

East African Community, African Regional Bodies

East African Community Protocol on Co-operation in Defence Affairs

Legislation as at 28 April 2012

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East African Community

East African Community Protocol on Co-operation in Defence Affairs

Not commenced

[This is the version of this document at 28 April 2012.]

PREAMBLE

We, the Heads of State of the Partner States of the East African Community;

TAKING COGNISANCE of the Treaty for the Establishment of the East African Community;

DESIRING to establish a framework for Co-operation in Defence in accordance with Article 125 of the Treaty;

COMMITTED to the establishment of a framework for close co-operation in Defence affairs for the promotion of peace, security and stability within and good neighborliness among the East African Community Partner States (hereinafter referred to as "the Partner States") in accordance with the objectives of the Community;

RE-AFFIRMING our faith in the purposes and principles of the Charter of the United Nations, the Constitutive Act of the African Union, and our desire to live in peace with all peoples and governments;

RECOGNIZING the principles of strict respect of sovereignty, equality, territorial integrity, political independence, good neighborliness, interdependence, non-aggression and non-interference in each Partner State's internal affairs;

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

CONSCIOUS of the fact that close co-operation, mutual understanding, and collaboration in matters of Defence will be to the mutual benefit of our countries;

DESIROUS of establishing and consolidating further ties of friendship and fraternity between our countries and our Armed Forces;

INSPIRED by the need to establish an effective mechanism of cooperation in Defence affairs;

HEREBY AGREE AS FOLLOWS:

Article 1 – Interpretation

In this Protocol, except where the context otherwise requires:

"**Armed Forces**" means all forces, which fall under the jurisdiction of the Defence Chiefs of the Partner States.

"**Community**" means the East African Community established under Article 2 of the Treaty.

"**Council**" means the Council of Ministers of the Community provided for under Article 9 of the Treaty.

"**Consultative Committee**" means Consultative Committee on Cooperation in Defence Affairs established under Article 10 of this Protocol.

"**Defence Experts Working Group**" means Defence Experts Working Group established under Article 10 of this Protocol.

"**defence affairs**" means, all activities which may be performed pursuant to this Protocol.

"**disaster management**" means decisions and operational activities to prevent, minimize, mitigate, or recover from the impact of natural or manmade hazards.

"**joint exercises**" means exercises, activities, and rehearsals, conducted jointly by the Armed Forces of the Partner States.

"**joint operations**" means operations involving the combination of any of the Armed Forces of the Partner States.

"**military training**" means any training involving the Armed Forces of the Partner States.

"**Partner States**" means the Republic of Burundi, the Republic of Kenya, the United Republic of Tanzania, the Republic of Rwanda, the Republic of Uganda, and any other country granted membership to the Community;

"**Peace Support Operations**" means Peace keeping and Peace enforcement operations;

"**Protocol**" means this Protocol on Co-operation in Defence Affairs and any Annexes hereto;

"**search and rescue**" means any operation undertaken to search for and rescue personnel in distress on land or at sea;

"**Secretary General**" means the Secretary General of the Community provided for under Article 67 of the Treaty;

"**Sectoral Committee**" means Sectoral Committee on Cooperation in Defence Affairs established under Article 10 of the Protocol.

"**terrorism**" means—

- (a) any act which is a violation of the criminal laws of a Partner State, and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any member or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment of any of these, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency or create general insurrection in a Partner State;
- (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in sub paragraphs (a), (i) and (ii);

"**Treaty**" means the Treaty for the Establishment of the East African Community.

Article 2 – Scope of co-operation

1. The Partner States shall cooperate in all defence affairs and collaborate with international and regional organizations 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,
 - (d) visits and exchange of information.

Article 3 – Objectives

The objectives of this Protocol are to:

- (a) develop, promote, and pursue policies and programmes aimed at widening and deepening cooperation among the Partner States in defence affairs for their mutual benefits.
- (b) promote peace, security, and stability within, and good neighborliness among Partner States in order to guarantee the protection and preservation of life and property, the wellbeing of the people in the Community and their environment as well as the creation of conditions conducive to sustainable development.
- (c) anticipate and prevent conflicts. In circumstances where conflicts have occurred to undertake Peace Support Operations and Peace Building functions for the resolution of such conflicts.
- (d) promote and implement peace-building and post-conflict reconstruction activities to consolidate peace and prevent the resurgence of violence.
- (e) coordinate and harmonize regional efforts in the prevention and combating of international terrorism in all its aspects.
- (f) undertake such other activities ancillary to cooperation in defence affairs that are calculated to further the objectives of the Community, as the Partner States may from time to time determine.

Article 4 – Fundamental principles

The fundamental principles that shall govern the Partner States in the achievement of the objectives under this Protocol shall include:

- (a) mutual trust, political will, and sovereign equality;
- (b) peaceful co-existence and good neighborliness;
- (c) peaceful settlement of disputes;
- (d) good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;
- (e) equitable distribution of benefits; and
- (f) cooperation for mutual benefit.

Article 5 – Operational principles

1. The operational principles that shall govern the practical achievement of the objectives of this Protocol shall include:
 - (a) the provision by the Partner States of an adequate and appropriate enabling environment, such as conducive policies and basic infrastructure;
 - (b) principles of subsidiarity with emphasis on multilevel participation and the involvement of wide range of stakeholders in the process of integration;
 - (c) the principle of variable geometry which allows for the progression in cooperation among groups within the Community for wider integration schemes in various fields and at different speeds.
 - (d) the equitable distribution of benefits accruing or to be derived from the operations of the EAC and measures to address imbalances that may arise from such operations;

- (e) the principle of complementarity; and
 - (f) the principle of asymmetry.
2. The Partner States undertake to abide by the principles of good governance, including the adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

Article 6 – Military training

The Partner States agree to cooperate in military training. For this purpose, the Armed Forces of the Partner States shall:

- (a) offer vacancies at each other's military training institutions and facilities for training of personnel and for any other military duties related to training as may be jointly decided upon;
- (b) endeavor to have joint conferences and training seminars;
- (c) exchange students and directing staff at their training colleges;
- (d) undertake training in joint Peace Support Operations as may be jointly agreed and shall endeavor to harmonize their syllabi and guidelines in regard to peace support operations; and
- (e) as and when agreed, conduct joint training exercises in disaster management, anti or counter terrorism and search and rescue operations.

Article 7 – Joint operations

The 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.
- (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.
- (c) aid to civil authority in disarmament, maritime patrol and surveillance establishing an early warning mechanism and in combating terrorism and cattle rustling.

Article 8 – Technical co-operation

The Partner States agree to undertake joint technical cooperation. For this purpose, the Armed Forces of the Partner States shall cooperate in:

- (a) the supply and acquisition of spares, use, repair and maintenance of military equipment;
- (b) military research and development and to this extent offer each other research facilities;
- (c) establishing and maintaining reliable and secure communication facilities, between the Chiefs of Defence of their Armed Forces and shall encourage general communication at different levels in order to foster co-operation in defence;
- (d) support of the joint utilisation of each other's defence industries and facilities.

Article 9 – Visits and exchange of information

1. The Partner States agree to cooperate in visits and exchange of information.

2. For the purpose of paragraph 1, the Armed Forces of the Partner States shall cooperate in visits, information and cultural exchanges, rifle ranges and sports competitions in order to enhance cooperation and spirit of comradeship amongst the Armed Forces of the Partner States.

Article 10 – Institutional coordination mechanism

The institutional coordination organs of the EAC Partner States' Armed Forces are hereby established as follows:

1. The Sectoral Council on Cooperation in Defence Affairs;
2. The Consultative Committee on Cooperation in Defence Affairs;
3. The Sectoral Committee on Cooperation in Defence Affairs;
4. Defence Experts Working Groups.

Article 11 – Composition and functions of the Sectoral Council

1. The Sectoral Council shall consist of the Ministers of the Partner States responsible for Defence affairs.
2. The functions of the Sectoral Council shall be to:
 - (a) make decisions and develop policies as directed by Summit of the Heads of State; and
 - (b) implement decisions of the Summit of Heads of State.
 - (c) review and consider reports from the Consultative Committee and coordinate their activities.

Article 12 – Composition and functions of the Consultative Committee

1. The Consultative Committee shall be composed of the Permanent Secretaries of the Partner States responsible for defence affairs and Chiefs of Defence Forces.
2. The functions of the Consultative Committee shall be to:
 - (a) monitor and constantly review the implementation of the decisions of the Sectoral Council; and
 - (b) review and consider reports from the Sectoral Committee and coordinate their activities.

Article 13 – Composition and functions of the Sectoral Committee

1. The Sectoral Committee shall be composed of senior officers of the Armed Forces and such other officers as each Partner State may determine.
2. The functions of the Sectoral Committee shall be to:
 - (a) prepare comprehensive implementation programme and set out priorities with respect to cooperation in defence affairs.
 - (b) submit from time to time reports and recommendations to the Consultative Committee on the implementation of the Protocol.

Article 14 – Defence Experts Working Groups

1. The Defence Experts Working Groups may from time to time be formed by the Sectoral Council on Cooperation in defence affairs to discharge such responsibilities as may be deemed necessary by the Sectoral Council.

2. The Defence Experts Working Groups in discharge of their duties shall determine their own procedures.

Article 15 – Coordination offices

1. The coordination offices are hereby established as follows:
 - (a) the Defence Liaison Office;
 - (b) East African Community Desk in each Armed Forces Headquarters;
 - (c) any other office as may be established by the Sectoral Council.
2. The Defence Liaison office at the Secretariat of the East African Community shall be:
 - (a) manned by senior officers not below the rank of Colonel seconded from the Armed Forces for a renewable term of three years who will be classified as professional officers of the Community;
 - (b) responsible in the Sectoral Committee on cooperation in defence Affairs matters of the Community except in respect to defence matters of an operational nature.
3. The functions of the Defence Liaison Office shall be to:
 - (a) provide the coordination link between the Armed Forces of the Partner States and the Secretariat;
 - (b) undertake research work on all agreed military issues; and
 - (c) perform such other duties as may be assigned by the Secretary General of the Community.
4. Each Defence Liaison Officer shall:
 - (a) be answerable to the Secretary General of the Community on administration matters and to the Armed Forces headquarters of their respective Partner States on all defence matters;
 - (b) be bound by Staff Rules and Regulations of the Secretariat in addition to being subject to the military law of their respective countries;
 - (c) ensure that classified documents in his or her custody are not handled by unauthorized staff.
5. In the event of misconduct by a Defence Liaison Officer, the Secretary General will report to the Armed Forces Headquarters of the Partner State concerned and make appropriate recommendations, including the withdrawal of the Officer.
6. There shall be a Chair of the Defence Liaison Officers who shall be appointed in accordance with the practice of the Community.
7. The Chair shall be responsible for:
 - (a) coordination between the Defence Liaison Officers and the Secretary General.
 - (b) coordination and implementation of the Defence sector programmes and decisions within the Community Secretariat.
 - (c) performance of any other duties as may be assigned by the Secretary General.
8. There shall be a Desk at the Armed Forces Headquarters of each Partner State to be called the East African Community Desk.
9. The East African Community Desk shall provide liaison between the Armed Forces Headquarters and the Secretariat.

Article 16 – Access and movement of the armed forces

1. The Partner States shall cooperate in the areas of Access and Movement of their Armed Forces

2. For purposes of paragraph 1, the Armed Forces of the Partner States shall as mutually be agreed from time to time:
 - (a) use each other's military airfield, seaports and land-based facilities for visits, training, exercises, refueling, navigation and for other acceptable military purposes;
 - (b) access each other's military facilities in accordance with such procedure as shall be agreed;
3. The Partner States shall exempt from compulsory insurance, registration licensing, testing or payment of levies, fees, charges, and tolls to visiting vessels, vehicles and aircraft which belong to the Armed Forces of any of the Partner States;
4. The Partner States shall grant entry to members of the Armed Forces of one Partner State into the territory of another Partner States on production of valid travel documents and shall be subject to such statutory provisions on tax as apply to members of the Armed Forces of the host Partner State.
5. The Partner States shall regulate the status of their Armed Forces during visits in each other's territory in accordance with the Status of Forces Agreement hereto attached as Annex "A".

Article 17 – Mutual Defence Pact

The Partner States undertake to negotiate and conclude a Mutual Defence Pact within one year upon entry into force of this Protocol.

Article 18 – Implementation

1. The Partner States undertake to ensure that necessary domestic regulatory or administrative measures are initiated in their respective territories to facilitate the implementation of the provisions of this Protocol.
2. The Partner States shall establish, maintain, and review the strategy and plan of action for the implementation of the Protocol.

Article 19 – Financial arrangements

1. The Partner States agree to share expenses arising from all joint training, operational and technical co-operation as shall be mutually agreed.
2. The costs of training of personnel at each of the Partner States training institutions shall be agreed upon separately and paid for accordingly.

Article 20 – Confidentiality of information

1. The Partner States agree not to disclose any classified information obtained under the operation of this Protocol other than to members of their own' staff to whom such disclosure is essential for purposes of giving effect to this Protocol.
2. The Partner States shall ensure that such staff shall at all times maintain strict secrecy.
3. The Partner States shall not use any classified information obtained during any multilateral co-operation among them to the detriment of any of them.

Article 21 – Dispute settlement

1. In the event of a dispute between two or more Partner States concerning the interpretation or application of this Protocol, the Partner States concerned shall seek the settlement of the dispute through negotiations and other alternate dispute resolution mechanisms.
2. If the Partner States concerned do not reach agreement as provided for in paragraph 1, the Partner States or the Secretary General may refer such dispute to the East African Court of Justice in accordance with Articles 28 and 29 of the Treaty.
3. The decision of the East African Court of Justice on any dispute referred to it shall be final.

Article 22 – Amendment

This Protocol may be amended by the Partner States in accordance with the provisions of Article 150 of the Treaty.

Article 23 – Annexes

1. Annexes to this Protocol shall form an integral part of it.
2. The Partner States agree to conclude such other annexes on other areas of cooperation in defence affairs covered under this Protocol as they may deem fit and necessary.

Article 24 – Relationship between this Protocol and other Protocols under the Treaty

1. This Protocol takes cognizance of the existence of other Protocols on other areas of co-operation that affect co-operation in defence affairs within the Community.
2. The Partner States shall consult and co-operate on other Protocols with a view to ensuring the achievement of the objectives of this Protocol and avoiding any interference with the achievement of the objectives and principles of those instruments or any inconsistency between the implementation of those instruments and this Protocol.

Article 25 – Relationship between this Protocol and other regional and international arrangements

The provisions of this Protocol shall not affect the rights and obligations of any Partner State deriving from any existing regional and international arrangement except where the exercise of those rights and obligations would be inconsistent with the realization of the objectives of this Protocol.

Article 26 – Entry into force

1. This Protocol shall enter into force upon ratification and deposit of instruments of ratification with the Secretary General by all Partner States.
2. Upon entry into force, this Protocol shall supersede the Memorandum of Understanding on Co-operation in Defence signed by the Partner States on 30 November 2001.

Article 27 – Depository and registration

1. This Protocol and all instruments of ratification shall be deposited with the Secretary General who shall transmit certified true copies of the Protocol to all Partner States.
2. The Secretary General shall register this Protocol with the African Union, United Nations and such other organization as the Council may determine.

Article 28 – Saving provision

Institutions and programmes of cooperation in Defence affairs existing prior to this Protocol shall be accommodated under the institutions framework of the Protocol.

DONE AT ARUSHA, TANZANIA this 28 th day of April 2012.

IN WITNESS WHEREOF THE undersigned have appended their signatures hereto:

Annex "A"

Status of Forces Agreement between the Partner States of East African Community

The Partner States have reached the following understanding relating to the status of the armed forces during the operation in military training visits and other related matters authorized by the Protocol.

Areas of co-operation

1. The Partner State agree to *inter alia* cooperate in the following areas:
 - a. military training
 - b. joint operations
 - c. technical co-operation
 - d. visits and exchange of information

Access and movement

2.
 - (a) Members of visiting armed forces on official visit shall be granted freedom of entry into and exist from the territory of the host Partner State upon production of an official service identification card and valid travel document.
 - (b) Competent authorities of the armed force will ensure that particulars of personnel and equipment entering or existing are provided in advance to appropriate host Partner State authorities for ease of administrative clearance.
 - (c) Members of visiting armed forces may use each other's military airfield, seaport, and land-based facilities for visits, training, exercise, refueling navigation and for other acceptable military purpose.
 - (d) Members of the visiting forces of the armed forces of Partner State will access each other's military facilities in accordance with such procedure as will be agreed,
 - (e) The Partner States shall exempt from compulsory insurance, registration licensing, testing or payment of levies, fees, charges, and tolls to visiting vessels, vehicles and aircraft which belong to the armed forces of any of the Partner States.

- (f) The host Partner State shall ensure physical security of the members of the visiting Armed forces and their equipment.

Uniforms and arms

3. Members of the armed forces on official visits or training assignments may wear their respective service uniforms and insignia. They may possess and carry arms when authorized to do so by their competent authorities after consultation with and subject to any restriction and direction on security and such related matters imposed by the host Partner State acting through its competent authorities.

Costs

4. The costs of visits for purpose of this Agreement will be borne by the sending States or as may be otherwise agreed by the Partner States.

Protection of the laws

5. While on training, visits or other recognized military duties in the host Partner States, Armed Forces personnel will be entitled to the protection of the law of that state.

Jurisdiction and enforcement of the law

6. In addition to the provisions on general protection of the law stipulated in the foregoing clause the following provisions will apply—
- (a) Armed Forces in charge of visiting member of a force may exercise in the host Partner State disciplinary jurisdiction conferred on them by the law of the sending Partner States of a member of its force.
 - (b) The courts of law of the host Partner State may exercise jurisdiction over members of visiting Armed Forces with respect to offences committed in its territory and punishable under its law.
7. In cases where the right to exercise jurisdiction is concurrent, the visiting Armed Forces will have the primary right to exercise jurisdiction if:
- (a) the offence is against the property or security of the visiting Forces State or against the property or person of another member of those forces, or
 - (b) the offence arises out of an act or omission in the course of official duty and the host Partner State confirms that there is no overriding public interest in the trial of the offence by its courts.
8. In any other case the courts of the host Partner State will have primary right to exercise jurisdiction with respect to offences committed in that state and punishable under its law. Where a trial in respect of such offence takes place, the accused will be entitled to all basic right of a fair and speedy due process of the law.
9. The host Partner State and the visiting Armed Forces will assist each other in the arrest of offenders for the purpose of handing them over under the provisions of clause 6 of this Agreement. They will in addition assist each other in the investigation and obtaining of evidence in relation to offences committed by members of a visiting force in the host Partner State.

Claims ad liabilities

10. Each Partner State undertakes to waive any claim it may have against the other Partner State, or any officer, serviceman, servicewoman, servant or agent of the other Partner State for injury (including injury resulting in death) suffered by its service personnel, servants and gents or for damage to or loss of property owned by the Partner State if such injury, death, damage or losses is caused by the acts or omissions of the other Partner State or any officer, serviceman, servicewoman, servant or agent of that Partner State whilst in the performance of official duties in connection with the Protocol.
11. (a) The Host Partner State will deal with and settle in accordance with its law, all third-party claims arising out of activities involving members of Visiting Armed Forces except those of a contractual nature.
(b) Where any such claim arises due to an act or omission of the Visiting Armed Forces or any of its personnel which results in injury, death, loss or damage done in performance of official duties related to this Agreement, the Host Partner State will subsequently charge 50% of the cost of the settlement to the Visiting Armed Forces. For the purposes of this clause "cost shall include all sums of money incurred by the Host State in settling the claim.
12. 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 Partner State 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 Visiting Armed Forces Partner States for consideration and payment of compensation. If the offer of such compensation in full satisfaction of the claim is made and accepted, the Partner State of the visiting Armed Forces will, through the host Partner State, make the payment.

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 tortuous claims unless there has been payment in full satisfaction of the claim.

Taxation

13. Members of the visiting Armed Forces will be exempted from income tax and any other form of direction levied under the laws of the host Partner State on their pay, allowances and other emoluments and benefits paid to them as such members. Remittances of such official and personal funds between a host and any Visiting Armed Forces of a Partner State will be freely permitted.

Imports and export

14. Each Partner State will allow Armed Forces personnel on visits exceeding three months to import into the host Partner States free of duty their personal equipment and material as well as household effects and any furniture and one private motor vehicle for their personal 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 Partner State by sale or otherwise will be subjected to the payment of duty in accordance with the law applicable.

Driving licenses

15. The Partner State will accept as valid current driving license international driving license or service driving permits issued by each respective Partner State to members of its Armed Forces.

Health facilities

16. The visiting armed forces' Partner State will be responsible for the cost of medical, optical, dental and hospital treatment for members of its Visiting Armed Forces and for arranging evacuation in the event that suitable medical treatment is not available. The host Partner State will, however, provide treatment for minor complaints at military medical reception centers free of charge.

Dispute settlement

17. (a) Any dispute regarding the interpretation or application of this Agreement will be resolved through consultation among the Partner States.
- (b) If the Partner States concerned do not reach agreement as provided for in paragraph I, either Partner State or the Secretary General may refer such dispute to the East African Court of Justice in accordance with articles 28 and 29 of the Treaty.
- (c) The decision of East African Court of Justice or any dispute referred to it shall be final.

Amendment

18. The Partner States may at any time review and amend any of the provision of this Agreement upon the request of any of them.
19. Any amendment of this agreement under the provisions of the preceding subparagraph will take effect upon the signature of an addendum to this Agreement incorporating such amendment.