



Treaty Series No. 10 (1985)

Exchange of Letters

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of Kenya

concerning the Status of Forces of the
United Kingdom in Kenya

London/Nairobi, 12 October 1984

[The Agreement entered into force on 12 October 1984]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 1985*

LONDON

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**EXCHANGE OF LETTERS
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF KENYA CONCERNING THE STATUS OF
FORCES OF THE UNITED KINGDOM IN KENYA**

No. 1

*The Minister of State for the Armed Forces of the United Kingdom to the
Minister of State in the Office of the President of Kenya*

*Ministry of Defence
London*

12 October 1984

Dear Mr. Ole Tipis,

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 forces of the United Kingdom in Kenya.

In the course of these discussions it was agreed that the arrangements concerning such status agreed upon in the Exchange of Letters between the two Governments dated 14 July 1967⁽¹⁾ should be superseded by the arrangements set out in the Appendix to this letter.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 date of your reply.

Yours sincerely
JOHN STANLEY

⁽¹⁾ Treaty Series No. 32 (1968), Cmnd. 3581.

APPENDIX

STATUS OF FORCES AGREEMENT

Definitions

1. For the purpose of this Agreement:

“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. This does not include loan service 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 resident of 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 residents of 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.

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 may 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 may exercise 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) In cases where the right to exercise jurisdiction is concurrent 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 Loan Service Personnel or their dependants; 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 with respect to offences committed in Kenya and punishable by the Laws of Kenya. 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 the 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) a member of the British Forces in Kenya, held in the custody of the authorities of Kenya may be released to the service authorities of the United Kingdom in suitable cases on the undertaking that such a member shall be presented for investigations and trial as the authorities of Kenya may require.
- (d) (i) The authorities of Kenya and of the United Kingdom shall assist each other in the investigation and obtaining of evidence in relation to offences committed by members of the British Forces in Kenya or civilian component or dependants in territory of Kenya;
 - (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 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 the 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 a 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) (i) 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) 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 service or other officer or servant of the Government of Kenya done in the course of their employment as such, the two Governments shall after consultation share equally the cost of settling the claim including all expenses connected therewith;

- (ii) a member of the British Forces in Kenya shall not be subject to any proceedings for the enforcement of any judgement given against him in Kenya in a matter which arises in the performance of his official duties.

(c) 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 this claim, the British authorities shall make the payment themselves and inform the authorities of Kenya of their decision and of the sum paid;

provided that nothing in this sub-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 for both contractual and tortious claims unless and until there has been payment in full satisfaction of the claim.

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

(e) 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. They may also possess and carry arms when authorized to do so by the authorities of the United Kingdom. Units and individual members of the British Forces in Kenya shall be responsible for the safe custody of all arms, ammunition and explosives in accordance with standing regulations of the British Forces.

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, provided that such persons have no income generated in Kenya.

(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. They shall not be exempt from user charges for public utilities or from charges for other services rendered.

(c) Authorized service organisations 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 organisations 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 organisations as such provided that such exemption shall not apply to income and profits generated from sale of goods to persons other than those specified in this agreement.

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 organisations 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 Treasury 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.

(e) In this paragraph :

(i) "duty" means customs duties and all other 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 after proper investigations have been conducted by Kenya 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 International 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 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 imported under the terms of paragraph 8, and officially recorded with the Government of Kenya for use by members of the British Forces while in Kenya, or civilian component while serving in Kenya, which are disposed of in anticipation of departure from Kenya. Permission to remit funds generated from the sale of locally acquired personal effects, furniture, motor vehicles and other property, purchased with funds from external sources, will depend on documentary proof of acquisition and sale of such items.

(c) United Kingdom service authorities and individual Service Personnel shall be required to comply with Kenya Government regulations on the declaration of all funds brought into Kenya. No dealing with those funds shall be permitted in contravention of Kenya Government regulations.

Movement, Entry and Exit

11. (a) No restriction shall be placed on the freedom of entry into and exit from Kenya of individual 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) The United Kingdom authorities shall provide the Kenyan authorities annually with a proposed schedule of exercises in Kenya giving notice of at least one year of each major exercise and specifying the units involved. Before each exercise the United Kingdom authorities shall provide the Kenya Government with provisional staff tables of the units involved six months in advance, showing estimated numbers of men and numbers and types of weapons, ammunition, explosives, vehicles and major equipment that

it is intended to bring into the country. The Government of Kenya shall have the right to prohibit the entry of personnel or importation of military stores as specified in the sub-paragraph, provided that notification of such prohibition is given three months in advance of the exercise. The precise numbers of men and equipment, which shall not differ significantly from the original estimates, shall be confirmed by the United Kingdom authorities at least two weeks before each exercise begins.

(c) Any weapons, ammunition, explosives, vehicles and major equipment which the United Kingdom wishes to import independently from a training exercise, or individual British service personnel intending to visit Kenya on official duty shall be notified separately to the Kenyan authorities. The Government of Kenya shall have the right to prohibit the entry of personnel or importation of military stores as specified in this sub-paragraph. The United Kingdom authorities will consider favourably any request from the Kenya authorities for the transfer of any military stores as specified in the sub-paragraph which are no longer required by the British Forces and are not re-exported to the United Kingdom.

(d) The bulk storage and transportation of ammunition and explosives in Kenya shall be subject to such detailed arrangements as may be agreed from time to time between the Kenyan and United Kingdom authorities. The use of weapons, ammunition and explosives for training purposes shall be confined to such areas as the Government of Kenya may from time to time specify.

(e) The Kenya Government shall have the right to restrict the movement of units and members of the British Forces to such an extent as may be necessary or expedient in the interests of Kenya's national security.

(f) The Government of Kenya may provide liaison officers to units of British Forces in Kenya.

(g) 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 been first obtained from the authorities of Kenya.

(h) 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.

(i) 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 (h) 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 shall 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 and civilian component and dependants through British Forces Post Office 10, 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 on satisfactory explanation allow postal articles addressed to Her Majesty's Ships at sea to be re-exported without examination.

(b) Documents and articles may be imported and exported by an official British Forces courier without being subjected to customs and any other inspection provided that a declaration shall be made in sufficient time to the Kenya Government of the type and nature of such documents and articles prior to their importation into Kenya and their exportation therefrom.

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 Kenyan military airfields will continue to be waived in favour of aircraft in the service of the United Kingdom Government.

(c) The clearance for entry into or exit out of Kenya of all vessels and aircraft connected with the official use thereof by the British Forces shall be directed through normal diplomatic channels. British military vehicles entering Kenya by road on official duties shall be cleared through other official channels.

Commencement Date

14. This agreement shall supersede the Exchange of Letters between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya concerning the status of forces of the United Kingdom in Kenya signed the 14th July 1967 and shall come into force upon the date of signature.

Review and Termination

15. This Agreement shall be reviewed by both parties at the end of each successive period of five years and may be terminated by either party giving to the other ninety days' notification in writing of such an intention.

No. 2

*The Minister of State in the Office of the President of Kenya to the Minister
of State for the Armed Forces of the United Kingdom*

*Department of Defence
Ulinzi House
Nairobi
12 October 1984*

Dear Mr. Minister,

I have received your Letter dated 12th October, 1984 setting out in an Appendix the arrangements which have been agreed in discussions 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.

[As in No. 1]

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 enter into force on today's date.

Yours sincerely,
J. K. TIPIS