

Malawi

## Immunities and Privileges Act

### Chapter 16:01

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# Immunities and Privileges Act

## Contents

Part I – Preliminary .....	1
1. Short title .....	1
2. Interpretation .....	1
Part II – State immunity .....	1
3. General immunity from jurisdiction .....	1
4. Submission to jurisdiction .....	2
5. Commercial transactions .....	2
6. Contracts of employment .....	3
7. Personal injuries and damage to property .....	3
8. Ownership, possession and use of property .....	3
9. Patents, trade-marks, etc. ....	3
10. Membership of corporate bodies .....	3
11. Arbitration .....	4
12. Proceedings against ships used for commercial purposes .....	4
13. Duties and rates .....	4
14. Service of process and default judgments .....	4
15. Other procedural privileges .....	5
16. States entitled to immunities and privileges .....	5
17. Heads of State .....	6
18. Excluded matters .....	6
19. Evidence by certificate .....	6
Part III – Diplomatic immunities and privileges .....	7
20. Application of Convention on Diplomatic Relations .....	7
Part IV – Consular immunities and privileges .....	7
21. Application of Convention on Consular Relations .....	7
22. Agreements to accord immunities and privileges .....	8
23. Commonwealth representatives .....	8
Part V – International organizations, etc. ....	9
24. Immunities and privileges of certain international organizations and persons connected therewith .....	9
25. Representatives of sovereign governments at international conferences .....	9
26. External agencies which provide co-operation or co-assistance .....	10
27. Modifications with respect to the United Nations Organization .....	10
28. Reciprocal treatment .....	10
Part VI – General provisions .....	11

29. Restriction and extension of privileges, immunities or powers .....	11
30. Admiralty jurisdiction of High Court .....	11
31. Special provisions relating to customs duty .....	11
32. Evidence .....	11
33. Oaths and notarial acts .....	11
First Schedule (Sections 20 and 25) .....	12
Second Schedule (Section 21 and 23) .....	17
Third Schedule (Section 22) .....	29
Fourth Schedule (Section 24) .....	29
Fifth Schedule (Sections 21 and 22) .....	30



# Malawi

## Immunities and Privileges Act

### Chapter 16:01

Assented to on 17 April 1984

Commenced on 17 April 1984

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to determine the extent of the immunity of foreign states from the jurisdiction of the courts of Malawi; to provide for diplomatic and consular privileges and immunities by giving effect to certain international conventions and otherwise and for privileges and immunities of international organizations; and for connected purposes**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Immunities and Privileges Act.

#### 2. Interpretation

(1) In this Act—

"**commercial purposes**" means purposes of any commercial transaction as defined in [section 5 \(3\)](#);

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

"**consular post**" means any consulate-general, consulate, vice-consulate or consular agency;

"**diplomatic agent**" has the meaning assigned to it in Article 1 in the First Schedule.

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

"**agent of the receiving State**" or "authorities of the receiving State" shall be construed as including a police officer and any person exercising a power of entry into or upon premises under any written law;

"**grave crime**" shall be construed as meaning any offence which, on first conviction, is punishable with imprisonment for a term which may extend to five years or with a more severe sentence;

"**national of the receiving State**" shall be construed as meaning a citizen of Malawi.

*[First and Second Schedules]*

### Part II – State immunity

#### 3. General immunity from jurisdiction

(1) A State is immune from the jurisdiction of the courts of Malawi except as provided in this Part of this Act.

- (2) A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question.

#### **4. Submission to jurisdiction**

- (1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of Malawi.
- (2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in an agreement that it is to be governed by the law of Malawi is not to be regarded as a submission.
- (3) A State is deemed to have submitted—
  - (a) if it has instituted the proceedings; or
  - (b) subject to subsection (4), if it has intervened or taken any step in the proceedings.
- (4) Subsection 3 (b) does not apply to intervention or any step taken for the purpose only of—
  - (a) claiming immunity; or
  - (b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it.
- (5) A submission in respect of any proceedings extends to any appeal but not to any counter-claim unless it arises out of the same legal relationship or facts as the claim.
- (6) The head of a State's diplomatic mission in Malawi, or the person for the time being performing his functions, shall be deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of or with the authority of a State shall be deemed to have authority to submit on its behalf in proceedings arising out of contract.

#### **5. Commercial transactions**

- (1) A State is not immune as respects proceedings relating to—
  - (a) a commercial transaction entered into by the State; or
  - (b) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in Malawi.
- (2) Subsection (1) does not apply if the parties to the dispute are States or have otherwise agreed in writing.
- (3) In subsection (1) "commercial transaction" means—
  - (a) any contract for the supply of goods and services;
  - (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of such transaction or of any other financial obligation; and
  - (c) any other transaction or activity of a commercial, industrial, financial, professional or other similar character into which a State enters or in which it engages otherwise than in the exercise of sovereign authority,but does not include a contract of employment between a State and an individual.

## 6. Contracts of employment

- (1) A State is not immune as respects proceedings relating to a contract of employment between the State and an individual if—
  - (a) the contract was entered into in Malawi of the work is to be performed wholly or partly in Malawi; and
  - (b) at the time when the contract was entered into the individual was a citizen of Malawi or was ordinarily resident in Malawi; and
  - (c) at the time when the proceedings are brought the individual is not a citizen of the State concerned.
- (2) Subsection (1) does not apply if the parties to the contract have otherwise agreed in writing unless the law of Malawi requires the proceedings to be brought in Malawi.

## 7. Personal injuries and damage to property

A State is not immune as respects proceedings relating to—

- (a) the death or injury of any person; or
- (b) damage to or loss of tangible property, caused by an act or omission in Malawi.

## 8. Ownership, possession and use of property

A State is not immune as respects proceedings relating to—

- (a) any interest of the State in, or its possession or use of immovable property in Malawi;
- (b) any obligation of the State arising out of its interest in, or its possession or use of, such property; or
- (c) any interest of the State in moveable or immovable property, being an interest arising by way of succession, gift or *bona vacantia*.

## 9. Patents, trade-marks, etc.

A State is not immune as respects proceedings relating to—

- (a) any patent, trade-mark, design or plant breeder's right belonging to the State and registered or protected in Malawi or for which the State has applied in Malawi; or
- (b) an alleged infringement by the State in Malawi of any patent, trade-mark, design, plant breeder's right or copyright; or
- (c) the right to use a trade or business name in Malawi.

## 10. Membership of corporate bodies

- (1) A State is not immune as respects proceedings relating to its membership of a body corporate, an unincorporated body or a partnership which—
  - (a) has members other than States; and
  - (b) is incorporated or constituted under the law of Malawi or is controlled from or has its principal place of business in Malawi,being proceedings arising between the State and the body or its other members or, as the case may be, between the State and the other partners.

- (2) This section does not apply if provision to the contrary has been made by an agreement in writing between the parties to the dispute or by the constitution or other instrument establishing or regulating the body or partnership in question.

## 11. Arbitration

- (1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of Malawi which relate to the arbitration.
- (2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.

## 12. Proceedings against ships used for commercial purposes

- (1) A State is not immune as respects—
  - (a) an action *in rem* against a ship belonging to that State; or
  - (b) an action *in personam* for enforcing a claim in connexion with such a ship,if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.
- (2) A State is not immune as respects—
  - (a) an action *in rem* against a cargo belonging to that State if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or
  - (b) an action *in personam* for enforcing a claim in connexion with such a cargo if the ship carrying it was then in use or intended for use for commercial purposes.
- (3) References in this section to a ship or cargo belonging to a State include references to a ship or cargo in its possession or control or in which it claims an interest; and subject to subsection (2) subsection (1) applies to property other than a ship as it applies to a ship.

## 13. Duties and rates

A State is not immune as respects proceedings relating to its liability for—

- (a) any duty of customs or excise; or
- (b) rates in respect of premises occupied by it for commercial purposes.

## 14. Service of process and default judgments

- (1) Any process or other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Ministry of External Affairs to the Ministry of Foreign Affairs of that State and service shall be deemed to have been effected when the process or other document is received at that State's Ministry.
- (2) Any time for entering an appearance (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the process or document is received at the State's Ministry.
- (3) A State which appears in proceedings cannot thereafter raise any objection on the ground that subsection (1) has not been complied with in the case of those proceedings.



- (4) No judgment in default of appearance shall be given against a State except on proof that subsection (1) has been complied with and that the time for entering an appearance as extended by subsection (2) has expired.
- (5) A copy of any judgment given against a State in default of appearance shall be transmitted through the Ministry of External Affairs to the Ministry of Foreign Affairs of that State and any time for applying to have the judgment set aside (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the copy of the judgment is received at that State's Ministry.
- (6) Subsection (1) does not prevent the service of a process or other document in any manner to which the State has agreed and subsections (2) and (4) do not apply where service is effected in any such manner.
- (7) This section shall not be construed as applying to proceedings against a State by way of counter-claim or to an action *in rem*, and subsection (1) shall not be construed as affecting any rules of court whereby leave is required for the service of process outside the jurisdiction

## 15. Other procedural privileges

- (1) Subject to subsections (2) and (3)—
  - (a) relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and
  - (b) the property of a State shall not be subject to any process for the enforcement of a judgment or an arbitration award or, in an action *in rem*, for its arrest, detention or sale.
- (2) Subsection (1) does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and any such consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection.
- (3) Subsection (1) (b) shall not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes.

## 16. States entitled to immunities and privileges

- (1) The immunities and privileges conferred by this Part apply to any foreign or Commonwealth State other than Malawi; and references to a State include references to—
  - (a) the sovereign or other head of that State in his public capacity;
  - (b) the government of that State; and
  - (c) any department of that government,but not to any entity (hereinafter referred to as a "separate entity") which is distinct from the executive organs of the government of the State and capable of suing or being sued.
- (2) A separate entity is immune from the jurisdiction of the courts of Malawi if, and only if—
  - (a) the proceedings relate to anything done by it in the exercise of sovereign authority; and
  - (b) the circumstances are such that a State would have been so immune.
- (3) If a separate entity (not being a State's central bank or other monetary authority) submits to the jurisdiction in respect of proceedings in the case of which it is entitled to immunity by virtue of subsection (2), [section 15](#) shall apply to it in respect of those proceedings as if references to a State were references to that entity.

- (4) Property of a State's central bank or other monetary authority shall not be regarded for the purposes of [section 15](#) (3) as in use or intended for use for commercial purposes; and where any such bank or authority is a separate entity [section 15](#) (1) and (2) shall apply to it as if references to a State were references to the bank or authority.
- (5) This section applies to a territory forming a constituent part of a federal State as if such territory were a separate entity of that State.

## 17. Heads of State

- (1) Subject to this section and to any necessary modifications, Part III shall apply to—
  - (a) a sovereign or other head of State;
  - (b) members of his family forming part of his household; and
  - (c) his private servants,as it applies to the head of a diplomatic mission, to members of his family forming part of his household and to his private servants.
- (2) The immunities and privileges conferred by virtue of subsection (1) (a) and (b) shall not be subject to the restrictions by reference to nationality or residence mentioned in Article 37 (1) or 38 in the First Schedule.
- (3) This section applies to the sovereign or other head of any State on which immunities and privileges are conferred by the other relevant sections of this Part and is without prejudice to the application of those sections to any such sovereign or head of State in his public capacity.

## 18. Excluded matters

- (1) This Part of the Act does not affect any immunity or privilege conferred by Part III or Part IV; and—
  - (a) [section 6](#) does not apply to proceedings concerning the employment of the members of a mission within the meaning of Article 1 of the Convention in the First Schedule or of the members of a consular post within the meaning of Article 1 of the Convention in the Second Schedule;
  - (b) [section 8](#) (1) does not apply to proceedings concerning a State's title to or its possession of property used for the purposes of diplomatic mission.
- (2) This Part does not apply to criminal proceedings.

## 19. Evidence by certificate

A certificate by or on behalf of the Minister of External Affairs shall be conclusive evidence on any question—

- (a) whether any country is a State for the purposes of this Part;
- (b) whether any territory is a constituent part of a federal State for those same purposes;
- (c) as to the person or persons to be regarded for the purposes of this Part as the head or government of a State;
- (d) whether, and if so when, a document has been served or received as mentioned in [section 14](#) (1) or (5).

### Part III – Diplomatic immunities and privileges

#### 20. Application of Convention on Diplomatic Relations

- (1) Subject to [section 29](#) (2), the Articles set out in the First Schedule (being Articles of the Vienna Convention on Diplomatic Relations signed in 1961) have the force of law in Malawi and shall for that purpose be construed in accordance with subsections (2) to (5).
- (2) For the purposes of Article 32 a waiver by the head of the mission of any State or any person for the time being performing his functions shall be deemed to be a waiver by that State.
- (3) Articles 35, 36 and 40 shall be construed as granting any immunity or privilege which they require to be granted.
- (4) The references in Articles 37 and 38 to the extent to which any immunities and privileges are admitted by the receiving State and to additional immunities and privileges which may be granted by the receiving State shall be construed as referring respectively to the extent to which any immunities or privileges are specified by the Minister by order and to any additional immunities and privileges which may be so specified.
- (5) In its application to the immunity granted by paragraphs 2, 3 and 4 of Article 37 the expression "permanent resident" in Article 38 shall be deemed to extend to any individual other than one who is resident in Malawi solely for the purpose of performing the duties of his office for a mission.

### Part IV – Consular immunities and privileges

#### 21. Application of Convention on Consular Relations

- (1) Subject to [sections 22](#) (2) and [29](#) (2), the Articles set out in the Second Schedule (being Articles of the Vienna Convention on Consular Relations signed in 1963) have the force of law in Malawi and shall for that purpose be construed in accordance with subsections (2) to (9).
- (2) The reference in paragraph 2 of Article 17 to any privileges and immunities accorded by customary international law or by international agreements shall be construed as a reference to any immunities and privileges conferred under Part V.
- (3) The references in Article 44 to matters connected with the exercise of the functions of members of a consular post shall be construed as matters connected with the exercise of consular functions by consular officers or consular employees.
- (4) For the purposes of Article 45 and that Article as applied by Article 58, a waiver shall be deemed to have been expressed by a State if it has been expressed by the head, or any person for the time being performing the functions of head, of the diplomatic mission of that State or, if there is no such mission, of the consular post concerned.
- (5) Articles 50, 51, 52, 54, 62 and 67 shall be construed as granting any immunity or privilege which they require to be granted.
- (6) The reference in Article 57 to the immunities and privileges provided in Chapter II shall be construed as references to those provided in section II of that Chapter.
- (7) The reference in Article 70 to the rules of international law concerning diplomatic relations shall be construed as a reference to Part III of, and of the First Schedule to, this Act.
- (8) The reference in Article 71 to additional immunities and privileges which may be granted by the receiving State or to immunities and privileges so far as these are granted by the receiving

State shall be construed as referring to such immunities and privileges as may be specified by the Minister by order.

*[First Schedule]*

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

## **22. Agreements to accord immunities and privileges**

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

*[Third Schedule]*

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

## **23. Commonwealth representatives**

- (1) The Minister may, by order, confer—
- (a) on persons in the service of the government of a Commonwealth country who hold such offices or classes of offices which appear to the Minister to involve the performance of duties substantially corresponding to those which, in the case of foreign sovereign power, would be performed by a consular officer;
  - (b) on a person for the time being recognized by the Government as the chief representative of any State or province of a Commonwealth country (in this section referred to as a state representative);
  - (c) on members of the staff of any such person as is mentioned in paragraph (a) or (b),
- any immunities or privileges which are conferred by or may be conferred under this Part, and any such order may provide for extending, in relation to premises, official archives, communications, documents and personal property of persons on whom any immunities and privileges are or may be conferred under this subsection, and in relation to any fees and charges levied by them Articles 31, 32, 33, 35, 39 and 51 in the Second Schedule.
- (2) An order under subsection (1) may exclude from any immunities and privileges conferred by it any persons who are permanently resident in Malawi, or who are citizens of Malawi, or any class of such persons.
- (3) Notwithstanding anything in this section—
- (a) a person for the time being recognized by the Government as the chief representative in Malawi of a Commonwealth country may waive any immunity conferred under this section on a person in the service of the government of the country which he represents;
  - (b) a state representative may waive any immunity conferred by subsection (1) on himself or a member of his staff.

## Part V – International organizations, etc.

### 24. Immunities and privileges of certain international organizations and persons connected therewith

(1) The Minister may, by order—

- (a) provide that any organization specified in the Fourth Schedule (hereinafter referred to as the organization) shall, to such extent as may be specified in the order, have the immunities and privileges set out in Part I of the Fifth Schedule, and shall also have the legal capacities of a body corporate;
- (b) confer upon—
  - (i) any persons who are representatives (whether of governments or not) on any organ of the organization or are members of any committee of the organization or of an organ thereof;
  - (ii) such number of officers of the organization as may be specified in the order, being the holders of such high offices in the organization as may be so specified; and
  - (iii) such persons employed on missions on behalf of the organization as may be so specified,to such extent as may be specified in the order, the immunities and privileges set out in Part II of the Fifth Schedule;
- (c) confer upon such other classes of officers and servants of the organization as may be specified in the order, to such extent as may be so specified, the immunities and privileges set out in Part III of the Fifth Schedule,

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

*[Fifth Schedule]*

- (2) An order under subsection (1) shall be so framed as to secure that there are not conferred upon any person any immunities or privileges greater in extent than those which, at the time of the making of the order, are required to be conferred on that person in order to give effect to any international agreement in that behalf, and that no immunity or privilege is conferred upon any person as the representative of the Government or as a member of the staff of such representative.
- (3) The Minister may, by order, amend the Fourth Schedule.

*[Fourth Schedule]*

### 25. Representatives of sovereign governments at international conferences

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

## 26. External agencies which provide co-operation or co-assistance

- (1) Where the Government has, whether before or after the commencement of this Act, entered into any agreement with an external agency under which, in return for co-operation or assistance in works executed in, or services rendered to, Malawi by such agency, the Government has agreed that such agency or person in its service should enjoy any immunities or privileges, the Minister may, by Order—
- (a) declare that such agency is one to which this section applies;
  - (b) provide that, to such extent as may be specified in the Order, such agency shall have the immunities and privileges set out in Part I of the Fifth Schedule;
  - (c) confer upon such classes of officers and servants of such agency as may be specified in the Order, to such extent as may be so specified, the immunities and privileges set out in Part III of the Fifth Schedule,

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

- (2) An Order under subsection (1) shall be so framed as to secure that there are not conferred on any person any immunities or privileges greater in extent than those which are required to be conferred on that person by the agreement concerned and that no immunity or privilege is conferred on any person who is a citizen of, or permanently resident in, Malawi.
- (3) For the purposes of this section, "external agency" means—
- (a) the government of a foreign State;
  - (b) any recognized agency of such a government;
  - (c) any internationally recognized foundation or other body.

## 27. Modifications with respect to the United Nations Organization

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

- (a) any reference to the governing body or any committee of the organization shall be construed as referring to the General Assembly or any council or other organ of the United Nations Organization; and
- (b) the powers conferred upon the Minister by section 24 (1) shall include power to confer upon the judges and registrars of the International Court set up under the Charter and on suitors to that Court and their agents, counsel and advocates, such immunities, privileges and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly.

## 28. Reciprocal treatment

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

## Part VI – General provisions

### 29. Restriction and extension of privileges, immunities or powers

- (1) Where the immunities and privileges conferred by Part II in relation to a State—
  - (a) exceed or are less than those accorded by the law of that State in relation to Malawi; or
  - (b) are less than those required by any treaty, convention or other international agreement to which that State and Malawi are parties,the Minister may, by order, restrict or, as the case may be, extend those immunities and privileges to such extent as appears to him to be appropriate.
- (2) Where the immunities, privileges or powers accorded in the territory of any State to a diplomatic mission or consular post of Malawi or to persons connected with that mission or post are less than those accorded by Part III or IV to the diplomatic mission or consular post of that State or to the persons connected therewith, the Minister may, by order, withdraw such of the immunities, privileges or powers accorded by Part III or IV from the diplomatic mission or consular post of that State or from persons connected therewith, as appears to him to be proper.

### 30. Admiralty jurisdiction of High Court

The High Court is declared to be a court of admiralty jurisdiction and shall, over the waters of Lake Malawi and other waters bordering partly upon Malawi and partly upon another State, have the same jurisdiction in respect of persons, matters or things thereon as the High Court in England has over the high seas and waters within its admiralty jurisdiction.

### 31. Special provisions relating to customs duty

- (1) If goods which have been imported or taken out of bond without payment of customs duty by a person in pursuance of any diplomatic immunity or privilege or other immunity or privilege conferred or granted by or under this Act, are sold or disposed of to a person who is not entitled to customs franchise privileges, the Controller of Customs and Excise may call upon the person selling or disposing of the goods or upon the person buying or receiving the goods to pay the duty thereon at the rate leviable at the date of the sale or disposal.
- (2) For the purpose of determining the amount of duty payable on goods sold or disposed of after use, the Controller of Customs and Excise shall take into consideration the depreciation in value of such goods since their importation or removal from bond and shall, except in the case of motor vehicles, remit the duty if the sale or disposal is effected more than two years after the date of importation or removal from bond.

### 32. Evidence

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

### 33. Oaths and notarial acts

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

- (a) required by any person for use in that State or under the laws thereof; or

- (b) otherwise required by a national of that State but not for use in Malawi except under the laws of some other country.

## **First Schedule (Sections 20 and 25)**

### **Articles of Vienna Convention on Diplomatic Relations having the force of law in Malawi**

#### **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 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 on 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 the buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

#### **Article 22**

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

#### **Article 23**

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



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

### Article 24

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

### Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.
3. The diplomatic bag shall not be opened or detained.
4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.
5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.
7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

### Article 28

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

### Article 29

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

### Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

### Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of—
  - (a) a real action relating to private immoveable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
  - (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
  - (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.
3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

### Article 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.
2. The waiver must always be express.
3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim 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 services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

### Article 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on—
  - (a) articles for the official use of the mission;
  - (b) articles, for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.
2. The personal baggage of a diplomatic agent shall be exempt from, inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

### Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.
2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident

in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.
4. Private servants of members of the mission shall if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

### Article 38

1. Except in so far as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.
2. Other members of the staff of the mission and private, servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise 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 moveable 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 moveable 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 or 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 State 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 21 and 23)

### Articles of Vienna Convention on Consular Relations having the force of law in Malawi

#### 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 consular post;
  - (g) "members of the consular post" means any 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) "members 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 renters 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 I**

### **Consular relations in general**

#### **Article 5 – Consular functions**

Consular functions consist in—

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life, of the, receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports, and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession mortis causae in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this Article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

### **Article 17 – Performance of diplomatic acts by consular officers**

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.
2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements, however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

## **Chapter II**

### **Facilities, privileges and immunities relating to consular posts, career consular officers and other members of a consular post**

#### **Section I – Facilities, privileges immunities relating to consular post**

### **Article 31 – Inviolability of the consular premises**

1. Consular premises shall be inviolable to the extent provided in this Article.
2. The authorities of the receiving State shall not enter that part, of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.
3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.
4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.



### **Article 32 – Exemption from taxation of consular premises**

1. Consular premises, and the residence of the career head of consular post, of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

### **Article 33 – Inviolability of the consular archives and documents**

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

### **Article 34 – Freedom of movement**

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

### **Article 35 – Freedom of communication**

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.
3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.
4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.
5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State, its diplomatic missions and its consular posts may designate consular couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.
7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement



with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

### **Article 36 – Communication and contact with nationals of the sending State**

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State—
  - (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
  - (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
  - (c) consular officers, shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.
2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity, with the laws and regulations of the receiving State, subject to the proviso however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

### **Article 38 – Communication with the authorities of the receiving State**

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

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

### **Article 39 – Consular fees and charges**

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.
2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

## **Section II – Facilities, privileges and immunities relating to career consular officers and other members of a consular post**

### **Article 41 – Personal inviolability of consular officers**

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

2. Except in the ease specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.
3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

### **Article 43 – Immunity from jurisdiction**

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either—
  - (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
  - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

### **Article 44 – Liability to give evidence**

1. Members of a consular post may be called, upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.
2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.
3. Members of a consular post are under no obligations to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

### **Article 45 – Waiver of privileges and immunities**

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.
2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.
3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43, shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.
4. The waiver of immunity for 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 immoveable 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 member 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 moveable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession of inheritance duties, and duties on transfers, on moveable property presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

### **Article 52 – Exemption from personal services and contributions**

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

### Article 53 – Beginning and end of consular privileges and immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.
2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.
3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.
4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.
5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so whichever is the sooner.

### Article 54 – Obligations of third States

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.
2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.
3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.
4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*

### **Article 55 – Respect for the laws and regulations of the receiving State**

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the international affairs of that State.
2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.
3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said officers shall not for the purposes of the present Convention, be considered to form part of the consular premises.

### **Article 56 – Insurance against third party risks**

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

### **Article 57 – Special provisions concerning private gainful occupation**

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

## **Chapter III**

### **Regime relating to honorary consular officers and consular posts headed by such officers**

### **Article 58 – General provisions relating to facilities, privileges and immunities**

1. Articles 28, 29, 30 34, 35 36, 37, 38 and 39 paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles, 59, 60, 61 and 62.
2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.
3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

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

### **Article 59 – Protection of the consular premises**

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

### **Article 60 – Exemption from taxation of consular premises**

1. Consular premises of a consular post headed by the honorary consular officer of which the sending States 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 for consular archives and documents**

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

### **Article 62 – Exemption from customs duties**

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

### **Article 63 – Criminal proceedings**

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

### **Article 65 – Exemption from registration of aliens and residence permits**

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

### **Article 66 – Exemption from taxation**

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



### **Article 67 – Exemption from personal services and contributions**

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

## **Chapter IV General provisions**

### **Article 70 – Exercise of consular functions by diplomatic missions**

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.
2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.
3. In the exercise of consular functions a diplomatic mission may address—
  - (a) the local authorities of the consular district;
  - (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.
4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

### **Article 71 – Nationals or permanent residents of the receiving State**

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.
2. Other members of the consular post who, are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff, who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.



### **Third Schedule (Section 22)**

#### **Provisions for giving effect to other agreements**

1. The like exemption from dues and taxes may be extended to the resident of any member of a consular post as is accorded under Article 32 in the Second Schedule to this Act to the residence of a career head of a consular post.
2. Paragraph 1 of Article 49 in the said Second Schedule may be extended to members of the service staff.
3. Paragraph 2 of Article 50 in the said Second Schedule may be applied as if it were among the Articles mentioned in paragraph 2 of Article 58 in that Schedule, as if the reference to consular employees included members of the, service staff and also such members of the families of consular employees or of members of the service staff as form part of their households, and as if the words "in respect of articles imported at the time of first installation" were omitted.
4. Articles 29 and 31 in the First Schedule to this Act may be extended to members of a consular post and members of their families forming part of their households.
5. Article 22 in the said First Schedule may be, extended to consular premises, and paragraph 1 of Article 30 in that Schedule may be extended to the residences of consular officers.
6. Article 27 in the said First Schedule may be extended to the communications of a consular post.

### **Fourth Schedule (Section 24)**

#### **Organization**

1. The United Nations
2. The International Court of Justice
3. The International Labour Organization
4. The Food and Agriculture Organization
5. The International Civil Aviation Organization
6. The United Nations Educational, Scientific and Cultural Organization
7. The World Health Organization
8. The United Nations International Children's Emergency Fund
9. The Inter-Governmental Maritime Consultative Organization
10. The International Atomic Energy Agency
11. The International Refugee Organization
12. The International Telecommunication Union
13. The Universal Postal Union
14. The World Meteorological Organization
15. The Organization of African Unity
16. The Commonwealth Secretariat
17. The International Red Locust Control Organization for Central and Southern Africa
18. The Regional Testing Resource and Training Centre

19. The Southern African Regional Tourism Council
20. The Delegation of the Commission of the European Economic Community in Malawi (E.E.C. Commission Delegation)
21. The African Development Fund
22. The International Bank for Reconstruction and Development (otherwise known as the World Bank)
23. The United States Agency for International Development (otherwise referred to as "USAID")
24. The Multi-Country Posts and Telecommunications Training Centre
25. The International Council for Research in Agroforestry (otherwise referred to as "ICRAF")
26. The Southern African Development Coordination Conference (otherwise referred to as "SADCC")
27. The Eastern and Southern African Trade and Development Bank (otherwise referred to as "PTA Bank")
28. The Centro International De Agriculture Tropical (otherwise referred to as "CIAT")
29. The African Foundation for Research and Development (otherwise referred to as "AFRAND")
30. The Malawi-Canada Programme Support Unit
31. Guidance, Counselling and Youth Development Centre for Africa
32. Southern African Development Parliamentary Forum (otherwise referred to as SADC Parliamentary Forum)
33. African Union Centre for Ticks and Tick-Borne Diseases (otherwise referred to as the "Centre")

*[G.N. 78/1986]*

*[G.N. 41/1987]*

*[G.N. 132/1987]*

*[G.N. 53/1988]*

*[G.N. 12/1989]*

*[G.N. 96/1989]*

*[G.N. 70/1996]*

*[G.N. 102/1996]*

*[G.N. 17/1999]*

*[G.N. 14/2001]*

*[G.N. 11/2002]*

*[G.N. 28/2003]*

## **Fifth Schedule (Sections 21 and 22)**

### **Immunities and privileges of an organization and officers thereof**

#### **Part I – Immunities and privileges of the organization**

1. Immunity from suit and legal process.

2. The like inviolability of premises occupied as offices and of official archives as is accorded by Articles 22 and 24 of the First Schedule to this Act.
3. The like exemption from rates and taxes, other than taxes on the importation of goods, as is accorded to a mission by the said First Schedule.
4. Exemption from taxes on the importation of goods directly imported by the organization for its official use in Malawi or for exportation, or on the importation of any publication of the organization directly imported by it, such exemption to be the subject to compliance with such conditions as any written law relating to customs and excise may prescribe.
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 wireless broadcasting (including communications addressed to, or despatched from places outside Malawi), of any reduced rates applicable for the corresponding service in the case of Press telegrams.

## **Part II – Immunities and privileges of representatives, members of committees, high officers and persons on missions**

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

## **Part III – Immunities and privileges of other officers and servants**

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.
2. Exemption from direct taxes upon the emoluments received as an officer or servant of the organization.
3. Immunity from national service obligations.
4. Immunity from immigration restrictions and alien registration in respect of the officers and servants and their spouses and dependent relatives.
5. The like privileges in respect of exchange control facilities as are accorded to officials of equivalent status forming part of a diplomatic mission.
6. The like facilities, for the officers and servants and their spouses and dependent relatives, for repatriation in times of international crises as are afforded to diplomatic missions.
7. Exemption from tax or duty on the importation of furniture, personal property and household effects of an officer or servant first arriving to take up his post in Malawi.

## **Part IV – Immunities and privileges of official staffs and of the families of high officers**

1. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as a representative of any organ of the organization or as a member of any committee of the organization or of any organ thereof, his official staff accompanying him as such a representative or

member shall also be entitled to those immunities and privileges, to the same extent, as are accorded to the members of the diplomatic staff of a mission by or under the First Schedule to this Act.

2. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as an officer of the organization, that person's spouse and children under the age of twenty-one shall be entitled to the immunities and privileges accorded to the family of a diplomatic agent by or under the First Schedule to this Act.