

APPRAISING THE RELEVANCE OF DIPLOMATIC IMMUNITY AND PRIVILEGES IN NIGERIA

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Abstract

Throughout the history of international law and practice, and even before the codification of the international treaties that serve as working documents for various States with respect to fostering friendly international relations, diplomatic agents as well as Consular officers have indeed enjoyed a special status. Their functions which include negotiating and entering into agreements with other States and acting as the middle men between their sending States and receiving States demand certain special privileges and immunities. These privileges and immunities are not to benefit individuals, but to ensure the efficient performance of their functions. The Vienna Convention on Diplomatic Relations 1961 and Consular Relations 1963 are the two basic treaties that provide for the privileges and immunities of diplomatic agents. Despite the existence of various privileges and immunities which seek to protect diplomatic agents, as well as facilitate their functions, there have been series of reported cases of abuse of these diplomatic privileges and immunities by diplomatic agents and crimes of abuse against diplomatically protected individuals. In the light of the above, this article seeks to examine and appraise the relevance or otherwise of diplomatic privileges and immunities in Nigeria.

Keywords: *Diplomatic Agent, Consular Officer, Diplomatic Privileges and Immunities*

Introduction

Diplomatic and consular law which is arguably one of the oldest branches of public international law comprises the principles and norms relating to procedures for conducting relations among States, as well as other subjects of international law.¹It regulates chiefly, the immunities and

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privileges accorded diplomatic agents and consular officers among others. Over the years, the principle of diplomatic immunities and privileges has formed the foundation of international relations.

While the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963 are the two major treaties that stipulate and regulate the various privileges and immunities accorded diplomatic agents and consular officers; the Diplomatic Immunities and Privileges Act, which is the domesticated version of the two Vienna Conventions mentioned above, regulates the privileges and immunities accorded diplomatically protected individuals in Nigeria.

It is worthy of note that diplomatic immunities and privileges as a principle of international law, is based on three major theories namely: (i) extra-territoriality theory (ii) representative character theory and (iii) functional necessity theory; and that the purpose of diplomatic immunities and privileges is not to benefit individuals, but to ensure the efficient performance of the functions of diplomatic agents and consular officers who represent their state.

Definition of Terms:

Diplomatic Agent

A diplomatic agent is a person who has been accredited to represent a government in her contacts with other governments or international organizations. The Vienna Convention² defines a diplomatic agent as the head of the mission or a member of the diplomatic staff of the mission.

Diplomatic agents act as a link between their country and the foreign country where they reside.

A diplomatic agent has been further defined to mean, a person appointed by a national government to conduct official negotiation and maintain political, economic, and social relations with other countries.³

The functions of diplomatic agents include:

- (a) Representing the sending State in the receiving State;

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¹ J Crawford, *Brownlie's Principles of Public International Law* (9th edn, Oxford University Press 2019) 78

² VCDR 1961

³ <<https://www.dictionary.com/browse/diplomat>>accessed 7 March 2020

- (b) Protecting the interest of the sending State and of its nationals in the receiving State, within the limits permitted by international law;
- (c) Conducting negotiations with the government of the receiving State;
- (d) Ascertaining through lawful means, conditions and developments in the receiving State, and reporting same to the government of the sending State;
- (e) Promoting friendly ties between the government of the sending State and the government of the receiving State and also developing their economic, cultural and scientific relations.⁴

Consular Officer

A consular officer who is sometimes referred to as consul is a governmental representative living in a foreign country to oversee commercial and other matters involving representative's home country and her citizens in that foreign country.⁵

The Vienna Convention also defines a consular officer as any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions.⁶

The presence of a consular officer in a country is a formal symbolic sign of good relations between nations.

The functions of consular officers include:

- a) protecting the interests of the sending State and its nationals, both individuals and corporations, in the receiving State, within the limits permitted by international law;
- b) promoting the development of commercial, economic, cultural, and scientific relations between the sending State and the receiving and otherwise promoting friendly relations between them in accordance with the provision 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;

⁴ VCDR 1961, art 3.

⁵ B A Garner, *Black's Law Dictionary* (8th edn, Thomson West Publishers 1990) 334.

⁶ VCCR 1963, art 1 (d).

- d) issuing passports and travel documents to citizens of the sending State, as well as visas or other necessary documentation to those desiring to visit the sending State;
- e) assisting nationals of the sending State, both people and corporations;
- f) serving as a notary, civil registrar, and in similar capacities, as well as performing certain administrative activities, provided that the laws and regulations of the receiving State do not prohibit it;
- g) protecting the interests of the sending State's citizens, both people and corporations, in cases of succession *mortis causa* in the receiving State's territory, in line with the receiving State's laws and regulations;
- h) preserving the interests of children and other persons lacking full capacity who are nationals of the sending State, within the restrictions established by the receiving State's laws and regulations, particularly where guardianship or trusteeship is required with respect to such persons;
- i) representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, in accordance with the receiving State's laws and regulations, for the purpose of obtaining, in accordance with the receiving State's laws and regulations, provisional measures for the preservation of these nationals' rights and interests, where such nationals are absent or otherwise disadvantaged;
- j) transmitting judicial and extra-judicial documents or executing letters derogatory or commissions to take evidence for the courts of the sending State in accordance with current international agreements or, in the absence of such international agreements, in any other manner compatible with the receiving State's laws and regulations;
- k) exercising rights of supervision and inspection provided for in the sending State's laws and regulations 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) assisting the vessels and aircraft mentioned in sub-paragraph (k) of this article and their crews, taking statements about a vessel's voyage, inspecting and stamping the ship's papers, and, without prejudice to the powers of the receiving State's authorities, conducting investigations into any incidents that occurred during

the voyage, and settling disputes of any kind between the master, the officers, and the seamen in so far as this is possible.

- m) performing any other functions entrusted to a consular post by the sending State that are not prohibited by the receiving State's laws and regulations, to which the receiving State has made no objection, or that are referred to in the sending State's and receiving State's current international agreements.⁷

Diplomatic Privileges and Immunities

These are referred to as rights, prerogatives, exemptions and protections accorded diplomatic agents. The purpose of these privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.

Diplomatic privileges and immunities include:

- a) Inviolability of the diplomatic mission;
- b) Inviolability of the person of a diplomatic agent;
- c) Inviolability of the archives, and documents of the mission
- d) Inviolability of his private residence;
- e) Immunity from criminal, civil and administrative jurisdiction of the receiving State with few exceptions;
- f) Exemption from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased;
- g) Exemption from dues and taxes;⁸

Theoretical Framework

There are numerous ideas, principles and theories that appear to justify the existence and relevance of diplomatic privileges and immunities, a few theories shall be discussed hereunder.

i. Ex- Territoriality Theory

The theory of ex- territoriality which is also referred to as extraterritoriality was originated by the French Jurist Pierre Ayrault.⁹ This theory states that the premises utilized by a diplomatic mission are not

⁷ VCCR 1963, art 5.

⁸ VCDR 1961, arts 22, 24, 29, 31, 34

⁹ Britanica 'Extraterritoriality' <<https://www.britanica.com/topic/extraterritoriality>> accessed 1 May 2022

considered to be a part of the receiving State's territory. Under this theory, the mission's premises are viewed as an extension of the sending State's territory; in other words, though diplomats are physically present upon the soil of the country to which they are accredited, they remain for all purposes on the soil to which they represent. This theory is also known as "Fictional Theory".

ii. Representative Character Theory

This theory of diplomatic immunity states that a diplomatic agent is considered as a representation of a sovereign and a sovereign State and accordingly, he owes no loyalty to the receiving State hence, he is not subject to the laws and authority of the receiving State.¹⁰

According to this theory, diplomatic agents in the receiving State assume a representative position and must be treated as such because of the Sovereign State and the Sovereign's power. This theory was supported by the English court when it held that an Ambassador represents his master.¹¹

From the foregoing, it is deduced that a diplomatic agent is considered as the alter ego of his ruler or Sovereign, wielding the rights and privileges that would typically be accorded to the Sovereign if he were present in the receiving State.

This view point has however been criticized as being excessively broad and considered difficult to apply to modern systems of government where many forms of government exist, making it difficult to determine which type of government the diplomat would assume in a circumstance where the sending State operates a unique type.¹²

iii. Functional Necessity Theory

This theory supposes that immunities and privileges are granted to diplomatic agents to ensure the efficient performance of the functions of diplomatic missions as representing States, rather than to benefit themselves.¹³ Diplomatic agents are granted immunity because of the nature of their functions which are not in any way easy. On this basis, hampering their person, property or rights will mean hampering their functions.

¹⁰ Franciszek Przetacznik, 'The History of the Jurisdictional Immunity of the Diplomatic Agent in English Law' (1987) (7) (4) *Anglo- American Law Review*, 348- 395.

¹¹ *Exchange v Mac Faddon*, 7 Cranch, 116.

¹² C Simuli, *Diplomatic Privileges and Immunities: A Critical Analysis of the Vienna Convention on Diplomatic Relations* (University of Nairobi, 2009) 78.

¹³ Preamble to the Vienna Convention on Diplomatic Relations 1961

Legal Framework

For the proper determination of this subject, the following National Legal Frameworks and international conventions will be considered.

1. Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The most fundamental and basic law of every country is its constitution. In it, the foreign policy objectives of the state are provided. The Constitution of the Federal Republic of Nigeria, 1999 (as amended), is the ultimate law of the land, and any other law inconsistent with it, is to the extent of that inconsistency, null and void. The constitution of Nigeria represents the detailed plan, model or guideline for the legal and political organizations of a Federal Government and the States respectively.

For an international treaty validly concluded between Nigeria and any other country to have the force of law in Nigeria, the constitution provides that it must first be domesticated by the National Assembly¹⁴ else, such treaties will continue to be mere documents to States that sign or ratify them.

Domestication of treaties is a process wherein States to an international or regional treaty incorporate the treaty into their domestic laws. The reason for domestication is to ensure that the rights and duties contained therein become applicable and enforceable under national law.

Section 12(1) - (3) of the 1999 Constitution provides as follows:

- 1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly;
- 2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty;
- 3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the president for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.¹⁵

¹⁴ *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt 660) 228, 225.

¹⁵ Constitution of the Federal Republic of Nigeria 1999 Cap C23 LFN 2004, s 12(1) – (3).

The above section of the constitution was given judicial interpretation by the Court of Appeal in the case of *Nnaji v Nigerian Football Association*¹⁶ per Aboki J. C. A. thus:

In interpreting the above provision of the constitution, the supreme court in *Abacha v Fawehinmi*, per Ejiwunmi, JSC said thus: 'it is therefore manifest that no matter how beneficial to the country or the citizenry, an international treaty to which Nigeria has become a signatory maybe, it remains unenforceable if it is not enacted into the law of the country by the National Assembly'. This position is generally in accord with the practice in other countries. In the recent case of *Higgs & Anor v Minister of National Security & Ors*, the times of December 23rd 1999 the Privy Council held that: 'In the law of England and the Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the Crown. Treaties formed no part of domestic law unless enacted by the legislature. Domestic courts had no jurisdiction to construe or apply a treaty, nor could unincorporated treaties change the law of the land. They had no effect upon the citizens' rights and duties in common or statute law. They might have an indirect effect upon the construction of statutes or might give rise to a legitimate expectation by citizens that the Government, in its acts affecting them, would observe the terms of the treaty.' I think the above ought to be accepted as representing the position of our law with regard to international treaties entered into by the Federal Government of Nigeria. If such a treaty is not incorporated into the municipal law, our domestic courts would have no jurisdiction to construe or apply it. Its provisions cannot therefore have any effect upon the citizens' rights and duties.

2. Diplomatic Immunities and Privileges Act 1962

The current law governing Nigeria's diplomatic relations with other countries is the Diplomatic Immunities and Privileges Act.¹⁷ This legislation confers immunities, powers, and privileges on diplomatic and consular representatives, as well as representatives of other subjects of international law, like international organizations; and for purposes ancillary to or connected with the matters aforementioned. Subject to the provisions of the Diplomatic Immunities and Privileges Act, every foreign

¹⁶(2010) 11 NWLR (pt 1206) 443.

¹⁷Cap. 99, LFN 2004.

envoy and foreign consular officer, their families, members of their official and domestic staff, and the families of their official staff shall be granted immunity from suit and legal processes, as well as inviolability of residence and official archives, to the extent to which they were entitled to do so under the law in force at the time.¹⁸

Any writ or process filed or prosecuted before or after the effective date of this Act, in which any foreign envoy or foreign consular officer, authorized and received as such by the Government of Nigeria, or any member of the official or domestic staff of such foreign envoy or foreign consular officer, is liable to arrest or imprisonment, or his or her goods or chattels are liable to distress, seizure, or attachment, shall be null and void.¹⁹

The Act provides that nothing in the Act shall:

- a) Authorize immunity from arrest of any member of the official or domestic staff of a foreign envoy or foreign consular officer unless the name of such person was, before the arrest, recorded with the Minister by the foreign envoy or foreign consular officer or
- b) confer the benefits of this section on any merchant or other trader within the meaning of any Act relating to bankruptcy or insolvency, who is in the service of a foreign envoy or foreign consular officer.²⁰

The Act provides further that with the consent of his Government, a foreign envoy or foreign consular officer may waive any immunity or inviolability conferred by or under this Act on himself, and may also waive immunity or inviolability conferred on a member of his official or domestic staff, or a member of his family or the family of a member of his official staff without the necessity for such consent.²¹

A chief representative of a Commonwealth country has the same immunity from litigation and judicial procedure, as well as the same inviolability of residence and official archives as are accorded a foreign envoy, subject to the requirements of this Act.²²

Subject to the provisions of this Act, a person who is:

¹⁸ Diplomatic Immunities and Privileges Act, Cap D9 LFN 2004, s 1.

¹⁹ *Ibid.*

²⁰ CFRN 1999, s 1(3)(a) and (b)

²¹ *Ibid*, s 2.

²² *Ibid*, s 3.

- a) A member of the official or domestic staff of a chief representative of a Commonwealth country; or
- b) A member of the family of a chief representative of a Commonwealth country; or
- c) A member of the family of a member of the official staff of a chief representative of a Commonwealth country shall be entitled to the like immunity from suit and legal process as would be accorded to him if the chief representative were a foreign envoy.²³

Section 20 of this Act expressly provides that, regulations may be made from time to time for the purpose of giving effect to the provisions of the Act and for due administration.

When a conference is held in Nigeria and representatives of the government or governments of one or more Commonwealth countries attend, the Minister may compile a list of representatives of the Commonwealth government or governments attending the conference, as well as members of their official staff, and cause that list to be published in the Federal Gazette; and every representative of a Commonwealth country who is currently included in the list.²⁴

When the Minister believes that a person ceases to be a representative or qualifies for inclusion into the list of representatives, he may update the list and cause a notice of the amendment, or an amended list to be published in the Federal Gazette. Every list or notice issued under this section in connection with a conference must include a statement of the effective date of the list or modification.

According to the provisions of the Act, a person who is a member of the official staff of a representative of the government of a commonwealth Country, who is a Nigerian citizen and not a citizen of another commonwealth country, is not entitled to immunity under the foregoing provisions of this Act, except for things done or omitted to be done in the course of his duties, and the name of the person whose immunity is limited shall be entered in a register.

The Diplomatic Immunities and Privileges Act governs Nigeria's official communications and ties with other Countries and as such, international documents like: messages, notes, and other correspondences become obligatory on Nigeria after being approved by the Nigerian Senate.

²³ (n 20), s 4.

²⁴ *Ibid*, s 6.

3. Vienna Convention on Diplomatic Relations, 1961

The Vienna Convention on Diplomatic Relations 1961 is an international convention that establishes a framework for diplomatic relations between sovereign states.²⁵ It describes among other things the functions of a diplomatic mission; a diplomatic mission's privileges which allow diplomatic agents carry out their duties with ease; it stipulates diplomatic immunities in which, diplomatic missions as well as diplomatic agents are accorded immunities that enable the person of a diplomatic agent carry out his duties without fear of coercion or harassment by the host country; and the beginning and end of diplomatic immunities. The purpose of the Vienna Convention is to enhance friendly relations amongst sovereign States through the instrumentality of uniform practices.²⁶ The Vienna Convention which is a cornerstone of 21st Century international relations and international law is about the most universally ratified and observed treaty.²⁷

4. Vienna Convention on Consular Relations, 1963

The VCCR is an international treaty that lays down a structure for consular relations and activities amongst sovereign nations as well as codifies several consular practices.²⁸ The VCCR stipulates the functions, privileges and immunities accorded consular officers in addition to the rights and obligations of the receiving state; that is, where the consular officer is based as well as that of the sending state (the state the consular officer represents).

It is important to note that consular relations between States take place by mutual consent, of which Nigeria is among the 182 States that have since ratified the Vienna Convention hence, the importance of the Vienna Convention to Nigeria's consular relations.

²⁵K Bruns, 'A Cornerstone of Modern Diplomacy: Britain and the Negotiation of the 1961 Vienna Convention on Diplomatic Relations', Bloomsbury Academics (New York, 19 June 2014) 2.

²⁶Global Affairs Canada, 'Vienna Convention on Diplomatic Relations' (Canada 31 October 2007) <https://www.international.gc.ca/protocol-protocole/vienna_convention-convention_vienne.aspx> accessed 1 January 2022.

²⁷Vienna Convention on Diplomatic Relations, United Nations Treaty Collection

²⁸M J Garcia, 'Vienna Convention on Consular Relations: Overview of U.S. Implementation and International Court of Justice (ICJ) Interpretation of Consular Notification Requirements' (CRS Report for Congress) <<https://fas.org/sgp/crs/row/RL32390.pdf>> accessed 25 May, 2021

The Vienna Convention on Consular Relations also provides for the end of consular functions and the beginning and end of consular privileges and immunities.

Categories of Persons Entitled to Diplomatic Privileges and Immunities

The Vienna Convention stipulates different categories of persons who enjoy varying degrees of diplomatic immunity. These categories of persons are defined basically with respect to the functions they perform.

(i) Diplomatic Agents

Diplomatic agents enjoy the highest form of privileges and immunities. They enjoy absolute personal inviolability which means that they are not subjected to be handcuffed, arrested or detained; their papers, correspondences, premises and properties are not to be violated, entered or searched. Diplomatic agents are completely immune from the criminal jurisdiction of the host State's courts and consequently cannot be prosecuted.²⁹ A diplomatic agent is not obliged to give evidence as a witness and is exempt from all dues and taxes, personal or real, national, regional or municipal except under certain circumstances. These same privileges and immunities are also enjoyed by the diplomatic agent's family members, forming part of his household so long as they are not nationals of the receiving state.³⁰

(ii) Members of Administrative and Technical Staff

Members of the administrative and technical staff of a diplomatic mission perform functions vital to the workings of the said mission or embassy. They enjoy almost all the privileges and immunities accorded diplomatic agents except that their personal baggage is subject to search and inspection and they are permitted entry of and granted permission only on first installation from all custom 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 member of his family forming part of his house hold, including articles intended for his establishment.

²⁹ VCDR 1963, arts 29, 30, 31, 33, 34, 35.

³⁰ *ibid*, art 37.

The same class of privileges and immunities enjoyed by the members of the administrative and technical staff are also enjoyed by the members of their families forming part of their respective households, so long as they are not nationals of or permanently reside in the receiving State.³¹

(iii) Members of Service Staff of the Mission

Members of the service staff of diplomatic missions do not perform critical tasks for the mission and as such, accorded less privileges and immunities than those in other categories. Members of service staff who are not nationals of or permanently resident in the receiving State enjoy immunity only in respect of acts performed in the course of their duties. They do not enjoy personal inviolability and inviolability of property. They are obliged to provide evidence as witnesses and the members of their families enjoy no privileges and immunities.³²

(iv) Private Servants of Members of the Mission

This category of persons has the least critical function in the mission. The Vienna Convention provides that if they are not nationals of or permanently reside in the receiving State, they are exempted from dues and taxes on the emoluments (salary) they receive by reason of their employment.³³

In addition to the above categories of persons entitled to diplomatic immunity are those entitled to Consular immunity.

(v) Consular Officers

Consular Officers are of two categories: (i) Career Consular Officers and (ii) Honorary Consular Officers.

(i) Career Consular Officers

Career Consular Officers enjoy some form of immunity and privileges which are lesser in all ramifications than their diplomatic counterparts. The person of a consular officer is inviolable, meaning that he is not to be subjected to arrest or detention except in extreme cases of crime; Career consular officers are not amenable to the jurisdiction of the judicial or administrative authorities with respect to acts done in the exercise of their

³¹*ibid.*

³²VCDR 1961, art 37.

³³*ibid.*

consular functions; This however does not apply to civil actions; They are exempted from all obligations under the laws and regulations of the receiving state with respect to registration of aliens and residence permits; They are exempted from obligations in respect of work permits imposed by the laws and regulations of the receiving state concerning the employment of foreign labour; they are also exempted from social security provisions, dues, taxes, personal or real, national, regional, or municipal with some exceptions; all personal services and from all public services of any kind whatsoever and finally from military obligations such as those linked with requisitioning, military contributions and billeting.³⁴

(ii) Honorary Consular Officers

The privileges and immunities accorded honorary consular officers are almost insignificant compared to that accorded career consular officers. The few privileges and immunities enjoyed by honorary consular officers include: not being answerable to the jurisdiction of the judicial or administrative authorities of the receiving state in respect of acts performed in the exercise of their honorary consular functions; protection of the person of an honorary consular officer by reason of his official position; exemption from all obligations under the laws and regulations of the receiving state in regard to the registration of aliens and residence permits; exemption 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 and finally exemption from all personal services and from all public services of any kind whatsoever and from military obligations such as those linked with requisitioning, military contributions and billeting.³⁵

(vi) Consular Employee

Consular employees who are those employed in the administrative or technical service of a consular post, are not 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. This does not however apply in respect of a civil action; consular employees together with members of their families forming part of their household are exempted from all obligations under the laws and regulations of the

³⁴ VCCR 1963, arts 40, 41, 43, 46, 47, 48, 49, 50, 57.

³⁵ *Ibid*, arts 43, 44(3).

receiving State with regards to the registration of aliens and residence permits; this immunity however does not apply to consular employees who are not permanent employees of the sending State or who carry on any private gainful occupation in the receiving State or to any member of the family of any such employee; they, together with their families forming part of their households are exempted from all dues and taxes, personal or real, national, regional or municipal except in certain circumstances; they are also exempted from all personal services, from all public service of any kind whatsoever and from any military obligation such as those connected with requisitioning, military contributions and billeting; with articles imported at the time of first installation, consular employees are granted permission of entry and exemption from all custom duties, taxes, and related charges, other than charges for storage, cartage and similar services.³⁶

(vii) Members of the Service Staff

Members of the service staff which refer to persons employed in the domestic service of a consular post, likewise enjoy certain privileges and immunities. With respect to services rendered for the sending state, members of the service staff (who form part of the members of a consular post) are exempted from any obligation with regards to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour; they, together with members of their families forming part of their household shall be exempt from social security provisions which may be in force in the receiving State with respect to services rendered by members of the service for the sending State; they are exempt from dues and taxes on the wages which they receive for their services; members of the service staff and members of their families forming part of their household are exempt from all personal services, public services of any kind and from military obligations, such as those connected with requisitioning, military contribution and billeting.

(viii) Members of the Private Staff

Persons in this category are employed exclusively in the private service of a member of the consular post and also enjoy a very little amount of immunity and privileges. This category of persons are exempted from any

³⁶VCCR 1963, arts 43, 46, 49

obligation with regards to work permit imposed by the laws and regulations of the receiving State concerning the employment of foreign labour, provided that they do not carry on any other gainful occupation in the receiving State; they are also exempt from social security provisions which may be in force in the receiving State, provided that they are not nationals of or permanently resident in the receiving State, and that they are covered by the social security provisions which are in force in the sending State or a third State.

Relevance of Diplomatic Immunities and Privileges in Nigeria

By the express provisions of the preambles to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, the purpose of diplomatic privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by diplomatic missions and consular posts on behalf of their respective States. Notwithstanding the existence of these provisions, there have been records of continuous flagrant abuse of as well as disregard for diplomatic privileges and immunities. A few examples will guide this work.

- (i) On the 19th day of June, 2020, despite the existence of the treaties and conventions on diplomatic relations which expressly provides for diplomatic immunities, buildings in the Nigerian High Commission compound in Accra, the capital city of Ghana was demolished,³⁷ which demolition is a gross violation of article 22 of the Vienna Convention, which provides for the inviolability of the premises of a mission and protection of same by the receiving State.
- (ii) Recently in 2021, it was reported that the Nigerian Ambassador to Indonesia was manhandled and arrested in Jakarta, Indonesia, in front of his official quarters by the Indonesian immigration officers³⁸
- (iii) In the case of *Alhaji Keinde Asafa Oluwalogbon & 3 others v the Government of United Kingdom and 1 other*³⁹, an accident which involved the 1st respondent's Land rover Defender Jeep collided with the 1st Appellant's Nissan Urban Bus due to the negligence of the 2nd respondent, Simeon Ashiwell, a diplomatic agent who was the driver of the 1st respondent's jeep at the time of the accident.

³⁷ BBC NEWS <<https://www.bbc.com/news/world-africa-53148609>> accessed 19 January 2021

³⁸Ifreke Inyang, 'Ministry of Foreign Affairs Reacts to Video of Nigerian Diplomat Being Beaten in Indonesia' Daily Post News (August 9 2021)

³⁹ (2005) LCN | 1824 (CA)

At the trial court, the defendants (respondents) argued that by the provision of article 31 of the Vienna Convention, they were immune from the criminal jurisdiction of the receiving state – Nigeria. The trial court however decided in favour of the defendants. Upon appeal, the appellate court affirmed the decision of the trial court.

Despite the abuse of diplomatic privileges and immunities and disregard of same, the relevance of diplomatic immunities and privileges cannot be over emphasized.

Diplomatic privileges and immunities are a very necessary tool to maintain peaceful relations amongst States as well as to ensure the efficient performance of diplomatic functions.

Without prejudice to the privileges and immunities accorded diplomatic agents, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State⁴⁰ and to not interfere in the internal affairs of that State and likewise the duty of the receiving State to protect the person of the diplomatic agent and other members of the diplomatic mission.

Conclusion and Recommendations

The doctrine and practice of diplomatic privileges and immunities is unarguably one of the strongest pillars of foreign relations, which brings to fore Sovereign equality of States, the maintenance of international peace and security and the promotion of friendly relations among nations.

Its relevance cannot be overlooked as such privileges and immunities ensure the effective and efficient performance of the functions of diplomatic missions.

The following recommendations have been made:

- (i) An amendment of the Vienna Convention to provide for the creation of special courts to try and punish diplomatic agents who abuse diplomatic privileges and immunities rather than leave their trial to the sending State who may want to sweep the case under the carpet;

⁴⁰ VCDR, art 41.

- (ii) Diplomatic agents who have been tried and found to abuse diplomatic privileges and immunities should be made to face penalties like jail terms, in addition to economic sanctions like payment of compensations or fines, forfeiture of properties and publication of their names and pictures for the world to see. This will deter other diplomatic agents from further abuse of diplomatic privileges and immunities;
- (iii) Persons, organizations or institutions that have been tried and found to have disregarded diplomatic immunities and privileges by assaulting or causing harm or fear upon diplomatically protected persons should be made to face penalties, and their name and faces published for the world to see. Despite the existence of the Convention for the prohibition and punishment of crimes against diplomatically protected individuals, there have not been clear records to show that persons who fall within this category are actually punished.