

AGREEMENT**between the European Union and the United Republic of Tanzania on the conditions of transfer of suspected pirates and associated seized property from the European Union-led Naval Force to the United Republic of Tanzania**

THE EUROPEAN UNION, hereinafter also referred to as EU,

of the one part, and

THE UNITED REPUBLIC OF TANZANIA, hereinafter referred to as 'Tanzania',

of the other part,

Together hereinafter referred to as the 'Parties',

TAKING INTO ACCOUNT:

- United Nations (UN) Security Council Resolutions (UNSCR) 1814 (2008), 1838 (2008), 1846 (2008), 1851 (2008) and subsequent UNSCRs,
- The 1982 UN Convention on the Law of the Sea (UNCLOS), in particular Articles 100 to 107 and Article 110 thereof,
- EU Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ⁽¹⁾ (Operation EUNAVFOR Atalanta), as subsequently amended,
- International human rights law, including the 1966 International Covenant on Civil and Political Rights, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- that this Agreement will not affect the Parties' rights and obligations under international agreements and other instruments establishing international courts and tribunals, including the Statute of the International Criminal Court,

TAKING ALSO INTO ACCOUNT

- the regional initiatives in combating piracy such as initiatives under the African Union (AU), the East African Community (EAC), the Southern Africa Development Community (SADC), the Djibouti Code of Conduct and the Regional Maritime Security and anti-piracy Strategy adopted in Mauritius in 2010,

HAVE AGREED AS FOLLOWS:

Article 1

Aim

This Agreement defines the conditions and modalities for the transfer from EUNAVFOR to Tanzania of persons suspected of intending to commit, committing or having committed acts of piracy and detained by EUNAVFOR, and associated property seized by EUNAVFOR, and for their treatment after such transfer.

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

*Article 2***Definitions**

For the purposes of this Agreement:

- (a) 'European Union-led Naval Force (EUNAVFOR)' shall mean EU military headquarters and national contingents contributing to the EU operation 'Atalanta', their ships, aircraft and assets;
- (b) 'Operation' shall mean the preparation, establishment, execution and support of the military mission established by EU Council Joint Action 2008/851/CFSP and/or its successors;
- (c) 'national contingents' shall mean units and ships belonging to the Member States of the European Union and to other States participating in the operation;
- (d) 'Sending State' shall mean a State providing a national contingent for EUNAVFOR.
- (e) 'Piracy' shall mean piracy as defined in Article 101 of UNCLOS;
- (f) 'Transferred person' shall mean any person suspected of intending to commit, committing or having committed, acts of piracy and transferred by EUNAVFOR to Tanzania under this Agreement.

*Article 3***General principles**

1. Tanzania may accept, upon the request of EUNAVFOR, the transfer by EUNAVFOR of persons detained by EUNAVFOR in connection with piracy and associated seized property and submit such persons and property to its competent authorities for the purpose of investigation and prosecution. Agreement on acceptance of a proposed hand-over will be made on a case by case basis by Tanzania, taking into account all relevant circumstances including the location of the incident.
2. EUNAVFOR shall transfer persons only to competent law enforcement authorities of Tanzania.
3. The Parties shall treat the persons referred to in Article 1, both prior to and following transfer, humanely and in accordance with international human rights obligations, including the prohibition of torture and cruel, inhuman and degrading treatment or punishment, the prohibition of unlawful detention, and in accordance with the requirement to have a fair trial.
4. Transfers shall not be carried out before the competent law enforcement authorities of Tanzania decide, in accordance with Tanzanian internal procedures, on the basis of evidence forwarded by EUNAVFOR through relevant communication channels, that there are reasonable prospects of securing a conviction of persons detained by EUNAVFOR.

*Article 4***Treatment, prosecution and trial of transferred persons**

1. Transferred persons shall be treated humanely and shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment, shall receive reasonable accommodation and nourishment and access to medical treatment, and shall be able to carry out religious observance.
2. Transferred persons shall be brought promptly before a judge or other officer authorised by law to exercise judicial power, who shall decide without delay on the lawfulness of their detention and shall order their release if the detention is not justified.
3. Transferred persons shall be entitled to trial within a reasonable time or to release.

4. In the determination of any criminal charge against them, any transferred persons shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
5. Transferred persons charged with a criminal offence shall be presumed innocent until proved guilty according to law.
6. In the determination of any criminal charge against them, transferred persons shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them;
 - (b) to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choice;
 - (c) to be tried without undue delay;
 - (d) to be tried in their presence, and to defend themselves in person or through legal assistance of their own choice; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it;
 - (e) to examine, or have examined, all evidence against them, including affidavits of witnesses who conducted the arrest, and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
 - (f) to have the free assistance of an interpreter if they cannot understand or speak the language used in court;
 - (g) not to be compelled to testify against themselves or to confess guilt.
7. Transferred persons convicted of a crime shall have the right to their conviction and sentence being reviewed by or appealed to a higher tribunal in accordance with the laws of Tanzania.
8. Tanzania may, after consultation with the EU, transfer such persons convicted and serving their sentences in Tanzania to a third State which complies with human rights standards, with a view to serving their sentences in that third State. In case of serious concerns about the human rights situation in that third State, no transfer shall take place before a satisfactory solution is found through consultations between the Parties to address the concerns expressed.

Article 5

Penalty

No transferred person shall be tried for an offence which has a maximum punishment that is more severe than imprisonment for life.

Article 6

Records and notifications

1. Any transfer shall be the subject of an appropriate document signed by a representative of EUNAVFOR and a representative of the competent law enforcement authorities of Tanzania.
2. EUNAVFOR shall provide detention records to Tanzania with regard to transferred persons. These records shall include the physical condition of transferred persons while in detention, the time of transfer to Tanzania, the reason for their detention, the time and place of the commencement of their detention, and any decisions taken with regard to their detention.

3. Tanzania shall be responsible for keeping an accurate account of all transferred persons, including but not limited to keeping records of any seized property, the persons' physical condition, the location of their places of detention, any charges against them and any significant decisions taken in the course of their prosecution and trial.
4. Those records shall be available to representatives of the EU and EUNAVFOR in accordance with Tanzanian laws and regulations upon request in writing to the Ministry of Foreign Affairs of Tanzania.
5. In addition, Tanzania shall notify EUNAVFOR of the place of detention of persons transferred under this Agreement, of any deterioration of their physical condition and of any allegations of improper treatment. Representatives of the EU and EUNAVFOR shall have access to persons transferred under this Agreement as long as such persons are in custody, subject to the applicable laws, and shall be entitled to question them.
6. National and international humanitarian agencies shall, at their request, be allowed to visit persons transferred under this Agreement.
7. For the purposes of ensuring that EUNAVFOR is able to provide timely assistance to Tanzania with attendance of witnesses from EUNAVFOR and the provision of relevant evidence, Tanzania shall notify EUNAVFOR of its intention to initiate criminal trial proceedings against transferred persons and the timetable for provision of evidence, and the hearing of evidence.

Article 7

EU and EUNAVFOR obligation to facilitate investigation and prosecution

1. EU and EUNAVFOR, within their means and capabilities, shall provide all assistance to Tanzania with a view to investigating and prosecuting of transferred persons.
2. In particular, EU and EUNAVFOR shall:
 - (a) hand over detention records drawn up pursuant to Article 6(2) of this Agreement;
 - (b) process any evidence in accordance with the requirements of the Tanzanian competent authorities as agreed in the implementing arrangements described in Article 10;
 - (c) endeavour to produce witness statements or affidavits by EUNAVFOR personnel involved in any incident in relation to which persons have been transferred under this Agreement;
 - (d) hand over all relevant seized property in the possession of EUNAVFOR;
 - (e) preserve or hand over all relevant seized property, exhibits, photographs and any article of evidential value in the possession of EUNAVFOR;
 - (f) secure the attendance of witnesses belonging to EUNAVFOR for the purpose of giving evidence in court (or by TV link or any other approved technological means) during the trial;
 - (g) facilitate the attendance of such interpreters as may be required by the Tanzanian competent authorities for the purpose of assisting in investigations and trials involving transferred persons.

Article 8

Relationship to other rights of transferred persons

Nothing in this Agreement is intended to derogate, or may be construed as derogating, from any rights that transferred persons may have under applicable domestic or international law.

*Article 9***Liaison and disputes**

1. All issues arising in connection with the application of this Agreement shall be examined jointly by Tanzania and the EU competent authorities.
2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by diplomatic means between Tanzania and EU representatives.

*Article 10***Implementing arrangements**

1. For the purposes of the application of this Agreement, operational, administrative and technical matters may be the subject of implementing arrangements to be concluded between the competent Tanzanian authorities on the one hand and the competent EU authorities, as well as the competent authorities of the Sending States, on the other hand.
2. Implementing arrangements may cover, inter alia:
 - (a) the identification of competent law enforcement authorities of Tanzania to whom EUNAVFOR may transfer persons;
 - (b) the detention facilities where transferred persons will be held;
 - (c) the handling of documents, including those related to the gathering of evidence, which will be handed over to the competent law enforcement authorities of Tanzania upon transfer of persons;
 - (d) points of contact for notifications and modalities for alert from EUNAVFOR to the Tanzanian competent authorities;
 - (e) forms to be used for transfers;
 - (f) provision of technical support, expertise, training and other assistance in repatriation, custody, determination of nationality, legal representation and issues related to liabilities upon request of Tanzania in order to achieve the objectives of this Agreement.

*Article 11***Entry into force and termination**

1. This Agreement shall be provisionally applied as from the date it is signed and shall enter into force after each of the Parties has notified the other Party that it has completed its internal procedure for the ratification of this Agreement.
2. Either Party may, by written notification, terminate this Agreement. In such case, the termination shall take effect three months after the date of receipt of the notification.
3. This Agreement may be amended by written agreement between the Parties.
4. Termination of this Agreement shall not affect any rights or obligations arising out of its execution before such termination, including the rights of transferred persons as long as they are held in custody or are prosecuted in Tanzania.

5. After the termination of this Agreement, all rights of the EU under this Agreement may be exercised by any person designated by the EU High Representative for Foreign Affairs and Security Policy. After the termination of the Agreement, all notifications that were to be made to EUNAVFOR under this Agreement shall be made to the EU High Representative for Foreign Affairs and Security Policy.

Done at Brussels, on the first day of April in the year two thousand and fourteen in two originals, each in the English language.

For the European Union

For the United Republic of Tanzania

Catherine M. Allb.

[Handwritten signature]
