

MEMORANDUM TO THE

NATIONAL ASSEMBLY

ON THE

REGIONAL AGREEMENT

ON THE

CO-ORDINATION OF

OPERATIONS AT SEA

IN THE WESTERN INDIAN

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CONFIDENTIAL

REPUBLIC OF KENYA



MINISTRY OF DEFENCE

MEMORANDUM TO THE NATIONAL ASSEMBLY

ON

**THE REGIONAL AGREEMENT ON THE CO-ORDINATION OF
OPERATIONS AT SEA IN THE WESTERN INDIAN OCEAN**

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CONFIDENTIAL

1.0 OBJECTIVE OF THE MEMORANDUM

1.1 The purpose of this Memorandum is to apprise the National Assembly on the Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean (hereinafter referred to as the Agreement) and to seek approval for its ratification.

2.0 BACKGROUND

2.1 The Agreement was negotiated under the auspices of the Indian Ocean Commission to which the Republic Kenya is a member. Even though the Republic of Kenya through the Ministry of Defence participated in the negotiation of the Agreement, the Ministry did not sign the Agreement at the close of the conference as the Ministry's delegates were not authorized to sign the Agreement. The Republics of Madagascar, Djibouti, Seychelles, Mauritius and Comoros however signed the Agreement.

2.2 The Republics of Kenya and France signed the Agreement on 26 November 2018 during the Sustainable Blue Economy Conference in Nairobi. The signature on behalf of the Republic of Kenya was made subject to a declaration which notified the other State Parties that the signature was subject to ratification by the Cabinet and approval by the National Assembly.

2.3 The Cabinet ratified the signature of the Agreement on behalf of the Republic of Kenya and further authorized the Ministry to seek the National Assembly's authority for ratification.

3.0 OBJECTIVES OF THE AGREEMENT

3.1 Article 3 of the Agreement identifies the objective of the Agreement as providing a framework for regional co-operation between the State Parties to enhance maritime safety and security. The Agreement further provides for the establishment of a Joint Operational Co-ordination Centre to co-ordinate joint interventions in the maritime zone and the high seas.

3.2 The Agreement further requires State Parties to establish jurisdiction on offences committed in the maritime zone within their sovereign

jurisdiction, on stateless vessels and on vessels or aircrafts registered by a State Party or flying the flags of the State Party. It further commits State Parties to provide mutual legal assistance to each other in the prosecution of such offences.

3.3 The Agreement will enhance the national security of the Republic of Kenya as it provides a framework for co-ordinated policing of the West Indian Ocean by coastal states.

4.0 CONTENTS OF THE AGREEMENT

4.1 The Agreement is divided into twenty four articles as follows:

- a. Article I provides for the interpretation of terms.
- b. Article II provides defines which state Parties are eligible to accede to the Agreement.
- c. Articles III and IV identify the purpose of the Agreement and measures to achieve the purpose of the Agreement.
- d. Articles V and VI identify the scope of the Agreement and identifies threats which may be subject to co-ordinated joint operations.
- e. Articles VII to XII prescribe the manner in which joint co-ordinated operations would be taken including mutual legal co-operation.
- f. Articles XIII and XIV establishes the Regional Co-ordination Operations Centre and sets out the responsibilities of the Host State.
- g. Articles XV to XXIV contain standard final provisions.

5.0 FINANCIAL IMPLICATION

5.1 Kenya's participation in the Agreement will occasion negligible additional financial cost. The Republic of Seychelles will be required to underwrite the administrative costs of operating the Regional Co-ordination Operations Centre. The Ministry will however be required to delegate a liaison officer to the Regional Co-ordination Operations Centre at its cost. The costs of

delegating the liaison officer will be drawn from the Ministry's recurrent expenditure budget.

6.0 RECOMMENDATIONS

6.1 The National Assembly is invited to:

- a. Take note of this Memorandum outlining the contents of the present Agreement.
- b. Approve ratification of the Agreement.

Dated this 6th day of March 2019



AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY FOR DEFENCE

ATTACHMENT

Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean together with the declaration dated 27 November 2018.

REGIONAL AGREEMENT

ON THE






COORDINATION OF

OPERATIONS AT SEA

IN THE

WESTERN INDIAN OCEAN

REGIONAL AGREEMENT ON THE COORDINATION OF
OPERATIONS AT SEA
IN THE WESTERN INDIAN OCEAN

REGIONAL AGREEMENT ON THE COORDINATION OF OPERATIONS AT SEA
IN THE WESTERN INDIAN OCEAN

The Parties to this Agreement,

Noting the United Nations Convention on the Law of the Sea of 10 December 1982;

Noting the Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances of 10 December 1988;

Noting the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988 and its Protocol of 2005;

Noting the International Convention for the Prevention of Pollution from Ships adopted on 2nd November 1973;

Noting the International Convention for the Protection of human life at sea of 1st November 1974;

Noting that the Strategy for the promotion of security in the ESA-OI region (MASE), adopted on 7th October 2010 in Grand Bay, Republic of Mauritius, particularly in the field of results 4 and 5, encourages the signatory States to pool the resources and strengthen the monitoring and control of regional maritime operations.

Recalling the responsibility of each regional State to ensure, by its own means, for State action at sea in the zones under its sovereignty, sovereign rights or exclusive jurisdiction as well as obligations of ships flying its flag, wherever they are;

Noting that the strengthening of cooperation between the Parties must be carried out in accordance with national sovereignty, territorial integrity and non-interference in internal affairs;

Noting that the integrated African Strategy for the seas and oceans – Horizon 2050:

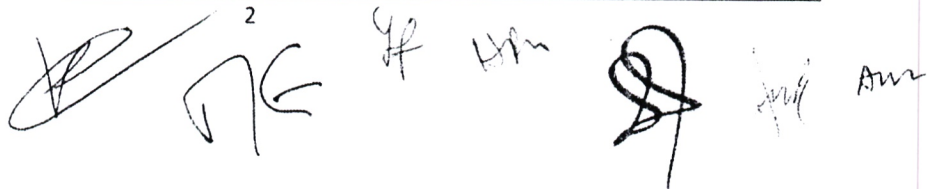
- a) encourages the implementation of joint regional monitoring operations and the establishment of marine or coastguard networks around Africa with an important cross-border prosecution function; and
- b) encourages the establishment, in collaboration with the relevant actors, of continental and regional agreements, provisions and capacities aimed, inter alia, at mobilization of assets through the elaboration of joint programs, on the application of Law, search and rescue services, humanitarian crises, emergency relief services;

Recalling the Code of conduct of Djibouti concerning the suppression of Acts of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden adopted in Djibouti on 29th January 2009 and the Jeddah Amendment to the Djibouti Code of Conduct of 12th January 2017;

Bearing in mind the code of Conduct on the prevention and suppression of acts of piracy, armed robberies against ships and illicit maritime activities in West and Central Africa adopted in Yaoundé, Cameroun, on 25th June 2013;

Bearing in mind the International Plan of Action to Prevent, Deter and Eliminate Illegal, unreported and unregulated fisheries of the Food and Agriculture Organization of the United Nations adopted on 23rd June 2001;

2



Recalling United Nations General Assembly resolution 67/78 of 5th December 2012 on Oceans and the Law of the Sea recognising the crucial role of cooperation at the global regional, sub-regional and bilateral levels in combatting maritime crime and threats in accordance with international law;

Recalling that the Assembly of the International Maritime Organization (IMO) adopted, on 2nd December 2009 at its 26th ordinary session, Resolution A. 1025 (26) on the Code of good practice for the conduct of investigations into offences of piracy and Armed robbery against ships, which invites, inter alia, Governments to develop, as appropriate, agreements and procedures to facilitate cooperation in the implementation of effective and efficient measures aimed at preventing Acts of piracy and armed robbery against ships;

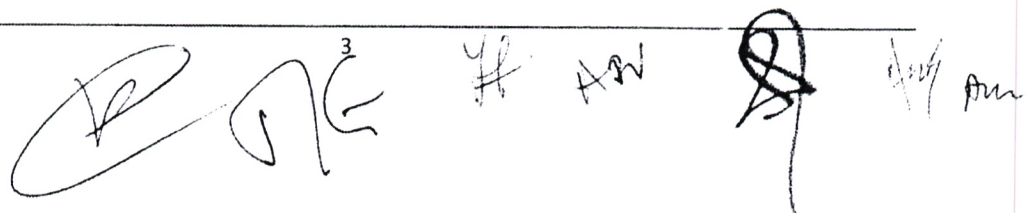
Aware that the participation of each Party in the regional operational coordination for sea operation of the state derives directly from the principle of international cooperation laid down in the relevant international legal instruments applicable, inter alia, for the protection of the marine environment, the search and rescue at sea, the fight against piracy, the fight against terrorism, the prohibition of the financing of terrorism, and to the relevant resolutions of the Council of Security of the United Nations (UN);

Convinced that the success of regional operational coordination is based initially on the political will of each Party and on the complementarity and mobilisation at the regional level of the material, human and legal means of the state's Partners in a second time, allowing to drive the necessary actions in time where a need has been identified;

Convinced that the Parties may enter into bilateral or multilateral cooperation or partnership agreements to enhance regional maritime safety and security;

HAVE HEREBY AGREED that a regional framework for operational coordination at sea known as the "Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean" or "Agreement", shall be established between the State Parties of the MASE Program, signatories of this Agreement.

Its terms and conditions are defined below:

A horizontal line is drawn across the page. Below the line, there are several handwritten signatures and initials. From left to right, there is a large, stylized signature, the letters 'GK' with a superscript '3', the letters 'H', the letters 'AN', a signature that looks like 'S', and another signature that looks like 'M'.

NATURE AND SCOPE OF THE AGREEMENT

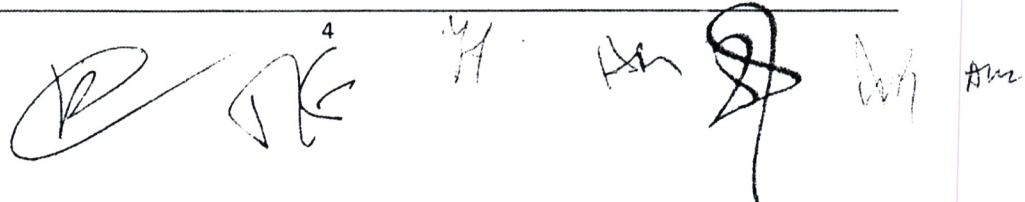
Article 1

Interpretation

For the purpose of this Agreement, terms are defined as follows:

1. "**Aircraft of repressive service**" means aircraft visibly bearing an external mark and identified as being at the service of the State, used for law enforcement purposes and duly authorized to do so on boarded by law enforcement officers;
2. "**Airspace of a party**" means airspace as defined in the Convention on International Civil Aviation signed in Chicago on 7th December 1944;
3. "**Depositary**" means the Secretary General of the Indian Ocean Commission;
4. "**Foreseeable threat**" means circumstances which may negatively affect the maritime safety and/or security, as noted and reported by the Regional Maritime Information Fusion Centre (RMIFC) of Madagascar;
5. "**Human resources**" refers to all human resources provided by the Parties within the framework of regional coordinated operations;
6. "**Legal means**" means the national and international legal instruments used by the Parties for enabling and facilitating judicial outcomes of the interventions carried out in the framework of the regional coordinated operations;
7. "**Material means**" means all equipment, sea, air and land facilities adapted to duties assigned to Parties and those likely to be used by the State Parties, in the framework of regional coordinated operations;
8. "**Regional Zone of Operation**" means all of the maritime zones and superjacent airspace under the exclusive jurisdiction or sovereignty or sovereign rights of the State parties in line with their respective national legislation, and the high seas and the superjacent airspace, encompassed by the Regional Coordination Operation Centre, defined by the following limits:
 - a. Longitudes 20° East and 76.5° East
 - b. Latitudes 26° North and 37° South
9. "**Suspicious aircraft**" means any aircraft in respect of which there are reasonable grounds to suspect that it is engaged in an illicit activity;
10. "**Suspicious vessel**" is defined as any vessel or floating structure which is reasonably suspected of undertaking an illicit activity;
11. "**Vessel of repressive services**" means vessels visibly bearing an external mark and identified as being at the service of the State, used for repressive purposes and duly authorized to do so, including vessels and aircraft on these ships boarded by law enforcement officers; and
12. "**Waters of a party**" means maritime zones as defined in the United Nations Convention on the Law of the Sea signed at Montego Bay on 10 December 1982.

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Article 23

Depositary

1. The original version of this Agreement shall be deposited with the Secretary General Indian Ocean Commission, who shall serve as the Depositary.
2. The Depositary shall transmit a certified copy of the Agreement to all signatories.

Article 24

Entry into force

This Agreement shall come into force on the date of its signature by at least three (3) States Parties. This Agreement comes into force as soon as the Depositary notifies the other Parties of this third required signature.

In witness whereof the undersigned, being duly authorised by the Parties, have signed this Agreement.

Done at Balaclava, Mauritius, on April 29th 2018, in English and French languages, both versions being equally authentic.

H.E.M. Youssoufa Mohamed Ali
Secretary of Cabinet of the
Presidency
Minister of Defence

Union of Comoros

H.E.M. Ali Hassan Bahdon
Minister of Defence
in charge of relations with
Parliament

Republic of Djibouti

H.E.M. Henry Rabary-Njaka
Minister of Foreign Affairs

Republic of Madagascar

H.E.M. Maneesh Gobin
Attorney General
Minister of Justice, Human Rights
and Institutional Reforms
Republic of Mauritius

H.E. Mrs Macsuzy Mondon
Designated Minister
Minister of Home Affairs and Local
Government
Republic of Seychelles



INDIAN OCEAN
COMMISSION

CERTIFIED TRUE COPY OF THE ORIGINAL

By Madi Hanada
Secretary General of the IOC and Depositary of this Agreement

Date: 7 May 2018

Signature:

ANNEX TO THE AGREEMENT FOR REGIONAL AGREEMENT ON THE COORDINATION OF OPERATIONS AT SEA IN THE WESTERN INDIAN OCEAN

"GOVERNANCE OF REGIONAL CENTRES"

I. Subject

1. At the regional level, a governing structure is created with the aim of ensuring the organisational structure and operational framework of the Centres set up by the Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and the Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean respectively.
2. The purpose of this Annex is to:
 - a) establish a structure for dialogue and discussion for the Regional Maritime Information Fusion Centre (RMIFC) and the Regional Coordination Operation Centre (RCOC) thereafter referred to as Centres or Regional Centres
 - b) define the roles and responsibilities of each stakeholder in the organisation, operation and decision-making process of the Centres;
 - c) promote a common vision for implementation of sustainable activities of the Centres.

II. Decision-making Structure of the Centres

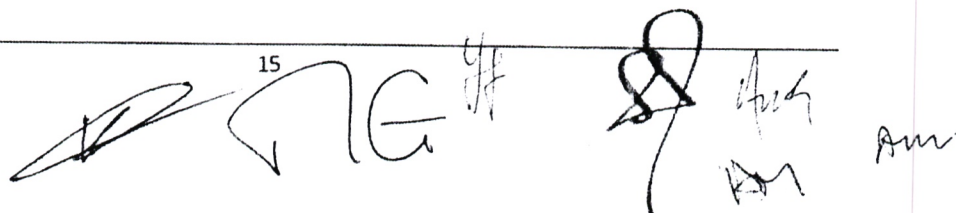
1. At the strategic level, there is a single governing body, referred to as the "Steering Committee", common to both Centres set up by the Parties which defines their main orientation.
2. At the operational level, a structure, referred to as a "Technical Committee", for day-to-day matters is established for each Centre.

III. The Steering Committee

A. Membership and mandates

1. State Parties will constitute the Steering Committee.
2. Participation of Partners and other States to the meetings of the Steering Committee is governed by the provisions of the specific agreements entered into at the time of their admission.
3. The Steering Committee is represented by its Chairperson.
4. The Steering Committee meets twice a year. The Committee will meet in extraordinary session when necessary.
5. The chairmanship of the Steering Committee is held by Parties' representatives on a rotational basis chosen by the other Parties. The Host States cannot hold the Chairmanship.
6. Each State Party is represented by its National Focal Person in the Steering Committee.

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B. Responsibilities of the Steering Committee

1. The Steering Committee has the overall responsibility to:
 - a) ensure that Regional Centres comply with and implement the mission entrusted to them by the State Parties;
 - b) ensure compliance with the confidentiality provisions in force in the Centres;
 - c) Ensure compliance or the adoption of national regulatory frameworks promoting the regional objectives set;
 - d) decides on the admission of new members;
 - e) set medium and long-term goals;
 - f) ensure monitoring and enforcement of decisions taken;
 - g) approve and control the budget of each Regional Centre;
 - h) define the profile and terms and conditions of appointment of the Director of each Regional Centre and validate his appointment on the proposal of the concerned country;
 - i) define the profile and terms and conditions of appointment of the deputy Director of each Regional Centre and validate his appointment; and
 - j) do such act ancillary to any of the above item.
2. Further, the Steering Committee shall examine and adopt, on the proposal of the Director of each of the Regional Centre:
 - a) strategic directions;
 - b) the strategic plan defining medium-and long-term goals;
 - c) the annual budget;
 - d) the annual activity report and the approval of the accounts;
 - e) the organisational structure of the Regional Centres; and
 - f) any organisational restructuring.

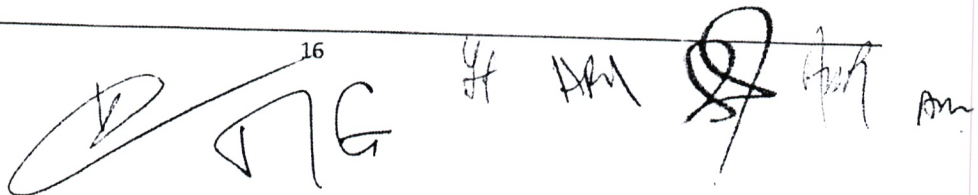
IV. The Technical committee

A. Membership

1. The Technical Committee is set up for each Centre:
2. Each Technical Committee is composed of the director of the Centre, the deputy director and the liaison officer of each of the State Parties. Liaison officers from other States and partner institutions attend only in a consultative role.
3. The Technical Committee holds regular meetings at the Centre under the chairmanship of the director of the Centre or his deputy.

B. Mandate of the Technical Committee

1. The Technical Committee is the implementing body for the decisions of the Steering Committee and is central to the functioning of the Centre.
2. The Technical Committee is responsible for:
 - a) ensure the implementation, under the responsibility of the Director of the Centre, of the decisions of the Steering Committee;



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- b) the development of the short-and medium-term work plans;
- c) the development and dissemination of deliverables;
- d) the development of protocols specially those relating to information security;
- e) the development of agreements, contracts and memoranda of understanding necessary for the Centre;
- f) the preparation of agreements relating to the admission of partners;
- g) the tasks distribution and day to day functioning of the Centre;
- h) the development of the internal rules of procedure of the Centre;
- i) the communication policy of the Centre;
- j) the development of training and capacity building plans.

V. The Director of the Centre:

1. The Director of the Centre is responsible for the operation of the Centre and reports to the Steering Committee on the implementation of the strategic directions and decisions set.
2. The Director is accountable to the Steering Committee.
3. The Director will ensure liaison with the authorities of the host country and will ensure the implementation of the Hosting Agreement.
4. In his capacity as Director, the holder of the position is responsible for:
 - a) implementing the decisions of the Steering Committee;
 - b) developing strategic plans for implementing the goals set by the Steering Committee;
 - c) developing exchanges with other Centres, naval forces in the region, maritime bodies and sea users;
 - d) ensuring compliance with the confidentiality provisions in place at the Centres, in particular with regard to the exchange and sharing of maritime information;
 - e) ensuring compliance with data confidentiality clauses and access restrictions at the Centre;
 - f) developing and presenting the budget to the Steering Committee and ensuring that the budget caters for the needs of the Centre and implement the approved budget; and
 - g) Validating an annual report analysing trends and issues relating to maritime safety in the Eastern and Southern Africa -Indian Ocean region.
5. The modalities for the designation of the Director of the RMIFC and RCOC will be decided at a later date.

VI. The Deputy Director

1. The Deputy Director supports the Director of the Centre in the exercise of the latter's functions.
2. The Deputy Director is responsible for the internal organisation and coordination of the different operational units of the Centre.
3. In absence of the Director, the Deputy Director ensures his replacement. To this end, he will take into account the functions listed in a delegation of authority established by the Director.

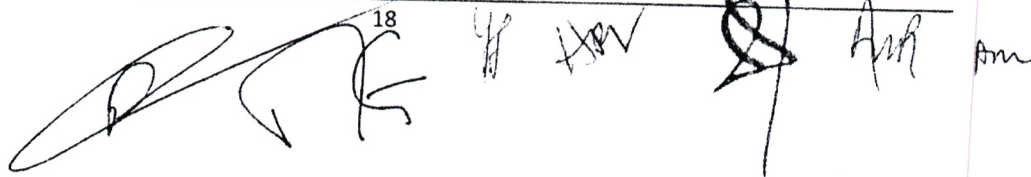
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4. The modalities for the designation of the Deputy Director of the RMIFC and RCCC will be decided at a later date.

VII. The financial resources of the Centres

1. In addition to the financial contribution of the Host countries to the Centres, the Centre's budget may be financed by contributions from:
 - a) State Parties
 - b) other State Parties and Partner Organisations;
 - c) intergovernmental organisations or non-governmental organisations; and
 - d) other sources, such as its own revenues
2. The diversity of funding sources is a guarantee for the long-term financial sustainability of the Centres. As such, the Centres can conduct *ad hoc* or specific studies for the benefit of other organisations or actors on the evolution of maritime threats and trends as well as risks related to regional maritime security. These *ad hoc* or specific studies will be undertaken in line with the clauses relating to the use of the maritime information and data mentioned in the Agreement.
3. The Steering Committee may authorise the Director of the Centre, in accordance with the guidelines previously set in this regard, to accept contributions as well as donations or grants, subject to the following conditions:
 - a) Autonomy of the Centre is not threatened;
 - b) Compatibility with the objectives and mandate of the Centre and
 - c) Formal and systematic approval by the Steering Committee before disbursement.

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ADDENDA

Pursuant Article 2 of this Agreement, the French Republic becomes a Party to this Regional Agreement on the Coordination of Operations at Sar in the Western Indian Ocean.

In witness whereof, the undersigned Authority duly mandated by the French Republic have signed this Agreement.

Done at Nairobi, Republic of Kenya, on November 26th 2018, in English and French languages, both versions being equally authentic.

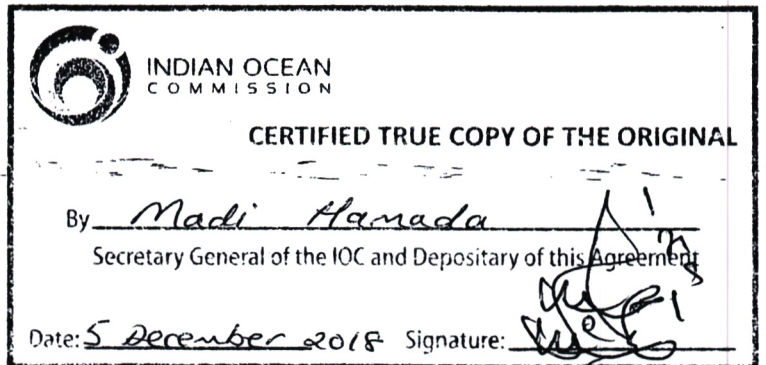
Signature subject to approval

Aline Kuster

H.E. Mrs Aline Kuster-Ménager

Ambassador of France in Kenya

French Republic

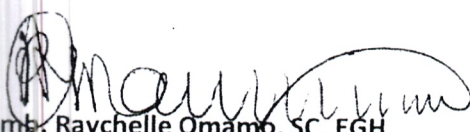


ADDENDA

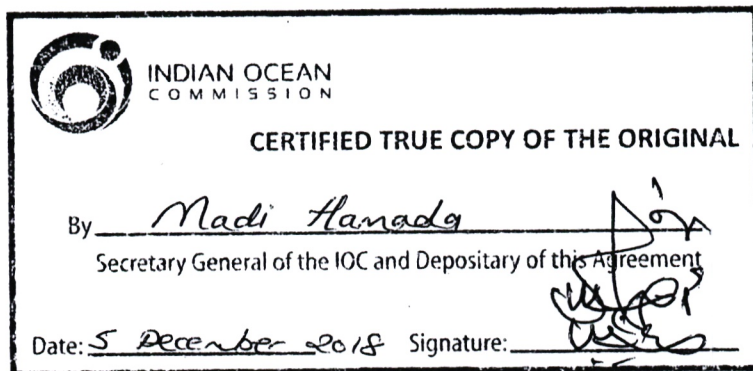
Pursuant to Article 2 of this Agreement, the Republic of Kenya becomes a Party to this Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean.

In witness whereof, the undersigned Authority duly mandated by the Republic of Kenya have signed this Agreement.

Done at Nairobi, Republic of Kenya, on November 26th 2018, in English and French languages, both versions being equally authentic.


Amb. Raychelle Omamo, SC, EGH
Cabinet Secretary for Defence
Republic of Kenya

Subject to the
Declaration dated
27 / Nov / 2018



DECLARATION
ON THE REGIONAL
AGREEMENT ON THE
CO-ORDINATION OF
OPERATIONS AT SEA
IN THE WESTERN
INDIAN OCEAN



MINISTRY OF DEFENCE

Telegrams: "DEFENCE", Nairobi
Telephone: Nairobi 020-2721100

DEFENCE HEADQUARTERS
ULINZI HOUSE
P.O Box 40668, NAIROBI
KENYA

When replying please quote

DECLARATION

Pursuant to Article 19 of the Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean, it is hereby declared that the signature on behalf of the Republic of Kenya is subject to subsequent Cabinet approval and ratification by the Kenya National Assembly in accordance with Kenya's Constitution, 2010 and the Treaty Making and Ratification Act, Act No. 45 of 2012.

Dated at Nairobi this 27th day of ... November 2018


AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY

SECRET

SECRET



MINISTRY OF DEFENCE

Telegrams: "DEFENCE", Nairobi
Telephone: Nairobi 020-2721100

DEFENCE HEADQUARTERS
ULINZI HOUSE
P.O Box 40668, NAIROBI
KENYA

When replying please quote

DECLARATION

Pursuant to Article 17 of the Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region, it is hereby declared that the signature on behalf of the Republic of Kenya is subject to subsequent Cabinet approval and ratification by the Kenya National Assembly in accordance with Kenya's Constitution, 2010 and the Treaty Making and Ratification Act, Act No. 45 of 2012.

Dated at Nairobi this 27th day of November 2018


AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY

SECRET