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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

COMMITTEE ON DELEGATED LEGISLATION

REPORT
ON

THE DRAFT PRIVILEGES AND IMMUNITIES (FORD
FOUNDATION) ORDER, 2026

	
THE NATIONAL ASSEMBLY	
PAPERS LAID	
OCTOBER 2026	
DATE: 13 OCT 2026	DAY: TUESDAY
TABLED BY:	HON. GICHIMU GITHINJI, MP (VICE CHAIRPERSON)
CLERK-AT-THE-TABLE:	INZO FU MWALE, HSC



The Directorate of Audit, Appropriations
& General-Purpose Committees
The National Assembly
Parliament Buildings

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LIST OF ABBREVIATIONS AND ACRONYMS

CBS	Chief of the Order of the Burning Spear
DLS	Directorate of Legislative and Procedural Services
EBS	Elder of the Order of the Burning Spear
EGH	Elder of the Order of the Golden Heart
HCA	Host Country Agreement
KANU	Kenya African National Union
KRA	Kenya Revenue Authority
MP	Member of Parliament
ODM	Orange Democratic Movement
UDA	United Democratic Alliance
UDM	United Democratic Movement
UPA	United Progressive Alliance
UPIA	United Party of Independent Alliance
VAT	Value Added Tax
WDM–Kenya	Wiper Democratic Movement–Kenya

CHAIRPERSON'S FOREWORD

The draft Privileges and Immunities (Ford Foundation) Order, 2026 is proposed to be made by the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs under section 11 of the Privileges and Immunities Act, Cap. 179. In accordance with section 17 of the Act, the Cabinet Secretary submitted the Order in draft, by letter Ref. MFA/NGO/31/VOL. I (22) dated 25th May 2026, for approval by the House before it is made. The draft Order was received by the Clerk on 18th June 2026, laid before the House on Tuesday, 23rd June 2026 by the Deputy Leader of the Majority Party, and stood committed to the Committee on Delegated Legislation.

The purpose of the draft Order is to give the force of law in Kenya to the privileges and immunities agreed under the Host Country Agreement between the Government of the Republic of Kenya and the Ford Foundation, signed on 13th March 2026, which provides for the establishment and strengthening of the Foundation's Regional Office in Nairobi.

Pursuant to section 16 of the Statutory Instruments Act, Cap. 2A, the Committee conferred with the Ministry of Foreign and Diaspora Affairs on Tuesday, 15th September 2026, at which meeting Members raised concerns on accountability, the fiscal effect of the exemptions and the identification and number of beneficiaries.

The Committee found that the draft Order is within the powers conferred by section 11 of the Act and that the privileges conferred on the Foundation correspond to those agreed in the Host Country Agreement. The tax exemptions conferred constitute revenue forgone to be accounted for under Article 210 of the Constitution.

Having examined the draft Order against the Constitution, the Privileges and Immunities Act, Cap. 179, the Statutory Instruments Act, Cap. 2A and the Interpretation and General Provisions Act, Cap. 2, the Committee recommends that the House **APPROVES** the draft Order.

I thank the Speaker and the Office of the Clerk for the support accorded to the Committee, and the Members and Secretariat for their diligence in considering the draft Order.

On behalf of the Members of the Committee on Delegated Legislation and pursuant to Standing Order 210, it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Draft Privileges and Immunities (Ford Foundation) Order, 2026.**



HON. CHEPKONG'A KIPRONO SAMUEL, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

CHAPTER ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Committee on Delegated Legislation is established under **Standing Order No. 210** of the National Assembly Standing Orders and is mandated to scrutinise statutory instruments submitted to the House.
2. Pursuant to Standing Order 210 and section 13 of the Statutory Instruments Act, Cap. 2A, the Committee is mandated to consider, in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which, in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the Courts;
 - f) gives retrospective effect to any of the provisions in respect to which the Constitution or the Act does not expressly give any such power;
 - g) involves expenditure from the Consolidated Fund or other public revenues;
 - h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had an unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - l) makes rights, liberties or obligations unduly dependent on insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises:

Chairperson

Hon. Chepkong'a Kiprono Samuel, CBS, M.P.

Ainabkoi Constituency

UDA

Vice-Chairperson

Hon. Githinji Robert Gichimu, M.P.

Gichugu Constituency

UDA

Committee Members

Hon. Mbui Robert, CBS, M.P.

Kathiani Constituency

WDM-Kenya

**Hon. (Maj) (Rtd) Dekow Barrow
Mohamed, M.P.**

Garissa Township Constituency

UDA

**Hon. Ole Sunkuli, Julius Lekakeny,
EGH, EBS, M.P.**

Kilgoris Constituency

KANU

Hon. Kamene Joyce, M.P.

Machakos County

WDM-Kenya

**Hon. Dr. Onchoke, Mamwacha
Charles, M.P.**

Bonchari Constituency

UPA

**Hon. Dr. Kimaiyo, Gideon Kipkoech,
M.P.**

Keiyo South Constituency

UDA

Hon. Waithaka, John Machua, M.P.

Kiambu Constituency

UDA

Hon. Chebor, Paul Kibet, M.P.

Rongai Constituency

UDA

Hon. Yakub Adow Kuno, M.P.

Bura Constituency

UPIA

**Hon. (Maj) (Rtd) Abdullahi, Bashir
Sheikh, M.P.**

Mandera North Constituency

UDM

Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

UDA

Hon. Odoyo, Jared Okello, M.P.

Nyando Constituency

ODM

Hon. Chepkorir Linet, M.P.

Bomet County

UDA

Hon. Munyoro Joseph Kamau, M.P.

Kigumo Constituency

UDA

Hon. Oluoch, Anthony Tom, M.P.
Mathare Constituency
ODM

Hon. Lenguris Pauline, M.P.
Samburu County
UDA

Hon. Okoth, Moses Omondi, M.P.
Butere Constituency
ODM

Hon. Mnyazi Amina Laura, M.P.
Malindi Constituency
ODM

Hon. Mugabe Innocent Maino, M.P.
Likuyani Constituency
ODM

1.3 Committee Secretariat

4. The Secretariat facilitating the Committee comprises:

Ms. Wanjiru Mwaura
Principal Clerk Assistant I, Head of Department and Team Leader

Mr. Brian Langwech
Clerk Assistant III

Mr. Wilson Dima
Deputy Director, DLS

Mr. Peter Barasa
Legal Counsel II

Ms. Grace Odedere
Clerk Assistant III

Ms. Elsy Jerop
Legal Counsel II

Ms. Angela Musau
Legal Counsel II

Mr. Yakub Ahmed
Media Relations Officer

Ms. Brenda Michira
Research Officer III

Mr. Cosmas Akhonya
Serjeant at Arms

Mr. Rodgers Kiludya
Hansard Reporter

CHAPTER TWO

2.0 CONSIDERATION OF THE DRAFT PRIVILEGES AND IMMUNITIES (FORD FOUNDATION) ORDER, 2026

2.1 Introduction

5. The Ford Foundation was founded in 1936 and is registered as a non-profit corporation in the State of Michigan, United States of America, with its headquarters in New York. It is amongst the world's largest foundations and maintains ten regional offices located in New Delhi, Jakarta, Cairo, Lagos, Nairobi, Bogotá, Mexico City, Rio de Janeiro, Beijing and Johannesburg.
6. The work of the Foundation is guided by its Articles of Incorporation, which direct it to apply its resources for scientific, educational and charitable purposes for the public welfare. According to the Explanatory Memorandum, the Foundation:
 - (a) operates through regional offices and partner institutions to support leaders, strengthen civil society, promote democratic values and advance equitable development;
 - (b) works to promote cooperation among governments, international organisations, the private sector, civil society and other stakeholders towards common goals of justice, inclusion and human rights; and
 - (c) provides grants, tools, support and resources to address inequality, strengthen civic space and support innovative solutions.
7. The Foundation opened its East Africa office in Nairobi in 1963. The Regional Office was registered on 4th October 1966 under section 366 of the Companies Act, Cap. 486 (since repealed), and the Foundation has since 1968 worked with the Government under a Memorandum of Understanding signed on 7th March 1968.
8. The Foundation seeks to formalise and strengthen its Regional Office in Nairobi in order to expand its activities in Kenya and to serve the Eastern Africa region. The Government has agreed to the establishment and strengthening of the Regional Office and has undertaken to provide an enabling legal and institutional framework for its operations.
9. The Host Country Agreement between the Government of the Republic of Kenya and the Ford Foundation for the Establishment of a Regional Office in Kenya (the "Agreement") was negotiated through an inter-ministerial process in August 2025. It was signed in Nairobi on 13th March 2026 by the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs on behalf of the Government and by Ms. Margaret Wawuda Mliwa, Regional Director for the Eastern Africa Regional Office, on behalf of the Foundation.

2.2 Object and Purpose of the Agreement and the Draft Order

10. The Agreement authorises the Foundation to establish a Regional Office in Nairobi for purposes of carrying out its activities in Kenya and elsewhere in Eastern Africa. It also defines the legal status, privileges, immunities and obligations of the Foundation and its officials in Kenya.
11. According to the Explanatory Memorandum, the objectives of the Agreement are:

- (a) strengthening Kenya's position as a hub for social justice and philanthropic initiatives in Africa;
 - (b) supporting programmes focused on civic space, democratic governance, economic inclusion, gender justice and human rights; and
 - (c) enhancing long-term cooperation between the Government of Kenya and the Ford Foundation.
12. The draft Order is the domestic legal instrument through which the privileges and immunities agreed under the Agreement acquire the force of law in Kenya. Article XVII(1) of the Agreement provides that it shall enter into force upon gazettelement and shall be presented to the National Assembly in accordance with the laws of Kenya. The Agreement does not, by itself, confer privileges or immunities enforceable in Kenya. It is the Order, made under section 11 of the Privileges and Immunities Act, that does so, and only to the extent specified in the Order.

2.3 Legislative Context

13. Article 94(5) and (6) of the Constitution permits Parliament to confer on a State organ or State officer the power to make provision having the force of law, provided that the parent Act specifies the purpose, objectives and limits of that authority.
14. Section 11(1) of the Privileges and Immunities Act, Cap. 179 provides that where the Government has entered into an agreement with an external agency under which, in return for assistance or co-operation in works executed in, or services rendered to, Kenya, the Government has agreed that the agency or persons in its service should enjoy immunities or privileges, the Cabinet Secretary may, by order:
- (a) declare that the agency is one to which section 11 applies;
 - (b) provide that, to such extent as may be specified, the agency shall have the immunities and privileges set out in Part I of the Fourth Schedule to the Act; and
 - (c) confer upon such classes of officers and servants of the agency as may be specified, to such extent as may be specified, the immunities and privileges set out in Part III of the Fourth Schedule.
15. Section 11(2) requires an order to be framed so as to secure that no person is granted immunities or privileges greater in extent than those required by the agreement, and that no immunity or privilege is conferred on any person who is a citizen of, or permanently resident in, Kenya. Section 11(3) requires the Cabinet Secretary to specify, by notice in the Gazette, the persons who are for the time being entitled to the immunities and privileges. Section 11(4)(c) defines an "external agency" to include an internationally recognised foundation or other body.
16. Section 17 of the Act provides that any order made under the Act shall, unless a draft of it has been laid before Parliament and approved by resolution before it is made, be laid before Parliament without unreasonable delay, and shall be void if Parliament resolves to annul it within twenty sitting days after it is laid.
17. Upon being made and published, the Order will be a statutory instrument within the meaning of section 2 of the Statutory Instruments Act, Cap. 2A. The Committee therefore applied the requirements of sections 5, 5A, 6, 13 and 16 of that Act to the draft Order.

18. Article 210(1) of the Constitution provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. Article 210(2) requires that where legislation permits the waiver of any tax or licensing fee, a public record of each waiver shall be maintained together with the reason for the waiver, and each waiver and the reason for it shall be reported to the Auditor-General.
19. The Treaty Making and Ratification Act, 2012 defines a treaty as an international agreement concluded between States. The Ford Foundation is a private non-profit corporation and not a State or an international organisation. The Agreement is therefore not a treaty requiring ratification under that Act, and the oversight role of Parliament is exercised through section 17 of the Privileges and Immunities Act.

2.4 Policy Context

20. According to the Explanatory Memorandum, the policy objective of the Privileges and Immunities Act is to provide immunities, privileges and capacities to international organisations and foundations with which Kenya partners. In furtherance of that objective, the Agreement seeks, subject to the laws of Kenya, to:
 - (a) grant privileges, immunities and exemptions to the Ford Foundation; and
 - (b) grant exemptions and privileges to officials of the Ford Foundation in the performance of official work.
21. The Ministry states that the Agreement will enhance Kenya's international profile, strengthen cooperation with global philanthropic stakeholders, create employment and capacity-building opportunities for Kenyan professionals, and increase support for projects in Kenya and Africa focused on democracy, inclusion and human rights.

2.5 Key Provisions of the Host Country Agreement

22. The principal provisions of the Agreement are summarised below.
23. Article I defines the terms used in the Agreement. "Officials of the Foundation" means the Regional Director, all internationally recruited staff and Kenyan nationals recruited locally, but excludes persons employed on an hourly basis.
24. Article II authorises the Foundation to establish a Regional Office in Nairobi under a Regional Director appointed by the President of the Foundation. Article III confers on the Foundation legal personality and the capacity to contract, to institute and defend legal proceedings, and to acquire, hold and dispose of property in accordance with the laws of Kenya. Article IV sets out the objectives of the Foundation, being scientific, educational and charitable purposes for the public welfare.
25. Article V provides for the inviolability of the offices, premises, property, archives and communications of the Foundation, and grants it immunity from legal process except in commercial and labour disputes, traffic claims and where immunity is expressly waived. Rules applicable within the premises are subject to the laws of Kenya, and the premises may not be used as a refuge.
26. Article VI exempts the Foundation from taxation, including stamp duty, land rates and rents, and from customs duty, excise duty and value added tax on goods and services for official use. Duty becomes payable where exempt goods are disposed of in Kenya. Article VII

permits the Foundation to hold, operate and transfer funds and currencies upon fulfilling the applicable legal requirements.

27. Article VIII sets out the privileges of officials, namely exemption from income tax and social security contributions, the duty-free importation of household effects and motor vehicles on first arrival, exemption from national service, banking and the transfer of funds, repatriation in times of crisis, immunity for official acts, freedom of movement and exemption from export duty on departure. Clauses 1, 2, 3, 5 and 9 of Article VIII do not apply to Kenyan citizens and permanent residents. Article IX provides for diplomatic identity cards, exemption from work permits, facilitation of entry and transit, and notification to the Government of officials and their dependants.
28. Articles X and XI require the Foundation to observe the labour laws of Kenya and the principle of non-discrimination, and to provide pension, social security and medical cover for its Kenyan and permanent resident staff. Article XII requires the Foundation to submit annual returns to the Ministry on all its activities in Kenya, including its income and expenditure and particulars of its employees. The first return is due within three months of signing, and thereafter annually by 31st December.
29. Article XIII obliges the Foundation and its officials to respect the laws of Kenya and not to interfere in the internal affairs of the Republic, and requires the Foundation to waive immunity where it would impede the course of justice. The Government may suspend privileges that are abused. No immunity extends to traffic offences, commercial transactions, civil and criminal actions and employment disputes involving Kenyan nationals, or to matters in which court orders have been issued.
30. Article XV provides for the amendment of the Agreement by Exchange of Notes, while Article XVI provides for the settlement of disputes by consultation and for claims by local nationals on employment, traffic and commercial matters to be determined by the courts of Kenya. Under Articles XVII and XVIII, the Agreement enters into force upon gazettment for a renewable period of ten years, and may be terminated by mutual consent, by twelve months' notice or upon closure of the Regional Office.

2.6 Summary of the Draft Order

31. The draft Order comprises seven paragraphs, as follows:

- (a) paragraph 1 provides for the citation of the Order as the Privileges and Immunities (Ford Foundation) Order, 2026;
- (b) paragraph 2 declares the Ford Foundation, being a non-profit organisation established with the aim of reducing poverty and inequality, strengthening democratic values and the rule of law, promoting international cooperation and advancing human achievement, and with which the Government has entered into an agreement for cooperation, to be an organisation to which section 11 of the Act applies;
- (c) paragraph 3 provides that the Foundation shall have the legal capacity of a body corporate to enter into contracts, institute and defend legal proceedings, and acquire, hold or dispose of movable and immovable property in accordance with the laws of Kenya;
- (d) paragraph 4 accords the Foundation the privileges and immunities specified in paragraphs 1 to 6 of Part I of the Fourth Schedule to the Act;

- (e) paragraph 5 provides that no privilege or immunity shall extend to the Foundation or its officials with respect to claims arising out of road traffic offences and accidents, commercial transactions, civil and criminal actions or omissions, and employment disputes involving Kenyan or other nationals;
- (f) paragraph 6 accords the Director, officials and staff of the Foundation, while residing in Kenya and performing duties in the service of the Foundation, the privileges and immunities specified in paragraphs 1 to 7 of Part III of the Fourth Schedule to the Act; and
- (g) paragraph 7 provides that paragraphs 2 to 7 of Part III of the Fourth Schedule shall not apply to a citizen of Kenya or to any person who is ordinarily resident in Kenya.

2.7 Meeting with the Ministry of Foreign and Diaspora Affairs

32. Pursuant to section 16 of the Statutory Instruments Act, the Committee met the Ministry of Foreign and Diaspora Affairs represented by Dr. Martin Owuor, Head of Legal Services, who appeared on behalf of the Prime Cabinet Secretary and Cabinet Secretary, accompanied by Amb. Daniel Wambura, Head of Privileges and Immunities and Ms. Margaret Mliwa, Regional Director of the Ford Foundation.
33. Dr. Owuor briefed the Committee on the provisions of the draft Order, covering its citation, the declaration of the Foundation as an organisation to which section 11 of the Act applies, its legal capacity, the privileges and immunities conferred under Parts I and III of the Fourth Schedule to the Act, and the exclusion of citizens of Kenya and persons ordinarily resident in Kenya.
34. Upon deliberation, the Committee observed that:
 - (a) the draft Order had been submitted in draft form, before being made and published, by letter Ref. MFA/NGO/31/VOL. I (22) dated 25th May 2026, as required by section 17 of the Privileges and Immunities Act;
 - (b) the draft Order, read with the Agreement, confers extensive privileges and immunities, including immunity from search and requisition, immunity from legal process, exemption from taxation including land rates and rents, exemption from value added tax and income tax, and the duty-free importation of motor vehicles, and that the cumulative legal and fiscal effect of the exemptions required close scrutiny;
 - (c) the proposed immunity from legal proceedings raised concerns regarding accountability and the remedies available to persons who may have claims against the Foundation;
 - (d) Article IX of the Agreement exempts officials from the requirement to obtain work permits or passes, but the draft Order does not disclose how the officials entitled to that exemption are to be identified;
 - (e) the draft Order does not limit the number of officials and staff to whom the privileges and immunities may extend;
 - (f) the views of the Judiciary and the Executive had been obtained, but the legislative arm had not been engaged until the draft Order was laid before the House; and
 - (g) the draft Order is accompanied by an Explanatory Memorandum setting out its purpose, legislative context, policy background and the outcome of consultations.

CHAPTER THREE

3.0 COMMITTEE OBSERVATIONS

35. Having examined the draft Order, the Explanatory Memorandum, the Agreement and the submissions of the Ministry, the Committee made the following observations.

3.1 Procedure and Statutory Timelines

36. The Cabinet Secretary transmitted the Explanatory Memorandum and the draft Order by letter dated 25th May 2026 “for consideration and approval by the National Assembly prior to its gazettelement”. The Committee observed that the Cabinet Secretary elected the first procedure under section 17 of the Act. The draft Order therefore requires the approval of the House by resolution before it is made, and the annulment procedure under the second limb of section 17 does not apply at this stage.
37. The letter was received by the Clerk on 18th June 2026, twenty-four days after it was signed, and the draft Order was laid on Tuesday, 23rd June 2026. As the Order has not been published, no question of delay in publication or laying arises under section 13(j) of the Statutory Instruments Act.
38. At its sitting of 15th September 2026, the Committee noted that the views of the Judiciary and the Executive were obtained during the negotiation of the Agreement, but that Parliament was not engaged until the draft Order was laid. The Committee observed that section 17 of the Act secures the approval of the House before the Order is made. As the Agreement enters into force only upon gazettelement of the Order under Article XVII, it cannot take effect without that approval.
39. The Committee considered the draft Order within the statutory sitting days of its referral on 23rd June 2026. The Committee further observed that the deemed-compliance provision in section 15(2) of the Statutory Instruments Act cannot take the place of the affirmative resolution of the House that section 17 of the Privileges and Immunities Act requires for a draft order.

3.2 Enabling Power

40. The Committee observed that the conditions in section 11(1) of the Act are satisfied, in that:
- (a) the Government has entered into an agreement with the Foundation, being the Agreement signed on 13th March 2026;
 - (b) the Foundation, being an internationally recognised foundation, is an external agency within the meaning of section 11(4)(c) of the Act;
 - (c) the Agreement is in return for co-operation and services rendered to Kenya, including grant-making, capacity building and employment opportunities, as set out in Articles II, IV and XII of the Agreement and Part 5 of the Explanatory Memorandum; and
 - (d) the Government has agreed that the Foundation and its officials shall enjoy immunities and privileges, under Articles V, VI and VIII of the Agreement.

41. Paragraphs 2, 4 and 6 of the draft Order are therefore within the powers conferred by section 11(1)(a), (b) and (c) of the Act. Paragraphs 5 and 7 limit the extent of the privileges conferred, as section 11(1)(b) and (c) and section 11(2) contemplate.
42. Paragraph 3 of the draft Order provides that the Foundation shall have the legal capacity of a body corporate. The Committee observed that the Foundation already possesses legal capacity in Kenya by virtue of the registration of its Regional Office under the Companies Act, Cap. 486 on 4th October 1966 and Article III of the Agreement. Paragraph 3 is therefore declaratory of the existing legal status of the Foundation, confers no additional immunity, privilege or exemption, and does not offend section 13(a) or (i) of the Statutory Instruments Act.

3.3 Exclusion of Kenyan Citizens and Permanent Residents

43. Section 11(2) of the Act requires an order to be framed so as to secure that no immunity or privilege is conferred on any person who is a citizen of, or permanently resident in, Kenya.
44. Paragraph 7 of the draft Order gives effect to this requirement by providing that paragraphs 2 to 7 of Part III of the Fourth Schedule shall not apply to a citizen of Kenya or to any person who is ordinarily resident in Kenya. Kenyan citizens and residents employed by the Foundation therefore do not enjoy the tax exemptions, exemption from national service, immigration exemptions, currency and repatriation facilities or customs privileges conferred on officials. This is consistent with the proviso to Article VIII of the Agreement.
45. The Committee further observed that the immunity of officials under paragraph I of Part III of the Fourth Schedule is functional, being limited to acts done in the course of official duties, and is subject to paragraph 5 of the draft Order, under which no privilege or immunity extends to the officials of the Foundation in respect of claims arising out of road traffic offences and accidents, commercial transactions, civil and criminal actions or omissions, and employment disputes.

3.4 Fundamental Rights, Access to Justice and the Rule of Law

46. Paragraph I of Part I of the Fourth Schedule confers on the Foundation immunity from suit and legal process, and paragraph I of Part III confers on its officials immunity for acts done in the course of official duties. These provisions engage section 13(b) and (e) of the Statutory Instruments Act and Article 48 of the Constitution.
47. At its sitting of 15th September 2026, the Committee raised concern regarding accountability and the remedies available to persons with claims against the Foundation. The Committee noted that paragraph 5 of the draft Order responds to this concern by excluding immunity for road traffic, commercial, civil, criminal and employment claims.
48. The Committee observed that the limitation is reasonable and justifiable within the meaning of Article 24 of the Constitution, in that:
- (a) paragraph 5 of the draft Order excludes from immunity all claims arising out of road traffic offences and accidents, commercial transactions, civil and criminal actions or omissions, and employment disputes, giving these safeguards the force of law;
 - (b) the immunity of officials is functional and limited to official acts;

- (c) under Article XIII of the Agreement, the Foundation has a duty to waive immunity where it would impede the course of justice, no immunity extends to matters in which court orders have been issued, and the Government may suspend privileges that are abused; and
 - (d) under Article X of the Agreement, the Foundation is required at all times to observe Kenyan labour laws.
49. The Committee further observed that the exclusions in paragraph 5 are expressed broadly and extend to claims involving Kenyan and other nationals. This approach favours access to justice and preserves the jurisdiction of the courts for all persons affected by the activities of the Foundation.
50. Article XVI(2) of the Agreement requires claims against the Foundation to be referred first to the Ministry for negotiation. The Committee observed that this requirement is an arrangement between the Parties, is not given legal effect by the draft Order, and cannot limit the right of any person to approach the courts under Articles 48 and 159 of the Constitution.

3.5 Fiscal Implications and Regulatory Impact

51. The draft Order exempts the Foundation from rates and taxes and from taxes on goods and services for official use, and exempts its non-citizen officials from tax on emoluments and from duty on personal effects on first arrival. These exemptions do not impose taxation within the meaning of section 13(d) of the Statutory Instruments Act. They do, however, constitute revenue forgone and engage section 13(g).
52. Part 7 of the Explanatory Memorandum states that the Agreement imposes no direct financial obligation on the Government beyond facilitating the operations of the Regional Office. No regulatory impact statement was prepared, and the Explanatory Memorandum does not estimate the revenue forgone. The Committee observed that the exemptions relate to a single regional office and its non-citizen officials, and their cost is unlikely to be significant on the community within the meaning of section 6 of the Statutory Instruments Act. The Committee nonetheless urges the Ministry to quantify the revenue forgone in future Explanatory Memoranda.
53. The Committee observed that the exemptions satisfy Article 210(1) of the Constitution, being provided for by section 11 of, and the Fourth Schedule to, the Privileges and Immunities Act. Article 210(2) requires a public record of each waiver, with the reason for it, to be maintained and reported to the Auditor-General. The Committee further observed that duty becomes payable where exempt goods are disposed of in Kenya, and the Kenya Revenue Authority should enforce this condition.
54. The Committee noted at its sitting of 15th September 2026 that the cumulative fiscal effect of the exemptions requires close scrutiny. Article VIII(2) of the Agreement provides for the duty-free importation or local purchase of one motor vehicle for each official and one for the spouse, replaceable after four years. The draft Order does not confer this exemption in those terms, as paragraph 7 of Part III of the Fourth Schedule is limited to furniture, personal property and household effects on first arrival. The Kenya Revenue Authority should therefore apply the exemption strictly in accordance with the Order and the Fourth Schedule, and not the wider terms of the Agreement.

3.6 Consultation and the Explanatory Memorandum

55. Section 5 of the Statutory Instruments Act requires appropriate consultation before a statutory instrument is made, particularly where it is likely to have a direct or substantial indirect effect on business or to restrict competition. Section 5A requires the Explanatory Memorandum to demonstrate that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution or, where none was undertaken, to explain why.
56. At its sitting of 15th September 2026, the Committee noted that the draft Order is accompanied by an Explanatory Memorandum setting out its purpose, legislative context, policy background and the outcome of consultations. On closer examination, the Committee made the further observations below.
57. Part 8 of the Explanatory Memorandum records that the views of the National Treasury and Economic Planning, the Office of the Attorney-General, the Directorate of Immigration, the Kenya Revenue Authority and the Judiciary were considered.
58. The Committee observed that the draft Order regulates the relationship between the Government and a single entity, has no direct effect on business or competition, and imposes no obligation on members of the public. Inter-agency consultation with the relevant State agencies was therefore appropriate and sufficient in the circumstances. The Explanatory Memorandum, read together with the Agreement, provides adequate information to enable the House to consider the draft Order.

3.7 Duration of the Agreement

59. Under Articles XVII and XVIII, the Agreement is in force for ten years, renewable, and may be terminated by mutual consent, by twelve months' notice or upon closure of the Regional Office. The Committee observed that privileges under section 11 are premised on the existence of the agreement, and that the Order should be revoked upon expiry or termination of the Agreement. Any amendment of the Agreement that extends privileges would require a further order laid before the House under section 17 of the Act.

3.8 Oversight Safeguards and Identification of Beneficiaries

60. The Committee observed that the Agreement contains the following oversight safeguards:
- (a) the Foundation is required to submit annual returns to the Ministry on all its activities in Kenya, including a summary of income and expenditure and particulars of its employees. The first return was due within three months of signing, by 13th June 2026, and thereafter annually by 31st December;
 - (b) the Regional Director is required under Articles VIII(10) and IX(2) of the Agreement to notify the Government of the names and positions of the officials entitled to privileges, their dependants, and their arrival and final departure;
 - (c) the Foundation and all persons enjoying privileges have a duty to respect the laws of Kenya and not to interfere in the internal affairs of the Republic;
 - (d) the Foundation is required to ensure that its staff, consultants and contractors respect the laws of Kenya and do not engage in activities incompatible with its objectives; and
 - (e) the Government reserves the right to suspend the privileges of the Foundation or any official where they are abused or impede the course of justice.

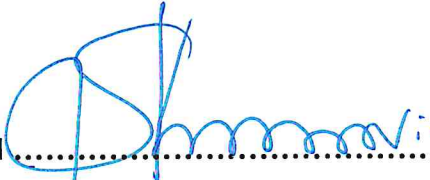
61. The Committee observed that section 11(3) of the Act requires the Cabinet Secretary to specify, by notice in the Gazette, the persons who are for the time being entitled to the privileges and immunities. Publication of that notice, updated with the notifications made by the Regional Director under the Agreement, would identify beneficiaries publicly and provide a basis for oversight. The absence of a ceiling on the number of beneficiaries is not inconsistent with section 11, which permits privileges to be conferred on classes of officers.
62. The Committee observed that these safeguards are adequate, provided that the section 11(3) notice is published and kept current, an approved staff establishment is agreed for the Regional Office, and the safeguards are actively enforced by the Ministry with Parliament kept informed.

CHAPTER FOUR

4.0 COMMITTEE RECOMMENDATION

63. Having examined the draft Privileges and Immunities (Ford Foundation) Order, 2026 against the Constitution, the Privileges and Immunities Act, Cap. 179, the Statutory Instruments Act, Cap. 2A and the Interpretation and General Provisions Act, Cap. 2, the Committee recommends that the House resolves as follows:

THAT, pursuant to section 17 of the Privileges and Immunities Act, Cap. 179, this House **APPROVES** the draft Privileges and Immunities (Ford Foundation) Order, 2026, laid on the Table of the House on Tuesday, 23rd June 2026.

Signed  Date 12/10/2026

HON. CHEPKONG'A KIPRONO SAMUEL, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 13 OCT 2026	
DAY: TUESDAY	
TABLED BY:	HON. GICHIMU GITAHINI, MP (VICE CHAIRPERSON)
CLERK-AT THE-TABLE:	INZOFU MWALE, HSC