

DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATIONS**NO. 421****12 MAY 2017****NOTICE**

It is hereby published for general information that the Minister of International Relations and Cooperation has in terms of section 5(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), recognised the International Committee of the Red Cross (ICRC) for the purposes of granting immunities and privileges as provided for in the Agreement between the Government of the Republic of South Africa and the International Committee of the Red Cross regarding the Legal Status, Privileges and Immunities of the International Committee of the Red Cross dated 20 October 2016 and set out in the Schedule hereto.

**MINISTER'S MINUTE NO: 1/2017**

In accordance with the powers vested in me by section 5(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), I hereby recognise the International Committee of the Red Cross (ICRC) for the purposes of granting immunities and privileges.

In accordance with section 7(1) of the said Act, the immunities and privileges to be accorded to the International Committee of the Red Cross (ICRC) are provided for in the Agreement between the Government of the Republic of South Africa and the International Committee of the Red Cross regarding the Legal Status, Privileges and Immunities of the International Committee of the Red Cross dated 20 October 2016.

A handwritten signature in black ink, appearing to read 'Maite Nkoana-Mashabane'.

MAITE NKOANA-MASHABANE
MINISTER OF INTERNATIONAL RELATIONS AND
COOPERATION
DATE: 1/02/2017



AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH
AFRICA**

AND

**THE INTERNATIONAL COMMITTEE OF THE RED
CROSS**

**REGARDING THE LEGAL STATUS, PRIVILEGES
AND IMMUNITIES OF THE INTERNATIONAL
COMMITTEE OF THE RED CROSS**

PREAMBLE

The Government of the Republic of South Africa (hereinafter referred to as “the Government”) and the International Committee of the Red Cross (hereinafter referred to as the ICRC);

CONSIDERING the work done by the ICRC in providing without discrimination protection and assistance with a view to relieving human suffering;

CONSIDERING the interests of and the wish expressed by the Parties to update the regulation of the status of the ICRC Delegation in the Republic of South Africa, which was established to carry out the humanitarian tasks entrusted to the ICRC under the 1949 Geneva Conventions and the 1977 Additional Protocols, to which the Republic of South Africa is a party, the Statutes of the International Red Cross and Red Crescent Movement and the resolutions of the International Conferences of the Red Cross and Red Crescent;

RECALLING that in order to implement its humanitarian mandate, the ICRC carries out its activities in full conformity with its fundamental principles of humanity, neutrality, impartiality and independence and its standard working modalities, in particular confidentiality;

HEREBY AGREE as follows:

ARTICLE 1

DEFINITIONS

In this Agreement the expression:

- (a) “appropriate authorities” means such national or other authorities in the Republic of South Africa as may be responsible in the context and in accordance with the laws and customs applicable in the Republic of South Africa;
- (b) “Country” means the Republic of South Africa;
- (c) “Delegation” means the office of the ICRC in the Republic of South Africa;

- (d) “experts” means persons, other than Officials, appointed to perform specific tasks on behalf of the ICRC or to undertake missions or special projects on behalf of the ICRC;
- (e) “member of family” means –
 - (i) the spouse;
 - (ii) any dependent child under the age of 18;
 - (iii) any other dependent family member officially recognised as such by the ICRC Headquarters; and
 - (iv) the life partner officially recognised as such by the ICRC Headquarters;
- (f) “Officials” means all representatives and all members of the staff of the ICRC, including foreign nationals, South African nationals and South African permanent residents, with the exception of persons locally recruited who are assigned to hourly rates;
- (g) “Parties” means the Government of the Republic of South Africa and the ICRC.

ARTICLE 2

JURIDICAL PERSONALITY

- (1) The Government recognises the juridical personality of the ICRC and in particular capacity:
 - (a) to contract;
 - (b) to acquire rights, and to acquire and dispose of moveable and immoveable property; and
 - (c) to institute judicial proceedings.
- (2) The ICRC shall enjoy status and treatment no less favourable than accorded to other inter-governmental organizations hosted by the Government. The Delegation shall have the right to display the flag of the ICRC on its premises, vehicles, aircraft and vessels.

ARTICLE 3**IMMUNITY**

The ICRC, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal and administrative process, except insofar as in any particular case the ICRC has expressly waived its immunity.

ARTICLE 4**INVIOABILITY OF ICRC PREMISES, PROPERTY AND ASSETS**

- (1) The premises of the ICRC shall be inviolable. The property and assets of the ICRC, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, judicial, administrative or legislative action, except insofar as in any particular case the ICRC has expressly waived its immunity.
- (2) The premises, property and assets of the Delegation shall not be used in any manner incompatible with the mandate and functions of the ICRC.

ARTICLE 5**INVIOABILITY OF ICRC ARCHIVES**

The ICRC's archives and, in general, all documents belonging to it or held by it, including electronic documents and data, shall be inviolable, wherever located.

ARTICLE 6**CONFIDENTIALITY OF ICRC REPORTS, LETTERS AND OTHER
COMMUNICATIONS TO THE GOVERNMENT**

The Government undertakes to respect the confidentiality of ICRC reports, letters and other communications to the Government, which respect includes neither divulging their content to anyone other than the intended recipient, nor permitting their use in legal proceedings, without prior written consent of the ICRC.

ARTICLE 7**EXEMPTION FROM TAXATION AND CUSTOMS DUTIES**

- (1) With respect to all official activities, the ICRC, its assets, income and property shall be exempt from all forms of direct taxation; however, the ICRC will not claim exemption from taxes which are no more than charges for public utility services.
- (2) While the ICRC agrees that it will not, as a general rule, claim exemption from excise duties and from taxes on the sale of moveable and immoveable property which form a part of the price to be paid, the Government agrees that when the ICRC is making important purchases of property for official use and which purchase attracts duties and taxes it will, wherever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax concerned.
- (3) The ICRC shall be exempt from customs duties, import and export duties and charges having equivalent effect and from all taxes, prohibitions and restrictions on goods and materials (including ICRC publications and audio-visual materials) imported, exported or in transit through the Republic of South Africa intended for official use and/or for ICRC assistance programs within the Republic of South Africa or in another country. Articles imported under such exemption will not be sold in the Republic of South Africa except under conditions agreed upon with the Government and being not less favourable than those extended to other inter-governmental or international organisations.
- (4) The ICRC shall be granted air-traffic rights and be exempt from overflying and landing fees to all government-operated airports for all transports over, through or to the Republic of South Africa on the basis of equal treatment being not less favourable than that extended to other inter-governmental or international organisations.

ARTICLE 8
TRANSIT OF GOODS, VEHICLES AND EQUIPMENT TO
NEIGHBOURING COUNTRIES

- (1) In the event of the ICRC providing food and related assistance to neighboring countries within the region, the Government shall, especially in, but not limited to, emergency situations, facilitate the movement of goods, vehicles and other items as well as transport, as may be necessary for the fast and efficient execution of ICRC activities. The following general principles will apply:
- (a) Should the ICRC require storage facility in the port area, the facility shall adhere to the International Ship and Port Facility Security Code (ISPS) in terms of International Maritime Security requirements;
 - (b) to facilitate expeditious unloading of food commodities at ports and airports and facilitate their transit at border checkpoints, the Government shall afford clearance of sea vessels, aircraft and landside transport vehicles contracted by the ICRC, and wherever possible, provide preferential berthing of vessels at dock;
 - (c) aircraft, vehicles and vessels in the service of the ICRC shall not be subject to registration, certification or licensing by the Government, provided that:
 - (i) The aircraft are properly registered and the operators and crew are properly licensed in accordance with the national regulatory requirements of a country which is a party to the 1944 Convention on International Civil Aviation and its annexes;
 - (ii) Subject to article 11 all vehicles and vessels shall be properly registered with an appropriate authority, in accordance with the requirements of international law and shall carry appropriate insurances as may be required by the relevant legislation; and
 - (iii) All vessels shall comply with the International Maritime Organisation regulations and ISPS as well as any other international maritime legislation relating to maritime safety and security at that time.
- (2) As regards charges for the use of port facilities, tolls and the use of commercial roads, the ICRC shall enter into agreements with the operating authorities directly

in order to obtain any exemptions or discounts within the overall spirit of this Agreement.

ARTICLE 9

FINANCIAL TRANSACTIONS

- (1) Without being restricted by financial controls, regulations or moratoria of any kind, the ICRC may, in order to carry out its activities, hold funds and currency of any kind and operate accounts in any currency, and freely transfer its funds and currency to and from the Republic of South Africa, and convert any currency held by it into any other currency, provided that such funds originate from non-resident sources.
- (2) Any funds to be deposited into above mentioned accounts or transferred from the Republic of South Africa from a resident source must comply with Exchange Control Rules and Regulations.

ARTICLE 10

COMMUNICATIONS

- (1) The ICRC shall enjoy, for its official communications, treatment no less favourable than that accorded by the Government to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephoto, telephone and other communications and press rates for information to the press and radio.
- (2) No censorship, nor any other form of interference, shall be applied to the official correspondence and other official communications of the ICRC. The ICRC shall be free to use the means of communication it deems most appropriate for its contacts.
- (3) In particular, the ICRC shall have the right to install on its premises radio and other telecommunications equipment and to use mobile and internet equipment within the national territory, on the basis of treatment being not less favourable

than that extended to other inter-governmental or international organisations. The ICRC shall have the right to apply for and use the frequencies assigned to it for this purpose by the competent national authority, in accordance with Resolution No. 10 (Rev.WRC-2000) of the International Telecommunication Union.

- (4) The ICRC shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic courier bags.
- (5) Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the Government and the ICRC.

ARTICLE 11

VEHICLE REGISTRATION

The Government shall authorise and facilitate the registration of the vehicles of the ICRC Delegation in the Republic of South Africa as diplomatic vehicles with a similar status to vehicles of diplomatic missions accredited in the Republic of South Africa, and issue them with diplomatic license plates.

ARTICLE 12

STATUS OF ICRC OFFICIALS

- (1) The Government shall accord to:
 - (a) Officials of the ICRC who are nationals or permanent residents of the Republic of South Africa:
 - (i) Immunity from legal process and arrest or detention, including immunity from being called as a witness or being required to give evidence, in respect of words spoken or written and all acts performed by them in their official capacity, which shall continue to apply after they have left the service of the Delegation; and
 - (ii) exemption from national service obligations for the duration of their service with the ICRC.

- (b) Officials of the ICRC who are not nationals or permanent residents of the Republic of South Africa, and accompanying members of their family:
 - (i) the same status as that accorded to the diplomatic agents, in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961 as incorporated into South African law through the Diplomatic Immunities and Privileges Act 2001 (Act No. 37 of 2001), as amended, which status shall continue to be enjoyed after they have left the service of the Delegation but only for acts performed and words spoken in relation to their previous official duties to the Delegation;
 - (ii) inviolability of their private residences, vehicles, documents, manuscripts and all other personal effects;
 - (iii) exemption from all immigration fees and restrictions and from alien registration obligations;
 - (iv) the right to import their personal effects, including vehicles, duty free, under the same conditions as those accorded to diplomatic agents;
 - (v) the right to sell their personal belongings in the Republic of South Africa under the same conditions as those accorded to diplomatic agents;
 - (vi) in the event of disturbances or armed conflict, the necessary facilities to leave the country, if they wish to do so, by means they consider to be safest and quickest;
 - (vii) the same privileges in respect of exchange facilities as are accorded to diplomatic agents; and
 - (viii) exemption from all taxes and salaries and other emoluments paid by the ICRC or received by them from outside the Republic of South Africa.
- (2) The members of the Delegation undertake to respect the laws and regulations in force in the Republic of South Africa from the moment they arrive in the Country, and shall benefit from their protection.
- (3) Members of families of ICRC Officials who are foreign nationals may be allowed to work in the Republic of South Africa, in accordance with a separate spousal agreement to be determined by the Parties.

ARTICLE 13
ICRC EXPERTS ON TEMPORARY MISSION

Experts of the ICRC on temporary mission in the Republic of South Africa shall benefit from the privileges and immunities set forth in Article 12, which shall be determined in accordance with their status in the Republic of South Africa.

ARTICLE 14
DECEASED STAFF MEMBERS

- (1) The ICRC Head of Delegation shall have the right to take charge of and remove the remains of an ICRC Official who is not a national of the Republic of South Africa or an ICRC expert on temporary mission who dies in the Republic of South Africa, in accordance with the applicable ICRC procedures, provided that in the exercise of this right due consideration shall be taken of the relevant domestic law in force in the Republic of South Africa.
- (2) The ICRC Head of Delegation shall also have the right to remove from the Republic of South Africa the personal property of the deceased ICRC Official who is not a national of the Republic of South Africa or an expert on temporary mission. The Government shall not levy national, regional or municipal estate, succession or inheritance duties and duties on transfers on moveable property, the presence of which was due solely to the presence in the Republic of South Africa of the deceased Official.

ARTICLE 15
IDENTITY DOCUMENTS AND COMMISSION

- (1) Officials and experts on temporary mission shall be issued a document by the ICRC called “Identity document and commission” attesting to the bearer’s identity and to his/her status as an ICRC staff member.
- (2) The authorities of the Republic of South Africa shall accept this document as a valid identity document. Upon presentation by the bearer, in conjunction with his

or her valid passport, they shall facilitate crossing of the Republic of South Africa's international borders and travel within the country.

- (3) The Government shall accredit and issue to each Official who is also a foreign national the appropriate certificates of identity. This shall be done as soon as possible after such Official is assigned to the ICRC Delegation in the Republic of South Africa.
- (4) All relevant Officials shall be required to present, but not to surrender, their certificates of identity upon demand of an authorised Official of the Government.
- (5) The ICRC shall, upon termination of employment or reassignment of relevant Officials, ensure that their certificates of identity are returned promptly to the Government.

ARTICLE 16

CO-OPERATION WITH THE HOST COUNTRY

- (1) The ICRC shall co-operate with the appropriate authorities at all times with a view to preventing any form of abuse of the privileges, immunities and facilities provided for in this agreement.
- (2) The ICRC may waive any immunity, in any case where, in its sole opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the ICRC. Such waiver shall only be valid when given in writing by the competent authority within the ICRC.
- (3) The Government undertakes to assist the ICRC, as far as possible, in obtaining and making available, where applicable, water, electricity, telephone, fax and other facilities at rates or charges not less favourable than those charged to comparable consumers or users, and in the case of interruption or threatened interruption of service, to give, as far as within its powers, the same priority to the needs of the ICRC as to other international organisations.

ARTICLE 17

INTERPRETATION

The Present Agreement shall be interpreted in the light of its primary objectives as well as applicable international law which are to enable the ICRC to assume its responsibilities, to discharge its duties and to carry out its programmes fully and efficiently.

ARTICLE 18

SETTLEMENT OF DISPUTES

- (1) Any dispute between the Parties arising out of or relating to the Present Agreement that cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. For the purposes of the implementation of this section:
- (a) the dispute shall be submitted for final decision to an arbitral tribunal made up of three arbitrators, one to be named by the President of the ICRC, another by the Republic of South Africa and the third by both parties or, failing agreement by them, by the President of the International Court of Justice. The decision of the tribunal so constituted shall be final;
 - (b) the expenses of arbitration shall be borne by the Parties as laid down in the arbitral award.

ARTICLE 19

AMENDMENTS TO THE PRESENT AGREEMENT

This Agreement may be modified by written agreement between the Parties hereto. Each Party shall give full consideration to any proposal advanced by other Party under this section.

ARTICLE 20

COMPLEMENTARY AGREEMENTS

The Parties may agree to conclude complementary agreements.

ARTICLE 21

ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force upon signature thereof.
- (2) This Agreement may be terminated at any time by either Party by written notice to the other Party and shall terminate six months after receipt of such notice. Notwithstanding any such notice of termination, this Agreement shall remain in force until complete fulfilment or termination of all obligations entered into by virtue of this Agreement.

ARTICLE 22

RELATION TO OTHER AGREEMENTS

The Agreement between the International Committee of the Red Cross and the Government of the Republic of South Africa regarding the legal status, privileges and immunities of the International Committee of the Red Cross, which entered into force on 23 February 1995, shall terminate upon the entry into force of this Agreement.

ARTICLE 23

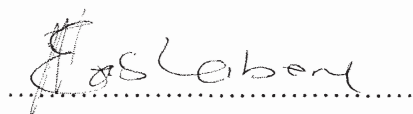
ORIGINALS AND DEPOSITORY

The Present Agreement shall consist of duplicate originals in English, one of which shall be deposited with the Government and the other with the ICRC, both being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed and sealed this Agreement in duplicate in the English language, both texts being equally authentic:

DONE AT Pretoria..... ON THIS 20th DAY OF October
IN THE YEAR 2016 .

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA



Maite Nkoana-Mashabane

Minister of International Relations and
Cooperation

FOR THE INTERNATIONAL
COMMITTEE OF THE RED
CROSS



Vincent Cassard

Head of Pretoria Regional
Delegation