

Diplomatic Immunities and Privileges from Kenya's National Security Perspective

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ABSTRACT

The designers of diplomatic immunities and consular privileges may not have anticipated their abuse because diplomats are individuals selected among equals and not expected to conduct themselves contrary to the law. However, a critical analysis of Kenyan daily newspapers reveals that some diplomats conduct themselves in a manner that threatens the national security of Kenya. This paper examines the intersection between the abuses of diplomatic immunities and privileges with Kenya's national security interests during President Daniel Moi's and Kibaki's regimes. It cites cases where abuses of diplomatic immunities and consular privileges occurred and interrogates the effectiveness of Kenya's legal framework in handling those cases, as well as their potential implications for national security. The paper proposes a response mechanism and the balance between respecting international obligations and safeguarding national security interests. The paper proposes a nuanced approach that enhances oversight while upholding Kenya's diplomatic commitments.

Keywords: Security, immunities, and privileges

INTRODUCTION

Diplomatic immunities and consular privileges are fundamental aspects of international law, facilitating the functioning of diplomatic missions and consular activities without interference from the host state. In Kenya, diplomatic immunities and privileges are enshrined in the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), and the Kenyan Diplomatic and Consular Immunities Act 179. However, some diplomats decide to abuse these immunities and privileges and become the focus of Kenya's security officials. These abuses pose challenges to Kenya's national security with concerns related to espionage, illicit activities, and abuse of legal protections. Kenya has had a problem balancing the need for diplomatic privileges with the country's national security interests due to a lack of a robust legal and institutional framework. This paper examines the Kenyan legal landscape governing diplomatic and consular immunities, assesses its impact on national security, and explores measures to prevent misuse while maintaining Kenya's international obligations. By evaluating the three legal frameworks, this paper aims to provide insights into how Kenya can navigate the intersection between diplomacy and security without compromising its international posture.

Diplomatic Immunities and Consular Privileges have long been recognized as essential elements of international relations. While these immunities facilitate diplomatic engagements between concerned states, they also raise concerns regarding potential abuses leading to national security threats in Kenya. The Diplomatic Privileges and Immunities Act 179, which consolidates Kenya's approach to diplomatic and consular relations, pays little attention to how abuses of these immunities challenge national security interests. Analysis of media reports and diplomatic police records in Nairobi reveals that many cases exist where diplomatic privileges have been exploited to evade legal accountability, engage in espionage, and facilitate illicit activities. For instance, some diplomats were suspected of colluding with locals to engage in espionage and smuggling contraband goods, including drugs and wildlife products, as diplomatic baggage is often exempted from inspection. Some diplomats were also accused of fraudulent financial activities such as including money laundering. For instance, on November 22, 2010, the Business Daily questioned whether diplomats in Kenya were missing the picture of immunity, particularly with traffic violations. Citizen Radio

stations also dedicated shows to this topic, and angry Kenyan callers raised many issues related to traffic offenses, financial fraud, and failure to pay council rates and rent. Such incidents highlight the delicate balance between maintaining diplomatic relations and safeguarding national security.

While it may be argued that Kenya has legal mechanisms to address such abuses, such as declaring diplomats' *persona non grata* or requesting a waiver of immunity from the sending state, the country faces unique challenges in ensuring that diplomatic immunities do not undermine national security efforts. It appears that there is a complex intersection between diplomatic immunities and Kenya's national security interests that requires a delicate balancing between international obligations with national security concerns. The balancing act would ensure that diplomatic immunities guarantee the safety and independence of diplomats while minimizing opportunities for their exploitation.

The current Diplomatic Immunities and Privileges Act (Cap 179) is faced with enforcement challenges that sometimes hinder intelligence operations, as certain foreign officials may use their immunity to evade scrutiny or interrogations in cases related to national security, such as terrorism, poaching, smuggling, or other organized crimes. For this reason, there is reason to believe that Kenya needs to balance its diplomatic obligations with national security interests, ensuring that foreign missions respect local laws while maintaining good international relations.

This paper explores Kenya's legal and institutional framework governing diplomatic and consular privileges, assesses the impact of these immunities on national security, and provides recommendations for mitigating risks while upholding international obligations. It contributes to policy discussions on balancing diplomacy with national security imperatives by examining the intersection between diplomatic privileges and national security in Kenya, identifying existing legal gaps, and proposing measures for mitigating risks without undermining diplomatic relations. By examining the balance between international obligations and national security interests, this paper contributes to policy discussions on strengthening oversight mechanisms concerning the Vienna Conventions of 1961 and 1963.

Theories of Diplomatic Immunities and Privileges

There are three key theories explaining why diplomats conduct themselves the way they do. First is the personal representation theory positing that diplomats are direct representatives of their sovereign or state meaning that a diplomat should be treated as though they were the sovereign themselves (Eyina & Dumle, 2024). Personal representation theorists believe that diplomats enjoy immunity from local jurisdiction because they are extensions of their home country's government and they must be able to communicate freely without interference. Host states need to extend courtesies to diplomats, such as exemption from certain laws such as taxation because mistreating them would be akin to disrespecting the head of state of the countries they represent. When diplomats engage in discussions, they do so with the authority of their home country. Their words and actions are treated as official state positions, reinforcing the idea that they embody their sovereignty.

While personal representation theory provides a strong foundation foundational for diplomatic immunities and privileges, it has been subject to various abuses that arise when diplomats exploit their immunity for personal gain or evade accountability for misconduct. For instance, some diplomats have engaged in illegal activities such as smuggling, corruption, or even violent crimes, knowing they are shielded from prosecution in the host country. Chakravarty narrated how Delhi based diplomat from Saudi Arabia abused his diplomatic immunities in India by buying two Nepali women from an agent who was a human trafficker to serve as maids in his home and later subjected them to torture and rape including unnatural sex by multiple friends of the diplomat (Chakravarty, 2015).

Diplomatic immunity in Nigeria has been subject to abuse, particularly in cases where diplomats exploit personal representation theory to evade legal consequences. Some diplomats have been accused of engaging in fraudulent activities, including money laundering and financial misappropriation, knowing they cannot be prosecuted under Nigerian law. There have been instances where diplomats mistreat domestic workers or engage in unethical labor practices, shielded by their diplomatic status. Some diplomats have been linked to

smuggling operations, using their immunity to bypass customs regulations. In cases of traffic violations, property disputes, or even more serious offenses, diplomats have invoked their immunity to escape legal consequences. However, Nigeria's response to abuses of diplomatic immunities and privileges has been solely guided by the Vienna Convention on Diplomatic Relations, which provides guidelines for handling diplomatic misconduct. While local authorities cannot prosecute diplomats directly, they can declare diplomats *persona non grata*, forcing them to leave the country; engage in diplomatic negotiations with the sending country to ensure accountability; push for international reforms to limit the scope of immunity in cases of serious abuse (Olanrewaju & Oyedele, 2022). Nigeria's response just like Kenya suggests that there is a lack of oversight authority to regulate the behavior of diplomats.

The second theory of diplomatic immunities and privileges is the functional necessity theory suggesting that immunities and privileges are essential for the diplomats to conduct their duties without fear or intimidation by the host states. However, the theory emphasizes that these immunities and privileges cannot be absolute since the VCDR emphasizes the duty of diplomats to respect the domestic laws of the states hosting them (VCDR, 1961, Article 41). The functional necessity theory also recognizes that diplomatic immunities and privileges need to be balanced against the need for accountability and observance of the national security of the host state. This principle is crystal clear on the duty of the diplomats to maintain good diplomatic relations with the host state while safeguarding the sovereignty of the host state (VCDR, 1961, Article 32). This provision suggests that it is possible to hold diplomats accountable for the offenses they commit when they abuse their diplomatic immunities and privileges. For this reason, the functional necessity theory provides a framework Kenya can use to oversight the behavior of diplomats in the country. It captures the required balance between national security needs and observance of international obligations.

The third theory is anchored on the reciprocity principle suggesting that states extend diplomatic immunities and privileges while expecting reciprocal treatment for their diplomats (Denza, 2016). It ensures that states grant certain protections to foreign diplomats within their territory with the expectation that their diplomats will receive similar treatment abroad. This principle fosters mutual respect and cooperation among nations, reinforcing the stability of international diplomatic relations. It plays a crucial role in maintaining bilateralism in diplomatic and consular relations, meaning that privileges granted by one state are expected to be reciprocated by another. For example, Article 47 of the Vienna Convention explicitly outlines reciprocal applications of diplomatic privileges. However, while reciprocity strengthens diplomatic ties, it also has limitations. Some states have misused diplomatic immunities, leading to concerns about accountability and fairness. In certain cases, diplomatic privileges have been restricted or withdrawn as a form of retaliation when one country perceives unfair treatment of its diplomats. This highlights the delicate balance between national security, diplomatic immunity, and international cooperation.

Effectiveness of Kenya's Legal Framework for Immunities and Privileges

The Privileges and Immunities Act (Cap. 179) is Kenya's legal framework governing diplomatic and consular relations. The provisions of this Act were derived from the framework established by the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963). While the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963) are foundational treaties that establish the framework for diplomatic immunities and consular privileges, their effectiveness has been widely debated regarding their ability to balance diplomatic protections with accountability and national security.

Even though the Convention provides essential protections, there have been instances of abuse, such as diplomats engaging in criminal activities without facing prosecution due to immunity (Ahmad et al., 2024). Some scholars argue that the principle of *persona non grata* which allows host states to expel diplomats serves as an effective countermeasure while others view it as quite ineffective (Ahmad et al., 2024). The Convention's provisions sometimes clash with national security, particularly in cases involving violations or financial misconduct by diplomats (Wanyela, 2014). The near-absolute immunity granted to diplomats has led to concerns about accountability and justice for victims of diplomatic misconduct in Kenya (Wanyela, 2014).

Consular officials enjoy certain immunities, but they are more limited compared to diplomats. This distinction ensures that consular officers can be held accountable for serious offenses, making consular privileges more balanced in terms of effectiveness (United Nations, 1961). The Vienna Convention remains a cornerstone of international diplomacy, but its effectiveness is contingent on responsible implementation by states. While it facilitates diplomatic functions, concerns about abuse and accountability persist, necessitating ongoing discussions on reform and enforcement mechanisms. For instance, the Kenyan Diplomatic and Consular Immunities Act 179 also lacks an effective oversight mechanism culminating in cases of abuse, exposing the country to diplomatic tensions and security risks (Karanja & Ochieng, 2018). This suggests that the legal framework has some loopholes, making it possible for diplomats to commit offenses unpunished.

However, not all concerned parties agree on the weaknesses of the country's legal system. For instance, proponents of the Act believe that it provides a structured legal framework that aligns Kenya's diplomatic practices with international conventions, ensuring smooth diplomatic interactions and adherence to global standards. In cases where diplomats have abused their privileges, Kenya has invoked provisions of the Act to request waivers of immunity or declare an individual persona non grata, leading to their expulsion from the country. The Act has also been instrumental in defining the privileges and immunities of international organizations operating in Kenya, ensuring they function within legal boundaries while maintaining diplomatic protections. These proponents cite instances where Kenyan courts have occasionally ruled on cases involving diplomatic immunity, reinforcing the balance between diplomatic privileges and the rights of citizens.

On the other hand, some citizens believe that enforcement mechanisms are weak, leading to instances of abuse, such as diplomats evading legal consequences for criminal activities (Kenya Law, 2022). For instance, it doesn't allow for restrictions on immunities in cases of severe misconduct, but implementation remains a challenge (Kenya Law, 2022). The Act has several weaknesses that affect its effectiveness in regulating diplomatic conduct. First, it has limited enforcement mechanisms, making it difficult to hold diplomats accountable for misconduct. Second, the Act grants extensive privileges, sometimes allowing diplomats to evade legal consequences for serious offenses. Third, the Act allows for immunity waivers without simplifying the process, which remains complex and often depends on the sending state's cooperation. Third, there have been cases where the Act has been applied inconsistently, leading to diplomatic disputes and concerns over fairness.

Taking a middle line, it is possible to enhance the effectiveness of this act by taking several legislative measures, including establishing clear procedures for investigating and addressing diplomatic misconduct to ensure that privileges are not misused. Second, it would be necessary to amend the Act to restrict immunity in cases of severe offenses, such as human trafficking or corruption, which would help uphold justice. Third, law enforcement agencies can implement stricter regulations on tax exemptions to prevent financial losses due to misuse by diplomats. For instance, enhancing the capacity of the diplomatic police or creating an independent body to monitor diplomatic activities and ensure compliance with legal provisions. Educating citizens and officials on the scope and limitations of diplomatic privileges would also reduce instances of exploitation.

The intersection between Diplomatic Immunities and Kenyan National Security

Diplomats in Kenya like many other countries are expected to adhere to international diplomatic norms, including respect for sovereignty, non-interference in domestic affairs, non-involvement in criminal activities, and the pursuit of peaceful resolutions to conflicts. However, there are many situations where diplomats are accused of committing crimes in Kenya under the guise of diplomatic immunities and consular privileges.

In 1987, during the clamor for multi-party democracy in Kenya, Mr. Ahmed Khaliffer Arrajel, the Libyan ambassador in Nairobi, was accused of persistently undermining national security efforts by running a spy network for Libya in Kenya and funding the University of Nairobi Student Organization (SONU) to rise against President Moi's regime. He was also accused of gathering intelligence concerning SONU's leadership for clandestine motives (Gicheru, 1987). The perception that Libya was working with local students to destabilize President Moi's regime created tension between the two countries. The conduct of the Libyan diplomat illustrates an example where an individual diplomat abuses their diplomatic immunities and privileges.

In April of the same year, the then Charge d'affaires of Libya in Nairobi, Mr. Wanis Ali Messelaty, and four other Libyan diplomats were accused of recruiting university students to spy for Libya, a move that caused Kenya to review its diplomatic ties with Libya, culminating in the closure of the Libyan Embassy in December 1987 (Gicheru, 1987). The two cases could not be punished due to the need for Kenya to observe diplomatic immunities and consular privileges. It was also apparent that the sending state, Libya, in this case, was complacent in the activities of the diplomats and could not waive their immunities even if it was requested by the government of Kenya.

In the 1980s the diplomatic relationship between Kenya and Uganda was frosty occasioned by each country accusing the other of harboring rebels to destabilize the other's government. Tension started after President Museveni stationed troops on the border with Kenya accusing Kenya of harboring dissidents who wanted to overthrow Museveni from power. On the other hand, Kenya also accused President Museveni of colluding with Libya to destabilize the government of Kenya. The diplomatic spat between the two countries may have caused the Ugandan envoy to conduct themselves contrary to the norms of the Vienna Convention. On December 18, 1987, Kenya expelled two Ugandan diplomats, Brigadier Reuben Musonye, and the first secretary, Mr. W.L.Ndege, after being accused of collaborating with the Libyan ambassador in Kenya to destabilize President Moi's regime.

The Ugandan ambassador, Mr. Katungi, was also accused of insulting President Moi in a press release, while his deputy was accused of issuing a press release with an unacceptable and unjustified assault on the integrity of the Kenyan Judiciary and declined to apologize (Musyoka & Ndirangu, 1987). In both cases, security officials could not prosecute the diplomats due to the Diplomatic Immunity of the concerned parties. While it may be argued that the relationship between the two states may have influenced the behavior of their diplomats, the diplomatic immunities and consular privileges stipulate that diplomats are not expected to engage in criminal activities in the host country without repercussions.

Besides African diplomats, in 1990, Kenya accused the Norwegian ambassador of sponsoring illegal activities in the country, specifically collaborating with dissidents such as Koigi Wa Mwere to undermine President Moi's regime (Muthui, Kenya Cuts Diplomatic Ties with Norway, 1990). Diplomatic relations between the two countries which were established in 1963 from the United Kingdom were severed due to Norway's criticism of the Kenyan government and its leadership. Although the expulsion of the Norwegian ambassador could be linked to political tension between the two countries, the ambassador in person, operating under the guise of a human rights activist, accommodated rebels who were fighting to remove President Moi from power, a move that may be translated as interference in the domestic politics of a host state. The diplomat could not be prosecuted locally due to their diplomatic immunity status.

Within the East African region, the government of Kenya arrested the Rwandese diplomat in Nairobi, Mr. Mugabo, on accusations that he was involved in a shooting incident where Mr. Seth Sendashonga, a Hutu politician linked to the opposition movement in Rwanda, was injured in Nairobi's residential suburb on Feb. 26, 1996. Kenya's attorney general, Amos Wako, named Mr. Francis Mugabo as one of the suspects since he was found with one pistol, together with its silencer and 13 rounds of 9mm ammunition at the time of his arrest at the scene of the crime. Kenya requested that Rwanda waive Mr. Francis Mugabo's diplomatic immunities and privileges to enable his prosecution, but the government of Rwanda declined, and Kenyan security officials could not charge him with attempted murder. Mr. Mugabo was the third high-ranking Rwandan diplomat to be deported by Kenya in the year 1995-1996 after Major Jacques Nziza and the diplomat who succeeded him as Charge d'affaires (Muthui, 1996).

The capture of the Kurdish guerrilla leader Abdullah Ocalan in January 1999 presents a classic example among the cases of abuses of diplomatic immunities and consular privileges (Mutegi & Muiruri, 1999). The Greek Ambassador to Kenya, Mr. George Costoulas, facilitated Ocalan's entry into Kenya even though he was a wanted person in Turkey. The Greek embassy was reluctant to give Ocalan fugitive asylum in Greece but instead settled on Kenya as a hiding place where they would keep him while trying to help him get asylum elsewhere (Mutegi & Muiruri, 1999). After two weeks, Kenyan security officials obtained intelligence and evidence that Ocalan was in the country and arrested him (Mutegi & Muiruri, 1999). The Greek ambassador, Mr. Costoulas, had also harbored three other Kurdish women who were being investigated for unprocedural

entry into the country, together with Abdullah Ocalan (Mutegi & Muiruri, 1999). While it is a criminal offense in Kenya to harbor criminals, Article 22 of the Vienna Convention prohibits the inviolability of the premises by the agents of the receiving state, including the police (Vienna Convention on Diplomatic Relations, Article 41). Since the offense was committed by the ambassador in person, it would have been futile for the Kenyan government to request the waiver of the ambassador's diplomatic immunities.

The Daily Nation on Saturday, 8 August 2009, contained headlines about the deportation of an Eritrean diplomat from Kenya due to security reasons. The police went later to court seeking permission to detain the diplomat as they awaited new deportation orders from the government, but to no avail. Besides that, three other Eritrean diplomats had previously been deported from the country on national security grounds, while no legal action could be taken due to their diplomatic immunities and privileges (Mukinda, 2009).

On May 27, 2011, the Nigerian High Commissioner in Kenya and Seychelles, Dr. Chijioke Wilcox Wigwe, was accused of battering his wife, who reported the matter to diplomatic police in Nairobi, the Nairobi Star of Kenya reported. His wife, Mrs. Tess Iyi Wigwe, had petitioned the Kenyan police, urging them to promptly arrest the diplomat before he beats her to death. She sustained injuries on the face, neck, fingers, and spinal cord and was only rescued by her 20-year-old son and 23-year-old daughter who rushed her to the hospital while bleeding profusely. However, the diplomat could not be arrested by the local police since he enjoyed diplomatic immunities and privileges.

In another case, Shelter Afrique managing director Mr. Alassane Ba, who enjoyed diplomatic immunities and privileges, physically assaulted the company's financial director Ms Karen Kandie on June 28, 2012, causing her serious bodily injuries (Correspondent, 2012). Mr. Alassane Ba's legal team argued that Mr. Ba was immune from arrest, detention, or criminal process in Kenya under the Immunities and Privileges Act 179, adopted by some provisions of the Vienna Convention on Diplomatic Relations in 1969. Once the court determined that Mr Ba had diplomatic immunity, it then followed that no criminal charges could be preferred against him.

On Friday, July 27, 2012, the Daily Nation reported the death of Venezuela diplomat, the Charge de'affaires Olga Fonseca, who was found strangled in her Runda home in Nairobi. Before her death, the Kenyan staff at the Venezuela embassy residence complained to the Diplomatic Police Unit in Gigiri over alleged dismissal by Ms. Fonseca for refusing to retract sexual harassment claims against former ambassador Gerato de Silva, who left the country unceremoniously in May after his unnatural sexual acts were reported to police by employees. On the arrival of the ambassador, Ms. Olga Fonseca, staff at the embassy filed a complaint that Ms. Olga had forcefully tried to make the staff apologize and document that they had fabricated lies about her predecessor, Mr. Silva. Further to this, the employees who filed the complaint were evicted from the premises of the embassy by Ms Olga (Angira Z. , 2012). The late Ms Fonseca is alleged to have discovered that officials were smuggling drugs in diplomatic pouches from Caracas, the Venezuelan capital. Local dailies in Venezuela had earlier reported that the Ministry of Foreign Affairs was engaged in narcotics trafficking internationally in the pouches that were immune to inspection, search, and seizure under the laws of International Diplomacy. It was estimated that over 200 tons of narcotics were smuggled through Venezuela's foreign affairs ministry per year (Angira & Mathenge, 2012). Although it is not clear whether Kenya was one of the destinations of drug trafficking by the Venezuelan embassy, the case illustrated how abuses of diplomatic immunities and privileges occur.

Why Diplomats Immunities and Consular Privileges Intersect with National Security

Diplomats sometimes abuse their immunities and privileges due to a combination of factors, including lack of accountability since diplomatic immunity shields them from legal consequences in the host country causing some diplomats to feel emboldened to engage in misconduct. The personal characteristics of individuals for instance those driven by personal achievement may abuse their diplomatic immunities and privileges for personal gains. Diplomats may also be influenced by the political relationship between the sending and receiving states causing them to interfere in local politics beyond their official duties, leveraging their status to push certain agendas. Differences in legal and ethical standards between the diplomat's home country and the host country can lead to misunderstandings or intentional disregard for local laws. Some diplomats believe

that past abuses have gone unpunished, reinforcing the idea that they can act without consequences. The Vienna Convention on Diplomatic Relations (1961) provides guidelines to prevent abuse, but enforcement largely depends on the host country's willingness to declare a diplomat *persona non grata* and send them home.

Many theories also explain why diplomats decide to exploit their immunities and privileges for the wrong reasons. First are the broad protections granted under the Vienna Convention on Diplomatic Relations (1961), which exempts them from prosecution by the host state (Bharadwaj & Sowmya, 2020). This legal shield can sometimes lead to misconduct, including financial crimes, exploitation, and even serious offenses, as diplomats recognize that they are unlikely to face prosecution in the receiving state (Wanyela). The Kenyan Diplomatic Immunities and Consular Privileges Act lacks oversight mechanisms to monitor to ensure a balance between national security and the enjoyment of these immunities and privileges by the diplomatic corps.

Second is the functional necessity theory suggesting that diplomatic privileges exist to ensure effective diplomatic engagement, but some diplomats exploit these protections for personal gain. The lack of enforcement mechanisms within the Vienna Convention further exacerbates the issue, as Kenya has limited options beyond declaring a diplomat *persona non grata* (Wanyela, 2014). Kenya may adopt approaches that have worked in other states to balance between international obligations and national security. For instance, the UK issues a certificate, through the Secretary of State that determines the status of a person, making it clear when, and when not, immunity is attributed. In countries such as Germany, the US, and Belgium, diplomats are issued with a diplomatic identity card as per Article 10 of the VCDR. However, possession of a diplomatic identity card does not provide conclusive evidence of entitlement to immunity, instead, it becomes important to determine which acts were performed in one's official capacity as a member of the mission, and which acts were performed in one's private capacity. Any act performed in the diplomat's private capacity does not benefit from immunity upon termination of the post. The requirement of notification of staff appointments has occasionally been viewed as a condition for the granting of immunity (VCDR Article 10). This principle implies that a diplomat would have to declare all persons living with him, including members of his family, to the Ministry of Foreign Affairs, which would then issue a certificate in case of abuse. It may limit the circumstances where diplomatic identity is falsely used to claim immunity in the country.

Third is the personal representative theory suggesting that diplomats are direct representatives of their sovereign or head of state and any action taken against them is equivalent to an action against the country they represent. While this conception reinforces the idea that diplomats should be granted extensive protections, it poses a significant challenge to security officials handling offenses committed by diplomats. Personal representation assumptions can tempt diplomats to exploit their immunity to evade legal consequences for misconduct, such as financial fraud, smuggling, and other crimes. Diplomats perceiving their functions as personal representatives of their countries are expected to uphold the highest standards of professionalism and integrity, as their actions symbolize their country's values. Abuse of diplomatic privileges leads to strained international relations or retaliatory measures as it occurred between Kenya and Uganda, Libya, Norway, and Rwanda. Diplomats aware of this may be discouraged from misconduct, as the states they represent want to maintain positive diplomatic ties.

In this sense, regular reviews of diplomatic immunities can help balance protection with accountability, ensuring diplomats do not exploit their privileges. Regular reviews of diplomatic immunities and privileges could significantly curb potential abuses. By periodically assessing how these immunities are applied, the government of Kenya can ensure that diplomats uphold ethical and legal standards while performing their duties. For instance, establishing review mechanisms would allow Kenya and sending states to monitor diplomatic conduct, reducing the likelihood of misconduct. Secondly, regular evaluations can reinforce the expectation that diplomats should act responsibly, preventing them from exploiting immunity for unlawful activities (Ahmad et al., 2024). With periodic assessments, governments can flag diplomats who violate local laws and consider actions such as revoking privileges or declaring them *persona non grata* (United Nations, 1961). Diplomatic relations evolve, and continuous monitoring helps ensure immunities align with contemporary legal and ethical standards. The challenge, however, lies in enforcing such reviews without

undermining the principles of diplomatic protection. Striking a balance between safeguarding diplomatic functions and maintaining accountability remains a key focus in discussions on improving the Vienna Convention's effectiveness. Regular reviews may also address the issue of personal misconduct, which is a major weakness of personal representation theory that primarily focuses on the diplomat's role rather than their actions. Kenya may wish to adopt a mixed approach by incorporating functional necessity alongside personal representation to ensure immunities are used responsibly.

Fourth is the inviolability of diplomatic premises suggesting that activities by the diplomat including the premises they occupy are considered to be virtually part of the sending state and therefore out of the jurisdiction of the receiving state (Brownlie 2008). Kenya can borrow a leaf from practices from other states to incorporate concepts like self-defense in diplomatic immunities and consular privileges Act 179. The UK uses this concept to justify the forcible entry into the premises of a diplomatic mission or for other forms of force used against a mission, for instance, the searching of persons with diplomatic status or the opening of diplomatic bags. The UK justified this concept by arguing that the rules of the Vienna Convention do not prejudice the fundamental right of self-defense either in international law or in domestic law (Minutes of Evidence, p.8, para.44).

Fifth when a diplomat comes from a country where corruption thrives, he is likely to abuse his diplomatic immunities by engaging in corrupt practices for personal gains. As suggested by Fisman and Miguel (2006) there is a correlation between the level of corruption in the sending state and the amount of abuse conducted by diplomats of that same country. If the receiving state is also permissive of corrupt practices, the diplomat will weigh the options based on cost-benefit analysis and proceed to act accordingly. Contrastingly, diplomats from low-corruption countries behave remarkably well despite knowing that they can get away with violations.

Sixth is the duration of tenure, Fisman and Miguel (2006) found a correlation between the duration of tenure in a host State and the potential for abuse of a person with immunity from a high-corruption country may also be observed. Individuals acquire a sense of comfort, ease, and confidence, to make them more susceptible to abuse.

Seventh is the relationship between the sending and receiving state. Fisman and Miguel (2006) found that if the sending state has a low opinion of the receiving state to the extent of feeling that, after all, the diplomatic relations are not of any value, it may lead to abuse of immunities. The country's unfavorable attitude towards the host state is confirmed when a sending State refuses to cooperate through a waiver, recalling the diplomat willingly.

CONCLUSION

This paper has argued that some gaps exist in the Diplomatic Immunities and Consular Privileges conventions making it difficult for Kenya to hold diplomats accountable for their actions including the commission of offences. It has presented evidence demonstrating that diplomats abuse their immunities and privileges in the country but also presents ways through which the government of Kenya may balance its national obligations and security at the same time. Kenya may leverage the principles of the functional necessity theory of diplomatic immunities and privileges as a framework for establishing an oversight mechanism for monitoring abuses of immunities and privileges. The paper has aligned itself with the principle that immunities and privileges are not absolute and there is a need to balance against the need to maintain the integrity of diplomatic relations and national security. The paper recommends the need for a fresh evaluation of the personal representation principles within the context of contemporary security threats such as poaching, human trafficking, smuggling drugs, and contraband goods. Kenya requires an enhanced oversight mechanism to ensure a balance observing international obligations and its national security demands. Kenya may also follow the principles of reciprocity by developing strong bilateral ties with states whose diplomats are hosted in the country to discuss challenges facing their diplomatic relations. This move may deter diplomats from abusing their immunities and privileges.

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