




REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIRST SESSION – 2022
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN
RELATIONS

REPORT ON A REQUEST BY THE NATIONAL EXECUTIVE TO DEPLOY
THE KENYA DEFENCE FORCES (KDF) TO THE EAST AFRICAN
COMMUNITY REGIONAL FORCE - DEMOCRATIC REPUBLIC OF CONGO
(EACRF-DRC)

 THE NATIONAL ASSEMBLY PARLIAMENTARY	
DATE: 09 NOV 2022	DAY: WED
TABLED BY:	Hon. Nelson Koech MP Chairperson, Committee on Defence
CLERK-AT THE TABLE:	Joyce Lemellal

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2022

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LIST OF ABBREVIATIONS AND ACRONYMS

AMISOM	African Union Mission to Somalia
AU	African Union
EAC	East African Community
EACRF-DRC	East African Community Regional Force to the Democratic Republic of Congo
FARDC	Armed Forces of the Democratic Republic of the Congo
JOA	Joint Area of Operation
KDF	Kenya Defence Forces
KENCON	Kenyan Contingent
MDAs	Ministries, Departments, and Agencies
MINUSMA	The UN Multidimensional Integrated Stabilization Mission in Mali
MONUSCO	UN Organization Stabilization Mission in the Democratic Republic of the Congo
P-DDRCS	Programme for Disarmament, Community Re-Integration, and Stabilization
RF	Regional Force
SOFA	Status of Forces Agreement
UN	United Nations
UNAMID	UN-African Union Mission in Darfur
UNAMSIL	UN Mission in Sierra Leone
UNMISS	UN Mission in South Sudan
UNOMIL	UN missions in Liberia
UNPROFOR	UN Protection Force
UNTAG	UN Transition Assistant Group

ANNEXURES LIST

1. Signed list of Members who attended the sitting which considered and adopted the report
2. Committee Minutes
3. Speaker's Communication conveying the Message from the Cabinet Secretary for Defence
4. Status of Forces Agreement (SOFA)
5. Memorandum to the National Security Council on Establishment of the East African Community Regional Force - Democratic Republic of Congo (EACRF-DRC) and deployment of Kenya Defence Forces (KDF) to the Regional Force.

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Defence, Intelligence and Foreign Relations during its consideration of a message from the National Executive requesting for approval of the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to the Democratic Republic of Congo (EACRF-DRC).

The Committee considered the message in the context of:

- (a) The East Africa Community (EAC) Legal framework on Peace and Security, particularly Article 124 and 125 of the EAC Treaty; Article 2 and Article 8 of The EAC Protocol on Peace and Security; Article 2 and Article 7(b) of the EAC Protocol on Co-operation on Defence Affairs;
- (b) Article 240 (8) (a) of the Constitution of Kenya; and Section 18 (c) (i), Section 36 (2) (a) and Section 37 of the Kenya Defence Forces Act No. 25 of 2012.

The Committee held three (3) sittings during which it examined and reviewed the request for the deployment of Kenya Defence Forces (KDF), received submissions from the Cabinet Secretary for Defence on behalf of the National Security Council, and finally considered and adopted this Report.

The Committee registers its appreciation to the Office of the Speaker, the Office of the Clerk of the National Assembly and the Committee Secretariat for the logistical support extended during its deliberations.

I acknowledge and appreciate Members of the Committee for their patience, sacrifice and commitment which enabled the Committee to complete the task.

On behalf of the Departmental Committee on Defence, Intelligence and Foreign Relations, and pursuant to Standing Order 199(6), it is my pleasant duty to table the Report of the Committee on a Request by the National Executive to Deploy the Kenya Defence Forces (KDF) to the East African Community Regional Force - Democratic Republic of Congo (EACRF-DRC) for debate and adoption by the House.

Hon. Nelson Koech, M.P.

Chairperson, Departmental Committee on Defence, Intelligence and Foreign Relations

EXECUTIVE SUMMARY

On Thursday, 3rd November, 2022, the Speaker of the National Assembly conveyed a message to the House from the National Executive requesting approval of the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to the Democratic Republic of Congo (EACRF-DRC) pursuant to Standing Order 42 (4); provisions of Article 240(8)(a) of the Constitution and Section 18(c) and 36(2)(a) of the Kenya Defence Forces Act, 2012.

The Committee considered the Message through in-house deliberative meetings and receiving of oral and written submissions from the Cabinet Secretary for Defence with a view to making a determination on whether or not to approve the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC).

The mandate of the envisaged Regional Force (RF) is to jointly plan and conduct operations with the Armed Forces of the DRC (FARDC) in the Joint Area of Operation (JOA), to defeat the local and foreign armed groups in Eastern DRC and to support FARDC in concretizing maintenance of law and order. The mandate will enable the RF to support DRC in collaborating with humanitarian agencies to continue humanitarian relief to populations affected by activities of armed groups including IDPs, and support the Programme for Disarmament, Community Re-Integration, and Stabilization (P-DDRCS).

Having reviewed the request for approval of the deployment of Kenya Defence Forces (KDF) to the EACRF-DRC, analyzed both oral and written submissions made before the Committee, and appreciated the applicable legal regimes at the UN, AU, EAC and the country level, the Committee observed as follows:

1. The deployment request had complied with the relevant legal provisions in the UN Charter, the EAC Treaty, the EAC Protocol on Peace and Security, the EAC Protocol on Co-operation on Defence Affairs, the Constitution of Kenya and the Kenya Defence Forces Act No. 25 of 2012.
2. In terms of the financial implications of the Deployment, the grand total budget stood at **Ksh. 4,451.31 Million** which is **Ksh. 601.87 Million** above the **Ksh. 3,849.44 Million** in the Memorandum to the National Security Council on the matter. However, the Cabinet Secretary for Defence explained that the discrepancy emanated from changes effected on the budget after a reconnaissance visit to the area in question that necessitated a change of strategy. Nevertheless, members observed that the budget was too high for a country that had in the recent past embraced austerity measures due to limited fiscal space.
3. The budget provided in the request to the National Assembly, **Ksh. 4,451 Million**, caters only for the initial 6 months envisaged in the deployment. However, if the Kenyan troops stay for one year, the cost implication will be approximately **Ksh. 7.2 Billion**. In case the troops stay on, the annual cost implication will be approximately **Ksh. 5.5 Billion to Ksh. 6 Billion**. It is, however, envisaged that international financing may be secured for the operation and if this materialises, the Cabinet Secretary will apprise the Committee accordingly.
4. The East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC) has a peace enforcement mandate unlike the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) which had only a peacekeeping mandate. Peacekeeping forces are lightly armed and use minimum force and only in exceptional cases while

peace enforcement deploys military assets to enforce peace against the will of the parties to a conflict.

5. There were a multiplicity of interests and numerous proxy wars being wedged in Eastern DRC and this was likely to jeopardize the safety and effectiveness of the KDF officers. This is compounded by the fact that they will be deployed alongside forces from Rwanda and Uganda, countries with known vested interests in Eastern DRC. It was, however, explained that the EAC had engaged in diplomatic efforts to forestall any possibility of proxy wars.
6. The Kenyan Contingent (KENCON) had a lot of goodwill from residents of Eastern DRC due to the fact that Kenya doesn't share a border with the DRC and therefore had no direct vested interests in the Great Lakes Conflict Ecosystem.
7. The situation in the DRC threatens regional peace, security, and stability of the Great Lakes Region, the Horn of Africa, and the larger Eastern African region. The incessant instability in Eastern DRC is likely to spill over to the Horn of Africa conflict system, including having the effect of emboldening terror groups such as *Al Shabaab* and thereby undermining the counter-terrorism agenda.
8. Kenya is expected to provide leadership and tangibly contribute to the maintenance of regional and international peace and security being a current non-permanent member of the United Nations Security Council. Indeed, the country has a chequered history as a guarantor of a myriad of peace processes within the Eastern and Central Africa sub-regions.
9. Deployment of the KDF to the Regional Force is aligned strategically to Kenya's national interests. It will enhance the country's ability to not only respond to threats emanating from the Great Lakes Conflict System but also help to mitigate threats to Kenya's stability and thereby enhance the security of its citizens. Kenya will also be in a position to secure its vital interests including Kenyan businesses like Banks operating in the DRC, numerous Kenyan business people in the DRC, bilateral trade with the DRC, and utilization of the Mombasa port by the DRC among others.

Committee Recommendation

Having reviewed the request for approval of the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to the Democratic Republic of Congo (EACRF-DRC) and considered it in the context of the East Africa Community (EAC) Legal framework on Peace and Security, Article 240 (8) (a) of the Constitution of Kenya; and Section 18 (c) (i), Section 36 (2) (a) and Section 37 of the Kenya Defence Forces Act No. 25 of 2012, the Committee recommends that the National Assembly **APPROVES** the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC).

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Defence, Intelligence and Foreign Relations is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - (b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
 - (c) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
 - (d) study and review all legislation referred to it;
 - (e) study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (f) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - (g) examine treaties, agreements and conventions;
 - (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - (j) examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the subjects of the Committee entail: Defence, intelligence, foreign relations, diplomatic and consular services, international boundaries including territorial waters, international relations, and veteran affairs.
3. In executing its mandate, the Committee oversees the following government Ministries, Departments, and Agencies (MDAs):
 - a) The Ministry of Defence,
 - b) The Ministry of Foreign and Diaspora Affairs
 - c) The State Department for East African Community Affairs(EAC).
 - d) The National Intelligence Service

1.3 Committee Membership

4. The Departmental Committee on Defence, Intelligence and Foreign Relations was constituted by the House on 27th October, 2022 and comprise 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. Hassan Abdi Yusuf, MP
Kamkunji Constituency
Jubilee Party

Hon. Odhiambo Millie Grace Akoth, MP
Suba North Constituency
ODM Party

Hon. Kanchory Elijah Memusi, MP
Kajiado Central Constituency
ODM Party

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

Hon. Kirima Moses Nguchine, MP
Imenti Central Constituency
UDA Party

Hon. Kandie Joshua Chepyegon, MP
Baringo Central Constituency
UDA Party

Hon. Kwenya Thuku Zachary, MP
Kinangop Constituency
Jubilee Party

Hon. Joshua Kandie, MP
Baringo Central Constituency
UDA Party

Hon. Luyai Caleb Amisi, MP
Saboti Constituency
ODM Party

Hon. Teresia Wanjiru Mwangi, MP
Nominated Member
UDA Party

Hon. Logova Sloya Clement, MP
Sabatia Constituency
UDA Party

Hon. Ikana Fredrick Lusuli, MP
Shinyalu Constituency
ANC Party

Hon. Mohamed Abdikadir Hussein, MP
Lagdera Constituency
ODM Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

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

Ms. Clara Kimeli
Principal Legal Counsel II

Ms. Winfred K. Kilonzo
Clerk Assistant III

Dr. Donald Manyala
Research Officer II

Mr. Edwin Machuki
Fiscal Analyst III

Mr. Rose Njuki
Senior Serjeant-At-Arms

Ms. Judy Wanjiku
Legal Counsel II

Ms. Debborah Mupusi
Media Relations Officer

CHAPTER TWO

2 BACKGROUND INFORMATION

6. On Thursday, 3rd November, 2022, the Speaker of the National Assembly conveyed a message to the House from the Executive on the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC) (Annexure 3) for peace and security operations (PSO) pursuant to provisions of Article 240(8)(a) of the Constitution and Section 18(c) and 36(2)(a) of the Kenya Defence Forces Act, 2012.
7. Although the Armed Forces of the DRC (FARDC) has unilaterally, jointly, and with bilateral partners such as the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) has conducted numerous operations against armed groups, the current situation in the DRC remains calamitous due to continued attacks from not only local but also foreign armed groups.
8. The situation in the DRC threatens regional peace, security, and stability of the Great Lakes Region, the Horn of Africa, and the larger Eastern African region. The incessant instability in Eastern DRC is likely to spill over to the Horn of Africa conflict system, including having the effect of emboldening terror groups such as *Al Shabaab* and thereby undermining the counter-terrorism agenda and the curbing of violent extremism.
9. Article 124 of The Treaty for the Establishment of the EAC stresses the necessity for peace and stability in the East African Partner States in fostering regional integration in all aspects. It is on this basis that the matter was committed to this Committee for consideration pursuant to its mandate.
10. It is noteworthy that DRC's accession into EAC in April 2022 as the seventh member of the Community came with gains coupled with socioeconomic and geopolitical challenges that the DRC is grappling with. This demands a recalibration of the bloc's peace and security considerations to devise novel strategies for coping with the unending violence in Eastern DRC, where M23 and other rebel groups continue to wreak havoc and damage. As a result, the Communique of the East African Regional Heads of State Conclave on the DRC held on 21 April 2022 in Nairobi approved the formation of the EACRF-DRC, marking the first time the EAC has been called upon to organize a regional force for deployment in a member state.
11. Kenya's contribution to peace operations dates back to 1979 in terms of support to UN operations. Some of the missions the country has participated in include: the UN Transition Assistant Group (UNTAG) in Namibia, the UN Protection Force (UNPROFOR) in Croatia, the two UN missions in Liberia (UNOMIL and UNMIL), the UN Mission in Sierra Leone (UNAMSIL), the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the UN-African Union Mission in Darfur (UNAMID), the UN Mission in South Sudan (UNMISS) and African Union Mission to Somalia (AMISOM), operated by the AU in Somalia with approval by the UN.
12. Following a Communique of the East African Regional Heads of State Conclave on the DRC held on 21st April, 2022 in Nairobi, the establishment of the EACRF-DRC was approved. The force is to deploy to Ituri, North Kivu, and South Kivu provinces of Eastern DRC to contain, and where necessary combat negative forces and enhance peace, stability, and development in the greater East African region.

13. The mandate of the regional force (RF) is to jointly plan and conduct operations with the Armed Forces of the DRC (FARDC) in the Joint Area of Operation (JOA), to defeat the local and foreign armed groups in the Eastern DRC and to support FARDC in concretizing maintenance of law and order.
14. The mandate will enable the RF to support DRC in collaborating with humanitarian agencies to continue humanitarian relief to populations affected by activities of armed groups including IDPs, and support the programme for disarmament, community re-integration, and stabilization programme (P-DDRCS) process.
15. Kenya is expected to provide leadership and tangibly contribute to the maintenance of regional and international peace and security. Indeed, the country has a chequered history as a guarantor of a myriad of peace processes within the Eastern and Central Africa sub-regions. Equally, Kenya is a current non-permanent member of the United Nations Security Council.
16. Kenya's deployment of the KDF to the Regional Force is aligned strategically to its foreign and national security objectives. It will enhance the country's ability to not only respond to threats emanating from the Great Lakes Conflict System but also help to mitigate threats to Kenya's stability and thereby enhance the security of its citizens.

2.1 Legal Context of KDF Deployment to EACRF-DRC

2.1.1 The East Africa Community (EAC) Legal framework on Peace and Security

(a) The EAC Treaty

17. EAC is guided by its Treaty which established the Community having been signed on 30 November 1999 and entered into force on 7 July 2000 following its ratification by the original three Partner States Kenya, Tanzania and Uganda; thereafter joined by Burundi, Rwanda, South Sudan and the Democratic Republic of Congo.
18. One of the objectives of the Community under Article 5(3(f) of the Treaty is the promotion of peace, security, and stability within, and good neighborliness among, the Partner States.
19. The EAC Treaty under Article 124 and 125 provides for the foundation within which the Community established the EAC Protocol on Peace and Security.
20. Art. 124 of The EAC Treaty provides that:
 1. *The Partner States agree that peace and security are pre-requisites to social and economic development within the Community and vital to the achievement of the objectives of the Community. In this regard, the Partner States agree to foster and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining to peace and security of the Partner States with a view to prevention, better management and resolution of disputes and conflicts between them.*
 2. *The Partner States undertake to promote and maintain good neighborliness' as a basis for promoting peace and security within the Community.*
 3. *The Partner States shall evolve and establish regional disaster management mechanisms which shall harmonise training operations, technical co-operation and support in this area.*
 4. *The Partner States undertake to establish common mechanisms for the management of refugees.*
 5. *The Partner States agree to enhance co-operation in the handling of cross border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the*

exchange of information on national mechanisms for combating criminal activities. To this end the Partner States undertake to adopt the following measures for maintaining and promoting security in their territories to:

- a) enhance the exchange of criminal intelligence and other security information between the Partner States' central criminal intelligence information centres;
 - b) enhance joint operations such as hot pursuit of criminals and joint patrols to promote border security;
 - c) establish common communication facilities for border security;
 - d) adopt the United Nations model law on mutual assistance on criminal matters;
 - e) conclude a Protocol on Combating Illicit Drug Trafficking;
 - f) enhance the exchange of visits by security authorities;
 - g) exchange training programmes for security personnel; and
 - h) establish common mechanisms for the management of refugees.
6. The Partner States undertake to co-operate in reviewing the region's security particularly on the threat of terrorism and formulate security measures to combat terrorism.

24. Art. 125 of The EAC Treaty provides that:

1. In order to promote the achievement of the objectives of the Community as set out in Article 5 of this Treaty particularly with respect to the promotion of peace, security and stability within, and good neighbourliness among the Partner States, and in accordance with Article 124 of this Treaty, the Partner States agree to closely co-operate in defence affairs.
2. For purposes of paragraph 1 of this Article, the Partner States agree to establish a **framework for co-operation**.

(b) The EAC Protocol on Peace and Security

25. The EAC Protocol on Peace and Security under Article 2 provides that the Partner States shall cooperate in peace and security matters and collaborate with international and regional organizations to promote peace and security in the region.

26. Article 8 of the Protocol further provides as follows:

1. The Partner States shall formulate a joint mechanism for the operationalisation of peace support operations within the context of the Charter of the United Nations, the Constitutive Act of the African Union and the Treaty.
2. The Partner States shall conduct peace support operations within the Community under a conflict prevention, management and resolution framework.

(c) EAC Protocol on Co-operation on Defence Affairs

27. Article 2 of the EAC Protocol on Co-operation on Defence Affairs provides for the scope of co-operation as follows:

1. The Partner States shall cooperate in all defence affairs and collaborate with international and regional organisations to promote peace, security and stability in the Community.
2. Without prejudice to the generality of this Article, the Partner States agree, to inter alia cooperate in the following areas:

- (a) military training;
- (b) joint Operations;
- (c) technical Co-operation; and
- (d) visits and exchange of information.

28. In Article 7(b) of the Protocol, Partner States agree to undertake joint operations. For this purpose, the Armed Forces of the Partner States shall cooperate in:

- (a) handling disasters as well as search and rescue operations, develop and implement necessary mechanisms in support of civil authorities and such other related matters as may be mutually agreed; and
- (b) joint formulation of mechanisms for the operationalization of Peace Support Operations within the contexts of the United Nations Charter and the Constitutive Act of the African Union.

2.1.2 Deployment Framework of Forces under the East African Community

29. **Decision by the Summit** – The EAC Summit is mandated to make a decision regarding deployment of forces.

30. The EAC Treaty establishes The Summit under Chapter 4 of the Treaty. The Summit is composed of the Heads of States of Governments of Partner States (Art. 10 (1) of the Treaty).

31. The functions of The Summit with respect to deployment of forces is provided for under Article 11(3) which provides that “*The Summit shall review the state of peace, security and good governance within the Community and the progress achieved towards the establishment of a Political Federation of the Partner States*”.

32. Decisions of The EAC Summit are by way of consensus. The decision to deploy forces to the DRC was made on the 21st April, 2022 at the EAC Regional Heads of State Conclave on the establishment of the East Africa Community Regional Force on the Democratic Republic of Congo.

2.1.3 Deployment Framework of Forces in the Kenyan Context

33. Once the EAC Summit has made a decision to deploy, the same is trickled down to the Partner States to implement pursuant to their domestic laws. In the Kenyan context, this means the Constitution of Kenya and the Kenya Defence Forces Act No. 25 of 2012.

34. Article 240(1) of the Constitution establishes the National Security Council whose functions under the constitution are to:

- (a) exercise supervisory control over the national security organs and perform any other function prescribed by national legislation (Art. 240(3);
- (b) integrate the domestic, foreign and military policies relation to national security in order to enable the national security organs to co-operate and function effectively (Art. 240(6)(a);
- (c) assess and appraise the objectives, commitments ad risks to the Republic in respect of actual and potential national security capabilities (Art. 240(6)(b);

(d) may, with the approval of Parliament deploy national forces outside Kenya for regional or international peace support operations or other support operations (Art. 240(8)(a); and

(e) may with the approval of Parliament approve deployment of foreign forces in Kenya (Art. 240(8)(b).

35. Section 18 (c) (i) of the Kenya Defence Forces Act No. 25 of 2012 provides, among others, that one functions of the National Security Council in relation to the Defence Forces is to “deploy Defence Forces outside Kenya, with the approval of Parliament, for regional or international peace support operations; or other support operations.”
36. Further, Section 36 (2) (a) of the Kenya Defence Forces Act No. 25 of 2012 provides that “Pursuant to Article 240(8) of the Constitution, the National Security Council may with the approval of Parliament deploy national forces outside Kenya for regional or international peace support operations; or other support operations.”
37. In addition, Section 37 of the Kenya Defence Forces Act No. 25 of 2012 requires that any treaty or agreement between the Government of Kenya and any other State or international institution or organization regarding the use or provision of military forces shall provide for the legal status of members of the Defence Forces placed at the disposal of the military authorities of such State, institution or organization. In this regard, the Status of Forces Agreement (SOFA) was developed and approved by the Heads of State to be engrossed by the EAC secretariat on behalf of the EAC partner states (Annexure 4). The SOFA provides for the legal status of KDF personnel while deployed as part of the Regional Forces in the DRC.
38. The National Security Council, having ratified the Memorandum on the establishment of the EACRF-DRC dated 7th July 2022 (Annexure 5), made a request to the National Assembly, through the Cabinet Secretary for Defence, for the approval of deployment pursuant to the provisions of Article 240(8) of the Constitution.

2.2 Financial Implications of KDF Deployment to EACRF-DRC

39. The approved budget to Ministry of Defence for the FY 2022/23 for its four programmes was **Ksh. 131.68 Billion** broken into **Ksh. 128.22 Billion** for recurrent expenditure and **Ksh. 3.47 Billion** for development expenditure.
40. The Ministry of Defence was requesting an additional **Ksh. 4,451 Million** towards the deployment of KDF to EACRF-DRC as per the submitted memorandum. This request was over and above the appropriation of **Ksh. 131,683 Million** in the FY 2022/23. The expenditures will mainly go towards equipment, operations and payment of sustenance allowances as analyzed in table below:

Item Description	Amount (KSH.)	Share of Total Budget
Equipment	1,418,324,689.00	31.86%
Ammunition	1,027,021,070.00	23.07%
Arms	24,690,600.00	0.55%
Kitting	80,031,480.00	1.80%
Major Equipment	286,581,539.00	6.44%
O&M	1,988,772,796.87	44.68%
Communication	50,160,126.00	1.13%
Deployment of MD530F Maintenance Expenses	268,847,250.00	6.04%
Domestic, Household, Cleaning, Catering & Tentage	124,087,450.00	2.79%
KAF C208 Maintenance & Deployment Budget	127,604,932.00	2.87%
Medical Expenses	131,363,137.20	2.95%
Minor Engineering	3,936,200.00	0.09%
Pol & LPG Gas	40,219,312.00	0.90%
Ration	195,250,660.29	4.39%
Stationery	24,693,500.00	0.55%
Technical Stores	543,131,780.00	12.20%
Utility Helicopter Operating Cost	479,478,449.38	10.77%
Personnel Emoluments	1,044,211,290.00	23.46%
Sustenance Allowance	1,044,211,290.00	23.46%
Grand Total	4,451,308,775.87	100.00%
Total as per the Memorandum	3,849,442,476.24	
Variance	601,866,299.63	

2.3 Committee Proceedings

35. The Committee having received the Message from the National Executive, on a request for approval of the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC), considered it in the context of:

- (a) The East Africa Community (EAC) Legal framework on Peace and Security, particularly Article 124 and 125 of The EAC Treaty; Article 2 and Article 8 of The EAC Protocol on Peace and Security; Article 2 and Article 7(b) of the EAC Protocol on Co-operation on Defence Affairs;
- (b) Article 240 (8) (a) of the Constitution of Kenya; and Section 18 (c) (i), Section 36 (2) (a) and Section 37 of the Kenya Defence Forces Act No. 25 of 2012.

36. The Committee held three (3) sittings during which it examined and reviewed the request for the deployment of Kenya Defence Forces (KDF), received submissions from the Cabinet Secretary for Defence on behalf of the National Security Council, and considered and adopted this Report.

CHAPTER THREE

3 SUBMISSIONS

37. The Message from the National Executive, on a request for the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to the Democratic Republic of Congo (EACRF-DRC) was presented to the House by the Hon. Speaker on **Thursday 3rd November, 2022** and subsequently committed to the Committee, on the same date, for consideration pursuant to Standing Order 42 (4).
38. The Committee, consequently, processed the Message through in-house deliberative meetings and receiving of oral and written submissions from the Cabinet Secretary for Defence with a view to making a determination on whether or not to approve the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC). The evidence adduced is recorded hereunder:

3.1 Submission from the Cabinet Secretary for Defence

39. The Cabinet Secretary for Defence, The Hon. Aden B. Duale, EGH appeared before the Committee on **Monday 7th November, 2022** and submitted as follows:
40. The DRC was admitted into the EAC by the Summit of the EAC Heads of State during their 19th Extra-Ordinary Meeting held virtually on 29th March, 2022. The DRC formally joined the EAC after signing the treaty of Accession to the EAC on 8th April, 2022 and after meeting all the conditions under Articles 3 and 4 of the EAC Treaty.
41. The DRC has witnessed one of the world's longest conflicts. The current violence in the country was fueled by the massive refugee crisis and spillover from the 1994 Rwanda genocide. The violence is being perpetrated by armed groups against defenceless civilians in the Eastern part of the DRC. One of the most prominent rebel groups is the March 23 movement (M23), made up largely of ethnic Tutsis who are allegedly propped by the Rwanda government. The UN estimates that there are over 100 armed groups operating in the DRC.
42. The peace initiative and the deployment of the regional force are anchored in three consecutive East Africa Heads of State Conclaves held on 8th April, 2022, 21st April, 2022 and 20th June, 2022. The strategic deliberations culminated in the 22nd EAC Heads of State Ordinary Summit held on 22nd July, 2022 which mainstreamed the "Nairobi Process" as an EAC-led peace intervention initiative. The Summit, consequently, authorized the deployment of a Joint EAC Regional Force in Eastern DRC.
43. The African Union Peace and Security Council endorsed the Nairobi and Luanda process on 31st August, 2022 and committed to facilitating consultations among stakeholders and mobilization of technical, financial and material resources to support the implementation of the process.
44. The United Nations Security Council, in its Joint Consultative Meeting of 14th October, 2022 with members of the AU Peace and Security Council, welcomed and re-affirmed its support for the regional effort.
45. With respect to mandate, the peace initiative is a two-track approach that comprises the political and military processes. The main goal of the military forces is to create an environment conducive to facilitating the political process.
46. The initial period of deployment is six (6) months. The Regional Force is mandated to:
- (a) Jointly plan and conduct operations with the Armed Forces of the DRC (FARDC) in joint areas of operation to defeat the armed group elements in eastern DRC;

- (b) Support FARDC in concretizing and maintenance of law and order;
 - (c) Support FARDC in collaboration with humanitarian agencies to continue humanitarian relief to populations affected by armed group elements' activities including IDPs; and
 - (d) Support in the Disarmament, Demobilization, Community Recovery and Stabilization Program (P-DDRCS).
35. The peace initiative has its legal underpinning in Articles 4 and 8 of the EAC Protocol on Peace and Security and Articles 5 and 124 of the EAC Treaty as read with Article 9 of the Protocol on the Establishment of the Peace and Security Council of the AU. In addition, Chapter 8 Article 54 of the UN Charter provides further legal backing since the intervention is a peace and security initiative under a regional mechanism.
47. Kenya had deployed troops to the DRC under UN Mission – MONUSCO (Kenya Quick Reaction Force and Kenya Signal Squadron). The EACRF is the inaugural regional-led intervention mission in the EAC arrangement and constitutes DRC, Kenya, Uganda, Burundi, and South Sudan. The force will operate jointly with FARDC and in close liaison with other friendly forces like MONUSCO, regional and international bodies.
48. Harmonization and signing of the Status of Forces Agreement (SOFA) took place in Kinshasa on 9th September, 2022 presided over by the DRC President Felix Tshisekedi.
49. The deployment will not only promote Kenya's intertwined security interests but also serve to dismantle terrorist and criminal networks in the region and thereby creating conditions that will spur regional trade.
50. The partner states had pledged troops as follows:
- (a) Kenya – one battle group with combat support (903 troops to take part)
 - (b) Burundi – two battalions and one naval squadron (already deployed)
 - (c) Rwanda – two battalions with combat support (within Rwanda borders)
 - (d) South Sudan – one battalion with support elements (already deployed one battalion)
 - (e) Uganda – two battalions with combat support (to deploy on 15th November, 2022 in addition to brigade already deployed)
 - (f) Tanzania – promised to join the operation later.
52. If approved for deployment, KDF will deploy 904 troops with assorted equipment to eastern DRC both via air and road movement. The area assigned to the Kenyan Contingent (KENCON) is *Rutshuru* and *Kiwanja*, currently controlled by rebels. It was envisaged that KENCON would deploy an advance party of 250 personnel immediately.
53. Under the regional block, Kenya was optimistic that the deployment will be fruitful in providing a regional solution to regional problems. It's anticipated that the deployment will meet the expectations of locals in eastern DRC who remain affected by the violence and its attendant gross violations perpetrated by numerous armed groups.
54. The budget provided in the request to the National Assembly, **Ksh. 4,451 Million**, caters for only the 6 months envisaged in the deployment. However, if the Kenyan troops stay for one year, the cost implication will be Ksh. 7.2 Billion. In case the troops stay on, the cost implication will be approximately Ksh. 5.5 Billion to Ksh. 6 Billion annually. It is, however, expected that

international financing may be secured for the operation and if and when that happens, the Cabinet Secretary will apprise the Committee.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

51. Having reviewed the request for approval of the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to the Democratic Republic of Congo (EACRF-DRC), analyzed both the oral and written submissions made before the Committee, and appreciated the applicable legal regimes at the UN, AU, EAC and the country level, it was observed as follows.
52. The deployment request had complied with the relevant legal provisions in the UN Charter, the EAC Treaty, the EAC Protocol on Peace and Security, the EAC Protocol on Co-operation on Defence Affairs, the Constitution of Kenya and the Kenya Defence Forces Act No. 25 of 2012.
53. In terms of the financial implications of the Deployment, the grand total budget stood at **Ksh. 4,451.31 Million** which is **Ksh. 601.87 Million** above the **Ksh. 3,849.44 Million** in the Memorandum to the National Security Council on the matter. However, the Cabinet Secretary for Defence explained that the discrepancy emanated from changes effected on the budget after a reconnaissance visit to the area in question that necessitated a change of strategy. Nevertheless, members observed that the budget was too high for a country that had in the recent past embraced austerity measures due to limited fiscal space.
54. The budget provided in the request to the National Assembly, **Ksh. 4,451 Million**, caters only for the initial 6 months envisaged in the deployment. However, if the Kenyan troops stay for one year, the cost implication will be approximately **Ksh. 7.2 Billion**. In case the troops stay on, the annual cost implication will be approximately **Ksh. 5.5 Billion to Ksh. 6 Billion**. It is, however, envisaged that international financing may be secured for the operation and if this materialises, the Cabinet Secretary will apprise the Committee accordingly.
55. The East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC) has a peace enforcement mandate unlike the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) which had only a peacekeeping mandate. Peacekeeping forces are lightly armed and use minimum force and only in exceptional cases while peace enforcement deploys military assets to enforce peace against the will of the parties to a conflict.
56. There were a multiplicity of interests and numerous proxy wars being wedged in Eastern DRC and this was likely to jeopardize the safety and effectiveness of the KDF officers. This is compounded by the fact that they will be deployed alongside forces from Rwanda and Uganda, countries with known vested interests in Eastern DRC. It was, however, explained that the EAC had engaged in diplomatic efforts to forestall any possibility of proxy wars.
57. The Kenyan Contingent (KENCON) had a lot of goodwill from residents of Eastern DRC due to the fact that Kenya doesn't share a border with the DRC and therefore had no direct vested interests in the Great Lakes Conflict Ecosystem.
58. The situation in the DRC threatens regional peace, security, and stability of the Great Lakes Region, the Horn of Africa, and the larger Eastern African region. The incessant instability in Eastern DRC is likely to spill over to the Horn of Africa conflict system, including having the effect of emboldening terror groups such as *Al Shabaab* and thereby undermining the counter-terrorism agenda.

59. Kenya is expected to provide leadership and tangibly contribute to the maintenance of regional and international peace and security being a current non-permanent member of the United Nations Security Council. Indeed, the country has a chequered history as a guarantor of a myriad of peace processes within the Eastern and Central Africa sub-regions.
60. Deployment of the KDF to the Regional Force is aligned strategically to Kenya's national interests. It will enhance the country's ability to not only respond to threats emanating from the Great Lakes Conflict System but also help to mitigate threats to Kenya's stability and thereby enhance the security of its citizens. Kenya will also be in a position to secure its vital interests including Kenyan businesses like Banks operating in the DRC, numerous Kenyan business people in the DRC, bilateral trade with the DRC, and utilization of the Mombasa port by the DRC among others.


CHAPTER FIVE

5. COMMITTEE RECOMMENDATION

61. Having reviewed the request for approval of the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to the Democratic Republic of Congo (EACRF-DRC) and considered it in the context of the East Africa Community (EAC) Legal framework on Peace and Security, particularly Article 124 and 125 of the EAC Treaty; Article 2 and Article 8 of The EAC Protocol on Peace and Security; Article 2 and Article 7(b) of the EAC Protocol on Co-operation on Defence Affairs; Article 240 (8) (a) of the Constitution of Kenya; and Section 18 (c) (i), Section 36 (2) (a) and Section 37 of the Kenya Defence Forces Act No. 25 of 2012, the Committee recommends that the National Assembly **APPROVES** the deployment of Kenya Defence Forces (KDF) to East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC).

SIGNED..... DATE.....

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

 THE NATIONAL ASSEMBLY PARLIAMENT BUILDING	
DATE: 09 NOV 2022	
DAY: WED	
TABLED BY:	Hon. Nelson Koech, MP
CLERK-AT THE TABLE:	Chairperson, Committee on Defence
	Joyce Lemuel.

ADOPTION LIST



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - FIRST SESSION - 2022
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN
RELATIONS.

REPORT ADOPTION LIST

**REPORT ON A REQUEST BY THE NATIONAL EXECUTIVE TO DEPLOY THE KENYA
DEFENCE FORCES (KDF) TO THE EAST AFRICAN COMMUNITY REGIONAL FORCE
-DEMOCRATIC REPUBLIC OF CONGO (EACRF-DRC).**

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, **Wednesday 9th November, 2022.**

	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 3RD SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS HELD ON MONDAY 7TH NOVEMBER, 2022 AT 11.00 AM IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.

PRESENT

- | | | |
|---|---|------------------|
| 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. Kanchory Elijah Memusi, MP | | |
| 6. The Hon. (Dr.) Kasalu Irene Muthoni, M.P | | |
| 7. The Hon. Kandie Joshua Chepyegon, M.P | | |
| 8. The Hon. Kwenya Thuku Zachary, M.P | | |
| 9. The Hon. Luyai Caleb Amisi, M.P | | |
| 10. The Hon. Logova Sloya Clement, M.P | | |
| 11. The Hon. Ikana Fredrick Lusuli, M.P | | |
| 12. The Hon. Mohamed Abdikadir Hussein, M.P | | |

APOLOGIES

1. The Hon. Odhiambo Millie Grace Akoth, MP
2. The Hon. Kirima Moses Nguchine, M.P
3. 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. Ms. Clara Kimeli | - | Principal Legal Counsel II |
| 4. Mr. Edison Odhiambo | - | Fiscal Analyst I |
| 5. Dr. Donald Manyala | - | Research Officer II |
| 6. Ms. Roselyne Ndeg | - | Senior Serjeant-at-Arms II |
| 7. Ms. Debborah Mupusi | - | Media Relations Officer |
| 8. Mr. Lennie Kabinga | - | Legal Counsel II |
| 9. Ms. Judy Wanjiku | - | Legal Counsel II |
| 10. Mr. Edwin Machuki | - | Fiscal Analyst III |
| 11. Mr. Kelvin Nganga Kamau | - | Research officer III |

AGENDA

1. Prayers
2. Preliminaries

3. **Briefing on a Message from the Cabinet Secretary for Defence Regarding a Request for approval of the deployment of Kenya Defence Forces (KDF) to the East African Community Regional Force - Democratic Republic of Congo (EACRF-DRC).**
4. Any Other Business
5. Adjournment/Date of the next Sitting

MIN.NO. DDC/DIFR/11/2022: - PRELIMINARIES

The meeting was called to order at 11:10 a.m. and commenced with prayers. Thereafter, the Chairperson asked all those present to introduce themselves. He then stated that the main agenda of the meeting was a briefing on a Message from the Cabinet Secretary for Defence regarding a request for approval of the deployment of Kenya Defence Forces (KDF) to the East African Community Regional Force - Democratic Republic of Congo (EACRF-DRC).

MIN.NO. DDC/DIFR/12/2022: **BRIEFING ON A MESSAGE FROM THE CABINET SECRETARY FOR DEFENCE ON A REQUEST FOR APPROVAL OF THE DEPLOYMENT OF KENYA DEFENCE FORCES (KDF) TO THE EAST AFRICAN COMMUNITY REGIONAL FORCE - DEMOCRATIC REPUBLIC OF CONGO (EACRF-DRC).**

PRESENTATION BY THE LEGAL COUNSEL

The Legal Counsel briefed Members on the legal context of KDF deployment to EACRF-DRC as follows:

1. EAC is guided by its Treaty which established the Community having been signed on 30 November 1999 and entered into force on 7 July 2000 following its ratification by the original three Partner States Kenya, Tanzania and Uganda; thereafter joined by Burundi, Rwanda, South Sudan and the Democratic Republic of Congo.
2. One of the objectives of the Community under Article 5(3(f) of the Treaty is the promotion of peace, security, and stability within, and good neighbourliness among, the Partner States.
3. The EAC Treaty under Article 124 and 125 provides for the foundation within which the Community established the EAC Protocol on Peace and Security.
4. The EAC Protocol on Peace and Security under Article 2 provides that the Partner States shall cooperate in peace and security matters and collaborate with international and regional organizations to promote peace and security in the region.
5. Article 2 of the EAC Protocol on Co-operation on Defence Affairs provides for the scope of cooperation. In Article 7(b) of the Protocol, Partner States agree to undertake joint operations.
6. On the deployment framework of forces under the East African Community, she stated that the EAC Summit is mandated to make a decision regarding deployment of forces. The EAC Treaty establishes The Summit under Chapter 4 of the Treaty. The Summit is composed of the Heads of States of Governments of Partner States (Art. 10 (1) of the Treaty). The functions of The Summit with respect to deployment of forces is provided for under Article 11(3) which provides that "The Summit shall review the state of peace, security and good governance

within the Community and the progress achieved towards the establishment of a Political Federation of the Partner States”.

7. The decision to deploy forces to the DRC was made on the 21st April, 2022 at the EAC Regional Heads of State Conclave on the establishment of the East Africa Community Regional Force on the Democratic Republic of Congo.
8. On the deployment framework of forces in the Kenyan context, she stated that:
 - a) Once the EAC Summit has made a decision to deploy, the same is trickled down to the Partner States to implement pursuant to their domestic laws. In the Kenyan context, this means the Constitution of Kenya and the Kenya Defence Forces Act No. 25 of 2012.
 - b) Article 240(1) of the Constitution establishes the National Security Council whose functions under the constitution include, among others, deploying, with the approval of Parliament, national forces outside Kenya for regional or international peace support operations or other support operations (Art. 240(8)(a).
 - c) Section 18 (c) (i) of the Kenya Defence Forces Act No. 25 of 2012 provides, among others, that one functions of the National Security Council in relation to the Defence Forces is to “deploy Defence Forces outside Kenya, with the approval of Parliament, for regional or international peace support operations; or other support operations.”
 - d) Further, Section 36 (2) (a) of the Kenya Defence Forces Act No. 25 of 2012 provides that “Pursuant to Article 240(8) of the Constitution, the National Security Council may with the approval of Parliament deploy national forces outside Kenya for regional or international peace support operations; or other support operations.”
 - e) In addition, Section 37 of the Kenya Defence Forces Act No. 25 of 2012 requires that any treaty or agreement between the Government of Kenya and any other State or international institution or organization regarding the use or provision of military forces shall provide for the legal status of members of the Defence Forces placed at the disposal of the military authorities of such State, institution or organization. In this regard, the Status of Forces Agreement (SOFA) was developed and approved by the Heads of State to be engrossed by the EAC secretariat on behalf of the EAC partner states. The SOFA provides for the legal status of KDF personnel while deployed as part of the Regional Forces in the DRC.
 - f) The National Security Council, having ratified the Memorandum on the establishment of the EACRF-DRC dated 7th July 2022 made a request to the National Assembly, through the Cabinet Secretary for Defence, for the **approval** of deployment pursuant to the provisions of Article 240(8) of the Constitution.

MIN.NO. DDC/DIFR/13/2022:

OBSERVATION

Members observed that the deployment request had so far complied with the relevant legal provisions in the EAC Treaty, the EAC Protocol on Peace and Security, the EAC Protocol on Co-operation on Defence Affairs, the Constitution of Kenya and the Kenya Defence Forces Act No. 25 of 2012.

MIN.NO. DDC/DIFR/14/2022:

PRESENTATION BY THE FISCAL ANALYST

The Fiscal Analyst briefed Members as follows:

1. The approved budget to Ministry of Defence for the FY 2022/23 for its four programmes was **Ksh. 131.68 Billion** broken into **Ksh. 128.22 Billion** for recurrent expenditure and **Ksh. 3.47 Billion** for development expenditure.
2. The Ministry of Defence was requesting an additional **Ksh. 4,451 Million** towards the deployment of KDF to EACRF-DRC as per the submitted memorandum. This request was over and above the appropriation of **Ksh. 131,683 Million** in the FY 2022/23. The expenditures will mainly go towards equipment, operations and payment of sustenance allowances as analyzed in the table below:

Item Description	Amount (KSH.)	Share of Total Budget
Equipment	1,418,324,689.00	31.86%
Ammunition	1,027,021,070.00	23.07%
Arms	24,690,600.00	0.55%
Kitting	80,031,480.00	1.80%
Major Equipment	286,581,539.00	6.44%
O&M	1,988,772,796.87	44.68%
Communication	50,160,126.00	1.13%
Deployment of MD530F Maintenance Expenses	268,847,250.00	6.04%
Domestic, Household, Cleaning, Catering & Tentage	124,087,450.00	2.79%
KAF C208 Maintenance & Deployment Budget	127,604,932.00	2.87%
Medical Expenses	131,363,137.20	2.95%
Minor Engineering	3,936,200.00	0.09%
Pol & LPG Gas	40,219,312.00	0.90%
Ration	195,250,660.29	4.39%
Stationery	24,693,500.00	0.55%
Technical Stores	543,131,780.00	12.20%
Utility Helicopter Operating Cost	479,478,449.38	10.77%
Personnel Emoluments	1,044,211,290.00	23.46%
Sustenance Allowance	1,044,211,290.00	23.46%
Grand Total	4,451,308,775.87	100.00%
Total as per the Memorandum	3,849,442,476.24	
Variance	601,866,299.63	

MIN.NO. DDC/DIFR/15/2022:

OBSERVATIONS

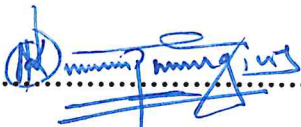
1. Members observed that the grand total budget for the deployment stood at **Ksh. 4,451.31 Million** which is **Ksh. 601.87 Million** above the **Ksh. 3,849.44 Million** in the Memorandum to the National Security Council on the matter. This needed clarification from the Cabinet Secretary for Defence.
2. Members further observed that the committed budget was too high for a country that had in the recent past embraced austerity measures due to limited fiscal space. The Cabinet Secretary for Defence ought to clarify if there were opportunities for funding the operation from external multilateral sources.

MIN.NO. DDC/DIFR/16/2022:

ADJOURNMENT

There being no other business the meeting was adjourned at 12.30 pm.

SIGNED:



THE HON. NELSON KOECH, M.P.

CHAIRPERSON,

**DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN
RELATIONS**

DATE:

09/11/22

MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS HELD ON MONDAY 7TH NOVEMBER, 2022 AT 2.30 PM IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.

PRESENT

- | | | |
|---|---|------------------|
| 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. Kanchory Elijah Memusi, MP | | |
| 6. The Hon. (Dr.) Kasalu Irene Muthoni, M.P | | |
| 7. The Hon. Kandie Joshua Chepyegon, M.P | | |
| 8. The Hon. Kwenya Thuku Zachary, M.P | | |
| 9. The Hon. Luyai Caleb Amisi, M.P | | |
| 10. The Hon. Kirima Moses Nguchine, M.P | | |
| 11. The Hon. Logova Sloya Clement, M.P | | |
| 12. The Hon. Ikana Fredrick Lusuli, M.P | | |
| 13. The Hon. Mohamed Abdikadir Hussein, M.P | | |

APOLOGIES

1. The Hon. Odhiambo Millie Grace Akoth, MP
2. 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. Ms. Clara Kimeli | - | Principal Legal Counsel II |
| 4. Mr. Edison Odhiambo | - | Fiscal Analyst I |
| 5. Dr. Donald Manyala | - | Research Officer II |
| 6. Ms. Roselyne Ndeg | - | Senior Serjeant-at-Arms II |
| 7. Ms. Debborah Mupusi | - | Media Relations Officer |
| 8. Mr. Lennie Kabinga | - | Legal Counsel II |
| 9. Ms. Judy Wanjiku | - | Legal Counsel II |
| 10. Mr. Edwin Machuki | - | Fiscal Analyst III |

AGENDA

1. Prayers
2. Preliminaries

3. **Briefing on a Message from the Cabinet Secretary for Defence Regarding a Request for approval of the deployment of Kenya Defence Forces (KDF) to the East African Community Regional Force - Democratic Republic of Congo (EACRF-DRC).**
4. Any Other Business
5. Adjournment/Date of the next Sitting

MIN.NO. DDC/DIFR/17/2022: - PRELIMINARIES

The meeting was called to order at 2:38 p.m. and commenced with prayers. Thereafter, the Chairperson asked all those present to introduce themselves. He then stated that the main agenda of the meeting was a deliberation with Cabinet Secretary for Defence on a Request for approval of the deployment of Kenya Defence Forces (KDF) to the East African Community Regional Force - Democratic Republic of Congo (EACRF-DRC).

MIN.NO. DDC/DIFR/18/2022: **DELIBERATION WITH CABINET SECRETARY FOR DEFENCE ON A REQUEST FOR APPROVAL OF THE DEPLOYMENT OF KENYA DEFENCE FORCES (KDF) TO THE EAST AFRICAN COMMUNITY REGIONAL FORCE - DEMOCRATIC REPUBLIC OF CONGO (EACRF-DRC).**

The Cabinet Secretary for Defence, Hon. Aden B. Duale, EGH appeared before the Committee and submitted as follows:

1. The DRC was admitted into the EAC by the Summit of the EAC Heads of State during their 19th Extra-Ordinary Meeting held virtually on 29th March, 2022. The DRC formally joined the EAC after signing the treaty of Accession to the EAC on 8th April, 2022 and after meeting all the conditions under Articles 3 and 4 of the EAC Treaty.
2. The DRC has witnessed one of the world's longest conflicts. The current violence in the country was fueled by the massive refugee crisis and spillover from the 1994 Rwanda genocide. The violence is being perpetrated by armed groups against defenceless civilians in the Eastern part of the DRC. One of the most prominent rebel groups is the March 23 movement (M23), made up largely of ethnic Tutsis who are allegedly propped by the Rwanda government. The UN estimates that there are over 100 armed groups operating in the DRC.
3. The peace initiative and the deployment of the regional force are anchored in three consecutive East Africa Heads of State Conclaves held on 8th April, 2022, 21st April, 2022 and 20th June, 2022. The strategic deliberations culminated in the 22nd EAC Heads of State Ordinary Summit held on 22nd July, 2022 which mainstreamed the "Nairobi Process" as an EAC-led peace intervention initiative. The Summit, consequently, authorized the deployment of a Joint EAC Regional Force in Eastern DRC.
4. The African Union Peace and Security Council endorsed the Nairobi and Luanda process on 31st August, 2022 and committed to facilitating consultations among stakeholders and mobilization of technical, financial and material resources to support the implementation of the process.

5. The United Nations Security Council, in its Joint Consultative Meeting of 14th October, 2022 with members of the AU Peace and Security Council, welcomed and re-affirmed its support for the regional effort.
6. With respect to mandate, the peace initiative is a two-track approach that comprises the political and military processes. The main goal of the military forces is to create an environment conducive to facilitating the political process.
7. The initial period of deployment is six (6) months. The Regional Force is mandated to:
 - (a) Jointly plan and conduct operations with the Armed Forces of the DRC (FARDC) in joint areas of operation to defeat the armed group elements in eastern DRC;
 - (b) Support FARDC in concretizing and maintenance of law and order;
 - (c) Support FARDC in collaboration with humanitarian agencies to continue humanitarian relief to populations affected by armed group elements' activities including IDPs; and
 - (d) Support in the Disarmament, Demobilization, Community Recovery and Stabilization Program (P-DDRCS).
35. The peace initiative has its legal underpinning in Articles 4 and 8 of the EAC Protocol on Peace and Security and Articles 5 and 124 of the EAC Treaty as read with Article 9 of the Protocol on the Establishment of the Peace and Security Council of the AU. In addition, Chapter 8 Article 54 of the UN Charter provides further legal backing since the intervention is a peace and security initiative under a regional mechanism.
8. Kenya had deployed troops to the DRC under UN Mission – MONUSCO (Kenya Quick Reaction Force and Kenya Signal Squadron). The EACRF is the inaugural regional-led intervention mission in the EAC arrangement and constitutes DRC, Kenya, Uganda, Burundi, and South Sudan. The force will operate jointly with FARDC and in close liaison with other friendly forces like MONUSCO, regional and international bodies.
9. Harmonization and signing of the Status of Forces Agreement (SOFA) took place in Kinshasa on 9th September, 2022 presided over by the DRC President Felix Tshisekedi.
10. The deployment will not only promote Kenya's intertwined security interests but also serve to dismantle terrorist and criminal networks in the region and thereby creating conditions that will spur regional trade.
11. The partner states had pledged troops as follows:
 - (a) Kenya – one battle group with combat support (903 troops to take part)
 - (b) Burundi – two battalions and one naval squadron (already deployed)
 - (c) Rwanda – two battalions with combat support (within Rwanda borders)
 - (d) South Sudan – one battalion with support elements (already deployed one battalion)
 - (e) Uganda – two battalions with combat support (to deploy on 15th November, 2022 in addition to brigade already deployed)
 - (f) Tanzania – promised to join the operation later.

12. If approved for deployment, KDF will deploy 904 troops with assorted equipment to eastern DRC both via air and road movement. The area assigned to the Kenyan Contingent (KENCON) is *Rutshuru* and *Kiwanja*, currently controlled by rebels. It was envisaged that KENCON would deploy an advance party of 250 personnel immediately.
13. Under the regional block, Kenya was optimistic that the deployment will be fruitful in providing a regional solution to regional problems. It's anticipated that the deployment will meet the expectations of locals in eastern DRC who remain affected by the violence and its attendant gross violations perpetrated by numerous armed groups.
14. The budget provided in the request to the National Assembly, **Ksh. 4,451 Million**, caters for only the 6 months envisaged in the deployment. However, if the Kenyan troops stay for one year, the cost implication will be Ksh. 7.2 Billion. In case the troops stay on, the cost implication will be approximately Ksh. 5.5 Billion to Ksh. 6 Billion annually. It is, however, expected that international financing may be secured for the operation and if and when that happens, the Cabinet Secretary will apprise the Committee.

MIN.NO. DDC/DIFR/19/2022:

OBSERVATIONS

The Committee observed that:

1. The budget provided in the request to the National Assembly, **Ksh. 4,451 Million**, caters only for the initial 6 months envisaged in the deployment. However, if the Kenyan troops stay for one year, the cost implication will be approximately **Ksh. 7.2 Billion**. In case the troops stay on, the annual cost implication will be approximately **Ksh. 5.5 Billion to Ksh. 6 Billion**. It is, however, envisaged that international financing may be secured for the operation and if this materialises, the Cabinet Secretary will apprise the Committee accordingly.
2. The East African Community Regional Force to Democratic Republic of Congo (EACRF-DRC) had a peace enforcement mandate unlike the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) which had only a peacekeeping mandate. Peacekeeping forces are lightly armed and use minimum force and only in exceptional cases while peace enforcement deploys military assets to enforce peace against the will of the parties to a conflict.
3. There were a multiplicity of interests and numerous proxy wars being wedged in Eastern DRC and this was likely to jeopardize the safety and effectiveness of the KDF officers. This is compounded by the fact that they will be deployed alongside forces from Rwanda and Uganda, countries with known vested interests in Eastern DRC. It was, however, explained that the EAC had engaged in diplomatic efforts to forestall any possibility of proxy wars.
4. The Kenyan Contingent (KENCON) had a lot of goodwill from residents of Eastern DRC due to the fact that Kenya doesn't share a border with the DRC and therefore had no direct vested interests in the Great Lakes Conflict Ecosystem.

5. The situation in the DRC threatens regional peace, security, and stability of the Great Lakes Region, the Horn of Africa, and the larger Eastern African region. The incessant instability in Eastern DRC is likely to spill over to the Horn of Africa conflict system, including having the effect of emboldening terror groups such as *Al Shabaab* and thereby undermining the counter-terrorism agenda.
6. Kenya is expected to provide leadership and tangibly contribute to the maintenance of regional and international peace and security being a current non-permanent member of the United Nations Security Council. Indeed, the country has a chequered history as a guarantor of a myriad of peace processes within the Eastern and Central Africa sub-regions.
7. Deployment of the KDF to the Regional Force is aligned strategically to Kenya's national interests. It will enhance the country's ability to not only respond to threats emanating from the Great Lakes Conflict System but also help to mitigate threats to Kenya's stability and thereby enhance the security of its citizens. Kenya will also be in a position to secure its vital interests including Kenyan businesses like Banks operating in the DRC, numerous Kenyan business people in the DRC, bilateral trade with the DRC, and utilization of the Mombasa port by the DRC among others.

MIN.NO. DDC/DIFR/16/2022:

ADJOURNMENT

There being no other business the meeting was adjourned at 4.55 pm.

SIGNED: 

**THE HON. NELSON KOECH, M.P.
CHAIRPERSON,**

**DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN
RELATIONS**

DATE: 09/11/22

SPEAKER'S COMMUNICATION



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - (FIRST SESSION)
THE NATIONAL ASSEMBLY
MESSAGES

MESSAGE FROM THE NATIONAL EXECUTIVE

_____ (No.001 of 2022) _____

ON

**DEPLOYMENT OF KENYA DEFENCE FORCES TO EAST AFRICA
COMMUNITY REGIONAL FORCE – DEMOCRATIC REPUBLIC OF
CONGO**


Honourable Members,

1. Pursuant to the provisions of Standing Order 42(4) relating to *Messages received from a Cabinet Secretary*, I wish to convey to the House that I have received a Message from the Cabinet Secretary for Defence.
2. **Honourable Members**, in the Message, the Cabinet Secretary is requesting the National Assembly to consider and approve the rapid deployment of Kenya Defence Forces personnel to the East Africa Community Regional Force to the Democratic Republic of Congo (EACRF-DRC) for peace-keeping operations, pursuant to the provisions of Article 240(8)(a) of the Constitution and Section 18(c) and 36(2)(a) of the Kenya Defence Force Act, 2012.
3. **Honourable Members**, the matter now stands committed to the Departmental Committee on Intelligence and Foreign Relations for consideration.

4. The Committee should **table its Report on Tuesday, 8th November, 2022 to allow the House to consider the Memorandum by Wednesday, 9th November 2022.**

The House is accordingly guided.

I thank you!


THE RT. HON. MOSES WETANGULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Thursday, 3rd November, 2022

STATUS OF FORCES AGREEMENT (SOFA)

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ANNEX B TO
EACRF-DRC CONOPS
DTD SEPTEMBER 2022

**STATUS OF FORCES AGREEMENT (SOFA)
BETWEEN**

THE EAST AFRICAN COMMUNITY AND THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF THE CONGO FOR THE DEPLOYMENT OF THE EAST AFRICAN REGIONAL FORCE FOR THE RESTORATION OF PEACE AND STABILITY IN EASTERN DEMOCRATIC REPUBLIC OF THE CONGO

PREAMBLE

This Agreement has been concluded on this 28th day of in the year 2022, between the East African Community (hereinafter referred to as the "Community") on the one hand, and the Government of the Democratic Republic of the Congo (DRC) (hereinafter referred to as the 'Host Country') on the other hand;

WHEREAS,

The East African Community (EAC) and the Government of the Democratic Republic of the Congo (DRC);

SEEKING to promote peace, stability and development in the Eastern Democratic Republic of the Congo and the greater East African region;

REAFFIRMING the principles of strict respect for sovereignty, equality, territorial integrity, political independence good neighbourliness, interdependence, non - aggression and non - interference in the internal affairs of the Democratic Republic of the Congo;

AWARE that peace and security and strong political relations are critical factors in creating a conducive environment for regional co-operation and integration;

CONSCIOUS of the commitment of the Heads of State of the East African Community to closely cooperate and collaborate in matters of peace and security in order to contribute to reconciliation and lasting peace and their determination to find a swift and lasting solution to the security situation in the Eastern Democratic Republic of the Congo;

RECALLING the decision of the Second Heads of State Conclave on the Democratic Republic of Congo held in Nairobi, Kenya on the 21st day of April 2022, to immediately commence the establishment of the regional force under the leadership of the Democratic Republic of the Congo to militarily deal with the challenges in the Eastern Democratic Republic of the Congo and to stabilize and secure peace in the region, and the directive for the urgent deployment of the said regional force;

FURTHER RECALLING of the decision of the Third Heads of State Conclave authorizing the East African Community joint Regional Force in Eastern Democratic Republic of Congo to: jointly plan and conduct operations with the Armed Forces of the Democratic Republic of Congo (FARDC) in the joint area of operations to defeat the Armed Group Elements; support the FARDC in concretizing and maintenance of Law and Order; support DRC in collaboration with the humanitarian agencies to continue humanitarian relief to populations affected by Armed Group Elements activities including internally displaced persons (IDPs); support in the Disarmament, Demobilization, Community Recovery and Stabilization Program (P-DDRCS);

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TAKING COGNISANCE of Article 11(3) of the Treaty for the Establishment of the East African Community which provides that one of the key functions of the Summit is to review the state of peace, security and good governance within the Community and that in furtherance of that provision, the 22nd Ordinary Summit of the EAC Heads of State held in Arusha, United Republic of Tanzania on 22nd July 2022 received a Report on the Nairobi process and decided *inter alia* to mainstream the Nairobi process into the East African Community, pursuant to Articles 5(3)(f), 124 and 125 of the Treaty for the Establishment of the East African Community and Article 4 of the Protocol on Peace and Security, and also decided to authorise the expeditious deployment of a joint regional force in Eastern Democratic Republic of the Congo;

SEEKING to deploy the East African Regional Force (EACRF-DRC) for the restoration of peace and stability in the eastern Congo in accordance with Articles 124 and 125 of the Treaty for the Establishment of the East African Community, Articles 3, 4 and 8 of the East African Community Protocol on Peace and Security and Articles 2, 7 (b) and 16(5) of the EAC Protocol on Cooperation in Defence Affairs;

DETERMINED to give effect to the decisions of the 22nd Ordinary Summit of the East African Community Heads of State;

HEREBY agree as follows:

ARTICLE 1

DEFINITIONS

For the purpose of this Agreement:

- (a) **'Armed Group Elements'** means any persons who do not form part of the Armed Forces or Security Forces of the DRC and who are operating in contravention of the National Laws of DRC. These include local, foreign negative forces and terrorist groups;
- (b) **'Competent Authority'** means Force Commander of the East African Community Regional Force deployed in the Eastern Democratic Republic of Congo;
- (c) **'Community'** means the East African Community established by Article 2 of the Treaty;
- (d) **'Contractor'** means a person other than a member of EACRF - DRC engaged by the Force including a juridical as well as a natural person and their employee and sub-contractor to perform services for the Force and/or to supply equipment, provisions, supplies, materials and other goods including spare parts and means of transport, in support of EACRF- DRC activities. Such a contractor shall not be considered a third-party beneficiary to this Agreement;
- (e) **'EACRF - DRC'** means the East African Community Regional Force deployed in the Eastern Democratic Republic of Congo and includes every locally recruited person who is attached to such armed forces;
- (f) **'FARDC'** means the Armed Forces of the Democratic Republic of Congo;
- (g) **'Host Country'** means the Democratic Republic of Congo;
- (h) **'Military Personnel'** means EAC Military Personnel made available to EACRF - DRC by the EAC Partner States;

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- (i) 'Territory' means the territory of the Democratic Republic of the Congo;
- (j) 'Treaty' means the Treaty for the Establishment of the East African Community and any annexes and protocols thereto.
- (k) 'Troop Contributing Countries (TCC)' means the East African Community Partner States that have contributed military forces to the EACRF-DRC;

ARTICLE 2

APPLICATION OF THE AGREEMENT

- 2.1 Unless specifically provided otherwise, the provisions of this Agreement and any obligation undertaken by the Government of Democratic Republic of the Congo or any privilege, immunity, facility or tax exemptions granted to EACRF-DRC shall apply on the territory of the Host Country only;
- 2.2 The EACRF - DRC, its property, funds and assets and its personnel, shall enjoy the privileges and immunities specified in this Agreement and the EAC Protocol on Cooperation in Defence Affairs. However, these provisions are not applicable to Members of the Host Country Military personnel.

ARTICLE 3

MANDATE

The mandate of the East African Community joint Regional Force authorised by the 22nd Summit is to:

- (a) jointly plan and conduct operations with the Armed Forces of the Democratic Republic of Congo (FARDC) in the joint area of operations to defeat the Armed Group Elements in the Eastern Democratic Republic of Congo;
- (b) support the FARDC in concretizing and maintenance of law and order;
- (c) support the Democratic Republic of the Congo in collaboration with the humanitarian agencies to continue humanitarian relief to populations affected by Armed Group Elements activities including Internally Displaced Persons (IDPs);
- (d) support in the Disarmament, Demobilization, Community Recovery and Stabilization Program (P-DDRCS).

ARTICLE 4

STATUS

4.1 Legal Personality.

The Host Country recognizes the legal personality and legal capacity of the EACRF - DRC;

4.2 Conduct of EACRF-DRC Personnel.

The EACRF-DRC shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with this Agreement. The EACRF-DRC shall respect all local laws and regulations. The EACRF- DRC Force Commander shall take all appropriate measures to ensure the observance of these obligations.

4.3 Without prejudice to the mandate of EACRF - DRC and its international status:

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- (a) The EAC shall ensure that EACRF- DRC shall conduct its operations in eastern DRC with strict respect for the principles and rules of the International Conventions applicable to the conduct of military and diplomatic personnel. These international conventions include the Four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, the UNESCO Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict and the Vienna Convention on Diplomatic Relations of 18 April 1961;
- (b) The Host Country undertakes to treat at all times the EACRF-DRC personnel with strict respect for the principles and rules of the international conventions applicable to the treatment of Military Personnel, including the Vienna Convention of diplomatic relations of 18 April 1961;
- (c) EACRF-DRC and the Host Country shall ensure that members of their respective Military Personnel are fully acquainted with the principles and rules of the above-mentioned international instruments;
- (d) The Host Country undertakes to respect the international nature of EACRF-DRC, while EACRF- DRC shall also respect the sovereignty and territorial integrity of the Host Country.

ARTICLE 5

FLAGS, MARKINGS AND IDENTIFICATION

- 5.1 The Host Country recognizes the right of EACRF-DRC to display within its territory, the EAC flag on its headquarters, camps or other premises, as decided by the Competent Authority;
- 5.2 The EACRF – DRC shall display at all times the national flag of the Host Country on its headquarters, camps or other premises.
- 5.3 Vehicles, vessels and aircraft of EACRF - DRC shall carry a distinctive National TCC flag, marking or identification, which shall be notified to the Host Country.

ARTICLE 6

COMMUNICATIONS

- 6.1 EACRF- DRC shall enjoy the facilities in respect to communication and shall, in coordination with the Host Country, use such facilities as may be required for the performance of its tasks.
- 6.2 In light of Paragraph 6.1 above, EACRF-DRC:
 - (a) shall have the right to use and operate combat net radio for communication between headquarters;
 - (b) shall in consultation with the Host Country, have the right to disseminate to the public in the Host Country information relating to its mandate through official printed materials and publications, which EACRF-DRC may produce itself or through private publishing companies in the Host Country. The content of such materials and publications shall be under the editorial control of EACRF-DRC in consultation with the Host Country;

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- (c) shall have the right to receive and use operational information from other stations or satellite systems, under the control of other international partners in the Host Country;
- (d) with regard to the System of Information and Communication (SIC), the EACRF - DRC will comply with the legislation of the Host Country in liaison with the FARDC Headquarters to facilitate the acquisition installation and operation of the SIC equipment. These provisions concern, in particular, exemptions from any tax or fee duly applied for.
- (e) shall enjoy, within the territory of the Host Country, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of Eastern DRC, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. EACRF-DRC shall be exempt from any taxes or fees for the allocation of frequencies for this purpose. However, connections with the local system of telephone, facsimile and other electronic data may be made only after consultation and in accordance with arrangements with the Host Country;
- (f) may make arrangements through its own facilities for the processing and transporting of private mails addressed to or emanating from members of EACRF-DRC. The Host Country shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of EACRF-DRC. In the event that postal arrangements applying to private mails of members of EACRF- DRC are extended to transfer of currency or the transport of packages and parcels, the conditions under which such operations are conducted shall be agreed with the Host Country.

ARTICLE 7

TRAVEL AND TRANSPORT

- 7.1 EACRF - DRC and its contractors, together with their property, equipment, provisions, supplies, materials and other goods, including spare parts, as well as vehicles, vessels and aircrafts used exclusively in the performance of operational and tactical duties for the EACRF-DRC, shall enjoy full and unrestricted freedom of movement without delay throughout the Eastern Democratic Republic of the Congo by the most direct route possible, without the need for travel permits or prior authorization or notification;
- 7.2 In the case of movements of incoming flights, the EACRF - DRC shall comply with the customary procedural requirements for flight planning and operations within the airspace of the Host Country as promulgated and specifically notified to EACRF - DRC by the Civil Aviation Authority of the Host Country;
- 7.3 Large movements of personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within the territory shall be coordinated with the Host Country;
- 7.4 The Host Country shall, where necessary, provide EACRF- DRC with maps and other information, including location of minefields and other dangers and impediments, which may be useful in facilitating EACRF- DRC movements and ensuring the safety and security of its members;
- 7.5 The Host Country shall exempt from compulsory insurance, registration licensing, testing or payment of levies, fees, charges and tolls to vehicles, vessels and aircraft which belong to the TCC of the EACRF- DRC.

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- 7.6 The Competent Authority of the EACRF - DRC will ensure that particulars of personnel and equipment entering or exiting the Host Country are provided in advance to the appropriate authorities of the Host Country for ease of administrative clearance. The EACRF-DRC shall from time to time, provide the Host Country with an updated list of EACRF- DRC vehicles, vessels, weapons, ammunition, aircraft and miscellaneous equipment;
- 7.7 EACRF- DRC and its contractors, together with vehicles, vessels and aircraft, including vehicles, vessels and aircraft of contractors used exclusively in the performance of their services for EACRF- DRC, may use roads, bridges, rivers, canals and other waters, port facilities, airfields, and airspace without the payment of any form of monetary contributions, dues, tolls, user fees, airport taxes, parking fees, over flight fees, port fees or charges, including wharfage and compulsory pilotage charges. However, EACRF- DRC and its contractors will not claim exemption from charges which are in fact charges for goods or services rendered, it being understood that such charges shall be charged at the most favorable rates.

ARTICLE 8

PRIVILEGES AND IMMUNITIES

- 8.1 In the execution of its mandate, the EACRF - DRC, enjoys the privileges and immunities provided under the Treaty for the Establishment of the East African Community and its related Protocols. The Host Country recognizes in particular:
- (a) the right to import, by the most convenient and direct route by sea, land or air, free of duty, taxes or, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of EACRF-DRC or for resale in the military canteen provided hereinafter. For this purpose, the Host Country agrees expeditiously to establish, at the request of EACRF - DRC, temporary customs clearance facilities for EACRF - DRC at locations in the Host Country convenient for EACRF - DRC not previously designated as official ports of entry for DRC;
 - (b) the right of EACRF - DRC to establish, maintain and operate military canteen at its headquarters, camps and posts for the benefit of the members of EACRF - DRC, but not of locally recruited personnel. Such military canteen may provide goods of a consumable nature and other articles to be specified in advance. The Competent Authorities shall take all necessary measures to prevent abuse of such military canteen and the sale or resale of such goods to persons other than members of EACRF - DRC and shall give sympathetic consideration to observations or requests of the Host Country concerning the operation of the military canteen;
 - (c) the right, in consultation with the Host Country, to clear customs and excise warehouse, free of duty, taxes, fees and charges and free of other prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of EACRF - DRC or for resale in the military canteen provided for above;
 - (d) the right, in consultation with the Host Country, to re-export or otherwise dispose of such property and equipment, including spare parts and means of transport, as far as they are still usable, and all unconsumed provisions, supplies, materials, fuel and other goods so imported or cleared excise customs and warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of the Host Country or to an entity nominated by them;

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To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between EACRF - DRC and the Host Country at the earliest possible date.

ARTICLE 9

FACILITIES FOR EACRF - DRC AND ITS CONTRACTORS

Premises required for conducting the operational and administrative activities of EACRF - DRC and for accommodating its members.

- (a) The Host Country shall provide without cost to EACRF - DRC and in agreement with the Competent Authority, for as long as may be required, such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of EACRF - DRC, including the establishment of the necessary facilities for maintaining communications in accordance with Article 6 above;
- (b) Without prejudice to the fact that all such premises remain territory of the Host Country, they shall be inviolable and subject to the exclusive control and authority of the Competent Authority. The Host Country shall guarantee unimpeded access to such EACRF-DRC premises. Where EACRF-DRC troops are co-located with military personnel of the Host Country, a permanent, direct and immediate access by EACRF-DRC to those premises shall be guaranteed;
- (c) The Host Country undertakes to assist EACRF-DRC as far as possible in obtaining and making available, where applicable, water, sewerage, electricity and other facilities free of charge, or, where this is not possible, at the most favorable rate, and free of taxes, fees and duties. Where such utilities or facilities are not provided free of charge, payment shall be made by EACRF - DRC on terms to be agreed with the competent authority. EACRF - DRC shall be responsible for the maintenance and upkeep of facilities so provided. In the event of interruption or threatened interruption of service, the Host Country undertakes to give as far as is within its powers the same priority to the needs of EACRF - DRC as to essential government services;
- (d) The Host Country undertakes to provide the EACRF - DRC Force Headquarters free of charge including payment of utilities such as water, sewerage, electricity and all other administrative or operating costs. Subject to paragraph (c), the utilities, operating and administrative costs of Sector Headquarters shall be paid by the Troop Contributing Countries;
- (e) EACRF - DRC shall have the right, where necessary, to generate, within its premises, electricity for its use and to transmit and distribute such electricity within its premises;
- (f) EACRF - DRC may alone consent to the entry of any Government Officials or any other person who are not members of EACRF - DRC to such premises.

ARTICLE 10

10.1 Provisions, Supplies and Services and Sanitary Arrangements

- (a) The Host Country agrees to grant, upon presentation by EACRF - DRC or by contractors of a bill of lading, airway bill, cargo manifest or packing list, all necessary authorizations, permits and licenses required for the import and re-exportation of equipment, provisions, supplies, fuel, materials and other

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goods, including spare parts and means of transport, used in support of EACRF-DRC, including in respect of import by contractors, free of any restrictions and without the payment of monetary contributions or duties, fees, charges or taxes, including value-added tax. The Host Country likewise agrees after checking and verification to grant promptly all necessary authorizations, permits and licenses required for the purchase or export of such goods, including in respect of purchase or export by contractors.

- (b) The Host Country undertakes to facilitate EACRF-DRC as far as possible in obtaining equipment, provisions, supplies, fuel, materials and other goods and services from local sources required for its subsistence and operations. In respect of equipment, provisions, supplies, fuel, materials and other goods and services purchased locally by EACRF-DRC or by contractors for the official and exclusive use of EACRF - DRC, the Host Country shall make appropriate administrative arrangements for the remission or return of any excise, tax or monetary contribution payable as part of the price. In making purchases on the local market, EACRF - DRC shall, on the basis of observations made and information provided by the Host Country in that respect, avoid any adverse effects on the local economy.
- (c) For the proper performance of the services provided by contractors, other than the Host Country nationals resident in the Host Country, in support of EACRF-DRC, the Host Country agrees to provide contractors with facilities for their entry into and departure from the Host Country, without delay or hindrance, and for their residence in the Host Country, as well as for their repatriation in time of crisis. For this purpose, the Host Country shall promptly issue to contractors, free of charge and without any restrictions within the earliest possible time-frame of application, all necessary visas, licenses, permits and registrations. Contractors, other than nationals of the Host Country resident in the Host Country, shall be accorded exemption from taxes and monetary contributions in the Host Country on services, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, provided to EACRF-DRC, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.
- (d) EACRF-DRC and the Host Country shall co-operate with respect to sanitary services and shall extend to each other their fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.

10.2 Recruitment of Local Personnel

EACRF-DRC may recruit locally such personnel as it requires for the performance of its duties. Upon the request of the EACRF-DRC, the Host Country undertakes, in accordance with the relevant laws and regulations, to facilitate the recruitment of qualified local staff by EACRF-DRC and to accelerate the process of such recruitment.

10.3 Currency

The Host Country undertakes to facilitate the EACRF-DRC, to access local currency required for use by the EACRF-DRC, at the prevailing market rate.

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ARTICLE 11

STATUS OF PERSONNEL

Privileges and Immunities.

- 11.1 The EACRF- DRC Force Commander and the Deputy Force Commander as may be agreed upon with the Host Country shall have the status accorded to diplomatic envoys by the Treaty and its related Protocols and International law.
- 11.2 Military Personnel of the TCC other than the Host Country assigned to EACRF-DRC shall have the privileges and immunities specifically provided for in this Agreement.
- 11.3 Unless otherwise specified in this Agreement, locally recruited personnel of EACRF-DRC shall enjoy the immunities concerning official acts and exemption from taxation and immunity from national service obligations provided for in the Treaty.
- 11.4 Members of EACRF-DRC will be exempted from income tax and any other form of direction levied under the laws of the Host Country on their pay, allowances and other emoluments and benefits paid to them as such. Remittances of such official and personal funds between a Host Country and any of the TCC will be freely permitted.
- 11.5 Members of EACRF - DRC shall have the right to import into the Host Country free of duty their personal equipment and material as well as personal effects for their use. Such goods imported free of duty may be re-exported freely and without payment of duty. Any disposal of these goods in the Host Country by sale or otherwise will be subjected to the payment of duty in accordance with the applicable laws and regulations. Special facilities shall be granted by the Host Country for the speedy processing of entry and exit formalities for all members of EACRF - DRC, upon prior written notification.
- 11.6 On departure from the Host Country, members of EACRF - DRC may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the appropriate National Authority certifies as having been received in pay and emoluments from the respective TCC and are a reasonable balance thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Host Country and the members of EACRF- DRC.
- 11.7 The Competent Authority shall cooperate with the Host Country and render all assistance within its power in ensuring the observance of the customs and fiscal laws and regulations of the Host Country by the members of EACRF - DRC, in accordance with this Agreement.
- 11.8 Wherever this Agreement refers to privileges, immunities and rights of EACRF-DRC and to the facilities the Host Country undertakes to provide to EACRF-DRC or the Community, the Host Country shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

ARTICLE 12

ENTRY, RESIDENCE AND DEPARTURE

- 12.1 The members of EACRF-DRC, whenever so required, have the right to enter into, reside in and depart from the Host Country.

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- 12.2 The Host Country undertakes to facilitate the entry into and departure from the Host Country, without delay or hindrance, of the members of EACRF-DRC at the designated entry points and shall be kept informed of such movements.
- 12.3 The members of EACRF - DRC shall be exempt from visa regulations and immigration inspection and restrictions, as well as from payment of any fees or charges on entering into or departing from the Host Country. They shall also be exempt from any regulations governing the residence of aliens in the Host Country, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in the Host Country.
- 12.4 For the purpose of entry or departure from the Host Country, members of EACRF - DRC are only required to have a valid travel document or collective movement order showing the passport number and a service card number of an official service identification card issued by the Competent Authority, in accordance with Article 13 of this Agreement.

ARTICLE 13

IDENTIFICATION

- 13.1 The Competent Authority shall issue to each member of EACRF - DRC and contractors before or as soon as possible upon such member's first entry into the Host Country and contractors, a numbered identity card, showing the bearer's name, designation and photograph. The official service identification card and valid travel document or collective movement order, shall be the only document required of a member of EACRF-DRC when present in the Host Country.
- 13.2 Members of EACRF - DRC as well as contractors shall be required to present, but not to surrender, their individual travel document or collective movement order and the official service identification cards upon demand of an appropriate official of the Host Country.

ARTICLE 14

UNIFORMS AND ARMS

- 14.1 Members of EACRF- DRC, while performing official duties, shall wear their respective national service uniforms with the distinctive mark of respective TCC accompanied with EACRF-DRC badge to distinguish them.
- 14.2 The wearing of civilian dress by members of EACRF - DRC may be authorized by the Competent Authority as and when necessary.
- 14.3 The Military personnel of the EACRF - DRC shall possess and carry arms, ammunition and other items of military equipment, including global positioning devices, when authorized to do so by the Competent Authority after consultation with and subject to any restrictions and direction on security and such related matters imposed by the Host Country.

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ARTICLE 15

PERMITS AND LICENSES

- 15.1 The Host Country agrees to accept as valid, without tax or fee, a service driving permit or current driving license, international driving license issued by the Competent Authority for the operation by any member of EACRF - DRC, including locally recruited personnel, of any EACRF - DRC vehicles and for the practice of any profession or occupation in connection with the functioning of EACRF - DRC, provided that no permit to drive a vehicle shall be issued to any person who is not already in possession of an appropriate and valid license.
- 15.2 The Host Country agrees to accept as valid, and where necessary to promptly validate, free of charge licenses and certificates already issued by appropriate authorities in other TCCs in respect of aircraft and vessels, including those operated by contractors exclusively for EACRF - DRC operations.
- 15.3 Without prejudice to the foregoing, the Host Country further agrees to grant promptly, free of charge and where necessary authorizations, licenses and certificates, where required, for the use, operation and maintenance of aircraft and vessels.

ARTICLE 16

MILITARY POLICE, ARREST AND TRANSFER OF CUSTODY, AND MUTUAL ASSISTANCE

- 16.1 The Competent Authority shall take all appropriate measures to ensure the maintenance of discipline and good order among members of EACRF - DRC, including locally recruited personnel. To this end, personnel designated by the Competent Authority shall police the premises and installations of EACRF - DRC and such areas where its members are deployed. Elsewhere, such personnel shall be employed only subject to arrangements with the Host Country and in liaison with it in so far as such employment is necessary to maintain discipline and order among members of EACRF - DRC.
- 16.2 The Military Police of EACRF - DRC shall have the power of arrest over the military members of EACRF - DRC. In such cases, the Competent Authority shall refer FARDC members of EACRF - DRC to their respective authorities. Military Personnel placed under arrest outside their own areas of operation shall be transferred to their respective Commanders for appropriate disciplinary action. The personnel mentioned in paragraph 16.1, may take into custody any other person who may have trespassed on the premises and installations of the EACRF - DRC. Such other person shall be delivered immediately to the nearest appropriate officials of the Host Country for the purpose of dealing with such acts or omissions.
- 16.3 Subject to the provisions of Paragraphs 16.1 and 16.2, the relevant authorities of the Host Country may take into custody any member of EACRF - DRC:
- (a) when so requested by the Competent Authority;
 - (b) or when such a member of EACRF - DRC is apprehended at the time he commits the offence or attempts to commit an offence. Such person shall be delivered immediately, together with any weapons or other items seized, to the nearest appropriate authority of EACRF - DRC, where after the provisions of Article 18 shall apply *mutatis mutandis*;
- 16.4 When a person is taken into custody under paragraph 16.2 or 16.3, EACRF - DRC or the Host Country, as the case may be, may make a preliminary interrogation, but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further handling.

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16.5 EACRF - DRC and the Host Country shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return on the terms specified by the authority delivering them. Each Party shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody.

ARTICLE 17

SAFETY AND SECURITY

17.1 In order to guarantee safety, security and freedom of movement of EACRF - DRC, together with its property and assets in the operational area, the Host Country undertakes to provide necessary and appropriate measures. This is without prejudice to the fact that all premises of EACRF - DRC are inviolable and subject to the exclusive control and authority of the EAC.

17.2 If members of EACRF-DRC are captured or detained by the negative forces in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall instead be promptly released and returned to their respective appropriate authorities. The Host Country will put in place a tracking mechanism in consultation with EACRF - DRC, in view of obtaining their release, if necessary, by force. Such personnel shall be treated in accordance with universally recognized standards and norms of human rights and the principles in the spirit of the Geneva Conventions of 1949.

17.3 The Host Country shall ensure that the crimes herein below are punishable by appropriate penalties, taking into account their grave nature:

- (a) murder, kidnapping or other attack upon the person or liberty of any member of EACRF - DRC;
- (b) violent attack upon the official premises and installations, the private residences or the means of transportation of any member of EACRF - DRC in a manner likely to endanger his or her person or liberty;
- (c) threat to commit any such attack under paragraphs (a) and (b) above with the objective of compelling a person to do or to refrain from doing any act;
- (d) attempt to commit any such attack in paragraphs (a) and (b) above;
- (e) act constituting participation as an accomplice in any such attack in paragraphs (a) and (b) above or in an attempt to commit such attack, or in organizing or ordering others to commit such attack.

17.4 The Host Country shall establish its jurisdiction over the crimes set out in paragraph 17.3 above:

- (a) when the crime was committed on the territory of the Host Country;
- (b) when the alleged offender is a national of the Host Country;
- (c) when the alleged offender, other than a member of EACRF - DRC, is present in the territory of the Host Country, unless it has extradited such a person to the State on whose territory the crime was committed, or to the State of his or her nationality, or to the State of his or her habitual residence if he or she is a stateless person, or to the State of the nationality of the victim;

17.5 The Host Country shall ensure the prosecution, without exception and without delay, of persons accused of acts described in paragraph 17.3 above who are present in the territory of the Host Country (if the Host Country does not extradite them), as well as those persons that are subject to its criminal jurisdiction who

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are accused of other acts in relation to EACRF - DRC which, if committed in relation to the forces of the Host Country or against the local civilian population, would have rendered such acts liable to prosecution;

17.6 Upon the request of the Competent Authority, the Host Country shall provide such security as necessary to EACRF - DRC and their equipment during the exercise of their functions.

17.7 The Members of the EACRF - DRC will be entitled to the protection of the law of the Host Country.

ARTICLE 18

JURISDICTION

18.1 All members of EACRF - DRC, shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by EACRF-DRC and after the expiration of the other provisions of this Agreement.

18.2 Should the Host Country consider that any member of EACRF-DRC has committed a criminal offence, it shall promptly inform the Competent Authority and present to him any evidence available to it. Subject to the provisions of paragraph 18.1:

- (a) Members of EACRF-DRC shall be subject to the exclusive jurisdiction of their respective Partner States in respect of any criminal and disciplinary offences which may be committed by them in the Host. However, the TCC to which the accused person comes from shall to the maximum extent possible ensure that the proceedings especially for violations of human rights and humanitarian law, murder, sexual offences such as rape and sexual assault/defilement, are disposed in the Host Country, area/place of commission of offence;
- (b) If any civil proceeding is instituted against a member of EACRF - DRC before any court of the Host Country, the Competent Authority shall be notified immediately and it shall certify to the court whether or not the proceeding is related to the official duties of such member;
- (c) If the Competent Authority certifies after investigations, that the proceedings are related to official duties, such proceeding shall be discontinued;
- (d) If the Competent Authority certifies after investigations, that the proceeding is not related to official duties, the proceeding may continue. In that regard, the courts and authorities of the Host Country shall grant the member of EACRF - DRC concerned sufficient opportunity to safeguard his or her rights in accordance with the due process of the law. If the Competent Authority certifies that a member of EACRF - DRC is unable, because of his or her official duties or authorized absence, to protect his or her interests in the proceeding, the court shall, at the defendant's request, suspend the proceeding until the elimination of the disability, but for no more than a period of thirty days according to the discretion of the judge;
- (e) Property of a member of EACRF - DRC that is certified by the Competent Authority to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgment, lien, decision or order. The personal liberty of a member of EACRF - DRC shall not be restricted in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath or for any other reason.

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ARTICLE 19

DECEASED MEMBERS

- 18.1 The Competent Authority in consultation with the respective TCC shall have the right to take charge of and dispose of the body of a member of EACRF - DRC who dies in the Host Country, as well as that member's personal effects located within the Host Country.
- 18.2 The Competent Authority shall open an investigation or inquiry to determine the circumstances leading to the death of the member of EACRF- DRC including the name, service or personnel number, nationality, place of death, date and time of death and cause of death.

ARTICLE 20

HANDLING OF SERIOUSLY INJURED EACRF - DRC

All seriously injured EACRF-DRC may be transferred to their countries of origin, as deemed necessary by the Competent Authority after medical advice.

ARTICLE 21

CLAIMS AND LIABILITIES

- 21.1 The Parties undertake to waive any claim they may have against each other, or any of their respective personnel, servants or agents, for injury (including injury resulting in death) suffered by their respective personnel, servants or agents or for damage to or loss of property owned by the Host Country or the EACRF - DRC, if such injury, death, damage or loss is caused by the acts or omissions of the Host Country or the EACRF - DRC whilst in the performance of official duties in connection with this Agreement.
- 21.2 The Host Country will deal with and settle in accordance with its law, all third-party claims arising out of activities involving the EACRF- DRC except those of a contractual nature. Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to EACRF-DRC, except for those arising from operational necessity, and which cannot be settled through the internal mechanisms of the EAC, shall be settled in the manner provided for in Article 22 of this Agreement, provided that the claim is submitted within six (6) months following the occurrence of the loss, damage or injury or, if the claimant did not know or could not reasonably have known of such loss or injury, within six (6) months from the time he or she had discovered the loss or injury, but in any event not later than one (1) year after the termination of the mandate of the operation.
- 21.3 Where any claim under paragraph 21.2 arises due to an act or omission of the EACRF - DRC which results into injury, death, loss or damage done in performance of official duties related to this Agreement, the Host Country will subsequently charge 50 percent of the cost of the settlement on the EACRF - DRC in accordance with Article 16 (5) of the Protocol on Cooperation in Defence Affairs. For purposes of this clause, "cost" shall include all sums of money incurred by the Host Country in settling the claim.
- 21.4 With regard to claims arising out of tortious acts or omissions occasioned outside the course of official duties in connection with this Agreement, the Host Country will consider the claim in a fair and just manner taking into account all the circumstances of the case, the laws and practice prevailing in its territory and will submit a report to the EACRF - DRC for consideration and payment of compensation. If the offer of

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such compensation in full satisfaction of the claims is made and accepted by the EACRF – DRC, the Secretary General will authorize the payment.

21.5 Nothing in this clause will affect the jurisdiction of the Courts of any of the Partner States to entertain claims against Governments, their service personnel, servants or agents for both contractual and tortious claims unless there has been payment in full satisfaction of the claim as provided by the EAC Guidelines on Settlement of Claims and Liabilities.

ARTICLE 22

SETTLEMENT OF DISPUTES

22.1 Except as provided in paragraph 18.2 any dispute regarding the interpretation or application of this Agreement will be resolved through consultation between the Parties.

22.2 If the Parties do not reach agreement as provided for in paragraph 22.1, either party may refer such dispute to the East African Court of Justice (EACJ) in accordance with Articles 28, 29 and 30 of the Treaty.

22.3 The decision of the East African Court of Justice on any dispute referred to it shall be final.

22.4 Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative mechanisms to be established by the Competent Authority in consultation with the Host Country;

ARTICLE 23

SUPPLEMENTAL ARRANGEMENTS

The Parties may conclude supplemental arrangements to implement this Agreement.

ARTICLE 24

LIAISON, COORDINATION AND REPORTING

24.1 The Parties hereby designate the Force Commander as the competent liaison with the Host Country and EAC for purposes of day - to - day operations of the EACRF - DRC.

24.2 The Force Commander shall coordinate all operations relating to the execution of the mandate of the EACRF- DRC with the relevant authorities of the Host Country.

24.3 The Force Commander shall report to the Facilitator of the Nairobi process as designated by the 22nd Summit of the EAC Heads of State on a regular basis on matters touching the execution of the mandate of the EACRF – DRC.

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ARTICLE 25

AMENDMENTS

25.1 The Parties may at any time mutually agree to review and amend in writing any of the provisions of this Agreement upon the request of any one of them.

25.2 Any Amendment of this Agreement under the provisions of Paragraph 25.1 will take effect upon signature of an addendum to this Agreement incorporating such amendment.

ARTICLE 26

ENTRY INTO FORCE, DURATION & TERMINATION

26.1 The duration of the operation of the EACRF-DRC is for a period of 6 (six) months, renewable upon evaluation.

26.2 Following three renewals of the mandate of the EACRF- DRC, the host country will organize, together with the Community, a strategic-political assessment with the aim of a determining whether to terminate or extend the mandate of the EACRF- DRC.

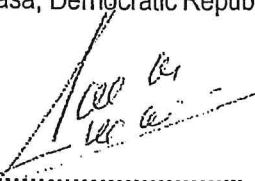
26.3 This Agreement shall enter into force immediately upon signature by or for the East African Community and the Host Country.

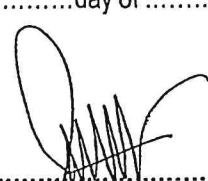
26.4 This Agreement shall remain in force until the completion, expiration or withdrawal of the EACRF - DRC and repatriation of its equipment.

26.5 Notwithstanding the cessation of the operations of EACRF - DRC, any obligations arising from the application and implementation of this Agreement shall remain valid.

IN WITNESS WHEREOF, the undersigned, being the duly recognized Representative of the East African Community and the authorized Representative of the Government of the Democratic Republic of the Congo, have, on behalf of the Parties, signed this Agreement:

Signed at Kinshasa, Democratic Republic of the Congo on the 08 day of 09 2022
by:


H.E. Christophe Lutundula Apala Pen' Apala
Vice Prime Minister and Minister of Foreign Affairs


HON. DR. Peter Mutuku Mathuki
Secretary General

MINISTRY OF FOREIGN AFFAIRS
DEMOCRATIC REPUBLIC OF THE CONGO

EAST AFRICAN COMMUNITY

**MEMORANDUM TO THE
NATIONAL SECURITY
COUNCIL**



 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 03 NOV 2022	
DAY: Thursday	
TABLED BY:	LOM
CLERK-AT THE TABLE:	GERTRUDE CHEBET

REPUBLIC OF KENYA

MINISTRY OF DEFENCE

MEMORANDUM TO THE NATIONAL SECURITY COUNCIL

ON

THE ESTABLISHMENT OF THE EAST AFRICA COMMUNITY REGIONAL
 FORCE - DEMOCRATIC REPUBLIC OF CONGO (EACRF-DRC) AND
 DEPLOYMENT OF KENYA DEFENCE FORCES TO THE REGIONAL FORCE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 03 NOV 2022	
DAY: Thursday	
TABLED BY:	LOM
CLERK-AT THE TABLE:	Gertrude Chebet

SECRET

MEMORANDUM TO THE NATIONAL SECURITY COUNCIL ON THE ESTABLISHMENT OF THE EAST AFRICA COMMUNITY REGIONAL FORCE-DEMOCRATIC REPUBLIC OF CONGO (EACRF-DRC) AND DEPLOYMENT OF KENYA DEFENCE FORCES TO THE REGIONAL FORCE

1.0 PURPOSE

The purpose of this Memorandum is to apprise the National Security Council (NSC) on the establishment of the East Africa Community Regional Force-Democratic Republic of Congo (EACRF-DRC) and to seek approval for the deployment of Kenya Defence Forces personnel to the Regional Force (RF).

2.0 BACKGROUND

2.1 Following a Communique of the East African Regional Heads of State Conclave on the DRC held on 21st April 2022 in Nairobi, the establishment of the EACRF-DRC was approved. The Force is to deploy to Ituri, North Kivu and South Kivu provinces of Eastern DRC to contain and, where necessary, combat the negative forces and promote peace, stability and development in the greater East African region.

2.2 The mandate of the Regional Force (RF) is to jointly plan and conduct Ops with the Armed Forces of the Democratic Republic of Congo (FARDC) in the Joint Area of Ops (JOA), to defeat the Local and Foreign Armed Groups in the Eastern DRC and to Support FARDC in concretizing and maintenance of Law and order.

2.3 The mandate will enable the RF to support DRC in collaboration with humanitarian agencies, to continue humanitarian relief to population affected by Armed Groups activities, including IDPs and Support the Programme for Disarmament, Demobilization, Community Re-integration and Stabilization Programme (P-DDRCS) process.

3.0 ANALYSIS OF THE PROBLEM

3.1 Whereas the Armed Forces of DRC (FARDC) has unilaterally, jointly and with bilateral partners such as the United Nations Mission in DRC (MONUSCO) conducted multiple operations against armed groups, the security situation in eastern DRC continues to deteriorate due to recurrence of attacks orchestrated by both foreign and local armed groups.

3.2 The prevailing situation threatens regional peace, security and stability of the Great Lakes region, the Horn of Africa and the larger Eastern African region. The unrelenting instability in Eastern DRC is likely to aggravate the conflict markers of the Horn of Africa conflict ecosystem including but not limited to



emboldening terror groups such as *Al Shabaab* and undermining the counter terrorism agenda as well as prevention of violent extremism.

3.3 Kenya's history as a guarantor of numerous peace processes within Eastern and Central African sub-regions and as a non-permanent member of the United Nations Security Council is expected to provide leadership and tangibly contribute to maintenance of regional and international peace and security. In this respect, Kenya's participation and deployment of Kenya Defence Forces to the Regional Force is strategically aligned to Kenya's foreign and national security objectives. It will also enhance our ability to prevent and respond to threats emanating from the Great Lakes conflict ecosystem and mitigate threats to Kenya's stability while enhancing the security of Kenyans.

4.0 LEGAL BASIS

4.1 Article 240(8) (a) of the Constitution of Kenya as read with Section 18(c)(i) of the Kenya Defence Forces Act (KDFA) provides that the National Security Council is to provide supervisory control over the Defence Forces and may with the approval of Parliament deploy national forces outside Kenya for regional or international peace support operations.

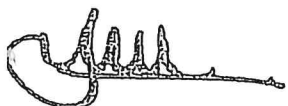
4.2 Further, Section 37 of the KDFA requires that any treaty or agreement between the Government of Kenya and any other state, international institution or organization regarding the use or provision of military forces shall provide for legal status for members of the Defence forces placed at the disposal of the military authorities of such state, institution or organization.

4.3 In this regard, a Status of Force Agreement (SOFA) has been developed and approved by the Heads of States to be engrossed by the EAC Secretariat on behalf of the EAC partner states. The SOFA provides for the legal status of Kenya Defence Forces personnel while deployed as part of the Regional Forces in the Democratic Republic of Congo.

4.4 It is recommended that the NSC approves the SOFA and authorize the Cabinet Secretary for Defence to forward the same to the Cabinet Secretary for Foreign Affairs for onward transmission to the EAC Secretariat to execute on behalf of the Republic of Kenya.

5.0 FINANCIAL IMPLICATIONS

The implementation of the deployment will occasion additional budgetary expenditure with a provisional budget of Kshs. 3,849,442,476.24 as reflected in Annex B which will be defrayed from the budget given by Treasury.




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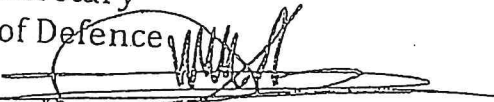
6.0 RECOMMENDATIONS TO THE NATIONAL SECURITY COUNCIL

The NSC is requested to:

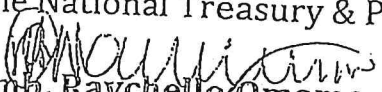
- (i) Note the contents of this Memorandum.
- (ii) Approve the deployment of KDF personnel to the DRC.
- (iii) Approve the engrossment of the SOFA and submission to the National Assembly.
- (iv) Approve the budget to support the deployment.
- (v) Direct the Cabinet Secretaries for Defence, Foreign Affairs, East African Affairs, National Treasury and Planning and the Attorney General to take appropriate action on the implementation of the Agreement.


Hon Eugene L Wamalwa, EGH
Cabinet Secretary
Ministry of Defence


Dated 06th July 2022


Amb. Ukur Yatani, EGH,
Cabinet Secretary
The National Treasury & Planning


Dated 7th July 2022


Amb. Raychelle Omamo, SC, EGH
Cabinet Secretary
Ministry of Foreign Affairs

Dated 12th July 2022


Mr. Betty C. Maina, EGH
Ag. Cabinet Secretary
Ministry of East African
Affairs

Dated 6/7/ 2022


Justice (Rtd) P. Kihara Kariuki, EGH,
Attorney General
Office of the Attorney General

Dated 06th July 2022

SECRET

Annexes

A - Status of Forces Agreement

B - Provisional Budget for deployment of Kenya's Contingent for East Africa
Community Force to DRC (EACRF-DRC)

1 

**BUDGET SUMMARY - KENYAN CONTINGENT FOR EAST AFRICA COMMUNITY REGIONAL FORCE TO
DRC (EACRF-DRC)**

S/NO	ITEM DESCRIPTION	AMOUNT (KSHS)	REMARKS
1	RATION		
2	ARMS	195,250,660.29	ANNEX A
3	AMMUNITION	24,690,600.00	ANNEX B
4	POL & LPG GAS	1,027,021,070.00	ANNEX C
5	MAJOR EQUIPMENT	40,219,312.00	ANNEX D
7	TECHNICAL STORES	286,581,539.00	ANNEX E
8	SUSTENANCE ALLOWANCE	543,131,780.00	ANNEX G
9	KITTING	1,044,211,290.00	ANNEX H
10	DOMESTIC, HOUSEHOLD, CLEANING, CATERING & TENTAGE	80,031,480.00	ANNEX I
11	MEDICAL EXPENSES	124,087,450.00	ANNEX J
12	STATIONERY	131,363,137.20	ANNEX K
13	COMMUNICATION	24,693,500.00	ANNEX L
14	MINOR ENGINEERING	50,160,126.00	ANNEX M
15	DEPLOYMENT OF MD530F MAINTENANCE EXPENSES	3,936,200.00	ANNEX N
16	KAF C208 MAINTENANCE & DEPLOYMENT BUDGET	268,847,250.00	ANNEX O
17	UTILITY HELICOPTER OPERATING COST	127,604,932.00	ANNEX P
GRAND TOTAL (KSHS)		4,451,308,775.87	

