

Namibia

Diplomatic Privileges Act, 1951

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Republic of Namibia
Annotated Statutes

Diplomatic Privileges Act, 1951

Act 71 of 1951

Published in [South African Government Gazette no. 4668](#) on 27 July 1951

Assented to on 2 July 1951

Commenced on 5 May 1989 by [Proclamation 63 of 1989](#)

[Up to date as at 14 July 2020]

[Amended by [Commonwealth Relations Act, 1962 \(Act 69 of 1962\)](#) on 31 May 1962]

[Amended by [Diplomatic Privileges Amendment Act, 1978 \(Act 61 of 1978\)](#) on 30 June 1978]

[Amended by [Diplomatic Privileges Amendment Act, 1985 \(Act 39 of 1985\)](#) on 12 April 1985]

[Amended by [Restoration of South African Citizenship Act, 1986 \(Act 73 of 1986\)](#) on 1 July 1986]

[Amended by [Transfer of Powers and Duties of the State President Act, 1986 \(Act 97 of 1986\)](#) on 3 October 1986]

[Amended by [Diplomatic Privileges Proclamation, 1989 \(Proclamation 63 of 1989\)](#) on 5 May 1989]

[APPLICABILITY TO SOUTH WEST AFRICA: The Act was made applicable to South West Africa by RSA Proc. 63 of 1989 (RSA GG 11861). Section 2 of that Proclamation states “The Act, as amended by Part II of this Schedule, shall apply in the Territory.” The Proclamation does not make specific reference to the amendments already made to the original Act in South Africa, but references in the Proclamation to text which is to be substituted are based on the Act as amended in South Africa prior to 1989. The wording of the Proclamation does not appear to make future amendments to the Act automatically applicable to South West Africa.]

[TRANSFER TO SOUTH WEST AFRICA: The Administrator-General acquired authority to administer this Act in South West Africa by virtue of RSA Proc. 63 of 1989. This did not qualify as a transfer proclamation in terms of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which defines “transfer proclamation” in section 1 as “a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General” (emphasis added). Therefore, the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, was not applicable to this Act. The Act was repealed in South Africa prior to Namibian independence by the Diplomatic Immunities and Privileges Act 74 of 1989 (RSA GG 11928). This repeal was not expressly applicable to South West Africa and does not seem to have applied by virtue of the wording of RSA Proc. 63 of 1989; furthermore it does not repeal RSA Proc. 63 of

1989. Thus, Act 71 of 1951 appears to have remained in force in South West Africa.]

ACT

To consolidate and amend the laws relating to the immunities and privileges of representatives of other heads of states or governments, to provide for the immunities and privileges of delegates to international conferences and of members and officials of certain organizations and institutions; to provide for the granting of certain immunities, rights and privileges to certain other persons; and to provide for matters incidental thereto.

[long title amended by Act 61 of 1978]

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[Because of the various amendments, this Act is inconsistent in the spelling of "subsection" and "sub-section" and the formatting style of cross-references. It also uses both the terms "Union" and "Republic" to refer to South Africa prior to Namibian independence. The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3 that as from 31 May 1961, any reference to the Union in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic, and any reference to the Governor-General shall be construed as a reference to the Republic or the State President as the circumstances may require.]

1. Definitions

In this Act, unless inconsistent with the context -

"diplomatic agent" means the public representative of any other head of state or government duly accredited to the Union as an ambassador, high commissioner, envoy extraordinary and minister plenipotentiary, minister resident, charge d'affaires or accredited diplomatic representative;

[definition of "diplomatic agent" amended by Act 69 of 1962]

"family" means the wife or husband, as the case may be, the minor children, and any other relative approved by the Minister for the purposes of this Act, of any person mentioned in sub-section (1) of section 2 or in subsection 1 of section 2A or in section 2B or of a member of the staff of any such person;

[definition of "family" amended by Act 39 of 1985; not all of the changes are indicated by amendment markings]

"local authority" means any of the institutions referred to in -

- (a) the Municipal Ordinance, 1963 (Ordinance No. 13 of 1963), of the Territory;
- (b) the Village Management Boards Ordinance, 1963 (Ordinance No. 14 of 1963), of the Territory; and
- (c) the Peri-Urban Development Board Ordinance, 1970 (Ordinance No. 19 of 1970), of the Territory;

[The definition of "local authority" is amended by Act 69 of 1962 and substituted by Proc. 63 of 1989. The Local Authorities Act 23 of 1992 repealed the Municipal Ordinance 13 of 1963, the Village Management Boards Ordinance 14 of 1963 and the Peri-Urban Development Board Ordinance 19 of 1970.]

"Minister" means the Minister of Foreign Affairs;

[definition of "Minister" amended by Act 69 of 1962]

"person" includes any organization or institution recognized by the Minister under section 2, and such an organization or institution shall, to the extent consistent with the instrument creating it, be vested in the Territory with the legal capacities of a body corporate;

[definition of "person" amended by Act 61 of 1978 and by Proc. 63 of 1989; not all of the changes made by Act 61 of 1978 are indicated by amendment markings]

"staff" means counsellors, secretaries, attaches, advisers, chancellors, archivists, stenographers, typists and

other persons approved by the Minister who take part in the diplomatic work of a diplomatic mission, the consular work of a consular mission or the work of the office of a representative of another State or person contemplated in section 2B, provided the aforementioned persons are employed exclusively for the purposes of the mission or office;

[definition of "staff" amended by Act 39 of 1985; not all of the changes are indicated by amendment markings]

"**suite**" in relation to any Head of State, diplomatic agent or other representative of or visitor from another sovereign or state means his family, the members of his staff and their families.

[Section 1 of RSA Proc. 63 of 1989 provides, without amending the Act, that - "Administrator-General" means the Administrator-General of the territory of South West Africa; and "Territory" means the territory of South West Africa.]

2. Immunity of heads of state, diplomatic agents and certain other persons from jurisdiction of courts

(1) Save as provided in section three, the following persons shall be immune from the civil and criminal jurisdiction of the courts of the Territory -

[introductory phrase of subsection (1) amended by Proc. 63 of 1989]

- (a) heads of state;
- (b) diplomatic agents;
- (c) any special envoy from another state, subject to the terms of any agreement governing the mission of such envoy;
- (d) any organization or institution recognized by the Minister for the purposes of this paragraph, the members, agents or officers of and the delegates to such organizations or institutions, and the permanent representatives of other Governments to such organizations or institutions, together with their wives and minor children, to the extent prescribed in any convention or agreement to which the Government of the Republic is a party;

[Paragraph (d) is amended by Act 61 of 1978. Not all of the changes are indicated by amendment markings. The words "convention" and "agreement" are not capitalised in the amended paragraph (d), even though this is inconsistent with paragraph (e) below.]

- (e) representatives of any government attending any international conference, to the extent prescribed in any Convention or Agreement to which the Union Government is a party;
- (f) any other person who is recognized by the Minister as being entitled to diplomatic immunity, in accordance with the recognized principles of international law and practice, including in particular persons falling under the category of diplomatic agents who are the representatives of a sovereign or state with whom or which the Union is at peace and who are accredited to another Government, and persons falling under the categories set out in paragraphs (d) and (e), while such diplomatic agents or persons are travelling to or from the country where their official duties are to be carried out or have been carried out,

and all legal process sued out against the persons or property of such persons shall be void.

(2) The immunity attaching to any person mentioned in sub-section (1) shall extend also to his suite.

2A. Immunities, rights and privileges of career-consular officers, representatives of other States and certain other persons

(1) Career-consular officers, representatives of another State (other than diplomatic agents) and members of the suite of such officers or representatives shall enjoy such immunities, rights and privileges as they enjoy in accordance with the provisions of any law or an agreement in terms of subsection (2) or the recognized principles of international law.

- (2) The State President may on a basis of reciprocity and on such conditions as he may deem fit, enter into an agreement with any other State by which immunities, rights and privileges are conferred upon any person concerned contemplated in subsection (1), and any incidental matters are regulated.
- (3) Such agreement and any amendment thereto shall be published by the State President by proclamation in the Gazette, shall come into force on the date of signature of the agreement or amendment or on the later date stipulated in the agreement or amendment, and shall have the force of law, and the provisions thereof shall prevail in the case of conflict between such provisions and the provisions of any law (other than this Act) or the recognized principles of international law.

[section 2A inserted by Act 61 of 1978 and amended by Act 39 of 1985; not all of the changes are indicated by amendment markings]

2B. Conferment of immunities, rights and privileges by proclamation or other instrument

Notwithstanding anything to the contrary in section 2A or in any law contained, the State President may, if he is satisfied that in a particular case it is not possible or desirable to enter into an agreement contemplated in section 2A and that the conferment of immunities, rights and privileges will be in the interest of the Republic -

- (a) by proclamation in the Gazette; or
- (b) in such manner as he thinks fit in any case in which he deems it expedient,

subject to such conditions as he may determine, at the request of another government and where possible on a basis of reciprocity, confer upon any person, irrespective of whether such person is a person referred to in section 2A, such immunities, rights and privileges as may be specified in the proclamation or other instrument in question.

[section 2B inserted by Act 39 of 1985]

3. Immunity not to apply in certain cases

- (1) The provisions of section two shall not apply to any person mentioned therein in connection with any liability incurred by him for any tax levied on the incomes of persons or in connection with any transaction entered into by him in his private and personal capacity, for purposes of trade or in the exercise of any profession or calling.

[subsection (1) amended by Proc. 63 of 1989]

- (2) The provisions of section two shall not be construed so as to prohibit the waiver by -
 - (a) any person mentioned in paragraph (a), (b), (c), (e) or (f) of sub-section (1) of the said section of the immunity secured to himself or to any member of his suite; or
 - (b) any organization or institution mentioned in paragraph (d) of sub-section (1) of the said section of the immunity secured to such organization or institution or to any member, agent or officer of such organization or institution or to any member of the suite of any such member, agent or officer; or
 - (c) any other Government of the immunity secured to a permanent representative mentioned in the said paragraph (d) or to any member of the suite of any such representative.
- (3) The Governor-General may withdraw the immunities granted by section two to any person, where the Government of such person fails to accord corresponding immunities to Union representatives or South African Citizens.

4. Register of persons entitled to immunity

- (1) (a) The Minister shall cause a register to be kept in which there shall be registered the names of all persons who shall be immune under section 2 or the recognized principles of international law or

an agreement contemplated in section 2A or a proclamation contemplated in section 2B from the civil or criminal jurisdiction of the court of the Territory, and every such registration shall be cancelled upon the person concerned ceasing to be so immune.

[paragraph (a) amended by Proc. 63 of 1989]

- (b) In the case of immunity granted under the recognized principles of international law or an agreement contemplated in section 2A or a proclamation contemplated in section 2B, the extent of such immunity shall be registered in the register.
- (2) The Minister shall cause every registration or cancellation made under sub-section (1) to be published in the Gazette.
- (3) At least once in each calendar year, the Minister shall cause to be published in the Gazette, a complete list of all persons on the register.
- (4) A notice published in terms of this section or a certificate under the hand of the Director-General: Foreign Affairs stating that any person mentioned in such certificate is covered by the provisions of any particular paragraph of subsection (1) of section 2 specified in such certificate or of section 2A or 2B, and accordingly recognized by the Government of the Republic to be entitled to the immunity concerned, or stating that the immunity previously attaching to any such person as aforesaid no longer subsists, or has been cancelled or withdrawn from any particular date, shall be conclusive proof of the facts or conclusions stated therein in any court of law.

[subsection (4) amended by Act 69 of 1962 and by Act 39 of 1985; not all of the changes are indicated by amendment markings]

5. Exemption from taxation of persons entitled to diplomatic immunity

- (1) Subject to the provisions of subsection (3), the Minister may, with the concurrence of the Administrator-General, exempt persons entitled to immunity under section 2 from taxes, duties, fees, rates or other charges levied upon -

[introductory phrase of subsection (1) amended by Act 97 of 1986 and by Proc. 63 of 1989; not all of the changes made by Act 97 of 1986 are indicated by amendment markings]

- (i) the person concerned; or
- (ii) any movable property of such person; or
- (iii) so much of the income of the person concerned as is derived directly from the holding of his office: Provided that any exemption granted to any person in terms of this sub-section shall not be construed as exempting such person from the necessity of complying with any formalities in respect of the importation of goods which are prescribed in any law relating to customs.
- (2) If a motor vehicle which has been imported or taken out of bond without payment of customs duty under subsection (1) is sold or disposed of within two years of importation to a person not entitled to customs franchise privileges, the person who sells or disposes of the vehicle may be called upon to pay duty thereon at the rate required according to the law relating to the payment of customs duty.
- (3) The Governor-General shall only grant exemption in terms of sub-section (1) to -
 - (a) any person mentioned in paragraph (a), (b) or (c) of sub-section (1) of section two, or to the members of the suite of any such person, if he is satisfied that reciprocal treatment is or would be accorded to Union representatives or South African citizens corresponding in rank or position to the person concerned by the Government of that person;
 - (b) any organization or institution mentioned in paragraph (d) of sub-section (1) of section two or any member, agent or officer of such organization or institution, or any representative of any other Government to such organization or institution, or to the wives or minor children of the foregoing persons, to an extent not greater than that prescribed in any Convention or Agreement to which the

Union Government is a party.

- (4) A certificate under the hand of the Secretary for Foreign Affairs stating that the Governor-General has granted any exemption in terms of sub-section (1) or (2) or of sub-section (1) of section six shall be conclusive proof thereof in any court of law.

[subsection (4) amended by Act 69 of 1962]

6. Exemptions which may be granted by Minister to Governments

- (1) The Minister may, with the concurrence of the Administrator-General and subject to the provisions of subsection (2), exempt any Government or any organization or institution recognized by him under section 2, from the payment of transfer duty or any other duties, fees, charges or other taxes payable in connection with the transfer of any immovable property acquired by that Government or organization or institution for official purposes in the Territory, as well as from the payment of rates, taxes, fees or other charges levied on or in connection with such property.

[subsection (1) amended by Act 61 of 1978, Act 97 of 1986 and Proc. 63 of 1989; not all of the changes made by Act 61 of 1978 and by Act 97 of 1986 are indicated by amendment markings]

- (2) The Minister shall only grant exemption in terms of subsection (1) to a Government if he is satisfied that reciprocal treatment is or would be accorded to the Government of the Republic by such Government.

[subsection (2) amended by Act 97 of 1986; not all of the changes are indicated by amendment markings]

7. Adjustment of loss of revenue to local authorities and statutory public utility corporations

The loss of revenue caused to any local authority or statutory public utility corporation by reason of the provisions of sections five and six shall be made good to the local authority or statutory public utility corporation concerned, as the case may be, out of moneys provided by Parliament for that purpose.

8. Recognition of building occupied by diplomatic agent

The Governor-General may by notice in the Gazette recognize any building or premises occupied by a diplomatic agent for the purpose of a chancery or an official residence as an embassy or legation or the office or residence of a high commissioner or other diplomatic agent.

[section 8 amended by Act 69 of 1962]

9. ***

[section 9 amended by Act 39 of 1985 and deleted by Proc. 63 of 1989]

10. Application of immunity to Union citizens

- (1) The immunities, privileges and exemptions provided for in this Act shall not apply to or be extended to South African citizens: Provided that -
- (a) the said immunities, privileges and exemption shall apply or may be extended to South African citizens who are also citizens of a state the territory of which previously formed part of the Republic, provided that such a state on a basis of reciprocity extends similar immunities, privileges and exemption to citizens of such a state who are also South African citizens;
 - (b) if the Government of the Republic has by agreement with an organization or institution referred to in section 2(1)(d) undertaken to extend any immunities, privileges or exemptions to South African citizens who are representatives of another Government on such organization or institution, or who are members, agents or officers of such organization or institution, the said immunities,

privileges and exemptions shall apply also to such South African citizens.

[subsection (1) amended by Act 73 of 1986; not all of the changes are indicated by amendment markings]

- (2) Notwithstanding anything to the contrary contained in the Defence Act, 1957 (Act No. 44 of 1957), any officer, agent or representative of an organization or institution referred to in section 2(1)(d) shall be exempt from service under the said Act as a citizen of the Republic.

[Subsection (2) is amended by Act 61 of 1978. Not all of the changes are indicated by amendment markings. The Defence Act 44 of 1957 has been replaced by the Defence Act 1 of 2002.]

11. Offences and penalties

- (1) Any person who wilfully or without the exercise of reasonable care sues out, obtains or executes any legal process against a person who is entitled to immunity under section 2 or 2A or paragraph (a) of section 2B and whose name has been published in terms of subsection (2) of section 4, whether as party, as attorney or as an officer concerned in issuing or executing such process, shall be guilty of an offence.
- (2) Any person who contravenes subsection (1) or any person who wilfully or without the exercise of reasonable care, commits any other offence which has the effect of infringing the inviolability of a person entitled to immunity under section 2 or 2A or paragraph (a) of section 2B or of his property or the premises occupied by him, shall be liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

[section 9 amended by Act 39 of 1985; not all of the changes are indicated by amendment markings]

12. Repeal of laws

The Diplomatic Immunities Act, 1932 (Act No. 9 of 1932), the Diplomatic Immunities Act Amendment Act, 1934 (Act No. 19 of 1934), section sixteen of the Finance Act, 1941 (Act No. 43 of 1941), and sections one to five inclusive of the Diplomatic Immunities and Asiatic Land Tenure Amendment Act, 1944 (Act No. 9 of 1944), are hereby repealed.

13. Amendment of long title and short title of Act 9 of 1944

The Diplomatic Immunities and Asiatic Land Tenure Amendment Act, 1944, is hereby amended -

- (a) by the deletion in the long title of the words “the Diplomatic Immunities Act, 1932 and”; and
- (b) by the deletion in section seven of the words “Diplomatic Immunities and”.

14. Short title

This Act shall be called the Diplomatic Privileges Act, 1951.