

No. 14183

**CANADA
and
KENYA**

**Agreement for the training in Canada of personnel of the
armed forces of the Republic of Kenya. Signed at
Nairobi on 29 April 1971**

Authentic texts: English and French.

Registered by Canada on 18 August 1975.

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**Accord concernant la formation au Canada de personnel
des forces armées de la République du Kenya. Signé à
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Enregistré par le Canada le 18 août 1975.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF CANADA AND
THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR THE
TRAINING IN CANADA OF PERSONNEL OF THE ARMED
FORCES OF THE REPUBLIC OF KENYA

The Government of Canada and the Government of the Republic of Kenya hereinafter referred to as Canada and Kenya respectively,

Considering that Kenya has requested Canada to provide training in Canada for personnel of the armed forces of Kenya,

Have agreed as follows:

Article 1. DEFINITIONS

In this Agreement

(a) "trainee" means a member of the armed forces of Kenya who has been authorized by his government to undergo training in Canada with the Canadian Forces and who has been accepted by Canada for training;

(b) "training" means the military training prescribed by the Chief of the Defence Staff of the Canadian Forces.

Article 2. TRAINING AND COSTS

Subject to the terms and conditions of this Agreement, Canada shall provide training in Canada for trainees in such numbers as may from time to time be agreed upon by the appropriate authorities of Kenya and Canada.

Article 3.

Unless other arrangements are made for particular courses of training, costs shall be borne as follows:

(a) Canada shall bear the cost of:

- (i) the allowances mentioned in sub paragraphs (b)(ii) and (iii) of paragraph 4,
- (ii) tuition, clothing and equipment required for training, and all other training costs,
- (iii) rations and quarters,
- (iv) duty travel in connection with the training, and
- (v) administration, including routine medical and dental care.

(b) Kenya shall bear the cost of:

- (i) the pay and allowances mentioned in subparagraph (a) of paragraph 4,
- (ii) the Maintenance Allowance provided for in subparagraph (b)(i) of paragraph 4,
- (iii) return commercial transportation between Kenya and Canada, including all in transit costs,
- (iv) major medical care relating to serious injury and illness and major dental care, and
- (v) *ex gratia* payments made under paragraph 13.

¹ Came into force on 29 April 1971 by signature, with retroactive effect from 20 August 1968, in accordance with article 21.

Article 4. PAY AND ALLOWANCES

Trainees during their period of training in Canada shall be paid as follows:

- (a) Kenya shall issue to the credit of each trainee in Kenya such pay and allowances, according to his rank, as he may be entitled to receive under Kenya regulations. The Kenya authorities will assume responsibility for arrangements such as assignments or deductions from such pay and allowances, which may be required to meet such obligations as the support of a trainee's dependents in Kenya. A trainee may make private arrangements to draw upon any balance of such pay and allowances remaining to his credit to meet his personal expenses while in Canada, if and to the extent that such arrangements are permitted by the Kenya authorities. Pay and allowances issued by Kenya shall be exempt from Canadian taxation.
- (b) Allowances shall be issued by Canada to each trainee, to meet his living and other expenses during his period of training, as follows:
 - (i) a *Maintenance Allowance* at a rate appropriate to the trainee's rank,
 - (ii) a *Ration Allowance*, in an amount to be determined by the Minister of National Defence, at any time that rations are not provided to the trainee free of charge,
 - (iii) a *Leave Transportation Allowance* when appropriate, having regard to the duration of the training, and at the rates applicable to members of the Canadian Forces.
- (c) The rate of the Maintenance Allowance mentioned above will be determined in consultation with the Kenya authorities. Allowances issued by Canada shall be exempt from Kenya taxation.

Article 5. MILITARY JURISDICTION

Trainees shall not, during the period of their training in Canada, be subject to the Code of Service Discipline of the Canadian Forces. The authorities of Kenya will, however, issue in advance to trainees appropriate written orders, a copy of which will be conveyed to the authorities of Canada, to ensure compliance by the trainees with orders and instructions issued to them by the authorities of the Canadian Forces during the period of their training in Canada.

Article 6. PROHIBITED ACTIVITIES

A trainee shall not during the period of training in Canada:

- (a) be required to participate in any form of combat operations either in or out of Canada or in aid of the civil power; or
- (b) be required to perform any function, duty or act that is inconsistent with the purpose of this Agreement.

Article 7. CANADIAN LAW

Trainees will be amenable to the civil and criminal laws in force in Canada and to the jurisdiction of civil and criminal courts in Canada.

Article 8. SECURITY

Canada shall take measures to ensure the security and protection within Canada of the person and property of trainees.

Article 9.

Kenya shall take security measures to prevent the disclosure by a trainee, after the cessation of his training, to any other government or to any unauthorized person of classified Canadian information of which he may become cognizant in his capacity as a trainee.

Article 10. CLAIMS

Canada waives all claims against Kenya for damages done to any property owned by Canada where such damage is caused by a trainee acting in the course of his official duties.

Article 11.

Canada and Kenya waive all claims against each other for injury or death suffered by a trainee or a member of the Canadian Forces while either is engaged in the performance of his official duties. Where a claim is made against Canada by any person for the injury or death suffered by a trainee in the performance of his duties, Kenya shall indemnify Canada in respect of costs incurred and damages paid by Canada in dealing with such a claim.

Article 12.

A claim against Kenya, or a trainee arising out of an act or omission of a trainee in the performance of his official duties, shall be assimilated to and be dealt with by Canada as if it were a claim arising out of the activities of a member of the Canadian Forces in the performance of his official duties in Canada. This paragraph shall not apply to any claim arising in connection with the death of or injury to a trainee.

Article 13. «Ex gratia» PAYMENTS

Claims against trainees arising out of acts or omissions in Canada not done in the performance of official duty may be dealt with in the following manner:

- (a) Canadian authorities may investigate the incident giving rise to the claim and prepare a report on the case including an estimate of the amount of money which the Canadian authorities consider would represent reasonable compensation for the death, injury or property damage or loss suffered by the claimant.
- (b) The report may be delivered to Kenya authorities who, upon receipt, shall decide without delay whether to offer an *ex gratia* payment, and, if so, of what amount.
- (c) Any offer of an *ex gratia* payment or payment itself by the Kenya authorities may be sent to the claimant directly or through the Deputy Minister of the Department of National Defence.
- (d) Nothing in this paragraph affects the jurisdiction of courts in Canada to entertain an action against a trainee unless and until there has been payment in full satisfaction of the claim.
- (e) Where the claim has been adjudicated by a court in Canada or Kenya and a judgment rendered in favour of the claimant, the Kenya authorities will consider whether to make an *ex gratia* payment to satisfy the judgment, or to take such other steps as they may within the bounds of Kenya domestic legislation to seek compliance with the judgment.

Article 14. IMMIGRATION

On the conditions specified in the second paragraph of this article and subject to compliance with the formalities established by Canada relating to entry into, and departure from, Canada, of military trainees from foreign countries, trainees shall be exempt from passport and visa regulations on entering or leaving Canada.

The following documents only will be required in respect of trainees and they must be presented on demand:

- (a) personal identity card issued by Kenya,
- (b) individual or collective movement order, in the English or French language, issued by the appropriate authorities of Kenya, and
- (c) international certification in the English or French language of vaccination against smallpox within three years of entry into Canada.

Article 15.

A trainee shall not by virtue of his presence in Canada as a trainee:

- (a) acquire any right to remain in Canada after his training has been completed or otherwise terminated;
- (b) acquire domicile in Canada.

Article 16. DECEASED TRAINEES AND THEIR ESTATES

Official representatives of Kenya shall have the right to take possession and make all arrangements in respect of the body of a trainee who dies in Canada and may dispose of the personal property of the estate after payment of debts of the deceased or the estate which were incurred in Canada and owed to persons ordinarily resident therein.

Article 17. TERMINATION OF TRAINING

Canada or Kenya may terminate the training of a trainee at any time and shall give to the other reasonable notification of an intention so to do.

Article 18.

A trainee whose training is terminated for any reason whatsoever shall be repatriated with the least possible delay by Kenya.

Article 19. ADMINISTRATIVE ARRANGEMENTS

The appropriate military authorities of Kenya and Canada may establish mutually satisfactory procedures not inconsistent with the provisions contained herein, to carry out the intent of this Agreement and to give effect to its provisions.

Article 20. REVISION

Either Canada or Kenya may at any time request revision of any of the provisions of this Agreement.

Article 21. COMMENCEMENT AND TERMINATION

This Agreement shall enter into force upon signature and shall have effect retroactively from August 20, 1968. It shall remain in force until terminated by one of the following methods:

- (a) by either Government after six months' written notice to that effect has been given to the other Government;

- (b) without complying with subparagraph (a) of this paragraph, by the withdrawal from Canada of all trainees by Kenya where such withdrawal is in the public interest of Kenya; or
- (c) without complying with subparagraph (a) of this paragraph, by Canada without previous notification if Canada decides that such termination is in the public interest of Canada.

DONE in duplicate, in the English and French language, each language version being equally authentic, at Nairobi this 29th day of April, 1971.

For the Government of Canada:
J. MURRAY COOK

For the Government of Kenya:
J. S. GICHURU
