

No. 9195

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
KENYA**

**Exchange of letters constituting an agreement concerning the
status of the Forces of the United Kingdom in Kenya
(with appendix). Nairobi, 14 July 1967**

Official text: English.

*Registered by the United Kingdom of Great Britain and Northern Ireland on
21 August 1968.*

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
KENYA**

**Échange de lettres constituant un accord relatif au statut des
forces britanniques au Kenya (avec appendice). Nairobi,
14 juillet 1967**

Texte officiel anglais.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le
21 août 1968.*

No. 9195. EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF KENYA CONCERNING THE STATUS OF THE FORCES OF THE UNITED KINGDOM IN KENYA. NAIROBI, 14 JULY 1967

I

*The United Kingdom High Commissioner at Nairobi
to the Minister for Defence of Kenya*

BRITISH HIGH COMMISSION

Nairobi, 14 July, 1967

Dear Dr. Mungai,

I have the honour to refer to the discussions which have taken place between representatives of the Government of the United Kingdom of Great Britain and Northern Ireland and representatives of the Government of Kenya concerning the status of the forces of the United Kingdom in Kenya.

In the course of these discussions it was agreed that the arrangements concerning such status should be those set out in the Appendix to this Letter.

I have the honour to propose that if these arrangements are acceptable to the Government of Kenya this Letter and its Appendix, together with your reply to that effect, shall be regarded as constituting an agreement in this matter between our two Governments which shall be deemed to have entered into force on the 12th day of December, 1964.

Yours sincerely,

Edward PECK

¹ Came into force on 14 July 1967 by the exchange of the said letters with retroactive effect as from 12 December 1964, in accordance with their provisions.

APPENDIX

STATUS OF FORCES AGREEMENT

DEFINITIONS

1. For the purpose of this Appendix :

“ The British Forces in Kenya ” means the personnel of the armed forces of the United Kingdom who are for the time being present within Kenya and this definition shall include personnel of the armed forces of the United Kingdom visiting Kenya to make use of the official leave and recreational facilities established there. It does not include Loaned Personnel;

“ dependant ” means :

the spouse of a member of the British Forces in Kenya or civilian component, or

any person wholly or mainly maintained by, or in the custody or charge of or who forms part of the family of, such member, or any other person (not being a national of nor ordinarily resident in Kenya) who is in domestic employment in the household of such member;

“ United Kingdom service authorities ” means the authorities of the United Kingdom empowered by the law of the United Kingdom to exercise command or jurisdiction over the armed forces of the United Kingdom, civilian component and dependants;

“ civilian component ” means the civilian personnel accompanying the British Forces in Kenya who are employed by departments or authorities of the Government of the United Kingdom which have functions relating to armed forces or by an authorized service organization accompanying the British Forces in Kenya and who are not stateless persons, nor nationals of nor ordinarily resident in Kenya;

“ authorized service organization ” means a non-profit making organization authorized by the United Kingdom service authorities to accompany the British Forces in Kenya in order to provide for the needs of those Forces, civilian component and dependants;

“ Loaned Personnel ” means personnel of the armed forces of the United Kingdom the arrangements for whom are governed by an Agreement constituted by Exchange of Letters dated 27th November, 1964.

COMPOSITION

2. The British Forces in Kenya may be accompanied by civilian component and dependants. The British Forces in Kenya may also be accompanied by such authorized service organizations operating under the general direction of the British Forces in Kenya as are designated by the United Kingdom service authorities as necessary to meet welfare and recreational needs or military requirements of the British Forces in Kenya.

JURISDICTION

3. (a) Subject to the provisions of this paragraph :

- (i) the United Kingdom service authorities shall have the right to exercise within Kenya or on board any ship or aircraft of Kenya all criminal and disciplinary jurisdiction conferred on them by the law of the United Kingdom over members of the British Forces in Kenya and civilian component and dependants;
- (ii) the courts of Kenya shall have jurisdiction over members of the British Forces in Kenya and civilian component and dependants with respect to offences committed in Kenya and punishable by the law of Kenya.

(b) Where both the courts of Kenya and the United Kingdom service authorities have the right to exercise jurisdiction the United Kingdom service authorities shall have the primary right to exercise jurisdiction if :

- (i) the offence is an offence against the property or security of the United Kingdom, or against the property or person of another member of the British Forces in Kenya or civilian component or dependants, or Loaned Personnel or dependants of Loaned Personnel; or
- (ii) the offence arises out of an act or omission done in the course of official duty.

In any other case the courts of Kenya shall have the primary right to exercise jurisdiction. If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance and in cases of minor offences where the courts of Kenya have the primary right and where the United Kingdom service authorities can impose a suitable punishment by disciplinary action without recourse to a court.

(c) (i) The authorities of Kenya and the United Kingdom shall assist each other in the arrest of members of the British Forces in Kenya or civilian component or dependants in the territory of Kenya for the purpose of handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions;

(ii) the authorities of Kenya shall notify the High Commissioner promptly of the arrest of a member of the British Forces in Kenya or civilian component, or his dependants;

(iii) the authorities of the United Kingdom, if the courts of Kenya are to exercise jurisdiction over a member of the British Forces in Kenya or civilian component or dependant, shall have the right to take custody of him until he is brought to trial by the courts of Kenya provided that the authorities of the United Kingdom undertake to present him to those courts for investigatory proceedings and trial when required.

(d) (i) The authorities of Kenya and of the United Kingdom will assist each other in the investigation and obtaining of evidence in relation to offences;

(ii) the authorities of Kenya and of the United Kingdom shall notify each other of the disposition of all cases in which both the courts of Kenya and the service authorities of the United Kingdom have the right to exercise jurisdiction.

(e) Where an accused has been tried in accordance with the provisions of this paragraph by the United Kingdom service authorities or the courts of Kenya and has been convicted or acquitted, which expression includes a charge being dismissed by the Commanding Officer of the accused after investigation, he may not be tried again for the same offence or in respect of the same circumstances within Kenya by either. This paragraph shall not prevent the United Kingdom service authorities from trying a member of the British Forces in Kenya for any violation of rules or discipline arising from an act or omission which constituted an offence for which he was tried by the courts of Kenya.

(f) Whenever a member of the British Forces in Kenya or civilian component or a dependant is prosecuted under the jurisdiction of Kenya he shall be entitled :

- (i) to a prompt and speedy trial;
- (ii) to be informed a reasonable time in advance of trial of the specific charge or charges made against him;
- (iii) to be confronted with the witnesses against him;
- (iv) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of Kenya;
- (v) to have legal representation of his own choice for his defence, or to have free or assisted legal representation under the conditions prevailing for the time being in Kenya;
- (vi) if he considers it necessary, to have the services of a competent interpreter; and
- (vii) to communicate with a representative of the Government of the United Kingdom, and, when the rules of the court permit, to have a representative of that Government present at his trial.

(g) A death sentence shall not be carried out in Kenya by the United Kingdom, service authorities if the law of Kenya does not provide for such punishment in a similar case.

CLAIMS

4. (a) The Government of Kenya and the Government of the United Kingdom each waive all their claims against the other :

- (i) for damage (including loss of use) to property in Kenya belonging to, hired or chartered by either of them if such damage was caused by an act or omission of a member of the armed forces or other officer or servant of the other Party to this Agreement and arose out of and in the course of his employment as such, or if such damage arose from the use of vehicle, vessel or aircraft belonging to, hired or chartered by the other Party to this Agreement and being used for official purposes in Kenya;

(ii) for injury or death suffered by a member of its armed forces while such member was engaged in the performance of official duties.

(b) Claims (other than contractual claims) in respect of the acts or omissions of a member of the British Forces in Kenya or civilian component or other officer or servant of the United Kingdom Government and which arose out of and in the course of his employment as such in Kenya, other than claims waived by sub-paragraph (a) (i) of this paragraph, shall be expeditiously investigated by the British authorities and settled where liability in accordance with the law of Kenya is established; provided that if such a claim arises conjointly out of an act or omission of a member of the British Forces in Kenya or civilian component or other officer or servant of the United Kingdom Government and of an act or omission of a member of the armed services or other officer or servant of the Government of Kenya done in the course of their employment as such, the two Governments will, after consultation, share equally the cost of settling the claim including all expenses connected therewith.

(c) A member of the British Forces in Kenya or civilian component or other officer or servant of the United Kingdom Government shall not be subject to any proceedings in Kenya in respect of a claim to which this paragraph relates or which otherwise arises out of the performance of his official duty.

(d) Claims against members of the British Forces in Kenya or civilian component or other officer or servant of the United Kingdom Government arising out of tortious acts or omissions in Kenya not done in the course of their employment as such in Kenya shall be dealt with in the following manner :

- (i) the authorities of Kenya may consider the claim and assess compensation to the claimant in a fair and just manner taking into account all the circumstances of the case including the conduct of the injured person, and shall prepare a report on the matter;
- (ii) the report shall be delivered to the British authorities who shall then decide without delay whether they will offer an ex gratia payment, and if so, of what amount;
- (iii) if an offer of an ex gratia payment is made, and accepted by the claimant in full satisfaction of his claim, the British authorities shall make the payment themselves and inform the authorities of Kenya of their decision and of the sum paid;
- (iv) nothing in this paragraph shall affect the jurisdiction of the courts of Kenya to entertain an action against a member of the British Forces in Kenya or civilian component or other officer or servant of the United Kingdom Government unless and until there has been payment in full satisfaction of the claim.

(e) In sub-paragraphs (b), (c) and (d) of this paragraph "civilian component" shall not include civilian personnel employed by an authorized service organization.

(f) The two Governments agree to co-operate in the procurement of evidence for the examination and disposal of claims in which they are concerned.

COMPULSORY SERVICE

5. Members of the British Forces in Kenya or civilian component or dependants shall not be subject to any legislation in Kenya relating to liability for compulsory service of any kind.

UNIFORM AND ARMS

6. Members of the British Forces in Kenya may wear uniform and insignia of the United Kingdom Armed Forces or civilian clothes. When visiting Kenya to make use of official leave and recreational centres they shall wear civilian clothes. Members of the British Forces in Kenya may possess and carry arms when authorized to do so by the United Kingdom authorities.

TAXATION

7. (a) The presence in Kenya of members of the British Forces in Kenya or civilian component shall not be regarded as constituting residence or domicile in Kenya for the purposes of determining the incidence of income tax which depends on residence or domicile.

(b) Members of the British Forces in Kenya and civilian component shall be exempt from income tax by Kenya on their pay, allowances and other emoluments and benefits (whether in cash or in kind) paid to them as such members and shall also be exempt from any other form of direct taxation.

(c) Authorized service organizations shall be exempt from taxation in Kenya on any tangible movable property (excluding private motor vehicles) the presence of which in Kenya is due solely to their temporary presence there. This paragraph shall apply to taxation on such property whether levied in respect of its ownership, possession, use or otherwise.

(d) Authorized service organizations shall be exempt in Kenya from taxes on income and profits, and shall not be liable to the laws of Kenya governing the constitution, management, conduct and taxation of companies or other organizations as such.

IMPORTS, EXPORTS, ETC.

8. (a) Save as expressly provided to the contrary in this Appendix, members of the British Forces in Kenya or civilian component, and dependants shall be subject to the laws and regulations administered by the customs authorities of Kenya.

(b) Headquarters, units and establishments of the British Forces in Kenya, and authorized service organizations, accompanying those Forces may import free of duty licence or other permit, equipment, material, vehicles, provisions, supplies and other goods required by them or required for the personal use or consumption of members of those Forces or civilian component or of dependants.

(c) Within three months after his entry into Kenya, or such further period as may be approved by the authorities in Kenya in special cases, a member of the British Forces in Kenya or civilian component or a dependant may import free of duty personal and household effects and furniture, and a member of the British Forces in Kenya or civilian component may import temporarily free of duty a private motor vehicle for his personal use and that of his dependants.

(d) Items which have been imported duty free under this paragraph :

- (i) may be re-exported freely and without payment of duty;
- (ii) may without payment of duty be sold or otherwise disposed of in Kenya to the authorities or members of the British Forces in Kenya, or civilian component, to dependants or to authorized service organizations, but if, but for the exemptions conferred by this paragraph, they would be chargeable to duty on importation they may only be sold or otherwise disposed of in Kenya to other persons on payment of duty on their current value, if the authorities of Kenya so require.

(e) In this paragraph :

- (i) “ duty ” means customs duties and all other duties, taxes and ad valorem registration fees payable on importation and exportation as the case may be, except dues and taxes which are no more than charges for services rendered;
- (ii) “ importation ” includes withdrawal from customs warehouses or continuous customs custody, provided that the goods concerned have not been grown, produced or manufactured in Kenya.

(f) (i) In order to prevent offences against customs and fiscal laws and regulations the United Kingdom service authorities and the authorities in Kenya shall assist each other in the conduct of enquiries and the collection of evidence;

(ii) United Kingdom service authorities shall render all assistance within their power to ensure that articles liable to seizure by or on behalf of, the customs and fiscal authorities in Kenya are handed to those authorities;

(iii) the United Kingdom service authorities shall render all assistance within their power to ensure the payment of duties, taxes and penalties payable by members of the British Forces in Kenya or civilian component or their dependants;

(iv) vehicles and articles which are the property of the British Forces in Kenya and not belonging to a member of the British Forces in Kenya or civilian component, seized by the authorities of Kenya in connection with an offence against the laws and regulations administered by the customs authorities of Kenya shall be handed over to the United Kingdom service authorities.

DRIVING LICENCES

9. The authorities of Kenya shall accept as valid current United Kingdom or International Driving Licences or service driving permits issued to members of the British Forces in Kenya and civilian component and current United Kingdom or Inter-

national Driving Licences issued to their dependants or shall issue, on production of such licences or permits, licences valid in Kenya without test.

REMITTANCE OF FUNDS

10. (a) Remittances between the territory of Kenya and the territory of the United Kingdom shall be freely permitted in respect of :

- (i) funds derived by members of the British Forces in Kenya or civilian component from services or employment in connection with their official duties as members of the British Forces in Kenya or civilian component;
- (ii) official funds of the British Forces in Kenya and authorized service organizations;
- (iii) funds derived by members of the British Forces in Kenya or civilian component or dependants or by authorized service organizations from sources outside Kenya subject to any laws or regulations of the United Kingdom in that respect.

(b) Remittances from Kenya to the United Kingdom shall be freely permitted in respect of funds derived from the proceeds of sale of personal effects, furniture, motor vehicles and other property used by members of the British Forces in Kenya or civilian component while serving in Kenya which are disposed of in anticipation of departure from Kenya.

MOVEMENT, ENTRY AND EXIT

11. (a) No restriction shall be placed on the freedom of entry into and exit from Kenya of members of the British Forces in Kenya and civilian component and their dependants provided that a person who has been declared a prohibited immigrant in Kenya shall not be allowed to enter Kenya, and a member of the British Forces in Kenya who is declared a prohibited immigrant while in Kenya shall be repatriated or otherwise removed from Kenya by the British authorities, at their expense.

(b) Within Kenya members of the British Forces and civilian component and dependants shall have the same freedom of movement as is accorded to Kenya citizens.

(c) Before a member of the British Forces in Kenya is discharged he shall be repatriated unless a permit or pass for him to remain in Kenya has first been obtained from the authorities of Kenya.

(d) The United Kingdom service authorities shall notify the authorities of Kenya if any dependant remains in Kenya after the departure of the head of the family or if any member of the civilian component leaves the employment of the departments or authorities of the Government of the United Kingdom or of an authorized service organization.

(e) Where a member of the civilian component or a dependant is declared a prohibited immigrant or a person is repatriated within three months of a notification given under sub-paragraph (d) of this paragraph and in order to repatriate such person as is mentioned in the preceding paragraphs it is necessary to transport that person, then the

authorities of the United Kingdom will provide such transport or, if such transport is not available from the resources of the authorities of the United Kingdom, reimburse any cost necessarily incurred by the authorities of Kenya.

POSTAL AND COURIER SERVICES

12. (a) The British Forces in Kenya may operate, by means of Forces Post Offices established within Kenya full postal services to, from and within Kenya, for the use of the British Forces in Kenya, civilian component and dependants and authorized service organizations who shall produce all postal articles imported into Kenya by individual members of the British Forces in Kenya and civilian component and dependants through the Fleet Mail Post Office in Mombasa, to the proper authorities in Kenya to ensure compliance with the restriction imposed by paragraph 8 (c) of this agreement, provided that those authorities may allow postal articles addressed to Her Majesty's Ships at sea to be re-exported without examination.

(b) All documents and articles officially sealed and carried by a properly identified courier shall be exempt from customs or any other inspection.

EXEMPTION FOR VESSELS, VEHICLES AND AIRCRAFT

13. (a) Vessels, vehicles and aircraft which are the property of the British Forces in Kenya or on charter to them and are for the time being exclusively in their service shall be exempt from any form of compulsory insurance, registration, licensing or compulsory testing.

(b) The movement of vessels, vehicles or aircraft belonging to the British Forces in Kenya in and over Kenya and territorial waters of Kenya under this Agreement shall be free from compulsory pilotage, harbour charges and all dues or tolls, except landing fees, air navigation service charges and charges for specific services rendered at the request of the United Kingdom service authorities. Landing fees at Kenya Air Force Airfields will continue to be waived in favour of aircraft in the service of the United Kingdom Government.

II

*The Minister for Defence of Kenya to the United Kingdom
High Commissioner at Nairobi*

MINISTRY OF DEFENCE

Nairobi, 14 July 1967

My dear High Commissioner,

I have received your Letter of to-day's date setting out in an Appendix the arrangements which have been agreed in discussion between representatives of

the Government of the United Kingdom of Great Britain and Northern Ireland and representatives of the Government of Kenya concerning the status of the forces of the United Kingdom in Kenya, a copy of which together with its Appendix is attached hereto.

These arrangements are acceptable to the Government of Kenya who therefore regard your Letter, together with its Appendix, and this reply as constituting an Agreement in this matter between our two Governments which shall be deemed to have entered into force on the 12th day of December, 1964.

Yours sincerely,

Njoroge MUNGAI