

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
PROTOCOL ON IMMUNITIES AND PRIVILEGES

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PREAMBLE

The Heads of State or Government of the Southern African Development Community (hereinafter referred to as SADC), signatories to the Treaty establishing SADC (hereinafter referred to as the Treaty);

CONSIDERING Article 31 of the Treaty which provides that SADC, its Institutions and staff shall, in the territory of each Member State, have such immunities and privileges as are necessary for the proper performance of their functions under the Treaty, and which shall, at least, be similar to those accorded to comparable international organisations;

HAVE AGREED as follows:

ARTICLE 1
SADC, ITS PROPERTY AND ASSETS

1. SADC, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except in any case where it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The premises of SADC shall be inviolable. The property and assets of SADC, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action.

3. The archives of SADC, and all documents belonging to it or held by it, shall be

inviolable wherever located.

ARTICLE 2 FUNDS

1. Without being restricted by financial controls, regulations or moratoria of any kind:

a) SADC and its Institutions, where applicable, may hold funds or currency of any kind and operate accounts in any currency;

b) SADC and its Institutions shall be free to transfer their funds or currency from one country to another or within any country and to convert any currency held by them into any other currency.

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

ARTICLE 3 TAX EXEMPTIONS

1. SADC, its income, assets and other property shall be exempt from:

a) all direct taxes except that SADC shall not claim exemption from rates, taxes, charges and duties which are, in fact, no more than charges for public utility services;

b) import and export duties, prohibitions and restrictions on imports and exports in respect of articles imported or exported by SADC for its official use; provided however, that the articles imported under such exemption shall not be sold or otherwise disposed of in the territory of the Member State into which they were imported except under conditions agreed with the Government of that Member State;

c) customs duties, prohibitions and restrictions on imports and exports in respect of its publications.

2. Each Member State shall make appropriate arrangements for the remission or refund of the amount of any duty or tax payable or paid by SADC in respect of property bought for official use by SADC or its Institutions in the territory of such Member State.

ARTICLE 4 FACILITIES IN RESPECT OF OFFICIAL COMMUNICATIONS

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

2. No censorship shall be applied to the official correspondence and other official

communications of SADC.

3. SADC shall have the right to use codes and to despatch and receive its official correspondence either by courier or in sealed bags which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE 5 OFFICIALS

1. Officials of SADC shall:

- a) be immune from legal process in respect of words spoken or written and all acts performed by them in the course of duty; they shall continue to be so immune after completion of their functions as officials of SADC;
- b) be exempt from taxation on the salaries and emoluments paid to them by SADC;
- c) be immune, together with their spouses and members of their family forming part of the household, from immigration restrictions, alien registration and from national service obligations;
- d) be accorded the same privileges in respect of exchange control facilities as are accorded to the officials of comparable rank of international organisations;
- e) be given, together with their spouses and members of their family forming part of the household, the same repatriation facilities in time of crisis as staff of international organisations;
- f) have the right to purchase ex-bond or import free of duty their furniture, effects and other articles for personal use or for use of members of their family forming part of the household, including articles intended for their establishment, provided that the articles so imported shall not be sold or otherwise disposed of in the territory of the host Member State into which they were imported except as agreed with the host Member State.

2. Immunities and privileges in this Article shall be conferred on categories of officials as follows:

- a) the Executive Secretary, Deputy Executive Secretary, Directors of Commissions, Heads of Divisions and other officials of comparable rank, shall enjoy all immunities and privileges provided in this Article;
- b) other regionally recruited staff shall enjoy immunities and privileges provided in paragraph 1 of this Article;
- c) locally recruited staff, excluding spouses and other members of their family forming part of the household, shall enjoy immunities and privileges indicated in paragraph 1(a), 1(b), 1(c) except their national service obligation, and 1 (d) of this Article, provided that paragraph 1(c) and 1(d) shall apply in respect of official purposes only.

3. In addition to the immunities and privileges referred to in paragraph 1 of this Article, the Executive Secretary, the Deputy Executive Secretary, Directors of Commissions, Heads of Divisions and other officials of comparable rank shall be accorded in respect of themselves, their spouses and minor children, the immunities and privileges, exemptions

and facilities accorded to representatives of comparable rank of international organisations.

4. The Executive Secretary shall specify the positions to which provisions of this Article shall apply. A list of these positions shall be submitted to the Council for approval. Thereafter, the list shall be communicated to all Member States. The names of officials occupying these positions shall, from time to time, be made known to Member States.

5. Privileges, immunities and facilities are granted to officials in the interest of SADC and not for the personal benefit of the individuals concerned. The Executive Secretary shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of SADC. In the case of the Executive Secretary and the Deputy Executive Secretary, the Council shall have the right to waive immunity.

6. SADC shall co-operate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice, secure the observance of police and security regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE 6 REPRESENTATIVES OF MEMBER STATES

1. Representatives of Member States to the Institutions of SADC and to conferences convened by SADC shall, while exercising their functions and during their travel to and from the place of the meeting, enjoy the following immunities and privileges:

a) immunity from personal arrest or detention and from seizure of their personal baggage and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

b) inviolability for all papers and documents;

c) the right to use codes and to receive papers or correspondence by courier in sealed bags;

d) exemption in respect of themselves from restrictions, alien registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official mission;

f) the same immunities and facilities in respect of their personal baggage as are accorded to representatives of comparable rank of international organisations;

g) such other privileges, immunities and facilities not inconsistent with the foregoing as staff of comparable rank of international organisations enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

2. Privileges, immunities and facilities are accorded to the representatives of Member States not for the personal benefit of the individuals concerned, but in order to safeguard

the independent exercise of their functions in connection with SADC. Consequently, a Member State not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the Member State, the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity was accorded.

3. The provisions of paragraph 1 of this Article are not applicable as between a representative and the authorities of the Member State of which he is a national or of which he is or has been the representative.

4. In this Article, the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisors, technical experts and secretaries of delegations.

ARTICLE 7 EXPERTS ON MISSION FOR SADC

1. Experts, other than officials referred to in Article 5 of SADC performing missions for SADC shall be accorded such privileges, immunities and facilities as are necessary for the independent exercise of their functions during the period of their mission, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:

- a) immunity from personal arrest or detention and from seizure of their baggage;
- b) in respect of words spoken or written and things done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for SADC;
- c) inviolability for all official papers, documents and correspondence; and
- d) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions.

2. Immunities and privileges are granted to experts in the interests of SADC and not for the personal benefit of the individuals concerned. The Executive Secretary shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of SADC.

ARTICLE 8 SADC LAISSEZ-PASSER

1. SADC shall issue a SADC Laissez-Passer to its officials. The Laissez-Passer, which shall have the status of a diplomatic passport, shall be recognised and accepted as a valid travel document by the authorities of Member States, taking into account the provisions of paragraph 2 of this Article.

2. Holders of the SADC Laissez-Passer shall have visa-free entry into the territory of all Member States.

3. Similar facilities to those specified in paragraph 2 of this Article shall be accorded to experts and other persons holding a SADC Identity Card and travelling on the business of

SADC.

4. The Executive Secretary, the Deputy Executive Secretary and such other officials, as the Executive Secretary shall specify, travelling on the business of SADC shall be granted the same facilities as are accorded to staff of comparable rank of international organisations.

ARTICLE 9 SETTLEMENT OF DISPUTES

1. Disputes between Member States regarding the interpretation or application of the provisions of this Protocol which are not settled amicably shall be referred to the Tribunal of SADC established by Article 9 of the Treaty.

2. If a dispute arises between SADC on the one hand and a Member State on the other, a request shall be made for an advisory opinion in accordance with Article 16 (4) of the Treaty.

ARTICLE 10 AMENDMENTS

1. An amendment to this Protocol shall be adopted by a decision of three-quarters of all the members of the Summit.

2. A proposal for the amendment of this Protocol may be made to the Executive Secretary by any Member State for preliminary consideration by the Council, provided, however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all Member States have been duly notified of it, and a period of three months has elapsed after such notification.

ARTICLE 11 SIGNATURE

This Protocol shall be signed by duly authorised representatives of Member States.

ARTICLE 12 RATIFICATION

This Protocol shall be ratified by the signatory States in accordance with their constitutional procedures.

ARTICLE 13 ENTRY INTO FORCE

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States.

ARTICLE 14 ACCESSION

This Protocol shall remain open for accession by any state subject to Article 8 of the

Treaty.

**ARTICLE 15
DEPOSITARY**

The original texts of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary, who shall transmit certified copies to all Member States.

IN WITNESS WHEREOF, WE, the Heads of State or Government of SADC Member States have signed this Protocol.

DONE at Windhoek, this 17th day of August 1992 in two (2) original texts in the English and Portuguese languages both texts being equally authentic.

THE PEOPLE'S REPUBLIC OF ANGOLA

REPUBLIC OF BOTSWANA

KINGDOM OF LESOTHO

REPUBLIC OF MALAWI

REPUBLIC OF MOZAMBIQUE

REPUBLIC OF NAMIBIA

KINGDOM OF SWAZILAND

UNITED REPUBLIC OF TANZANIA

REPUBLIC OF ZAMBIA

REPUBLIC OF ZIMBABWE