

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;