



HOUSE OF LORDS

International Agreements Committee

15th Report of Session 2021–22

**Scrutiny of
international
agreements:
UK-Kenya Defence
Cooperation
Agreement**

Ordered to be printed 17 January 2022 and published 17 January 2022

Published by the Authority of the House of Lords

International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

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Declaration of interests

See Appendix.

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Committee staff

The current staff of the Committee are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst) and Robert Cocks (Committee Operations Officer).

Contact details

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SUMMARY

This report addresses the following Agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG), which we report for information:

- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya on Defence Cooperation (CP 567, 2021)

Scrutiny of international agreements: UK-Kenya Defence Cooperation Agreement

AGREEMENT REPORTED FOR INFORMATION

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya concerning Defence Cooperation (CP 567, 2021)¹

1. The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya concerning Defence Cooperation (the UK-Kenya Defence Cooperation Agreement) was laid on 25 November 2021, and the scrutiny period is scheduled to end on 17 January 2022. It was considered by the Committee on 13 January 2022.
2. The Agreement covers various aspects of defence and security cooperation between the UK and Kenya—from entry requirements for members of visiting forces and the areas in which both Parties will be co-operating, to the control of defence items, investigations, and matters of jurisdiction, taxation, health and environmental protection. The Agreement explicitly prohibits visiting forces from taking part in hostilities or other operations of the host nation’s armed or security forces.
3. The Explanatory Memorandum (EM) published alongside the Agreement explains that it “enables the UK to have access ... to one of the best infantry training environments in the world ... The benefit to Kenya is also significant, including institutional development; collective and individual training, capacity building; operational assistance; and community projects”.²
4. Although the EM does not set out the economic and development benefits in detail, the press release issued on signature of the Agreement provides further information:

“[The British Army Training Unit Kenya] has contributed over KES 5.8 billion to the economies of Laikipia, Samburu and Isiolo. More than 550 local staff have maintained their jobs even during the harshest economic times brought in by the COVID-19 pandemic. Meanwhile, our community engagement projects have not only improved education, health an environmental protection, but have pivoted support towards COVID containment. At the onset of the pandemic, BATUK provided

1 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya concerning Defence Cooperation, 27 July 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034481/CS_Kenya_1.2021_Defence_Cooperation_Agreement.pdf [accessed 13 January 2022]

2 Ministry of Defence, Explanatory Memorandum on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya Concerning Defence Cooperation, 25 November 2021, para 3.2: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034482/EM_CS_Kenya.1.2021_Defence_Cooperation_Agreement.odt [accessed 13 January 2022]

443,000 litres of water across the three counties and also helped in food distribution.”³

5. The Agreement replaces the previous Defence Cooperation Agreement signed in 2015 and which expired on 6 October 2021. Although there is a gap between the expiry of the previous Agreement and the new one coming into force, under the previous Agreement “provisions relating to jurisdiction, civil claims and liabilities, the protection of information and the financial arrangements between the Parties ... continue to apply for as long as necessary”.⁴

Key differences between the expired and new UK-Kenya Defence Cooperation Agreements

6. The new UK-Kenya Defence Agreement mostly replicates the previous one, albeit with some exceptions. It diverges from the Agreement signed in 2015 in the following key areas:
- It explicitly adds counter-terrorism, information operations training and a defence civilian component to the areas for co-operation. Research and development are now explicitly covered within “medical research services”.⁵ It also provides for multilateral training exercises.⁶
 - It provides for cooperation on the Counter-Improvised Explosives Devices Capability training module at the Humanitarian Peace Support School in Nairobi, with the UK agreeing to support the implementation of programmes and the maintenance of instruction equipment.⁷
 - It introduces additional controls on defence items, such as arms and ammunitions,⁸ and strengthens the monitoring of environmental protections, with the host nation now entitled to verify that measures have been put in place by visiting forces to protect the environment.⁹
 - It removes the ability for members of the UK Armed Forces to import household goods and one motor vehicle into Kenya on a duty-free basis.¹⁰
 - Article 23 on community relations is expanded so that injury, loss or damage resulting from sexual exploitation is now subject to compensation payments to the local community.

3 Ministry of Defence, ‘Kenya and UK sign Defence Cooperation Agreement to tackle shared threats across East Africa’, 28 July 2021: <https://www.gov.uk/government/news/kenya-and-uk-sign-defence-cooperation-agreement-to-tackle-shared-threats-across-east-africa> [accessed 13 January 2022]

4 Article 26(5), Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defence Cooperation, 9 December 2015: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/569346/TS_34.2016_Cm_9359_Kenya_Defence_WEB.pdf [accessed 13 January 2022]

5 Article 3

6 Article 10(2)

7 Article 4

8 Under Articles 7(6) and 7(7) the Commander of the visiting forces is required to certify that all defence imports have been either expended or re-exported by the visiting forces, and visiting forces must comply with measures to prevent the sale of defence items to civilians in the host nation.

9 Article 8(5)

10 Article 13

7. **Over the years, there have been serious allegations of criminal activity levelled against some British soldiers in Kenya, including rape, sexual assault and even murder.¹¹ We therefore call on the Government to set out the steps it is taking to ensure that assistance is provided to the Kenyan authorities with any such investigations; and to set out the steps it is taking to confront the attitudes by some UK services personnel towards women in Kenya and elsewhere.**

Entry into force

8. The Agreement will enter into force once both Parties have confirmed that they have completed their respective internal procedures and will then be in effect for five years.¹² The EM explains that no new legislation is required to bring the Agreement into force.¹³

Governance and amendments

9. An Inter-Governmental Liaison Committee will be responsible for administering and overseeing the implementation of the Agreement, and will have a role in dispute resolution and determining questions of jurisdiction.¹⁴
10. Amendments to the Agreement may be made in writing by mutual consent. The EM explains that amendments “would be subject to further scrutiny in accordance with the Constitutional Reform and Governance Act 2010”.¹⁵
11. The Agreement may be terminated by either Party giving six months’ notice.

Territorial scope and consultation

12. The Agreement applies to the UK only, and does not extend to the Overseas Territories or Crown Dependencies. The EM explains that the Agreement relates fully to a reserved matter with no direct implications for the Devolved Administrations, Crown Dependencies or Overseas Territories. It notes that the UK Government has not, therefore, consulted the Devolved Administrations, Crown Dependencies or Overseas Territories on the drafting of this Agreement.
13. **We report the UK-Kenya Defence Cooperation Agreement the House for Information. In particular, we highlight our comments at paragraph 7.**

11 There have been historical allegations of rape and sexual assault by British soldiers, although the EM is silent on this point. The behaviour of British soldiers in Kenya has recently come under the spotlight again with the Kenyan authorities investigating the allegations that a British soldier murdered sex worker Agnes Wanjiru in 2012. See also: Amnesty International, ‘Decades of Impunity: Serious Allegations of Rape of Kenyan Women by UK Army Personnel’, 1 July 2003: <https://www.amnesty.org/en/documents/eur45/014/2003/en/> [accessed 14 January 2022] and ‘I’ve killed her: the moment a British soldier ‘confessed’ to dumping a mother’s body into a septic tank’, *The Sunday Times*, 23 October 2021: <https://www.thetimes.co.uk/article/british-army-soldier-murder-mother-kenya-9hffnjqqv> [accessed 14 January 2022].

12 Article 26(2)

13 EM, para 5.1

14 Article 24

15 EM, para 4.4

APPENDIX: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND COMMITTEE STAFF

International Agreements Committee Members and staff

Lord Astor of Hever

No relevant interests

Lord Gold

Director, Gold Collins Associates Ltd

Principal, David Gold & Associates LLP

Baroness Hayter of Kentish Town

No relevant interests

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power plc

Lord Lansley

Director, LOW Associates Ltd

Chair, UK-Japan 21st Century Group

Trustee, Radix

Baroness Liddell of Coatdyke

Adviser, PricewaterhouseCoopers

Association Member, Bupa

Chair, Annington Ltd

Honorary Vice President, Britain-Australia Society Education Trust

Trustee, Northcote Educational Trust

Lord Morris of Aberavon

No relevant interests

Lord Oates

Chair, Advisory Committee, Weber Shandwick UK

Director, H&O Communications Ltd

Lord Razzall

Director, North Atlantic Mining Associates Limited

Director, ZeU Technologies Inc

Shareholdings, ZeU Technologies Inc

Shareholdings, St-Georges Eco-Mining Corporation

Shareholdings, Tintra plc

Lord Robathan

No relevant interests

Earl of Sandwich

No relevant interests

Lord Watts

No relevant interests

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst), and Robert Cocks (Committee Operations Officer).

Specialist Adviser

Alex Horne acted as Specialist Adviser to the Committee and declared the following interests:

Counsel, Hackett & Dabbs LLP; Visiting Professor at Durham University; and Specialist Adviser, United Nations Development Programme (Pacific Region).