

No. 17311

**UNITED STATES OF AMERICA
and
KENYA**

**Exchange of notes constituting an agreement relating to
social security. Nairobi, 31 January and 21 March 1977**

Authentic text: English.

Registered by the United States of America on 24 November 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
KENYA**

**Échange de notes constituant un accord relatif à la sécurité
sociale. Nairobi, 31 janvier et 21 mars 1977**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 24 novembre 1978.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND KENYA RELATING TO SOCIAL SECURITY

I

No. 015

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Government of Kenya and has the honor to propose that the United States participate on a limited voluntary basis in the National Social Security Fund of Kenya for certain employees of the United States Government in Kenya. It is proposed that an agreement containing the following conditions govern United States Government participation.

I. PARTICIPATION

1. Employees on the employment rolls of the United States Government in Kenya as of the effective date of the Agreement who are nationals or permanent residents of Kenya and who are not citizens of the United States, nor participants in the retirement system of the United States, shall within the limits of their eligibility under Kenyan law, be enrolled by the United States Government in the National Social Security Fund for retirement benefits.

2. Employees hired by the United States Government in Kenya after the effective date of the Agreement who are nationals or permanent residents of Kenya and who are not citizens of the United States, shall, within the limits of their eligibility under Kenyan law, be enrolled by the United States Government in the National Social Security Fund for retirement benefits.

3. Employees on the employment rolls of the United States Government in Kenya on or after the effective date of this Agreement who are nationals or permanent residents of Kenya and who are not citizens of the United States, and who are participants in the United States Civil Service Retirement system, and who elect to participate in the National Social Security Fund in lieu of the United States Retirement system shall be permitted to discontinue their Civil Service Retirement payments and commence contributions to the National Social Security Fund.

4. Employees on the employment rolls of the United States Government in Kenya on February 1, 1977 who are nationals or permanent residents of Kenya and who are not citizens of the United States, and who are participants in the United States retirement system and who elect to remain in the United States retirement system, shall be permitted to do so.

5. The Government of Kenya shall extend the same retirement benefits to United States Government employees covered by this Agreement as are enjoyed by other nationals and residents of Kenya under the law of Kenya.

6. The reservation by the Contracting Parties of certain privileges, immunities, and limitations of liability shall confer no rights on the employees of the United States to whom this Agreement applies. The rights and duties of such employees in matters relating to retirement shall be determined by the law of Kenya.

¹ Came into force on 25 March 1977, the date of receipt of the note in reply, in accordance with the provisions of the said notes.

II. ADMINISTRATION

1. Subject to the provisions of Part I of this Agreement, the United States shall undertake the following actions on behalf of employees identified in Paragraphs 1, 2 and 3 of Part I and who become enrolled in the National Social Security Fund.

- a. pay appropriate contributions as an employer;
- b. withhold appropriate contributions of its employees;
- c. remit said contributions to appropriate officials of the National Social Security Fund;
- d. make returns on forms and in the manner prescribed by the National Social Security Fund;
- e. furnish information as may be relevant to the administration of the provisions of the National Social Security Fund;
- f. provide self-audit and self-inspection of its accounts and financial records in lieu of audit and inspection by National Social Security Fund required by the law of Kenya for private employers.

2. No penalty or penalty interest shall be incurred by the United States and no lien or charge shall be levied against its property because of its agreement to assume the obligations enumerated in Paragraph 1 of this Part.

3. The United States Government shall be under no obligation whatsoever with respect to participation in the National Social Security Fund prior to the date of this Agreement.

4. Nothing in this Agreement is to be construed as a waiver of the sovereign immunity of the United States Government or as a modification of the privileges and immunities derived from generally accepted principles of international law and practice and from treaties and agreements in force between our respective governments. Nor shall this Agreement subject the United States, its departments or establishments or its officers or employees who are not within the groups identified in Paragraphs 1, 2 and 3 of Part I of this Agreement, to any judicial or administrative action, whether civil or penal in nature, provided by Kenyan law or any other law now or in the future.

5. If the United States should otherwise become eligible for a refund of contributions made pursuant to this Agreement, such amounts shall be applied in reduction of future obligations for contributions by the United States. Upon termination of this Agreement, any amounts outstanding to the credit of the United States shall be promptly refunded.

6. The Contracting Parties shall jointly conclude administrative arrangements, regulatory in nature, for the further implementation of this Agreement. Amendments, notification, additions, and deletions of provisions in such administrative arrangements may be made by mutual consent of the Contracting Parties.

III. AMENDMENT OF AGREEMENT

This Agreement may be amended at any time by mutual consent of the contracting Parties.

IV. TERMINATION OF AGREEMENT

Either Party may terminate this Agreement at any time provided notice in writing is given to the other Party six months in advance of such termination date.

The Embassy proposes that, if these conditions are acceptable to the Government of Kenya, this note and the reply concurring therein shall constitute an Agreement between our two governments which shall enter into force on the date of the receipt from the Government of Kenya of such concurrence. Actual contributions to the National Social Security Fund will commence upon completion of the necessary changeover in United States Government Financial records.

The Embassy of the United States of America avails itself of this occasion to renew to the Ministry of Foreign Affairs of the Government of Kenya the assurances of its highest consideration.

Embassy of the United States of America

Nairobi, January 31, 1977

II

MINISTRY OF FOREIGN AFFAIRS NAIROBI, KENYA

Ref. No. MFA 168/321/001/42

The Ministry of Foreign Affairs of the Republic of Kenya presents its compliments to the Embassy of the United States of America in Nairobi and has the honour to refer to the latter's note no. 015 of January 31, 1977 in connection with a proposal for United States to participate on a limited voluntary basis in the National Social Security Fund of Kenya for certain employees of United States Government in Kenya. The proposal states as follows:

[See note I]

The Ministry has the honour to confirm that these proposals and conditions are acceptable to the Government of Kenya and consequently this Agreement shall come into force on receipt of this note. The Embassy may also find it convenient to deal directly with the Director, National Social Security Fund, in the Ministry of Labour in the implementation of this Agreement.

The Ministry of Foreign Affairs of the Republic of Kenya avails itself of this opportunity to renew to the Embassy of the United States of America in Nairobi the assurances of its highest consideration.

Nairobi, 21st March, 1977.

Embassy of the United States of America
Nairobi
