

THE PRIVILEGES AND IMMUNITIES ACT, 1970

No. 3 of 1970

Date of Assent: 3rd April, 1970

Date of Commencement: 6th April, 1970

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Section

- 1—Short title.
- 2—Interpretation.

PART II—DIPLOMATIC RELATIONS

- 3—Replacement of existing law.
- 4—Application of Convention.

PART III—CONSULAR RELATIONS

- 5—Application of Convention.
- 6—Agreements.
- 7—Commonwealth representatives.
- 8—Power of consular officer in relation to property of deceased persons.

PART IV—INTERNATIONAL ORGANIZATIONS, ETC.

- 9—Privileges, etc., of certain international organizations and persons connected therewith.
- 10—Representatives at international conferences.
- 11—Technical assistance, etc., agencies.
- 12—Modifications in respect of the United Nations Organization.
- 13—Reciprocal treatment.

PART V—GENERAL

- 14—Oaths and notarial acts.
- 15—Restriction of immunities, privileges or powers.
- 16—Evidence.
- 17—Making of orders.
- 18—Repeal and savings.

SCHEDULES.

An Act of Parliament to amend and consolidate the law on diplomatic and consular relations by giving effect to certain international conventions and otherwise; to consolidate the law relating to the immunities, privileges and capacities of international organizations of which Kenya is a member and of certain other bodies; and for matters incidental to and connected with the foregoing

ENACTED by the Parliament of Kenya, as follows:—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Privileges and Immunities Act, 1970.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“Commonwealth country” means any country to which, for the time being, section 95 of the Constitution applies;

“consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions and any person in the service of the Government of a Commonwealth country performing any such functions;

“consular post” means any consulate-general, consulate, vice-consulate or consular agency;

“diplomatic agent” has the meaning assigned to it in Article 2 in the First Schedule to this Act;

“the Minister” means the Minister for the time being responsible for foreign affairs.

(2) In the Articles set out in the First and Second Schedules to this Act—

“agent of the receiving State” or “authorities of the receiving State” shall be construed as including a police officer and any person exercising a power of entry to any premises under any written law;

“grave crime” shall be construed as meaning any offence punishable (on a first conviction) with imprisonment for a term that may extend to five years or with a more severe sentence;

"Ministry for Foreign Affairs or such other ministry as may be agreed" shall be construed as meaning the Ministry of the Minister;

"national of the receiving State" shall be construed as meaning citizen of Kenya.

PART II—DIPLOMATIC RELATIONS

3. The following provisions of this Part shall, with respect to the matters dealt with therein, have effect in substitution for any previous written law or rule of law.

Replacement of existing law.

4. (1) Subject to section 15 of this Act, the Articles set out in the First Schedule to this Act (being Articles of the Vienna Convention on Diplomatic Relations signed in 1961) shall have the force of law in Kenya and shall for that purpose be construed in accordance with the following provisions of this section.

Application of Convention.

(2) For the purposes of Article 32 a waiver by the head of the mission of any State or any person for the time being performing his functions shall be deemed to be a waiver by that State.

(3) Articles 35, 36 and 40 shall be construed as granting any immunity or privilege which they require to be granted.

(4) The references in Articles 37 and 38 to the extent to which any immunities and privileges are admitted by the receiving State and to additional immunities and privileges that may be granted by the receiving State shall be construed as referring respectively to the extent to which any immunities or privileges are specified by the Minister by order and to any additional immunities and privileges that may be so specified.

(5) In its application to the immunity granted by paragraphs (2), (3) and (4) of Article 37 of the First Schedule the expression "permanently resident" in Article 38 of the said Schedule shall be deemed to extend to any individual other than one who is resident in Kenya solely for the purpose of performing the duties of his office for a mission.

PART III—CONSULAR RELATIONS

5. (1) Subject to sections 6 (2) and 15 of this Act, the Articles set out in the Second Schedule to this Act (being Articles or parts of Articles of the Vienna Convention on Consular Relations signed in 1963) shall have the force of law

Application of Convention.

in Kenya and shall for that purpose be construed in accordance with the following provisions of this section.

(2) The reference in paragraph 2 of Article 17 to any immunities and privileges accorded by customary international law or by international agreements shall be construed as a reference to any immunities and privileges conferred under Part IV of this Act.

(3) The references in Article 44 to matters connected with the exercise of the functions of members of a consular post shall be construed as matters connected with the exercise of consular functions by consular officers or consular employees.

(4) For the purposes of Article 45 and that Article as applied by Article 58, a waiver shall be deemed to have been expressed by a State if it has been expressed by the head, or any person for the time being performing the functions of head, of the diplomatic mission of that State or, if there is no such mission, of the consular post concerned.

(5) Articles 50, 51, 52, 54, 62 and 67 shall be construed as granting any immunity or privilege which they require to be granted.

(6) The reference in Article 57 to the immunities and privileges provided in Chapter II shall be construed as referring to those provided in Section II of that Chapter.

(7) The reference in Article 70 to the rules of international law concerning diplomatic relations shall be construed as a reference to the provisions of Part II of, and Schedule I to, this Act.

(8) The reference in Article 71 to additional immunities and privileges that may be granted by the receiving State or to immunities and privileges so far as these are granted by the receiving State shall be construed as referring to such immunities and privileges as may be specified by the Minister by order.

(9) In its application to the immunity granted by Article 49 of the Second Schedule the expression "permanently resident" in Article 71 of the said Schedule shall be deemed to extend to any individual other than one who is resident in Kenya solely for the purpose of performing the duties of his office for a consular post.

6. (1) Where any agreement made, whether before or after the commencement of this Act, between Kenya and any other State provides for according to consular posts and persons connected with them immunities and privileges not accorded to them by the other provisions of this Act, the Minister may, by order, exercise, with respect to the consular posts of that State and persons connected with them, the powers specified in the Third Schedule to this Act so far as may be necessary to give effect to that agreement.

Agreements.

(2) Where any agreement made, whether before or after the commencement of this Act, between Kenya and any other State provides for according to consular posts and persons connected with them some but not all of the immunities and privileges accorded to them by the other provisions of this Act, the Minister may, by order, provide for excluding, with respect to consular posts of that State and persons connected with them, any of the immunities and privileges which are not provided for by that agreement.

7. (1) The Minister may, by order, confer—

Commonwealth
representatives.

- (a) on persons in the service of the Government of a Commonwealth country holding such offices or class of offices as may be specified in the order, being offices or classes of offices which appear to the Minister to involve the performance of duties substantially corresponding to those which, in the case of a foreign sovereign power, would be performed by a consular officer;
- (b) on a person for the time being recognized by the Government of Kenya as the chief representative of any state or province of a Commonwealth country (in this section referred to as a state representative);
- (c) on members of the staff of any such person as is mentioned in paragraph (a) or paragraph (b) of this subsection,

any immunities or privileges which are conferred by or may be conferred under this Part, and any such order may provide for extending, in relation to premises, official archives, communications, documents and personal property of persons on whom any immunities and privileges are or may be conferred under this section, and in relation to any fees and charges levied by them, the provisions of Articles 31, 32, 33, 35, 39 and 51 in the Second Schedule to this Act.

(2) An order under subsection (1) of this section may exclude from any immunities and privileges conferred by it persons who are permanently resident in Kenya, or who are citizens of Kenya, or any class of such persons.

(3) Notwithstanding anything in this section—

(a) a person for the time being recognized by the Government of Kenya as the chief representative in Kenya of a Commonwealth country may waive any immunity conferred under this section on a person in the service of the Government of the country which he represents;

(b) a state representative may waive any immunity conferred under this section on himself or on a member of his staff.

Power of
consular
officer in
relation
to property
of deceased
persons.

8. (1) Where any person who is a national of a foreign State is named as executor in the will of a deceased person disposing of property in Kenya, or is otherwise a person to whom a grant of representation to the estate in Kenya of a deceased person may be made, then if the court is satisfied, on the application of a consular officer of the said State, that the said national is not resident in Kenya, and if no application for a grant of such representation is made by a person duly authorized by power of attorney to act for such national in that behalf, the court shall make to that officer any such grant of representation to the estate of the deceased as would be made to him if he were so authorized as aforesaid:

Provided that the court may, if it thinks fit, postpone the making of such grant during such period as the court considers appropriate having regard to all the circumstances of the case.

(2) Where any person who is a national of a foreign State—

(a) is entitled to payment or delivery of any money or property in respect of any interest in the estate of a deceased person, or vesting in possession on the death of any person, or is entitled to payment of any money becoming due on the death of any person; or

(b) is a person to whom any money or property comprised in the estate of a deceased person may be paid or delivered in pursuance of any written law, whether passed or made before or after the commencement of this Act, authorizing the payment or delivery of such money or property without representation to the estate of the deceased being granted,

then, if the said national is not resident in Kenya, a consular officer of that State shall have the like right and power to receive and give a valid discharge for any such money or property in Kenya as if he were duly authorized by power of attorney to act for such national in that behalf:

Provided that no person shall be authorized or required by this subsection to pay or deliver any money or property to a consular officer if it is within his knowledge that any other person in Kenya has been expressly authorized to receive that money or property on behalf of the said national.

(3) A grant of administration made by virtue of this section may be made to the consular officer concerned by his official title and to his successors in office, and when a grant is so made the office of administrator, and all the estate, rights, duties and liabilities of the administrator (including liabilities under the administration bond), shall be vested in and imposed on the person for the time being holding the office, and no fresh grant shall be required by reason only of the death or vacation of office of the person to whom the grant was made, or in whom it is vested as aforesaid:

Provided that nothing in this subsection shall affect any limitation contained in the grant or any power of the court to revoke the grant.

(4) No sureties shall be required to an administration bond given by a consular officer upon the grant to him of administration by virtue of this section.

(5) Notwithstanding any other provision of this Part conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of powers conferred on him by or under this section or in respect of any document for the time being in his possession in relation thereto.

PART IV—INTERNATIONAL ORGANIZATIONS, ETC.

9. (1) This section shall apply to any organization which the Minister may, by order, declare to be an organization of which Kenya, or the Government, and one or more foreign sovereign powers, or the government or governments thereof, are members.

Privileges, etc., of certain international organizations and persons connected therewith.

(2) The Minister may, by order—

(a) provide that any organization to which this section applies (hereinafter referred to as the organization) shall, to such extent as may be specified in the order,

have the immunities and privileges set out in Part I of the Fourth Schedule to this Act, and shall also have the legal capacities of a body corporate;

(b) confer upon—

(i) any persons who are representatives (whether of governments or not) on any organ of the organization or are members of any committee of the organization or of an organ thereof;

(ii) such number of officers of the organization as may be specified in the order, being the holders of such high offices in the organization as may be so specified; and

(iii) such persons employed on missions on behalf of the organization as may be so specified,

to such extent as may be specified in the order, the immunities and privileges set out in Part II of the said Fourth Schedule;

(c) confer upon such other classes of officers and servants of the organization as may be specified in the order, to such extent as may be so specified, the immunities and privileges set out in Part III of the said Fourth Schedule,

and Part IV of the said Fourth Schedule shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in subparagraph (i) of paragraph (b) of this subsection, and to the families of officers of the organization, any immunities and privileges conferred on the representatives, members or officers under that paragraph, except in so far as the operation of the said Part IV is excluded by the order conferring the immunities and privileges.

(3) An order under subsection (2) of this section shall be so framed as to secure that there are not conferred upon any person any immunities or privileges greater in extent than those which, at the time of the making of the order, are required to be conferred on that person in order to give effect to any international agreement in that behalf and that no immunity or privilege is conferred upon any person as the representative of the Government of Kenya or as a member of the staff of such representative.

(4) Where immunities and privileges are conferred upon any persons by an order under subsection (2) of this section, the Minister, by notice in the Gazette—

- (a) shall specify the persons entitled to immunities and privileges conferred under paragraph (b) of that subsection; and
- (b) may specify the persons entitled to immunities and privileges conferred under paragraph (c) of that subsection.

10. Where a conference is held in Kenya and is attended by the representatives of the Government of Kenya and of the government or governments of one or more other States, and it appears to the Minister that doubts may arise as to the extent to which the representatives of such other States and members of their official staffs are entitled to diplomatic immunities and privileges, he may, by notice in the Gazette, specify the persons aforesaid and the Articles set out in the First Schedule to this Act which shall apply to them, and, for the purposes of those Articles, every representative of a State who is for the time being specified in such a notice shall be deemed to be a head of the mission and such of his official staff as are for the time being included in the notice shall be deemed to be members of the diplomatic staff.

Representatives
at international
conferences.

11. (1) Where the Government of Kenya has, whether before or after the commencement of this Act, entered into any agreement with an external agency under which, in return for assistance or co-operation in works executed in, or services rendered to, Kenya by such agency, the Government has agreed that such agency or persons in its service should enjoy any immunities or privileges, the Minister may, by order—

Technical
assistance,
etc., agencies.

- (a) declare that such agency is one to which this section applies;
- (b) provide that, to such extent as may be specified in the order, such agency shall have the immunities and privileges set out in Part I of the Fourth Schedule to this Act;
- (c) confer upon such classes of officers and servants of such agency as may be specified in the order, to such extent as may be so specified, the immunities and privileges set out in Part III of the said Fourth Schedule,

and for the purposes of any such order references in the said Fourth Schedule to the organization shall be construed as references to the external agency named in the order.

(2) An order under subsection (1) of this section shall be so framed as to secure that there are not conferred on any person any immunities or privileges greater in extent than those which are required to be conferred on that person by the agreement concerned and that no immunity or privilege is conferred on any person who is a citizen of, or permanently resident in, Kenya.

(3) Where immunities and privileges are conferred upon any person by an order under subsection (1) of this section, the Minister shall, by notice in the Gazette, specify the persons who are for the time being entitled to such immunities and privileges.

(4) For the purposes of this section, "external agency" means—

- (a) the government of a foreign State;
- (b) any recognized agency of such a government;
- (c) any internationally recognized foundation or other body.

Modifications
in respect of
the United
Nations
Organization.

12. In its application to the United Nations Organization, established by Charter at San Francisco on 25th June 1945, this Part shall have effect subject to the following modifications—

- (a) any reference to the governing body or any committee of the organization shall be construed as referring to the General Assembly or any council or other organ of the United Nations Organization; and
- (b) the powers conferred upon the Minister by subsection (2) of section 9 of this Act shall include power to confer on the judges and registrars of the International Court set up under the said Charter, and on suitors to that Court and their agents, counsel and advocates, such immunities, privileges and facilities as may be required to give effect to any resolution of, or convention approved by, the said General Assembly.

Reciprocal
treatment.

13. Notwithstanding the foregoing provisions of this Part, the Minister may decline to accord immunities and privileges to, or may withdraw immunities and privileges from, nationals or representatives of any State on the ground that such State is failing to accord corresponding immunities and privileges to citizens or representatives of Kenya.

PART V—GENERAL

14. A diplomatic agent or consular officer of any State may, if authorized to do so under the laws of that State, administer oaths, take affidavits and do notarial acts—

Oaths and
notarial acts.

- (a) required by any person for use in that State or under the laws thereof; or
- (b) otherwise required by a national of that State but not for use in Kenya except under the laws of some other country.

15. If it appears to the Minister that the immunities, privileges or powers accorded to a diplomatic mission or consular post of Kenya in the territory of any state, or to persons connected with that mission or post, are less than those accorded by this Act to the diplomatic mission or consular post of that State, or to the persons connected therewith, the Minister may, by order, withdraw such of the immunities, privileges or powers accorded by this Act from the diplomatic mission or consular post of that State, or from such persons connected therewith, as appears to the Minister to be proper.

Restriction of
immunities,
privileges or
powers.

16. If in any proceedings any question arises whether or not any person is entitled to the benefit of any immunity or privilege, or to exercise any power, under this Act, a certificate given by the Minister stating any fact relating to that question shall be conclusive evidence of that fact, and any such certificate purporting to be signed by the Minister shall be presumed to have been signed by him until the contrary is proved.

Evidence.

17. Any order made under this Act shall, unless a draft thereof has been laid before Parliament and approved by resolution before the making thereof, be laid before Parliament without unreasonable delay, and, if a resolution is passed by Parliament within twenty days on which Parliament next sits after such order is laid before it that the order be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new order.

Making of
orders.

18. (1) The Diplomatic Privileges Act 1708, of the United Kingdom is hereby repealed in its application to Kenya.

Repeal and
savings.
7 Anne, c. 12.

(2) The following Acts are hereby repealed—

(a) the Administration of Estates by Consular Officers Act;

Cap. 164.

(b) the Diplomatic Privileges Extension Act;

Cap. 179.

Cap. 180.

(c) the Immunities and Privileges (Commonwealth Countries and Republic of Ireland) Act;

Cap. 181.

(d) the Consular Conventions Act.

(3) Nothing in this Act shall affect any order made, or list or notice published, under any law repealed by this Act, but any such order, list or notice shall, if in force at the commencement of this Act, continue in force and, so far as it could have been made or published under this Act, have effect as if so made or published.

FIRST SCHEDULE

(ss. 4 and 10)

ARTICLES OF VIENNA CONVENTION ON DIPLOMATIC
RELATIONS HAVING THE FORCE OF LAW IN KENYA

ARTICLE I

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;
- (b) the "members of the mission" are the head of the mission and the members of the staff of the mission;
- (c) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) the "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;
- (e) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;
- (f) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;
- (g) the "members of the service staff" are the members of the staff of the mission in the domestic service of the mission;
- (h) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

ARTICLE 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

ARTICLE 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

ARTICLE 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

ARTICLE 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

ARTICLE 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

ARTICLE 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and take all appropriate steps to prevent any attack on his person, freedom or dignity.

ARTICLE 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

ARTICLE 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

ARTICLE 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. The waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

ARTICLE 33

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

ARTICLE 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance, duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property subject to the provisions of Article 23.

ARTICLE 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on:

(a) articles for the official use of the mission;

(b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

ARTICLE 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 38

1. Except in so far as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

ARTICLE 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

SECOND SCHEDULE (ss. 5 and 7)

ARTICLES OF VIENNA CONVENTION ON CONSULAR RELATIONS HAVING THE FORCE OF LAW IN KENYA

ARTICLE 1

Definitions

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) "consular post" means any consulate-general, consulate, vice-consulate or consular agency;
- (b) "consular district" means the area assigned to a consular post for the exercise of consular functions;
- (c) "head of consular post" means the person charged with the duty of acting in that capacity;
- (d) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (e) "consular employee" means any person employed in the administrative or technical service of a consular post;
- (f) "member of the service staff" means any person employed in the domestic service of a consular post;
- (g) "members of the consular post" means consular officers, consular employees and members of the service staff;
- (h) "members of the consular staff" means consular officers, other than the head of a consular post, consular employees and members of the service staff;

- (i) "member of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;
- (j) "consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
- (k) "consular archives" includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

CHAPTER I—CONSULAR RELATIONS IN GENERAL

ARTICLE 5

Consular Functions

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causæ* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this Article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

ARTICLE 17

Performance of Diplomatic Acts by Consular Officers

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

CHAPTER II—FACILITIES, PRIVILEGES AND IMMUNITIES
RELATING TO CONSULAR POSTS, CAREER CONSULAR
OFFICERS AND OTHER MEMBERS OF A CONSULAR
POST

SECTION I—FACILITIES, PRIVILEGES AND IMMUNITIES
RELATING TO A CONSULAR POST

ARTICLE 31

Inviolability of the Consular Premises

1. Consular premises shall be inviolable to the extent provided in this Article.

2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

ARTICLE 32

Exemption from Taxation of Consular Premises

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

ARTICLE 33

Inviolability of the Consular Archives and Documents

The consular archives and documents shall be inviolable at all times and wherever they may be.

ARTICLE 34

Freedom of Movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

ARTICLE 35

Freedom of Communication

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

ARTICLE 36

Communication and Contact with Nationals of the Sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his

legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

ARTICLE 38

Communication with the Authorities of the Receiving State

In the exercise of their functions, consular officers may address:

- (a) the competent local authorities of their consular district;
- (b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

ARTICLE 39

Consular Fees and Charges

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

SECTION II—FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

ARTICLE 41

Personal Inviolability of Consular Officers

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 43

Immunity from Jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:

- (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
- (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

ARTICLE 44

Liability to give evidence

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligations to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

ARTICLE 45

Waiver of Privileges and Immunities

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43, shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

ARTICLE 46

Exemption from Registration of Aliens and Residence Permits

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

ARTICLE 47

Exemption from Work Permits

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

ARTICLE 48

Social Security Exemption

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

ARTICLE 49

Exemption from Taxation

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
- (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;
- (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

ARTICLE 50

Exemption from Customs Duties and Inspection

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

ARTICLE 51

Estate of a Member of the Consular Post or of a Member of His Family

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession of inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

ARTICLE 52

Exemption from Personal Services and Contributions

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning military contributions and billeting.

ARTICLE 53

Beginning and End of Consular Privileges and Immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so whichever is the sooner.

ARTICLE 54

Obligations of Third States

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*.

ARTICLE 55

Respect for the Laws and Regulations of the Receiving State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the international affairs of that State.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not for the purposes of the present Convention, be considered to form part of the consular premises.

ARTICLE 56

Insurance Against Third Party Risks

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

ARTICLE 57

Special Provisions Concerning Private Gainful Occupation

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

2. Privileges and immunities provided in this Chapter shall not be accorded:

(a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;

- (b) to members of the family of a person referred to in subparagraph (a) of this paragraph or to members of his private staff;
- (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

CHAPTER III—REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS

ARTICLE 58

General Provisions Relating to Facilities, Privileges and Immunities

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.

2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.

3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

ARTICLE 59

Protection of the Consular Premises

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

ARTICLE 60

Exemption from Taxation of Consular Premises

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

ARTICLE 61

Inviolability of Consular Archives and Documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

ARTICLE 62

Exemption from Customs Duties

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coat of arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

ARTICLE 63

Criminal Proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 65

Exemption from Registration of Aliens and Residence Permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

ARTICLE 66

Exemption from Taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

ARTICLE 67

Exemption from Personal Services and Contributions

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

CHAPTER IV—GENERAL PROVISIONS

ARTICLE 70

Exercise of Consular Functions by Diplomatic Missions

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3. In the exercise of consular functions a diplomatic mission may address:

- (a) the local authorities of the consular district;
- (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

ARTICLE 71

Nationals or Permanent Residents of the Receiving State

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the

privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

THIRD SCHEDULE

(s. 6)

PROVISIONS FOR GIVING EFFECT TO OTHER AGREEMENTS

1. The like exemption from dues and taxes may be extended to the residence of any member of a consular post as is accorded under Article 32 in the Second Schedule to this Act to the residence of a career head of a consular post.

2. Paragraph 1 of Article 49 in the said Second Schedule may be extended to members of the service staff.

3. Paragraph 2 of Article 50 in the said Second Schedule may be applied as if it were among the Articles mentioned in paragraph 2 of Article 58 in that Schedule, as if the reference to consular employees included members of the service staff and also such members of the families of consular employees or of members of the service staff as form part of their households, and as if the words "in respect of articles imported at the time of first installation" were omitted.

4. Articles 29 and 31 in the First Schedule to this Act may be extended to members of a consular post and members of their families forming part of their households.

5. Article 22 in the said First Schedule may be extended to consular premises, and paragraph 1 of Article 30 in that Schedule may be extended to the residences of consular officers.

6. Article 27 in the said First Schedule may be extended to the communications of a consular post.

FOURTH SCHEDULE

(ss. 9 and 11)

IMMUNITIES AND PRIVILEGES OF AN ORGANIZATION
AND OFFICERS THEREOF

PART I

Immunities and Privileges of the Organization

1. Immunity from suit and legal process.
2. The like inviolability of premises occupied as offices and of official archives as is accorded by Articles 22 and 24 of the First Schedule to this Act.
3. The like exemption from rates and taxes, other than taxes on the importation of goods, as is accorded to a mission by the said First Schedule.
4. Exemption from taxes on the importation of goods directly imported by the organization for its official use in Kenya or for exportation, or on the importation of any publications of the organization directly imported by it, such exemption to be subject to compliance with such conditions as any written law relating to customs and excise may prescribe.
5. Exemptions from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organization for its official use and in the case of any publications of the organization directly imported or exported by it.
6. The right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the Press or for wireless broadcasting (including communications addressed to, or despatched from, places outside Kenya), of any reduced rates applicable for the corresponding service in the case of Press telegrams.

PART II

*Immunities and Privileges of Representatives, Members of Committees,
High Officers and Persons on Missions*

1. The like immunity from suit and legal process as is accorded to a diplomatic agent under the First Schedule to this Act.
2. The like inviolability of residence as is so accorded to such agent.
3. The like exemption or relief from taxes as is so accorded to such agent.

PART III

Immunities and Privileges of Other Officers and Servants

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.
2. Exemption from direct taxes upon the emoluments received as an officer or servant of the organization.

3. Immunity from national service obligations.
4. Immunity from immigration restrictions and alien registration in respect of the officers and servants and their spouses and dependent relatives.
5. The like privileges in respect of exchange control facilities as are accorded to officials of equivalent status forming part of a diplomatic mission.
6. The like facilities, for the officers and servants and their spouses and dependent relatives, for repatriation in times of international crises as are afforded to diplomatic missions.
7. Exemption from tax or duty on the importation of furniture, personal property and household effects of an officer or servant first arriving to take up his post in Kenya.

PART IV

Immunities and Privileges of Official Staffs and of the Families of High Officers

1. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as a representative on any organ of the organization or as a member of any committee of the organization or of any organ thereof, his official staff accompanying him as such a representative or member shall also be entitled to those immunities and privileges, to the same extent, as are accorded to the members of the diplomatic staff of a mission by or under the First Schedule to this Act.
2. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as an officer of the organization, that person's spouse and children under the age of twenty-one shall be entitled to the immunities and privileges accorded to the family of a diplomatic agent by or under the First Schedule to this Act.