



## **TRIPARTITE AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF  
KENYA,**

**THE GOVERNMENT OF THE FEDERAL  
REPUBLIC OF SOMALIA**

**AND**

**THE UNITED NATIONS HIGH  
COMMISSIONER FOR REFUGEES**

**GOVERNING THE VOLUNTARY  
REPATRIATION OF SOMALI REFUGEES  
LIVING IN KENYA, 2013**

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A handwritten signature in black ink, likely of a Somali official.

A handwritten signature in black ink, likely of a UNHCR official.



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REPATRIATION OF SOMALI REFUGEES LIVING IN KENYA, 2013**

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**Preamble**

The Government of the Republic of Kenya, the Federal Government of Somali (herein referred to as "**the Governments**") and the United Nations High Commissioner for Refugees (herein referred to as "**UNHCR**"), all together hereinafter referred to as "**The Parties**."

- a) **Recalling** the Geneva Convention Relating to the Status of Refugees of July 28, 1951 (the 1951 Refugee Convention) and its Additional Protocol of January 31, 1967 (the 1967 Protocol) and the OAU Convention of September 10, 1969 Governing the Specific Aspects of Refugee Problems in Africa (the 1969 OAU Convention) and the obligations on the Parties to adhere to and respect the provisions of this Agreement;
- b) **Noting** the general principles of international law on the right of all persons to leave and return to their country of origin as enshrined in Article 13 (2) of the 1948 Universal Declaration of Human Rights (UDHR) and Article 12 of the 1966 International Covenant on Civil and Political Rights (ICCPR);
- c) **Recalling** that the United Nations General Assembly Resolution 428(V) of 14 December 1950, adopted the Statute of the United Nations High Commissioner for Refugees, and mandated it to seek permanent solutions for the problem of refugees inter alia, facilitating the voluntary repatriation and reintegration of refugees in their countries of origin;
- d) **Considering** that voluntary repatriation constitutes a durable solution for the problems of refugees, and that the attainment of this solution requires that refugees will voluntarily return to their country of origin in conditions of safety and dignity;
- e) **Noting** that Conclusion 18 (Session XXXI)-1980, Conclusion 40 (Session XXXVI)- 1985 and Conclusion 74 (XLV)-1994 and 101 (LV)-2004 of the Executive Committee of the High Commissioner's Program set out internationally accepted principles and standards governing voluntary repatriation of refugees;



- f) **Underscoring** the obligation of the Government of the Federal Republic of Somalia, while respecting the right of all persons to return to their country, to create conditions for voluntary, safe and organized return of refugees to Somalia;
- g) **Recognizing** the hospitality of Kenya to one of the highest number of Somali refugees in the world;
- h) **Acknowledging** that regional security is a concern for all parties, and that Kenya has borne a huge economic, environmental and social burden, arising from hosting large numbers of refugees and asylum seekers from Somalia;
- i) **Commending AMISOM** and the International community as a whole for their support to the Somali Federal Government in stabilizing the country;
- j) **Welcoming** the commitment of the two Governments to facilitate the voluntary repatriation and reintegration of Somali returnees as contained in the Joint Statement of Understanding of 27<sup>th</sup> April 2013;
- k) **Further welcoming** the endorsement of this commitment by the 21<sup>st</sup> and 22<sup>nd</sup> Extra-Ordinary Summits of IGAD Heads of State and Government and by the London International Conference on Somalia;
- l) **Recognizing** that the Parties have agreed that issues relating to unregistered and or undocumented Somali refugees in Kenya shall be addressed in the spirit of this agreement;
- m) **Recognizing** the desire of the two Governments and UNHCR to cooperate and establish this legal framework in order to facilitate the voluntary repatriation in safety and dignity of refugees as well as their sustainable reintegration in Somalia;
- n) **Stressing** the role and the need of the Parties to mobilize international resources for the voluntary repatriation and reintegration of Somali refugees;

Hereby agree as follows:



## **I. GENERAL PROVISIONS**

### **ARTICLE 1 Definitions**

For the purpose of this Agreement,

1. The term "Commission" shall mean the Tripartite Commission established under Article 3 of the present Agreement;
2. The term "Committees" shall mean the Technical Committees formed under Article 4 paragraph 7 for the present Agreement;
3. The term "refugee" shall have the meaning as provided for in the 1951 Refugee Convention, its 1967 Protocol, the 1969 OAU Convention and the Kenya Refugees Act 2006;
4. The term "returnee" shall mean any refugee who has voluntarily returned to Somalia and is now within the territory of Somalia;
5. The term "voluntary repatriation" refers to the voluntary return of a refugee to the country of origin with the specific intention to re-avail him or herself of the national protection of the country of origin;
6. The term "vulnerable group" refers to refugees with specific needs including women, children, disabled, sick and elderly persons.

### **ARTICLE 2 Objective of the Agreement**

The objective of this Agreement is to provide for a legal framework for the safe and dignified voluntary repatriation of Somali refugees from the Republic of Kenya and their reintegration in the Federal Republic of Somalia.

### **ARTICLE 3 Establishment of the Tripartite Commission**

A Tripartite Commission is hereby established.



**ARTICLE 4**  
**Composition of the Commission**

1. Each Party shall designate not more than four representatives to the membership of the Commission. Two representatives from the Governments shall be at ministerial level.
2. The chairperson and co-chair will alternate between the two Governments upon mutual agreement.
3. UNHCR will act as Secretary being assisted by representatives of both Governments designated by members of the Commission at its meetings.
4. Any of the Parties to the Commission may, when attending meetings or other business of the Commission, be accompanied by not more than two advisors who shall be funded by the Commission.
5. The Commission may, whenever deemed appropriate, and subject to agreement by all its members, invite relevant persons including refugee representatives or partners to participate in its deliberations in an observer or advisory capacity.
6. Where a member is unable to attend to any business of the Commission, that member shall designate an alternate.
7. The Commission may form Technical Committees for the implementation of the policies, decisions and activities of the Commission.
8. The composition and structure of any Technical Committee shall be determined by the Commission.

**ARTICLE 5**  
**Role and Function of the Commission**

1. The principal objective of the Commission shall be to advance the voluntary and organized repatriation of refugees to, and the reintegration of returnees in Somalia.



2. The Commission shall determine the overall policies and may establish the modalities and provide guidance and recommendations to the Parties regarding the voluntary and organized repatriation in safety and dignity of Somali refugees.

## **ARTICLE 6**

### **Meetings of the Commission**

1. The Commission shall convene regularly, at least five times in a year, at the request of any of the Parties, and at such venue as may be agreed upon.
2. A meeting can be called to order if at least two members of each party are present.
3. The dates of the meetings shall be decided on by the members of the Commission.
4. The Commission shall make its decisions on the basis of mutual agreement by members.
5. The Commission shall adopt its own Rules of Procedure as necessary.

## **ARTICLE 7**

### **Liaison Officers**

In support of and to complement the work of the Commission, the Governments shall designate Liaison Officers at their respective diplomatic representations or offices in both Nairobi and Mogadishu with powers to deal with operational issues as may be required.

## **ARTICLE 8**

### **Resource Mobilization**

The Parties shall bear the primary responsibility of mobilizing international resources and shall endeavor to obtain these resources for:

- I. The activities of the Commission and its technical working committees.
- II. The voluntary and organized repatriation of Somali refugees and the reintegration of Somali returnees.



**ARTICLE 9**  
**Right of Return**

All Somali refugees, irrespective of their registration status, living in the Republic of Kenya have the right to voluntarily return to the Federal Republic of Somalia in accordance with international law.

**ARTICLE 10**  
**Voluntary Character of Repatriation**

1. The Parties hereby reaffirm that the repatriation provided for in this Agreement of Somali refugees who have sought refuge in the Republic of Kenya shall take place in conformity with international law pertaining to voluntary repatriation.
2. The Parties hereby agree that the decision of the refugees to repatriate shall be based on their freely expressed wish and their relevant knowledge of the conditions within the country of origin and the areas of return.

**ARTICLE 11**  
**Freedom of Choice of Destination**

The Parties hereby support that the Somali refugees shall be free to return to, and settle in, their former places of residence or any other place within Somalia.

**ARTICLE 12**  
**Return in Safety and Dignity**

1. The Parties agree to assist Somali refugees under this Agreement to return to their final destination in safety and dignity.
2. The Government of the Republic of Kenya shall be responsible for the safety and security of repatriating refugees while within Kenyan territory according to national and international law.
3. The Government of the Federal Republic of Somalia shall be responsible for the safety and security of the returnees once within the territory of Somalia in accordance with National and International Law.



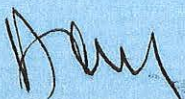
4. With a view to ensuring that voluntary repatriation is sustainable, the Parties may advocate for the strengthening and expansion of the Federal Republic of Somalia's national development, security and humanitarian assistance programs, focusing wherever possible on local community development in key areas of return to facilitate reintegration of the returnees.

**ARTICLE 13**  
**Preservation of Family Unity**

In accordance with the principle of family unity, the Parties shall make every effort to ensure that families return as units and that involuntary separation shall be prevented. If, for any reason, a returnee's family breaks up or becomes separated in the process of repatriation, steps shall be taken on a priority basis to facilitate the reunification of the family members.

**ARTICLE 14**  
**Legal Status and Equivalency**

1. The Government of the Republic of Kenya shall validate or issue documentation to Somali refugees in respect of births, deaths, adoptions, marriages and divorces that occurred while residing as refugees in Kenya, prior to their voluntary repatriation in accordance with international and national legislations and as a measure to prevent statelessness.
2. The Government of Kenya shall issue or validate, whenever applicable, certificates, diplomas and degrees in accordance with national law reflecting academic or vocational skills obtained by the refugees in Kenya.
3. The Government of Somalia shall recognize as appropriate and in accordance with applicable national laws the legal and civil status, including changes thereto during their displacement in Kenya, of returnees including births, deaths, adoptions, marriage, divorces and custody decisions.
4. The Government of Somalia shall accord recognition, as appropriate and in accordance with applicable national laws, to the equivalency of academic and vocational skills, certificates, diplomas and degrees obtained by the returnees during displacement. Replacement or equivalency of documents certifying legal status or equivalency of academic and vocational skills, diplomas and certificates of returnees shall be provided at no or reduced cost.





**ARTICLE 15**  
**Information and Sensitization**

1. The Parties to this Agreement shall provide Somali refugees with objective, accurate and timely information on current conditions in Somalia which shall inform their decision to voluntarily repatriate to Somalia.
2. The Parties to this Agreement shall facilitate "go and see" visits by refugees and "come and tell" visits by returnees, local authorities from Somalia and other relevant partners.

**ARTICLE 16**  
**Spontaneous Return**

The Parties hereby recognize that all assurances, and guarantees benefits and other provisions set out in this Agreement that govern the voluntary repatriation and the reintegration of refugees shall also apply to those returnees who return to Somalia using their own means.

**ARTICLE 17**  
**Registration and Documentation**

The commission shall agree on a voluntary repatriation form recognized as a valid identification and travel document to Somalia for the purpose of return and access to reintegration services.

**ARTICLE 18**  
**Special Measures for Vulnerable Groups**

1. The Parties shall take special measures, to ensure that children, women, the elderly and other vulnerable groups receive adequate protection, assistance and care throughout the repatriation and reintegration process.
2. Parties shall take necessary measures to ensure that unaccompanied minors and or separated children are returned after a successful tracing of family members or others who by law or custom are responsible for the child. For those cases where tracing was not successful adequate reception and care arrangements shall be put in place in by the Federal Government of Somalia.



**ARTICLE 19**  
**Designated Border Crossing Points and Transit Arrangements**

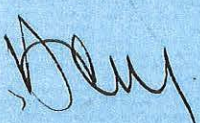
The Parties shall agree on border crossing points and related transit arrangements for organized repatriation movements. Such arrangements may be modified as mutually agreed on to better suit operational requirements.

**ARTICLE 20**  
**Immigration, Customs and Health Formalities**

1. The Governments shall simplify and streamline their respective immigration, customs, health and other formalities usually carried out at border crossing points.
2. All goods of the returnees, their personal effects or communal property, including household and electronic items, food and livestock, shall be exempted by the respective Government from all customs duties, charges and tariffs, provided that such property is not prohibited for export and import by the respective Government. The Parties shall also expedite the clearance and handling of such items.
3. The Governments shall waive all fees as well as road or other taxes for vehicles, including those, which are part of the personal property of returnees, entering or transiting their respective territories under the repatriation programme.

**ARTICLE 21**  
**Movement and Security of Staff and Resources**

1. The Governments shall facilitate the free movement of staff and personnel of the Parties herein and of their partners as well as vehicles, relief goods and equipment used in the operation in, within and out of Kenya and Somalia in the repatriation subject to relevant clearances.
2. The Governments shall take all appropriate steps to ensure the security and safety of the staff and all other personnel engaged in the repatriation operation provided for under this Agreement.





## **ARTICLE 22**

### **Relief Goods, Materials, Equipment and Communication**

1. The Governments shall in conformity with the national taxation laws, exempt from all taxes, duties and levies of all relief goods, materials, equipment, vehicles of UN agencies meant for official use in the repatriation and reintegration operation and expedite its clearance and handling.
2. The Governments shall authorize UNHCR to use UN communications equipment, including satellite communication, networks, designated frequencies and networks for cross-border and internal communication between offices, vehicles and staff and may, whenever operational requirements necessitate, facilitate the allocation of other frequencies.
3. The relevant written authorizations for equipment, frequencies and cross-border networks shall be issued to UNHCR in accordance with national laws and regulations.

## **ARTICLE 23**

### **Establishment of Field Offices**

UNHCR may, whenever required, for the purpose of a more effective discharge of its responsibilities under this Agreement, establish Field Offices at locations to be agreed upon with the Government concerned, and in compliance with Government policies, regulations and procedures.

## **II DUTIES AND RESPONSIBILITIES OF THE PARTIES**

### **ARTICLE 24**

#### **Responsibilities of the Government of the Republic of Kenya**

The Government of the Republic of Kenya shall cooperate with the Parties to ensure voluntary repatriation in safety and dignity. The following are the duties of the Government of the Republic of Kenya:

- i. Facilitate sensitization of refugees on voluntary repatriation;



- ii. Facilitate access by UNHCR to Somali refugees wherever they may be in Kenya so as to implement the voluntary repatriation programme provided for in this Agreement ;
- iii. Issue and or validate documentation in respect of births, marriages, divorces, adoptions, deaths or other legal status as well as educational credentials in acknowledgement of academic or vocational skills obtained by refugees in Kenya;
- iv. Simplify immigration formalities and procedures to facilitate exit from Kenya in accordance with applicable national law;
- v. Facilitate "go and see" visits of refugees to areas of intended return, and "come and tell" visits by Somali Federal or local authorities as provided for under Article 15 of this Agreement;
- vi. Exempt all goods of the returnees, their personal effects or communal property, including household and electronic items, food and livestock from customs and duties or taxes which would otherwise apply;
- vii. Simplify and expedite health formalities and requirements to the extent feasible in accordance with the law in the interest of facilitating easy exit from Kenya of the repatriating refugees;
- viii. Provide security escorts for the repatriation convoys, the staff of the Parties and the implementing partners engaged in the operation in Kenya ;
- ix. Facilitate the joint registration with UNHCR of Somali refugees wishing to voluntarily repatriate and;
- x. The Government of Kenya shall continue to provide protection and assistance to all refugees until durable solutions are attained in accordance with national and international law.

#### **ARTICLE 25**

#### **Responsibilities of the Government of the Federal Republic of Somalia**

The Government of the Federal Republic of Somalia shall put in place administrative, judicial and security measures to ensure that the return and reintegration of refugees takes place in safety and dignity. In order to discharge the aforesaid obligations, the following shall be the duties of the Federal Government of Somalia:-



- i. Facilitate the safe, dignified and sustainable return;
- ii. Ensure return and reintegration without fear of harassment, intimidation, persecution, discrimination, prosecution or any punitive measures whatsoever on account of having left, or remained outside Somalia;
- iii. Create conditions conducive to sustainable return and reintegration of returnees;
- iv. Guarantee that all Somali refugees living in Kenya wishing to return to Somalia, shall be able to do so without any legal or other hindrances, and that any of their family members who are non-Somali citizens should be able to join them for the purposes of maintaining family unity, and have their residence status expedited subject to national law;
- v. Simplify formalities for the return of refugees and facilitate the entry of all their goods, including of commercial nature or quantity, personal and household effects free from any customs and excise duties or taxes. Controls and inspections at the entry point will be carried out expeditiously, with due respect to the dignity and basic human rights of the returnees;
- vi. Take all necessary measures to allow returnees to settle in their areas of origin or any other part of the country of their choice. In addition, ensure freedom of movement of the returnees as provided for in the country's national legislation and in accordance with international human rights standards;
- vii. Commit to promote durable peace and national reconciliation;
- viii. Establish fair and accessible procedures to settle any claims that the returnees may make for restitution of lands or other property left behind when they were forced to flee;
- ix. Ensure that the returnees shall enjoy property ownership and protection acquired upon return, in accordance with the national laws;
- x. Recognize the legality of births, adoptions, deaths, marriages or divorces which may have taken place during asylum as read together with Article 24 (III);
- xi. Recognize as appropriate and in accordance with applicable national law, certifications, qualifications and skills obtained from recognized institutions while residing in Kenya;



- xii. Issue to the returnees all documents necessary for the exercise and enjoyment of their respective legal rights such as passports, personal identification documents, birth, death, marriage certificates and land title deeds;
- xiii. Facilitate the issuance of new documents or the replacement of those lost in the course of displacement without imposing unduly restrictive or prohibitive conditions, costs or delays;
- xiv. Facilitate all the activities of UNHCR relating to the repatriation operation provided for in this Agreement including granting free and unhindered access to UNHCR officials to the returnees, accompanying the returnees to Somalia, conducting effective monitoring of their legal, physical and material situation and to make appropriate interventions ;
- xv. Facilitate the reintegration of the returnees and their enjoyment of all the social, economic, civil, cultural and political rights provided for in the laws of the country, including fair and equal access to public services;
- xvi. Facilitate the movement into and within its territory of the staff of UNHCR and its partners and ensure that vehicles, relief goods and equipment required for use in implementing the voluntary repatriation and reintegration of the returnees can be brought into and used in the country free of duty, customs or other charges;
- xvii. Ensure the safety and security of the returnees, including when in transit in Somalia while proceeding to their final destinations;
- xviii. Guarantee the safety and security of the staff of UNHCR and partners engaged in the repatriation and reintegration operation and;
- xix. Facilitate "go and see" visits by refugees to areas of intended return, and "come and tell" visits by Somali Federal or local authorities as provided for under Article 15 of this Agreement.

## **ARTICLE 26**

### **Responsibilities of the United Nations High Commissioner for Refugees**

In keeping with its mandate, the UNHCR shall facilitate and coordinate the voluntary repatriation of Somali refugees and verify that the voluntary repatriation is carried out in conditions of safety and dignity. UNHCR shall:-



- i. Verify and assure the free and voluntary nature of the decisions made by the refugees to repatriate, in keeping with its mandate and shall have access to the refugees so as to discharge these and other responsibilities as per this Agreement;
- ii. Facilitate the safe and dignified character of the repatriation by ensuring that it is carried out in accordance with national and International law;
- iii. Organize and facilitate in collaboration with the Parties, awareness raising activities, dissemination of relevant information with regard to the voluntary repatriation to Somalia and on family reunification procedures in and outside Somalia;
- iv. Establish offices, deploy staff and carry out activities along the main return routes in Kenya and areas of return in Somalia to implement the repatriation in safety and dignity of the refugees and promote their reintegration;
- v. Ensure that the vulnerable group of refugees and returnees are protected and their fundamental rights are respected in accordance with applicable international, and national legal standards;
- vi. Monitor the situation of all refugees in Kenya in cooperation with the Government of Kenya, supervise their continued enjoyment of asylum as provided for by national and international law;
- vii. Mobilize and allocate resources for the purpose of the implementation of this Agreement;
- viii. Assist and coordinate in collaboration with partners the ongoing protection and assistance programs, the voluntary repatriation and reintegration activities in Kenya and Somalia;
- ix. Verify and assure the progress of the reintegration process of returnees to Somalia in cooperation with the Government of the Federal Republic of Somalia and
- x. Have access to the returnees during the reintegration process in accordance with this Agreement.



### **III. FINAL PROVISIONS**

#### **ARTICLE 27**

##### **Continued Validity of other Agreements**

This Agreement shall not affect the validity of or derogate from any existing Agreements, arrangements or mechanisms of cooperation between the Parties.

To the extent necessary or applicable, such Agreements, arrangements or mechanisms may be relied upon and applied as if they form part of this Agreement to assist in the pursuit of the objectives of this Agreement.

#### **ARTICLE 28**

##### **Resolution of Disputes**

Any disputes arising out of the interpretation and application of this Agreement, shall be resolved amicably through negotiations and consultation between the Parties.

#### **ARTICLE 29**

##### **Entry into Force, Duration and Termination**

1. This Agreement shall become effective on the date of its signature by all Parties, and shall remain in force for a period of 3 years and it may be renewed for a further period as agreed upon by the Parties.
2. This Agreement may be terminated by either Party giving six months' notice. The termination of this Agreement shall not prejudice activities and programmes in progress.

#### **ARTICLE 30**

##### **Amendments**

The Articles of this Agreement may be amended at anytime by a written consent of all Parties through exchange of Diplomatic Notes. Any such amendments shall constitute part of this Agreement.

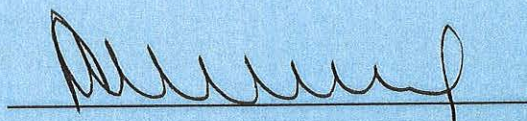
IN WITNESS WHEREOF, the authorized representatives of the Parties have hereby signed this Agreement.

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**Dated** this 10 day of November **2013**, in three originals in the English language, each being equally authentic.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF KENYA



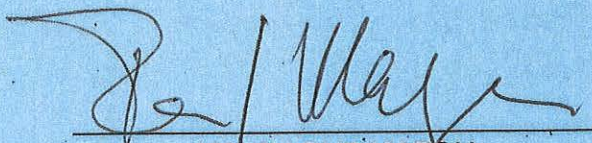
AMB. AMINA C. MOHAMED, CBS CAV  
**CABINET SECRETARY FOR FOREIGN AFFAIRS  
AND INTERNATIONAL TRADE**

FOR THE GOVERNMENT OF THE  
FEDERAL REPUBLIC OF SOMALIA



H.E. FAWZIA YUSUF H. ADAM  
**DEPUTY PRIME MINISTER AND  
MINISTER FOR FOREIGN AFFAIRS**

FOR THE UNITED NATIONS  
HIGH COMMISSIONER FOR REFUGEES



MR. RAOUF MAZOU  
**REPRESENTATIVE, UNHCR REPRESENTATION IN KENYA**