

THE EAST AFRICAN COMMUNITY

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THE EAST AFRICAN COMMUNITY IMMUNITIES AND PRIVILEGES
ACT, 2004

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A Bill

for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY IMMUNITIES AND PRIVILEGES
ACT, 2004**

An Act to provide for the organs, institution, staff and persons employed in different capacities in the service of the East African Community with such immunities and privileges as are necessary for the proper discharge of their function under the Treaty.

ENACTED by the East African Community and assented to by the President of the United Republic of Tanzania, the President of the Republic of Kenya and the President of the Republic of Uganda.

1. This Act may be cited as the East African Community Immunities and Privileges Act, 2004.

Citation

2. In this Act unless the context otherwise requires-

Interpre-
tation

"appropriate authorities" means such national, regional, municipal or other authorities in the Partner States as may be appropriate in the context of this Act and in accordance with the laws and customs applicable in the Partner States;

"Community" means the East African Community established by Article 2 of the Treaty and includes the organs and institutions of the Community established by Article 9 of the Treaty;

"Council" means the Council of Ministers of the Community established by Article 9 of the Treaty;

"Deputy Secretaries General" means the Deputy Secretaries General provided for under Article 68 of the Treaty;

"East African Court of Justice" means the East African Court of Justice established by Article 9 of the Treaty;

"East African Legislative Assembly" means the East African legislative Assembly established by Article 9 of the Treaty;

"Government" means the Government of any of the Partner States;

- "Institutions of the Community" means institutions of the Community established by Article 9 of the Treaty;
- "International organisation" means an international organisation accredited with diplomatic status in any of the Partner States;
- "Judges of the East African Court of Justice" means the Judges of the East African Court of Justice provided for under Article 24 of the Treaty;
- "Members of family" means a spouse and children of a member of staff or person employed in the Community;
- "Members of the East African Legislative Assembly" means the members of the East African Legislative Assembly provided for under Article 48 of the Treaty;
- "Organs of the Community" means the organs of the Community established by Article 9 of the Treaty;
- "Partner States" means the United Republic of Tanzania, the Republic of Kenya, the Republic of Uganda and any other country granted membership to the Community under Article 3 of the Treaty;
- "Persons in the service of the Community" means all persons engaged in rendering service to the Community including the President and other Judges of the East African Court of Justice, the Speaker and members of the East African Legislative Assembly, the Secretary General, the Deputy Secretaries General and Staff of the Community, experts and consultants rendering services to the Community";
- "Premises of the Community" means the buildings or parts of buildings and the land irrespective of ownership, used for the purposes of the Community in the Partner States;
- "President of the East African Court of Justice" means the person appointed as President of the East African Court of Justice under Article 24 of the Treaty;
- "Professional staff" means staff of the Community other than the Secretary General, the Deputy Secretaries General with a special knowledge or professional qualifications and specially recruited for a particular job;
- "Secretary General" means the Secretary General of the Community provided for under Article 67 of the Treaty;
- "Speaker of the East African Legislative Assembly" means the Speaker of the East African Legislative Assembly provided for under Article 53 of the Treaty;
- "Staff of the Community" means the Secretary General, the Deputy

Secretaries General, the professional staff and the support staff appointed by the Summit or the Council to be staff of the Community;

"Summit" means the Summit of Heads of State established by Article 9 of the Treaty;

"Support staff" means staff of the Community other than the Secretary General, the Deputy Secretaries General, and the professional staff;

"Treaty" means the Treaty for the Establishment of the East African Community;

"Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

3. The main purpose of this Act is to accord the Community and its officers the privileges and immunities accorded to similar international organisation by the Partner States to enable the Community carry out its functions.

Purpose
of this Act

4.-(1) The Community, its property and assets, wherever located and by whomsoever held in the Partner States, shall enjoy immunity from every form of legal process, except in any case where the Secretary General has expressly waived the Community's immunity.

Immunity
of
Communi-
ty's
property
and assets

(2) No waiver of immunity shall extend to any measure of execution against Community's property and assets.

5.-(1) The premises of the Community shall be inviolable.

Inviola-
bility of
the
Communi-
ty's
premises

(2) The property and assets of the Community, wherever located and by whomsoever held in the Partner States, shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action.

(3) Officers of a Government of any Partner State whether administrative, judicial, military or police, shall not enter the premises of the Community to perform any official duties except with the consent of and under conditions agreed upon by the Secretary General.

(4) Without prejudice to the provisions of this Act, the Community shall prevent its premises from becoming a refuge for persons who are

avoiding arrest under any law of the Government of any Partner State or are required by such Government for extradition to another country or who are endeavouring to avoid service of legal process.

(5) The appropriate authorities in the Partner States shall exercise due diligence to ensure that the tranquillity of the premises of the Community is not disturbed by the unauthorised entry of groups of persons from outside or by disturbance in its immediate vicinity, and shall provide on the premises such protection as is required for these purposes.

(6) If so requested by the Secretary General, the appropriate authorities shall provide a sufficient number of security personnel for the preservation of law and order on the premises of the Community and for the removal of any persons as requested under the authority of the Secretary General.

Invulnerability of the Community's archives

6. The archives of the Community, and all documents belonging to it or held by it wherever located in the Partner States, shall be inviolable.

Funds of the Community

7.-(1) Without being restricted by financial controls, regulations or moratoria of any kind in the Partner States:-

- (a) the Community may, whenever necessary, hold funds or currency of any kind and operate accounts in any currency;
- (b) the Community shall be free to transfer its funds or currency from one Partner State to another or within any Partner State and to convert any currency into any other currency.

(2) In exercising its rights under this section, the Community shall pay due regard to any representations made by the Government of a Partner State in so far as it is considered that effect can be given to such representations without detriment to the interests of the Community.

Tax exemptions for the Community

8.-(1) The Community, its income, assets and other property shall be exempt from:-

- (a) all direct taxes and indirect taxes on the property, income and

official transactions of the Community payable in any of the Partner States except taxes that are no more than charges for services rendered;

- (b) import and export duties payable in any of the Partner States, prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Community for its official use from any of the Partner States; except that the articles imported under such exemption shall not be sold or otherwise disposed of in the territory of the Partner State into which they were imported except under conditions agreed with the Government of that Partner State;
- (c) customs duties, prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Community from any of the Partner States or on publications by the Community for official purposes except payments for services rendered.

(2) Each Partner State shall make appropriate arrangements for the remission or refund of the amount of any duty or tax payable or paid by the Community in respect of property bought for official use by the Community in the territory of such Partner State.

(3) Any funds or property availed to the Community for its functions shall be exempt from the payment of taxes.

(4) The Community shall not claim exemption from charges for public utility services.

9.-(1) The Community shall enjoy in the territory of each Partner State, for its official communications, treatment not less favourable than that accorded by the Government of that Partner State to other international organisations as well as any Government and its diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, telefax, radiograms, telephotos, telephones and other communications and press rates for information to the press and radio.

Facilities
in respect
of official
communi-
cations by
the
Commua-
nity

(2) Censorship shall not be applied to the official correspondence and other official communications of the Community.

(3) The Community shall have in any of the Partner States the right to use codes and to dispatch and receive its official correspondence either by courier or in sealed bags which shall have the same immunities and privileges as diplomatic couriers and bags.

Immunities and privileges for persons in the service of the Community

10.-(1) Any person in the service of the Community, shall:-

- (a) be immune from legal process in respect of words spoken or written and all acts performed by him or her in the course of duty while in service and after service of the Community;
- (b) be exempt from taxation on the salaries and emoluments paid to him or her by the Community;
- (c) be immune, together with his or her spouses and members of his or her family forming part of the household, from immigration restrictions, alien registration and from national service obligations;
- (d) be accorded the same immunities and facilities in respect of personal baggage as accorded to the officials of comparable rank of international organisations under the Vienna Convention;
- (e) be accorded the same privileges in respect of exchange control facilities as are accorded to the officials of comparable rank of international organisations;
- (f) be given, together with his or her spouse and members of his or her family forming part of the household, the same repatriation facilities in time of crisis as staff of other comparable ranks of other international organisations under the Vienna Convention;
- (g) have the right to purchase ex-bond or import free of duty his or her furniture, effects and other articles for personal use or for use of members of his or her family forming part of the household, including articles intended for his or her establishment, provided that the articles so imported shall not be sold or otherwise disposed of in the territory of the host

Partner State into which they were imported except as agreed with the host Partner State;

(h) have the right to re-export the same items referred to in subsection (1) (g) free of duty to their country of domicile.

(2) Immunities and privileges referred to Subsection (1) shall be conferred and enjoyed by the following categories of persons-

(a) the President and other Judges of the East African Court of Justice;

(b) the Speaker and other members of the East African Legislative Assembly;

(c) the Secretary General and the Deputy Secretaries General;

(d) the Chief Executives of other organs and institutions of the Community;

(e) the professional staff of the organs and institutions of the Community; and

(f) other officials of comparable rank.

(3) Support staff, excluding their spouses and other members of their family forming part of the household, shall enjoy immunities and privileges provided in paragraphs (a), (b) and (c) of Subsection (1).

(4) In addition to the immunities and privileges referred to in Subsection (1), the President and other Judges of the East African Court of Justice, the Speaker and other members of the East African Legislative Assembly, the Secretary General and the Deputy Secretaries General, Chief Executives of other organs and institutions of the Community, the professional staff of the organs and institutions of the Community and other officials of comparable rank shall be accorded in respect of themselves, their spouses and minor children, the immunities and privileges, exemptions and facilities accorded to representatives of comparable rank of international organisations by the Partner States.

(5) Privileges, immunities and facilities are granted to persons in the service of the Community in the interest of the Community and not for the personal benefit of the individuals concerned.

(6) The Secretary General shall have the right to waive the immunity of any official in any case where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Community.

(7) In the case of the President and other Judges of the East African Court of Justice, the Speaker and other members of the East African Legislative Assembly, the Secretary General, Chief Executives of other organs and institutions of the Community, the Deputy Secretaries General and other officials of comparable rank, the Council shall have the right to waive the immunity.

Coopera-
tion with
Partner
States

11. The Community shall co-operate at all times with the appropriate authorities of the Partner States to facilitate the proper administration of justice, secure the observance of police and security regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities provided under this Act.

Immuni-
ties and
privileges
for repre-
sentatives
of Partner
States

12.-(1) A representative of the Partner States to meetings and other activities organised by the Community shall, while exercising his or her functions and during his or her travel to and from the place of the meeting, enjoy the following immunities and privileges:-

- (a) immunity from personal arrest or detention and from seizure of his or her personal baggage and, in respect of words spoken or written and all acts done by him or her in his or her capacity as a representative;
- (b) immunity from legal process of every kind;
- (c) inviolability for all papers and documents;
- (d) the right to use codes and to receive papers or correspondence by courier in sealed bags;
- (e) exemption in respect of themselves from restrictions, alien registration or national service obligations in the Partner States he or she is visiting or through which he or she is passing in the exercise of his or her functions;
- (f) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official mission;

- (g) the same immunities and facilities in respect of his or her personal baggage as are accorded to representatives of comparable rank of international organisations by the Partner States;
- (h) such other privileges, immunities and facilities not inconsistent with the foregoing as staff of comparable rank of other international organisations enjoy, except that he or she shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of his or her personal baggage) or from excise duties or sales taxes.

(2) Privileges, immunities and facilities are accorded to the representative of the Partner States not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions in connection with the Community.

(3) A Partner State has the right to waive the immunity of its representative in any case where, in the opinion of the Partner State, the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity was accorded.

(4) The provisions of Subsection (1) are not applicable as between a representative and the authorities of the Partner States of which he or she is a national or of which he or she is or has been the representative.

(5) For the purposes of this section "representatives" means delegates, advisors, technical experts and secretaries of delegations from Partner States.

13.-(1) An expert performing missions for the Community shall be accorded such privileges, immunities and facilities as are necessary for the independent exercise of his or her functions during the period of his or her mission, including the time spent on journeys in connection with his or her missions.

Immunities and privileges for experts on mission for the Community

(2) Without prejudice to Subsection (1) he or she shall be accorded-

- (a) immunity from personal arrest or detention and from seizure of his or her baggage;

- (b) in respect of words spoken or written and things done by him or her in the course of the performance of his or her mission, immunity from legal process of every kind;
- (c) immunity from legal process shall continue to be accorded notwithstanding that the person concerned are no longer employed on missions for the Community;
- (d) inviolability for all official papers, documents and correspondence; and
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions.

(3) Immunities and privileges are granted to experts in the interests of the Community and not for the personal benefit of the individuals concerned.

(4) The Secretary General shall have the right to waive the immunity of any expert in any case where, in his or her opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Community.

(5) For the purpose of this section "experts" include consultants.

Settle-
ment of
Disputes
with third
parties

14. The Community shall, without prejudice to the powers and responsibilities of the Assembly under the Treaty, make provisions for appropriate modes of settlement of:

- (a) Disputes arising out of contracts and other disputes of a private law character to which the Community is a party;
- (b) Disputes involving any person referred to in this Act who, by reason of his or her official position or function in connection with the Community, enjoys immunity, if such immunity has not been waived.