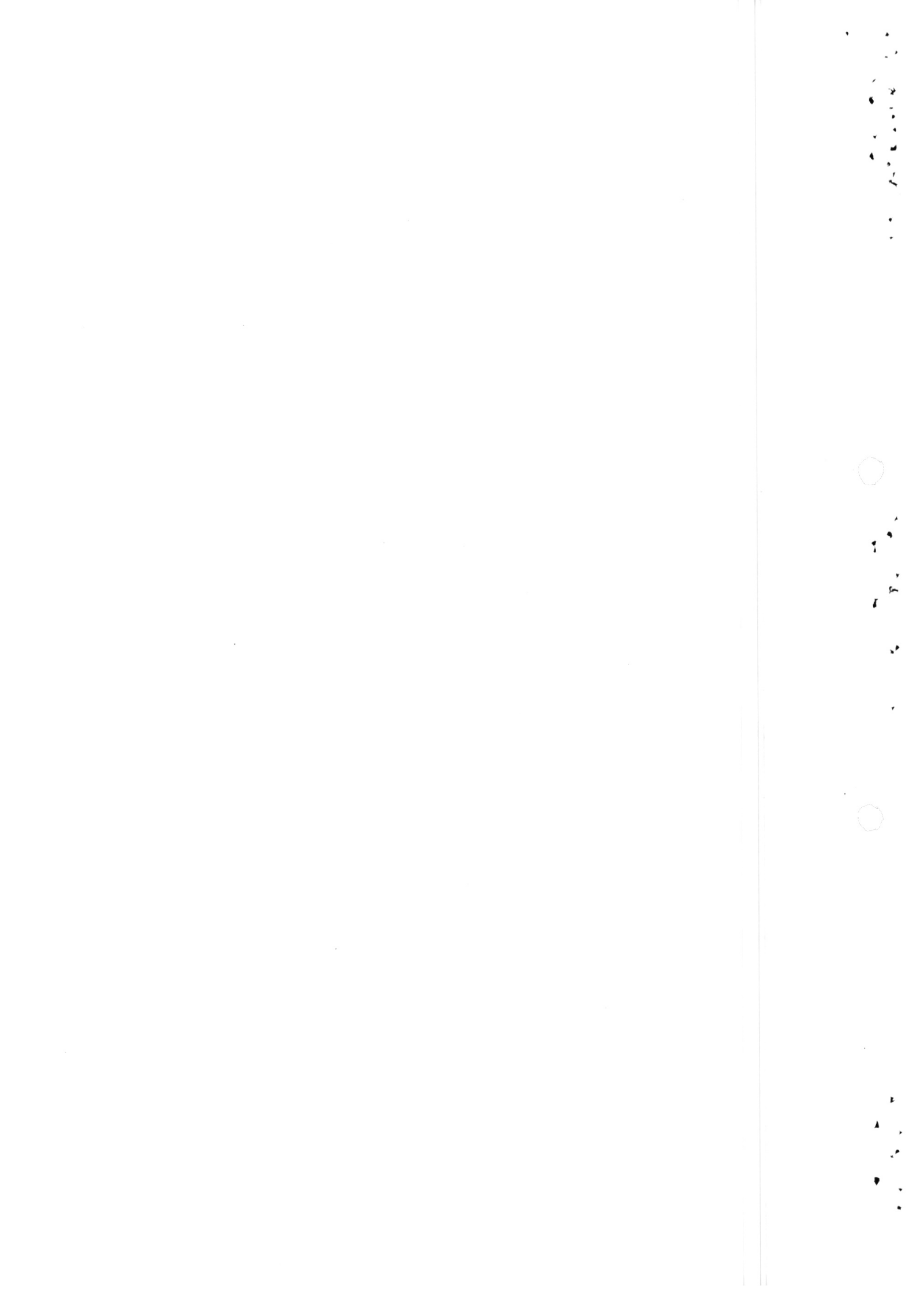
**MIN. NO.NA/DDC.DFR/2022/073:                      ADJOURNMENT**

There being no other business, the meeting adjourned at 11.50 am.

Signed.....  


**Hon. Richard Tong'i, M.P  
(CHAIRPERSON)**

Date... 12<sup>th</sup> / 04 / 2022 .....



**MINUTES OF THE ONE HUNDRED AND SIXTY THIRD (163<sup>RD</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS, ON MONDAY, 20<sup>TH</sup> JUNE, 2022 AT 11.00 AM**

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**PRESENT**

1. The Hon. Elijah Memusi Kanchory, MP - **(Vice-Chairperson)-Chairing**
2. The Hon. Charles Kilonzo, MP
3. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
4. The Hon. Stephen Mutinda Mule, MP
5. The Hon. Yusuf Hassan Abdi, MP
6. The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP
7. The Hon. (Dr.) Lilian Gogo, MP
8. The Hon. Ernest Ogesi Kivai, MP
9. The Hon. Vincent Kipkurui Tuwei, MP
10. The Hon. Zachary Kwenya Thuku, MP

**ABSENT WITH APOLOGY**

1. The Hon. Richard Tong'i, MP - **(Chairperson)**
2. The Hon. (Dr.) Adan Keynan Wehliye, CBS, MP
3. The Hon. Richard Maore Maoka, CBS, MP
4. The Hon. Col. (Rtd.) Gideon S. Konchela, EGH, OGW, 'psc' (UK), MP
5. The Hon. Martha Wangari Wanjira, MP
6. The Hon. Moses Nguchine Kirima, MP
7. The Hon. (Dr.) Irene Muthoni Kasalu, MP
8. The Hon. Caleb Amisi, MP
9. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                       |   |                             |
|-----------------------|---|-----------------------------|
| 1. Mr. Daniel Mutunga | - | Principal Clerk Assistant I |
| 2. Mr. Edwin Machuki  | - | Fiscal Analyst              |
| 3. Mr. Eric Kariuki   | - | Research Officer            |
| 4. Mr. John Ngang'a   | - | Audio Officer               |
| 5. Mr. Mohamed Said   | - | Serjeant-At-Arm             |

**MIN. NO.NA/DDC.DFR/2022/124: PRELIMINARIES**

The Chairperson called the meeting to order at 11.25 am. A prayer was said. The agenda of the meeting was adopted after having been proposed by Hon. Col. (Rtd.) Dido Raso, MP and seconded by Hon. Ernest Ogesi Kivai, MP

**MIN. NO.NA/DDC.DFR/2022/125: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The agenda item was deferred to the next sitting.

**MIN. NO.NA/DDC.DFR/2022/126: CONSIDERATION OF THE DRAFT REPORT ON THE DEFENCE COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE**

**REPUBLIC OF THE UNITED KINGDOM AND  
THE NORTHERN IRELAND**

The Members were informed by the Session Chair Hon. Elijah Memusi Kanchory, MP, that since the House was on *Sine die* recess the Speaker had approved the Committee meeting and therefore the Sitting was properly and procedurally convened.

Members deliberated on the ratification of the Defence Cooperation Agreement Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom and the Northern Ireland by observing that the Agreement had not been fully subjected to public participation. The Committee was yet to meet the County Government of Laikipia as well as hold public hearings in Nanyuki with the community and meet representatives of the British Army Training Unit in Kenya (BATUK).

It was also observed that the previous Agreement between the Member states had expired. The British soldiers were currently operating on a 'bridging Agreement' and therefore could be exposed to litigation if anything untoward happened. It was therefore hoped that the processing of the Agreement would be expedited by the Committee for adoption and approval by the House.

However, Members resolved to defer adoption of the report until the said public hearings were adequately conducted.

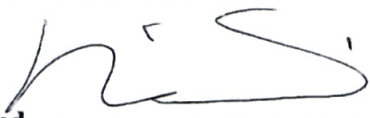

It was therefore resolved that a programme on the proposed visit to Nanyuki be developed and preparations be commenced.

**MIN. NO.NA/DDC.DFR/2022/127: ANY OTHER BUSINESS**

Hon. Yusuf Hassan Abdi, MP informed Members that he was invited to represent the Committee during the 18<sup>th</sup> Ambassadors and High Commissioners Conference at the Windsor Golf and Country hotel on Wednesday 15<sup>th</sup> June, 2022 where he was the key guest speaker during their dinner. His keynote speech focused on Parliamentary diplomacy with aspects drawn from his personal international experience while at the United Nations.

**MIN. NO.NA/DDC.DFR/2022/128: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.17 pm. The next meeting would be convened on notice.

Signed..........Date..........  
**Hon. Richard Tong'i, M.P.**  
**(CHAIRPERSON)**

**MINUTES OF THE ONE HUNDRED AND SIXTY FOURTH (164<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD IN THE COMMITTEE BOARDROOM, 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, ON TUESDAY 12<sup>TH</sup> JULY, 2022 AT 11.00 AM**

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**PRESENT**

1. The Hon. Richard Tong'i, MP - (Chairperson)
2. The Hon. Elijah Memusi Kanchory, MP (Vice-Chairperson)
3. The Hon. Charles Kilonzo, MP
4. The Hon. Richard Maore Maoka, CBS, MP
5. The Hon. Col. (Rtd.) Gideon S. Konchela, EGH, OGW, 'psc' (UK), MP
6. The Hon. Yusuf Hassan Abdi, MP
7. The Hon. Ernest Ogesi Kivai, MP
8. The Hon. Vincent Kipkurui Tuwei, MP
9. The Hon. Zachary Kwenya Thuku, MP
10. The Hon. (Dr.) Irene Muthoni Kasalu, MP (virtual)
11. The Hon. Caleb Amisi, MP (virtual)
12. The Hon. (Dr.) Lilian Gogo, MP (virtual)
13. The Hon. Maj. (Rtd.) Bashir Sheikh Abdullah, MP

**ABSENT WITH APOLOGY**

1. The Hon. (Dr.) Adan Keynan Wehliye, CBS, MP
2. The Hon. Col. (Rtd.) Dido Ali Raso, MBS, MP
3. The Hon. Martha Wangari Wanjira, MP
4. The Hon. Stephen Mutinda Mule, MP
5. The Hon. Moses Nguchine Kirima, MP
6. The Hon. Asha Hussein Mohamed, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Mr. Daniel Mutunga   | - | Principal Clerk Assistant I |
| 2. Mr. Abdi Aziz Shobay | - | Clerk Assistant II          |
| 3. Mr. Salem Lorot      | - | Legal Counsel I             |
| 4. Mr. Edwin Machuki    | - | Fiscal Analyst              |
| 5. Mr. Eric Kariuki     | - | Research Officer            |
| 6. Ms. Deborah Mupusi   | - | Media Relations Officer     |
| 7. Mr. John Ngang'a     | - | Audio Officer               |

**MIN. NO.NA/DDC.DFR/2022/129: PRELIMINARIES**

The Chairperson called the meeting to order at 11.15 am. A prayer was said. The Chairman welcomed the Members to the meeting and thanked them for the commitment they had shown even by taking time off the busy campaigns to attend the Sitting.

**MIN. NO.NA/DDC.DFR/2022/130: ADOPTION OF THE AGENDA**

The Agenda was amended by deleting the words "exit/progress" from the text. Further, a Motion was moved by Hon. Charles Kilonzo, MP, to rescind the resolutions of the Committee in a meeting held on 20<sup>th</sup> June 2022 on deferment of the adoption of the Committee report subject to a planned public participation activity in Nanyuki. The Motion which was moved by Hon. Charles Kilonzo, MP, and seconded by Hon. Maoka Maore, MP was carried. The

Agenda was further amended to include item 2(ii) on consideration and adoption of the report of the Committee on its visit to the United Kingdom.

**MIN. NO.NA/DDC.DFR/2022/131:      CONFIRMATION OF MINUTES OF PREVIOUS SITTING**

Confirmation of the Minutes of the 163<sup>rd</sup> Sitting of the Committee were stood down as the Motion to rescind the resolutions of the Committee during the said meeting had been moved and passed.

**MIN. NO.NA/DDC.DFR/2022/132:      CONSIDERATION OF THE DRAFT REPORT ON THE DEFENCECOOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF THE UNITED KINGDOM AND THE NORTHERN IRELAND**

The Committee made the following changes on the observations of the draft report: -

- i) Delete the word “alleged” from wherever it appears in the report as it was apparent from the inquest ordered by the courts that Agnes Wanjiru was murdered.
- ii) Delete the words “privately owned” in observation no. 6 as all land, whether private or public, was subjected to the dictates of Article 8 of the Agreement.
- iii) Recast observation no. 7 to indicate that the Director of Criminal Investigations had initiated talks with the UK Government for Mutual Legal Assistance (MLA).
- iv) Rephrase observation no. 8 to indicate that trainings by BATUK had failed to adhere to Kenya’s laws and obligations under international law with respect to the preservation of the environment pursuant to Article 8 of the Agreement.
- v) Expunge observation no. 9 making reference to double taxation.

The adoption of the report was proposed by Hon. Maoka Maore, MP and seconded by Hon. Zachary Thuku Kwenya, MP.

**MIN. NO.NA/DDC.DFR/2022/133:      CONSIDERATION OF THE DRAFT REPORT ON THE VISIT OF THE COMMITTEE TO THE UNITED KINGDOM ON THE DEFENCECOOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF THE UNITED KINGDOM AND THE NORTHERN IRELAND**

The Committee made the following changes on the observations of the draft report: -

- i) Insert the changes noted above (i-v) in the consideration of the report on the Defence Cooperation Agreement,
- ii) Delete recommendation no. 4 on public participation and stakeholder engagement as the process had been adequately undertaken and concluded.


The adoption of the report was proposed by Hon. Ernest Ogesi Kivai, MP and seconded by Hon. Gideon S. Konchella, MP.

**MIN. NO.NA/DDC.DFR/2022/134: ANY OTHER BUSINESS**

There was no other business under this item.

**MIN. NO.NA/DDC.DFR/2022/135: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.45 pm. The next meeting would be convened on notice.

Signed..........Date.....13/07/2022.....

**Hon. Richard Tong'i, M.P  
(CHAIRPERSON)**

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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - FIFTH SESSION  
DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS

In the Matter of Articles 2(5) & (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

And

In the Matter of Consideration by the National Assembly of the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom of Great Britain and Northern Ireland concerning Defence Cooperation

INVITATION FOR PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Pursuant to Articles 2(5) & (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom of Great Britain and Northern Ireland on Defence Cooperation seeks to enhance defence cooperation by identifying a framework for the exchange of experience and knowledge for the use and mutual benefit of the Parties.

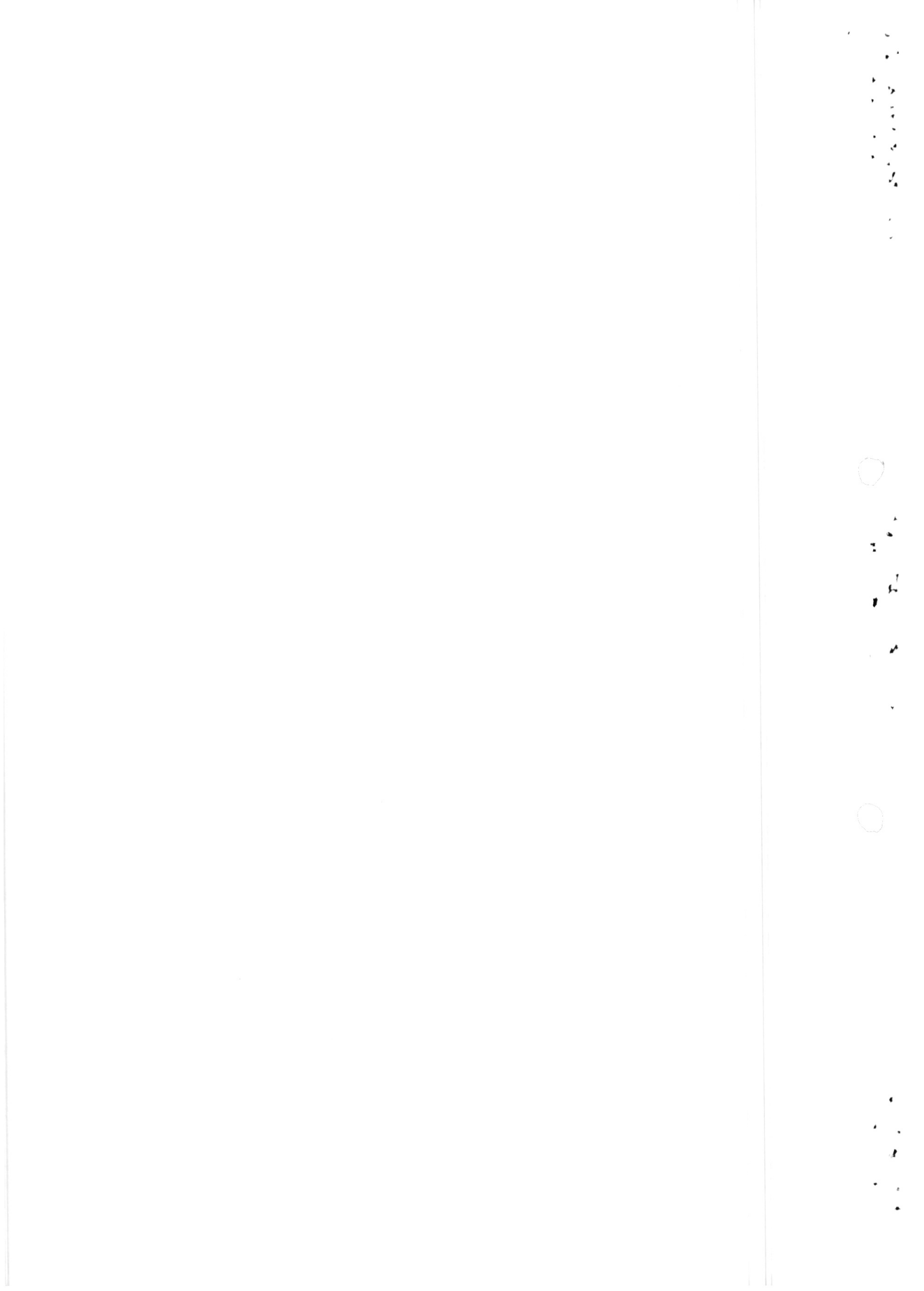
The Defence Cooperation Agreement was submitted to the Speaker of the National Assembly on 7<sup>th</sup> September 2021 and subsequently committed to the Departmental Committee on Defence and Foreign Relations for consideration and report to the House in accordance with Section 8 of the Treaty Making and Ratification Act, 2012.

The Departmental Committee on Defence and Foreign Relations hereby invites the public and relevant stakeholders to submit memoranda on the Defence Cooperation Agreement. The full text of the Agreement and the accompanying Memorandum to Parliament may be accessed at [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Friday 5<sup>th</sup> November 2021.

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

21<sup>st</sup> October, 2021



**MEMORANDUM  
FROM COUNTY  
GOVERNMENT OF  
LAIKIPIA**

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**COUNTY GOVERNMENT OF LAIKIPIA**  
**OFFICE OF THE COUNTY ATTORNEY**  
**P.O. BOX 1271-10400**  
**NANYUKI**  
**EMAIL: [legal@laikipia.go.ke](mailto:legal@laikipia.go.ke)**



Date: 16<sup>th</sup> March, 2022

Our Ref: CGL/CE/015/2022

**The Chairperson,**  
 Defence and Foreign Relations Committee,  
 Parliament Buildings, Parliament Road,  
 P.O. Box 41842-00100,  
Nairobi, Kenya.

**The Clerk of the National Assembly,**  
 Parliament Buildings, Parliament Road,  
 P.O. Box 41842-00100,  
Nairobi, Kenya.

Tel: (254-2) 2221291/2848000  
 Fax: 254 2 2243694  
 Email: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

Dear Sir/Ms,

**RE: REVIEW AND APPROVAL OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF KENYA CONCERNING DEFENCE COOPERATION, DATED IN LONDON ON 27<sup>TH</sup> JULY 2021 AND PRESENTED TO PARLIAMENT BY THE SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS BY THE COMMAND OF HER MAJESTY, THE QUEEN, ON NOVEMBER 2021.**

The above subject matter refers.

1. On 11<sup>th</sup> October 2016, the Government of the Republic of Kenya entered into an Agreement with the United Kingdom of Great Britain and Northern Ireland (UKGBNI) concerning Defence Cooperation. Under the Agreement, the parties agreed to implement all activities in conformity with the domestic law in force in the Host Nation. Among the

**RECEIVED**  
 DIRECTOR  
 01 APR 2022  
 Directorate of Departmental Committees

*David mutunga*  
*to facilitate the committee*  
*to consider.*

Your Ref: T.B.A.

*4/4/22*

NATIONAL ASSEMBLY  
 MAIN RECORDS UNIT  
 31 MAR 2022  
 NAIROBI - KENYA

*D/DC*  
*31/3/22*

31 MAR 2022

activities envisaged in the Agreement, was military exercises and training, under Article 4 of the Agreement.

2. Subsequently, the government of the UKGBNI brought its Armed Forces for training in Kenya, and particularly in Nanyuki, namely, the British Army Training Unit Kenya (BATUK). The Agreement is attached to this letter and marked '**Annex 1**' for your reference.
3. Since the beginning of their activities in Kenya, and despite the presence of a binding agreement, the BATUK have committed several unspeakable atrocities to the people of the Republic of Kenya, and to the environment in general. The sovereignty of the people of Kenya as enshrined in the Constitution of Kenya, 2010 has constantly been put under threat. The right to human life and the sanctity of such life as provided for under our Constitution has been undermined, and the right to a clean and healthy environment has been abused beyond measure. Below are just but a few examples of how the BATUK have abused the rights of the people of Kenya:

#### **LOLLDAIGA HILLS CONSERVANCY**

4. Under Article 26 (6)(b) of the Agreement, the Visiting Forces (BATUK) were required to terminate their use of Lolldaiga Hills Conservancy (The Conservancy) with effect from 30<sup>th</sup> June 2016. Despite this requirement, and in utter disregard of the environmental rights of the people of Kenya, and further with utter disregard of the safety of Kenya's ecological system, the BATUK undertook military training activities within the Conservancy, occasioning fire incidences between 20<sup>th</sup> and 24<sup>th</sup> of March 2021. This caused outrageous losses to the people of Kenya, the biodiversity and ecological system of the conservancy, and particularly to the Kenyan population surrounding the conservancy, as summarized hereunder:
    - a) On 23<sup>rd</sup> March 2021, 7,000 acres of grassland and forest area was affected by the fire (attached and marked '**Annex 2**' is a copy of a letter by the Defence Infrastructure Organisation confirming that an investigation was ongoing);
    - b) The destruction of the conservancy led to the escape of wildlife to private land, causing destruction of crops and thus economic loss (attached and
-

marked '**Annex 3**' is a copy of the Compensation Claim Form by Ernest Ngeera Gituma issued on 27<sup>th</sup> March 2021); and

- c) The death of Mr. Murage Gitonga, an 82-year-old Kenyan gentleman, who developed throat cancer and breathing difficulties after exposure to the fire.
5. This is despite the enabling Agreement stating clearly under Article 6, that the visiting forces shall be subject to, and shall abide by and respect the Constitution, laws and regulations of the Republic of Kenya at all times, and that the relevant authorities of the Republic of Kenya shall have jurisdiction over any member of the Visiting Forces (BATUK), the Civilian Component of the Dependants for any offence that is against the security or property of the Host Nation (Kenya) or against a person or property of a member of the Host Nation (Kenya).
6. This is, further, despite the enabling Agreement stating clearly, under Article 8(1) that the Host Nation (Kenya) and the Visiting Forces (BATUK) shall ensure protection, preservation and restoration of the environment comprising of the Training Areas and Service Establishments and Installations. The Agreement, further, under Article 8(1) obliges the Visiting Forces (BATUK) to avoid acts that negatively impact on human health and safety, property, flora and fauna and to, at all material times, comply with Kenya's directions, regulations and laws preserving the environment and Service Establishments and Installations
7. Pursuant to the laws of Kenya, the Agreement, and following the destruction by fire, the African Centre for Corrective and Preventive Action lodged before The Environment and Land Court of Kenya at Nyeri, a Constitutional Petition against the BATUK at the 3<sup>rd</sup> Respondent, and its Commander as the 2<sup>nd</sup> Respondent. The Petition is attached to this Letter and marked '**Annex 4**' for your reference.
8. Despite clear provisions of the Defence Corporation Agreement, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents approached the Honourable Court through a Notice of Motion application dated 27<sup>th</sup> April 2021, and sought to have the petition struck out, and that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be struck out of the Petition on the premises that the Government of the UKGBNI does not submit to the jurisdiction of the Kenyan Court. Attached for your reference and marked '**Annex 5**' is a copy of the said Application.

## THE MURDER OF AGNES WANJIKU WANJIRU

9. Agnes Wanjiku Wanjiru was a Kenyan citizen, residing in Kenya, and working for gain in Laikipia, within the Republic of Kenya. She was last seen on 31<sup>st</sup> March 2012, dancing with British soldiers at Lions Court Hotel. She later on went into a room with one of the soldiers in the same hotel. In June, 2012, a groundsman at the hotel was asked to clear an apparent blockage in a septic tank. He uncovered the lid and saw a woman's body. The police retrieved the body, and transported the same to the mortuary at Nanyuki Teaching and Referral Hospital. The body was identified by her friends and family.
  10. The police initiated their investigations. A Post Mortem report was generated on 13<sup>th</sup> June 2012, and subsequently, a more detailed report was generated on 13<sup>th</sup> July 2012. The issue however came to an abrupt rest for unclear reasons. The next letter came from the Office of the Director of Public Prosecutions (ODPP) on 10<sup>th</sup> January 2017, 5 years later, only to state that the offence was murder. It thereafter took another 1 year, 10 months for the file to be forwarded to the Honourable Court at Nanyuki with the recommendation that the Court conducts an inquest. These delays can only speak to interference by the British Soldiers, in the process of investigations, with an aim to frustrate the process.
  11. According to the Post Mortem report, Agnes met her horrific death in the hands of one of the nine British Soldiers who had booked rooms in the hotel on the fateful night of 31<sup>st</sup> March 2012: She had a stab wound, 2 cm long on the right side; her lungs collapsed and she had bleeding in her chest; she had an injury of the covering on her small intestine. In the pathologist's opinion therefore, the cause of death was chest and abdominal injuries due to blunt hit on the chest as well as sharp injuries (stab wounds). We have herby attached the Pathologists testimony before Court in the proceedings of Inquest No. 8 of 2018, and marked the same as '**Annex 6**' for your reference. We have further attached the inquest report by the Judiciary and marked the same as '**Annex 7**'
  12. Due to the continuous interruption by the BATUK, Agnes Wanjiku Wanjiru, who was also the mother of a 4-year-old child at the time of her death, is yet to obtain redress from our justice system. Her right to life, as guaranteed to her by our Constitution, was abused by the BATUK, despite being bound by an Agreement to obey the laws and regulations of our country. They have gone scot-free despite being bound by the very agreement that binds them to the jurisdiction of this country.
-

### **BLAST INJURY UPON 10-YEAR-OLD LISOKA LESASUYAN**

13. On or about 7<sup>th</sup> November 2015, the BATUK were undertaking a training exercise in open grounds within Laikipia County after which they left an unutilized explosive. Lisoka Lesasuyan, being a minor, found the explosive, and unknown to him of the dangers it could cause, started playing with it. The explosive exploded, causing multiple injuries upon him. The injuries included:

- i. Traumatic amputation of the left forearm;
- ii. Facial injuries with a ruptured right eye;
- iii. Multiple lacerations of the chest; and
- iv. Gangrenous right forearm and hand. (Attached and marked 'Annex 8' is a copy of the medical report, and 'Annex 9' is a copy of Lisoka's photo.)

Upon filing of Miscellaneous Civil Application No. 1 of 2018 in the High Court of Kenya at Nanyuki, an *ex gratia* settlement was awarded in the sum of KSHs. 10,108,500.00/-.

14. This case however shows that the BATUK have been negligent in their activities, and ought to continue operating under strict guidelines. It is also a clear indicator of the dangers that come with military training on open public spaces.

### **UNETHICAL BUSINESS PRACTICES BY THE DEFENCE INFRASTRUCTURE ORGANISATION AND THE BATUK**

15. The Defence Infrastructure Organisation (DIO) and the BATUK have also taken part in several unethical business practices, which have had the effect of acute economic sabotage on the people of Kenya, particularly Laikipia. They induce developers to build houses on the promise that they will lease the houses and subsequently renege.

16. One of the companies which have fallen victim to this unfortunate practice is Maiyan Holdings Limited. The company was induced to building 34 custom built house units which would form the Swara Ranch Estate. The houses were built as a cost of KSHs. 400,000,000.00/-. The construction commenced in March 2019, and were built for a period of 4 months under constant and consistent supervision and follow-up by the DIO and the BATUK (we have attached a copy of the project status report for July 2019 and

marked the same as 'Annex 10'. At this particular period, when the shell and core of the entire estate was already complete, the DIO wrote to Maiyan Holdings, withdrawing from the project. This was notwithstanding the fact that it is them who had supplied and approved the designs, and further requested for concurrent construction of all the houses to meet their housing demand from September 2019 (attached and marked 'Annex 11' is a thread of communication emails with regard to the progress of the Swara Ranch Estate Project).

17. The project employed more than 100 people at all given times, and sourced most of their material from Small and Medium Sized Enterprises (SMEs) within Laikipia County. The company further invited investors, most of whom were community-based investment groups, who mortgaged and charged their properties to invest and secure a long-term rental income. The livelihoods and sustainability of this large and diverse population was put on the line by this move.
18. This was not an isolated incident, neither was it an honest mistake. It was a result of a deliberate policy and pattern of behaviour employed by the DIO in high command. In a similar incident involving one Douglas Kiago, he was similarly engaged on 28<sup>th</sup> February 2019 to renovate his 12 units to be leased by the BATUK. He had built the houses 5 years ago for the BATUK, who reneged upon their conclusion. The units fell into disuse, and Douglas was left struggling to service his debt obligations. They since went incommunicado and became totally irresponsible of his calls and emails.
19. It is unacceptable that an entity under the British Government, that represents itself as one acting on behalf of the Secretary of State for Defence of the United Kingdom would deliberately adopt a policy aimed at sabotaging the local business community.

**RECOMMENDATIONS:**

Due to the above acts, which are just but a handful of all the acts that have been illegally orchestrated upon the Kenyan populace, we have come up with the following recommendations for your review and action:

- i. That the current agreement as entered into on 11<sup>th</sup> October 2016 between the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of Kenya be terminated immediately, as the Government of the United

Kingdom of Great Britain and Northern Ireland is in contractual breach of its fundamental terms;

- ii. That the Agreement being deliberated upon, dated 27<sup>th</sup> July 2021, be subjected to a rigorous process of public participation, especially within Laikipia County, before further deliberations and approvals;
- iii. That the Government of the United Kingdom of Great Britain and Northern Ireland do unequivocally declare that the Visiting Forces under the Agreement being deliberated upon are under and subject to the jurisdiction of Kenyan Authorities for all illegal acts committed towards the people of the Republic of Kenya, and their properties, for the duration of the Agreement;
- iv. That full compensation for the illegalities committed by the BATUK and by extension the DIO be provided for before renewal of the Agreement under deliberation;
- v. That trainings by the BATUK be restricted to designated and enclosed areas, to ensure safety and security upon the Kenyan population; and
- vi. That all future Agreements between Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Kenya be availed to the general public for purposes of ensuring the Kenyan population is aware of their rights under the Agreement.

We have further reached out to all other bodies involved, and have hereby attached the bundle of letters as '**Annex 12**' herein.

We look forward to hearing from you, and further to your positive action in respect to these issues.

Yours Faithfully,

  
ALEXANDER MUCHEMI,  
THE COUNTY ATTORNEY,  
THE COUNTY GOVERNMENT OF LAIKIPIA.

Cc.: H.E. the Governor,  
County Government of Laikipia  
Nanyuki.

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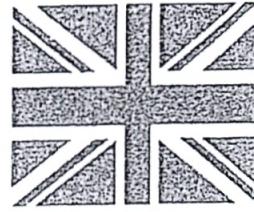
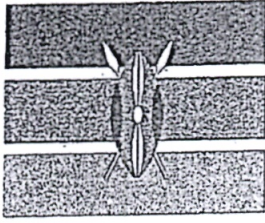
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**COPY OF THE  
AGREEMENT**



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AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AND

THE GOVERNMENT OF THE REPUBLIC OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND

CONCERNING

DEFENCE COOPERATION

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*Michael*

*[Signature]*

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

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**PREAMBLE**

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

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

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

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

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

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

**IN CONSIDERATION OF** the needs of the Armed Forces of the United Kingdom of Great Britain and Northern Ireland and the Kenya Defence Forces regarding cooperation in military training, visits and technical assistance, the status of forces and other related matters.

**HAVE** agreed as follows:

**ARTICLE 1**

**DEFINITIONS**

In this Agreement, the following definitions apply:

- a. **Armed Forces**. Means the Kenya Defence Forces or the Armed Forces of the United Kingdom of Great Britain and Northern Ireland.
- b. **Authorised Service Organisation**. Means any organisation established and operated by the Service Authorities of a Party to provide services to its Armed Forces including welfare services.

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- c. **Civilian Component.** Means the civilian personnel accompanying the Visiting Forces, who are employed in the service of the Visiting Forces or employed by an Authorised Service Organisation accompanying Visiting Forces who are not stateless persons or citizens of the Host Nation or persons ordinarily resident in the Host Nation.
- d. **Dependant.** Means a person who is not ordinarily resident in the Host Nation and who is the wife, husband or dependent child of a member of the Visiting Forces and is officially accompanying them.
- e. **Designated Training Areas.** Means private, public and/or communal land outside Gazetted Areas that the Visiting Forces may in conjunction with the Implementing Ministry procure through licences from local communities and/ or private owners for use as a Training Area.
- f. **Duty.** Includes any cess, levy, imposition, tax, or surtax, imposed by any law of the Host Nation.
- g. **Exercises or Training.** Means bilateral and multilateral exercises or training activities involving units and individuals, short term training teams, advisory support, exchanges and attachment of units.
- h. **Gazetted Areas.** Means public land allocated and reserved for use by Kenya Defence Forces for setting up its establishments including but not limited to barracks, bases, camps, detachments and Training Areas.
- i. **Host Nation.** Means the State in the territory of which the Visiting Forces are located for the purposes of this Agreement.
- j. **Implementing Arrangement.** Means a follow-on arrangement to this Agreement which may be concluded in order to set out additional details and conditions or for specific activity in which case it shall detail the resources required to undertake that activity. The Implementing Arrangement shall be a document made under this Agreement and shall be interpreted consistently with its provisions. Either Party may propose an Implementing Arrangement.
- k. **Implementing Ministry.** Means the Ministry for the time being responsible for defence and nominated by a Party to be responsible for the implementation of this Agreement under Article 5.
- l. **Official Duty.** Means the performance of a function of duty.

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- m. Sending Nation. Means the State which sends the Visiting Forces to the Host Nation for the purposes of this Agreement.
- n. Service Authorities. Means the authorities of the Host Nation or the Sending Nation empowered by the law of their respective States to exercise command or jurisdiction over the Armed Forces.
- o. Service Establishments and Installations. Means the designated base camps including the married quarters of the Visiting Forces.
- p. Training Areas. Means those areas on land, air and sea in the Host Nation in which Armed Forces shall be deployed for the purposes of conducting Exercises or Training and include Designated Training Areas and/or Gazetted Areas.
- q. Visiting Forces. Means the Armed Forces of the Sending Nation who for the time being are lawfully present in the Host Nation in time of peace under this Agreement.

ARTICLE 2

AIM

The aim of this Agreement is to enhance defence cooperation by identifying a framework for the exchange of experience and knowledge for the use and mutual benefit of the Parties.

ARTICLE 3

SCOPE AND GOALS

The Parties shall, in compliance with relevant domestic and international law, pursue the goal of defence cooperation in the following areas:

- a. Security and defence policy;
- b. Initial, advanced and follow-on training of military and Ministry of Defence civilian personnel;
- c. Defence administration and welfare matters of military personnel;
- d. Counter-piracy and other maritime security activities;

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- e. Peacetime military activities;
- f. Protection of the environment;
- g. Military medical services including research and development;
- h. Military sports;
- i. Disaster relief and humanitarian operations by the Armed forces;
- j. Military exercises;
- k. Counter-terrorism;
- l. Information operations training;
- m. Defence civilian component;
- n. Exchange visits of military personnel;
- o. Mapping/survey and exchange of geographic materials;
- p. Other areas of mutual interest which may be decided upon in future.

ARTICLE 4

FORMS OF COOPERATION

- 1. Defence cooperation between the Parties shall be based on the principle of reciprocity and shall be implemented primarily along the following lines:
  - a. Mutual visits by delegations of high-ranking representatives from the defence sector;
  - b. Staff talks and technical meetings;
  - c. Meetings between equivalent defence institutions;
  - d. Exchange of teaching and training personnel as well as students from military training institutions;

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- e. Participation in training courses, practical training, seminars, round-table discussions and symposia;
- f. Visits by Service personnel, warships and other Government ships and aircraft;
- g. Military exercises;
- h. Any other form of Military cooperation in areas agreed upon.

2. The Parties agree to co-operate in the management and operation of the Counter-Improvised Explosives Devices Capability at the Humanitarian Peace Support School. In particular, the Government of the United Kingdom of Great Britain and Northern Ireland shall support the implementation of programmes and the maintenance of instruction equipment at the Counter-Improvised Explosives Department Wing of the Humanitarian Peace Support School.

ARTICLE 5

IMPLEMENTATION

- 1. On entry into force of this Agreement both Parties shall take appropriate action to designate the other Party as a Visiting Force in accordance with its relevant laws.
- 2. All activities under this Agreement shall be implemented in conformity with the domestic law in force in the Host Nation. Implementation of some aspects of the Agreement may be covered by Implementing Arrangements.
- 3. The Parties shall designate an Implementing Ministry as the focal point of contact to implement this Agreement and coordinate the activities referred to herein; and may provide liaison officers to Visiting Forces. The Parties shall by 31<sup>st</sup> March of each year, negotiate and agree on the activities to be undertaken in that year.
- 4. Visiting Forces shall be treated, except as otherwise provided for in this Agreement, as members of the Armed Forces of the Host Nation of equivalent rank.
- 5. Visiting Forces shall not take part in hostilities or other operations of a warlike nature, or which are concerned with the preservation of peace, internal security or enforcement of law and order, in the Host Nation.

*Michael*

*B*

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6. The Host Nation may provide assistance to the Visiting Forces from time to time as it may deem necessary, fit and expedient. Visiting Forces shall observe rules, orders and safety measures applied in the institution or establishment where activities take place, and shall abstain from infringing the laws of the Host Nation and from any political activities or any other activity that may be inconsistent with the spirit of this Agreement. The Service Authorities shall take such necessary precautions or measures for the proper observance of these provisions.

7. Visiting Forces deployed in training and advisory posts shall not be given operational responsibilities in the Armed Forces of the Host Nation.

ARTICLE 6

JURISDICTION

1. Visiting Forces shall be subject to, abide by and respect the Constitution, laws and regulations of the Host Nation at all times.
2. The relevant authorities of the Host Nation shall have jurisdiction over any member of the Visiting Forces, the Civilian Component or Dependants for any criminal offence committed in contravention of any law of the Host Nation, customary international law, treaty or any agreement to which the Host Nation's Government is a party to, save for instances where under this Agreement such jurisdiction is expressly conferred on the Service Authorities of the Sending Nation.
3. The Service Authorities of the Sending Nation shall have the right to exercise within the territory of the Host Nation or on board any vessel or aircraft of the Host Nation all criminal and disciplinary jurisdiction conferred on them by the law of the Sending Nation over Visiting Forces.
4. The Service Authorities of the Sending Nation shall have jurisdiction over a member of the Visiting Forces if:
  - a. The offence is solely against the property or security of the Visiting Forces or the Sending Nation;
  - b. The offence is solely against the person or property of another member of the Visiting Forces, the Civilian Component or a Dependant; or
  - c. The offence arises out of an act or omission done in the course of Official Duty by any member of the Visiting Forces. The Inter-Governmental Liaison

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Committee, established under Article 24, shall determine whether an offence arises out of an act or omission done in the course of Official Duty.

5. Any offence not arising in the course of Official Duty in accordance with paragraph 4(c) of this Article or that does not fall under paragraphs 4(a) and 4(b) of this Article shall be subject to the primary right of the Host Nation to exercise jurisdiction. For the avoidance of doubt the following offences are not to be considered offences arising out of an act or omission in the course of Official Duty:

- a. Sexual offences;
- b. Torture;
- c. Inhumane or degrading treatment of persons;
- d. Transnational organised crimes;
- e. Slavery;
- f. Offences against the Host Nation's security;
- g. Robbery;
- h. Attempting, aiding and abetting the commission of the aforementioned offences.

6. The relevant authorities of the Party having the primary right to exercise jurisdiction shall give sympathetic consideration to a request from the authorities of the other Party to waive that right in cases where that other Party considers such a waiver to be of particular importance and in cases of minor offences where the authorities of the Host Nation have the primary right and where the Service Authorities of the Sending Nation can impose a suitable punishment by disciplinary action without recourse to a trial. If the relevant authorities having the primary right decide not to exercise jurisdiction, they shall notify the appropriate authorities of the other Party as soon as practicable. The waiver by one Party of its primary right to exercise jurisdiction shall not preclude that Party from exercising its right to jurisdiction in matters where the other chooses not to exercise its own right to jurisdiction.

7. The Service Authorities of the Sending Nation shall consider waiving jurisdiction granted in paragraph 4(c) of this Article, in any incident where an offence arising out of an act or omission done in the course of Official Duty by a member of the Visiting Forces has caused the death of, or serious injury to, a person who is not a member of the Visiting Forces, the Civilian Component or a Dependant.

8. Notwithstanding paragraph 7, either Party shall have the right to refer any such incident, to the Inter-Governmental Liaison Committee which shall determine whether the Sending Nation shall waive jurisdiction in a particular case in accordance with Article 24.

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9. The Attorney General or the Minister of Justice of the Host Nation may by certificate certify the existence of the public interest or the interest of administration of justice of the Host Nation which would in his/her opinion necessitate the exercise of the Host Nation jurisdiction. Such certificate shall be submitted to the Inter-Governmental Liaison Committee and the Sending Nation for consideration pursuant to Article 24 of this Agreement.
10. In the event of an incident involving Visiting Forces, including those that have caused the death of or serious injury to any person who is not a member of the Visiting Forces, the Civilian Component or a Dependant, the Sending Nation shall notify the Host Nation and the Inter-Governmental Liaison Committee of the incident within 7 days.
11. The relevant authorities of the Host Nation shall immediately notify the Visiting Forces' High Commission of the arrest of any member of the Visiting Forces, Civilian Component or a Dependant.
12. The relevant Authorities of the Parties shall assist each other in the carrying out of all necessary investigations into any offences, in collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence as well as the arrest and transfer of prisoners. The handing over of objects may, however, be subject to their return within the time specified by the authorities delivering them.
13. Any arrested member of the Visiting Forces, Civilian Component or Dependant shall be presented to a public court for arraignment or first appearance as soon as possible after their arrest, and, in any event, within 48 hours of their arrest.
14. Where an accused has been tried in accordance with the provisions of this Agreement by the authorities of one Party and has been acquitted or has been convicted and is serving or has served a sentence, or has been pardoned, he or she may not be tried again for the same offence within the territory of the Host Nation by the authorities of the other Party. However, nothing in this paragraph is to prevent the Service Authorities of the Sending Nation from trying a member of its Visiting Forces, Civilian Component or Dependant for any violation of rules of discipline arising from an act or omission for which he or she was tried by the authorities of the Host Nation.
15. Whenever a member of the Visiting Forces, Civilian Component or a Dependant is prosecuted under jurisdiction exercised by the authorities of the Host Nation, he or she shall be entitled:
  - a. to a prompt and speedy trial;

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- b. to be informed, in advance of trial, of the specific charge or charges made against him or her;
- c. to be confronted with the witnesses against him or her;
- d. to have compulsory process for obtaining witnesses in his or her favour, if they are within the jurisdiction of the authorities of the Host Nation;
- e. to have legal representation of his or her own choice for his or her defence or to have free or assisted legal representation under the conditions prevailing for the time being in the Host Nation and to be granted private and unfettered access to the legal representative;
- f. if necessary, to have the services of a competent interpreter;
- g. to communicate with a representative of the Sending Nation, and, when the rules of the court permit, to have such a representative present at his or her trial; and
- h. to have any sentence of the death penalty or corporal punishment commuted to a prison sentence or fine.

16. In cases where the authorities of the Host Nation have the right to exercise jurisdiction over members of the Visiting Forces, that jurisdiction shall be exercised within the ordinary criminal justice system applicable to civilians and shall not be exercised within the criminal justice system applicable only to members of the Armed Forces of the Host Nation.

17. Whenever a member of the Visiting Forces is convicted and sentenced to imprisonment under jurisdiction exercised by the authorities of the Host Nation, the Host Nation shall give sympathetic consideration to any request from the Sending Nation that the prison sentence is served in the Sending Nation.

18. The Service Authorities of each Party shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

ARTICLE 7

UNIFORM, ARMS AND OTHER DEFENCE ARTICLES

1. The Visiting Forces shall, prior to entry into the Host Nation, submit through the Implementing Ministry a schedule detailing all cargo on board their vessels. Such cargo

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shall be subject to inspection and verification by the relevant authorities of the Host Nation.

2. Members of the Visiting Forces shall, where necessary and appropriate, wear the uniform and insignia of their parent units in the performance of their official duties. No uniform shall be worn if a member is not on duty. They may possess and carry arms and ammunition when authorised to do so by their Service Authorities after consultation with, and subject to any restrictions and direction imposed by the relevant authorities of the Host Nation through the Implementing Ministry.
3. The Visiting Forces may take such measures as they deem necessary to ensure the security of Service Establishments and Installations and of persons and property in them and official information.
4. Within Training Areas, the Armed Forces of the Host Nation and Visiting Forces shall jointly take such measures as are necessary to ensure the security of members of the Visiting Forces and equipment.
5. Units and members of the Visiting Forces shall be responsible for the safe custody of all arms, ammunitions, uniforms, explosives and other defence articles. Units and members of the Visiting Forces shall under no circumstances sell or transfer possession to civilians of the Host Nation any arms, ammunitions, uniforms, explosives and other defence articles. All arms, ammunitions, uniforms, explosives and other defence articles no longer required by the Visiting Forces shall either be returned to the Sending Nation or disposed of in accordance with Host Nation law and international practice and standards.
6. Prior to departing the territory of the Host Nation, the Commander of the Visiting Forces shall certify that all defence articles imported to the Host nation have either been expended or re-exported by the Visiting Forces. The service authorities of the Sending Nation shall transmit a copy of the certificate to the service authorities of the Host Nation.
7. The Sending Nation shall ensure that their Visiting Forces comply with the provisions of this Article in particular implementing measures to prevent the sale of defence items to civilians of the Host Nation.

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ARTICLE 8

ENVIRONMENTAL PROTECTION

1. **Environment.** The Host Nation and the Visiting Forces shall ensure protection, preservation and restoration of the environment comprising of the Training Areas and Service Establishments and Installations. The Visiting Forces shall avoid acts that negatively impact on the human health and safety, property, flora and fauna and shall at all material times, comply with the Host Nation's directions, regulations and laws preserving the environment and Service Establishments and Installations.
2. **Inspection of Training Areas.** Visiting Forces shall refrain from such acts that would prejudice the Host Nation's laws and obligations under international law with respect to the preservation of the environment. The Host Nation's relevant authorities shall regularly inspect the Training Areas under use by the Visiting Forces to verify compliance with this Article.
3. **Infrastructure.** No permanent infrastructure shall be constructed in the Training Areas without the express consent of the Host Nation. In the event that such infrastructure is authorised and constructed, the ownership of the same shall be determined by the relevant authorities of the Host Nation through the Implementing Ministry. Any change of use of authorised infrastructure shall be subject to the express consent of the Host Nation.
4. **Waste management.** Disposal of waste shall be in accordance with international law and the Host Nation's laws on waste management.
5. **Monitoring.** The Host Nation relevant authorities shall be entitled to verify that measures have been put in place to protect the environment in line with relevant laws of the Host Nation. The Host Nation shall report any concerns to the Inter-Governmental Liaison Committee.

ARTICLE 9

ACCESS TO FACILITIES

1. The Parties shall cooperate in the military and related technical fields of interest to both Parties for the mutual benefit of the Armed Forces as follows:
  - a. Visiting Forces may use the Host Nation's civilian and military airfields, seaports and land-based facilities for visits, Exercises or Training, refuelling,

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aircraft landing, berthing of ships, navigation and other mutually acceptable military purposes.

- b. The Host Nation shall permit visits to its establishments and facilities by Visiting Forces, provided that the personnel have the appropriate security clearances, and that visits have been authorised in advance by the Service Authorities of the Host Nation.
- c. Entry into the Host Nation by vessels including aircraft shall be subject to the payment of fees and charges levied in accordance with Host Nation's laws and regulations.
- d. Each Party shall be responsible for payment of any fees and any other charges relating to the use of such military facilities as shall be jointly determined. Such charges may also be paid in kind by agreement.
- e. Vessels including aircraft and vehicles which are the property of the Sending Nation and for the time being exclusively in service shall be exempt from any form of compulsory insurance, registration, licensing or compulsory testing.
- f. Use of facilities for aircraft Exercises or Training shall be subject to orientation requirements by the Host Nation's relevant civil aviation regulatory authority through the Implementing Ministry.

2. The Government of the Republic of Kenya grants the United Kingdom of Great Britain and Northern Ireland a licence to occupy and use the permanent infrastructures constructed by the United Kingdom of Great Britain and Northern Ireland Armed Forces at Laikipia Air Base and Kahawa Garrison during the validity of this Agreement. Construction of additional permanent infrastructures or modifications within or outside the aforesaid Kahawa Garrison or Laikipia Air Base shall be with the consent of the Government of the Republic of Kenya through the Implementing Ministry.

3. Authorised permanent infrastructures within the Training Areas shall be subject to the payment of licence fees as the Host Nation shall from time to time determine. For the avoidance of doubt, the Government of the United Kingdom of Great Britain and Northern Ireland shall pay Kenya Shillings Ten Million (Kshs. 10,000,000) and Kenya Shillings Twenty-Seven Million Seven Hundred Thousand (Kshs. 27,700,000) per calendar year for the licence granted for the permanent infrastructure at Laikipia Air Base and Kahawa Garrison respectively. The licence fees shall be subject to an escalation of no more than the annual rate of inflation each calendar year based on the Kenya National Bureau of Statics official rate of annual inflation.

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4. Permanent infrastructure constructed or installed by the Visiting Forces shall where built within gazette areas vest in the Host Nation upon the expiry of this Agreement and its non-renewal or at such earlier time as the Parties may mutually agree.
5. The Service Authorities of the Host Nation shall, in liaison with the Service Authorities of the Sending Nation or the local commander of the Visiting Forces, be at liberty to visit and inspect permanent infrastructures constructed or installed by the Visiting Forces within the Host Nation.

ARTICLE 10

PROVISION OF TRAINING AREAS

1. The Sending Nation shall annually provide the Host Nation with a proposed schedule of exercises giving notice of at least one (1) year to each major exercise and specifying the units involved. Where the exercise is to be multilateral, the Sending Nation shall inform the Host Nation of the particulars of the third country armed forces that is proposed to participate in the exercise.
2. The Host Nation shall approve or disapprove the participation of third country armed forces in a multilateral exercise. The Host Nation shall be entitled to participate in the multilateral exercise.
3. The Sending Nation shall provide the Host Nation with staff tables of the units involved nine (9) months in advance, showing full details and numbers of personnel, numbers and types of weapons, ammunition, explosives, vehicles and major equipment that it intends to bring into the Host Nation.
4. The relevant authorities of the Host Nation may prohibit the entry of personnel or importation of military stores, provided that notification of such prohibition is given four (4) months in advance of the exercise. The precise numbers of personnel and equipment, which shall not differ significantly from original estimates, shall be confirmed by the Visiting Forces a minimum of four (4) weeks prior to the arrival of the Visiting Forces in the Host Nation.
5. Training in Training Areas in the Host Nation shall take place in accordance with the following provisions:
  - a. Bookings for training in Gazetted Areas are to be made nine (9) months in advance and guaranteed allocation shall be confirmed by the relevant authorities of the Host Nation through the Implementing Ministry six (6)

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months in advance including the limit on the number of the Visiting Forces to be allowed into the Host Nation.

- b. Training in Designated Training Areas shall be permitted subject to the Visiting Forces:
  - 1) Obtaining consent from the Implementing Ministry of the Host Nation prior to commencement of negotiations and procurement of licences;
  - 2) Involving the Implementing Ministry of the Host Nation in the negotiations and procurement process;
  - \* 3) Making full disclosure to the Implementing Ministry of the Host Nation on the licences procured to train on private, public and/or communal land;
  - 4) Paying all applicable taxes due from them to the relevant national and county/local governments as may be prescribed from time to time.
- c. Subject to the limitations set by the Host Nation, the booking shall specify duration, nature of training, equipment and number of personnel taking part.
- d. The Host Nation shall provide liaison staff and undertake combined training with the Visiting Forces throughout the military exercise period in the Training Areas, including the planning, execution and recovery stages within the Host Nation.
- e. The Host Nation and the Visiting Forces shall jointly take appropriate measures to warn against any form of interference prior to the commencement of or during any training activity.
- f. Military training involving live firing including high trajectory ammunition and parachuting shall require clearance from the relevant authorities of the Host Nation through the Implementing Ministry.
- g. Military training involving any firing at sea shall require clearance from the relevant authorities of the Host Nation through the Implementing Ministry.
- h. All training shall be regulated in strict compliance with both Parties' existing military safety and clearance procedures and rules.
- i. The Parties shall conduct a joint annual unexploded ordnance clearance validation exercise in order to prevent injury, death or other damage to persons and property.

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ARTICLE 11

CIVIL CLAIMS AND LIABILITIES

1. The Host Nation shall have jurisdiction for civil claims and liabilities arising from activities in its territory under this Agreement. Each Party waives any claim it may have against the other Party or the Armed Forces personnel of the other Party for injury (including injury resulting in death) suffered by its Armed Forces personnel or for damage to or loss of property owned by the Armed Forces if such injury, death, damage or loss was caused by the acts or omissions of the other Party in the course of Official Duty in connection with this Agreement.
2. The relevant authorities of both Parties shall cooperate in the carrying out of all necessary investigations into all third party claims, including paternity cases, and in the collection and production of evidence, including the seizure and the handing over of objects connected with such a claim.
3. Where it is established that the Visiting Forces, their members, Visiting Forces employees or agents are legally liable for such a claim, the relevant authorities of the Host Nation shall submit a report to the relevant authorities of the Sending Nation who shall pay prompt and adequate compensation to the claimants.
4. The Parties shall cooperate in the disposal of claims for which they are responsible.

ARTICLE 12

ENTRY, MOVEMENT AND EXIT

1. The Host Nation may allow Visiting Forces freedom of movement within its territory, including stopping and anchoring in its waters, and its air space, provided that a request to do so has been received within reasonable time.
2. A person who has been declared a prohibited immigrant shall not be allowed to enter the Host Nation. Any member of the Visiting Forces, Civilian Component or a Dependant who is declared a prohibited immigrant while in the Host Nation shall be repatriated or otherwise removed from the Host Nation by the Service Authorities of the Sending Nation at their expense.
3. The Service Authorities of the Sending Nation shall bear the cost or reimburse any cost necessarily incurred by the relevant authorities of the Host Nation resulting from the

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repatriation of any member of the Visiting Forces, Civilian Component or a Dependant in accordance with paragraph 2.

4. To obtain entry into the Host Nation, each member of the Visiting Forces shall be required to produce a Passport valid for at least six (6) months with a service identity card, be processed through the normal immigration screening and clearance including but not limited to finger printing in accordance with the laws of the Host Nation whereupon they shall be issued with visas or business permit in accordance with the domestic laws of the Host Nation at a prescribed fee.
5. On arrival at the port of entry, the Visiting Forces shall be received by an officer to be designated by the Host Nation who shall facilitate the efficient and seamless immigration procedures at the port of entry.
6. The Service Authorities of the Sending Nation shall provide a list of the names of the Visiting Forces to the Implementing Ministry of the Host Nation for onward transmission to the Immigration Department at least two (2) weeks prior to the arrival of the Visiting Forces.
7. A member of the Visiting Forces who is resident in the Host Nation for at least six (6) months shall be required to apply for a work permit and pay the applicable fee. Dependants shall be required to apply for dependants' passes and if they wish to work, they shall apply for work permits in accordance with the Host Nation's immigration laws. All such applications for work permits shall be forwarded to the Immigration Department through the Implementing Ministry of the Host Nation.
8. The Visiting Forces shall provide a manifest of the Civilian Component and dependents for onward transmission to the Host Nation Immigration Authorities at least two (2) weeks prior to their arrival in the Host Nation. The Civilian Component and Dependants shall be required to produce a passport valid for at least six (6) months and to pay, or have paid on their behalf, any applicable port of entry/exit visa fees.
9. After a member of the Visiting Forces is discharged from service, he or she shall be repatriated.
10. On completion of the tour of duty, the Visiting Forces, Civilian Component and their Dependants shall leave the Host Nation within fourteen (14) days.

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ARTICLE 13

TAXATION, IMPORTATION AND EXPORTATION

1. Direct taxation of pay, allowances, emoluments and benefits of the Visiting Forces and the Civilian Component in the Host Nation shall be dealt with in accordance with the Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains signed on 31 July 1973.
2. The Parties shall permit each other access to their duty free regime facilities in accordance with the laws and regulations applicable in the Host Nation. Goods and equipment owned by the Government of the United Kingdom of Great Britain and Northern Ireland for official use by its Armed Forces in the Republic of Kenya shall be imported duty free. The Government of the United Kingdom of Great Britain and Northern Ireland shall permit members of the Kenya Defence Forces personal import reliefs on temporary admission, transfer of residence and overseas student allowance.
3. If a member of the Kenya Defence Forces intends to travel to the United Kingdom of Great Britain and Northern Ireland on official business connected to the implementation of this Agreement and wishes to make use of the available tax reliefs under the laws of the United Kingdom of Great Britain and Northern Ireland, the Republic of Kenya shall notify the High Commission of the United Kingdom of Great Britain and Northern Ireland in the Republic of Kenya at least one (1) month in advance of the intended date of travel. The notification should include an explanation of the purpose of travel, expected duration and the nature of the goods and equipment that shall be imported into the Host Nation.
4. For the purposes of paragraph 3, the High Commission of the United Kingdom of Great Britain and Northern Ireland in the Republic of Kenya shall consult with the relevant authorities of the United Kingdom of Great Britain and Northern Ireland and advise the Republic of Kenya on the appropriate procedure to obtain the most favourable arrangements in relation to Duty.
5. If the Service Authorities of the Sending Nation intend to import into the Host Nation vehicles, goods or other equipment for official use by the Visiting Forces, the Sending Nation shall notify the High Commission of the Host Nation in the Sending Nation at least one (1) month in advance of the intended date of arrival of the equipment, goods or vehicles into the Host Nation. The notification shall include an official accurate manifest of such items with sufficient details to enable inspection and proper account of the materials for disposal in the Host Nation or re-export.

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6. If a financial security or undertaking is required on the importation of goods and equipment into the United Kingdom of Great Britain and Northern Ireland pursuant to paragraph 3, the Implementing Ministry of the Government of the United Kingdom of Great Britain and Northern Ireland shall provide the financial security provided that the member of the Kenya Defence Forces agrees to abide by any conditions that apply to the personal import relief.
7. Postal articles may be imported into and exported from the Host Nation by authorised postal agencies subject to the production of such articles to the relevant authorities of the Host Nation for examination in order to ensure compliance with the relevant customs regulations.
8. The importation of equipment, materials, vehicles, provisions, supplies and other goods shall be subject to the Host Nation and applicable regional economic integration organisations' laws and regulations in relation to licences or permits. Where it is appropriate to do so, the Host Nation may provide further bilateral facilitations such as exemptions to certain licences and permits following any discussions and agreements for specific situations.
9. Items imported into the Host Nation pursuant to this Agreement shall, unless the relevant authorities of the Host Nation decide to the contrary be subject to inspection at the port of entry in the presence of a member of the Visiting Forces. All imports into the Host Nation shall be done through the designated ports of entry. The Parties shall from time to time notify each other of their designated ports of entry.
10. Goods imported duty free may be re-exported freely and without payment of duty. Any disposal of duty free goods in the Host Nation by sale or transfer to a non-privileged person shall be subject to the payment of duty in accordance with existing Host Nation laws and regulations. Subject to approval of the relevant Host Nation's authorities and where the Host Nation's laws permit, duty free goods may be transferred to persons similarly privileged.
11. Vehicles and articles which are the property of the Sending Nation that are seized by the relevant authorities of the Host Nation in connection with an offence against the laws and regulations administered by the customs authorities of the Host Nation shall be handled in accordance with the laws of the Host Nation. Subject to the applicable laws and regulations of the Host Nation, the vehicles and articles seized shall be handed over to the Sending Nation after proper investigations and completion of any legal proceedings by the relevant authorities of the Host Nation.

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12. The Parties shall co-operate in the exchange of information to facilitate the administration of the Host Nation's tax laws where tax is applicable.

13. Further arrangements under this Article may be covered by an Implementing Arrangement agreed upon by the Parties.

ARTICLE 14

FINANCE

1. The financial obligations of the Parties shall be subject to their respective national laws.

2. For any supplies or services which are not provided free of charge by mutual consent, the relevant authorities of the Host Nation and the Visiting Forces shall negotiate for payment either in cash or in kind.

a. Cash Payments. The Visiting Forces shall pay outstanding balances after receipt of an invoice.

b. Payment in Kind. The Visiting Forces may pay by transferring supplies or services that are equal in value to those received if satisfactory to the Host Nation.

3. The Host Nation shall not obtain services or commit to any commercial contracts on behalf of the Visiting Forces without prior authorisation.

4. The Visiting Forces shall pay for supplies, equipment or services from commercial sources such as food, vehicle hire, laundry, medical, prior to departure from the territory of the Host Nation, unless otherwise contractually determined or unless a dispute regarding cost or receipt of services exists. In case of the latter situation arising, every effort shall be made to resolve the dispute as soon as possible in order to expedite settlement of accounts.

5. Subject to availability, the Host Nation shall provide the Visiting Forces with messing and accommodation to the same standard as would be provided to members of the Host Nation's Armed Forces of equivalent rank.

6. The Visiting Forces shall not re-transfer logistic support, supplies or services, either temporarily or permanently, to another nation or organisation without written consent of the relevant authorities of the Host Nation.

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ARTICLE 15

REMITTANCE OF FUNDS

Remittance between the territory of the Host Nation and the territory of the Visiting Forces shall be permitted in respect of:

- a. Funds derived by members of the Visiting Forces from services or employment in connection with their official duties in the Host Nation;
- b. Official funds of the Visiting Forces and Authorised Service Organisations accompanying them in the Host Nation;
- c. Funds derived by the Visiting Forces from sources outside the Host Nation subject to any Host Nation laws or regulations;
- d. Funds derived by the Visiting Forces arising from the disposal, in anticipation of departure from the Host Nation, of personal effects, furniture, motor vehicles and other property which, at the time of importation, were officially recorded with the Host Nation as being items for use by the Visiting Forces;
- e. Funds derived from the sale of locally acquired personal effects, furniture, motor vehicles and other property, purchased with funds from external sources, provided documentary proof of the acquisition and sale of such items is provided to the relevant authorities of the Host Nation.

ARTICLE 16

IDENTIFICATION

1. Visiting Forces shall carry passports and/or Service identity cards at all times. The Service Authorities of the Host Nation may issue such identity documents as they deem necessary for Visiting Forces training or otherwise in military establishments in the Host Nation.
2. Visiting Forces' ships, aircraft, vehicles, stores, equipment, weapons and provisions may carry distinctive identification such as their national flag and markings such as military insignia, titles and official symbols.

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ARTICLE 17

VEHICLE REGISTRATION AND DRIVING LICENCES

1. All vehicles belonging to the Sending Nation and permanently stationed in the Host Nation shall be registered by the Visiting Forces and the relevant authorities of the Host Nation. Registration numbers are to be applied to all vehicles in accordance with each Party's practice.
2. Vehicles owned by members of the Visiting Forces in their private capacity shall be registered by the relevant authorities of the Host Nation in accordance with the Host Nation's domestic law.
3. The authorities of the Host Nation shall accept as valid current national driving licences, international driving licences or service driving licences issued by the Sending Nation to its Armed Forces, Civilian Component or Dependants in accordance with the Sending Nation's laws and regulations.

ARTICLE 18

TRAINING COSTS AND SALARIES

Both Parties may charge fees for training courses, which may include tuition, food, accommodation, training aids and transport. Such fees shall be determined between the Parties when places on training courses are applied for. The Sending Nation shall be responsible for paying the salaries of the Visiting Forces and Civilian Component in the Host Nation.

ARTICLE 19

INVESTIGATION PROCEDURES FOR ACCIDENTS

1. Investigation of accidents or incidents including those involving military aircraft, missiles and/or unmanned aircraft systems of the Visiting Forces shall be the responsibility of the authorities of the Party in whose territory the accident or incident under investigation occurred. The Visiting Forces may provide expert advice, and shall, in the spirit of this Agreement, cooperate with requests for information and evidence, as may be made by the chairperson of any inquiry as part of their deliberations. The Visiting Forces shall be provided with a copy of the inquiry report.
2. The Visiting Forces shall be entitled to have an observer present at any inquiry carried out by the Service Authorities of the Host Nation. Except when requested to do

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otherwise by the Host Nation, the observer shall not have the freedom to cross-examine, or to participate in any other way and shall not be present when the Inquiry is deliberating on its findings and recommendations. The observer shall normally be no higher in corresponding rank than the chairperson of the inquiry.

3. Visiting Forces may conduct further investigations into an accident or incident in the territory of the Host Nation as may be required by the laws or regulations of the Sending Nation. Any requests for information for use in the pursuit of such investigations shall be given consideration by the Host Nation.

ARTICLE 20

MEDICAL, OPTICAL AND DENTAL

1. At the time of their departure for the Host Nation, Visiting Forces shall be medically fit. The Sending Nation shall be responsible for arranging the provision, and for meeting the cost of, medical, optical and hospital treatment (including the provision of spectacles and dentures) of Visiting Forces, and for arranging evacuation in the event that suitable treatment is not available locally. The Host Nation may be requested to provide treatment where possible which may be subject to charges. However, any emergency medical treatment required by a member of the Visiting Forces shall be provided free of charge.

2. If Visiting Forces are engaged in joint training with the Armed Forces of the Host Nation, the medical facilities available to the Visiting Forces shall be extended to the participating Armed Forces of the Host Nation, where appropriate and necessary.

ARTICLE 21

DEATH OF A MEMBER OF THE VISITING FORCES

1. The death of a member of the Visiting Forces in the Host Nation shall be reported to the relevant authorities of the Host Nation and Sending Nation. The death shall be certified by a medical practitioner of the Host Nation who is registered and current with the relevant regulatory authority of the Host Nation and who is authorised to issue the death notification or death certificate.

2. If the Host Nation authorities require that an autopsy be carried out on the deceased, this shall be done by a doctor of the Host Nation nominated for the purpose. The Host Nation shall notify the Commander of the Visiting Forces prior to an autopsy taking place. A doctor appointed by the Service Authorities of the Sending Nation may

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also attend the autopsy which shall take place at a time and location stipulated by the relevant authorities of the Host Nation.

ARTICLE 22

PROTECTION OF INFORMATION

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

ARTICLE 23

COMMUNITY RELATIONS

1. The Visiting Forces shall respect and be sensitive to the traditions, customs and cultures of local communities of the places where they are deployed in the Host Nation.
2. The Service Authorities of the Sending Nation shall ensure that wherever deployed in the Host Nation, the Visiting Forces shall not harm vulnerable groups in particular the disabled, women and children.
3. The Sending Nation shall pay compensation within the framework of this Agreement where they are found liable for causing any death, injury, loss or damage to the persons and/or property of members of such local communities including that arising from sexual exploitation.
4. The Visiting Forces shall not enter into any memorandum of understanding or agreement with the local community or county/local government except with the consent and participation of the Host Nation.

ARTICLE 24

INTER-GOVERNMENTAL LIAISON COMMITTEE

1. There is established an Inter-Governmental Liaison Committee.
2. The Parties shall each nominate not less than four (4) representatives to constitute the Inter-Governmental Liaison Committee. The Inter-Governmental Liaison Committee

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shall comprise of senior military officers not below the rank of colonel and at least two senior civilian government officers from each side.

3. The Inter-Governmental Liaison Committee shall meet at least two (2) times a year or when a request is made by either Party under Article 6 paragraph 8. The Inter-Governmental Liaison Committee shall meet within seven (7) days of such a request. It shall meet at such places as the Parties shall mutually agree provided that meetings to determine issues under Article 6, paragraph 8 shall be held in the Host Nation.

4. The Inter-Governmental Liaison Committee shall:

- a. administer and oversee the implementation of this Agreement;
- b. consider, recommend and oversee the resolution of any disputes referred to it as may arise under Articles 11 (Civil Claims and Liabilities) and 25 (Settlement of Disputes) of the Agreement or in the implementation of this Agreement;
- c. consider and make recommendations to the Parties in relation to any matter referred to it;
- d. provide periodic review of the Agreement and make recommendations to the Parties for their consideration;
- e. refer unresolved civil claims against Visiting Forces for mediation and arbitration as it deems fit and expedient;
- f. facilitate service of process in accordance with this Agreement and any applicable law;
- g. undertake the functions set out in paragraphs 5 and 6 of this Article;
- h. perform any function it is empowered to perform under this Agreement;
- i. perform any other function assigned to it by the Parties.

5. On referral to it of an incident in accordance with Article 6, paragraph 8, the Inter-Governmental Liaison Committee shall:

- a. receive the initial decision of the Sending Nation whether the incident does or does not constitute an act or omission done in the course of Official Duty;

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- b. receive representations from the authorities of the Host Nation or any other person;
  - c. in light of these representations determine whether the incident does or does not constitute an act or omission done in the course of Official Duty;
  - d. consider any certification of the public interest and the interests of justice from the Attorney General or the Minister of Justice of the Host Nation that would in his/her opinion necessitate the exercise of Host Nation jurisdiction;
  - e. in the event of a certification of public interest by the Attorney General or the Minister of Justice determine whether the Sending Nation should waive jurisdiction;
  - f. facilitate co-operation with the investigations of the Party with jurisdiction by the other Party and ensure that the Party with jurisdiction keeps the other Party appropriately informed as to the progress of its investigations;
  - g. ensure that any necessary representations and evidence are made available to the prosecuting authorities of the Party exercising jurisdiction;
  - h. confirm that, when the Sending Nation exercises jurisdiction, any trial shall be held in the Host Nation and be open to the public with full access to observers and victims from the Host Nation, where the rules of the court permit;
  - i. ensure that the rights of victims are safeguarded;
  - j. ensure that the rights of the accused person are safeguarded and make recommendations to the Parties on the custody of the accused person.
6. In the circumstances where the Inter-Governmental Liaison Committee is unable to reach an agreed position on any issue, that issue shall be referred to diplomatic and political channels for determination. Such determination shall be made as soon as possible bearing in mind the rights of the accused person and the victim.
7. Subject to the provisions of this Agreement, the Inter-Governmental Liaison Committee shall regulate its own proceedings and may formulate rules or regulations to govern its work.
8. The Inter-Governmental Liaison Committee may establish sub-committees for the effective discharge of its functions.

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9. The Inter-Governmental Liaison Committee may co-opt into the membership of the sub-committees, persons whose knowledge or skills are considered necessary for the functions of a sub-committee. Any person co-opted may attend a meeting of a sub-committee but shall not participate in the making of decisions.

10. The Inter-Governmental Liaison Committee shall submit annual reports to the Parties and may make such recommendations for the better implementation of the Agreement.

ARTICLE 25

SETTLEMENT OF DISPUTES

1. Save as is otherwise provided in this Agreement, disputes related to the implementation and/or interpretation of this Agreement shall be resolved by consultation or negotiation between the Parties through the Inter-Governmental Liaison Committee.

2. Disputes not resolved by the Inter-Governmental Liaison Committee in accordance with paragraph 1 of this Article shall be resolved through diplomatic channels.

ARTICLE 26

ENTRY INTO FORCE, DURATION, AMENDMENT AND TERMINATION

1. This Agreement supersedes the Defence Cooperation Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Defence Cooperation, signed in duplicate in Nairobi on December 2015 and which entered into force on 11 October 2016.

2. The Agreement shall enter into force on the date of receipt of the later written notification by which the Parties shall notify each other through diplomatic channels of the completion of their respective internal procedures required for the entry into force of the Agreement and shall remain in effect for a period of five (5) years.

3. Either Party wishing to renew this Agreement shall notify the other Party of its intention to renew the Agreement at least twelve (12) months prior to the expiry of this Agreement and the other Party shall consider the same.

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4. This Agreement may be amended at any time, in writing, by mutual consent of the Parties. Agreed amendments shall enter into force in accordance with the procedure set out in paragraph 2.

5. This Agreement may be terminated by either Party by giving the other six (6) months written notice of termination. If the Agreement is terminated or it is not renewed, the provisions relating to jurisdiction, civil claims and liabilities, the protection of information and the financial arrangements between the Parties shall continue to apply for as long as necessary. In the event of termination, the Parties shall negotiate the costs arising from termination.

In witness whereof the undersigned being duly authorised thereto by their respective Governments have signed this Agreement in two originals in English.

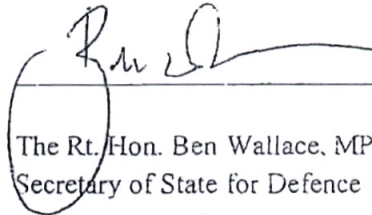
Done at London this 27<sup>th</sup> day of July Two Thousand and Twenty One.

For the Government of the Republic of  
Kenya

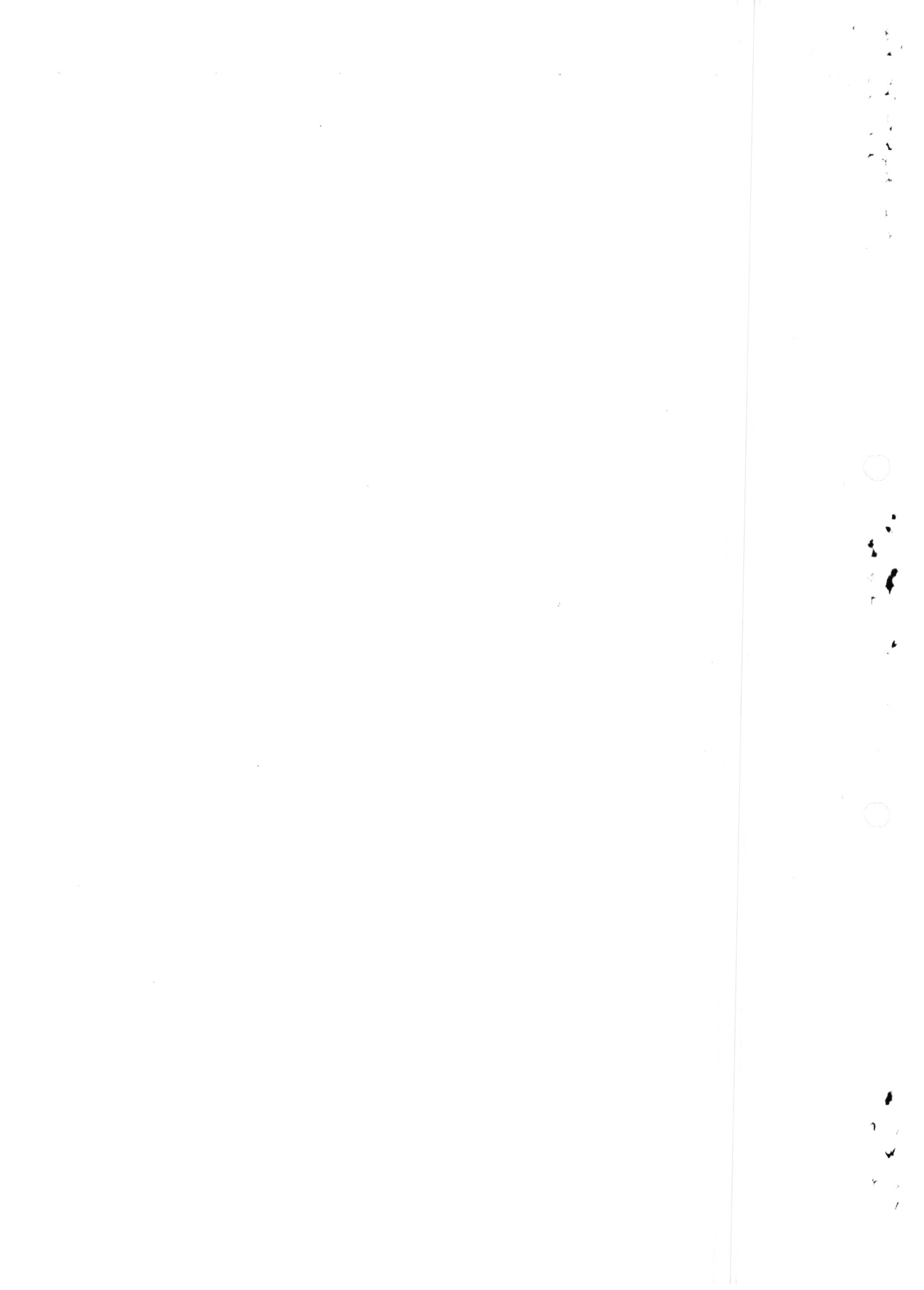
For the Government of the United  
Kingdom of Great Britain and Northern  
Ireland



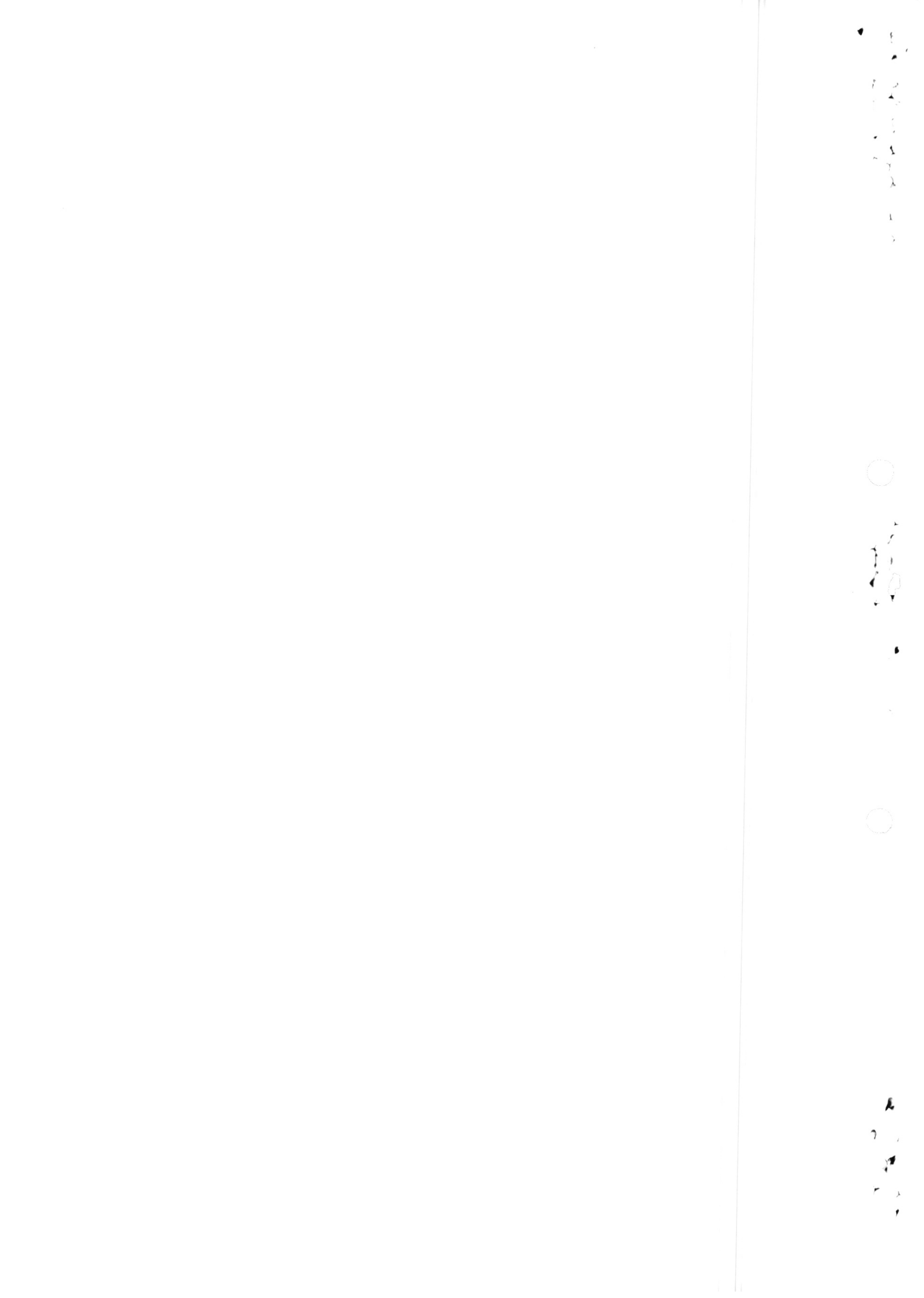
Amb. Dr. Monica K. Juma, (Oxon), EGH  
Cabinet Secretary for Defence



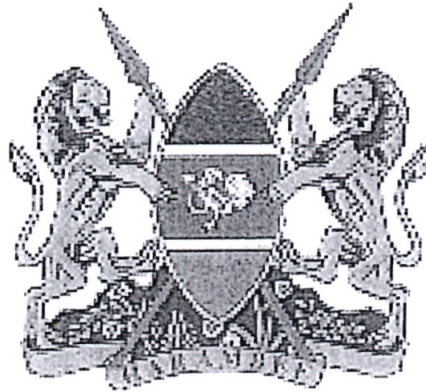
The Rt. Hon. Ben Wallace, MP  
Secretary of State for Defence



**COPY OF A  
MEMORANDUM OF  
THE AGREEMENT**



**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 REPUBLIC OF THE UNITED  
KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND**

**ON**

**DEFENCE CO-OPERATION**

## 1.0 PURPOSE

The purpose of this Memorandum is to apprise the National Assembly on the Agreement between the Government of the Republic of Kenya and the Government of the Republic of the United Kingdom of Great Britain and Northern Ireland on Defence Co-operation (the Agreement) and to seek approval for ratification.

## 2.0 BACKGROUND

2.1 The Kenya Defence Forces has been co-operating with the United Kingdom of Great Britain and Northern Ireland Defence Forces primarily in the defence industry, training support and exchange of students in military institutions.

2.2 An Inter-Ministerial Committee comprising of representatives of the Ministries of Defence, Foreign Affairs and Interior and Co-ordination of National Government and the State Law Office was convened to consider and identify the Republic of Kenya's strategic interest in the bilateral co-operation with the Government of the Republic of the United Kingdom of Great Britain and Northern Ireland on defence and to further develop a draft agreement setting out the framework of co-operation.

2.3 A delegation from the Republic of the United Kingdom of Great Britain and Northern Ireland was received at the Defence Headquarters in Nairobi to discuss and settle the terms of the draft agreement. The resulting agreement is annexed hereto as **Annex A**.

2.4 The draft Agreement was subsequently submitted to the State Law Office for clearance and legal advice. The draft Agreement has been cleared by State Law Office and the

National Security Council and was accordingly signed by the parties on 27<sup>th</sup> July 2021 during the Head of State Visit to the United Kingdom. Copies of the clearance letters are at **Annexes B and C.**

### **3.0 ANALYSIS OF THE PROBLEM**

3.1 The bilateral co-operation in defence between the Republic of Kenya and the Republic of the United Kingdom of Great Britain and Northern Ireland has been limited to exchange of students in military institutions, training support and co-operation in the defence industry. This was observed to be narrow and does not exploit all the potential areas of co-operation. The draft Agreement expands the potential areas of co-operation to include security and defence policy, peacetime military activities, environmental protection, military sports, military medicine and research and development. The draft Agreement also expands co-operation in military training to include military exercises, staff talks and technical meetings and exchange of teaching and training personnel as well as students from military institutions.

3.2 The draft Agreement provides a formal framework for bilateral co-operation in defence between the Republics of Kenya and The United Kingdom of Great Britain and Northern Ireland in conformity with section 37 of the Kenya Defence Forces Act, 2012 (revised 2018) as read together with section 283 requires that co-operation in defence be regulated by an agreement which should also provide for the legal status of the visiting forces while in the Republic of Kenya. The draft Agreement at Article 6 prescribes the legal status of the visiting forces.

3.3 Contemporary security challenges such as terrorism, organized crime and human and drug trafficking are

transnational and necessitate collaboration and co-operation between States. The proposed Agreement will provide a framework for collaboration between the Republics of Kenya and The United Kingdom of Great Britain and Northern Ireland to address the contemporary security challenges.

#### 4.0 THE AGREEMENT

4.1 Article 2 of the draft Agreement identifies its objective as enhancing bilateral co-operation on defence by identifying a framework for the exchange of experience and knowledge for the use and mutual benefit of the Republics of Kenya and The United Kingdom of Great Britain and Northern Ireland. The Agreement will regulate co-operation in the following areas:

- a. Security and defence policy;
- b. Initial, advanced and follow-on training of military and Ministry of Defence civilian personnel;
- c. Defence administration and welfare matters of military personnel;
- d. Counter-piracy and other maritime security activities;
- e. Peacetime military activities;
- f. Protection of the environment;
- g. Military medical services including research and development;
- h. Military sports;
- i. Disaster relief and humanitarian operations by the Armed forces;
- j. Military exercises;
- k. Counter-terrorism;
- l. Information operations training;
- m. Defence civilian component;
- n. Exchange visits of military personnel;

- o. Mapping/survey and exchange of geographic materials;
- p. Other areas of mutual interest which may be decided upon in future.

4.2 Article 6 of the draft Agreement prescribes the legal status of the visiting forces. The draft Agreement while subjecting the visiting forces to the laws of the host nation, it grants the authorities of the visiting forces primary jurisdiction to try offences arising out of official duty.

4.3 The Agreement at Article 24 establishes the Inter-Governmental Liaison Committee comprising of the representatives of the Republics of Kenya and the United Kingdom of Great Britain and Northern Ireland to oversee the implementation of the Agreement. The Inter-Governmental Liaison Committee is also empowered to administer and implement the Agreement and to settle all disputes and misunderstandings arising out of the implementation of the Agreement.

## 5.0 WAY FORWARD

The Defence Council has considered the draft Agreement and approved the same. It is recommended that the National Assembly approves its ratification in accordance with the Treaty Making and Ratification Act.

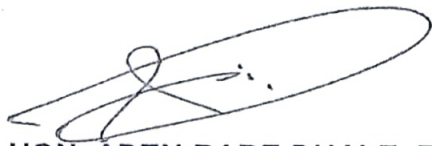
## 6.0 FINANCIAL IMPLICATIONS

The implementation of the Agreement will occasion additional expenditure which will be defrayed from the budget voted to the Ministry of Defence.

## 7.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National assembly is invited to approve the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland on Defence Co-operation.

Dated this 23<sup>rd</sup> day of November 2022



**HON. ADEN BARE DUALE, EGH. MP**  
Cabinet Secretary  
Ministry of Defence