 <b>THE NATIONAL ASSEMBLY</b> P. M. P. 1000	
<b>DATE:</b> 14 FEB 2023	
<b>DAY:</b> TUESDAY	
<b>TABLED BY:</b>	LEADER OF THE MAJORITY
<b>CLERK-AT THE-TABLE:</b>	WILSON MWALE

## DEFENCE COOPERATION AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AS REPRESENTED BY THE MINISTRY OF DEFENCE

AND

THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES

AS REPRESENTED BY THE DEPARTMENT OF DEFENCE



## PREAMBLE

The Government of the Republic of Kenya and the Government of the Republic of Seychelles (hereinafter referred to individually as "Party" and collectively as the "Parties"); (hereinafter the term "Party" and "Parties" shall also substitute for the term determined to abide by the principles of the Charter of the United Nations "Country" and "Countries" wherever the context so requires);

**RE-AFFIRMING** their existing friendly relations between the two countries on the basis of reciprocity and mutual benefits;

**INSPIRED** by a common desire to enhance and strengthen existing bilateral relations and promote cooperation between the two countries in the field of defence and security;

**BEARING** in mind that bilateral defence cooperation will develop into formidable defence and security engagements between the Parties and the two-Defence Forces;

**HAVE** agreed as under:

## ARTICLE 1 GENERAL PRINCIPLE

The Parties shall implement the provisions of this Agreement in conformity with their national laws and international obligations.

## ARTICLE 2 DEFINITIONS

2.1 The expressions shall have the following meanings unless the context provides otherwise:





- a. **"Sending Party"** is the Party that sends its Military Personnel, in the field of their competency, to the other Party's territory;
- b. **"Receiving Party"** is the Party that receives Military Personnel sent by the other Party on its territory;
- c. **"Visiting Personnel"** shall include serving members of the military and civilians in the employment of the Defence Forces of the Parties.

### ARTICLE 3 AIM AND PURPOSE

3.1 This Agreement aims to:

3.1.1 Promote Military cooperation in defence and security by means of developing and fostering bilateral relations in Military fields;

3.1.2 Enhance the strong relations between both Parties through exchanging bilateral communications and strengthening bonds of cooperation in defence and security;

3.2 The purpose of this Agreement is a general framework for cooperation in defence and security and will be followed by Implementing Arrangements related to each cooperation field separately and shall be signed by the respective authorities of the Parties under the same procedures used in executing this Agreement. The Implementing Arrangements shall be considered an integral part of this Agreement;

3.3 The Parties agree that their cooperation shall not be directed against any third party.



#### ARTICLE 4 CONCEPT OF COOPERATION

The Parties shall cooperate in joint fields identified in this Agreement on reciprocal basis, mutual benefits and in accordance with the national laws of the Parties.

#### ARTICLE 5 SCOPE OF COOPERATION

5.1 The Parties shall in accordance with the principles of equality, collaboration and mutual benefit cooperate in the following fields:

5.1.1 Defence and Security;

- a. Maritime security.
- b. Counter-terrorism.
- c. Exchange of information.
- d. Exchange of defence and Military delegations.

5.1.2 Defence and Security Training;

- a. Exchange of Military students/ instructors/directing staff.
- b. Joint Military training exercises.

5.1.3 Defence Industries and Technology;

- a. Procurement of defence equipment, supplies and repair services subject to national laws.
- b. Participation in trade, science or technology exhibits.



c. Research and Development (R&D) in defence science and technology.

5.1.4 Any other fields that may be agreed upon according to the nature of this Agreement.

## **ARTICLE 6 PLANNING FOR COOPERATION**

Methods of actual cooperation between the Parties shall be formulated by the Joint Military Cooperation Committee.

## **ARTICLE 7 THE COMPETENT AUTHORITIES**

7.1 The Appropriate Authorities responsible for executing this Agreement are the Department of Defence of the Republic of Seychelles and the Ministry of Defence of the Republic of Kenya;

7.2 The Parties shall establish a Joint Military Cooperation Committee and a Joint Technical Cooperation Committee;

7.3 The Joint Military Cooperation Committee shall formulate Implementing Arrangements and set work plans. The Joint Technical Cooperation Committee shall be responsible for the implementation of this Agreement on behalf of the Joint Military Cooperation Committee;

7.4 The Joint Military Cooperation Committee shall be composed of senior Military leadership. The Joint Military Technical Committee shall comprise of not less than three (3) Military Personnel per Party and shall coordinate the implementation of this Agreement;





7.5 The Parties Military leadership shall decide on the membership of the Committees;

7.6 The Joint Military Cooperation Committee shall convene alternately in Kenya and in Seychelles; at least once per annum while the Joint Military Technical Committee shall meet at least twice per annum or as directed by the Joint Military Cooperation Committee.

## ARTICLE 8 FINANCIAL ARRANGEMENTS

8.1 The Parties shall bear the cost of implementation of this Agreement subject to the availability of resources and based on the principle of reciprocity;

8.2 Sending Party shall pay for travelling expenses, salaries, insurance and any other allowances due under their own regulations for its Personnel;

8.3 Receiving Party shall pay for local transportation, accommodation and planned activities on reciprocal basis;

8.4 Receiving Party shall provide emergency medical treatment;

8.5 Sending Party shall pay health insurance, in addition to the expenses for evacuation of its own sick Personnel and repatriation of deceased Personnel;

8.6 As regards to the attendance of courses by Military Personnel, financial and medical aspects as well as detailed implementing procedures for any specific form of cooperation will be regulated by ad-hoc supplementary arrangements to be concluded between the Parties in accordance with the existing laws of the Parties;

8.7 Should any of the Parties send a delegation outside the framework of this Agreement, the concerned Party shall bear the cost of all the relevant expenses.



## ARTICLE 9 PAYMENT OF SPECIAL COSTS

When the Parties agree upon a cooperation issue which is beneficial to only one Party and incurring costs on the other Party, the Parties shall conclude a prior Implementing Arrangement regarding the payment of such costs. In this case, the terms set out in Article eight (8) of this Agreement shall not be restrictive.

## ARTICLE 10 SECURITY AND VISITS

10.1 With regards to security the following shall apply:

10.1.1 Security procedures related to visiting Personnel of the Sending Party shall be coordinated with the Competent Authorities in the Receiving Party;

10.1.2 All delegation members of the Sending Party shall abide by security instructions of the Receiving Party. Any information disclosed or informed to the delegation members shall be treated as information officially presented to the Sending Party.

10.2 With regards to visits the following shall apply:

10.2.1 Requests for visits or Military exercises shall be coordinated through channels designated by each Party. Delegation members of the Sending Party shall observe all applicable security procedures and laws and regulations related to entry and exit in the Receiving Party's country;

10.2.2 Regarding regular visits, rosters of Personnel who conduct such regular visits to the other Party shall be sent via official channels in accordance with the applicable procedures of the Receiving Party's country;



10.2.3 Delegation members of the Sending Party shall return to their homeland after the end of their visit or activity unless authorized by the Parties.

10.3 Visiting Personnel shall not perform any activities outside this Agreement.

## **ARTICLE 11 PROTECTION OF CLASSIFIED INFORMATION**

11.1 Classified information exchanged between the Parties in the framework of the identified cooperation areas included in this Agreement, shall be protected by the Receiving Party in accordance with applicable national laws and regulations and according to the classification degree assigned thereto by the Sending Party;

11.2 The Parties shall protect the classified information disclosed as a result of the cooperation activities identified in this Agreement. The Receiving Party shall not disclose any information to a third Party without written consent from the Sending Party;

11.3 The method of protecting classified information related to activities under this Agreement shall be agreed upon through an implementing arrangement.

## **ARTICLE 12 INTELLECTUAL PROPERTY**

The Parties shall protect the intellectual property rights of each Party or of any third party in accordance with the national laws and regulations of the Parties. Any intellectual property rights gained through joint research/effort shall be shared as mutually agreed by the Parties.





### ARTICLE 13 LEGAL STATUS

The legal status of the personnel of the Parties shall be conferred in accordance with the national laws of the Receiving Party.

### ARTICLE 14 JURISDICTION

14.1 Sending Party's Personnel shall respect the Receiving Party's National Laws, Rules and Regulations while staying in the Receiving Party's territory and shall not conduct any activity that affects the security or integrity of the Receiving Party;

14.2 Sending Party's Personnel shall be subject to criminal laws of the Receiving Party while staying in the territory of the Receiving Party;

14.3 In case of the violation of the rules of Military discipline by the Sending Party's Personnel while being in the Receiving Party's territory, the Sending Party's Authorities shall take appropriate action in accordance with its Military Laws and Regulations.

### ARTICLE 15 CLAIMS AND INDEMNITY

15.1 The Parties shall waive any claims related to loss or damage of equipment and/or property or Personnel injuries or loss of lives due to any activities conducted under the provisions of this Agreement, unless inflicted by intentional actions or neglect of duty;

15.2 In case of third-party claims, the Parties shall negotiate the settlement of the claim in accordance with the respective applicable laws and regulations of the Parties;



15.3 In case the claim is not relevant to any official activities related to this Agreement, the Party whose Personnel causes the damage or loss shall be obliged to indemnify for the damage or loss according to an amicable settlement or a judicial ruling.

## **ARTICLE 16 SETTLEMENT OF DISPUTES**

16.1 Any dispute arising from the implementation or interpretation of this Agreement shall be settled between the Parties through negotiations, consultations and amicable means within the Joint Military Cooperation Committee level;

16.2 Any disputes not settled within the Joint Military Cooperation Committee shall be resolved by the Parties through diplomatic channels.

## **ARTICLE 17 COMMUNITY RELATIONS**

17.1 Sending Party's Personnel shall respect and be sensitive to the traditions, customs and cultures of local communities of the places where they are deployed in the Receiving Party;

17.2 The Military Authorities of the Sending Party shall ensure that its Personnel while deployed in the Receiving Party's territory shall not harm vulnerable groups in particular the disabled, women and children.

## **ARTICLE 18 COMMAND**

18.1 The Military Personnel of any of the Parties who visit the other Party's territory shall remain, under all circumstances, Members of the Defence Forces of their country and are subject to the Command and service laws and regulations of their Military Authorities at all times;





18.2 Receiving Party shall not assign the Personnel sent by the Sending Party to perform operational tasks or other activities in favour of the Receiving Party outside the agreed upon framework of this Agreement.

## **ARTICLE 19 MILITARY UNIFORM, ARMS AND EQUIPMENT**

19.1 Military Personnel from the Parties who visit the other Party's territory shall have the right to wear their official Military uniforms and insignias;

19.2 Visiting Military Personnel shall be allowed to import Military equipment and arms into the Receiving Party territory for use within the framework this Agreement subject to applicable laws of the Parties;

19.3 Sending Party shall give a notice of thirty days (30) days before any such importation.

## **ARTICLE 20 ENTRY, MOVEMENT AND EXIT**

20.1 Host/Receiving Party may allow Sending Party Personnel freedom of movement and freedom to travel 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;

20.2 Personnel who have been declared prohibited immigrants shall not be allowed to enter the territory of the Host/Receiving Party;

20.3 Personnel who are declared prohibited immigrants while in the Host/Receiving Party shall be repatriated or otherwise removed from the territory of the Host/Receiving Party by the Sending Party Authorities at their own expense;



20.4 To obtain entry into the Host/Receiving Party, Personnel of the Sending Party shall be required to produce valid Passports and be processed in accordance with immigration laws of the Host/Receiving Party;

20.5 Personnel of the Sending Party seeking to work in the territory of the Host/Receiving Party shall be required to apply for Work Permits and pay the applicable fees in accordance with national laws of the Host/Receiving Party.

## **ARTICLE 21 IMPORTS AND EXPORTS**

21.1 Subject to Host/Receiving Party national laws, Sending Party may import free of duty, licence or other permit the equipment, materials, vehicles, provisions, supplies, official mail and other goods required for their exclusive use for official purposes. Items so imported shall be subjected to inspection at the port of entry in the presence of an authorized representative of the Sending Party;

21.2 Postal articles may be imported into and exported from Host/Receiving Party by authorized Service postal agencies subject to the production of such articles to the proper authorities for examination in order to ensure compliance with the relevant customs regulations.

21.3 Personnel of the Sending Party in the territory of the Host/Receiving Party may import free of duty personal, household effects and a private motor vehicle;

21.4 Goods imported duty free may be re-exported freely and without payment of duty. Any disposal of these goods in the territory of the Host/Receiving Party by sale or otherwise, shall be subject to payment of duty in accordance with national laws of the Host/Receiving Party;





21.5 Vehicles and articles seized by the Host/Receiving Party Authorities in connection with an offence against the laws of the Host/Receiving Party and are the property of the Sending Party, shall be handled in accordance with the laws of the Host/Receiving Party.

21.6 Any seized vehicles and items shall be processed under the applicable laws of the Host/Receiving Party and handed over to the Sending Party after proper investigations and disposal thereof have been carried out by the Host/Receiving Party's Authorities.

## ARTICLE 22 ENTRY INTO FORCE, VALIDITY, AMENDMENT, REVIEW, AND TERMINATION

22.1 This Agreement shall come into force on the date of its signature by both Parties and shall remain valid for a period of five (5) years with automatic renewal for a further period of five (5) years.

22.2 This Agreement is subject to review after ten (10) years from the effective date.

22.3 Despite the provisions of sub-article 2 above the Parties are at liberty to review any specific areas in this Agreement as they may deem it fit.

22.4 The Parties may amend this Agreement by mutual written consent, and such amendments shall come into force under the same procedures as used before execution of this Agreement.

22.5 Any of the Parties may terminate this Agreement by sending a written notice to the other Party at least six (6) months prior to its termination date.

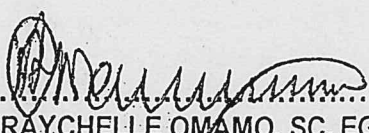
22.6 Termination or amendments of the Agreement shall not affect the financial obligations of the Parties and their related implications.



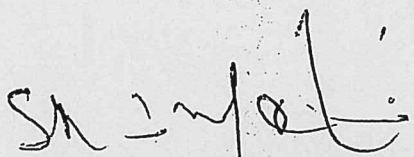
22.7 Classified information exchanged under the provisions of this Agreement shall, after termination, continue to be treated in accordance with the provisions of Article 11 of this Agreement.

**IN WITNESS WHEREOF** the undersigned duly authorized thereto by their respective Governments, have signed and sealed this Agreement in duplicate in the English language.

Signed at Victoria, Seychelles on this 18<sup>th</sup> day of July in the year 2022.

  
.....  
AMB. RAYCHELLE OMAMO, SC, EGH  
CABINET SECRETARY  
FOR FOREIGN AFFAIRS

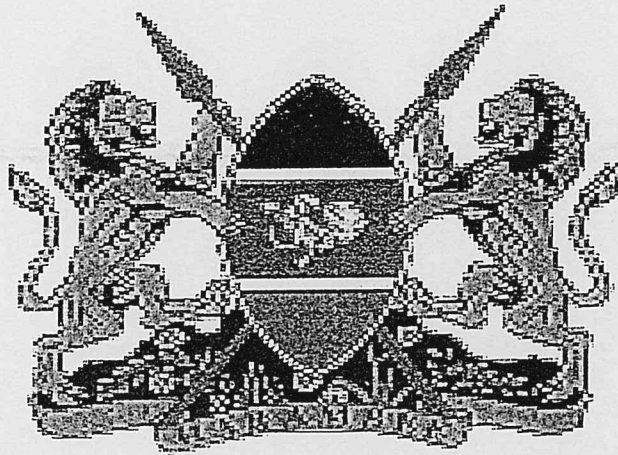
FOR THE GOVERNMENT OF THE REPUBLIC  
OF KENYA

  
.....  
MR. SYLVESTRE RADEGONDE  
MINISTER  
FOR FOREIGN AFFAIRS & TOURISM

FOR THE GOVERNMENT OF THE  
REPUBLIC OF SEYCHELLES



**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 SEYCHELLES**

**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 Seychelles on Defence Cooperation (the Agreement) and to seek approval for ratification.

## **2.0 BACKGROUND**

2.1 The Kenya Defence Forces has been cooperating with Seychelles People's Defence Force on maritime security and support training. Hence, the Government of the Republic of Seychelles on 6<sup>th</sup> April 2022 expressed the desire to conclude a Defence Cooperation Agreement with the Government of the Republic of Kenya.

2.2 Subsequently, a delegation from Seychelles (Seychelles Peoples Defence Force) was hosted in Nairobi from 25<sup>th</sup> – 29<sup>th</sup> April 2022 to discuss, review and firm up the terms of the Agreement. The draft Agreement was sent to the Office of the Attorney General for approval and clearance which was provided. The resulting Agreement was executed on 18<sup>th</sup> July 2022 in Victoria, Seychelles and is annexed hereto as **Annex A**.

## **3.0 ANALYSIS OF THE PROBLEM**

3.1 The Kenya Defence Forces has been cooperating with Seychelles People's Defence Force on maritime security and support training and seek to re – affirm that defence cooperation and to assist in building bilateral capabilities and training for military personnel.

3.2 The Defence Cooperation Agreement provides a formal legal framework for bilateral cooperation in defence between the two Republics in conformity with Section 37 as read with Section 283 of the Kenya Defence Forces Act, 2012 (revised 2018) which require that cooperation in defence be regulated by an Agreement. According to the two provisions, the Agreement should also provide for the legal status of the Visiting Forces while on Kenyan territory. This element is captured in Article 13 of the Agreement.

3.3 It is expected that contemporary security challenges such as maritime security, organized crime and counter-terrorism that necessitate deepened collaboration and partnership between the two States shall be resolved to the mutual benefit of both countries. The Agreement will provide an important tool to facilitate a robust partnership to tackle these challenges.

#### **4.0 THE AGREEMENT**

4.1 Article 3 of the Agreement establishes the legal basis for defence cooperation between the parties which is to promote cooperation in defence and security, to enhance relations through exchange of bilateral communications and strengthening the bonds of the military field.

4.2 The Agreement will regulate cooperation in the broad areas of defence and security, defence and security training and defence industries.

4.3 Article 13 prescribes the legal status of the Visiting forces which is to be conferred in accordance with the national laws of the Receiving party. The Agreement while subjecting Visiting forces to the laws of the host nation grants the authorities of the Sending party primary jurisdiction in case of violations of military disciplinary law.

4.4 Article 6 as read with article 7 establish the Joint Military Cooperation Committee and the Joint Technical Cooperation Committee. The former is charged with the formulation of Implementing Arrangements and setting of work plans whilst the latter will be responsible for the implementation of the Agreement on behalf of the Military Cooperation Committee.

#### **5.0 WAY FORWARD**

The Defence Council considered the Agreement prior to signature and approved it. It is recommended that the National Assembly approves its ratification in accordance with the Treaty Making and Ratification Act.

#### **6.0 FINANCIAL IMPLICATION**

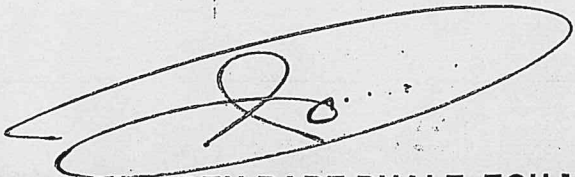
The implementation of the Agreement will occasion additional expenditure which will be defrayed from the budget voted to the Ministry of Defence.



## 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 Republic of Seychelles on Defence Co-operation.

Dated this 28<sup>th</sup> day of November 2022



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