

CHAPTER 3:03

PRIVILEGES AND IMMUNITIES ACT

Act 13/1972, 22/2001.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II

DIPLOMATIC PRIVILEGES AND IMMUNITIES

3. Application of Vienna Convention on Diplomatic Relations.
4. Withdrawal of privileges and immunities.

PART III

CONSULAR PRIVILEGES AND IMMUNITIES

5. Application of Vienna Convention on Consular Relations.
6. Withdrawal of privileges and immunities.

PART IV

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS AND PERSONS CONNECTED THEREWITH

7. Privileges and immunities of specified international organizations.
8. Privileges and immunities of representatives attending international conferences.
9. Privileges and immunities of international courts.

PART V

GENERAL

10. List of persons entitled to privileges and immunities.
11. Exemption from special restrictions on occupation of immovable property.
12. Identity cards.
13. Identification plates.
14. Evidence.
15. Regulations.

SCHEDULES

First Schedule: Articles of the Vienna Convention on Diplomatic Relations Having the Force of Law in Zimbabwe.

Second Schedule: Articles of the Vienna Convention on Consular Relations Having the Force of Law in Zimbabwe.

Third Schedule: Privileges and Immunities of International Organizations and Persons Connected Therewith.

AN ACT to confer certain privileges and immunities on foreign States and the diplomatic and consular representatives of foreign States, on certain international organizations and courts and persons connected therewith and on certain other persons; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 1st December, 1972.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Privileges and Immunities Act [*Chapter 3:03*].

2 Interpretation

In this Act—

“Minister” means the Minister of Foreign Affairs;

“mission” means a diplomatic mission of any State;

“Secretary” means the Secretary for Foreign Affairs;

“Vienna Convention on Consular Relations” means the Vienna Convention on Consular Relations signed at Vienna on the 24th April, 1963;

“Vienna Convention on Diplomatic Relations” means the Vienna Convention on Diplomatic Relations signed at Vienna on the 18th April, 1961.

PART II

DIPLOMATIC PRIVILEGES AND IMMUNITIES

3 Application of Vienna Convention on Diplomatic Relations

(1) Subject to this Act, the Articles of the Vienna Convention on Diplomatic Relations set out in the First Schedule shall have the force of law in Zimbabwe.

(2) In the Articles referred to in subsection (1)—

“agent of the receiving State” shall be construed as including a reference to any police officer or other person exercising a power of entry into any premises in Zimbabwe in terms of any enactment;

“member of the family”, in relation to any person, shall be construed as meaning—

(a) the spouse or any dependent child of that person; and

(b) any other person deemed by the Minister to be a member of the family in question;

“national of the receiving State” shall be construed as a reference to a citizen of Zimbabwe;

“receiving State” shall be construed as a reference to Zimbabwe.

(3) The references in Articles 37 and 38 of the Vienna Convention on Diplomatic Relations to the extent to which any privileges or immunities are admitted by the receiving State and to additional privileges and immunities that may be granted by the receiving State shall be construed as referring respectively to the extent to which any privileges and immunities may be specified by the President, by notice in the *Gazette*, and to any additional privileges and immunities that may be so specified.

4 Withdrawal of privileges and immunities

(1) Where it appears to the President that the privileges and immunities accorded to a mission of Zimbabwe in any State, or to persons connected with that mission, are less than those conferred in terms of this Act or any other enactment in relation to the mission of that State or to persons connected with that mission, the President may, by notice in the *Gazette*, withdraw, modify or restrict, in relation to the mission of that State, or to persons connected with that mission, such of the privileges and immunities so conferred to such extent as appears to the President to be proper.

(2) The President may, by notice in the *Gazette*, repeal or amend any notice made in terms of subsection (1).

PART III

CONSULAR PRIVILEGES AND IMMUNITIES

5 Application of Vienna Convention on Consular Relations

(1) Subject to this Act, the Articles or parts thereof of the Vienna Convention on Consular Relations set out in the Second Schedule shall have the force of law in Zimbabwe.

(2) In the Articles referred to in subsection (1)—

“authority of the receiving State” shall be construed as including a reference to any police officer or other person exercising a power of entry into any premises in Zimbabwe in terms of any enactment;

“member of the family”, in relation to any person, shall be construed as meaning—

(a) the spouse or any dependent child of that person; and

(b) any other person deemed by the Minister to be a member of the family in question;

“national of the receiving State” shall be construed as reference to a citizen of Zimbabwe;

“receiving State” shall be construed as a reference to Zimbabwe.

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

(4) The references in Article 71 of the Vienna Convention on Consular Relations to additional privileges and immunities that may be granted by the receiving State or to privileges and immunities so far as these are granted

by the receiving State shall be construed as referring to such privileges and immunities as may be specified by the President, by notice in the *Gazette*.

6 Withdrawal of privileges and immunities

(1) Where it appears to the President that the privileges and immunities accorded to a consular post of Zimbabwe in any State or to persons connected with such consular post are less than those conferred in terms of this Act or any other enactment in relation to a consular post of that State or to persons connected with such consular post, the President may, by notice in the *Gazette*, withdraw, modify or restrict, in relation to all or any of the consular posts of that State or to such persons connected therewith, such of the privileges and immunities so conferred as appears to the President to be proper.

(2) The President may, by notice in the *Gazette*, repeal or amend any notice made in terms of subsection (1).

PART IV

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS AND PERSONS CONNECTED THEREWITH

7 Privileges and immunities of specified international organizations

(1) The President may, by notice in the *Gazette*, confer upon any international or regional organization or agency (hereinafter called the organization) specified in such notice all or any of the privileges and immunities set out in Part I of the Third Schedule.

(2) A notice made in terms of subsection (1)—

(a) may confer upon—

- (i) any persons who are representatives of any organ of the organization or are members of any committee of the organization or any organ thereof;
- (ii) such officers of the organization as may be specified in the notice, being the holders of such high offices in the organization as may be so specified;
- (iii) such persons employed on missions on behalf of the organization as may be specified in the notice;

all or any of the privileges and immunities set out in Part II of the Third Schedule;

(b) may confer upon such other classes of officers and servants of the organization as may be specified in the notice all or any of the privileges and immunities set out in Part III of the Third Schedule;

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

(3) The President may, by notice in the *Gazette*, repeal or amend any notice made in terms of subsection (1).

8 Privileges and immunities of representatives attending international conferences

(1) Where—

- (a) a conference is held in Zimbabwe and is attended by representatives of the governments of one or more States or of any of the territories for whose international relations any of those governments is responsible; and
- (b) it appears to the Minister that doubts may arise as to the extent to which the representatives of those governments and members of their official staffs are entitled to privileges and immunities;

the Minister may cause a list of such persons as he thinks are entitled to such privileges and immunities to be published in the *Gazette* and thereupon such persons shall be entitled to the privileges and immunities which, in terms of customary international law and usage, this Act or any other enactment, are accorded to the head of a mission and members of his official staff respectively.

(2) Whenever he deems it expedient, the Minister may, by notice in the *Gazette*, cancel or amend any list referred to in subsection (1).

9 Privileges and immunities of international courts

(1) The President may, by notice in the *Gazette*, confer upon the judges, registrars and other officers of any international court and upon suitors thereto and their legal representatives such privileges, immunities and facilities as appear to him to be desirable.

(2) The President may, by notice in the *Gazette*, repeal or amend any notice made in terms of subsection (1).

PART IV

GENERAL

10 List of persons entitled to privileges and immunities

(1) The Minister may cause a list of the persons appearing to him to be entitled to privileges and immunities in terms of customary international law and usage, this Act or any other enactment to be published in the *Gazette*, except—

- (a) children under the age of eighteen years of a person so entitled; or
- (b) any person whose name appears on a list referred to in subsection (1) of section eight.

(2) Whenever he deems it expedient, the Minister may, by notice in the *Gazette*, cancel or amend any list referred to in subsection (1).

11 Exemption from special restrictions on occupation of immovable property

No enactment or condition in a title deed which prohibits the occupation of immovable property by persons belonging to any particular racial group shall be construed to prohibit the occupation of immovable property by any person whose name appears on a list referred to in subsection (1) of section *eight* or subsection (1) of section *ten* and the family of such person if such immovable property is occupied exclusively for the purposes of the office or residence of the person concerned.

12 Identity cards

(1) The Secretary may issue to any person entitled to privileges and immunities in terms of customary international law and usage, this Act or any other enactment, an identity card in the form prescribed.

(2) The Secretary may at any time revoke the issue in terms of subsection (1) of any identity card and may recover the same.

(3) No person who carries on the business of selling goods or is employed in such a business shall, on the ground of race alone, refuse—

- (a) admission to the business premises; or
- (b) to sell any goods;

to the holder of an identity card who produces the card to him.

(4) No proprietor shall, on the ground of race alone, refuse admission to a hotel, restaurant or entertainment to the holder of an identity card who produces the card to him.

(5) Any person or proprietor who contravenes subsection (3) or (4) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by Act 22 of 2001]

(6) In any criminal proceedings in terms of this section any—

- (a) person mentioned in subsection (3) who refuses—
 - (i) admission to his business premises; or
 - (ii) to sell any goods; or
- (b) proprietor who refuses admission to a hotel, restaurant or entertainment;

to the holder of an identity card shall, unless the contrary is proved, be deemed to have done so on the ground of race alone.

(7) In this section—

“admission” includes the supply of accommodation, food, drink and other facilities and services ordinarily supplied to members of the public by a proprietor;

“entertainment” means any exhibition, performance, amusement, contest, game or sport to which members of the public are admitted for payment;

“hotel” includes a boarding-house, hostel, pension, rest-house and similar place;

“identity card” means an identity card issued in terms of subsection (1);

“proprietor”, in relation to a hotel, restaurant or entertainment, includes any person responsible for the management thereof;

“restaurant” includes any bar or beer-hall and any other place where food or drink is served to members of the public for payment.

13 Identification plates

(1) The Minister may, by notice in the *Gazette*, specify forms of identification plates for the purposes of this section.

(2) The Secretary may issue specified identification plates in respect of such motor vehicles used by persons entitled to privileges and immunities in terms of customary international law and usage, this Act or any other enactment as he thinks fit.

(3) The Secretary may at any time revoke the issue in terms of subsection (2) of any specified identification plate and recover the same.

(4) Any person who displays on any motor vehicle—

(a) any specified identification plate which has not been issued in terms of subsection (2) in respect of that vehicle; or

(b) anything so closely resembling a specified identification plate as to be likely to deceive;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by Act 22 of 2001]

(5) Notwithstanding anything to the contrary in the Vehicle Registration and Licensing Act [*Chapter 13:14*], a motor vehicle in respect of which a specified identification plate has been issued in terms of subsection (3) shall be deemed to be registered and licensed in terms of that Act.

(6) In this section—

“specified identification plate” means an identification plate which is in the form specified by the Minister in terms of subsection (1).

14 Evidence

If in any proceedings any question arises whether any person is entitled to any privilege or immunity in terms of customary international law and usage, this Act or any other enactment, a certificate issued by or under the hand of the Minister stating any fact relating to that question shall be conclusive evidence of that fact.

15 Regulations

(1) Subject to subsection (2), the Minister may by regulation provide for all matters which, in his opinion, are necessary or convenient to be provided for in order to carry out or give effect to the provisions of this Act.

(2) Regulations made in terms of subsection (1) may prescribe offences and provide penalties therefor:

Provided that such penalties shall not exceed the penalties set out in subsection (4) of section *thirteen*.

FIRST SCHEDULE (Section 3)

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

ARTICLE 1

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

(a) the “head of the mission” is the person charged by the sending State with the duty of acting in that capacity;

(b) the “members of the mission” are the head of the mission and the members of the staff of the mission;

(c) the “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(d) the “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;

(e) a “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;

(f) the “members of the administrative and technical staff” are the members of the staff of the mission employed in the administrative and technical service of the mission;

(g) the “members of the service staff” are the members of the staff of the mission in the domestic service of the mission;

(h) a “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(i) the “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission;

ARTICLE 22

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

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

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

ARTICLE 23

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

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

ARTICLE 24

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

ARTICLE 27

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

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

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

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

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

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

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

ARTICLE 28

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

ARTICLE 29

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

ARTICLE 30

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

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

ARTICLE 31

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

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

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

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

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

ARTICLE 32

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

2. Waiver must always be express.

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

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

ARTICLE 33

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

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

(a) that they are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

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

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

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

ARTICLE 34

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

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;

(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

ARTICLE 35

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

ARTICLE 36

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

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

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

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regula-

tions of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

ARTICLE 37

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

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

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

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

ARTICLE 38

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

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

ARTICLE 39

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

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

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

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

ARTICLE 40

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

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

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

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

SECOND SCHEDULE (Section 5)

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

ARTICLE 1

Definitions

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

- (a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;
- (b) “consular district” means the area assigned to a consular post for the exercise of consular functions;
- (c) “head of consular post” means the person charged with the duty of acting in that capacity;
- (d) “consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (e) “consular employee” means any person employed in the administrative or technical service of a consular post;
- (f) “member of the service staff” means any person employed in the domestic service of a consular post;
- (g) “members of the consular post” means consular officers, consular employees and members of the service staff;
- (h) “members of the consular staff” means consular officers, other than the head of a consular post, consular employees and members of the service staff;
- (i) “member of the private staff” means a person who is employed exclusively in the private service of a member of the consular post;
- (j) “consular premises” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
- (k) “consular archives” includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safe keeping.

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

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

CHAPTER II

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

SECTION I

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST

ARTICLE 31

Inviolability of the consular premises

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

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

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

ARTICLE 32

Exemption from taxation of consular premises

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

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

ARTICLE 33

Inviolability of the consular archives and documents

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

ARTICLE 35

Freedom of communication

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

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

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

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

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

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

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

ARTICLE 39

Consular fees and charges

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

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

SECTION II

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

ARTICLE 41

Personal inviolability of consular officers

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

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

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

ARTICLE 43

Immunity from jurisdiction

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

2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either—
- (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
 - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

ARTICLE 44

Liability to give evidence

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

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

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

ARTICLE 45

Waiver of privileges and immunities

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

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

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

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

ARTICLE 46

Exemption from registration of aliens and residence permits

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

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

ARTICLE 47

Exemption from work permits

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

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

ARTICLE 48

Social security exemption

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

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

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

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

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

ARTICLE 49

Exemption from taxation

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

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

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

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

ARTICLE 50

Exemption from customs duties and inspection

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

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

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

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

ARTICLE 51

Estate of a member of the consular post or of a member of his family

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

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

ARTICLE 52

Exemption from personal services and contributions

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

ARTICLE 53

Beginning and end of consular privileges and immunities

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

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

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

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

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

ARTICLE 54

Obligations of third States

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

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

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

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

ARTICLE 57

Special provisions concerning private gainful occupation

2. Privileges and immunities provided in this Chapter shall not be accorded—
- (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
 - (b) to members of the family of a person referred to in subparagraph (a) of this paragraph or to members of his private staff;
 - (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

CHAPTER III

REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS

ARTICLE 58

General provisions relating to facilities, privileges and immunities

1. Articles 35 and 39, and paragraph 3 of Article 54 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 60, 61 and 62.

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

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

ARTICLE 60

Exemption from taxation of consular premises

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

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

ARTICLE 61

Inviolability of consular archives and documents

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

ARTICLE 62

Exemption from customs duties

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

ARTICLE 66

Exemption from taxation

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

CHAPTER IV
GENERAL PROVISIONS

ARTICLE 71

Nationals or permanent residents of the receiving State

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State.

THIRD SCHEDULE (Section 7)

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS AND PERSONS CONNECTED THEREWITH

PART I

PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION

1. Immunity from suit and legal process.
2. The like inviolability of official archives and premises occupied as offices as is accorded in respect of the official archives and premises of a mission.
3. The like exemption or relief from taxes and rates, other taxes on the importation of goods, as is accorded to the government of any foreign State.
4. Exemption, in accordance with the law relating to taxation on the importation or exportation of goods, from taxes on the importation or exportation of goods by the organization.
5. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organization for its official use and in the case of any publications of the organization directly imported or exported by it.
6. The right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or dispatched from places outside Zimbabwe), of any reduced rates applicable for the corresponding service in the case of press telegrams.

PART II

PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES, MEMBERS OF COMMITTEES, HIGH OFFICERS AND PERSONS ON MISSIONS

1. The like immunity from suit and legal process as is accorded to a diplomatic agent.
2. The like inviolability of residence, official premises and official archives as is accorded to a diplomatic agent.
3. The like exemption or relief from taxes as is accorded to a diplomatic agent.

PART III

PRIVILEGES AND IMMUNITIES OF OTHER OFFICERS AND SERVANTS

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

PART IV

PRIVILEGES AND IMMUNITIES OF OFFICIAL STAFFS AND OF HIGH OFFICERS FAMILIES

1. Where any person is entitled to any such privileges and immunities as are mentioned in Part II as a representative on any organ of the organization or a member of any committee of the organization or of an organ thereof, his official staff accompanying him as such a representative or member shall also be entitled to those privileges and immunities to the same extent as the members of the staff of a mission are accorded the privileges and immunities accorded to a diplomatic agent.

2. Where any person is entitled to any such privileges and immunities as are mentioned in Part II as an officer of the organization, the members of the family of that person shall also be accorded those privileges and immunities to the same extent as the members of the family of a diplomatic agent are accorded the privileges and immunities accorded to that diplomatic agent.

downloaded from www.law.co.zw