



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 452

Cape Town,  
Kaapstad,

20 February  
Februarie 2003

**No. 24576**

## THE PRESIDENCY

No. 258

20 February 2003

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 42 of 2002: Defence Act, 2002.

## IHHOVISI LIKAMONGAMELI

Ino. 258

20 February 2003

Ngalokhu ukwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzo-shicilelwa umphakathi:—

Ino. 42 ka-2002: Umthetho wezokuvikela ka-2002.



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

(English text signed by the President.)  
(Assented to 12 February 2003.)

# ACT

To provide for the defence of the Republic and for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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(English text signed by the President.)  
(Assented to 12 February 2003.)

# UMTHETHO

Ukwenza ukuba livikeleke elaseRiphabhlikhi nezindaba eziphathelene nalo.

**K**UFANELE KWENZIWE UMTHETHO yiPhalamende neRiphabhlikhi yase-Ningizimu Afrika ngendlela elandelayo:—

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(Isigaba 106)



## CHAPTER 1

## INTRODUCTORY PROVISIONS

## Definitions

1. (1) In this Act, unless the context indicates otherwise—
- (i) **“auxiliary service”** means any service established under section 16(1); 5
  - (ii) **“Chief of the Defence Force”** means the Chief of the South African National Defence Force contemplated in section 13(1);
  - (iii) **“citizen”** means a South African citizen as contemplated in the South African Citizenship Act, 1995 (Act No. 88 of 1995);
  - (iv) **“Code”** means the Military Discipline Code referred to in section 104(1) of the Defence Act, 1957 (Act No. 44 of 1957); 10
  - (v) **“conscientious objection”** means an objection, against the rendering of military service or against participating in a military operation, on grounds of conscience based on compelling religious, ethical or moral beliefs;
  - (vi) **“court”**, in relation to a visiting force, means a body which or person who, by virtue of the laws of the country to which such visiting force belongs, is empowered to investigate any matter under the military law of that country or to try any person for an offence under such military law or to review the proceedings in connection with the investigation of any such matter or the trial of any person in respect of any such offence; 15 20
  - (vii) **“Defence Force”** means the South African National Defence Force contemplated in section 11, and includes any portion of that Force;
  - (viii) **“Defence Secretariat”** means the secretariat established by section 6(1);
  - (ix) **“Department”** means the Department of Defence;
  - (x) **“Division”** means any division of the Defence Secretariat or the Defence Force, established by the Minister by or under the Public Service Act, 1994 (Proclamation No. 103 of 1994); 25
  - (xi) **“employee”** means a person appointed to the Department in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), or any person regarded as having been appointed to the Defence Secretariat in terms of section 6(4); 30
  - (xii) **“enrol”** means to accept and record the attestation of any person as a member of the Regular Force or the Reserve Force;
  - (xiii) **“force”** means a military force;
  - (xiv) **“member”**— 35
    - (a) in relation to the Defence Force, means any officer and any other rank; and
    - (b) in relation to a visiting force, means any person who is—
      - (i) subject to the military law of the country of that visiting force;
      - (ii) a member of another force but who is attached to such visiting force; or 40
      - (iii) a civilian who entered into employment in connection with such visiting force outside the Republic;
  - (xv) **“Minister”** means the Minister of Defence;
  - (xvi) **“officer”**, in relation to the Defence Force, means a person on whom permanent or temporary commission has been conferred by or under this Act, and who has been appointed to the rank of officer; 45
  - (xvii) **“other force”** means a military force of a country or state other than the Republic;
  - (xviii) **“other rank”**, in relation to the Defence Force, means any member thereof other than an officer; 50
  - (xix) **“prescribed”** means prescribed by regulation;

## ISAHLUKO 1

## OKULUNGISELELWE UKWETHULWA

## Incazelo

1. (1) KuloMthetho, ngaphandle uma okuqukethwe kuwo kuchaza okunye okwehlukile —
  - (i) **“Imisebenzi eyimixhantela”** isho noma iyiphi imisebenzi esungulwe ngaphansi kwesiGaba 16 (1);
  - (ii) **“Umkhuzi woMbutho wezokuVikela”** usho uMkhuzi woMbutho kaZwelonke wezokuVikela eNingizimu Afrika njengoba kuchazwe kwisiGaba 13(1);
  - (iii) **“Isakhamuzi”** sisho isakhamuzi saseNingizimu Afrika njengoba kuchazwe kuMthetho no. 88 ka 1995 kwizakhamizi zaseNingizimu Afrika (Act No. 88 of 1995);
  - (iv) **“UMthetho”** usho uMthetho wokuqondiswa kwezigwegwe kwezeMpi njengoba kuchazwe kwisigaba 104 (1) soMthetho wezokuVikela ka, 1957 (Act No. 44 of 1957);
  - (v) **“Ukwenqaba ukuba yisotsha”** Kusho ukwala ukungena kwezeMpi noma ukusebenza kuzona ngoba loko kungahambelani nezinkolelo zomuntu ngenxa yenkolo yakhe noma izinkolelo zakhe ngokomoya nangokwendlela yokuziphatha;
  - (vi) **“INKantolo”**, maqondana noMbutho ovakashile isho inhlango noma umuntu okuthi ngokwemiThetho yezwe loMbutho ovakashile leyonhlango noma umuntu ibe namandla okuphenya noma wuluphi udaba ngaphansi kwemiThetho yezempi yalelozwe noma ukuphenywa kwanoma umuphi umuntu ngecala elingaphansi kweMithetho yezempi noma ukubuyekeza inqubo yecala maqondana nophenyo lodaba noma icala okungase kube likhona;
  - (vii) **“UMbutho wezokuVikela”** usho uMbutho kaZwelonke wezokuVikela eNingizimu Afrika njengoba kuchazwe kwisiGaba 11 (1), futhi kufaka nanoma iyiphi enye ingxenye yalowoMbutho;
  - (viii) **“UPhiko lwezokuVikela”** lusho uphiko olusungulwe ngokwesigaba 6(1);
  - (ix) **“UMnyango”** usho uMnyango wezokuVikela;
  - (x) **“UMkhakha”** usho noma imuphi umkhakha woPhiko lokwezokuVikela noma uMbutho wezokuVikela owasungulwa uNgqongqoshe ngaphansi koMthetho 103 ka 1994 wabasebenzi bakaHulumeni, (Proclamation No. 103 of 1994), noma ngaphansi kwesigaba 6(2), kuye ngokuthi kuyisima kanjani;
  - (xi) **“Umsebenzi”** usho umuntu oqashwe umnyango ngokoMthetho ka 1994 waBasebenzi bakaHulumeni (Proclamation No. 103 of 1994), noma umuntu ochazwe kwisigaba 6(4) noma (5);
  - (xii) **“Ukubhalisa”** kusho ukwamukela nokuqopha izifungo zanoma imuphi umuntu njengelungu loMbutho Osebenza Ngokuphelele noma uMbutho wamaRizevu
  - (xiii) **“UMbutho” usho uMbutho wezeMpi;**
  - (xiv) **“Ilungu”**
    - (a) maqondana noMbutho wezokuVikela lisho noma iliphi isotsha nanoma isiphi esinye isikhundla; kanti
    - (b) maqondana noMbutho ovakashile lisho noma ubani —
      - i. ongaphansi kwemithetho yezempi yezwe lalowo Mbutho ovakashile;
      - ii. Ilungu lomunye uMbutho kepha elisebenza noMbutho ovakashile; noma
      - iii. Ilungu loMphakathi eliqashwe maqondana noMbutho ovakashele ngaphandle kwaseRiphabhlikhi;
  - (xv) **“UNgqongqoshe”** usho uNgqongqoshe wezokuVikela;
  - (xvi) **“Isiphathimandla”**, kwezoMbutho wezokuVikela sisho umuntu onikwe amandla yiloMthetho okwesikhashana noma unomphele, futhi oqashelwe esikhundleni sokuba isiPhathimandla;
  - (xvii) **“amanye amabutho” isho amabutho yezempi yezwe elingeyona leRiphabhlikhi;**
  - (xviii) **“ezinye izikhundla”**, maqondana noMbutho wezokuVikela zisho noma iliphi elinye ilungu elingesona isiphathimandla;
  - (xix) **“okunconyiwe”** kusho okunconyiwe ngokweMithetho;

- (xx) “**registered address**”, in relation to a person, means the address of that person as notified from time to time to the proper authority in terms of this Act;
- (xxi) “**Regular Force**” means the Regular Force contemplated in section 11(a);
- (xxii) “**regulation**” means a regulation made under section 82;
- (xxiii) “**Reserve Force**” means the Reserve Force contemplated in section 11(b); 5
- (xxiv) “**secondary strike**” means a strike, or conduct in contemplation or furtherance of a strike, by members of the Defence Force or any auxiliary service in support of a strike or in solidarity with a strike undertaken by persons other than such members against any employer;
- (xxv) “**Secretary for Defence**” means the Secretary for Defence appointed in terms of section 7(1); 10
- (xxvi) “**Service**” means any Service referred to in section 12(1);
- (xxvii) “**state of emergency**” means a state of emergency contemplated in section 37 of the Constitution;
- (xxviii) “**strike**” means the partial or complete concerted refusal to render service, or the retardation or obstruction of the rendering of service, or failure to serve, by members of the Defence Force or any auxiliary service for purposes of protest, petition or remedying a grievance or resolving a dispute in respect of any matter of mutual interest between the employer and such members, and every reference to “serve” in this definition includes overtime, service or duty, 15 whether it is voluntary or compulsory; 20
- (xxix) “**superior officer**”, in relation to another member of the Defence Force, means any officer, warrant officer, non-commissioned officer or candidate officer of the Defence Force who holds—
- (a) or is regarded by or under this Act to hold, a higher rank than such other member of the Defence Force; or 25
- (b) the same or an equivalent rank as such other member of the Defence Force, but is in a position of authority over that member;
- (xxx) “**this Act**” includes the regulations;
- (xxxi) “**time of war**” means any time during which the Republic is under threat of war, armed conflict, armed invasion or armed insurrection or is at war, and in respect of which the Defence Force has been employed for service in the defence of the Republic; 30
- (xxxii) “**training**” includes education and development in the defence environment;
- (xxxiii) “**visiting force**” means a military force of any country present in the Republic with the consent of the President and, in sections 97, 98, 99 and 100, also such force on a routine visit to the Republic where prior agreement regarding the matters referred to in those sections has been concluded between the Government of the Republic and the government of the country in question. 35
- (2) Any reference in this Act to— 40
- (a) an obligation to render service in the Defence Force, includes an obligation to undergo training; or
- (b) a rank, includes the equivalent of such rank in any Service.

## Principles

2. The Minister and any organ of state defined in section 239 of the Constitution, as well as all members of the Defence Force and any auxiliary service and employees, must, in exercising any power or performing any duty in terms of this Act, have regard to the following principles: 45

- (a) The formulation and execution of defence policy is subject to the authority of Parliament and the national executive. 50
- (b) The primary object of the Defence Force is to defend and protect the Republic, its people and its territorial integrity.

- (xx) **“ikheli elibhalisiwe”**, maqondana nomuntu, lisho ikheli lalowo muntu njengoba laziwa yiziphathimandla ngokwaloMthetho;
- (xxi) **“uMbutho Osebenza Ngokuphelele”** usho uMbutho Osebenza Ngokuphelele njengoba kuchazwe kusigaba 11 (a);
- (xxii) **“uMthetho”** usho uMthetho owakhiwe ngaphansi kwesigaba 82; 5
- (xxiii) **“uMbutho wama Rizevu”** usho uMbutho wamaRizevu njengoba kuchazwe kusigaba 11 (1) (b);
- (xxiv) **“isiteleka sokweseka”** sisho isiteleka noma ukuziphatha okuhambisana noma okubhebezela isiteleka samalungu oMbutho wezokuVikela noma yimuphi omunye umsebenzi ongumnxhantela wezokuVikela, ngoba kwesekwa isiteleka esingenwe ngabantu abangewona lamalungu, kungekho mqashi abamutelekelayo; 10
- (xxv) **“unoBhala wezokuVikela”** usho unoBhala wezokuVikela oqashwe ngokwesigaba 7(1);
- (xxvi) **“Umsebenzi”** usho noma imuphi umsebenzi ochazwe kusigaba 12 (1); 15
- (xxvii) **“Isimo esibucayi”** sisho isimo esibucayi njengoba sichazwe kwisigaba 37 soMthethosisekelo;
- (xxviii) **“isiteleka”** sisho ukwenqaba ngokuphelele noma okungaphelele kwamalungu oMbutho ezokuVikela noma eminye imisebenzi eyimixhantela yawo ukwenza umsebenzi othize noma ukuvimba noma ukukhubaza ukwenziwa komsebenzi, noma ukwehluleka ukusebenza ngoba kubhikishwa noma kuzanywa ukulungisa isikhalo noma ingxabano maqondana nodaba oluthinta abaqashi nalawo malungu, konke okuphathelene nokusebenza kulencazelo kufaka nokusebenza i-ova noma umsebenzi owenziwa ngoba umuntu ezithandela noma ephoqekile; 20
- (xxix) **“isiphathimandla esiphakeme”** maqondana neline ilungu loMbutho wezokuVikela, sisho noma isiphi isiphathimandla, u-warrant officer, non-commissioned officer isiphathimandla esisafunda soMbutho wezokuVikela esinokulandelayo— 25
- (a) noma esithathwa ngokwaloMthetho ngokuthi sinesikhundla esiphakeme kunesamanye amalungu oMbutho wezokuVikela; noma 30
- (b) isikhundla esifanayo noma esilingana nesamanye amalungu oMbutho wezokuVikela, kepha sibe sisesikhundleni sokuba namandla namanye amalungu;
- (xxx) **“loMthetho”** usho neminye imiThetho;
- (xxxi) **“isikhathi semPi”** sisho noma isiphi isikhathi iRiphabhulikhi ezithola isengozini ngaso, izingxabano okusetshenziswa kuzo izikhali, ukuhlaselwa ngezikhali noma ukuzithola isempini, okuyisimo uMbutho wezokuVikela oqashelwe ukusiza iRiphabhulikhi ngaso; 35
- (xxxii) **“ukuqeqeshwa”** kusho ukufundisa nokuthuthukisa kwezokuVikela;
- (xxxiii) **“uMbutho ovakashile”** usho uMbutho wezeMpi wanoma yiliphi ilizwe okhona eRiphabhulikhi ngemvume kaMongameli nangokwesigaba 97, 98, 99 no100 futhi kusho nesimo lapho lowoMbutho uhlala uvakashela eRiphabhulikhi ngoba kunesivumelwano esesayindwa phakathi kukaHulumeni wase Riphabhulikhi noHulumeni walawomazwe athintekayo maqondana nezigaba ezibhalwe ngenhla. (2). Noma yikuphi kuloMthetho okuphathelene no— 40
- (a) nokuphoqeleka kokusebenza kuMbutho wezokuVikela kufaka ukuphoqeleka ukuqeqesha; noma
- (b) isikhundla sisho noma yisiphi esinye isikhundla esifana naleso kunoma yimuphi umsebenzi. 45

## Imigomo

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2. UNgqongqoshe nanoma iyiphi ingxenye yoMbuso echazwe kwisigaba 239 soMthethosisekelo, nawowonke amalungu oMbutho wezokuVikela nanoma iyiphi imisebenzi eyimixhantela yawo kanye nabasebenzi, kufanele kuthi uma kukhona imisebenzi abayenzayo noma kunamandla abawasebenzisa ngokwaloMthetho, bacabangele imigomo elandelayo:

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- (a) Ukwakhiwa nokusetshenziswa kwemigomo yezokuVikela kungaphansi koMthetho kaHulumeni kanye nesiGungu sikaZwelonke Esiphethe.
- (b) Inhloso esemqoka yoMbutho wezokuVikele wokuVikela iRiphabhulikhi, ukuhlonishwa kwendawo engaphansi kwayo kanye nabantu bayo.

- (c) The Defence Force must perform its functions in accordance with the Constitution and international law regulating the use of force.
- (d) The Defence Force must have a primarily defensive orientation and posture.
- (e) No member of the Defence Force may obey a manifestly illegal order.
- (f) Neither the Defence Force nor its members may, in the performance of their functions, prejudice a political party interest that is legitimate in terms of the Constitution, or, in a partisan fashion, further any interest of a political party. 5
- (g) The Defence Force must respect the fundamental rights and dignity of its members and of all persons.

### **Application of Act**

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- 3. (1) Unless the context indicates otherwise, this Act applies to—
  - (a) all members of the Defence Force and any auxiliary service, and all employees, whether they are posted or employed inside or outside the Republic; and
  - (b) any persons who, with the consent of the commanding officer concerned, are with or accompanying the Defence Force whilst outside the borders of the Republic. 15
- (2) In the event of any inconsistency between this Act and any other legislation in force at the commencement of this Act other than the Constitution, this Act prevails.

### **Secretary for Defence and Chief of Defence Force exercise powers under direction of Minister**

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- 4. Subject to sections 202(2) and 204 of the Constitution, the powers vested in the Secretary for Defence and the Chief of the Defence Force by or under this Act must be exercised subject to and in accordance with any directions of the Minister.

## **CHAPTER 2**

25

### **DEPARTMENT OF DEFENCE**

#### **Composition of Department of Defence**

- 5. The Department of Defence consists of—
  - (a) the Defence Secretariat;
  - (b) the South African National Defence Force; and
  - (c) any auxiliary service. 30

#### *Defence Secretariat*

#### **Establishment of Defence Secretariat**

- 6. (1) The civilian secretariat for defence contemplated in section 204 of the Constitution is hereby established as the Defence Secretariat. 35
- (2) The Minister must, subject to the laws governing the public service, appoint such number of persons to posts in the Defence Secretariat as may be necessary.
- (3) Despite subsection (2), members of the Defence Force may, with their consent, be placed at the disposal of the Secretary for Defence to serve in posts in the Defence Secretariat. 40
- (4) Any person serving in the Defence Secretariat established by section 7A(1) of the Defence Act, 1957 (Act No. 44 of 1957), immediately before the commencement of this Act must be regarded as having been appointed to a post in the Defence Secretariat in terms of subsection (2) or having been placed at the disposal of the Secretary for Defence as contemplated in subsection (3), as the case may be. 45



- (c) UMbutho wezokuVikela kufanele wenze uMsebenzi wawo ngokuhambisana noMthethosisekelo kanye neMithetho yamazwe ohlaba esingethe ukusebenziswa kodlame.
- (d) UMbutho wezokuVikela kufanele ukwazi ukuzivikela futhi ube sesimeni esifanele. 5
- (e) Akukho lungu loMbutho wezokuVikela okufanele lenze elikutshelwayo kepha okungekho eMthethweni.
- (f) UMbutho wezokuVikela namalungu awo awuvumelekile ukuthi uma wenza imisebenzi yawo uthikameze ilungelo leqembu lezopolitiki eliseMthethweni ngokoMthethosisekelo, noma ngandlela thize uthuthukise izinhloso zeqembu lombangazwe ngandlela thize. 10
- (g) UMbutho wezokuVikela kufuneka uwahloniphe amalungelo asemqoka nesithunzi samalungu awo nesabo bonke abantu.

### Ukusetshenziswa koMthetho

3. (1) Ngaphandle uma okuqukethwe kuchaza okwehlukile, loMthetho usebenza kwabalandelayo— 15

- (a) Kuwonke amalungu oMbutho wezokuVikela nemisebenzi eyimixhantela yawo, nakubo bonke abasebenzi noma ngabe basebenza ngaphakathi noma ngaphandle kweRiphabhlikhi; kanye
- (b) Nanoma yibaphi abantu okuthi ngemvume yeziphathi mandla eziphethe nezithintekayo kulolondaba kube baseMbuthweni wezokuVikela ngesikhathi bengaphandle kwemingcele yase Riphabhlikhi. 20

(2) Uma kwenzeka kuba khona ukungahambisani phakathi kwaloMthetho neminye imiThetho ngaphandle koMthethosisekelo ebisisebenza ngesikhathi kuqalwa loMthetho, loMthetho uyosebenza. 25

### UNobhala wezokuVikela noMkhuzi woMbutho wezokuVikela basebenzisa amandla abo njengoba betshelwa wuNgqongqoshe

4. Ngokwesigaba 202 (2) no 204 soMthethosisekelo, amandla anikwa uNobhala wezokuVikela noMkhuzi woMbutho wezokuVikela ngokwaloMthetho kufanele asetshenziswe ngokuhambisana nezinqumo zikaNgqongqoshe. 30

## ISAHLUKO 2

### UMNYANGO WEZOKUVIKELA

#### Indlela Owakhiwe Ngayo uMnyango wezokuVikela

5. UMnyango wezokuVikela wakhiwe ngokulandelayo—

- (a) uPhiko lwezokuVikela; 35
- (b) uMbutho kaZwelonke wezokuVikela waseNingizimu Afrika;
- (c) neminye imisebenzi eyimixhantela

#### *UPhiko lwezokuVikela*

#### Ukusungulwa koPhiko lwezokuVikela

6. (1) Abantu abasoPhiko lwezokuVikela oluchazwe kwisigaba 204 soMthetho-sisekelo seluyasungulwa njengoPhiko lwezokuVikela. 40

(2) UNgqongqoshe kungathi ngokwemithetho esingethe abasebenzi bakahulumeni, aqashe inani labantu abadingekayo elizogcwalisa izikhundla ezikhona oPhikweni lwezokuVikela njengoba kudingeka.

(3) Yize kunesigaba (2) uma amalungu oMbutho wezokuVikela efuna, angabekwa ezandleni zikaNobhala wezokuVikela ukuze angene ezikhundleni zoPhiko lwezokuVikela. 45

(4) Noma ubani osebenza oPhikweni lwezokuVikela olusungulwe ngokwesigaba 7A(1) soMthetho ka 1957 wezokuVikela (Act No. 44 of 1957), ngaphambi kokuba uqale ukusebenza loMthetho, kufuneka athathwe njengomuntu owaqashwa ukuba angene esikhundleni soPhiko lwezokuVikela ngokwesigaba (2) noma kubengobekwe ezandleni zikaNobhala wezokuVikela njengoba kubekwe kwisigaba (3). 50

(5) Members of the Defence Force serving in posts in the Defence Secretariat must obey the instructions and directions of civilian superiors in the Defence Secretariat as well as those of superior officers.

### Secretary for Defence

7. (1) The President must, subject to the laws governing the public service, appoint a person to the post of Secretary for Defence as head of the Defence Secretariat. 5

(2) The Secretary for Defence serves in that post for the period and subject to the terms and conditions of service otherwise applicable to heads of department under the laws governing the public service and must receive the salary, benefits and privileges to which such heads of department are entitled. 10

(3) The Secretary for Defence must be a citizen and may not be a member of the Defence Force.

(4) The Secretary for Defence who immediately before the commencement of this Act served as the Secretary for Defence—

(a) must be regarded as having been appointed in terms of subsection (1); and 15

(b) continues to serve in that capacity under the terms and conditions of service of his or her existing appointment for the remainder of the period of service in terms of such appointment.

### Functions of Secretary for Defence

8. The Secretary for Defence— 20

(a) is the Head of the Department as contemplated in the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the accounting officer for the Department as contemplated in section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(b) is the principal departmental adviser to the Minister on defence policy matters; 25

(c) must advise the Minister on any matter referred to him or her by the Minister;

(d) must perform such functions as may be entrusted to the Secretary for Defence by the Minister, in particular those necessary or expedient to enhance civil control by— 30

(i) Parliament over the Department;

(ii) parliamentary committees having oversight over the Department; and

(iii) the Minister over the Department;

(e) must provide the Chief of the Defence Force with comprehensive instructions requiring the Chief of the Defence Force to issue orders and directives and to give commands to any specified member regarding the exercise of any power delegated or the performance of any duty assigned to that member by the Secretary for Defence as head and accounting officer of the Department of Defence; 35

(f) must monitor compliance with policies and directions issued by the Minister to the Chief of the Defence Force and report thereon to the Minister; and 40

(g) is responsible for the discipline of, administrative control over and management of employees, including their effective utilisation and training.

### Delegation of powers and assignment of duties by Secretary for Defence

9. (1) The Secretary for Defence may, subject to such conditions as he or she may impose, in writing delegate any power and assign any duty conferred upon him or her in terms of this Act to— 45

(a) any employee or member contemplated in section 6(3);

(b) the Chief of the Defence Force; and

(c) with the consent of the Chief of the Defence Force, any member of the Defence Force. 50

(2) A delegation or assignment under subsection (1) does not prevent the Secretary for Defence from exercising the power in question himself or herself.

(5) Amalungu oMbutho wezokuVikela asezikhundleni zoPhiko lwezokuVikela kufuneka ayilalele yonke imiThetho yabawaphethe oPhikweni lwezokuVikela kanye neziphathimandla eziphakeme.

### UNobhala wezokuVikela

7. (1) UMongameli kufanele kuthi ngokulandela imiThetho esingethe imisebenzi 5  
kaHulumeni aqoke umuntu othatha isikhundla sokuba uNobhala.
- (2) UNobhala wezokuVikela uhlala kuleso sikhundla isikhathi esilingana nesazo zonke izinhloko zeminyango kanti nemiThetho asebenza ngaphansi kwayo, iholo namalungelo anawo afana nawezinhloko zeminyango.
- (3) UNobhala wezokuVikela kufuneka abe isakhumuzi kanti akavumelekile ukuba 10  
ilungu loMbutho wezokuVikela.
- (4) UNobhala wezokuVikela okwathi ngaphambi kokuba kuqale ukusebenza kwaloMthetho wabe esesebenza njengoNobhala wezokuVikela—
- (a) Kufanele athathwe njengowaqashwa ngokwesigaba (1); futhi
- (b) Aqhubeke nokusebenza kuleso sikhundla ngaphansi kwayo yonke imiThetho 15  
ehambisana naso, kuze kuphele isikhathi okumele asisebenze ekuleso sikhundla.

### Imisebenzi kaNobhala wezokuVikela

#### 8. UNobhala wezokuVikela—

- (a) UyiNhlolo yoMnyango njengoba kubekwe kuMthetho wemiSebenzi 20  
kaHulumeni ka 1994 (Proclamation No. 103 of 1994) futhi uyena obheke ezezimali zomNyango njengoba kubekwe kwisigaba 36 soMthetho ka 1999 wokuPhathwa kweziMali zikaHulumeni (Act No. 1 of 1999);
- (b) Ungumeluleki omkhulu kaNgqongqoshe eMnyangweni maqondana nemigomo yezokuVikela; 25
- (c) Kufuneka eluleke uNgqongqoshe ngako konke uNgqongqoshe akwedlulisela kuye;
- (d) Kufuneka enze yonke imisebenzi uNgqongqoshe amnika yona njengo- 30  
Nobhala wezokuVikela ikakhulukazi leyo ephathelene nokusiza ukuba—
- (i) Iphalamende libe nezwi ukwedlula uMnyango; futhi
- (ii) UNgqongqoshe abe namandla phezu koMnyango;
- (iii) Amakomidi asePhalamende abheke uminyango iyakulandela yini okubekiwe.
- (e) Kufanele anike uMkhuzi woMbutho wezokuVikela imiyalelo enemini- 35  
ningwane edingekayo ukuze akwazi ukunika amalungu imisebenzi namagunya afanele okwenza imisebenzi ethize ayinikwa nguNobhala wezokuVikela njengenhloko nomphathi wezemali zoMnyango wezokuVikela.
- (f) Kufuneka aqaphele ukulandelwa kwemithetho ekhishwe nguNgqongqoshe eyedlulisela kuMkhuzi woMbutho wezokuVikela ethule nombiko ngaloko 40  
kuNgqongqoshe; futhi
- (g) Ubhekene nokuqondiswa kwezigwegwe nokuphathwa kwabasebenzi, kuhlangele nokusetshenziswa kwabo ngendlela efanele nokuqeqeshwa kwabo. 45

### Ukunikezwa kwamagunya amandla nokwabiwa kwemisebenzi nguNobhala wezokuVikela

9. (1) UNobhala wezokuVikela unelungelo lokuthi kuthi uma ebona kunesidingo abhale incwadi edlulisela amandla awanikiwe abe nemisebenzi ayinikiwe 50  
ngokoMthetho kwabalandelayo—
- (a) Kunoma yimuphi umsebenzi noma ilungu njengoba kubekwe kwisigaba 6 (3);
- (b) UMkhuzi woMbutho wezokuVikela; futhi
- (c) ngemvume yoMkhuzi woMbutho wezokuVikela kungaba yinoma yiliphi 55  
ilungu loMbutho wezokuVikela
- (2) Lelilungelo lokwaba amandla noma ukuwedlulisela kwabanye elikusigaba (1) alimvimbi uNobhala wezokuVikela ukuba aziphathele qobo lomsebenzi.

**Departmental investigations by Secretary for Defence**

10. The Secretary for Defence may in respect of any matter concerning his or her capacity as head or accounting officer of the Department—

- (a) instruct any employee or member contemplated in section 6(3) to carry out an inspection or investigation within the Defence Secretariat; 5
- (b) if such matter affects or concerns the Defence Force, instruct the Chief of the Defence Force to convene a board of inquiry or to have such matter investigated by the Military Police;
- (c) otherwise deal with it or have it dealt with in accordance with the law; or
- (d) institute such investigation as may be provided for in law. 10

***South African National Defence Force*****Composition of South African National Defence Force**

11. The South African National Defence Force established by section 224(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), continues to exist and consists of the— 15

- (a) Regular Force, the members of which serve full-time until—
  - (i) reaching their age of retirement;
  - (ii) expiry of their contracted term of service; or
  - (iii) otherwise discharged from the Defence Force in accordance with the law; and 20
- (b) Reserve Force, the members of which serve on a part-time basis for such periods as they have been contracted for, unless their service is terminated in accordance with the law.

**Services of Defence Force, and structural components**

12. (1) The Defence Force consists of the following Services: 25
- (a) The South African Army;
  - (b) the South African Air Force;
  - (c) the South African Navy; and
  - (d) the South African Military Health Service.
- (2) Despite subsection (1), the— 30
- (a) Minister may establish a structural component consisting of members of—
    - (i) any of the Services; and
    - (ii) either the Regular Force or the Reserve Force or both; and
  - (b) Chief of the Defence Force may establish such temporary task force, group, element or unit as may be required for military exercises or operations, and may for that purpose establish such number of temporary headquarters as may be required. 35

**Chief of Defence Force**

13. (1) The President appoints the Chief of the South African National Defence Force. 40

(2) The Chief of the Defence Force serves in that capacity for the period and subject to the terms and conditions of service otherwise applicable to heads of department under the laws governing the public service and must receive the salary, benefits and privileges to which such heads of department are entitled.

(3) The Chief of the Defence Force must be a citizen and must be a member of the Regular Force. 45

(4) The Chief of the Defence Force who immediately before the commencement of this Act served as the Chief of the Defence Force—

- (a) must be regarded as having been appointed in terms of subsection (1); and

**Uphenyo loMnyango olwenziwa nguNobhala wezokuVikela**

**10.** UNobhala wezokuVikela kungathi maqondana nanoma yiluphi udaba oluphathelele nesikhundla sakhe njengenhloko noma umphathi wamabhuku ezimali zoMnyango atshele —

- (a) noma yimuphi umsebenzi noma ilungu elichazwe kwisigaba 6 (3) ukuba 5  
lihlole noma lenze uphenyo oPhikweni lwezokuVikela;
- (b) Uma lolodaba luthinta uMbutho wezokuVikela, atshele uMkhuzi 5  
wezoMbutho wezokuVikela angahlanganise ibhodi yokuphenya noma enze  
ukuba lolodaba luphenywe ngamasotsha;
- (c) Noma abhekane nalo noma enze ukuba kubhekwane nalo ngokoMthetho; 10  
noma
- (d) Enze uphenyo olwamukelekile nokunemithetho olungenziwa ngokulandela 10  
yona.

***Umbutho kaZwelonke wezokuVikela eNingizimu Afrika*****Ukwakhiwa koMbutho kaZwelonke wezokuVikela eNingizimu Afrika**

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**11.** Umbutho wezokuVikela njengoba uchazwe kwisigaba 224 (1) soMthethosisekelo weRiphabhliki yaseNingizimu Afrika ngo1993 (Act No. 200 of 1993) usasebenza futhi unokulandelayo—

- (a) Umbutho Osebenza Ngokuphelele, amalungu awo asebenza ngokugcwele 20  
aze—
  - (i) afike eminyakeni yokuthatha umhlalaphansi;
  - (ii) ekupheleni kwezivumelwano zawo zomsebenzi; noma
  - (iii) akhishwe ngezinye izindlela eMbuthweni wezokuVikela ezihambisana 20  
noMthetho; kanye
- (b) NoMbutho wamaRizevu amalungu awo asebenza okwesikhashana 25  
ngezikhathi anezivumelwano ngazo ngaphandle-ke uma umsebenzi wawo  
umiswa ngokoMthetho.

**Imisebenzi yoMbutho wezokuVikela nendlela owakhiwe ngayo**

- 12.** (1) Umbutho wezokuVikela wakhiwe ngokulandelayo 30
  - (a) Amasotsha aseNingizimu Afrika;
  - (b) Umbutho wamasotsha aseMoyeni aseNingizimu Afrika;
  - (c) Amasotsha asolwandle aseNingizimu Afrika;
  - (d) AbezeMpilo emasotsheni aseNingizimu Afrika.
- (2) Nanxa kunesigaba (1)—
  - (a) UNGqongqoshe angawusungula umkhakha onomalungu alandelayo— 35
    - (i) akunoma yimuphi umsebenzi; kanye
    - (ii) noMbutho Osebenza Ngokuphelele noma uMbutho wamaRizevu noma 35  
yomibili; kanti
  - (b) UMkhuzi woMbutho wezokuVikela angawusungula umkhakha wokwesi- 40  
khashana, iqembu, ingxenye noma iyunithi kuye ngokuthi yini edingwa  
ngaboMbutho wezamasotsha, kanti kungasungulwa nezizinda zokwesi-  
khashana ezidingekayo ukuze kuhlangelelwe nezidingo ezikhona.

**UMkhuzi woMbutho wezokuVikela**

**13.** (1) UMongameli uqoka uMkhuzi woMbutho kaZwelonke wezokuVikela eNingizimu Afrika. 45

(2) UMkhuzi woMbutho wezokuVikela uhlala kuleso sikhundla isikhathi esifanele nangokulandela imigomo okusetshenzwa ngayo ngokweMithetho yaBasebenzi bakaHulumeni efana neyenzihloko zemiNyango eholo, ethola namalungelo afana nawazo.

(3) UMkhuzi woMbutho wezokuVikela kufanele abe yisakhamuzi futhi abe yilungu 50 loMbutho Osebenza Ngokujwayelekile.

(4) UMkhuzi woMbutho wezokuVikela okwathi ngaphambi kokuqala ukusebenza kwalemiThetho, wasebenza njengoMphathi wezoMbutho wezokuVikela—

- (a) kufuneka athathwe njengowayeseqashiwe ngokwesigaba (1); futhi



- (b) continues to serve in that capacity under the terms and conditions of service of his or her existing appointment for the remainder of the period of service in terms of such appointment.

### Functions of Chief of Defence Force

14. Without derogating from any function of the Secretary for Defence contemplated in section 8, the Chief of the Defence Force— 5
- (a) is the principal adviser to the Minister on any military, operational and administrative matter within the competence of the Chief of the Defence Force;
  - (b) must comply with any direction issued by the Minister under the authority of the President as contemplated in section 202(2) of the Constitution; 10
  - (c) is responsible for formulating and issuing military policy and doctrines;
  - (d) must execute his or her command by issuing orders, directives and instructions, and by giving commands;
  - (e) is responsible for the direct management and administration of the Defence Force in an efficient way, including the effective utilisation and the education, training and development of all members of the Defence Force, and employees of the Department where so required by the Secretary for Defence; 15
  - (f) is responsible for the execution of approved programmes of the budget for the Defence Force; 20
  - (g) must supply the Secretary for Defence with such information with regard to the Defence Force as may be requested by the Secretary for Defence;
  - (h) is responsible for the employment of the Defence Force in accordance with an authorisation in terms of section 201(2) of the Constitution and section 18(1) of this Act; 25
  - (i) is responsible for the training of members of the Defence Force to act in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic;
  - (j) is responsible for the maintenance of such military response capability as may be authorised by the Minister; 30
  - (k) is responsible for planning for contingencies which may require the use of the Defence Force;
  - (l) must manage the Defence Force as a disciplined military force; and
  - (m) is responsible for the development of a non-racial, non-sexist and non-discriminatory institutional culture within the Defence Force in accordance with the Constitution and departmental policy on equal opportunity and affirmative action. 35

### Delegation of powers by Chief of Defence Force

15. (1) The Chief of the Defence Force may, subject to such conditions as he or she may impose, in writing delegate any power conferred upon him or her in terms of this Act— 40
- (a) to any member of the Defence Force;
  - (b) to any person employed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and serving in a post within the Defence Force; and 45
  - (c) with the approval of the Secretary for Defence, to any employee.
- (2) A delegation under subsection (1) does not prevent the Chief of the Defence Force himself or herself from exercising the power in question.

### *Auxiliary services*

### Establishment of auxiliary service, and terms and conditions of service 50

16. (1) The Minister may establish, and designate for the purpose of support to the Defence Force, such auxiliary service as may be necessary.
- (2) The members of an auxiliary service serve for such period as the Minister may determine.

- (b) aqhubeke nokusebenza kuleso sikhundla ngaphansi kwemiThetho yomsebenzi asevele ewenza kuze kuphele isikhathi sesivumelwano sokuqashwa kwakhe.

### Imisebenzi yoMkhuzi woMbutho wezokuVikela

14. Ngaphandle kokuthatha imisebenzi kaNobhala wezokuVikela echazwe kwisigaba 5  
8, uMkhuzi woMbutho wezokuVikela—

- (a) Ungumeluleki ophambili kaNgqongqoshe kunoma yiluphi udaba oluphathele nezeMpi kanye nezokuphatha uma uMkhuzi woMbutho wezokuVikela egculiseka;
- (b) Kufuneka ahambisane nako konke akutshelwa uNgqongqoshe egunyazwe 10 uMongameli njengoba kubekwe kwisigaba 202(2) soMthethosisekelo;
- (c) Ubhekene nokwakha nokukhipha imigomo nenqubo kwezeMpi;
- (d) Kufuneka asebenzise namandla akhe ngokushaya imiThetho akhiphe imiyalelo asho nokufuneka kwenziwe;
- (e) Ubhekene nokuphatha uMbutho wezokuVikela kanye nokufundisa ukuqeqesha nokuthuthukisa onke amalungu oMbutho wezokuVikela nabasebenzi boMnyango lapho kudingeka khona ngokukaNobhala wezokuVikela;
- (f) Ubhekene nokwenziwa kwezinhlelo zoMbutho wezokuVikela esezamukeliwe nemali yazo eseyabiwe;
- (g) Kufuneka anike uNobhala wezokuVikela ulwazi oluphathele noMbutho 20 wezokuVikela njengoba lidingwa nguNobhala wezokuVikela;
- (h) Ubhekene nokuqashwa koMbutho wezokuVikela njengoba kubekwe kusigaba 201(2) soMthethosisekelo nesigaba 17(1) saloMthetho;
- (i) Ubhekene nokuqeqeshwa kwamalungu oMbutho wezokuVikela ukuze aziphathe ngendlela ebekwe kuMthethosisekelo naseMthethweni 25 sekuhlangene noMthetho wamaZwe omhlaba nesivumelwano samaZwe omhlaba esibopha neRiphabhlikhi ngabhande linye
- (j) Ubhekene nokugcinwa kwezeMpi zisesimeni esifanele sokuba zisukume zenze umsebenzi wazo uma uNgqongqoshe ekhipha leso sinqumo;
- (k) Ubhekene nokuhlelela izimo ezingase zidinge ukusetshenziswa koMbutho 30 wezokuVikela;
- (l) Kufuneka aphaathe uMbutho wezokuVikela njengoMbutho wezeMpi oqondile nosendleleni; futhi
- (m) Ubhekene nokuthuthukiswa kwendlela yokuziphatha eMbuthweni wezokuVikela engabandlululi ngokwebala, ngokobulili nanganoma iyiphi 35 enye indlela njengoba kubekwe kuMthethosisekelo nakwimigomo yoMnyango ephathelene nokulingana kwamathuba nokuvezwa kwamathuba nakulabo ababebandlululwa.

### Ukwabiwa kwamandla nguMkhuzi woMbutho wezokuVikela

15. (1) UMkhuzi woMbutho wezokuVikela kungathi uma ebona kunesidingi abhale 40 incwadi edlulisela amandla awanikwe ngokwaloMthetho kwabalandelayo—

- (a) Kunoma yiluphi ilungu loMbutho wezokuVikela;
- (b) Kunoma ubani oqashwe ngokoMthetho ka1994 wemisebenzi kaHulumeni (Proclamation No 103 of 1994), osebenza ngaphansi koMbutho wezokuVikela; futhi 45
- (c) Nakunoma yimuphi umsebenzi uma kutholakele imvume kaNobhala wezokuVikela.

(2) Ukwabiwa kwamandla okuchazwe kusigaba (1) akumvimbi uMkhuzi wezokuVikela ukuba aziphathele yena uqobo.

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### Imisebenzi eyimixhantela

#### Ukusungulwa kwemisebenzi eyimixhantela nendlela nezimiso zemisebenzi

16. (1) UNgqongqoshe angawusungula umsebenzi owumxhantela ewusungulela ukweseka uMbutho wezokuVikela uma kunesidingo.

(2) Amalungu omsebenzi owumxhantela asiza ngaleso sikhathi esinqunywe 55 uNgqongqoshe kuphela.

(3) The organisation of and conditions of service in any auxiliary service, including enrolment prerequisites, enrolment, engagement, attestation, discharge, ranks, mustering, leave, duties, discipline, attire and any other matters convenient or necessary for the establishment, control and proper functioning of such auxiliary service are as prescribed.

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### Existing auxiliary services

17. Any auxiliary service in existence immediately before the commencement of this Act continues as an auxiliary service contemplated in section 16 under its existing name and in the way in which it was organised.

## CHAPTER 3

10

### EMPLOYMENT AND USE OF DEFENCE FORCE

#### Employment of Defence Force

18. (1) In addition to the employment of the Defence Force by the President as contemplated in section 201(2) of the Constitution, the President or the Minister may authorise the employment of the Defence Force for service inside the Republic or in international waters, in order to—

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- (a) preserve life, health or property in emergency or humanitarian relief operations;
- (b) ensure the provision of essential services;
- (c) support any department of state, including support for purposes of socio-economic upliftment; and
- (d) effect national border control.

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(2) When the Defence Force is employed for any purpose contemplated in paragraph (a), (b), (c) or (d) of subsection (1), the President or Minister, as the case may be, must inform Parliament promptly and in appropriate detail of the—

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- (a) reasons for such employment;
- (b) place where the Defence Force is being employed;
- (c) number of people involved;
- (d) period for which the Defence Force is expected to be employed; and
- (e) expenditure incurred or expected to be incurred.

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(3) If Parliament does not sit during the first seven days after the employment of the Defence Force as contemplated in subsection (2), the President or Minister, as the case may be, must provide the information required in that subsection to the appropriate oversight committee of Parliament on Defence.

(4) If the Defence Force is employed by the President for any purpose contemplated in section 201(2) of the Constitution, the President must also comply with subsection (2)(e).

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(5) Parliament may by resolution within seven days after receiving information contemplated in subsection (2) from the President or the Minister—

- (a) confirm any such authorisation of employment;
- (b) order the amendment of such authorisation;
- (c) order the substitution for such authorisation of any other appropriate authorisation; or
- (d) order the termination of the employment of the Defence Force.

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(6) An order contemplated in subsection (5)(b), (c) or (d) does not affect—

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- (a) the validity of the authorisation up to the moment of the passing of the resolution by Parliament;
- (b) the validity of anything done by virtue of the authorisation up to the moment that the amendment, substitution or termination of the authorisation takes effect; or
- (c) any right, privilege, obligation or liability acquired, accrued or incurred as a result of the authorisation for the employment of the Defence Force, up to the applicable moment contemplated in paragraph (b).

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(3) Inkambiso nezimo zokusebenza kunoma yimuphi umsebenzi owumxhantela izinto ezifana nezidingo zokubhalisa, ukuqasha, ubufakazi, ukuyekiswa emsebenzini, izikhundla, ilivu, imisebenzi, ukuqondiswa kwezigwegwe, inyufomu nokunye okudingekayo nokuwusizo ukuze kube nendlela efanele yokuphathwa nokuqikelela ukusebenza ngendlela efanelekile kunjengoba kubekwe eMthethweni. 5

#### Imisebenzi eyimixhantela ebisivele ikhona

17. Noma yimuphi umsebenzi owumxhantela obusuvele ukhona ngaphambi kokuqala ukusebenza kwaloMthetho, uyoqhubeka uloku uwumsebenzi owumxhantela njengoba kubekwe kwisigaba 16, futhi uyoloku usebenza ngegama obuvela ulisebenzisa futhi uqhuba ngendlela owawakhiwe ngayo. 10

### ISAHLUKO 3

#### UKUQASHWA NOKUSETSHENZISWA KOMBUTHO WEZOKUVIKELA

##### Ukuqashwa koMbuthe wezokuVikela

18. (1) Ngaphezu kokuqashwa koMbuthe wezokuVikela nguMongameli njengoba kubekwe kwisigaba 201(2) soMthethosisekelo, uMongameli noma uNgqongqoshe angakugunyaza ukuqashwa koMbuthe wezokuVikela ukuba usebenze ngaphakathi e Riphabhlikhi noma emanzini amaZwe oMhlaba ukuze— 15

- (a) Kugcinwe iMpilo noma impahla esengozini noma kwenziwe umsebenzi wokutakula uluntu;
- (b) Ukuqikelela ukuthokala kosizo okusemqoka; 20
- (c) Ukweseka noma yimuphi uMnyango kaHulumeni ngisho nokweseka okwenzelwa ukuthuthukisa ezenhlalakahle nezoMnotho; kanye
- (d) NokuVikela yonke imingcele ekhona kuleliZwe.

(2) Uma uMbuthe wezokuVikela uqashelwe noma iziphi izizathu ezibekwe kwisigaba (a), (b), (c) noma (d) besigaba (1), uMongameli noma uNgqongqoshe kufanele azise iPhalamende ngokushesha akhiphe neminingwane efanele yokulandelayo— 25

- (a) Izizathu zalokuqashwa;
- (b) Izindawo oqashwe kuzo uMbuthe wezokuVikela;
- (c) Inani labantu abaqashiwe; 30
- (d) Isikhathi okulindeleke ukuba uMbuthe wezokuVikela usisebenze; kanye
- (e) Nezindleko okuzongenwa kuzo noma osekungenwe kuzo.

(3) Uma iPhalamende lingahlangani ezinsukwini zokuqala ezingu 7 emva kokuqashwa koMbuthe wezokuVikela njengoba kuchazwe kwisigaba (2), uMongameli noma uNgqongqoshe uyokhipha lonke ulwazi oludingekayo kuleso sigaba alunike ikomidi eliphathelene nezokuVikela ePhalamende. 35

(4) Uma uMbuthe wezokuVikela uqashwe uMongameli nganoma isiphi izizathu esibhalwe kwisigaba 201(2) soMthethosisekelo, uNgqongqoshe kuyofuneka ahlangebezane nanezidingo zesigaba (2)(e).

(5) Kungathi uma iPhalamende lithathe isinqumo ezinsukwini ezingu 7 emva kokuthola ulwazi oluphuma kuMongameli noma kuNgqongqoshe ngokwesigaba (2)— 40

- (a) Likwamukele ukugunyazwa kwaloko kuqasha;
- (b) Lifune kuchibiyelwe loko kugunyaza;
- (c) Liqhamuke nokusha esikhundleni saloko kugunyaza; noma
- (d) Lifune kuchithwe ukuqashwa koMbuthe wezokuVikela. 45

(6) Isinqumo okukhulunywa ngaso kwisigaba (5)(b), (c) noma (d) asikuthinti okulandelayo—

- (a) Ubuqiniso bokugunyaza kuze kube isikhathi iPhalamende elathatha ngaso isinqumo;
- (b) ubuqiniso banoma yini eyenziwa ngenxa yokugunyaza kuze kube isikhathi laphe kwenziwa khona ukuchibiyela, ukuqhamuka nokusha esikhundleni sokudala noma ukunqanyulwa kokugunyazwa; noma
- (c) yiliphi ilungelo, ithuba, umsebenzi noma okufanele kwenziwe okutholakele, okwandile noma okube yizindleko ngenxa yokugunyazwa noma ukuqashwa koMbuthe wezokuVikela kuze kube yisikhathi okukhulunywa ngaso kwisigaba (b). 55

(7) (a) If authorisation by the Minister in terms of subsection (1)(a) cannot be obtained in time to avert imminent danger to life, health or property, the Secretary for Defence, with the concurrence of the Chief of the Defence Force, may, in accordance with a standing arrangement delegated by the Minister in this regard, authorise the employment of the National Defence Force for purposes of that subsection. 5

(b) The Secretary for Defence must inform the Minister as soon as possible of such authorisation and provide the Minister with the information referred to in subsection (2).

(c) The Minister may cancel the authorisation if he or she disagrees, in which case subsection (6) applies with the necessary changes.

(d) If the Minister agrees with the authorisation, subsections (2), (3), (5) and (6) apply with the necessary changes. 10

### Employment in co-operation with South African Police Service

19. (1) The Defence Force may be employed in co-operation with the South African Police Service in terms of section 201(2)(a) of the Constitution in the prevention and combating of crime and maintenance and preservation of law and order within the Republic. 15

(2) If the employment of the Defence Force in co-operation with the South African Police Service is authorised as contemplated in subsection (1), the Minister must give notice of such employment by notice in the *Gazette* within 24 hours of the commencement of such employment and, upon such employment being discontinued, within 24 hours of such discontinuation give notice of the discontinuation by notice in the *Gazette*. 20

(3) Service in co-operation with the South African Police Service—

(a) may only be performed in such area or at such place as the President may order at the request of the Minister and the Minister of Safety and Security; 25

(b) must be discontinued in such area or at such place as the President may order at the request of the Minister and the Minister of Safety and Security or when the President deems it expedient for any other reason; and

(c) must be performed in accordance with—

(i) a code of conduct and operational procedures approved by the Minister; 30

(ii) such guidelines regarding—

(aa) co-operation between the Defence Force and the South African Police Service; and

(bb) co-ordination of command over and control of members of the Defence Force and the South African Police Service, as the Chief of the Defence Force and the National Commissioner of the South African Police Service may determine. 35

### Powers and duties of members while being employed

20. (1) Whenever the Defence Force or any portion or member thereof has been employed for a service contemplated in section 201(2) of the Constitution or section 18(1)(a), (b), (c) or (d), a member of the Defence Force who is utilised for the execution of services under such employment has the same powers and duties as those conferred or imposed upon a member of the South African Police Service by virtue of— 40

(a) section 13(3), (6), (7), (8) and (9) of the South African Police Act, 1995 (Act No. 68 of 1995); 45

(b) section 9 of the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993);

(c) sections 21, 22, 23, 24, 25, 27, 29, 30, 32, 33, 34, 35, 36, 39, 40, 41, 44, 47, 48, 49 and 52 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(d) sections 9 and 41 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969); 50

(e) section 11(b), (g) and (i) of the Road Traffic Act, 1989 (Act No. 29 of 1989); and

(f) section 31(b), (g), (h), (i) and (l) of the National Road Traffic Act, 1996 (Act No. 93 of 1996).



(7) (a) Uma ukugunyaza kukaNgqongqoshe ngokwesigaba (1)(a) kungeke kwatholaka kusenekhathi sokuvimba ingozi engase idaleke empilweni, noma empahleni, uNobhala wezokuVikela esekwa nguMkhuzi woMbutho wezokuVikela angakwazi ukuba kuthi ngesi vumelwano esikhishwe uNgqongqoshe maqondana naloku, agunyaze ukuqashwa koMbutho kaZwelonke wezokuVikela maqondana naleso sigaba. 5

(b) UNobhala wezokuVikela kufanele azise uNgqongqoshe ngokushesha ngaloko kugunyaza bese enika yena uNgqongqoshe futhi ulwazi okukhulunywa ngalo kwisigaba (2).

(c) UNgqongqoshe angakucima loko kugunyaza uma engavumelani nako, okungathi uma kwenzeka bese kusebenza isigaba (6) nalo lonke uguquko oludingekayo. 10

(d) Uma uNgqongqoshe evumelana nokugunyaza, (2), (3), (5) no (6) kuyosebenza noguquko oludingekayo.

### Ukuqashwa ngokubambisana noMbutho wamaPhoyisa aseNingizimu Afrika

19. (1) UMbutho wezokuVikela ungaqashwa ngokubambisana noMbutho wezamaPhoyisa eNingizimu Afrika ngokwesigaba 201(2)(a) soMthethosisekelo ekujinweni kobugebengu nokugcinwa komthetho nokuthula. 15

(2) Uma ukuqashwa koMbutho wezokuVikela ngokubambisana noMbutho wezamaPhoyisa aseNingizimu Afrika kugunyazwa njengoba kuchazwe kwisigaba (1), kufanele uNgqongqoshe akhiphe isaziso salokho kuqashwa ngokukushicilela kwiGazethi, engakapheli amahora awu 24 kwenzekile loko kuqashwa, ngokunjalo uma loko kuqashwa kuqedwa, kufuneka kukhishwe isaziso sishicilelwe kwiGazethi engakapheli amahora angu 24 emva kokunqanyulwa kwako. 20

(3) Ukusebenza ngokubambisana noMbutho wamaPhoyisa aseNingizimu Afrika—

(a) Kungenzeka kuphela kuleyondawo uMongameli ayikhombile ngokwesicelo sikaNgqongqoshe nesika Ngqongqoshe wezokuPhepha; 25

(b) Kufanele kunqanyulwe kungabe kusaqhubeka endaweni ekhonjwe nguMongameli ecelwa nguNgqongqoshe kanye noNgqongqoshe wezokuPhepha, noma uma uMongameli ekubona kubalulekile ngesizathu esithize; futhi 30

(c) Kufanele kwenziwe ngokubambisana—

(i) Nendlela yokuziphatha nenqubo yokusebenza evunyelwe uNgqongqoshe;

(ii) Nomhlahlandlela ophathelene—

(aa) Nokubambisana phakathi koMbutho wezokuVikela noMbutho wezamaPhoyisa aseNingizimu Afrika; kanye 35

(bb) Nokuxhumana kwendlela yokuphatha amalungu oMbutho wezokuVikela nawoMbutho wezamaPhoyisa aseNingizimu Afrika, ngendlela uMkhuzi wezoMbutho wezokuVikela noKhomishina kaZwelonke woMbutho wezamaPhoyisa aseNingizimu Afrika abayobona ngayo. 40

### Amandla nemisebenzi yamalungu ngesikhathi esaqashiwe

20. (1) Uma uMbutho wezokuVikela noma iyiphi ingxenye yawo iqashelwe ukwenza umsebenzi ochazwe kwisigaba 201 (2) soMthethosisekelo noma isigaba 18 (1) (a), (b), (c) noma (d) ilungu loMbutho wezokuVikela elisetshenziswayo ekwenzeni lowomsebenzi linamandla nemisebenzi efana nenelungu loMbutho wamaPhoyisa aseNingizimu Afrika ngokwezigaba ezilandelayo— 45

(a) isigaba 13 (3), (6), (7), (8) no (9) soMbutho wezamaPhoyisa aseNingizimu Afrika, 1995 (Act No. 68 ka 1995);

(b) Isigaba 9 soMthetho wemiHlangano, 1993 (Act No. 205 of 1993); 50

(c) Izigaba 21, 22, 23, 24, 25, 27, 29, 30, 32, 33, 34, 35, 36, 39, 40, 41, 44, 47, 48, 49 no 52 boMthetho weNqubo yokuBhekana noBugebengu, 1977 (Act No. 51 of 1977);

(d) Izigaba 9 no 41 zoMthetho weziKhali nokuHloma, 1975 (Act No. 75 of 1969); 55

(e) Izigaba 11 (b), (g) no (i) zoMthetho wezokuThutha emiGaqweni, 1989 (Act No. 29 of 1989; kanye

(f) Nezigaba 31 (b), (g), (h), (i), (l) — zoMthetho kaZwelonke wezeMigwaqo nezokuThutha, 1996 (Act No. 2093 of 1996).

(2) The powers and duties referred to in subsection (1) may only be exercised or performed for the purposes of the—

- (a) successful execution of that employment;
- (b) prevention of crime;
- (c) maintenance of law and order; or
- (d) preservation of the internal security of the Republic.

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(3) The powers and duties referred to in subsection (1) does not include investigation of crime.

(4) A member of the Defence Force who arrests or detains any person or seizes any article or object must as soon as possible hand that person, article or object over to a police official or any other appropriate functionary designated by a relevant law.

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(5) A member of the Defence Force shall in respect of acts done or omitted to be done by him or her by virtue of this section be liable to the same extent as he or she would have been liable in like circumstances if he or she were a member of the South African Police Service, and shall have the benefit of all the indemnities to which a member of that Service would in like circumstances be entitled.

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(6) A member of the Defence Force who exercises any power by virtue of this section must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(7) For the purposes of this section, every statutory provision which confers any power or imposes any duty upon a member of the South African Police Service—

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- (a) holding a specific rank or office, must be construed as a reference to the military rank or office equivalent to such rank; and
- (b) who is the National Commissioner of the South African Police Service, must be construed as a reference to the Chief of the Defence Force and, in the case of a provincial commissioner, to an officer designated by the Chief of the Defence Force for such purposes.

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(8) Nothing in this section may be construed as giving a member of the South African Police Service any power to exercise command or control over any member of the Defence Force and, conversely, as giving a member of the Defence Force any power to exercise command or control over any member of the South African Police Service.

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(9) A member of the Defence Force who is utilised for the execution of an employment envisaged in section 18(1)(d) also has the power to—

- (a) request anyone in the Republic who is reasonably suspected of being an illegal foreigner contemplated in the Immigration Act, 2002 [Act No. 13 of 2002], to identify himself or herself as a citizen or resident, or to produce a permit to be in the Republic;
- (b) apprehend, question or, subject to subsection (4), arrest or detain without a need for a warrant an illegal foreigner in order to be dealt with in terms of that Act; and
- (c) subject to subsection (4), seize or retain, without a need for a warrant, any firearm or other dangerous weapon in possession or under the control of an illegal foreigner.

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(10) No provision of this Act relating to the powers and duties of a member of the Defence Force may be construed as removing, detracting from or diminishing any power or duty expressly conferred, enforced or imposed by any other law or the common law upon such a member of the Defence Force.

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(11) Members of the Defence Force employed in terms of subsection (1) must receive appropriate training prior to such employment and must be equipped accordingly.

(2) Imisebenzi namandla okukhulunywe ngawo kwisigaba(1) ingenziwa kuphela maqondana nokulandelayo—

- (a) ukwenziwa kwalowomsebenzi ngempumelelo;
- (b) ukuvinjwa kobugebengu;
- (c) ukugcinwa komthetho nokuthula; noma
- (d) ukugcinwa kwezokuphepha ngaphakathi eRiphabhlikhi.

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(3) Imisebenzi namandla okukhulunywa ngayo kwisigaba (1) ayikufaki ukuphenywa kobugebengu.

(4) Ilungu loMbutho wezokuVikela elibopha noma eligquma esitokisini noma ubani noma elithatha noma yini ekulowomuntu kufanele liyedlulisele kwiziphathimandla zamaphoyisa noma yisiphi esinye isiphathimandla esibekwe kulesosikhundla ngokomthetho.

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(5) Ilungu loMbutho wezokuVikela kuyothi maqondana nemisebenzi eyenziwe noma engenziwanga yilo ngokwalesigaba litholakele linecala njengoba belingatholakala linecala ezimweni ezifanayo uma liyilungu lombutho wamaPhoyisa aseNingizimu Afrika, kanti liyoba nawo wonke amalungelo okukhululwa ezimweni ezithize amalungu alowombutho akhululwa kuzo.

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(6) Ilungu loMbutho wezokuVikela elisebenzisa amandla eligunyazwe wona ngokwalesigaba kufanele lithathwe njengomsebenzi wezoxolo njengoba kuchazwe kwisigaba 1 soMthetho weNqubo yokuBhekana nezobugebengu, 1977 (Act No. 51 of 1977).

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(7) Maqondana nalesigaba, yonke imithetho enika noma imaphi amandla noma imisebenzi kwilungu loMbutho wamaPhoyisa aseNingizimu Afrika—

- (a) elinesikhundla esithize kufanele sithathwe njengesikhundla sezamasotsha noma esinye esilingana naso; kanye
- (b) nonguKhomishina kaZwelonke woMbutho wezamaPhoyisa aseNingizimu Afrika, kanti uma kunguKhomishina wesiFunda, kuze kuyofika kuKhomishina ogunyazwe ngalawomandla nguMkhuzi woMbutho wezokuVikela ukuze abhekane naleyomisebenzi.

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(8) Akukho lutho kulesigaba olungathathwa njengokunika ilungu loMbutho wezamaPhoyisa aseNingizimu Afrika noma yimaphi amandla okuphatha nokukhipha imiyalelo kunoma yiliphi ilungu loMbutho wezokuVikela ngokunjalo nokunika ilungu loMbutho wezokuVikela noma yimaphi amandla okuphatha noma ukukhipha imiyalelo kunoma yiliphi ilungu loMbutho wezamaPhoyisa aseNingizimu Afrika.

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(9) Ilungu loMbutho wezokuVikela elisetshenziselwa ukwenza imisebenzi ethize maqondana nokuqashwa okukhulunywa ngako kwisigaba 18 (1) (d) nalo linamandla okwenza okulandelayo—

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- (a) ukucela noma ubani eRiphabhlikhi osolwa ukuba ukuleli ngokungemthetho njengoba kuchazwe kuMthetho weZifiki Zakulel, 2002 ukuba azichaze kabanzi njengesakhamuzi sakuleli noma aveze imvume yokuba seRiphabhlikhi;
- (b) ukubopha, ukubuza noma ukwenza ukuba umuntu abhekane nesigaba (4), ukubopha noma ukugquma ejele ngaphandle kwesidingo semvume yokubopha okuleli ngokungemthetho ngokwalowomthetho; futhi
- (c) kuthi ngokwesigaba (4) abone noma athathe ayogcina ngaphandle kwemvume noma yisiphi isibhamu noma isikhali esiyingozi esitholakala noma esiphethwe ngohlala kuleli ngokungemthetho.

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(10) Akukho kulomthetho okuphathelene namandla nemisebenzi yelungu loMbutho wezokuVikela okungathathwa njengokususa, ukwehlisa noma yimaphi amandla noma imisebenzi egunyazwe, eyenziwa noma ephoqeelwa yinoma wumuphi omunye umthetho noma umthetho wezwe kunoma yiliphi ilungu loMbutho wezokuVikela.

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(11) Amalungu oMbutho wezokuVikela aqashwe ngokwesigaba (1) kufanele athole ukuqeqeshwa okufanele ngaphambi kokuqashwa ngalendlela futhi kufanele ahlonyiswe ngokufanele.

## CHAPTER 4

## LAW ENFORCEMENT POWERS OF DEFENCE FORCE AT SEA

## Definitions

21. In this Chapter a word or expression has the meaning ascribed to it in any appropriate convention and, unless the context indicates otherwise— 5
- (a) **“innocent passage”** means the right of innocent passage contemplated in section 2 of the Marine Traffic Act, 1981 (Act No. 2 of 1981);
  - (b) **“military aircraft”** means an aircraft of the armed forces of a State having the military marks of that State, commanded by a member of the armed forces and the crew of which is subject to regular armed forces discipline; 10
  - (c) **“UNCLOS”** means the United Nations Convention on the Law of the Sea adopted at Montego Bay on 10 December 1982;
  - (d) **“warship”** means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of that State and whose name appears in the appropriate service list or its equivalent, and the crew of which is under regular armed forces discipline. 15

## Criminal and civil law enforcement by Defence Force

22. (1) If requested by a competent Minister, the Chief of the Defence Force, with the concurrence of the Minister of Defence, may authorise the use of any military aircraft of the Defence Force or any warship of the Defence Force or any member of the Defence Force for the purpose of enforcing any provision of South African law at sea. 20
- (2) An officer on board an aircraft or a warship contemplated in subsection (1) may enforce South African law in—
- (a) the internal waters of the Republic; 25
  - (b) the territorial waters of the Republic, but any measures taken must be carried out in accordance with paragraphs 3, 4 and 5 of article 27, and paragraphs 2 and 3 of article 28, of UNCLOS; and
  - (c) subject to subsection (3), outside the territorial waters of the Republic.
- (3) No enforcement outside the territorial waters of the Republic may take place— 30
- (a) in the territorial waters of a foreign state, unless it takes place on board a South African ship or in pursuance of an agreement on co-operation in law enforcement with that state; and
  - (b) against foreign ships or those on board them, except in circumstances permitted by international law. 35
- (4) An officer of the Defence Force acting in accordance with subsection (2)—
- (a) who exercises any power referred to in this section inside or outside the Republic, must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise such power in the same manner as a peace officer exercising such powers 40 within the Republic;
  - (b) may exercise all other powers referred to in this Chapter; and
  - (c) may exercise all or any of the powers conferred on any enforcement authority in terms of the relevant legislation, the provisions of which are being enforced by the said officer. 45
- (5) This section does not affect powers contemplated in sections 25, 26, 27 and 28, or any other matters which are within the original and exclusive jurisdiction of the Defence Force.

**ISAHLUKO 4****AMANDLA OMBUTHO WEZOKUVIKELA OKUSEBENZISA UMTHETHO OLWANDLE****Izincazelo**

21. Kulesahluko igama noma isisho sinencazelo eyejwayelekile ngaphandle uma okuqukethwe kuchaza okwehlukile— 5

- (a) “ukuhamba okumsulwa” kusho ilungelo lohambo olumsulwa njengoba kubekwe kwisigaba 2 soMthetho ka 1981 wezithuthi ezihamba olwandle (Act No. 2 ka 1981);
- (b) “Indiza yezeMpi” isho indiza yamaButho eZwe anezikhali zakulelozwe aholwa ilungu lamabutho ahlomile amalungu awo ahambisa ngokwenqubo eyejwayekile yamaButho ahlomile;
- (c) “UNCLOS” usho uMhlangano weNhlangano yamaZwe oMhlaba maqondana noMthetho wasoLwandle okwavumelwana ngawo emaTekobhayi ngo 10 Decemba 1982; 15
- (d) “UMkhumbi weMpi” usho uMkhumbi wamaButho ahlomile eZwe onemidwebo ngaphandle ekhombisa ukuthi ngeyamaphi amaZwe leyo mikhumbi, nokuthi ingaphansi kwesiphathimandla esigunyazwe nguHulumeni wakulelolizwe igama laso elikhona ohleni lwabemikhumbi yemPi namaButho akuleyo mikhumbi aziphethe ngendlela elindelekile kumabutho. 20

**Ukusebenzisa koMbutho wezokuVikela uMthetho wamacala egazi nawombango**

22. (1) Uma ecelwe uNgqongqoshe ofanele, uMkhuzi woMbutho wezokuVikela ebambisene noNgqongqoshe wezokuVikela bangagunyaza ukusetshenziswa kwanoma iyiphi indiza yezemPi yoMbutho wezokuVikela noma imuphi uMkhumbi weMpi woMbutho wezokuVikela noma yiliphi ilungu loMbutho wezokuVikela ukuze kuphoqeilewe ukulandelwa kwanoma isiphi isigaba soMthetho waseNingizimu Afrika oLwandle. 25

(2) Isiphathimandla esigibele indiza noma umkhumbi weMpi okukhulunywa ngawo kusigaba (1) singakuphoqeilela ukusetshenziswa koMthetho waseNingizimu Afrika kulezizimo— 30

- (a) Emanzini angaphakathi kwelaseRiphabhlikhi;
- (b) Emanzini angaphakathi kwemingcele yase Riphabhlikhi, kepha konke okwenziwayo kufanele kuhambisane nendima 3, 4 no 5 zoMthetho 27, nendima 2 no 3 zoMthetho 28, we UNCLOS; futhi 35
- (c) Uma kuya ngesigaba (3), emanzini angaphandle kwemingcele yase Riphabhlikhi.

(3) Akumele lemiThetho isetshenziswe emanzini angaphandle kwemingcele yaseRiphabhlikhi —

- (a) Emanzini angaphakathi kwemingcele yelinye iZwe, ngaphandle kokuba isetshenziswa ngaphakathi emikhunjini yaseNingizimu Afrika noma uma kulandelwa isivumelwano sokubambisana ngokusetshenziswa koMthetho kuleloZwe; 40
- (b) Futhi emikhunjini yamanye amazwe noma kulabo abagibele ngaphandle kwezimo ezivunyelwa nguMthetho wamaZwe omhlaba. 45

(4) Isiphathimandla soMbutho wezokuVikela esisebenza ngokwesigaba (2)—

- (a) Esisebenzisa noma imaphi amandla achazwe kulesisigaba ngaphakathi noma ngaphandle kweRiphabhlikhi, kufanele saziwe njengomsebenzi wezoxolo njengoba kuchazwe kusigaba 1 soMthetho ka 1977 wenqubo yobugebengu (Act No. 51 of 1977); 50
- (b) Angasebenzisa wonke amanye amandla achazwe kulesahluko; futhi
- (c) Asebenzise wonke noma imaphi amandla anikwe noma yimuphi umkhandlu obophayo ngokwemiThetho efanele okuqukethwe kuyo okwenziwa yilowo msebenzi.

(5) Lesigaba asiwathikamezi amandla achazwe kwizigaba 25, 26, 27 no 28, noma iziphi ezinye izindaba ezingaphansi kwesandla soMbutho wezokuVikela kuphela. 55



**Interests to be considered**

23. (1) (a) If the Master of a foreign ship in relation to which and on board of which enforcement measures are being taken in accordance with section 22(2)(b) so requests, directly or through any military aircraft or warship authorised in terms of section 22(1), the Department of Foreign Affairs must notify a diplomatic agent or consular officer of the flag state of such ship before any enforcement measures are taken. 5

(b) The Department of Foreign Affairs or the Defence Force, as the case may be, must, if reasonably possible, facilitate contact between such diplomatic agent or consular officer and the crew of the ship in question.

(c) In a case of emergency or if there is danger that such ship might escape, the notification contemplated in paragraph (a) may be communicated while the enforcement measures are being taken. 10

(2) In considering whether or in what manner an arrest should be made, due regard must be had to the interests of safe navigation.

**Piracy**

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24. (1) For purposes of this Act, piracy is—

(a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew, including the Master, or the passengers of a private ship or a private aircraft, and directed—

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; 20

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a ship or aircraft contemplated in subsection (1); and 25

(c) any act of inciting or of intentionally facilitating an act contemplated in paragraph (a) or (b).

(2) Any act of piracy committed by the crew of a warship or military aircraft, government ship or government aircraft which has mutinied and taken control of such ship or aircraft, must for purposes of this section be regarded as having been committed by the crew of a private ship or aircraft. 30

(3) Any person who commits an act of piracy is guilty of an offence, which may be tried in any court in the Republic designated by the Director of Public Prosecutions and, upon conviction, is liable to a fine or to imprisonment for any period, including life imprisonment. 35

**Seizure of pirate ship or aircraft**

25. (1) An officer of the Defence Force may seize a ship or aircraft and the property on board, and arrest any person on board, in accordance with articles 105 and 107 of UNCLOS. 40

(2) Any officer of the Defence Force who exercises any power referred to in this section inside or outside the Republic, must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(3) Any ship, aircraft or property seized, or any person arrested, in terms of this section, must as soon as possible be brought to the Republic or to any other authority determined by the Minister of Foreign Affairs, with the concurrence of the Ministers of Defence and of Justice, to be dealt with in accordance with applicable law. 45

**Okufanele kubonelelwe**

23. (1) (a) Uma uMkhuzi woMkhumbi welinye ilizwe okunokuboshwa okwenziwa kuwona noma maqondana nawo ngokwesigaba 22 (2)(b) ecela yena uqobo noma ecela ngendiza yezempi noma umkhumbi wezempi ogunyazwe ngokwesigaba 22(1), umnyango wezangaphandle kufuneka wazise abamele leloZwe ngokoMthetho ngesimo salowo Mkhumbi ngaphambi kokuba kubekhona uMthetho ophoqeleyo. 5

(b) UMnyango wezangaPhandle noma uMbutho wezokuVikela kufanele ukungenzeka wenze kube khona ukuxhumana phakathi kwalowo omele lelozwe nabaseMkhunjini othintekayo.

(c) Uma kunengozi noma isimo esiphuthumayo esingadala lowoMkhumbi ubaleke, isaziso esichazwe kwisigaba (a) singedluliswa ngesikhathi izinyathelo zokuphoqelesa uMthetho zithathwa. 10

(2) Uma kusacatshangwa ukuthi kufanele yini kube nokubopha okwenziwayo nokuthi kuyoboshwa kanjani, kufanele kucatshangelwe nokuhamba koMkhumbi nokuphepha olwandle. 15

**Ukweba olwandle**

24. (1) Maqondana naloMthetho ukweba olwandle kusho okulandelayo—

(a) Yinoma isiphi isenzo esingekho eMthethweni sodlame noma ukugcina umuntu othize noma isenzo sokuthatha ngokungeMthetho esenzelwe ukuzuza kwabasebenzi boMkhumbi ngasese kuhlangele nomPhathi woMkhumbi noma abagibeli boMkhumbi wangasese noma indiza yangasese, okuqondiswe— 20

(i) Olwandle, kweminye imikhumbi noma izindiza, noma abantu noma impahla ekulowo mkhumbi noma leyondiza; 25

(ii) Okwenziwa emkhunjini, endizeni kubantu noma empahleni endaweni engekho ngaphansi koMthetho wanoma yiliphi iliZwe;

(b) Noma isiphi isenzo sokungena ngokuzithandela kuloko okwenziwa emkhunjini noma kwindiza wazikahle kamhlophe ngokwenzekayo njengoba kuchazwe kwindima (1); futhi 30

(c) noma isiphi isenzo sokukhuthaza sokwenza ukuba kube lula ukwenza okubhalwe kwisigaba (a) noma (b).

(2) Noma isiphi isenzo sokweba esenziwe ngabasebenzi bomkhumbi weMpi noma indiza yezeMpi, umkhumbi kaHulumeni noma indiza kaHulumeni esithumbe lowo mkhumbi noma leyo ndiza kufanele ngokwalesigaba kuthathwe njengokwenziwe ngabasebenzi balowomkhumbi wangasese noma leyo ndiza. 35

(3) Noma ubani owenza izenzo zokweba emkhunjini noma endizeni unecala elingathethwa kunoma iyiphi inkantolo eRiphabhlikhi ekhethwe uMqondisi wezabashushisi, okungathi uma kutholakala enecala, akhokhiswe inhlawulo noma aboshwe isikhathi esingaba side noma kangakanani, okungaba nawukudilikelwa ijele. 40

**UkuThunjwa koMkhumbi noma indiza eyebayo**

25. (1) Isiphathimandla soMbutho wezokuVikela singawuthumba umkhumbi noma indiza nokuthwelwe kuko sibophe nanoma wubani ogibele, ngokulandela umthetho 105 no 107 we UNCLOS. 45

(2) Noma isiphi isiPhathimandla soMbutho wezokuVikela esinamandla achazwe kulesahluko ngaphandle noma ngaphakathi kweRiphabhlikhi kufanele sithathwe njengomsebenzi wezoxolo njengoba kuchazwe kwisigaba 1 soMthetho ka 1977 wenqubo yezobugebengu (Act No. 51 of 1977).

(3) Noma yimuphi umkhumbi, indiza noma impahla ethunjwe inoma yimuphi umuntu oboshwe ngokwalesigaba, kufuneka ayiswe eRiphabhlikhi ngokushesha noma yikuyiphi indawo enoMthetho ekhonjwe uNgqongqoshe wezangaPhandle ngokuvumelana noNgqongqoshe woMbutho wezokuVikela nowezoBulungiswa ukuze kubhekwane nalolodaba ngokoMthetho osebenza kuleyo ndawo. 50

**Right of visit on high seas by warships of Defence Force**

26. (1) Any South African warship may exercise the right of flag verification as provided for in paragraph 2 of article 110 of UNCLOS in the circumstances mentioned in paragraph 1 of that article.

(2) If the suspicion referred to in article 110 of UNCLOS is proved to be well-founded, the ship may be seized and any person who is reasonably suspected of having committed an offence justiciable by a criminal court of the Republic, may be arrested, whereupon such seized ship and any arrested person shall be dealt with in accordance with section 25(3). 5

**Hot pursuit of ships**

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27. (1) Any warship or military aircraft of the Defence Force may exercise on behalf of the Republic or on the behalf of a foreign state, the right of hot pursuit of any ship in accordance with article 111 of UNCLOS.

(2) The seizure of a ship and the arrest of any person on board such ship may be effected by any officer of any ship or aircraft which acts in accordance with this section. 15

(3) An officer of the Defence Force who exercises any power referred to in this section inside or outside the Republic, must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

**Warships or military aircraft of Defence Force to render assistance**

28. (1) Subject to subsection (2), a warship or military aircraft of the Defence Force must— 20

- (a) render assistance to any person found at sea in danger of being lost;
- (b) proceed with all possible speed to the rescue of persons in distress at sea, if informed of their need for assistance, in so far as such action may be reasonably expected of such warship or aircraft; or 25
- (c) after a collision at sea, render assistance to the other ship, its crew and passengers, and where the collision involves the warship, if possible, inform the other ship of its name, its flag state and the port at which it will call.

(2) A warship or military aircraft may only render assistance or proceed to the rescue as contemplated in subsection (1), if— 30

- (a) it can be effected without serious danger to the warship or military aircraft, its crew and its passengers; and
- (b) in times of armed conflict, it can be effected without serious prejudice to an operation in which the warship or military aircraft is engaged at the time.

**Co-operation with foreign states**

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29. (1) Subject to subsection (2), any officer of the Defence Force serving on a warship or military aircraft of the Defence Force or any other ship or aircraft on government service specially authorised, may, in respect of any violation of the law of a foreign state—

- (a) seize any vessel; 40
  - (b) arrest any person on board such vessel;
  - (c) seize any property on board such vessel;
  - (d) conduct a hot pursuit operation in relation to such vessel;
  - (e) escort such vessel to a foreign port;
  - (f) surrender such vessel, person or property to the authorities of the foreign state 45 contemplated in paragraph (e); and
  - (g) assist in any of the actions contemplated in paragraphs (a) to (e).
- (2) An action contemplated in subsection (1) may only be taken—

**Ilungelo lemikhumbi yezeMpi yoMbutho wezokuVikela lokuvakashela olwandle**

26. (1) Noma imuphi umkhumbi wezeMpi wase Ningizimu Afrika unelungelo lokubheka ukuthi iFulegi elixhonywe emkhunjini liyilo yini njengoba kubekwe kwisigaba 2 soMthetho 110 we UNCLOS ezimweni ezichazwe kwindima 1 yalowoMthetho. 5

(2) Uma izinsolo ezichazwe kwisigaba 110 se UNCLOS zitholakala ziyiqiniso, umkhumbi ungathunjwa kuthi noma yimuphi umuntu osolwa sengathi kunecala alenzile elithathwa njengecala ezinkantolo zegazi zaseRiphabhlikhi, angaboshwa bese kuthi lowo mkhumbi othunjiwe nanoma ibaphi abantu ababoshiwe kubhekwane nabo ngokwesigaba 25 (3). 10

**Ukujahwa kwemikhumbi**

27. (1) Noma yimuphi umkhumbi wemPi noma indiza yezemPi yoMbutho wezokuVikela ingalisebenzisa ilungelo enalo lokujaha noma umuphi umkhumbi njengoba kubekwe kuMthetho 111 we UNCLOS, loko ikwenzela iRiphabhlikhi noma iliphi elinye iliZwe. 15

(2) Ukuthunjwa koMkhumbi nokuboshwa kwanoma imuphi umuntu okulowo mkhumbi kungenziwa yinoma isiphi isiphathimandla somkhumbi noma indiza esenza loko njengoba kubekwe kulesigaba. 20

(3) Isiphathimandla soMbutho wezokuVikela esisebenzisa amandla achazwe kulesigaba ngaphakathi noma ngaphandle kweRiphabhlikhi kufuneka sithathwe njengomsebenzi wezoxolo njengoba kuchazwe kusigaba 1 soMthetho ka 1997 wenqubo yamacala egazi (Act No. 51 of 1977). 20

**Ukukhipha usizo kwemikhumbi yezemPi noma izindiza zemPi zoMbutho wezokuVikela**

28. (1) Njengoba kubekwe kwisigaba (2), umkhumbi wezemPi noma indiza yezemPi yoMbutho wezokuVikela kufanele— 25

(a) Usize noma yimuphi umuntu otholakala esengozini yokulahleka oLwandle

(b) Kufuneka uphuthume ngaso sonke isivini onaso ukuyosiza umuntu osenkingeni oLwandle, uma usuwazisiwe ngesidingo sosizo olungakhishwa ngendlela lowomkhumbi wezemPi noma indiza; noma 30

(c) Uma kunokushayisana kwemiMkhumbi oLwandle, usize leyomikhumbi eshayisene, abasebenzi nabagibeli kuthi uma ukushayisana kuthinta imikhumbi yezemPi, yaziswe imikhumbi ethintekile ngamagama ayo, amaFulegi, ezindawo ephuma kuzo nezindawo ezilandelayo ezoma kuzona. 35

(2) Umkhumbi noma indiza yezemPi ungakhipha usizo noma utakule njengoba kuchazwe kwisigaba(1), uma— 35

(a) Loko kungenziwe ngaphandle kokudala umonakalo omkhulu emkhunjini noma endizeni yezemPi, abasebenza kuyo kanye nabagibeli; futhi

(b) Uma nesimo sokungezwani okusetshenziswa izikhali kuzo, usizo lungakhishwa ngendlela engeke ikhubaze umsebenzi umkhumbi noma indiza yezeMpi ephezu kwawo ngaleso sikhathi. 40

**Ukubambisana namaZwe angaphandle**

29. (1) Njengoba kubekwe kwisigaba (2), noma isiphi isiphathimandla soMbutho wezokuVikela esisebenza emkhunjini noma endizeni yezemPi yoMbutho wezokuVikela noma yimuphi omunye umkhumbi noma indiza egunyazwe ukuba yenze umsebenzi kaHulumeni, kungathi uma kunokwephulwa koMthetho okwenzekayo weZwe langaphandle— 45

(a) Ithumbe noma yimuphi umkhumbi othintekayo;

(b) Ibophe abantu abawugibele;

(c) Ithumbe impahla ekulomkhumbi; 50

(d) Iwujahe lowo mkhumbi;

(e) Iwuphelezele lowo mkhumbi iwuyise ethekweni langaphandle;

(f) Iyise lowokhumbi abantu nempahla abakuwona kuziphathimandla zeZwe zangaphandle elichazwe kwindima (e); bese

(g) Kukhishwa usizo kunoma iziphi izinyathelo ezichazwe endimeni (a) kuya (e). 55

(2) Isinyathelo esichazwe kwisigaba (1) singathathwa kuphela uma—

- (a) in pursuance of a reciprocal agreement on co-operation in law enforcement at sea between the Republic and the relevant foreign state;
  - (b) if the law enforcement measure taken, is consistent with the agreement; and
  - (c) if the relevant foreign state may take the law enforcement measures contemplated in subsection (1) (a) to (e) under international law. 5
- (3) Subsections (1) and (2) apply with the necessary changes to enforcement in respect of violations of South African or foreign law by officers of the—
- (a) Defence Force on board a foreign warship, military aircraft or other authorised foreign vessel or aircraft; and
  - (b) armed forces of a foreign state on board a warship or military aircraft of the Defence Force or on board any other authorised South African vessel. 10
- (4) An officer contemplated in subsection (3)(b) must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), when taking enforcement measures in respect of the violation of any South African law.

## CHAPTER 5

15

### MILITARY POLICE

#### Appointment of military police officials

30. (1) The Chief of the Defence Force or any person designated by him or her may appoint any member of the Defence Force as a military police official and issue all such members with a prescribed identification card. 20
- (2) A member so appointed must carry the identification card on his or her person when on duty.

#### Functions of military police officials

31. (1) For purposes of enforcing this Act or any other law, including the common law in so far as it applies to the Department, any member, employee or property of the Department, or to any person, area, land, premises or property under the protection or control of the Department, a military police official may at any time and in any place perform any police function, which includes— 25
- (a) the prevention and combating of crime;
  - (b) the investigation of any offence or alleged offence; and 30
  - (c) the maintenance of law and order.
- (2) A military police official, when performing any function contemplated in subsection (1)—
- (a) has the same powers and duties as may be conferred on or are imposed by law upon a member of the South African Police Service; 35
  - (b) is liable in respect of acts done or omitted to the same extent as he or she would have been, had he or she been a member of the South African Police Service; and
  - (c) has the benefit of all indemnities to which a member of the South African Police Service would in like circumstances be entitled. 40
- (3) For purposes of this section, every statutory provision which confers any power or imposes any duty upon a member of the South African Police Service—
- (a) holding a specified rank or office, must be construed as a reference to the military rank of office equivalent to such rank or office; and
  - (b) who is the National Commissioner of the South African Police Force, must be 45 construed as a reference to the Chief of the Defence Force and, in the case of a provincial commissioner, to an officer designated by the Chief of the Defence Force for such purposes.
- (4) Nothing in this section may be construed as giving a member of the South African Police Service any power to exercise command or control over any military police 50



- (a) Kulandelwa isivumelwano sokubambisana sokusetshenziswa koMthetho oLwandle phakathi kweRiphabhlikhi namaZwe angaphandle athintekayo;
- (b) Uma isinyathelo soMthetho esithathiwe sihambisana nesivumelwano; futhi
- (c) Uma iZwe langaphandle elithintekayo lingazithatha izinyathelo zokusetshenziswa koMthetho ezichazwe kwisigaba (1) (a) kuya (e) ngaphansi koMthetho wamazwe omhlaba. 5
- (3) Isigaba (1) no (2) zisetshenziswa noshintsho olufanele ekuthathweni kwezinyathelo zoMthetho maqondana nokwepulwa koMthetho waseNingizimu Afrika noma wamazwe angaphandle yiziphathimandla zokulandelayo—
- (a) UMbutho wezokuVikela ogibele umkhumbi wezemPi weZwe langaphandle, indiza yezemPi noma umkhumbi noma indiza yangaphandle; kanye 10
- (b) Namabutho ahlomile eZwe langaphandle asemkhunjini noma endizeni yezemPi yoMbutho wezokuVikela noma omunye umkhumbi ogunyaziwe waseNingizimu Afrika.
- (4) Isiphathimandla okukhulunywa ngaso kwisigaba (3)(b) kufuneka sithathwe njengomsebenzi wezoxolo njengoba kuchazwe kwisigaba 1 soMthetho ka 1977 wenqubo yokubhekana nobugebengu (Act No. 51 of 1977), uma kuthathwa izinyathelo zoMthetho maqondana nokwepulwa koMthetho waseNingizimu Afrika. 15

## ISAHLUKO 5

### AMASOTSHA ASEMBUTHWENI WEZOKUVIKELA

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#### Ukuqashwa kweziphathimandla zamasotsha ombutho wezokuvikela

30. (1) UMkhuzi woMbutho wezokuVikela noma yimuphi umuntu okhethwe uye, naye angaqasha noma iliphi elinye ilungu loMbutho wezokuVikela njengesikhulu samasotsha bese enika onke lawomalungu ikhadi elivumelekile elisaPasi.

(2) Ilungu eliqokiwe kufanele lihlale liliphethe lelikhadi elisaPasi njalo uma lisemsebenzini. 25

#### Imisebenzi yeziphathimandla zamasotsha

31. (1) Ukuze loMthetho noma yimuphi omunye uMthetho ukwazi ukusebenza, kuhlangele noMthetho weZwe loMthetho usebenza emNyangweni nakunoma iliphi ilungu, umsebenzi noma impahla yomNyango, noma yikumuphi umuntu, indawo, uMhlaba, ijali noma impahla engaphansi kwesandla somNyango, isiphathimandla samasotsha singenza umsebenzi wamaPhoyisa noma yinini noma kuphi. Lowo msebenzi ungaba nokulandelayo— 30

- (a) Ukuvinjwa nokuqedwa kobugebengu;
- (b) Ukuphenywa kwanoma iliphi icala noma loko okuthiwa kuyicala; kanye 35
- (c) Nokuqikelela ukulandelwa koMthetho.

(2) Uma isiphathimandla samasotsha senza noma yimuphi umsebenzi ochazwe kwisigaba (1)—

- (a) Sinamandla nemisebenzi efana nenikwa ngokoMthetho ilungu loMbutho wamaPhoyisa aseNingizimu Afrika; 40
- (b) Uyena oyobhekana nomphumela wokwenziwa noma wokungenziwa kwezinto ezithize ngendlela efanayo njengoba kulindeleke kwilungu loMbutho wamaPhoyisa ase Ningizimu Afrika;
- (c) Unelungelo nokuxolelwa kuzo zonke izinto ilungu loMbutho waseNingizimu Afrika elingaxolelwa kuzo uma lisesimeni esifanayo. 45

(3) Maqondana nalesigaba yonke imiThetho enika amandla noma imisebenzi kwilungu loMbutho wamaPhoyisa aseNingizimu Afrika—

- (a) Elinesikhundla esithize kufanele kuthathwe njengesikhundla esilinganayo kwezempi; futhi
- (b) Elingukhomishina kaZwelonke eMbuthweni wamaPhoyisa aseNingizimu Afrika kufuneka lithathwe njengelilingana noMphathi woMbutho wezokuVikela, uma kunguKhomishina wesiFunda angabekwa esikhundleni esikhethe ngumphathi woMbutho wezokuVikela maqondana nokufuneka kwenziwe. 50

(4) Akukho kulesigaba okungathathwa njengokunika ilungu loMbutho wezamaPhoyisa aseNingizimu Afrika amandla okuphatha noma isiphi isiphathimandla 55

official and, conversely, as giving a military police official any power to exercise command or control over any member of the South African Police Service.

(5) Section 217 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the necessary changes to a confession made to a military police official in the performance of any function contemplated in this section. 5

(6) (a) Any civilian arrested by a military police official must be handed over to the South African Police Service without delay.

(b) Any person subject to the provisions of the Code and the Military Discipline Supplementary Measures Act, 1999 (Act No. 16 of 1999), must be dealt with in accordance with those provisions. 10

(7) A military police official who exercises any power referred to in this Chapter must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

## CHAPTER 6

### DEFENCE INTELLIGENCE

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#### Definitions

32. In this Chapter, unless the context indicates otherwise—

- (a) “**defence intelligence**” includes—
  - (i) “counterintelligence”;
  - (ii) “departmental intelligence”;
  - (iii) “domestic military intelligence”;
  - (iv) “foreign military intelligence”; and
  - (v) “national security intelligence”, as defined in the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);
- (b) “**Intelligence Division**” means the Intelligence Division of the Defence Force contemplated in section 33; 20
- (c) “**Review Board**” means the Personnel Security Review Board established in terms of section 40(1). 25

#### Intelligence Division of Defence Force

33. The Intelligence Division in existence immediately before the commencement of this Act continues as the Intelligence Division of the Defence Force in the way in which it was organised. 30

#### Application of strategic and operational intelligence

34. The Intelligence Division must, subject to the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), gather, correlate, evaluate and use— 35

- (a) strategic intelligence for purposes of—
  - (i) ensuring national security;
  - (ii) assisting in the formulation of defence policy;
  - (iii) assisting in the determination of defence strategy;
  - (iv) assisting in the execution of defence and foreign policy;
  - (v) ensuring the security of defence assets of whatever description; and
  - (vi) assisting in the co-ordination of foreign military assistance; and
- (b) operational intelligence for purposes of—
  - (i) assisting in the execution of operations in line with defence strategy;
  - (ii) assisting in the preparation of forces in order to get them ready for combat;
  - (iii) providing support for combat forces; and
  - (iv) ensuring the security of the forces. 40

sezamasotsha, ngokunjalo okunganika isiphathimandla sezamasotsha amandla okuphatha noma iliphi ilungu loMbutho wamaPhoyisa aseNingizimu Afrika.

(5) Isigaba 217 soMthetho ka 1977 wenqubo yezebugebengu (Act No. 57 of 1977), siyosebenza ngendlela efanele maqondana nokuvunywa kwecala kwisiPhathimandla sezamasotsha uma senza umsebenzi waso njengoba kubekwe kulesigaba. 5

(6) (a) Noma yimuphi umuntu oboshwe yisostha kufanele edluliselwe eMbuthweni wamaPhoyisa aseNingizimu Afrika ngaphandle kokuchitha isikhathi.

(b) Noma yimuphi umuntu ongaphansi koMthetho kanye noMthetho wokuQondiswa kweziGwegwe eMasotsheni (Act No. 16 of 1999) kufanele kubhekanwe naye ngokwaleyo mthetho. 10

(7) Isotsha elisebenzisa amandla achazwe kulesahluko kufuneka lithathwe njengomsebenzi wezoxolo njengoba kuchazwe kwisigaba 1 soMthetho ka 1977 wenqubo yokubhekana nezobugebengu (Act No. 51 of 1977).

## ISAHLUKO 6

### UBUNHLOLI KWEZOKUVIKELA

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#### Izincazelo

32. KuleSahluko, ngaphandle uma okuqukethwe kuso kuchaza okwehlukile—

“ubunhloli kwezokuvikela” buhlanganisa—

- (a) “okuphikisana nobunhloli”;
- (b) “ubunhloli emnyangweni”;
- (c) “ubunhloli bezasekhaya kwezempi”;
- (d) “ubunhloli bezamazwe angaphandle kwezempi”;
- (e) “ukuphepha kukazwelonke kwezobunhloli”; njengoba kuchazwe kuMthetho kaZwelonke waMasu ezobunhloli ka 1994 (Act No. 39 of 1994); 20 25

“UMkhakha wezobunhloli” usho uMkhakha wezobunhloli kwezokuVikela njengoba kubekwe kwisigaba 33;

“IBhodi lokuBuyekeza” lisho iBhodi lokuBuyekeza Kwesimo sokuPhepha kwabasebenzi elasungulwa ngokwesigaba 40 (1).

#### UMkhakha wezobunhloli kwezokuVikela

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33. UMkhakha wezobunhloli owawukhona ngaphambi kokuqala ukusebenza kwaloMthetho usaqhubeka njengoMkhakha wezobunhloli kwezokuVikela ngendlela owawulungiswe ngayo.

#### Ukusetshenziswa kwamasu nezindlela zobunhloli

34. UMkhakha wezobunhloli kufanele kuthi ngokuhambisana noMthetho kaZwelonke waMasu ezobunhloli ka 1994 ((Act No. 39 of 1994), uqoqe, uhlanganise, ubheke osukwenzile, usebenzise— 35

(a) amasu ezobunhloli ngenhloso yokulandelayo—

- (i) ukuqiniseka ukuphepha kuzwelonke;
- (ii) ukusiza ekwakheni umgomo wezokuvikela;
- (iii) ukusiza ekwakheni izindlela namasu kwezokuVikela;
- (iv) ukusiza ekwenzeni imigomo yezokuVikela neyezaNgaphandle;
- (v) ukuqikelele ukuphepha kwempahla yezokuVikela noma eyinhloboni; kanye 40

(vi) nokusiza ekuhlanganisweni kosizo lwezangaphandle kwezempi; kanye 45

(b) ubunhloli obenziwa maqondana—

- (i) nokusiza ekwenzeni okudinga ukwenziwa maqondana nezindlela namasu ezokuVikela;
- (ii) nokusiza ekulolongeni umbutho ukuze uhlale uvivele ezempi;
- (iii) ukweseka umbutho wezempi; kanye 50
- (iv) nokuqikelela ukuphepha kwemibutho.

**Co-operation with other intelligence services**

35. The Intelligence Division must co-operate with any other intelligence service or body created by or under any other law.

**Counterintelligence by Intelligence Division**

36. The Intelligence Division must, in accordance with any policy, procedure or norm determined by the Minister and in consultation with the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994), conduct and institute counterintelligence measures and activities within— 5

- (a) the Ministry of Defence;
- (b) the Department; and 10
- (c) the Armaments Development and Production Corporation of South Africa, Limited, established in terms of section 2 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968).

**Determination of security classification of members and employees**

37. (1) The Minister may prescribe— 15

- (a) different grades of security clearance to be issued by the Intelligence Division for various categories of members and employees, and employees of the Armaments Development and Production Corporation of South Africa, Limited; 20
- (b) the requirements which must be met before any such grade of security clearance may be issued; and
- (c) any circumstance, act, conduct or behaviour which disqualifies any such member or employee from being accorded a specific grade of security clearance.

(2) A member or employee contemplated in subsection (1)(a) may not be enrolled, appointed or promoted, receive a commission or be retained as a member or employee, unless such member or employee has been issued with the appropriate or provisional grade of security clearance by the Intelligence Division. 25

(3) No member or employee contemplated in subsection (1)(a) may claim an automatic right by virtue of enrolment, appointment, promotion, receipt of commission or retention to obtain, retain or be issued with a security clearance or any grade of security clearance. 30

(4) The Intelligence Division must on the instruction of the Secretary for Defence determine whether any security clearance or a specific grade of security clearance should be issued to any member or employee contemplated in subsection (1)(a). 35

(5) The grade of security clearance issued to a member or employee in terms of subsection (4)—

- (a) must be specified in a certificate, issued by the Secretary for Defence on the recommendation of the Chief of the Defence Intelligence Division or an officer authorised by him or her, which certificate shall be *prima facie* proof of the grade of security clearance so issued; 40
- (b) remains in force until the next determination is made under subsection (4) or until the clearance lapses or is downgraded or withdrawn in terms of this Act; and
- (c) is subject to periodic revision by the Intelligence Division at such times or intervals as the Secretary for Defence may determine. 45

**Discharge of members or employees not issued with security clearances**

38. Any member or employee who is deemed unfit for further membership or employment in the Department by reason of not having been issued with a security

**Ukubambisana nezinye izikhungo zobunhloli**

35. UMkhakha wezobuNhloli kufanele ubambisane nezinye izikhungo zobunhloli noma izinhlangano ezakhiwe ngeminye imithetho noma ngaphansi kweminye imithetho.

**Okuphikisana nobuNhloli okwenziwa nguMkhakha wezobuNhloli**

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36. UMkhakha wezobuNhloli kufanele kuthi ngokuhambisana nanoma imiphi eminye imithetho nenqubo enqunywe nguNgqongqoshe ebonisana nesiKhungo sikaZwelonke sezobuNhloli esisungulwe ngesigaba 3 soMthetho wezobuNhloli ka 1994 (Act No. 38 of 1994), wakhe futhi wenze izindlela zokubhekana nokuphikisana nezobuNhloli kulezindawo—

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(a) UMnyango wezokuVikela;

(b) UMnyango; kanye

(c) Ne-Nkampani yoKwakha nokuKhiqiza Izikhali eNingizimu Afrika (Armaments Developments and Production Corporation of South Africa Ltd.) eyasungulwa ngokwesigaba 2 soMthetho ka 1968 woKwakhiwa nokuKhiqizwa kweziKhali (Act No. 57 of 1968).

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**Indlela yokuhlela abasebenzi namalungu ngokwesimo sabo sokuphepha**

37. (1) UNgqongqoshe angase akhiphe isincomo sokuba—

(a) Kube namazinga ehlukeni obumsulwa kwezokuphepha okudlulwa kuwona akhishwa nguMkhakha wezobuNhloli kwimikhakha eyehlukene yamalungu nabasebenzi nabasebenzi beNkampani yoKwakha nokuKhiqiza Izikhali;

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(b) Izidingo okufanele kuhlangukshwane nazo ngaphambi kokuphasiswa kuloluhlobo lwezokuphepha; kanye

(c) Nanoma yisiphi isimo, ukwenza nokuziphatha okwenza ukuba ilungu noma umsebenzi angaphumeleli ekunikweni izinga elithize lokutholakala emsulwa ngezokuphepha.

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(2) Ilungu noma umsebenzi ochazwe kwisigaba (1) (a) ngeke abhaliswa, aqashwa noma akhushulelwa esikhundleni esiphakeme, athole ikhomishini noma agcinwe njengelungu noma umsebenzi ngaphandle uma lelolungu noma umsebenzi enikwe wuMkhakha wezokuVikela izinga elithize elifanele lokutholakala kwakhe emsulwa kwezokuphepha.

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(3) Akukho lungu noma umsebenzi ochazwe kwisigaba (1) (a) elingafuna ilungelo elitholakala ngoba umuntu esebhalisiwe, eqashiwe, ukukhushulelwa esikhundleni esiphakeme, ukuthola ikhomishini, ukucina nokuthola noma ukunikwa okukhombisa ukuthi umsulwa kwezokuphepha noma iliphi izinga lokutholakala emsulwa kwezokuphepha.

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(4) UMkhakha wezobuNhloli kufanele uthi uma unikwa umyalelo nguNobhala wezokuVikela ubheke ukuthi kufanele yini kubekhona ilungu noma umsebenzi ochazwe kwisigaba (1) (a) onikwa okokukhombisa ukuba emsulwa kwakhe kwezokuphepha noma izinga elithize lokuba emsulwa kwezokuphepha.

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(5) Amazinga okutholakala emsulwa kwezokuphepha anikwa ilungu noma umsebenzi ngokwesigaba (4) —

(a) Kufanele achazwe esitifiketini esikhishwa nguNobhala wezokuVikela ngesincomo soMkhuzi wezokuVikela noma isiphathimandla esigunyazwe nguye ngesitifiketi esiwubufakazi obuqanda ikhanda bezinga lokutholakala kwakhe emsulwa ngokwezokuphepha;

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(b) Kufanele sihlale sisebenza kuze kube yisikhathi esilandelayo okuyobhekwa ngaso futhi ngokwesigaba (4) noma size siphelelwe yisikhathi isitifiketi sokutholakala emsulwa kwezokuphepha noma kwehliswe izinga laso noma sihoxiswe ngokwalomthetho; futhi

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(c) Sihlale sibuyekizwa nguMkhakha wezobuNhloli ngesikhathi esibekwa nguNobhala wezokuVikela.

**Ukuyekiswa emsebenzini kwamalungu nabasebenzi abatholakala bengemsulwa ngezokuphepha**

38. Noma yiliphi ilungu noma umsebenzi otholakala engekho esimweni sokuqhubeka nokuba yilungu noma umsebenzi eMyangweni ngenxa yokungatholakali emsulwa

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clearance in terms of section 37(4), may be discharged from the Department by the Minister.

#### Notification of security clearance or refusal thereof

**39.** (1) The Secretary for Defence must give written notice to every member or employee in respect of whom a determination has been made in terms of section 37(4). 5

(2) (a) Subject to paragraph (b), the Secretary for Defence must, in writing, furnish every member or employee whose security clearance or particular grade of security clearance has been refused, downgraded or withdrawn with the grounds and reasons for such refusal, downgrading or withdrawal.

(b) No person may reveal any counterintelligence measure taken, any source of information or the identity of any person involved in the collection or giving of information with regard to a security screening, investigation and evaluation, or allude to it in a manner which will enable a person to identify it. 10

(3) No security clearance or specific grade of security clearance may be refused, downgraded or withdrawn without the member or employee who will be affected thereby being afforded reasonable opportunity to present information regarding such matter. 15

(4) (a) Within 14 days after having received the grounds and reasons contemplated in subsection (2)(a), the member or employee concerned may lodge a written objection against the refusal, downgrading or withdrawal, as the case may be, with the Secretary for Defence and furnish the Secretary for Defence with such written representations, statements and documents as the member or employee deems necessary for a review by the Review Board. 20

(b) The Secretary for Defence may on application to it in writing by a member or employee extend the period referred to in paragraph (a) by a further period of 14 days. 25

(c) The Secretary for Defence must upon receipt of any objection contemplated in paragraph (a) forthwith furnish to the Review Board—

- (i) the objection and all supporting documents and any representations;
- (ii) the grounds and reasons referred to in subsection (2)(a);
- (iii) any other document, information or particulars which it considered in making the decision in question; 30
- (iv) any additional reasons which it deems necessary to furnish to the Review Board.

#### Personnel Security Review Board

**40.** (1) The Minister must establish a Personnel Security Review Board consisting of— 35

(a) a serving or retired military law officer of the Defence Force who is a suitable person to serve on the Review Board by reason of his or her qualifications or experience;

(b) a serving or retired officer of the Defence Force who is charged with or sufficiently experienced in personnel matters of the Defence Force; and 40

(c) such other members as the Minister may determine.

(2) The Minister—

(a) must appoint one of the members of the Review Board as Chairperson; and

(b) may, subject to subsection (1), likewise appoint an alternate member for any member of the Review Board. 45

(3) A member of the Review Board and an alternate—

(a) are appointed for such period, but not exceeding three years, as the Minister may determine;

(b) who are not in the full-time service of the State, must be appointed at such remuneration and on such other conditions of service as the Minister, in consultation with the Minister of Finance, may determine; 50

(c) may, at the expiry of his or her term of office, be appointed again.

ngokwezokuphepha ngokwesigaba (4), angase ayekiswe nguNgqongqoshe ukusebenza eMnyangweni.

### **Ukwaziswa ngokutholakala umsulwa ngezokuphepha noma ukungaziswa**

**39.** (1) UNobhala wezokuVikela kufanele akhiphe isaziso esibhaliwe nesinezizathu zokutholakala bengemsulwa ngezokuphepha siye kubo bonke abasebenzi namalungu osekuthathwe izinqumo ngabo ngokwesigaba 37 (4). 5

(2)(a) Maqondana nendima (b), uNobhala wezokuVikela kufanele anike izizathu kubo bonke abatholakale bengemsulwa ngokwezokuphepha ngamazinga athize, nalabo abehliselwe ezingeni eliphansi, nokuhoxiswe ubumsulwa babo.

(b) Akukho muntu ovunyelwe ukuveza izindlela eziphikisana nobunhloli ezithathiwe, umthombo wolwazi noma umuntu obeyingxenywe yokuqoqwa noma ukukhishwa kolwazi maqondana nokuphenya abantu ngobumsulwa babo kwezokuphepha noma ukuveza ulwazana olungenza ukuba baziwe abaqoqi bolwazi. 10

(3) Akukho bumsulwa kwezokuphepha noma ngabe obezinga elithize obungenikwe muntu, buhoxiswe noma buyiswe ezingeni eliphansi ngaphandle kokunikwa ithuba kothintekile ukuba naye abeke uvo lwakhe ngalolodaba. 15

(4) (a) Ezinsukwini ezingu 14 emva kokuthola izizathu ezichazwe kwisigaba (2) (a), ilungu noma umsebenzi othintekile angasifaka isikhalo sakhe ngokunganikwa ubumsulwa ngokwezokuphepha, ukwehliselwa ezingeni eliphansi noma ukuhoxiswa kobumsulwa bakhe, loku angakuqondisa kuNobhala wezokuVikela nayo yonke imibhalo abona iyodingeka uma udaba seluphambi kweBhodi yokuBuyekeza. 20

(b) UNobhala wezokuVikela kungathi uma ethola isicelo esibhaliwe esiphuma kwilungu noma umsebenzi bese esandisa isikhathi esichazwe kwindima (a) ngesikhathi esiyizinsuku ezingu 14.

(c) UNobhala wezokuVikela kufuneka athi uma ethola isikhalo esichazwa kwindima (a) azise iBhodi lokuBuyekeza ngaso lesosikhathi— 25

- (i) ukungasemukeli isinqumo nayo yonke imibhalo yokweseka loko nokunye okungaba wusizo;
- (ii) izizathu ezichazwe kwisigaba (2) (a);
- (iii) nanoma imiphi eminye imibhalo, ulwazi noma imininingwane eyasetshenziswa ekuthatheni isinqumo; kanye. 30
- (iv) Nezinye izizathu azibona zidingekile ukuba izedlulisele kwiBhodi yokuBuyekeza.

### **IBhodi lokuBuyekeza ubumsulwa kwezokuphepha kubasebenzi**

**40.** (1) UNgqongqoshe kufanele asungule iBhodi lokubuyekeza ubumsulwa kwezokuphepha kubasebenzi elakhiwe ngabalandelayo— 35

(a) Isiphathimandla sezempi esisasebenza noma esesathatha umhlalaphansi esingumuntu ofanele ukuba kuleliBhodi lokuBuyekeza ngenxa yemfundo noma ulwazi lwaso olujulile;

(b) Isiphathimandla soMbutho wezokuVikela esisasebenza noma esesithathe umhlalaphansi esinolwazi olwanelwe ngezabasebenzi bezoMbutho wezokuVikela; futhi 40

(c) Namanye amalungu uNgqongqoshe angawabona efanele.

(2) UNgqongqoshe—

(a) kufanela aqoke elinye lamalungu eBhodi lokuBuyekeza njengosihlalo; 45

(b) kungathi ngokwesigaba (1), aqoke nelinye ilungu elizoshintshana nelungu leBhodi lokuBuyekeza.

(3) Ilungu leBhodi lokuBuyekeza nelishintshana naye—

(a) baqashwa isikhathi esingengaphezulu kweminyaka emithathu kuye ngokubona kukaNgqongqoshe; 50

(b) ngasebenzi ngokuphelele eMbusweni, kufanele aqashwe ngomholo nangamalungelo okusebenza ngendlela uNgqongqoshe ngokubonisana noNgqongqoshe wezeZimali abanganquma ngayo;

(c) kungathi uma kuphela isikhathi sakhe sokwenza lomsebenzi, aphinde aqashwe. 55

**Review by Review Board**

41. (1) The Review Board must review any objection referred to it in terms of section 39(4)(c) and may direct the Secretary for Defence to investigate any aspect under review further and to submit its findings and recommendations to the Review Board.

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(2) The Review Board may—

(a) confirm the determination in question; or

(b) set aside such determination and substitute any determination which could have been made by the Secretary for Defence.

(3) Section 39(2) and (3) applies with the necessary changes to any determination made by the Review Board in terms of this section.

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(4) The Secretary for Defence must amend or cancel the certificate referred to in section 37(5)(a) so as to reflect the determination made by the Review Board in terms of subsection (2).

**Inspector-General of Department to monitor Intelligence Division**

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42. The Inspector-General of the Department must monitor the personnel structures of, adherence to the law and procedures by and activities of the Intelligence Division.

**CHAPTER 7****COUNCIL OF DEFENCE AND OTHER COUNCILS****Establishment and composition of Council of Defence**

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43. (1) A Council of Defence is hereby established, which consists of—

(a) the Minister;

(b) the Deputy Minister of Defence, if one is appointed;

(c) the Secretary for Defence;

(d) the Chief of the Defence Force; and

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(e) any other person co-opted by the Minister.

(2) The Council of Defence conducts its business in accordance with such rules and procedures as the Minister may determine.

**Functions of Council of Defence**

44. (1) The Council of Defence may be consulted regarding any matter which might affect the functions which the Minister performs in respect of the Department and matters connected therewith.

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(2) Any recommendation which has been approved by the Defence Staff Council for submission to the Minister, must be submitted to the Council of Defence for consideration before being referred to the Minister for decision.

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(3) The proceedings and decisions taken at meetings of the Council of Defence must be recorded and retained as prescribed.

**Establishment and composition of Defence Staff Council**

45. (1) A Defence Staff Council is hereby established, which consists of—

(a) the Secretary for Defence;

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(b) the Chief of the Defence Force;

(c) all Chiefs of Divisions as determined by the Secretary for Defence and the Chief of the Defence Force by joint decision; and

(d) any other person who may be co-opted by joint decision of the Secretary for Defence and the Chief of the Defence Force.

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(2) The Defence Staff Council must conduct its business in accordance with such rules and procedures as the Minister may determine.

**Ukubuyekeza okwenziwa yibhodi lokubuyekeza**

41. (1) Ibhodi lokuBuyekeza kufanele libuyekeze noma yiziphi izikhalo ezilethwe phambi kwalo ngokwesigaba (39) (4) (c) kanti lingathuma uNobhala wezokuVikela ukuba aphenye ngaloko okubuyekwayo bese eletha okutholwa nguNobhala nezincomo zakhe kwiBhodi lokuBuyekeza. 5

(2) IBhodi lokuBuyekeza linga—

(a) khipha isiqiniseko ngokushiwo; noma

(b) lisihoxise isinqumo bese lethula noma yisiphi isinqumo ebesingathathwa nguNobhala wezokuVikela.

(3) Isigaba 39 (2) no (3) basebenza nezinguquko ezifanele kwizinqumo ezenziwa yiBhodi lokuBuyekeza maqondana nalesigaba. 10

(4) UNobhala wezokuVikela kufanele achibiyele noma akhansela isitifiketi okukhulunywa ngaso kwisigaba 37 (5) (a) ukuze kubonakale ukuzimisela ebelinako iBhodi lokuBuyekeza ngokwesigaba (2).

**UMhloli Jikelele woMnyango okufanele ahlole uMkhakha wezobuNhloli 15**

42. UMhloli Jikelele woMnyango kufanele ahlole ukuthi amazinga ehlukeni abasebenzi awulandela kangakanani umthetho ngokwenza okwenziwa kuMkhakha wezobuNhloli.

**ISAPHELA 7****UMKHANDLU WEZOKUVIKELA KANYE NEMINYE IMIKHANDLU 20****Ukusungulwa nendlela owakhiwe ngayo umkhandlu wezokuVikela**

43. (1) Lapha kusungulwa uMkhandlu wezokuVikela onabalandelayo—

(a) UNgqongqoshe;

(b) Isekela lika Ngqongqoshe wezokuVikela uma selaqokwa;

(c) UNobhala wezokuVikela; 25

(d) UMkhuzi woMbutho wezokuVikela; kanye

(e) Nanoma yimuphi omunye umuntu oqokwe uNgqongqoshe.

(2) UMkhandlu wezokuVikela wenza imisebenzi yawo ngokulandela iMithetho nenqubo ebekwa uNgqongqoshe.

**Imisebenzi yoMkhandlu wezokuVikela 30**

44. (1) UMkhandlu wezokuVikela ungathintwa maqondana nanoma iluphi udaba olungase luthinte imisebenzi eyenziwe nguNgqongqoshe maqondana noMyango nezindaba eziphathelene nawo.

(2) Noma yisiphi isinqumo esamukelwa ngumkhandlu wabasebenzi wezokuVikela ukuba sedluliselwe kuNgqongqoshe, kufanele sedluliselwe kuMkhandlu wezokuVikela kuqala ukuze usibhekisise ngaphambi kokuba siye kuNgqongqoshe athathe isinqume ngaso. 35

(3) Inqubo nezinqumo ezithathwe emhlanganweni womkhandlu wezokuVikela kufuneka ziqoshwe phansi futhi zigcinwe ngendlela efanale.

**Indlela osungulwe nowakhiwe ngayo uMkhandlu waBasebenzi bezokuVikela 40**

45. (1) Lapha kusungulwa uMkhandlu wabasebenzi bezokuVikela onabalandelayo—

(a) UNobhala wezokuVikela;

(b) UMkhuzi woMbutho wezokuVikela;

(c) Bonke abaPhathi bemikhakha njengoba kubeka uNobhala wezokuVikela ethatha isinqumo ngokuvumelana noMkhuzi woMbutho wezokuVikela; 45 kanye

(d) Nanoma yimuphi omunye umuntu ongase afakwe ngesinqumo sikaNobhala wezokuVikela benomphathi woMbutho wezokuVikela.

(2) UMkhandlu waBasebenzi bezokuVikela kufanele uziphathele izindaba zawo ngokwemiMithetho nenqubo ebekwe uNgqongqoshe. Imisebenzi yoMkhandlu wabasebenzi bezokuVikela. 50

### Functions of Defence Staff Council

46. The Defence Staff Council must advise the Secretary for Defence and the Chief of the Defence Force on any matter within their respective competencies.

### Other councils that may be established

47. (1) The Secretary for Defence, the Chief of the Defence Force and any Chief of a Division may establish such other councils as may be necessary. 5

(2) Any council established under subsection (1) must be constituted by the Defence Staff Council and perform such functions as the Defence Staff Council may determine.

(3) All councils which were in existence immediately before the commencement of this Act must be regarded as having been established under this section. 10

### Establishment of Reserve Force Council

48. (1) The Minister must establish a Reserve Force Council.

(2) The Minister must appoint no fewer than nine and no more than 18 persons to the Reserve Force Council and must designate one of them as chairperson.

(3) The Council must conduct its business in accordance with a constitution adopted by it and approved by the Minister. 15

(4) The Council is a consultative and advisory body representing the Reserve Force in order to promote and maintain that Force as an integral part of the Defence Force and must be consulted on any legislation, policy or administrative measures affecting the Reserve Force. 20

(5) The Minister, Secretary for Defence and Chief of the Defence Force may commission the Council to execute any task or programme or to investigate any matter pertaining to the Reserve Force or its interests.

(6) The Council does not have any powers of command.

(7) The Minister may make such regulations regarding the Reserve Force Council as may be required. 25

## CHAPTER 8

### LIMITATIONS ON RIGHTS OF MEMBERS OF DEFENCE FORCE

#### Application

49. This Chapter applies to all members of the Defence Force and employees. 30

#### Limitations of rights

50. (1) Subject to the Constitution, the rights of members or employees may be restricted in the manner and to the extent set out in subsections (2) to (7).

(2) To the extent necessary for purposes of military security and safety of members of the Defence Force and employees, such members and employees may from time to time be subjected to— 35

- (a) searches and inspections;
- (b) screening of their communications with people in or outside the Department;
- (c) security clearances which probe into their private lives; and
- (d) shared accommodation or privation in accordance with the exigencies of military training and operations. 40



**Imisebenzi yoMkhandlu waBasebenzi bezokuVikela**

46. UMkhandlu waBasebenzi bezokuVikela kufanele weluleke uNobhala wezokuVikela noMphathi woMbutho wezokuVikela nganoma uluphi udaba onamakhono okuluphatha.

**Eminye imikhandlu engase isungulwe**

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47. (1) UNobhala wezokuVikela, uMphathi woMbutho wezokuVikela nanoma yimuphi uMphathi woMkhakha lomNyango bangayisungula eminye imikhandlu uma kunesidingo.

(2) Noma yimuphi umkhandlu osungulwe ngaphansi kwesigaba (1) kufanele wakhiwe nguMkhandlu waBasebenzi bezokuVikela futhi wenze imisebenzi enqunywa nguMkhandlu waBasebenzi bezokuVikela. 10

(3) Yonke imikhandlu eyayivele ikhona ngaphambi kokuqala kwaloMthetho kufuneka ithathwe njengesungulwe ngaphansi kwalesigaba.

**Ukusungulwa koMkhandlu woMbutho wamaRizevu**

48. (1) Kufuneka uNgqongqoshe asungule uMkhandlu woMbutho wamaRizevu. 15

(2) Kufuneka uNgqongqoshe aqoke abantu abayinani elingengaphansi kuka 9 futhi elingekho ngaphezu kuka 18 ukuba bangene eMkhandlwini woMbutho wamaRizevu bese ekhetha oyedwa kubona ukuba abe ngusihlalo.

(3) Umkhandlu wenze imisebenzi yawo njengoba kubekwe kuMthethosisekelo ohlanganiswe yiwo wemukelwa uNgqongqoshe. 20

(4) Umkhandlu uyinhlango yokweluleka nokubonisana emele uMbutho wamaRizevu ukuze iwusize uhlale usesimeni esifanele futhi uyingxenywe yoMbutho wezokuVikela, futhi kufuneka uthintwe nnganoma yimuphi uMthetho nokuphatha okuthinta uMbutho wamaRizevu.

(5) UNgqongqoshe, uNobhala wezokuVikela noMkhuzi woMbutho wezokuVikela bangawuthuma uMkhandlu ukuba wenze noma yimuphi umsebenzi noma uhlelo noma uphenyo lwanoma yiluphi udaba oluphathelele noMbutho wamaRizevu noma izindaba zawo. 25

(6) Umkhandlu awunawo amandla okushaya imiMthetho.

(7) UNgqongqoshe angayakha imiMthetho ephathelene nomkhandlu woMbutho wamaRizevu uma kunesidingo. 30

**ISAHLUKO 8****UKUFINEYZWA KWAMALUNGELO AMALUNGU OMBUTHO WEZOKUVIKELA****Indlela okusebenza ngayo**

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49. Lesahluko sisebenza kuwo wonke amalungu oMbutho wezokuVikela nabasebenzi bawo.

**Ukufineyza kwamalungelo**

50. (1) NgokoMthethosisekelo, amalungelo amalungu noma abasebenzi angafineyza ngendlela ebekwe kwisigaba (2) kuya ku (7). 40

(2) Loku kungenzeka ngendlela okunesidingo ngayo maqondana nokuphepha koMbutho wezokuVikela, amalungu nabasebenzi bawo, ngakho-ke lawomalungu nabasebenzi kungahlalahlale kulindeleke ukuba babhekane nokulandelayo—

- (a) Ukusesha nokuphenywa;
- (b) Ukuphenywa kokuxhumana kwabo nabantu abangaphakathi nabangaphandle koMnyango; 45
- (c) Ukubhekwa kwempilo yabo ukuthi kayinazinto ezingadingeki yini okungenza nokuthi bafakwe umshini wokuvivinywa ukuthi bakhuluma iqiniso yini; kanye
- (d) Nokuhlala nabanye emagunjini okulala okuhambisana nokuqeqeshelwa ezobusotsha. 50

(3) To the extent necessary for security and the protection of information, members of the Defence Force and employees may be subjected to restrictions in communicating any kind of information, and where appropriate, may be subjected to prohibition of communication of information.

(4) To the extent necessary for military discipline, the right of members of the Regular Force, serving members of the Reserve Force and members of any auxiliary service to peaceful and unarmed assembly, demonstration, picketing and petition, may be subjected to such restrictions as may be prescribed. 5

(5) (a) Entry into, remaining in and movement in and around designated military areas may be restricted to authorised persons and subject to such conditions as may be prescribed. 10

(b) Members of the Defence Force may, while in service, be required and ordered to serve, move or reside anywhere in the Republic and the rest of the world.

(6) To the extent necessary for national security and for maintaining the Defence Force as a structured and disciplined military force, the rights of members of the Regular Force, serving members of the Reserve Force and members of any auxiliary force to join and participate in the activities of trade unions and other organisations may be subjected to such restrictions as may be prescribed. 15

(7) To the extent necessary for national security, access to information in the Department may be restricted. 20

(8) No member of the Regular Force—

(a) may serve as a member of Parliament or any other legislative body;

(b) may be a member of the Reserve Force and *vice versa*; and

(c) may be a member of the South African Police Service and *vice versa*.

## CHAPTER 9

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### EMPLOYMENT IN DEFENCE FORCE

#### Application

51. Unless the contrary appears from the context, this Chapter applies to members of the Regular Force and to members of the Reserve Force.

#### Regular Force

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52. (1) The Regular Force consists of persons not younger than 18 years of age and not older than 65 years, whether in a permanent or temporary capacity, and is organised in the manner prescribed.

(2) The terms and conditions of service in the Regular Force as well as the conditions and procedures regarding enrolment, appointment, promotion and transfer, but not remuneration, are as prescribed. 35

(3) (a) The relevant provisions of any applicable law relating to the granting of pensions and related benefits, as well as any rules and regulations made in terms of or under those laws, apply to members of the Regular Force.

(b) The conditions contemplated in subsection (2) may provide for the payment of gratuities upon discharge to specified categories of members. 40

(c) Different conditions of service may be prescribed under subsection (2) for members of the Regular Force.

(d) Any member enrolled in the Regular Force must serve therein until he or she has been officially discharged therefrom. 45

(4) (a) No person may enrol in the Regular Force unless he or she is a citizen.

(3) Loku kuyokwenziwa ngendlela okunesidingo ngayo maqondana nokuphepha nokuvikelwa kolwazi. Amalungu oMbutho wezokuVikela nabasebenzi bakhona kungenzeka afinyezwe amalungelo abo okukhipha ulwazi oluthile, kanti uma kunezimo ezithize bangavinjwa nokuvinjwa bangakhiphi lwazi nhlobo.

(4) Uma kunesidingo sokuqondiswa kwezigwegwe kwezamasotsha, amalungelo okubhikisha oMbutho Osebenza Ngokuphelele, amalungu asebenzela uMbutho wezokuVikela namalungu anoma yimiphi eminye imisebenzi eyimixhantela, angafinyezwa uma kudingekile. 5

(5) (a) Ukungena, ukuhlala nokuhamba ngokukhululeka endaweni eyaziwa njengeyamasotsha kungenziwa ngabathize abanamagunya okwenzenjalo, kuye ngokuthi ihamba ifikephi invume yabo. 10

(b) Amalungu oMbutho wezokuVikela angalindeleka ukuba kuthi esasebenzela lombutho ayosebenza noma ayohlala kwenye indawo ekhona kuleli noma ekwamanye amazwe omhlaba.

(6) Uma kunesidingo maqondana nokuphepha kwezwe kanye nokugcina uMbutho wezokuVikela uhlale uwumbutho wezamasotsha asemgqeni, angafinyezwa amalungelo okujoyina izinyunyana nezinye izinhlangano ezifana nazo uma kunesidingo kumalungu oMbutho oJwayelelekile nalawo asebenza ngaphansi koMbutho wamaRizevu nawanoma yimiphi eminye imisebenzi eyimixhantela. 15

(7) Uma kunesidingo maqondana nokuphepha kwezwe, kungenziwa ukuba ulwazi oluphathelele noMnyango lungatholakali kalula. 20

(8) Akukho malungu oMbutho wezokuVikela angenza okulandelayo —

(a) ukuba ngamalungu ePhalamende noma yisiphi esinye isiShayamthetho;

(b) ukuba ngamalungu oMbutho wamaRizevu; noma

(c) ukuba ngamalungu oMbutho wamaPhoyisa aseNingizimu Afrika noma isimo siphendukezelwe. 25

## ISAHLUKO 9

### UKUQASHWA EMBUTHWENI WEZOKUVIKELA

#### Indlela okusebenza ngayo

51. Ngaphandle uma okuqukethwe kwehlukile, okuqukethwe kulesahluko yikona okuyosebenza kumalungu oMbutho Osebenza Ngokuphelele nakumalungu oMbutho wamaRizevu. 30

#### Umbutho Osebenza Ngokuphelele

52. (1) UMbutho Osebenza ngokuPhelele uqukethe abantu abangengaphansi kweminyaka eyi-18 nabangengabadala kuneminyaka engama-65, abangabe basebenza unomphelo noma ngokwesikhashana, futhi kuhlelwe ngendlela ebekiwe. 35

(2) Imiyalelo kanye nezimiselo zensebenzo yoMbutho oseMbuthweni ngokuPhelele kanye nezimiselo nezinqubo zokwenza ezithinta ukubuthwa, ukubekwa, ukukhushulelwa esikhundleni esiphezulu nokwedluliselwa kepha hhayi inkokhelo kunjengoba kubekiwe. 40

(3) (a) Izimisomigomo ezifanele kanye neminye imithetho ephathelene nokunikezwa kwezimpesheni kanye nezinsizakalo ezihlobene, kanye nanoma iyiphi imithetho nezimiselo eyenziwe ngaphansi noma ngokwaleymithetho iyasebenza emalungwini oMbutho oseMbuthweni ngokuPhelele.

(b) Izimiso ezicetshwa esigabeni esingaphansi (2) zingalungiselelwa ukukhokhelwa kwezimali ezinikezwa ngokwensebenzo eyenziwe, iyasebenza ngenkathi kudedelwa imikhakha ethile yamalungu. 45

(c) Izimiso ezahlukeni zensebenzo zingabekwa ngaphansi kwesigaba esingaphansi (2) nemikhakha eyehlukeni yamalungu oMbutho oseMbuthweni ngokuPhelele.

(d) Noma yiliphi ilungu elibuthwe eMbuthweni oseMbuthweni oPhelele kufanele lisebenze lapho lize lidedelwe ngokomthetho lapho. 50

(4) (a) Akukho muntu ongabuthwa eMbuthweni Osebenza Ngokuphelele ngaphandle kokuthi abe yisakhamuzi.

(b) If a need for a specific service or capacity exists which cannot be filled by any other reasonable means, the Minister may authorise the contracting of a non-citizen in a temporary capacity for a period not exceeding three years, renewable once for a period not exceeding three years.

(5) (a) A member of the Regular Force must place the whole of his or her time at the disposal of the State, and may not perform remunerated work or engage himself or herself to perform work outside his or her employment unless prior authority has been obtained from the Secretary for Defence. 5

(b) The Secretary for Defence may only give such authorisation if he or she is satisfied that there will be no prejudice to the Department. 10

(6) Should a Regular Force member be granted permission to embark on a separate career while employed in the Defence Force, the interests of the State take precedence when conflict arises between the Defence Force career on the one hand and the other career on the other hand, and the member concerned must resign or temporarily vacate his or her position in his or her other career if so directed by the Secretary for Defence. 15

(7) No member of the Regular Force may—

- (a) further or prejudice the political interest of any political party in the performance of his or her functions;
- (b) be politically partisan, or express any party-political allegiance, in the performance of his or her functions; or 20
- (c) hold any position other than that of ordinary member in any political party.

### Reserve Force

53. (1) The members of the Defence Force who immediately before the commencement of this Act were serving voluntarily in a component known as the Citizen Force or the Commandos, must be regarded as having been enrolled as members of the Reserve Force in terms of this section, and any rights, privileges, duties, capacities and legal position not excluded by this Act that applied to them immediately before the commencement of this Act, apply to them for the remainder of the predetermined period of the said voluntary service. 25

(2) The terms and conditions of service as well as conditions for and procedures regarding enrolment, appointment, promotion, transfer and termination of service, but excluding remuneration, in the Reserve Force must be prescribed. 30

(3) All benefits and allowances accruing to a member of the Reserve Force, including a travel allowance scheme, must be prescribed.

(4) Any member of the Reserve Force may, on a voluntary basis, render service with or without remuneration in addition to service stipulated in his or her contract of service under such terms and conditions as may be prescribed. 35

(5) A member of the Reserve Force, while in service, may not—

- (a) further or prejudice the political interest of any political party in the performance of his or her functions; 40
- (b) be politically partisan, or express any party-political allegiance, in the performance of his or her functions;
- (c) perform any function pertaining to any political position he or she may hold.

(6) The Reserve Force is organised, and its members are trained and render service at headquarters, or in services, formations, units, personnel musters or military training institutions. 45

(7) Any member of the Reserve Force who wishes to undergo training which cannot be fitted in within the bounds of normal Reserve Force service, may, if he or she meets the requirements for such training, enter into a specific contract with the Defence Force to undergo such training. 50

(b) Uma isidingo sensebenzo ethile noma sokwazi okuthile esingakwazi ukugcwaliswa nganoma iyiphi enye indlela emukelekile, uNgqongqoshe angagunyaza ukuthathwa ngenkontileka songesona isakhamuzi sesikhashana isikhathi esingedluli iminyaka emithathu, esingavuselelwa kanye esikhathini esingengaphezu kweminyaka emithathu. 5

(5) (a) Ilungu loMbutho Osebenza Ngokuphelele kufanele libeke sonke isikhathi salo ekusebenzeleni uMbuso, futhi alivunyelwe ukwenza umsebenzi okhokhelwayo noma ukuthi lizibandakanye ekwenzeni umsebenzi onje ngaphandle kwalapho liqashwe khona, ngaphandle kwalapho igunya litholwe ngaphambili kuMbutho wezokuVikela, inqobo nje ukuthi (b) uNobhala wezokuVikela anganikeza igunya elinje uma ngabe enelisiwe ukuthi akuzukuba nokuphatheka kabi eMnyangweni. 10

(6) Uma kungathi ilungu loMbutho oseMbuthweni Osebenza Ngokuphelele linikezwe invume yokuqala umsebenzi oweHlukile ngenkathi liqashwe eMbuthweni wezokuVikela, izintshisekelo zoMbuso ziza ngaphambili uma kuvela ukungqubuzana phakathi koMbuso wezokuVikela ngakolunye uhlangothi kanye nomunye umsebenzi owenziwa ngakolunye yihlangothi, futhi ilungu elithintekayo kufanele lesule emsebenzini noma lisuke esikhundleni salo okwesikhashana emsebenzini walo omunye uma liyalelwa ukuba lenze kanjalo nguMbutho wezokuVikela. 15

(7) Akunalungu loMbutho wezokuVikela—

- (a) elingaqhubekisa noma lilimaze izintshisekelo zeqembu lezombusazwe ekwenzeni kwalo imisebenzi yalo; 20
- (b) elingabaseqenjini elithatha uhlangothi ngokwezombusazwe, noma liveze ukuthobela kwanoma yikuphi kwezamaqembu ezombusazwe, ekwenzeni kwalo imisebenzi yalo; noma
- (c) elingaba kunoma yisiphi isikhundla ngaphandle kwaleso selungu elejwayelekile kunoma yiliphi iqembu lezombusazwe. 25

#### UMbutho wamaRizevu

53. (1) Amalungu oMbutho wezokuVikela ngaphambi kokuqala kwaloMthetho ayesebenza ngokuzithandela emkhakheni owaziwa ngokuthi nguMbutho weZakhamuzi noma amaKhomando kufanele athathwe njengamalungu abuthwe ngokwalesigaba, futhi wonke amalungelo, okuvunyelwe, imisebenzi, izikhundla kanye nezikhundla zomthetho okungakhishelwanga ngaphandle yiloMthetho masishane ngaphambi kokuqala kwaloMthetho, ebekusebenza kuwo masishane ngaphambi kokuqala kwaloMthetho, kuyosebenza kuwo kunsalela yesikhathi esinqunywe ngaphambili sokusebenza ngokuzithandela okushiwoyo. 30 35

(2) Imiyalelo kanye nezimiselo zomsebenzi, kanye nezimiselo nezinqubo zokwenza mayelana nokubuthwa, ukuqashwa, ukukhushulwa esikhundleni nokuyosebenza kwenye indawo nokuqedwa kwensebenzo, kepha kubeka ngaphandle inkokhelo njengoba kubekiwe, kunjengoba kubekiwe.

(3) Konke ukusizakala nezimali ezivunyelwe okuqongelekela ilungu loMbutho wamaRizevu, kuhlenganisa nohlelo lwezimali ezivunyelwe zokuhamba, kunjengoba kubekiwe. 40

(4) Noma yiliphi ilungu loMbutho wezokuVikela, ngokokuzithandela linganikeza usizo olunenkokhelo noma olungenankokhelo ngaphezu kwensebenzo echazwe enkontilekeni yalo yomsebenzi engahle ibekwe. 45

(5) Ilungu loMbutho wamaRizevu ngenkathi lisesembenzini—

- (a) alinakuqhubekisa noma lilimaze noma yiziphi izintshisekelo zanoma yiliphi iqembu lezombusazwe ekwenzeni kwalo umsebenzi walo.
- (b) alinakukhetha ngokweqembu lezombusazwe, noma liveze noma yikuphi ukuthobela iqembu lezombusazwe, ekwenzeni kwalo imisebenzi yalo; noma
- (c) elingenza noma yimuphi umsebenzi ophathelene nanoma yisiphi isikhundla kwezombusazwe elingahle libenazo. 50

(6) UMbutho samaRizevu uhleliwe, futhi amalungu awo aqeqeshiwe futhi asebenza ezindaweni zakomkhulu, ezinsebenzweni, ezinhlelweni ezithile zamasosha, ezikhungweni, ekuqoqweni kwabasebenzi ukuba bahlolwe noma ezindaweni zasemasosheni zokuqeqeshwa njengoba kudingekile. 55

(7) Noma yiliphi ilungu loMbutho wamaRizevu elifisa ukungenela ukuqeqeshwa okukhethekile okungenakufakwa emingceleni eyejwayelekile yensebenzo yoMbutho wamaRizevu, uma ngabe lihlangebeza izidingo zokuqeqeshwa okunje, lingangena enkontilekeni ekhethekile yoMbutho wezokuVikela ngenxa yokungenela ukuqeqeshwa okunje. 60



(8) Every member of the Reserve Force must be provided with the basic prescribed uniform, distinctive marks, badges and accoutrements at State expense and must maintain these during his or her period of service.

#### Commissioned officers in Defence Force

54. (1) (a) Subject to subsection (2), the President may confer a permanent commission on any member of the Defence Force. 5

(b) A member upon whom a commission has been conferred, must be issued with a Deed of Commission bearing the President's signature or a replica thereof.

(2) In order to qualify for a permanent commissioned appointment in the Defence Force, a person must— 10

- (a) swear or declare allegiance to the Republic;
- (b) be a citizen;
- (c) relinquish any other citizenship he or she may have;
- (d) have served successfully on probation as an officer with a temporary commission for at least one year; 15
- (e) successfully complete specific prescribed training;
- (f) never have been convicted and imprisoned without the option of a fine for a criminal offence, except one for which he or she has been granted amnesty in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995); 20
- (g) be a fit and proper person to serve and must have a trustworthy and exemplary character; and
- (h) comply with the prescribed security grading requirements.

(3) (a) Only the President may cancel a permanent commission, but such a commission may not be cancelled without the holder thereof being notified in writing of any complaint or charge made against him or her and of any action proposed to be taken in respect thereof, nor without him or her being called upon to show cause in relation thereto. 25

(b) Where the holder of a permanent commission cannot be traced after a diligent search that is appropriate in the circumstances, the commission may be cancelled without such notification. 30

(4) The Minister may confer a temporary commission in the Defence Force on any person who is a member or who is eligible to become a member of the Defence Force, if such person complies with the requirements for such appointment and if there is an appropriate post in which such person can serve. 35

(5) All persons given a temporary commission hold their commissions for such period as the Minister determines.

(6) (a) An officer may by notice in writing request to be relieved of his or her commission, and any such request takes effect three months after the date upon which it is approved or on such earlier date as may be approved by the Minister. 40

(b) A former officer is not, in consequence of the withdrawal of his or her commission, exempt from—

- (i) any service or training for which he or she may be liable in terms of this Act unless exempted by the Exemption Board; and
- (ii) the repayment of any money stipulated in a contract pertaining to any education or training he or she may have undergone or may be in the process of undergoing at State expense. 45

(7) The commission of any officer terminates and must be regarded as having been cancelled—

(8) Wonke amalungu oMbutho wamaRizevu kufanele anikezwe ngezindleko zoMbuso umfaniswano oyisisekelo obekiwe, izimpawu ezigqamisayo, amabheji kanye nokunye okusetshenziswa ngamasosha okungezona izimpahla futhi kufanele likugcine lokhu ngesikhathi salo sokusebenza.

### Iziphathimandla ezijutshwe kuMbutho wezokuVikela

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54. (1) (a) Ngaphansi kwesigaba esingaphansi kuka (2), uMongameli angagunyaza ukubekwa esikhundleni ukuze kwenziwe umsebenzi othile okungenakupheliwa kunoma yiliphi ilungu loMbutho wezokuVikela.

(b) Ilungu elinikezwe isikhundla sokwenza umsebenzi othile esingenakupheliwa kufanele linikezwe iNcwadi yokuNikezwa isikhundla enesiginesha kaMongameli noma 10 umfanekiso wayo ofana nse nayo.

(2) Ukuze abe sesimweni sokulungela ukuthola ukunikezwa isikhundla sokwenza umsebenzi othile eMbuthweni wezokuVikela, umuntu kufanele—

- (a) afunge ukuthobela iRiphabhulikhi; 15
- (b) abe yisakhamuzi; 15
- (c) ehlukane nanoma yibuphi ubulungu bokuba yisakhamuzi selinye izwe angahle abe nakho;
- (d) abe ngosebenze ngempumelelo ngesikhathi esabhekwa ukuthi angawenza yini umsebenzi okungenani unyaka owodwa; 20
- (e) aqede ngempumelelo ukuqeqeshwa okuthile okubekiwe; 20
- (f) abe ngongakaze atholwe enecala noma agqunywe ejele ngaphandle kokukhetha ukukhokha inhlawulo yemali ngenxa yecala lobulelesi, ngaphandle kwalelo anikezwe ukuxolelwa ngalo ngokoMthetho wePromotion of National Unity and Reconciliation ka-1995 (uMthetho ongunombolo 34 ka-1995); 25
- (g) abe ngumuntu ongumqemane nofanele ukusebenza futhi abe ngumuntu owethembekayo noyisibonelo; futhi
- (h) alandele izidingo ezibekiwe zokutholakala emsulwa enganamarekhodi mayelana nezokuphepha.

(3) (a) NguMongameli kuphela ongesula ukubekwa esikhundleni ukuze kwenziwe umsebenzi othile njengoba kufisa uMongameli. Ukubekwa esikhundleni okunje akunakwesulwa ngaphandle kokuthi onikezwe sona abhalelwe aziswe nganoma isiphi isikhalo noma icala elibekiwe ngaye kanye nanganoma yisiphi isinyathelo esihlongozwa ukuba sithathwe mayelana nalokho, nangaphandle kokuthi abizwe ukuba akhonjiswe izizathu mayelana nalokho. 30 35

(b) Uma umuntu onikezwe isikhundla sokwenza umsebenzi othile esingenakupheliwa kungenakutholwa umkhondo wakhe ngemuva kokucingwa okwenzisiwe okungokufanele kuleso simo, ukunikezwa kwesikhundla, lesokungesulwa ngaphandle kwesaziso esinje.

(4) UNgqongqoshe anganikeza isikhundla sesikhashanasokwenza umsebenzi othile eMbuthweni wezokuVikela kunoma yimuphi umuntu olilungu noma olungele ukuba yilungu loMbutho wezokuVikela, uma umuntu onjalo egcwalisa izidingo zokubekwa okunje futhi uma kunesikhundla esifanele umuntu onje angasebenza kuso. 40

(5) Bonke abantu abanikezwe izikhundla zesikhashana sokwenza umsebenzi othile bahlala ezikhundleni isikhathi esinqunywe nguNgqongqoshe. 45

(6) (a) Umphathisikhundla angathi ngokwesaziso esibhaliwe acele ukuba ethulwe ukuba sesikhundleni futhi noma yisiphi isicelo esinje sisebenza kuphela ezinyangeni ezintathu ngemuva kosuku esivunye ngalo noma ngosuku olungaphambili olungahle luvunyelwe nguNgqongqoshe.

(b) Umphathisikhundla owayesesikhundleni ngaphambili akuthi ngenxa yokuhoxiswa kwesikhundla sokwenza umsebenzi othile akhululwe. 50

- (i) kunoma yikuphi ukusebenza noma ukuqeqeshwa afanele ukukwenza ngokwaloMthetho ngaphandle kokuthi likhululwe yiBhodi lokuKhulula; futhi
- (ii) lingahle liqhubeke lizithole lifanele libuyisele noma yiziphi izimali ezichazwe enkontilekeni ephathelene nanoma yikuphi ukufunda noma ukuqeqeshwa angahle abe ukwenzile noma asesimweni sokukwenza ngezindleko zoMbuso. 55

(7) Ukubekwa esikhundleni sokwenza umsebenzi othile kwanoma yimuphi umphathisikhundla kuyaphela noma kufanele kuthathwe njengokwesuliwe—

- (a) on the date on which a sentence of cashiering imposed on him or her is confirmed;
- (b) if any sentence of imprisonment without the option of a fine is imposed on him or her by a competent civilian court, and in the event of an appeal, upon the confirmation of such sentence. 5

(8) (a) The appointment in the Defence Force of any person whose commission has been cancelled in terms of subsection (7) must be regarded as having been terminated simultaneously with such cancellation.

(b) The appointment in the Defence Force of any person whose commission has been cancelled in terms of subsection (3), terminates on such cancellation if such appointment was made by virtue of the commission conferred, and may be terminated subject to any terms and conditions governing such appointment, but nothing contained in this section may be construed as relieving or exempting such person from liability to render service in terms of this Act. 10

(9) Officers who have retired from the Defence Force and while still in service held permanent commissions, may retain the use of their rank after they have so retired and are no longer in service, but must append the appellation "Rtd" whenever it is used. 15

(10) Commissioned officers from other countries who are attached to the Defence Force by means of temporary appointment in terms of this Act are entitled to all privileges bestowed on commissioned officers in the Defence Force by virtue of their rank. 20

#### **Pay, salaries and entitlements**

55. (1) Members of the Regular Force and Reserve Force must receive such pay, salaries and entitlements including allowances, disbursements and other benefits in respect of their service, training or duty in terms of this Act as may from time to time be agreed upon in the Military Bargaining Council. 25

(2) If no agreement contemplated in subsection (1) can be reached in the Military Bargaining Council, the Minister may, after consideration of any advisory report by the Military Arbitration Board and with the approval of the Minister of Finance, determine the pay, salaries and entitlements contemplated in that subsection. 30

#### **Protection of members on active service**

56. (1) For the purposes of this section "member" includes an employee deployed with the Defence Force.

(2) (a) Where a member of the Defence Force has been captured or has gone missing and the member's commanding officer is satisfied that the member's capture or absence arose from the performance of his or her duties while rendering services in terms of this Act, such member must be regarded to be still serving in the Defence Force for all purposes until the day on which he or she again reports for duty or on which his or her death is confirmed or on which a competent court issues an order whereby the death of such person is presumed. 35 40

(b) The pay, salary and entitlements accruing to a member during his or her captivity or other absence contemplated in paragraph (a) must be paid to a beneficiary designated by the member concerned.

(c) The Chief of the Defence Force must take the necessary steps to ensure that in respect of every member of the Defence Force there is at all times a record of the particulars of the beneficiary designated by such member for purposes of paragraph (b). 45

(d) A member of the Defence Force may at any time designate another person in the place of the person designated for purposes of paragraph (b) but must ensure that any change in designation is notified to the Chief of the Defence Force in writing.

(a) ngosuku okuqinisekiswa ngalo isigwebo esibekwe kuye sokuxoshwa embuthweni ngenxa yehlazo.

(b) uma noma yisiphi isigwebo sokugqunywa ejele ngaphandle kokukwazi ukukhetha ukukhokha inhlawulo sibekwe kuye yinkantolo yabangekho emasotsheni efanele, futhi uma ngabe kunesicelo sokubonelelwa, ngesikhathi sokuqiniswa kwesigwebo esinje. 5

(8) (a) Ukubekwa eMbuthweni wezokuVikela kwanoma yimuphi umuntu okunikezwa kwakhe isikhundla sokwenza umsebenzi othile kwesuliwe ngokwesigaba esingaphansi (7) kufanele kuthathwe njengokuqedwe ngasikhathi sinye nokwesulwa okunje. 10

(b) Ukubekwa eMbuthweni wezokuVikela kwanoma yimuphi umuntu okubekwa kwakhe esikhundleni sokwenza umsebenzi othile kwesuliwe ngokwesigaba esingaphansi kuka (3), kuyaphela ngokwesulwa okunje uma ngabe ukubekwa okunje kwakwenziwe ngenxa yokunikezwa kwesikhundla, futhi kungaqedwa ngaphansi kwanoma yiyiphi imiyalelo nezimiselo eziphethe ukubekwa okunje, kepha akukho lutho oluqukethwe kulesi sigaba okumele kuthathwe njengokusiza noma okukhulula umuntu onje ekulindleleni kokuthi anikeze insebenzo ngokwaloMthetho. 15

(9) Abaphathizikhundla asebethathe umhlalaphansi eMbuthweni wezokuVikela futhi okuthe ngenkathi besasebenza babe besezikhundleni zokwenza imisebenzi ethile, bangacina ukusetshenziswa kwezikhundla zabo ngemuva kokuba behathe umhlalaphansi onje futhi bengasasebenzi, kepha kufanele bathasisele isihloko esithi "Rtd" njalo uma sisetshenziswa. 20

(10) Abaphathisikhundla abanikezwe izikhundla zokwenza umsebenzi othile abaqhamuka kwamanye amazwe abafakwe eMbuthweni wezokuVikela ngokwesikhashana ngokwaloMthetho banegunya elinikezwa abaphathisikhundla abaseMbuthweni wezokuVikela ngokwesikhundla sabo. 25

### **Inkokhelo, amaholo namanye amalungelo**

55. (1) Amalungu oMbutho oseMbuthweni ngokuPhelele kanye nawoMbutho kufanele athole inkokhelo, amaholo kanye nokuyizimfanelo okufaka phakathi izimali ezivunyelwe, izinkokhelo kanye nezinye izinsizakalo mayelana nensebenzo, ukuqeqeshwa noma umsebenzi wawo ngokwaloMthetho njengoba kungahle kuvunyelwane ngakho eMkhandlwini wokufinyelela kwiziVumelwano waseMasotsheni. 30

(2) Uma kungekho zivumelano ezichazwe kwisigaba (1) okungafinyelelwa kuzo kuMkhandlu wokufinyelela kwiziVumelwano eMasotsheni, uNgqongqoshe kungathi uma esebhekisise umbiko wokwelulekwa ophuma kwiBhodi yokuXazulula iziNkinga eMasotsheni, kuthi uma evumelana noNgqongqoshe wezeZimali, akwazi ukunquma amaholo, inkokhelo nezikhundla ezibekwe kulesosigaba. 35

### **Ukuvikelwa kwamalungu asebenza ngokuphelele emasotsheni uma esemsebenzini**

56. (1) Ngokuqondene nalesigaba "ilungu" lisho nomsebenzi oqashwe nguMbutho wezokuVikela. 40

(2) (a) Lapho ilungu loMbutho wezokuVikela ngokombono womphathisikhundla olengamele lithunjiwe noma liduke ngenkathi lenza umsebenzi eliqashelwe wona ngokwaloMthetho, ilungu elinje kufanele lithathwe mayelana nazo zonke izinhloso, njengelisasebenza eMbuthweni wezokuVikela kuze kube usuku eliyophinde lifike ngalo emsebenzini noma usuku ukufa kwalo okuyiqiniswa ngalo noma usuku inkantolo efanele ekhipha ngalo umyalo okuyothi ngawo ukufa komuntu onje kucatshangelwe. 45

(b) Inkokhelo, iholo kanye nokuyizimfanelo okuqongelelekela ilungu ngesikhathi sokuthunjwa kwalo noma okunye ukungabikho okucetshwa esigabeni kufanele kukhokhelwe okhonjwe yilungu elithintekayo. 50

(c) UMkhuzi woMbutho wezokuVikela kufanele athathe izinyathelo ezifanele ukuqinisekisa ukuthi ngalelo nalelo lungu loMbutho wezokuVikela kukhona ngaso sonke isikhathi irekhodi lemininingwane yokhonjwe yilungu elinje ngezinhloso zendima (b). 55

(d) Ilungu loMbutho wezokuVikela lingakhomba nganoma yisiphi isikhathi omunye umuntu esikhundleni somuntu okhonjelwe izinhloso zendima (b) kodwa kufanele liqinisekise ukuthi noma iyiphi inguquko ekukhonjweni yaziswa uMkhuzi woMbutho wezokuVikela ngokubhaliwe. 60



(e) Any change in designation becomes valid for purposes of paragraph (b) when it is received by or on behalf of the Chief of the Defence Force.

(3) Subject to the Moratorium Act, 1963 (Act No. 25 of 1963), and any other law relating to the protection of citizens or non-citizens who are in active service on behalf of the Republic, no appropriations, including seizures or attachments, may be made under or by virtue of any writ of execution, garnishee or sequestration order issued against a member of the Defence Force who is employed on active service in time of war or during a state of national defence or in fulfilment of the Republic's international obligations, except appropriations under or by virtue of a maintenance order issued against the said member.

(4) (a) A member of the Defence Force who, through no misconduct on his or her part, sustains a wound or injury or contracts an illness while on military service or undergoing training is, under such conditions and for such period as may be prescribed, entitled to be provided with medical, dental and psychological or other necessary treatment for such wound, injury or illness, notwithstanding that the duration of such treatment may extend beyond that member's service contract.

(b) A member receiving the treatment referred to in paragraph (a) must receive his or her pay and entitlements on their becoming due and such period of treatment must for all purposes be regarded as duty.

(5) An appropriate death and disability benefit insurance scheme must be negotiated and provided by the Defence Secretariat on behalf of members who must belong to it.

(6) The premiums in respect of such scheme must be recovered directly from the pay or entitlements payable to such members.

#### **Compensation in case of injury or disability**

57. (1) For the purposes of this section "member" includes an employee deployed with the Defence Force.

(2) Any member or former member of the Defence Force who has suffered any damage or loss as a result of an act or omission arising from any training or service under this Act, whether or not legal proceedings have been or are to be instituted, may in writing apply to the Compensation Board established by subsection (3) for compensation, setting out fully the grounds on which the application is based, the extent and nature of the damage or loss and the compensation desired.

(3) A Compensation Board (hereinafter called the Board) is hereby established, and the Board members must be appointed by the Minister, after consultation with the Minister of Finance and the Minister of Labour, and they must receive the emoluments prescribed.

(4) The functions of the Board are to consider any application referred to it and to make recommendations to the Minister, or an officer acting on his or her behalf, as to—

- (a) the granting or refusal of the application or any part thereof;
- (b) the amount of compensation to be paid if the application is granted; and
- (c) the conditions, if any, under which the compensation is granted.

(5) (a) The Board consists of—

- (i) a chairperson; and
- (ii) such number of other members, not exceeding four, as the Minister may determine.

(b) The members of the Board hold office for three years at a time or for such period as the Minister determines.

(c) The Minister may appoint alternate members to fill in for members who are absent from any meeting of the Board.

(d) At any meeting an alternate member has all the rights and obligations of the member whose place he or she takes.



(e) Noma iyiphi inguquko ekukhunjweni iyasebenza ngokwezinhloso zendima (b) lapho yemukelwa nguMkhuzi woMbutho wezokuVikela noma yemukelwa egameni lakhe.

(3) Ngaphansi koMthetho weMoratorium ka-1963 (UMthetho onguNombolo 25 ka-1963), kanye nanoma yimuphi omunye uMthetho ophathelene nokuvikelwa kwezakhamuzi noma abangezona izakhamuzi abasebenza egameni leRiphabhulikhi, akunakudliwa, kufaka phakathi ukwephucwa noma ukubanjwa okungenziwa ngaphansi noma ngenxa yencwadi yesinqumo sasenkantolo yokwenza okuthile, yokwamuka ekhishelwe ilungu loMbutho wezokuVikela eliqashelwe ngesikhathi sempi noma ngesikhathi sokuvikelwa kwezwe noma ekugcwalisweni kwezibopho zamazwe ngamazwe zeRiphabhulikhi, ngaphandle k okudliwa okungaphansi noma okungenxa komyalo wokondla okhishelwe ilungu elinje.

(4) (a) Ilungu loMbutho wezokuVikela, okuthi ngenxa yokuziphatha kabi okungadaliwe yilo, lithole inxeba noma ukulimala noma licoshe ukugula ngenkathi lisemsebenzini wezamasotsha noma ngenkathi liqeqeshwa, ngaphansi kwezimo ezinje futhi nangesikhathi esingahle sibekwe, lilungele ukuba linikezwe ukwelashwa okudingekayo kwezemithi, kwezamazinyo kanye nokwezengqondo noma okunye ngenxa yenxeba, ukulimala noma ukugula ngaphandle kokuvinjelwa kokuthi ukwelashwa okunje kungedlulela ngale kwenkontileka yomsebenzi yelungu lelo.

(b) Ilungu elemukela ukwelashwa okubhekiswe kukho endimeni (a) kufanele lithole iholo lalo kanye nokuyizimfanelo ngesikhathi lokhu okufanele kutholwe ngakho futhi isikhathi sokwelashwa okunje kufanele ngezinhloso zonke sithathwe njengomsebenzi.

(5) Uhlelo lomshuwalense obhekela ukufa kanye nosizo ekukhubazekeni kufanele luboniswane futhi lunikezwe nguNobhala wezokuVikela egameni lamalungu okufanele abe ngaphansi kwalo.

(6) Izimali ezikhokhwayo mayelana nohlelo olunje kufanele zithathwe ngqo enkokhelweni noma kokuyizimfanelo okukhokhelwa amalungu anje.

#### Ukunxeshezwa ngokulimala noma ukukhubazeka

57. (1) Maqondana nalesigaba, "ilungu" lisho nomsebenzi oqashwe ngaphansi koMbutho wezokuVikela.

(2) Noma yiliphi ilungu noma owayeyilungu ngaphambili loMbutho wezokuVikela elithole umonakalo noma ukulahlekelwa noma izindleko ngenxa yesenzo noma ukungenziwa okuvela kunoma yikuphi ukuqeqeshwa noma ukusebenza ngaphansi kwalo Mthetho, noma ngabe izinyathelo zomthetho zithathiwe noma zizothathwa, ngokuthi libhale lingafaka isicelo eBhodini leziNxephezelo elisungulwe ngesigaba esingaphansi (3) ukunxephezela, libeke ngokugcwele izizathu isicelo esesekelwe kuzo, ubungako kanye nohlobo lomonakalo, noma ukulahlekelwa noma izindleko kanye nesinxephezelo esifiswayo.

(3) Ibhodi leziNxephezelo (kulesahluko elibizwa iBhodi) liyasungulwa ngalokhu, elimalungu alo okumele abekwe nguNgqongqoshe, ngemuva kokubonisana noNgqongqoshe wezeziMali kanye noNgqongqoshe wezeMisebenzi, futhi lithole inkokhelo ebekiwe.

(4) Imisebenzi yeBhodi ukubheka noma yisiphi isicelo esilethwe kulo nokwenza zincomo kuNgqongqoshe, noma kumphathisikhundla osebenza egameni lakhe mayelana—

(a) nokuvunyelwa noma ukwenqatshwa kwesicelo noma yinoma iyiphi ingxenye yaso;

(b) nenani lesinxephezelo okumele sikhokhwe uma isicelo sivunyiwe; kanye

(c) nezimiselo uma zikhona, okunikezwa isinxephezelo ngaphansi kwazo.

(5) (a) Ibhodi lakhiwe—

(i) umgcinisihlalo; kanye

(ii) nenani lamalungu amanye, angedluli amane, elinganqunywa nguNgqongqoshe.

(b) Amalungu eBhodi abasesikhundleni iminyaka emithathu ngesikhathi noma ngokuthanda kukaNgqongqoshe.

(c) UNgqongqoshe angabeka amalungu amanye ukugcwalisa amalungu angekho kunoma yimuphi umhlangothi weBhodi.

(d) Kunoma yimuphi umhlangothi ilunga elisesikhundleni selinye linawo wonke amalungelo kanye nezibopho zelungu elithathe indawo yalo.

(e) The quorum for a meeting of the Board consists of the chairperson, or the acting chairperson, and two other members, and any decision of the majority present at any properly constituted meeting is the decision of the Board.

(f) Where the Board consists of more than two members, the chairperson, or the acting chairperson, has a casting vote in addition to his or her deliberative vote in the event of an equality of votes on any matter. 5

(6) The Board must adhere to any procedure prescribed.

(7) Any application to the Board must be accompanied by such documents as may be necessary to support the application.

(8) The Board may cause such investigation to be made in connection with the application and in such manner as it may deem necessary in order to enable it to furnish its recommendation. 10

(9) For purposes of the investigation referred to in subsection (8), the Board may summon witnesses, cause an oath or affirmation to be administered to them, examine them and call for the production of books, documents and objects. 15

(10) A summons for the attendance of a witness or for the production of any book, document or object before the Board must be signed and issued by the chairperson of the Board in the prescribed form and must be served in the same manner as a summons for the attendance of a witness at a civil trial in a magistrates' court.

(11) Any person who has been summoned to attend any sitting of the Board as a witness or who has given evidence before the Board is entitled to claim expenses incurred as if the summons were one requiring the attendance of such witness at a civil trial in a magistrates' court at the place where the sitting takes place. 20

(12) In connection with the giving of any evidence or the production of any book or document before the Board, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or a document at a civil trial in a magistrates' court applies. 25

(13) Any person who—

(a) fails to comply with a summons in terms of subsection (10);

(b) fails to produce documents, books or objects required by a summons; or 30

(c) makes a false statement, knowing it to be false, in any application for compensation under this section or to the Board in connection with any such application, is guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (a) or (b), to a fine or to imprisonment for a period not exceeding six months, and in the case of an offence referred to in paragraph (c), to any punishment that may lawfully be imposed for perjury. 35

(14) (a) The recommendations of the Board in terms of subsection (4) must be referred to the Minister or officer contemplated in that subsection, as the case may be, for a decision on the application.

(b) The Minister or officer concerned must notify the applicant in writing of his or her decision, and cause effect to be given to the said decision. 40

(15) The Board may after a reasonable time has elapsed and on the grounds of any new facts presented to it, review any previous recommendation for a greater or lesser amount to be paid in compensation to a member who was duly compensated.

(16) The Department must maintain a secretariat to support the Board, keep appropriate records and handle queries referred to it in connection with any relevant matter pertaining to injury or psychological damage and compensation of members or former members of the Defence Force. 45

(17) The expenses of the Board and the compensation payments made as a result of the Board's recommendations must be defrayed from money appropriated for those purposes. 50

(18) Any compensation payment in terms of this section is free from taxation on payment to the member or former member concerned.

(19) A member of the Board who is not in the full-time employ of the State must be paid such remuneration and allowances in respect of his or her services as the Minister may determine with the concurrence of the Minister of Finance. 55

(e) Isibalo senani elilingene ukuxoxa indaba emhlanganweni siqukethe umgcinisihlalo, noma ibamba likamgcinisihlalo, kanye namalungu amanye amabili futhi noma yisiphi isinqumo seningi elikhona emhlanganweni.

(f) Lapho iBhodi liqukethe ngaphezu lwamalungu amabili, umgcinisihlalo, noma obambe umgcinisihlalo unevoti elinqumayo ngaphezu kwevoti eletshisiwe uma kwenzeka kuba nokulingana kwamavoti nganoma yiluphi udaba. 5

(6) IBhodi kufanele linamathele kunoma iyiphi indlela yokwenza ebekiwe.

(7) Noma yisiphi isicelo esiya eBhodini kufanele sihambisane naleyo mibhalo engahle idingeke ukwesekela isicelo leso.

(8) IBhodi lingadala ukuthi uphenyo olunje lwenziwe mayelana nesicelo futhi nangendlela elingayibona idingeka ukulisiza ukuba lilethe izincomo zalo. 10

(9) Mayelana nezinhloso eziphawulwe esigabeni esingaphansi (8), iBhodi lingabiza ofakazi, lidale ukuba kuthathwe isifungo noma kuvunywe futhi licele ukuthi kukhishwe izincwadi, imibhalo nezinto.

(10) Isamanisi lokubakhona kukafakazi noma lokukhishwa kwanoma iyiphi incwadi, umbhalo noma into ngaphambi kweBhodi kufanele lisayinwe futhi likhishwe ngumgcinisihlalo weBhodi efomini elibekiwe futhi kufanele lihanjisiwe ngendlela efanayo njengesamanisi lokubakhona kukafakazi ecaleni labengewona amasosha enkantolo kamantshi. 15

(11) Noma yimuphi umuntu obizwe njengofakazi noma onikeze ubufakazi ngaphambi kweBhodi unelungelo lokubiza zindleko ezivelile uma kube sengathi amasamanisi bekuyilawo adinga ukubakhona kukafakazi onje ecaleni lasenkantolo kaMantshi endaweni lapho lethanyelwe khona. 20

(12) Mayelana nokunikezwa kwanoma yibuphi ubufakazi noma ukukhishwa kwanoma yimuphi umbhalo ngaphambi kweBhodi, uMthetho omayelana nelungelo njengoba usebenza kufakazi onika ubufakazi noma obizelwa ukukhipha incwadi noma umbhalo ecaleni lezakhumusi enkantolo kamantshi uyasetshenziswa. 25

(13) Noma yimuphi umuntu— (a) owehluleka ukulandela isamanisi ngokwesigaba esingaphansi (10); (b) owehluleka ukukhipha imibhalo, izincwadi noma izinto ezidingwa yisamanisi; noma (c) owenza isitatimende esingelona iqiniso, ebe esazi ukuthi asilona iqiniso, kunoma yisiphi isicelo sokunxephezela ngaphansi kwalesi sigaba noma eBhodini mayelana nanoma yisiphi isicelo esinje, unecala futhi kungenzeka kuthi ekutholweni enecala mayelana necala eliphawulwe ezindimeni (a) noma (b) akhokhiswe inhlawulo noma agqunywe ejele isikhathi esingedluli izinyanga eziyisithupha, futhi mayelana necala okubhekiswe kulo endimeni (c), abhekane nanoma yisiphi isijeziso sokuhlululisa esingahle sibekwe ngokusemthethweni ngokwephulwa kwesifungo sokukhuluma iqiniso. 30

(14) (a) Izincomo zeBhodi ngokwesigaba esingaphansi (4) kufanele zibhekiswe kuNgqongqoshe noma umphathisikhunla ocetshwa kulezo zigaba esingaphansi, njengoba kungahle kube njalo ukuze kutholakale isinqumo ngesicelo. 40

(b) UNgqongqoshe noma umphathisikhundla othintekayo kufanele azise ofake isicelo ngokumbhalela ngesinqumo ngesicelo, futhi enze ukuba umphumela waleso sinqumo esishiwo wenziwe.

(15) IBhodi ngemuva kokuthi kwedlule isikhathi esemukelekayo noma ngenxa yezizathu zanoma yimaphi amaphuzu amasha ethulwe kulo, lingabukeza noma yiziphi izincomo zangaphambili zemali encane noma enkulu okumele ikhokhelwe ilungu elanxephezela ngokufanele. 45

(16) UMnyango kufanele ube nehhovisi lokuxhasa iBhodi, lokugcina amarekhodi afanele kanye nokubhekana nemibuzo ethunyelwe kulo mayelana nanoma yiluphi udaba olufanele oluphathelele nokulimala noma umonakalo ngokwengqondo kumalungu noma kwababengamalungu oMbutho wezokuVikela. 50

(17) Izindleko zeBhodi kanye nezinkokhelo zesinxephezelo ezenziwe ngokungumphumela wezincomo zeBhodi kufanele zikhokhelwe ngemali ebekwe yiPhalamende ngalezi zinhloso.

(18) Noma iyiphi inkokhelo yesinxephezelo ngokwalesi isigaba ikhululekile ekutheliseni ngenkathi ikhokhelwa ilungu noma owayeyilungu elithintekayo. 55

(19) Ilungu leBhodi elingaqashiwe ngokugcwele nguMbuso kufanele likhokhelwe inkokhelo kanye nezimali ezivunyiwe ezingahle zinqunywe nguNgqongqoshe ngokubonisana noNgqongqoshe wezeziMali mayelana nemisebenzi yalo.

(20) The Board must—

- (a) make a recommendation contemplated in subsection (4) within 12 months of receiving an application contemplated in subsection (2); and
- (b) furnish a report to the Minister on its activities annually, which report must be tabled together with the annual report and financial statements contemplated in section 65 of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 5

#### **Obligation to serve in time of war, state of national defence or state of emergency**

58. (1) Subject to this Act, every person who is contracted to serve in the Defence Force is obliged to serve and remain in service during a time of war, a state of national defence or a state of emergency. 10

(2) Where a contract of a member of the Defence Force has been terminated, has lapsed or has expired before the outbreak of war or the declaration of the state of national defence or the declaration of the state of emergency, such contract may be renewed by the Minister so that the member may render service in a time of war, during a state of national defence or during a state of emergency, but no such contract may be extended at any one time for a continuous period exceeding three months. 15

(3) Where a member's contract terminates, lapses or expires during service in a time of war, during a state of national defence or during a state of emergency, such contract may be extended by the Minister to enable the said member to remain in service for a period of three months. 20

(4) Nothing in this section may be construed as prohibiting an application for exemption or deferment of service by a member of the Defence Force in terms of this Act.

#### **Termination of service of members of Regular Force**

59. (1) The service of a member of the Regular Force is terminated—

- (a) upon the expiration of three months after the date on which such member lodged his or her resignation or upon the expiration of such shorter period as may be approved by the Chief of the Defence Force;
- (b) on the termination of any fixed term contract concluded between the member and the Department or on the expiration of any extended period of such contract; 30
- (c) if he or she has reached the prescribed age of retirement or, where applicable, if he or she exercises his or her right to retire on pension in accordance with the provisions of the applicable pension laws; 35
- (d) if he or she is sentenced to a term of imprisonment by a competent civilian court without the option of a fine or if a sentence involving discharge or dismissal is imposed upon him or her under the Code; or
- (e) if the Surgeon-General or any person authorised thereto by him or her issues a certificate to the effect that due to medical or psychological reasons, such member is permanently unfit to serve in the Defence Force. 40

(2) The service of a member of the Regular Force may be terminated in accordance with any applicable regulations—

- (a) as a result of the abolition of such member's post or any reduction or adjustment in the post structure of the Department of Defence; 45
- (b) if for reasons other than the member's own unfitness or incapacity, such discharge is likely to promote efficiency or increased cost-effectiveness in the Department of Defence;
- (c) on account of unfitness for his or her duties or inability to carry them out efficiently, irrespective of whether such unfitness or inability is caused by such member's ill-health not amounting to a condition referred to in subsection (1)(e); 50



(20) IBhodi kufanele—

- (a) lenze isincomo esishiwo kwisigaba (4) zingakapheli izinyanga ezingu 12 emva kokuthola isicelo okukhulunywa ngaso kwisigaba (2); futhi
- (b) lethule umbiko kuNgqongqoshe njalo ngonyaka ngelikwenzayo lowombiko wethulwe kanye nombiko wonyaka nezitatimende zezimali ezichazwe kwisigaba 65 soMthetho wokuPhathwa kweziMali zikaHulumeni (Act No. 1 of 1999).

### **Isibopho sokusebenza esikhathini sempi, isimo sokuvikelwa kwezwe noma isimo esiphuthumayo**

58. (1) Ngaphansi kwalo Mthetho, wonke umuntu onenkontileka ukuba asebenze eMbuthweni wezokuVikela unesibopho sokusebenza nokuthi ahlale emsebenzini ngesikhathi sempi, isimo sokuvikelwa kwezwe noma isimo esiphuthumayo.

(2) Lapho inkontileka yelungu loMbutho wezokuVikela, iphelisiwe noma isiphelelwe yisikhathi ngaphambi kokuqubuka kwempi noma ekuqubukeni noma ekumemezelweni kwesimo sokuvikelwa kwezwe noma ekumenyezelweni kwesimo esiphuthumayo, inkontileka enje ingavuselelwa nguNgqongqoshe ukuze ilungu linikeze inbenzo ngesikhathi sempi, ngesikhathi sesimo sokuvikelwa kwezwenoma ngesikhathi sesimo esiphuthumayo, kepha akunankontileka enje engelulwa nganoma yisiphi isikhathi esithile isikhathi esiqhubekayo esedlula izinyanga ezintathu.

(3) Lapho inkontileka yelungu iphelanoma iphelelwe yisikhathi ngesikhathi sensebenzo ngesikhathi sempi, ngesikhathi sesimo sokuvikelwa kwezwe noma ngesikhathi sesimo esiphuthumayo, inkontileka enje ingelulwa nguNgqongqoshe ukuvumela ilungu elishiwoyo ukuba lihlale ensebenzweni isikhathi esiyizinyanga ezintathu.

(4) Akukho lutho kule ngxenye okumele kuthathwe njengokuthibela isicelo sokukhululwa noma sokwedluliselwa kwensebenzo yilungu loMbutho wezokuVikela ngokwaloMthetho.

### **Ukuyekiswa umsebenzi kwamalungu oMbutho Osebenza Ngokuphelele kwezokuVikela**

59. (1) Insebenzo yelungu loMbutho oseMbuthweni ngokuPhelele iyapheliswa—

- (a) ekupheleni kwezinyanga ezintathu ngemuva kosuku ilungu elinje elafaka ngalo ukwesula kwalo noma ekupheleni kwesikhathi esifushane kunaleso esingahle sivunyelwa nguMkhuzi woMbutho wezokuVikela.
- (b) Ekupheleni kwanoma iyiphi inkontileka yesikhathi esibekiwe ehlanganiswe phakathi kwelungu kanye noMnyango noma ekupheleni kwanoma yisiphi isikhathi eseluliwe senkontileka enje.
- (c) uma selifike ebudaleni obubekiwe bokuthatha umhlalaphansi noma, lapho kusebenza khona, uma esebenzisa ilungelo lakhe lokuthatha umhlalaphansi wempesheni ngokwezimisonqubo zempesheni esebenzayo.
- (d) uma ligwetshwe isikhathi ejele yinkantolo yezakhamuzi efanele ngaphandle kokuvunyelwa ukukhetha ukukhokha inhlawulo noma uma isigwebo esibandakanya ukudedelwa noma ukuxoshwa sibekwa kulo ngaphansi koMthethonqubo.
- (e) uma uDokotela onguMhlinzi-Jikelele noma yinoma yimuphi umuntu onikezwe igunya ukuba enze njalo ekhipha isitifiketi esithi ngenxa yezizathu zezemithi noma zezengqondo, ilungu elinje alikulungele ukusebenza eMbuthweni wezokuVikela.

(2) Insebenzo yelungu loMbutho wezokuVikela ingaqedwa ngokulandela imithetho efanele—

- (a) ngenxa yomphumela wokuqedwa kwesikhundla selungu elinje noma ngenxa yokwehliswa noma ukwehliswa noma ukuguqulwa ekwakhekeni kwesikhundla soMnyango wezokuVikela;
- (b) uma ngokwezizathu ezingezona ukungakulungeni kwelungu noma ukwehluleka kwelungu ukudedelwa okunje kungahle kugququzele ukusebenza kangcono noma ukonga eMnyangweni wezokuVikela;
- (c) ngenxa yokungakulungeli ukusebenza kwalo noma ukwehluleka ukukwenza kahle, kunganakiwe noma ukungakulungeli noma ukwehluleka okunje kudalwa yimpilo engeyinhle yelungu engafikeli esimweni okubhekiswe kuso esigabeni esingaphansi (1)(e);



- (d) if, after serving a period of probation in terms of this Act, his or her appointment is not confirmed; or
- (e) if his or her continued employment constitutes a security risk to the State or if the required security clearance for his or her appointment in a post is refused or withdrawn.

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(3) A member of the Regular Force who absents himself or herself from official duty without the permission of his or her commanding officer for a period exceeding 30 days must be regarded as having been dismissed if he or she is an officer, or discharged if he or she is of another rank, on account of misconduct with effect from the day immediately following his or her last day of attendance at his or her place of duty or the last day of his or her official leave, but the Chief of the Defence Force may on good cause shown, authorise the reinstatement of such member on such conditions as he or she may determine.

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(4) The name of a member whose service has been terminated in terms of subsection (1)(a) or (b) or subsection (2)(a) or (b), and who has not voluntarily joined the Reserve Force, must be retained on the personnel list.

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(5) A member who is entitled to be discharged in terms of subsection (1)(a), (b) or (c) may not, without the prior consent of the Chief of the Defence Force, be permitted to obtain his or her discharge—

- (a) while he or she is employed in defence of the Republic; or
- (b) while disciplinary proceedings are still pending against him or her.

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(6) A member contemplated in subsection (1)(a) or (d) who has undergone or who was undergoing education or training at State expense remains liable for the repayment of such money as is repayable in terms of a contractual agreement pertaining to such education or training.

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### Legal representation for members

60. (1) For the purposes of this section “member” includes an employee deployed with the Defence Force.

(2) A member of the Defence Force against whom a civil claim or any other action arising from his or her acts or omissions has been instituted is entitled to legal representation at the expense of the State unless it appears that he or she—

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- (a) was not acting in the execution of his or her official duties or did not *bona fide* believe that he or she was so acting;
- (b) exercised his or her powers in bad faith or exceeded such powers;
- (c) without prior consultation with the State Attorney, made an admission of guilt which was detrimental to the State;
- (d) acted negligently, recklessly or wilfully; or
- (e) failed to comply with or disregarded standing minimum instructions of which he or she was aware or could reasonably be expected to have been aware.

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(3) Despite the ineligibility of a member for legal representation by reason of any of the grounds listed in subsection (2)(a) to (e), the State Attorney may on the request of the Department, provide legal representation to such member if the State has a material interest in the outcome of the case.

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(4) The legal representation contemplated in subsection (2) may only be provided if the member agrees that any costs and expenses incurred by the State Attorney may be recovered from the said member.

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### Procedures for redress of grievances

61. (1) Any person to whom this Act applies and who is aggrieved by any act or omission of any other person to whom this Act applies, may lodge his or her grievance in writing.

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(2) The Minister must prescribe procedures, which must, among other things, specify the expeditious processing of grievances and the chain of command through which individuals and groups within the Department may address individual and collective grievances.

- (d) uma, ngemuva kokusebenza isikhathi sokuhlolwa ngokwaloMthetho, ukuqashwa kwalo kungaqiniswa; noma
- (e) uma ukuqashwa kwalo okuqhubekayo kuyingozi yezokuphepha eMbusweni noma uma ukuvunyelwa kwezokuphepha okudingekayo ukusebenza ngokuthile, ngokuqashwa kwalo esikhundleni kwenqatshwa noma kuhoxiswa. 5
- (3) Ilungu loMbutho oseMbuthweni ngokuPhelele elingabikho ngokwalo emsebenzini osemthethweni ngaphandle kwemvume yomphathisikhundla owengamele isikhathi esedlula izinsuku ezi-30, kufanele lithathwe njengelixoshiwe uma ngabe lingumphathisikhundla noma lidedelwe uma lingesinye isikhundla, ngenxa yokuziphatha kabi ukusuka osukwini olulandela masishane osukwini lalo lokucina lokuba khona endaweni yalo yokusebenza, kepha uMphathi oMkhulu wezokuVikela, ekukhonjisweni kwezizathu ezizwakalayo, angagunyaza ukubuyiselwa kwelungu elinje ngokwezimiselo angahle azinqume. 10
- (4) Igama lelungu elinsebenzo yalo iqediwe ngokwesigaba esingaphansi kuka (1)(a)(b) noma isigaba esingaphansi (2)(a) noma (b) nelingahle libe alingenanga ngokuzithandela eMbuthweni oBekwe eCeleni, kufanele ligcinwe ohlwini lwabasebenzi. 15
- (5) Ilungu elivunyelwe ukuba lidedelwe ngokwesigaba esingaphansi (1)(a), (b) noma (c) alinakuvunyelwa, ngaphandle kwemvume etholwe ngaphambili yoMkhuzi woMbutho wezokuVikela ukuthola ukudedelwa kwalo- 20
- (a) ngenkathi liqashwe ekuvikeleni iRiphabhuliki; noma (b) ngenkathi kusalindelwe izinyathelo eziyizenzo zokujezisa ngalo.
- (6) Ilungu, okubhekiswe kulo esigabeni esingaphansi (1)(a) no- (d), elingahle libe lathola noma labe lithola ukufundiswa noma ukuqeqeshwa ngezindleko zoMbuso liyohlala lilindeleke ukuba likhokhe izindleko zezimalinjengoba kumele zikhokhwe ngokwesivumelwano senkontileka ephathelene nokufundiswa nokuqeqeshwa okunje. 25

#### Ukumelwa kwamalungu kwezomthetho

60. (1) Maqondana nalesigaba "ilungu" lisho nomsebenzi oqashwe nguMbutho wezokuVikela. 30
- (2) Ilungu loMbutho wezokuVikela elibhekene necala elingelombango noma nanoma yiliphi elinye icala elingumphumela wezenzo noma ukungenzi kwalo elifakiwe livunyelwe ukuba nokumelwa kwezomthetho ngezindleko zoMbuso ngaphandle uma kubukeka sengathi—
- (a) belingasebenzi ukwenza imisebenzi yalo esemthethweni noma belingakholelwa ngokuyiqiniso ukuthi belenza kanjalo. 35
- (b) belisebenzisa amagunya alo ngokungethembekile noma leqa amagunya anje;
- (c) ngaphandle kokubonisana okwenziwe ngaphambili noMmeli woMbuso, lenza ukuvunywa kwecala okube yingozi eMbusweni;
- (d) liziphathe budedengu ngoba lithanda; noma 40
- (e) lehlulekile ukulandela noma lashaya indiva imiyalo okungeyona emincane ekhona emile ebeliyazi noma ebekulindelwe ukuba liyazi.
- (3) Nanxa ukungalungi kwelungu ukuthola ukumelwa kwezomthetho ngenxa yanoma yiziphi izizathu ezibalwe esigabeni esingaphansi (2)(a) ukuya ku-(e) uMmeli woMbuso angathi ngokwesicelo soMnyango, enze ukuba lelolungu lithole ukumelwa ngokomthethoanikeze ukumelwa ngokomthetho uma uMbuso unokuwuthintayo kumphumela wecala. 45
- (4) Ukumelwa ngokomthetho okucetshwa esigabeni esingaphansi (2) kunganikezwa uma ilungu livuma ukuthi noma yiziphi ezinye izindleko ezi tholwa nguMmeli woMbuso zingathathwa kulelo lungu elishiwoyo. 50

#### Inqubo yokubhekana nezikhalo

61. (1) Noma yimuphi umuntu okusebenza lo Mthetho kuye noma olinyazwe noma yisiphi isenzo noma noma ukweqiwa okwenziwe yinoma yimuphi omunye umuntu okusebenza kuye lo Mthetho, angafaka isikhalo sakhe ngokuthi asibhale. 55
- (2) UNGqongqoshe kufanele abeke izindlela zenqubo, okuthi ngaphakathi kwezinye zibuye zibeke ukusetshenzwa okusheshisayo kanye nemigudu okufanele ilandelwe amalungu namaqembu oMnyango maqondana nokubhekwa kwezikhalo zabantu ngabodwana noma ngamaqembu.

(3) The Minister may perform any act in connection with any grievance which relates to or arises from the employment or the conditions of service of a former member while he or she was a member, if the Minister would, at the relevant time, have been competent in terms of this Act or any other law to perform any such act in respect of the then serving member.

(4) No act contemplated in subsection (3) may be performed after the expiration of a period of two years after the date on which the former member ceased to be a member.

### **Religious observance in Defence Force**

62. The Minister may, subject to section 31 of the Constitution, determine the rules and related policies for religious observance in the Defence Force in consultation with the Chief of the Defence Force.

## **CHAPTER 10**

### **TRAINING**

#### **Defence training institutions**

63. (1) The Minister may establish defence training institutions for purposes of providing instruction and other training for members and employees of the Department.

(2) Any institution established before the commencement of this Act for purposes of providing military instruction and other training, whether under a law hereby repealed or otherwise, must be regarded as being a defence training institution established under this section.

(3) The Minister must ensure that the training of members and employees of the Department promotes the objects of, and is in accordance with, the Constitution and the law, including customary international law and international agreements binding on the Republic.

(4) The training of members is an essential part of force preparation and may encompass instruction at any military or tertiary institution for higher education and learning in the world, as well as practical training which must include physical training, sport, structured recreational activities and military exercises.

(5) The provision and maintenance of training tools and equipment as well as the provision and maintenance of training facilities and opportunities for members of the Defence Force or other forces must be carried out under the direction of the Chief of the Defence Force or a person designated by him or her.

(6) The staff of any defence training institution must be members of the Department designated by the Chief of the Defence Force.

(7) The duration and description of the courses of instruction and training therein, the conditions of admission thereto, the conditions of future service required from persons who have undergone training and all matters relating to good administration and management, control and regulation of any such institution are as prescribed.

#### **Discipline**

64. (1) All members who are under instruction and training at any defence training institution in the Republic are subject to the Code.

(2) For purposes of subsection (1) and for purposes of jurisdiction, prosecution and punishment, a member of another force must be regarded as holding the equivalent of a rank in the Defence Force as determined by the Chief of the Defence Force.

(3) UNgqongqoshe angenza noma yisiphi isenzo mayelana nanoma yisiphi isikhalo esiphathelene noma esivela ekuqashweni noma ezimiselweni zensebenzo zowabe elilungu ngenkathi elilungu, uma uNgqongqoshe, esikhathini esifanele, wayezobe elungele ngokwalo Mthetho noma ngokwanoma yimuphi omunye uMthetho ukwenza isenzo esinje mayelana nelungu elalisebenza. 5

(4) Akunasenzo esicetshwa esigabeni esingaphansi (3) esingenziwa ngemuvakokuphela kwesikhathi seminyaka emibili ngemuva kosuku okwathi ngalo owabe eyilungu wagcina ukuba yilungu.

#### **Ukuhlonishwa kwezinkolo ezehlukene eMbuthweni wezokuVikela**

62. UNgqongqoshe ngokulandela isigaba 31 soMthethosisekelo anganquma imithetho kanye nezinqubomigomo zokugcinwa kwezenkolo eMbuthweni-wezokuVikela ngokubonisana noMkhuzi woMbutho wezokuVikela. 10

### **ISAHLUKO 10**

#### **UKUQEQUESHA**

##### **Izikhungo zokuqeqesha zezokuvikela**

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63. (1) UNgqongqoshe angasungula izikhungo zokuqeqesha zezokuvikela ngezinhloso zokunikeza ukunikezwa imiyalo nokuqeqeshwa kwamalungu kanye nabasebenzi boMnyango.

(2) Noma yisiphi isikhungo esimiwe ngaphambi kokuqala kwalo Mthetho ngezinhloso zokunikeza imiyalo yasemasosheni noma kanye nokunye ukuqeqeshwa, okungaba ngaphansi komthetho ochithwa ngalokhu noma ngenye indlela, kufanele ithathwe njengesikhungo sokuqeqesha sezokuvikela esisungulwe ngaphansi kwalesi sigaba. 20

(3) UNgqongqoshe kufanele aqinisekise ukuthi ukuqeqeshwa kwamalungu kanye nabasebenzi boMnyango kuvikela izinto, futhi kulandela uMthethosisekelo kanye nomthetho kufaka phakathi imithetho yamazwe ngamazwe eyisiko kanye nezivumelwano zamazwe ngamazwe eziyizibopho kuRiphabhulikhi. 25

(4) Ukuqeqeshwa kwamalungu kuyingxenywe edingekayo yokulungiswa kwebutho futhi kungabandakanya ukunikwa imiyalo kunoma iyiphi indawo yamasosha noma yemfundo ephakeme emhlabeni, kanye nokuqeqeshwa okwenziwa ngokuthi kwenziwe lowo msebenzi ofundiswayo okufanele kufake phakathi ukuqeqeshwa komzimba, ezemidlalo, imisebenzi yezokungcebeleka ehleliwe kanye nezivivinyo zamasosha. 30

(5) Ukunikezwa nokugcinwa kwamathuluzi okuqeqesha nezinto zokusebenza kanye nokunikezwa nokugcinwa kwezindawo zokuqeqesha kanye namathuba kumalungu oMbutho wezokuVikela kanye namanye amabutho kufanele kwenziwe ngaphansikwemiyalo yoMkhuzi woMbutho wezokuVikela noma yomuntu obekwe nguye. 35

(6) Abasebenzela noma iyiphi inhlangano yokuqeqesha yezokuvikela kufanele babe ngamalungu oMnyango okhonjwe nguMkhuzi woMbutho wezokuVikela.

(7) Isikhathi esithathwayo kanye nencazelo yezifundo zemiyalo kanye nokuqeqeshwa kuzo, izimiselo zokwemukelwa kuzo, izimiselo zokusebenza kwesikhathi esizayo okudingekayo kubantu abaqeqeshiwe kanye nazo zonke izindaba eziphathelele nokuphathwa okuhle, ukuphathwa nokuqondiswa kwanoma yisiphi isikhungo esinje kunjengoba kubekiwe. 40

##### **Ukuqondiswa kwezigwegwe**

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64. (1) Wonke amalungu angaphansi kwemiyalo nokuqeqeshwa kunoma yisiphi sikhungo sokuqeqesha sezokuvikela eRiphabhulikhi angaphansi koMthethonqubo.

(2) Ngokwezinhloso zesigaba esingaphansi (1) kanye nangokwezinhloso zamandla esikhundla, ezokushushisa kanye nezokujezisa, ilungu lelinye ibutho kufanele lithathwe njengelibambe okulingana nesikhundla eMbuthweni wezokuVikela njengoba kunqunywe nguMkhuzi woMbutho wezokuVikela. 50

**Designation of areas for training**

65. (1) Subject to subsections (2) and (3), and the National Environmental Management Act, 1998 (Act No. 107 of 1998), the Minister may, at the request of the Chief of the Defence Force, as and when the exigencies of the training require, designate any area, whether on public or private property, as an area in which the Defence Force may conduct military exercises. 5

(2) (a) Before acting in terms of subsection (1), the Minister must publish a notice in the *Gazette* and a notice in at least two official languages in newspapers circulating in the area in question and must also post suitable public notices, to the effect that such area is to be designated as a training area under subsection (1) and inviting all interested parties to furnish him or her with representations with regard thereto by not later than a date specified in the notice. 10

(b) Any such representations must be considered by the Minister before acting in terms of subsection (1).

(3) (a) Before the Minister may designate any private property under subsection (1), the Minister must obtain the approval of the lawful occupier of the property in question. 15

(b) If the approval is being withheld unreasonably or cannot be obtained after a reasonable attempt, the Minister may designate the area as a training area.

(4) The Minister must—

(a) issue a certificate at the completion of the military exercises to the effect that the area in question has been cleared of all live ammunition and other objects which could cause injury; and 20

(b) prescribe the conditions under which compensation may be claimed by or paid to an occupier for any damage or loss sustained as a direct consequence of military exercises so conducted. 25

**CHAPTER 11****EXEMPTIONS FROM, AND DEFERMENT OF, TRAINING AND SERVICE****Exemption boards**

66. (1) The Minister must establish such number of exemption boards as may be necessary. 30

(2) The functions of a board are to hear applications by members of the Regular Force or the Reserve Force for their exemption from or the deferment of the whole or any part of their training or service, as the case may be.

(3) (a) A board must consist of no more than five members appointed by the Minister of whom at least one must be— 35

(i) a person from outside the Department who is a fit and proper person for appointment as Chairperson;

(ii) a member of the Regular Force of the rank of warrant officer or higher who is sufficiently experienced in operational and personnel matters of the Defence Force; and 40

(iii) a member of the Reserve Force of the rank of warrant officer or higher who is sufficiently experienced in operational and personnel matters of the Defence Force.

(b) The Minister may appoint alternate members to take the place of members who are absent from any meeting of a board, and at any such meeting an alternate member has the same rights and obligations as the member replaced by him or her. 45

(c) If the Chairperson, or his or her alternate, is absent from a meeting of the board, the members present must elect one of their number to preside at that meeting and that member may during that meeting perform all the functions of the Chairperson.

(d) A quorum at a meeting of a board is constituted by the Chairperson, one member contemplated in paragraph (a)(ii) and one member contemplated in paragraph (a)(iii). 50



**Ukukhethwa kwezindawo zokuqeqesha**

65. (1) Ngokwesigaba (2) no (3) kanye noMthetho kaZwelonke wokuGcinwa kwezeMvelo ka 1998, (Act No. 107 ka 1998), uNgqongqoshe angathi, ngokucelwa nguMkhuzi woMbutho wezokuVikela, njengoba nalapho izidingo eziphuthumayo zokuqeqeshwa zikudinga, angakhetha noma iyiphi indawo, engaba sendaweni kawonkewonke noma yangasese lapho uMbutho wezokuVikela ungenza ukuvivinywa okuhambisana nokwezamasotsha khona. 5

(2) (a) Ngaphambi kokuthatha izinyathelo ngokwesigaba esingaphansi kuka (1) uNgqongqoshe kufanele akhiphe isaziso kuGazette kanye nesaziso okungenani ngezilimi ezimbili ezisemthethweni emaphephandabeni atholakala kuleyondawo ekhethwe njengendawo yokuviva ngaphansi komthetho (1) futhi ameme bonke abanomdlandla ngaloludaba ukuba amnike izikhalo zawo mayelana nalokho kungekedluli usuku oluphawulwe kulesaziso. 10

(b) Ukumelwa okuwuloluhlobo kufanele akubhekisise uNgqongqoshe ngaphambi kokuba athathe isinyathelo ngokwesigaba (1). 15

(3) (a) Ngaphambi kokuba uNgqongqoshe abe umhlaba wangasese ngaphansi kwesigaba (1), kufuneka athole imvume yohlala kulowomhlaba ngokomthetho.

(b) Uma leyomvume igodlwa ngendlela engafanele noma kulukhuni ukuyithola emva kwemizamo eminingi, uNgqongqoshe angawaba lowomhlaba. 20

(4) Kufanele uNgqongqoshe— 20

(a) akhiphe isitifiketi uma usuphelile umsebenzi obuwenziwa ngamasotsha esichaza ukuthi indawo obekwenzelwa umsebenzi othize kuyo ayisenazikhali nokunye okungadala ukulimala; futhi

(b) abeke nezimiselo ohlala kuleyondawo angacela ngazo ukunxephezela nganoma yimuphi umonakalo noma ukulahlekelwa okwenzekile okungumphumela oqondene ngqo nokuvivinywa okuhambisana nokwezamasotsha. 25

**ISIAHLUKO 11****UKUKHULULWA NOMA UKUHLEHLISWA, KOKUQEQESHA KANYE NOKUSEBENZA** 30**Ibhodi elibhekene nokukhululwa ezintweni ezithize**

66. (1) UNgqongqoshe kufanele asungule isibalo samabhodi esidingekayo.

(2) Imisebenzi yebhodi ukulalela izicelo zamalungu oMbutho oseMbuthweni ngokuPhelele noma awoMbutho wamaRizevu, zokukhululwa noma ukuhlehliswa kokuphelele noma kwengxenywe yokuqeqeshwa nokusebenza kwawo kuye ngesimo. 35

(3) (a) Ibhodi lokuKhululwa kufanele liqukathe okungengaphezu kwamalungu amahlanu abekwe nguNgqongqoshe oyedwa kulawo malungu okungenani oyedwa kufanele—

(i) abe ngumuntu oqhamuka ngaphandle koMnyango wezokuVikela ongumuntu ophilile nofanele ukubekwa njengoMgcinisihlalo; futhi 40

(ii) abe yilungu loMbutho oseMbuthweni ngokuPhelele elisezingeni lomphathisikhundla ongaphansi noma ngaphezulu onolwazi olwanele ezindabeni zokusebenza nezabasebenzi boMbutho wezokuVikela.

(iii) ilungu loMbutho wamaRizevu elisesikhundoeni sika-warrant officer noma ngaphezulu elinolwazi olunzulu ngokuphatha nabasebenzi boMbutho wezokuVikela. 45

(b) UNgqongqoshe angabeka amalungu a ukuba athathe indawo yamalungu angekho kunoma yimuphi umhlangano webhodi, futhi kunoma yimuphi umhlangano onje ilungu elingelinye linamalungelo kanye nezibopho ezifanayo nezelungu elithathe indawo yalo.

(c) Uma uSihlalo noma ashintshana naye engekho emhlanganweni webhodi, amalungu akhona kufanele omunye wawo ukuba abe ngusihlalo walowomhlangano okungathi kulowomhlangano enze yonke imisebenzi kasihlalo. 50

(d) Isibalo esilingene ukuxoxa indaba emhlanganweni webhodi sihlanganiswa nguMgcinisihlalo, nelungu okukhulunywe ngalo esigabeni (a)(ii) nelungu elilodwa elichazwe kwindima (a)(iii). 55

(e) The decision of the majority of the members of a board present at a meeting is the decision of the board, and in the event of an equality of votes concerning any matter, the member presiding has a casting vote in addition to his or her deliberative vote.

(4) The Minister may make such rules as may be necessary for regulating the procedure and the conduct of the business of a board. 5

(5) A member of a board who is not in the full-time employ of the Defence Force or the Public Service must be paid such remuneration and allowances in respect of his or her services as the Minister may determine, with the concurrence of the Minister of Finance.

(6) A board which has granted or denied the application for exemption from or deferment of training and service may, if it is satisfied that the facts upon which such decision is founded have changed, and after having afforded all interested parties an opportunity of being heard, withdraw or amend its decision with effect from a date determined by the board. 10

(7) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), 15 no person may disclose any information obtained in the exercise of his or her powers or the carrying out of his or her duties relating to the deliberations or evidence brought before a board in terms of this Act without prior authority from the Minister.

### Application for exemption

67. (1) The following persons may apply to a board for exemption from, or 20 deferment of, training or service:

- (a) A person who has been selected for service or training under this Act;
- (b) any person who, after having been selected, has commenced his or her training or service; or
- (c) any interested person, including an employer of a member of the Reserve 25 Force, acting on behalf of a person contemplated in paragraph (a) or (b) with the written consent of such person.

(2) Any application made by or in respect of a person contemplated in subsection (1)(a) must be addressed to and lodged with the Chairperson of the board and any application made by or in respect of a person contemplated in subsection (1)(b) must be 30 addressed to the Chairperson of the board and lodged with the commanding officer of the unit in which the said person is serving.

(3) (a) Every person who has made an application in terms of this section or on whose behalf such application has been made, must at his or her own expense attend at the time and place determined by the board and submit himself or herself to any examination 35 relating to any matter connected with the application.

(b) A person attending as contemplated in paragraph (a), must be paid such reasonable expenses as may be prescribed.

### Powers and duties of board

68. (1) A board must carry out such investigations as may be necessary in 40 connection with any application and representations.

(2) A board may sit at any place that is under the control of the Defence Force, for purposes of hearing evidence or for deliberating.

(3) (a) For purposes of ascertaining any matter relating to the subject of an investigation, a board has the power to summon witnesses, to cause an oath or 45 affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.

(b) A summons for the attendance of a witness or for the production of any book, document or object before a board must be signed and issued by the Chairperson of the board in the prescribed form and must be served in the same manner as a summons for 50 the attendance of a witness at a civil trial in a magistrates' court.

(e) Isinqumo seningi lamalungu ebhodi akhona emhlanganweni webhodi yisona esiba yisinqumo sebhodi, uma amavoti elingana maqondana nodaba oluthize, ilungu elingusihlalo liba nelinye ivoti elingaphezulu lokuthatha isinqumo nelokuvala impikiswano.

(4) UNgqongqoshe angenza imithetho engahle idingeke ukuqondisa indlela okwenziwa ngayo kanye nokukuqhutshwa komsebenzi wamabhodi. 5

(5) Ilungu lebhodi elingaqashiwe ngokugcwele nguMbutho wezokuVikela noma yiNsebenzo yezoMphakathi kufanele likhokhelwe inkokhelo nezimali ezivunyiwe ekungahle kunqunywe nguNgqongqoshe, ngokubonisana noNgqongqoshe wezeziMali.

(6) (a) Ngokulandela isigaba (b), isinqumo sebhodi ekwenzeni noma yiliphi igunya noma umsebenzi obekwe noma ongaphezu kwalo ngaphansi kwalo Mthetho sinumqamula juqu, kepha akunalutho kulo Mthetho okungathathwa njengokuvala umfakisicelo ekuthini afake izikhalo ezifanele eNkantolo ePhakeme yeRiphabhulikhi ukuba ibukeze isinqumo seBhodi nokuthi afune ukulungiselwa nokududuzwa okufanele. 15

(b) IBhodi elinikeze ilivu noma elenqabele isicelo, uma lenelisiwe ukuthi amaphuzu okwesekelwe kuwo isinqumo esinje aguqukile, futhi nangemuva kokunikeza wonke amaqembu athintekayo ithuba lokulalelwa, lingahoxisa noma liguqule isinqumo salo ukusuka osukwini olunqunywe yiBhodi.

(7) NgokoMthetho wokuKhuthaza ukuTholakala koLwazi ka 2000 (Act No. 2 of 2000), akunamuntu ongaveza noma yiluphi ulwazi olutholakale ekusetshenzisweni kwamagunya akhe noma ekwenzeni imisebenzi yakhe ephathelene nokwenziwa kwemisebenzi noma ubufakazi obulethwe ngaphambi kweBhodi ngokwalo Mthetho ngaphandle kwemvume etholakele kuNgqongqoshe. 20

#### Ukufakwa kwezicelo zokukhululwa 25

67. (1) Abantu abalandelayo bangafaka izicelo zokukhululwa zokuhlehliswa kokuqeqeshwa noma ukusebenza okuyilaba—

(a) umuntu okhethelwe ukusebenza noma ukuqeqeshwa ngaphansi kwalo Mthetho;

(b) noma yimuphi umuntu, okuthi ngemuva kokukhethwa, abe eseqale ukuqeqeshwa kwakhe noma ukusebenza; noma 30

(c) noma yimuphi umuntu onentshisekelo, kufaka phakathi umqashi welungu loMbutho oBekwe eCeleni esebenza egameni lomuntu ocetshea endimeni (a) noma (b) ngemvume ebhaliwe yomuntu onjena.

(2) Noma yisiphi isicelo esenziwe noma esimayelana nomuntu ocetshwa esigabeni esingaphansi (1)(a) kufanele siqondiswe futhi sifakwe kuMgcinisihlalo weBhodi futhi noma yisiphi isicelo esenziwe ngumuntu noma mayelana nomuntu ocetshwa esigabeni esingaphansi (1)(b) kufanele siqondiswe kuMgcinisihlalo weBhodi futhi sifakwe nakumphathisikhundla owengamele iviyo umuntu othintekayo asebenza kulo. 35

(3) (a) Wonke umuntu owenze isicelo ngokwalesi sigaba noma owenzelwa isicelo esinje, kufanele ngezindleko zakhe abe khona ngesikhathi nasesendaweni enqunywe yiBhodi futhi azilethe kunoma yikuphi ukuhlolwa okuphathelene nanoma yiluphi udaba oluxhumene nesicelo. 40

(b) Umuntu oze njengoba kubekwe kwindima (a), kufanele akhokhelwe ngezindleko angene kuzo ngendlela ebekiwe. 45

#### Amagunya nemisebenzi yeBhodi lokuKhulula

68. (1) IBhodi kufanele lenze uphenyo olungahle ludingeke mayelana nanoma yisiphi isicelo noma ukukhalaza.

(2) IBhodi lingahlala kunoma iyiphi indawo engaphansi kwempatho yoMbutho wezokuVikela, ngezinhloso zokulalela ubufakazi noma ukudingida udaba. 50

(3) (a) Ngokwezinhloso zokuqinisekisa noma yiluphi udaba olumayelana nophenyo, iBhodi linegunya lokubiza ofakazi, lokwenza ukuba bathathiswe isifungo noma bavunyiswe, lokubahlola, kanye nokucela ukuthi kukhishwe izincwadi, imibhalo nezinto.

(b) Isamanisi lokuba khona kukafakazi noma lokukhishwa kwanoma iyiphi incwadi, umbhalo noma into ngaphambi kweBhodi kufanele lisayinwe futhi likhishwe nguMgcinisihlalo weBhodi efomini elibekiwe futhi kufanele lisayinwe ngendlela efanayo njengeyesamanisi lokuba khona kukafakazi ecaleni lombango enkantolo kamantshi lapho kuzoyiwa noma kuzosetshenzwa khona. 55

(c) If required to do so by the Chairperson of the board a witness must, before giving evidence, take an oath or make an affirmation administered by the Chairperson of the board or such official of the board as the Chairperson may designate.

(d) Any person who has been summoned to attend any sitting of a board as a witness or who has given evidence before a board is entitled to claim expenses incurred from public funds in accordance with the tariff applicable to a witness in a civil trial in a magistrates' court. 5

(e) In connection with the giving of any evidence or the production of any book or document before a board, the law relating to privilege as applicable to a witness giving evidence or summonsed to produce a book or a document in a court, applies. 10

(4) A board may, with due regard to the evidence adduced before it—

- (a) grant the application on any justifiable ground, including that it should be granted—
  - (i) in order to prevent the interruption of the course of full-time educational studies of the person concerned; 15
  - (ii) by reason of the nature and extent of such person's domestic obligations or, in the case of a member of the Reserve Force, any circumstance connected with any trade, profession or business in which he or she is engaged;
  - (iii) on the grounds that such person is being compulsorily detained in any institution due to his or her having been sentenced to imprisonment or his or her incapacity to function effectively in society; 20
  - (iv) on the grounds that undue hardship pertaining to the personal circumstances of the member would otherwise be caused;
  - (v) on the grounds that it is in the public interest that the application be granted; or 25
  - (vi) on the grounds that the person concerned is a conscientious objector;
- (b) grant the application under such conditions as it may deem fit;
- (c) grant the whole or part of the application subject to such modifications as it may deem necessary; or 30
- (d) refuse the application.

(5) A board must give reasons for its decision.

(6) No deferment may be granted which has the effect of forcing the applicant to commence service or training after reaching the age of 50 years.

#### **Offences by witnesses summoned or subpoenaed by board 35**

**69.** (1) A person is guilty of an offence if, after having been summoned to attend and give evidence or to produce any book, document or object before a board, he or she, without sufficient cause, fails to—

- (a) attend at the time and place specified in the summons;
- (b) remain in attendance until the conclusion of the enquiry or until he or she is excused by the Chairperson of the board from further attendance; or 40
- (c) produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce.

(2) A person is guilty of an offence if he or she, after having been summoned to attend and give evidence before a board, attends but— 45

- (a) refuses to be sworn or to make an affirmation as a witness after he or she has been required by the Chairperson of the board to do so; or
- (b) after having been sworn or having made an affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her.

(3) Any person convicted of an offence in terms of subsection (1) or (2), is liable to a fine or to imprisonment for a period not exceeding three months. 50

(4) Any person who after having been sworn or having made an affirmation, gives false evidence before a board on any matter, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to any penalty which may be imposed on a person convicted of perjury. 55



(c) Uma ecelwa ukuba enze njalo nguMgcinisihlalo weBhodi, ufakazi kufanele, ngaphambi kokunika ubufakazi, athathe isifungo noma ukuvunyiswe okwethulwa nguMgcinisihlalo weBhodi noma umphathisikhundla weBhodi oyokhonjwa nguMgcinisihlalo.

(d) Noma yimuphi umuntu obizwe ukuba abe khona ekuhlaleni kweBhodi njengofakazi noma onikeze ubufakazi ngaphambi kweBhodi unelungelo lokucela izindleko ezivelile emalini yomphakathi ngokwesilinganiso esisebenza kufakazi ecaleni lezakhamuzi enkantolo kamantshi.

(e) Mayelana nokunikezwa kwanoma yikuphi ubufakazi noma ukukhishwa kwanoma iyiphi incwadi noma umbhalo ngaphambi kweBhodi, umthetho obhekene nelungelo njengoba usebenza kufakazi onika ubufakazi noma obizwe ukuba akhiphe incwadi noma umbhalo enkantolo yezakhamuzi uyasebenza.

(4) Ibhodi, ngokunaka ubufakazi obubekwe ngaphambi kwalo—

(a) lingemukela isicelo nganoma yiziphi izizathu ezamukelekayo, kufaka phakathi ukuthi kufanele semukelwe—

(i) ukuze kuvinjelwe ukuphazamiseka kwemfundo eyenziwa ngokugcwele yomuntu othintekayo;

(ii) ngesizathu sohlobo nobungako bezibopho zomuntu onje zasekhaya noma odabeni lwamalungu oMbutho oBekwe eCeleni, noma yiziphi izimo ezixhumenanoma yiluphi uhwebo, umsebenzi owenziwayo noma ibhizinisi abandakanyeka kukho;

(iii) ngokwezizathu zokuthi umuntu onje ubanjwe ngokuyimpoqo kunoma yisiphi isikhungo ngenxa yokuthi ethole isigwebo sokugqunywa ejele noma ukwehluleka kwakhe ukusebenza kahle emphakathini;

(iv) ngokwezizathu zokuthi ubunzima obungafanele obumayelana nesimo esithinta okubhekene ngqo nomuntu lowo bungahle ngokunye budaleke elungwini elithintekayo;

(v) ngokwezizathu zokuthi kuyadingeka ukubonelela umphakathi ukuthi isicelo sinikezwe; noma (vi) ngokwezizathu zokuthi umuntu othintekayo ungumenqabiwesazelo;

(b) linganikeza isicelo ngaphansi kwezimo elizibona zifanele;

(c) linganikeza sonke isicelo noma ingxenye yaso kwencike eziguqulweni elingahle lizibone zidingeka; noma

(d) lingasenqaba isicelo.

(5) IBhodi kufanele linikeze izizathu zesinqumo salo.

(6) Akunakuhlehliswa okunganikezwa okunomphumela wokuphoqa umfakisicelo ukuba aqale insebenzo noma ukuqeqeshwa ngemuva kokufinyelela iminyaka engamashumi amahlanu.

#### Amacala enziwa ngofakazi ababiziwe noma ababizwe yiBhodi lokukhulula

69. (1) Umuntu uba necala uma, ngemuva kokuthi abizwe ukuba abe khona azonika ubufakazi noma ukuba akhiphe incwadi, umbhalo noma into ngaphambi kweBhodi, ehluleka—

(a) ukuba khona ngesikhathi nasendaweni ephawulwe kumasamanisi;

(b) ukuba ahlale ekhona kuze kube sesiphethweni sokuhlolwa noma aze akhululwe nguMgcinisihlalo weBhodi ekuqhubekeni abe khona; noma ukukhipha noma iyiphi incwadi, umbhalo noma into ekuye noma engaphansi kwempatho yakhe, acelwe ukuba ayikhiphe.

(2) Umuntu unecala uma, ngemuva kokuba ebiziwe ukuba abe khona azonika ubufakazi ngaphambi kweBhodi, eba khona kepha—

(a) enqabe ukufungiswa noma ukuvunyiswa njengofakazi ngemuva kokuthi ecelwe nguMgcinisihlalo ukuba enze njalo; noma

(b) ngemuva kokufungiswa noma kokuvunyiswa, ehluleka ukuphendula ngokugcwele nangokwenelisayo noma yimiphi imibuzo ebekwa kuye.

(3) Umuntu otholwa enecala ngokwendima (1) no (2), angahlawuliswa noma athole ukugqunywa ejele isikhathi esingedluli izinyanga ezintathu.

(4) Noma yimuphi umuntu othi ngemuva kokuba afungiswe noma avunyiswe anikeze ubufakazi obungelona iqiniso ngaphambi kweBhodi nganoma yiluphi udaba, ebe azi ukuthi ubufakazi obunje ukuthi akulona iqiniso noma engakholelwa ukuthi buyiqiniso, unecala futhi angagwetshwa ngesijeziso esibekwa kumuntu otholwe enecala lokuqamba amanga efungile.



**Appeal to Minister**

70. (1) Any person contemplated in section 67(1)(a), (b) or (c) aggrieved by a decision of a board may appeal against the decision to the Minister.

(2) The noting of an appeal in terms of subsection (1) does not suspend the obligation of the person to undergo the training in question or to perform the service in question. 5

**Manner of appeal**

71. (1) An appeal—

(a) must be lodged in the prescribed form within 30 days from the date on which the appellant is notified of the decision of the board; 10

(b) must be delivered or sent to the Minister at his or her address, fax number or electronic mail address and a copy of the appeal must be delivered or sent to the Chairperson of the board at his or her address, fax number or electronic mail address;

(c) must identify the subject of the appeal and state the reasons for the appeal and may include any other relevant information known to the appellant; and 15

(d) must specify the postal address or fax number of the appellant.

(2) (a) If an appeal is lodged after the expiry of the period referred to in subsection (1)(a), the Minister may, upon good cause shown, allow the late lodging of the appeal.

(b) If the Minister disallows the late lodging of an appeal, he or she must give notice of that decision to the person that lodged the appeal. 20

(3) As soon as reasonably possible, but in any event within three working days after receipt of a copy of the appeal in accordance with subsection (1), the Chairperson of the board must submit the reasons for the decision in question to the Minister.

**Decision on appeal, and notice**

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72. (1) The decision on an appeal must be made with due regard to the—

(a) particulars stated in the appeal in terms of section 71(1)(c);

(b) reasons submitted by the Chairperson of the board in terms of section 71(3).

(2) The Minister may confirm the decision appealed against, may refer the matter back to the board or may set that decision aside, and give such decision as should in his or her view have been given. 30

(3) The Minister must consider and decide the appeal as soon as reasonably possible, but in any event within 30 days after the appeal is received by him or her.

(4) The Minister must, immediately after making the decision on an appeal, give written notice of the decision to the appellant. 35

(5) The notice in terms of subsection (4) must—

(a) state the reasons for the decision and must include any provision of this Act relied upon; and

(b) inform the appellant of his or her right to take the matter on review to the High Court. 40

(6) If the Minister fails to give notice as contemplated in subsection (4), he or she must be regarded as having allowed the appeal.

**CHAPTER 12****CEREMONIAL DECORATIONS, MEDALS, AWARDS, FLAGS AND ACCOUTREMENTS**

45

**Institution of decorations and medals**

73. The President may institute warrants for decorations and medals which are to be conferred in respect of conduct in peace or conduct during a state of national defence, including war.

**Ukufaka isicelo sokubuyezwa kodaba kuNgqongqoshe**

**70.** (1) Noma yimuphi umuntu ochazwe kwisigaba 67 (1) (a), (b) noma (c) onesikhalo ngesinqumo sebhodi angafaka isicelo kuNgqongqoshe sokubuyezwa kwesinqumo.

(2) Ukwamukelwa kwesikhalo ngokwesigaba (1) akusimisi isibopho somuntu sokuyoqeqeshwa okulindeleke ukuba akwenze noma ukwenza umsebenzi othize. 5

**Indlela yokufaka isicelo sokubuyezwa kodaba**

**71.** (1) Isicelo sokubuyezwa kwesinqumo—

(a) kufanele sifakwe sibhalwe kwifomu lakhona zingakapheli izinsuku ezingu 30 kusukela osukwini ofaka isicelo aziswa ngalo ngesinqumo sebhodi;

(b) kufanele siyiswe noma sithunyelwe kuNgqongqoshe ekhelini lalapho ekhona, sithunyelwe kwinombolo yakhe yefeksi noma sithunyelwe nge e-mail bese ikhophi yaso ithunyelwa noma iyiswe kuSihlalo webhodi ekhelini lakhe; kwinombolo yakhe yefeksi noma ngeposi le e-mail; 10

(c) Kufuneka sichazwe isihloko sesikhalo kubekwe nezizathu zokufaka isikhalo kanti lungafakwa nolunye ulwazi oluwusizo noluphathelele naloludaba; bese 15

(d) Kubhalwa nekheli leposi noma inombolo yefeksi yofaka isikhalo.

(2) (a) Uma isicelo sesikhalo sifakwa sesidlulile isikhathi esibekwe kwisigaba (1) (a), uNgqongqoshe angaluvumela udaba ukuba lwemukelwe yize sesedlulile isikhathi uma kunezizathu ezibambekayo zokudlulelwa yisikhathi kodaba.

(b) Uma uNgqongqoshe enqaba ukuba udaba oseludlulelwe yisikhathi lwamukelwe, kufanele amazise ofaka isicelo sesikhalo ngaloko. 20

(3) Ngokushesha okungase kwenziwe kungakapheli izinsuku ezintathu emva kokuthola ikhophi yesicelo sokubuyezwa kodaba ngokwesigaba (1), uSihlalo webhodi kufanele anike uNgqongqoshe izizathu zesinqumo okuzoboniswana ngaso.

**Isinqumo sesinqumo esibuyezwayo nesaziso**

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**72.** (1) isinqumo sodaba lokubuyezwa isinqumo salo kufuneka senziwe ngokucabangela—

(a) imininingwane efakwe kwisicelo sokubuyezwa udaba ngokwesigaba 71 (1) (c);

(b) izizathu ezethulwe ngusihlalo webhodi ngokwesigaba 71 (3). 30

(2) UNgqongqoshe angakhipha isiqiniseko sesinqumo okukhalwa ngaso, angalwedlulisela ebhodini udaba noma asesule isinqumo ebesithathiwe bese ekhipha isinqumo ngombono wakhe.

(3) UNgqongqoshe kufanele asibhekisise isicelo sesikhalo ngokushesha okusemandleni akhe, zingakapheli izinsuku ezingu 30 emva kokuba esamukele. 35

(4) Kufanele kuthi emva kokuthatha isinqumo ngodaba lwesicelo sesikhalo uNgqongqoshe akhiphe isinqumo esibhaliwe asedlulisele kofake isikhalo.

(5) Isaziso ngokwesigaba (4) kufanele—

(a) sikhiphe izizathu zesinqumo futhi sifake nokusemthethwei osetshenziwe; futhi 40

(b) sazise ofake isicelo ngamalungelo akhe okulwedlulisela enkantolo yimajaji udaba lwakhe.

(6) Uma uNgqongqoshe ehluleka ukukhipha isaziso njengoba kubekwe kwisigaba (4), kufanele athathwe njengosemukele isicelo sesikhalo.

**ISIAHLUKO 12**

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**IMIHLLOBISO,IZIMENDLELA, IMIKLOMELO, AMAFULEGI KANYE  
NOKUNYE OKUSETSHENZISWA NGAMASOSHA,  
OKUNGOKWEMIKHOSI**

**Isizinda sokuhlobisa nezimindlela**

**73.** UMongameli angangenisa izincwadi zomthetho zemihlobiso nezimindlela okumele zethweswe mayelana nokuziphatha ngesikhathi soxolo noma ngesikhathi sesimo sokuvikelwa kukazwelonke, kufaka phakathi nempi. 50

**Rules and regulations**

74. The Minister, with the approval of the President, must make such rules and regulations as may be necessary in the case of every decoration or medal, for—

- (a) the award thereof;
- (b) the granting, wearing, forfeiture and restoration thereof; and 5
- (c) such other matters concerning such decorations and medals as he or she may deem expedient.

**Award of decorations and medals**

75. Persons may be awarded decorations and medals depending on the content of the warrant pertaining to such decoration or medal. 10

**Wearing of decorations and medals**

76. The wearing in public of decorations and medals in the prescribed manner by the following categories of persons and on the following apparel, is allowed:

- (a) Serving members of the Defence Force, on the appropriate uniform as prescribed; 15
- (b) former members of the Defence Force who have been awarded military decorations and medals, on appropriate civilian dress as prescribed;
- (c) civilians who are the next of kin of deceased former members of the Defence Force, on appropriate civilian dress as prescribed; and
- (d) other civilian recipients, on appropriate dress. 20

**Order of precedence**

77. (1) South African decorations and medals precede other decorations and medals presented to a member of the Defence Force.

(2) The President must issue an official order of precedence for the wearing of decorations and medals. 25

(3) Medals presented by any institution other than a state or a head of state may not be worn by members of the Defence Force together with their other medals.

**Display of insignia**

78. Units of the Defence Force may display on parade only prescribed flags, honours, awards and other insignia. 30

**Antecedent honours and medals**

79. Any decoration or medal instituted or recognised prior to the commencement of this Act may, subject to anything to the contrary contained in such honours and the rules for the governance thereof, be awarded, and any authority, sanction, warrant or certification relating to any such decoration or medal may be continued, amended or cancelled by the President. 35

**CHAPTER 13****GENERAL ADMINISTRATION AND SUPPORT****General powers of Minister**

80. (1) The Minister may do or cause to be done all things which are necessary for the effective defence and protection of the Republic, its territory and its inhabitants. 40

**Imithetho nezimiso**

74. UMongameli uzokwenza uNgqongqoshe ukuba abeke imithetho nezimiso angahle akubone kudingeka kuleso naleso simo sokuhlotsishwa noma semendlela, —  
 (a) mayelana nokunikezwa kwakho lokhu; (b) nokunikezwa ukugqokwa, ukulahlekelwa nokubuyiselwa kwakho lokhu; kanye (c) nezinye izindaba ezinje ezithinta ukuhlotsishwa kanye nezimendlela ayozibona zifanela. 5

**Ukuklonyeliswa ngemihlobiso nezimendlela**

75. Abantu banganikezwa imihlobiso nezimendlela kwencike kokuqokethwe yincwadi yomthetho emayelana nomhlobiso noma imendlela enje.

**Ukuhloba ngemihlobiso nezimendlela**

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76. Ukuhloba ngemihlobiso nezimendlela emphakathini ngendlela ebekiwe yimikhakha elandelayo yabantu kanye nasezimpahleni ezilandelayo, kuvunyelwe, kulaba—

- (a) amalungu asebenzayo oMbutho wezokuVikela emfaniswaneni ofanele njengoba kubekiwe; 15
- (b) amalungu ayengawoMbutho wezokuVikela anikezwe imihlobiso yezamasoshanezimendlela ezimpahleni ezifanele ezingezona ezasemasosheni njengoba kubekiwe;
- (c) abangewona amasosha abayizihlobo zamalungu ayengawoMbutho wezokuVikela, ezimpahleni ezifanele ezingezona ezamasosha njengoba kubekiwe; kanye 20
- (d) nabemukeli abangewona amasosha.

**Ukuhleleka ngokubaluleka**

77. (1) Imihlobiso nezimendlela zaseNingizimu Afrika zendulela eminye imihlobiso nezimendlela ezinikezwe amalungu oMbutho wezokuVikela. 25

(2) Umongameli kufanele akhiphe umyalo osemthethweni wokuhleleka ngokubaluleka kokugqokwa kwemihlobiso nezimendlela.

(3) Izimendlela ezinikezwe yinhlangano engewona uMbuso noma iNhloko yoMbuso ayinakugqokwa ngamalungu oMbutho wezokuVikela ndawo yinye nezinye izimendlela zawo. 30

**Ukukhonjiswa kwezimpawu**

78. Amaviyo oMbutho wezokuVikela angakhombisa lapho eviliyela, amafulegi, ukuhlonishwa, imiklomelo nezinye izimpawu kuphela, ezibekiwe.

**Ukuhlonishwa nezimendlela okwandulelayo**

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79. Noma yimuphi umhlobiso noma imendlela engeniswe noma eyemukelwe ngaphambi kokuqala kwalo Mthetho, ngokulandela noma yikuphi okuqophisanayo okuqokethwe ekuhlonishweni nasemithethweni yokuphathwa kwalokho, kunganikezwa, kanye nanoma yikuphi ukugunyazwa, ukuvunyelwa, incwadi yomthetho noma isitifiketi okuphathelene nomhlobiso noma imendlela enje kungaqhutshwa, kuguqulwe noma kwesulwe nguMongameli. 40

**ISAHLUKO 13****UKUPHATHA NOKUXHASWA NGOKWEJWAYELEKILE****Amandla kaNgqongqoshe**

80. (1) UNgqongqoshe angenza noma adale ukuthi kwenziwe zonke izinto ezidingekayo ekuvikelweni kweRiphabhulikhi, indawo yayo kanye nabahlali bayo. 45

- (2) Without derogating from the generality of subsection (1), the Minister may—
- (a) manage, provide, acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes, either singly or in conjunction with other users;
  - (b) after consultation with other interested government departments manage, provide, acquire, hire, construct and maintain airfields, air navigation systems, harbours and harbour facilities for the vehicles, aircraft and vessels of the Defence Force; 5
  - (c) acquire and maintain arms, ammunition, vehicles, aircraft, vessels, uniforms, stores and other equipment; 10
  - (d) sell, let or otherwise dispose of movable or immovable property of the Defence Force which is no longer needed for defence purposes;
  - (e) authorise the sale or loan of equipment belonging to the Department to the defence forces of allied countries;
  - (f) establish military training institutions for purposes of providing training and instruction to members and employees of the Department; 15
  - (g) issue directives for the training of any member or employee of the Department;
  - (h) subject to an agreement with the owner and such conditions, including compensation, as may be stipulated by the National Treasury, authorise such use of private vehicles, vessels or aircraft as is necessary for the training of the members of the Reserve Force or the rendering of services by them; 20
  - (i) establish military museums, monuments, heritage sites and war graves or cemeteries.
- (3) (a) If it is in the public interest, or in the case of an emergency, the Minister, after consultation with the Minister of Finance, may authorise— 25
- (i) the conveyance of any person who is not an officer or employee of the State acting in the execution of his or her duty as such, or any goods belonging to such person, by means of any vehicle, aircraft or vessel belonging to the Department; or 30
  - (ii) the use of any vehicle, aircraft, vessel, equipment, facility or any other property belonging to the Department, by any person who is not an officer or employee of the State acting in the execution of his or her duty as such.
- (b) Any authorisation contemplated in paragraph (a) may be made subject to such conditions as the Minister may determine. 35

### Delegation of powers and assignment of duties by Minister

81. The Minister may in writing delegate any power conferred upon him or her or assign any duty imposed upon him or her by or under this Act to the Secretary for Defence or the Chief of the Defence Force, except the power to make regulations and, in the case of the Chief of the Defence Force, the power to employ the Defence Force as contemplated in section 18(1). 40

### Regulations

82. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) the conditions of service of members of the Defence Force generally, excluding pay, salaries and entitlements, as well as the maximum age to which members may serve, related job descriptions and personnel management codes and job evaluation; 45



- (2) Ngaphandle kokubukela phansi isigaba esingaphansi (1), uNgqongqoshe—
- (a) angaphatha, anikeze, athole, aqashe, akhe futhi agcine izinsebenzo zezokuvikela, izinhla, izakhiwo, izindawo zokuqeqeshela kanye nomhlaba wezokuvikela ezidingekayo ngokwezinhloso zezokuvikela ekwenza eyedwa noma ngokuhlanganyela nabanye abasebenzisi; 5
  - (b) ngemuva kokubonisana neminye iminyango kahulumeni enentshisekelo angaphatha, anikeze, athole, aqashe, akhe noma agcine izindawo zezindiza, izinhlelo zokuhamba emoyeni, izindawo zokungenisa imikhumbi, kanye nezindawo ezisemathekweni zezithuthi, zindiza nemikhumbi yoMbutho wezokuVikela; 10
  - (c) angathola futhi agcine izikhali, izikhali zokulwa, izithuthi, izindiza, imikhumbi, imifaniswano, izindawo zokugcina izinto nezinye izintozokusebenza; 15
  - (d) angathengisa, aqashise noma ngenye indlela asuse impahla esukayo noma engasuki yoMbutho wezokuVikela engasadingeki mayelana nezinhloso zokuvikela; 15
  - (e) angagunyazisa ukuthengiswa noma ukwebolekwa kwezinto ezisetshenziswayo ezingezoMnyango wamabutho amazwe ahambisana naleli; 20
  - (f) angamisa izinhlangano zokuqeqesha zezempi ngezinhloso zokunikeza ukuqeqeshwa nokuyalwa kumalungu nabasebenzi boMnyango; 20
  - (g) angakhipha imiyalo ngokuqeqeshwa kwanoma yiliphi ilungu noma isisebenzi soMnyango; 25
  - (h) ngokulandela isivumelwano nomnikazi kanye nangezimo, kufaka phakathi ukunxephezela, njengoba kungahle kube kubekiwe kuMnyango wokubeka izimali zezwe, agunyaze ukusetshenziswa kwezithuthi, imikhumbi noma izindiza zangasese njengoba kudingakala ukuqeqesha amalungu oMbutho oBekwe eCeleni noma ukunikeza kwabo insebenzo; kanye 25
  - (i) angamisa iminyuziyamu yezamasosha, izindawo eziyisikhumbuzo, izizazokungamafa kanye namangcwaba ezempi noma izindawo zokungcwabela. 30
- (3) (a) Uma kungokuthinta umphakathi, noma uma kunesimo esiphuthumayo, uNgqongqoshe, ngemuva kokubonisana noNgqongqoshe wezeziMali, angagunyaza—
- (i) Ukuthwalwa kwanoma yimuphi umuntu ongeyena umphathisikhundla nomaisisebenzi soMbuso osebenza ekwenziweni kwemisebenzi yakhe, noma yiziphi izimpahla ezingezomuntu onje, ngokusebenzisa isithuthi, indiza noma umkhumbi ongowoMnyango; noma 35
  - (ii) ukusetshenziswa kwanoma yisiphi isithuthi, indiza, umkhumbi, izinto ezisetshenziswayo, noma yinoma iyiphi enye impahla okungeyoMnyango, yinoma yimuphi umuntu ongeyena umphathisikhu ndla noma isisebenzi soMbuso osebenzaukwenza imisebenzi okungeyakhe. 40
- (b) Noma yiliphi igunya elicetshwa esigabeni (a) lingenziwa ngokulandela izimiselo uNgqongqoshe angahle azinqume.

**Ukwedluliselwa kwamagunya kanye nokunikezwa kwemisebenzi nguNgqongqoshe 45**

**81.** UNgqongqoshe, kungathi ngokubhala agunyaze uNobhala wezoMbutho wokuVikela noma uMkhuzi woMbutho wezokuVikela ngamandla noma ngemisebenzi ebisemahlombe akhe ngaphandle kwamandla okushaya imithetho kanti uma kunguMkhuzi woMbutho wezokuVikela, amandla okuthumela uMbutho wezokuVukela endaweni ethize ukuba uyosebenza khona njengoba kuchazwe kwisigaba 18 (1). 50

**Izimiso**

- 82.** (1) UNgqongqoshe angenza, ngokwesaziso kuGazette, imithetho mayelana—
- (a) izimiselo zensebenzo yamalungu oMbutho wezokuVikela ngokubanzi, ngaphandle kwamaholo namanye amalungelo kanye neminyaka amalungu angayisebenza ephathelene nezincazelo ezihlobene nalokho zemisebenzi kanye nokuphathwa kwabasebenzi kanye nokuhlolwa kwemisebenzi; 55

- (b) the temporary employment of persons, in a military or a civilian capacity;
- (c) discipline in the Defence Force;
- (d) the occupation of official quarters;
- (e) the conditions under which overtime duty, subsistence, travelling, climatic and other allowances may be paid; 5
- (f) the occupational health and safety of members of the Defence Force and civilian employees of the Department;
- (g) defence intelligence, including—
  - (i) assigning security classifications to information of the Department;
  - (ii) assigning security classifications to areas and facilities of the Department; 10
  - (iii) restrictions based on security classifications with regard to access to such information, areas or facilities;
  - (iv) assigning security gradings to posts in the Department; and
  - (v) the declassification of information, areas or facilities of the Department; 15
- (h) training, including—
  - (i) the level of training of the members of the Defence Force;
  - (ii) the attendance of military training programmes by civilians older than 18 years;
  - (iii) the establishment of training camps and units; 20
  - (iv) the accreditation of military training institutions with academic and other non-military institutions;
  - (v) the conclusion of agreements between the State as employer and members of the Department covering all aspects of training and education; and 25
  - (vi) the use and compensation of specialised staff at or in respect of military training institutions not otherwise provided for by law;
- (i) the establishment of standards of any physical measurement as well as the medical and psychological condition determined by an appropriate examination or measurement and compulsory immunisation of the members of the Defence Force; 30
- (j) the establishment of standards of health and the compulsory immunisation of employees of the Department;
- (k) the provision for medical, dental and hospital treatment of retired members of the Regular Force and their dependants and, if applicable, the establishment, management and control of one or more funds for such purposes; 35
- (l) leave of absence of members of the Defence Force;
- (m) compulsory insurance of members and employees, and members of any auxiliary service, in respect of bodily injury, disablement or death occurring in the course of military service, as well as the deductions of the prescribed premiums for such insurance from the pay, salary or remuneration of the members and employees concerned; 40
- (n) labour relations between members of the Defence Force or any auxiliary service and the State as their employer, including the resolution of disputes and the establishment of mechanisms necessary for the regulation of the said labour relations and the administration and management of such matters; 45
- (o) the establishment, management and control of funds and trading and non-trading institutions, the aims of which are to the benefit of serving and former members of the Defence Force and their accompanying guests as stipulated; 50
- (p) the seniority and precedence of headquarters, the constituent forces, formations, units and personnel musters and of members of the Defence Force;

- (b) ukuqashwa kwesikhashana kwabantu, kokubili ezikhundleni zasemasosheni noma kwezabangewona amasosha;
- (c) ukufakwa endleleni koMbutho wezokuVikela;
- (d) ukuhlala ezindaweni ezisemthethweni;
- (e) izimo okungakhokhelwa kuzo ukusebenza okwenziwa ngaphezu kwesikhathi esibekiwe somsebenzi, imali yokuziphilisa, izimali ezihambisana nezimo ezithile zezulu kanye nezinye izimali kungakhokhwa; 5
- (f) impilo yasemsebenzini nokuphepha kwamalungu oMbutho wezokuVikela kanye nabasebenzi boMnyango kuhlange—
- (i) ukubekwa kokuhlelwa ngokwezokuphepha kokuthola ulwazi loMnyango; 10
- (ii) ukubekwa kokuhlelwa ngokwezokuphepha kwezindawo nezibonelelo zoMnyango.
- (iii) izithiyo ezesekelwe ekubekweni kokuhlelwa ngokwezokuphepha mayelana nokufinyelela olwazini, izindawo noma izibonelelo ezinje; 15 kanye
- (iv) nokubekwa kokuhlelwa ngokwezokuphepha ezikhundleni eziseMnyangweni; kanye
- (v) nokususwa ohlelweni kolwazi, izindawo noma izibonelelo zoMnyango;
- (g) ukuqeqeshwa, kufaka phakathi— 20
- (i) ibanga lokuqeqeshwa kwamalungu oMbutho wezokuVikela;
- (ii) ukungenelwa kwezinhlelo zokuqeqeshwa zasemasotsheni ngabangewona amasosha abadala kuneminyaka eyishumi nesishiyagalolunye;
- (iii) ukumiswa kwezinkambu nezikhungo zokuqeqesha; 25
- (iv) ukwemukelwa ngokusemthethweni kwezikhungo zokuqeqesha zasemasotsheni kanye nezikhungo ezingezemfundo kanye nezinye ezingezona ezasemasosheni;
- (v) ukwenziwa kwezivumelwano phakathi koMbuso njengomqashi kanye namalungu oMnyango, ezivala yonke imikhakha yokuqeqesha nemfundo; kanye 30
- (vi) nokusetshenziswa nokunxephezela kwabasebenzi abakhethekile ezikhungweni zokuqeqesha zasemasotsheni ezingabonelelwanga ngomthetho;
- (i) ukumiswa kwezilinganiso zanoma yikuphi ukulinganiswa kwento kanye nokugonywa ngenkani kwamalungu oMbutho wezokuVikela; 35
- (j) ukumiswa kwezilinganiso zempilo kanye nokugonywa ngenkani kwabasebenzi boMnyango;
- (k) ukunikezwa kokwelashwa kwezemithi, ezamazinyo nokwasesibhedlela kwamalungu oMbutho oseMbuthweni ngokuPhelele asethathe umhlalaphansinabondliwa yiwo, kanye, uma kusebenza lokho, nokusungulwa, ukuphathwa kwesikhwama semali esisodwa noma ngaphezulu ngokwezinhloso zalokhu;
- (l) ilivu yokungabikho yamalungu oMbutho wezokuVikela;
- (m) umshuwalense ophoqwayo wamalungu nabasebenzi namalungu emisebenzi ewusizo mayelana nokulimala komzimba, ukukhubazeka noma ukufa okwenzeka ngenkathi kuqhutshwa umsebenzi kanye nokudonswa kwemali ekhokhwayo ebekiwe yomshuwalense onje enkokhelweni noma eholweni lamalungu noma abasebenzi abathintekayo; 45
- (n) nobudlelwane kwezemisebenzi phakathi kwamalungu oMbutho wezokuVikela noma kanye noMbuso njengomqashi wabo, kufaka phakathi ukuxazululwa kwezingxabano kanye nokusungulwa kwezindlela zokwenza ezidingekayo zezemisebenzi ezishiwoyo kanye nokuphathwa kwezindaba ezinje; 50
- (o) ukusungulwa nokuphathwa kwezimali kanye nezikhungo zokuhwebelana nezingahwebelani, izinhloso zalapho okungukusizakala kwamalungu asebenzayo nangabake baba ngamalungu kanye nabavakashi abaphelezele njengoba kushiwo;
- (p) ubukhulu nokulandelana kwamakomkhulku, amabutho equkethwe, izinhla, amaviyo nokuqoqwa kwabasebenzi bazohlolwa kanye nokwamalungu oMbutho wezokuVikela; 60

- (q) all matters pertaining to military ceremony including the design, award, use, care and custody of colours, standards and flags designated for military use;
- (r) honorary appointments and ranks in the Defence Force and the terms and conditions upon which the appointments may be made;
- (s) beneficial affiliation of units and formations of the Defence Force with similar units and formations of foreign defence forces; 5
- (t) the exemption of a member who, while in the service at a specific place and on good cause shown, requests not to be ordered to serve elsewhere in the Republic or the rest of the world;
- (u) the governance and management of military detention and correctional facilities established under the Act and the enforcement of discipline in such facilities; 10
- (v) the prohibition, restriction and regulation of any traffic in any military area, base, unit or on any premises under the control of the Department;
- (w) the minimum standards for the registration and certification of roadworthiness of vehicles and vehicular equipment for use in the Defence Force and the licensing of the drivers of such vehicles and the operators of such equipment; 15
- (x) the minimum standards for the registration and certification of airworthiness of aircraft for use in the Defence Force and the certification of the competency of the crew of such aircraft; 20
- (y) the minimum standards for the registration and certification of the seaworthiness of vessels for use in the Defence Force and the certification of the competency of the crew of such vessels;
- (z) the issue, care and disposal of arms, accoutrements, ammunition, supplies, animals, transport, clothing and equipment of the Department; 25
- (zA) military museums, monuments, heritage sites and cemeteries;
- (zB) any auxiliary services provided for in this Act including matters relating to terms and conditions of service of members, their education, training, discipline and conduct;
- (zC) the support that the Department may give to recognised community organisations and institutions in respect of development programmes; 30
- (zD) any matter which this Act requires or permits to be prescribed or which it is necessary or expedient to prescribe in order to ensure the good governance of the Department.
- (2) Any regulation made in terms of subsection (1)— 35
  - (a) which may result in financial expenditure for the State may only be made subject to sections 63 and 64 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and with the approval of the Minister of Finance; and
  - (b) relating to the terms and conditions of service of members of the Defence Force may be made with retrospective effect for a period not exceeding 12 months, except where such regulations provide for— 40
    - (i) any reduction in the rights and privileges of members; or
    - (ii) the imposition of penalties.
- (3) Any regulation made under subsection (1) may provide that a contravention of or failure to comply with a regulation is an offence and that any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding five years. 45

### Protection of defence assets

83. (1) The Minister may, by notice in the *Gazette*, designate a mark to be applied to animals, equipment or articles to denote the ownership of the Department or any visiting force in such animals, equipment or articles. 50

- (q) zonke izindaba eziphathelele nemikhosi yasemasosheni kufaka phakathi ukuklanywa, ukunikezwa, ukusetshenziswa, ukunakekelwa kanye nokugcinwa kwemibala, izilinganiso namafulegi aklanyelwe ukusetshenziswa kwezamasosha;
- (r) ukubekwa kanye nezikhundla okungezokuhlonishwa eMbuthweni wezokuVikela kanye nemiyalelo nezimiselo zokubekwa kungenziwa; 5
- (s) ukuxhumana okulusizo kwamaviyo nezinhla zoMbutho wezokuVikela ezinamaviyo afanayo nemibutho yezokuvikela yangaphandle;
- (t) amandla nemisebenzi yamasotsha, ukukhululwa kwelungu elithi ngenkathi lisasebenza futhi nangokuveza isizathu esihle, licele ukuthi lingayalelwa ukuthi lisebenze noma yikuphi eNingizimu Afrika kanye nasemhlabeni ngokubanzi; 10
- (u) ukuphathwa kwezindawo zokubambela nezokuqondisa izigwegwe zasemasosheni ezimiswe ngokoMthetho kanye nokuqhutshwa kwempatho eqinile ezindaweni ezinje; 15
- (v) ukuvinjelwa, ukuthitshwa nokuqondiswa kwanoma yikuphi ukuhamba kunoma iyiphi indawo, isikhungo noma kunoma yisiphi isiza samasosha esingaphansi kwezandla zoMnyango;
- (w) izidingo ezimbalwa zokubhaliswa nokunikezwa izitifiketi kwezithuthi kanye nezinto ezisetshenziselwa izithuthi ukuba zisetshenziswe eMbuthweni wezokuVikela kanye nokunikezwa amalayisense kwabashayeli bezithuthi ezinje kanyenabasebenzisa izinto ezisetshenziswayo ezinje; 20
- (x) izidingo ezimbalwa zokubhaliswa nokunikezwa isitifiketi sokulungela ukuba semoyeni kwendiza esetshenziswa eMbuthweni wezokuVikela kanye nokunikezwa kwesitifiketi sokuba nekhono kwamatilosi endiza enje; 25
- (y) izidingo ezimbalwa zokubhaliswa nokunikezwa isitifiketi kokulungela ukuba solwandle esetshenziswa eMbuthweni wezokuVikela kanye nokunikezwa kwesitifiketi soku ba nekhono kwamatilosi emikhumbi enje;
- (z) ukukhishwa, ukunakekelwa nokulahlwa kwezikhali, okusetshenziswa nempahla yamasosha, izikhali zokulwa, izilwane, okokuhamba, okokugqoka nezinto ezisetshenziswa nguMnyango; 30
- (zA) iminyuziyamu yezempi, izindawo zezikhumbuzo, iziza ezingamafa namangcwaba;
- (zB) Noma yiziphi iziNsebenzo ezisizayo ezibonelelwe kuloMthetho kufaka phakathi izindaba eziphathelele nemiyalelo nezimiselo zamalungu, imfundo, ukuqeqeshwa, ukuphathwa ngokusemthethweni nokuziphatha kwawo; 35
- (zC) Ukwesekwa uMnyango ongase ukunike izinhlangano zemiphakathi ezaziwayo nezemukelekile nezinye izinhlangano maqondana nezinhlelo zentuthuko;
- (zD) noma yiluphi udaba loMthetho odinga ukuba lwamukelwe kukhishwe isincomo ngalo noma okufanele kukhishwe isincomo ngalo ukuze kuqinisekise indlela yoMnyango yokuphatha ngokufanele. 40
- (2) Noma yisiphi isimisomthetho esenziwe ngokwesigaba esingaphansi (1)—
- (a) esingaba nomphumela ekusetshenzisweni kwezimali zombuso, zingenziwa kuphela ngokuhambisana nesigaba 63 no 64 simthetho wokuPhathwa kweZimai zikaHulumeni ka 1999 (Act No. 1 of 1999) kube loko kwemukelwe nguNgqongqoshe weZezimali; futhi 45
- (b) kuphathelele nemiyalelo nezimiselo zamalungu oMbutho wezokuVikela singenziwa ngokuthi isibuyiselwe emuva isikhathi esingedluli izinyanga eziyishumi nambili, ngaphandle kwalapho izimisomthetho ezinje zibhekela— 50
- (i) noma yikuphi ukwehliswa kumalungelo amalungu; noma
- (ii) ukubekwa kwezijeziso.
- (3) Noma yimuphi umthetho owakhiwe ngaphansi kwesigaba (1) ungenza ukuba ukwephulwa kwawo noma ukwehluleka ukuhlangabezana naqo kuyicala umuntu otholakala enalo ongabekwa icala okungadingeka alihlawulele noma agqunywe ejele isikhathi esingengaphezu kweminyaka emihlanu. 55

### Ukuvikelwa kwempahla yezokuvikela

83. (1) UNgqongqoshe, ngesaziso kuGazette, angakhetha uphawu oluzosetshenziswa ezilwaneni, ezintweni ezisetshenziswayo noma Izinto ukukhomba ubunini boMnyango noma banoma yiliphi umbutho ohambele. 60



(2) No animal, equipment or article belonging to the Department or to any visiting force which bears a mark contemplated in subsection (1) may be seized or attached by or under any writ of execution which may be issued against any employee of the Department or any visiting force.

(3) The entity known as the Department of Defence Archive Repository which existed immediately prior to the commencement of this Act continues to exist under this Act under the same conditions, and the provisions of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), apply with the necessary changes, but—

- (a) the Archive Repository must be maintained under the proper management and care of the Department; 10
- (b) no record may be transferred to the National Archives;
- (c) subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)—
  - (i) no record may be available for public access until a period of 20 years has elapsed since the end of the year in which the record came into existence, which period may be extended by the Minister in the interests of national security; and 15
  - (ii) access to records which have been in existence for less than 20 years can only be obtained subject to such conditions as may be determined by the Secretary for Defence. 20

#### Exemptions applicable to Defence Force

84. (1) Despite anything to the contrary contained in any other law—

- (a) the Defence Force is exempted from any registration, licensing or related fee for taxation regarding the possession or movement of equipment, vehicles, aircraft or vessels which are used by the Department if such equipment, vehicles, aircraft or vessels are clearly marked and identifiable; 25
- (b) members of the Defence Force are exempted from any provisions relating to the licensing of drivers of any vehicle or operators of any equipment or machinery used by the Department if the Department ensures that the said drivers or operators are adequately trained and tested in accordance with prescribed minimum standards; 30
- (c) members of the Defence Force are exempted from any provisions relating to the licensing of pilots, aircrew and aerospace-related persons of any aircraft or air vessel used by the Department if the Department ensures that such pilots, aircrew and aerospace-related persons are adequately trained and tested in accordance with prescribed standards to ensure their competency and certification; 35
- (d) officers or sailors of any vessel used by the Department are exempted from any provisions relating to their competency and certification if the Department ensures that such officers or sailors are adequately trained and tested in accordance with prescribed standards to ensure their competency and certification; 40
- (e) clubs, messes and trading institutions are exempted from the payment of any licence fees, taxes and duties other than customs and excise duties or value-added tax if such clubs, messes and trading institutions are established and managed for the exclusive use or benefit of members or employees of the 45

(2) Akuna silwane, okusetshenziswayo noma into okungeyoMnyango noma eyonoma yimuphi umbutho ohambale enophawu olucetshwa esigabeni esingaphansi (1) okungephucwa noma kubanjwe noma ngaphansi kwencwadi yomthetho engahle ikhishelwe umqashwa woMnyango noma yinoma ikhishelwe noma yiliphi ibutho elihambale. 5

(3) Uhlelo olwaziwa njengeNdawo yokuBeka amaRekhodi neMilando yoMnyangowezokuVikela obelukhona ngaphambi kokuqala kwalo Mthetho luyaqhubeka ukuba khona ngaphansi kwaloMthetho ngaphansi kwezimiselo ezifanayo, kanye nemithethomigomo yoMthetho weNational Archives of South Africa ka-1996 (UMthetho ongunombolo 43 ka-1996) Kuyasebenza neziguquko ezidingekayo, 10  
kepha—

- (a) iNdawo yokuBeka amaRekhodi neMilando kufanele igcinwe ngaphansi kwempatho efanele nokunakekelwa koMnyango;
- (b) akunarekhodi elivunyelwe ukuba ledluliselwe eNdaweni yokuBeka amaRekhodi nemiLando kaZwelonke; 15
- (c) ngokoMthetho wePromotion to Access to Information ka-2000 (Umthetho ongunombolo 2 ka-2000)—
  - (i) akunarekhodi okumele litholakale kuwonkewonke kuze kwedlule isikhathi seminyaka engamashumi amabili ukusuka ekugcineni konyaka elabakhona ngawo, sikhathi leso esingelulwa nguNgqongqoshe ngokubhekela ukuphepha kwezwe lonke; kanye 20
  - (ii) ukufinyelela kumarekhodi asenesikhathi ekhona esingaphansi kweminyaka engamashumi amabili kungatholakala kuphela ngokulandela izimiselo ezingahle zinqunywe nguMabhalane oMkhulu wezokuVikela. 25

#### Ukukhululwa okusebenza eMbuthweni wezokuVikela

84. (1) Nanxa kunokuqophisanayo okuqokethwe kunoma yimuphi omunye uMthetho—

- (a) uMbutho wezokuVikela ukhululwe kunoma yikuphi ukubhalisa, ukunikezwa ilayisense noma ukukhokhwa kwemali ehambisana nalokho mayelana nokuba kanye nokuhamba kwezinto ezisetshenziswayo, izithuthi, izindiza noma imikhumbi esetshenziswa nguMnyango uma izinto ezisetshenziswayo, izithuthi noma izindiza noma imikhumbi kukhonjiswe ngokucacile futhi kubonakala; 30
- (b) amalungu oMbutho wezokuvikela akhululwe kunoma yimithi imithethomigomo emayelana nokunikezwa kwamalayisense kubashayeli banoma yisiphi isithuthi noma abasebenzisi banoma yiziphi izinto ezisetshenziswa nguMnyango uma uMnyango uqinisekisa ukuthi abashayeli noma abasebenzisi abashiwoyo baqeqeshwe ngokwanele futhi bahlolwa ngokulandela izilinganiso okuyizona eziphansi kunazo zonke ezibekiwe; 35 40
- (c) amalungu oMbutho wezokuVikela akhululwe kunoma yimiphi imithethomigomo mayelana nokunikezwa kwamalayisense kubashayelizindiza, amatilosi asemoyeni kanye nabantu abasebenza ngokuba semoyeni banoma iyiphi indiza noma umkhumbi womoya osetshenziswa nguMnyango uma uMnyango uqinisekisa ukuthi abashayelizindiza, amatilosi asemoyeni kanye nabantu abasebenza ngokubasemoyeni baqeqeshwe ngokwanele bahlolwa ngokulandela izilinganiso ezibekiwe ukuqinisekisa ikhono labo nokunikezwa kwezitifiketi; 45
- (d) abaphathizikhundla noma amatilosi asolwandle anoma yimuphi umkhumbi osetshenziswa nguMnyango akhululwe kunoma yimiphi imithethomigomo ephathelene nekhono labo nokunikezwa isitifiketi uma uMnyango uqinisekisa ukuthi abaphathizikhundla noma amatilosi asolwandle anje aqeqeshwe ngokwanele futhi ahlolwa ngokulandela izilinganiso ezibekiwe ukuqinisekisa ikhono labo nokunikezwa kwao izitifiketi; 50
- (e) izindawo zokuhlanganyela, zokuhlala nezikhungo zokuhweba zikhululwe ekukhokheni noma yiziphi izimali zamalayisense, izintela kanye nemali ekhokhelwa ukukhipha nokungenisa impahla ezweni noma intela efakwa entengweni yempahla uma izindawo zokuhlanganyela, zokuhlala nezikhungo zohwebo zimiswe futhi ziphathelwe ukusetshenziswa nokusizakala kuphela kwamalungu noma abasebenzi boMnyango, imindeni yabo, izivakashi zabo, 55 60

Department, their families, their guests, military veterans and members of any visiting forces, as prescribed;

- (f) unless determined otherwise by the Chief of the Defence Force due to the nature of the duties involved, a member of the Defence Force is exempted from payment of tolls when passing through a toll-gate or any similar facility if he or she so passes in the course of performing his or her functions and if he or she is— 5
- (i) driving a military vehicle or operating any other military means of transport; or
  - (ii) proves his or her membership of the Defence Force by exhibiting his or her military identification and the relevant authorisation documents. 10

(2) The Secretary for Defence may determine that subsection (1)(f) does not apply to any particular member or group of members of the Department, in which case such toll is payable and such payment must be regarded as being authorised expenditure.

### Exclusion of liability

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85. (1) Neither the State nor a member or employee is liable (except in the case of any wilful act or omission on the part of a member or employee) to any person who makes unauthorised use of any vehicle, aircraft or vessel under the control of the Department, or to any dependant of such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use of such vehicle, aircraft or vessel. 20

(2) Neither the State nor a member or employee is liable (except in the case of any wilful act or omission on the part of any such person) to any person—

- (a) referred to in section 80(3) who makes use of any vehicle, aircraft or vessel which is under the control of the Department and appropriated for use by members or employees; 25
- (b) who makes use of any other property of the Department; or
- (c) to whom services are rendered by the Department, or to any dependant of such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use of any such vehicle, aircraft or vessel, such other property or such services. 30

(3) If the State has paid any compensation in respect of a claim by any person for any loss or damage contemplated in subsection (2), the State may, without having obtained any formal cession of the right of action, recover from the person responsible for the loss or damage, the amount paid by way of compensation or any lesser amount determined by the Minister with the concurrence of the Minister of Finance. 35

### Right of recourse in respect of expenditure for injuries of members

86. Whenever the Department—

- (a) has incurred expenditure or has paid any amount in respect of medical, dental or hospital treatment of the bodily injuries of a member of the Defence Force or the supply of articles or the rendering of service in connection with that treatment; or 40
- (b) has made any payments in respect of any salary, pay, allowances or any compensation to the member during his or her incapacity, and the expenditure has been incurred or the payments have been made in circumstances where the member or his or her estate would otherwise have a claim against another person as a result of the bodily injury to or incapacity of the member, the Department shall, without obtaining a formal cession of action, have the same right of recourse against that other person for restitution of the payments made as that member or his or her estate had against such person. 45 50

omakadebona bamasosha kanye namalungu anoma yimuphi uMbutho ohambele, njengoba kubekiwe;

- (f) ngaphandle kokuthi kubekwe ngokunye nguMphathi woMbutho wezokuVikela ngenxa yohlobo lwemisebenzi ebandakanyekayo, ilungu loMbutho wezokuVikela likhululwe ekukhokheni imali ekhokhelwa ukusebenzisa umgwaqo uma ledlula esangweni elikhokhelwayo noma indawo efanayo, uma ledlula ngenkathi lenza imisebenzi yalo futhi uma—
- (i) lishayela isithuthi sasemasosheni noma lisebenzisa noma iyiphi enye indlela yokuthutha yasemasosheni; noma
  - (ii) liveza ubulungu balo boMbutho wezokuVikela ngokukhombisa umazisi wasemasosheni walo kanye nemibhalo efanele yokugunyazisa.

(2) UMkhuzi woMbutho wezokuVikela anganquma ukuthi isigaba esingaphansi (1) (f) asisebenzi kunoma yiliphi ilungu elithile noma iqembu lamalungu oMnyango, kuthathwe njengezindleko ezigunyaziwe.

#### Ukukhishelwa ngaphandle kokuba nesibopho

85.(1) Akukho Mbuso noma ilungu noma isisebenzi esinesibopho (ngaphandle kwalapho kunesenzo sangamabomu noma ukungenziwa ohlangothini lwalelo lungu) kunoma yimuphi umuntu osebenzisa ngaphandle kokugunyazwa noma yisiphi isithuthi, indiza noma umkhumbi ongaphansi kwezandla zoMnyango, noma kunoma yimuphi umuntu owondliwa yilowo muntu onje, ngokulahleka noma umonakalo empahleni okubangwe ukulimala komzimba, ukulahleka kwempilo noma ukulahleka noma umonakalo ezimpahleni okubangwe noma okuvela noma okuxhumene ngandlela ethize nokusetshenziswa kwesithuthi, indiza yezinto ezisetshenziswayo noma umkhumbi.

(2) Akukho Mbuso noma ilungu noma isisebenzi esinesibopho (ngaphandle kwalapho kunesenzo sangamabomu noma ukungenziwa engxenyeni yomuntu onje ) kunoma yimuphi umuntu—

- (a) okubhekiswe kuye esigabeni 80(3) osebenzisa noma yisiphi isithuthi, indiza noma umkhumbi ongaphansi kwezandla zoMnyango futhi nothathelwe ukusetshenziswa ngamalungu noma abasebenzi;
- (b) osebenzisa noma iyiphi enye impahla yoMnyango; noma
- (c) onikezwa izinsebenzo nguMnyango, noma kunoma yimuphi umuntu owondliwa ngumuntu onje, mayelana nanoma umonakalo ongumphumela wanoma yikuphi ukulimala ngokomzimba, ukulahleka kwempilo noma ukulahleka kwempahla noma ukonakala kwempahla okudalwe noma okuvela noma ngandlela thize okuxhumene nokusetshenziswa kwesithuthi, indiza noma umkhumbi onje, noma enye impahla noma insebenzo enje.

(3) Uma uMbuso ukhokhe noma yisiphi isinxephezelo mayelana nesikhalo yinoma yimuphi umuntu ocetshwa esigabeni esingaphansi (2), umBuso, ngaphandle kokuthi uthole noma yikuphi ukuyekelwa kwelungelo lokuthatha isinyathelo okusemthethweni, ungalanda kumuntu othintekayo ngokulahlekelwa noma umonakalo, inani elikhokhwe njengesinxephezelo noma yinoma yiliphi inani elingaphansi elinqunywe nguNgqongqoshe ngokubonisana oNgqongqoshe wezeziMali.

#### Ilungelo lokuthola usizo mayelana nezindleko zokulimala kwamalungu

86. Lapho uMnyango—

- (a) ube nezindleko noma ukhokhe noma iyiphi imali nokwelashwa ngemithi kwezamazinyo noma esibhedlela noma ukwelashwa esibhedlela kokulimala okusemzimbeni kwelungu loMbutho wezokuVikela noma ukunikezwa kwezinto ezixhumene nalokho kwelashwa; noma
- (b) wenze noma iyiphi inkokhelo neholo, inkokhelo, izimali ezivunyiwe noma yinoma yisiphi isinxephezelo elungwini ngesikhathi sokukhinyabezeka kwalo, futhi nezindleko zivelile noma kukhokhiwe ngaphansi kwezimo lapho ilungu noma ifa lalo ngokunye belingathola imali komunye ngenxa yokulimala komzimba noma ukukhinyabezeka kwelungu, uMnyango, ngaphandle kokuthola ukuyekelwa kwelungelo elisemthethweni lokwenza, uzoba namalungelo afanayo elungelo lokuthola usizo kulowo muntu mayelana nokubuyiselwa kwezinkokhelo ezenziwe njengoba lelo lungu noma ifa lalo lalinazo kulowo muntu.

**Indemnity in respect of trespass and nuisance**

87. No action shall be brought against the State in respect of—
- (a) trespass or nuisance, by reason only of the flight of aircraft or air vessels used by the Department, or being operated on behalf of the Department, over any property at a height which, having regard to the weather and all the circumstances of the case, is reasonable; or 5
  - (b) any reasonable nuisance caused by any activity connected with ship building or repairs to shipping conducted by the South African Navy in any of its dockyards.

**Permission to enter upon private land for national border control 10**

88. (1) Any member of the Defence Force may enter upon private land within a strip not exceeding 10 kilometres in width along any border of the Republic for the purposes of national border control, with the approval of the lawful occupier of the land.

(2) If the approval is being withheld unreasonably or cannot be obtained after a reasonable attempt, the Minister may give written permission for such entry. 15

(3) (a) No member may enter upon any land unless the occupier has given his or her approval or unless the occupier has been given a copy of the Minister's permission to enter such land.

(b) If the occupier in question cannot be traced a copy of the permission must be affixed at a prominent place on the land before the border control may be undertaken. 20

(4) The Minister must prescribe the conditions under which compensation may be claimed by or paid to such occupier for any damage or loss sustained as a result of any entry in terms of this section.

**CHAPTER 14****STATE OF NATIONAL DEFENCE 25****Declaration of state of national defence**

89. The President may, by proclamation in the *Gazette*, declare a state of national defence contemplated in section 203 of the Constitution if, among other things, the sovereignty or territory of the Republic—

- (a) is threatened by war, including biological or chemical warfare, or invasion, 30  
armed attack or armed conflict; or
- (b) is being or has been invaded or is under armed or cyber attack or subject to a state of armed conflict.

**Mobilisation during state of national defence**

90. After the declaration of a state of national defence the President may, by 35  
proclamation in the *Gazette*, authorise the mobilisation of persons for service in the Defence Force if it is necessary to supplement the number of serving members.

**State of national defence regulations**

91. (1) The President may during a state of national defence, and for as long as the proclamation declaring a state of national defence remains in force, by proclamation in 40  
the *Gazette*, make such regulations as are necessary or expedient to deal with any circumstances which have arisen or are likely to arise as a result of the state of national defence, and make adequate provision for terminating the state of national defence.



**Isivikelo mayelana nokweqa umthetho nokuziphatha ngendlela engemukelekile**

**87.** Akunazinyathelo ezizothathelwa uMbuso mayelana—

- (a) nokweqa umthetho nokucasula, ngesizathu kuphela okundiza kwendiza noma umkhumbi womoya osetshenziswa egameni loMnyango, kunoma iyiphi impahla ekuphakameni okunake isimo sezulu nazo zonke izimo zesehlakalo leso kwemukeleka; noma
- (b) yinoma yisiphi isenzo esemukelekile esibangwa okwenziwa ma kwakhiwa imikhumbi noma ukulungiswa okwenziwa emikhunjini nguMbutho wezasoLwandle waseNingizimu Afrika kunoma yisiphi isikhumulo semikhumbi.

**Imvume yokungena emhlabeni wangasese maqondana nokubhasobha imingcele**

**88.** (1) Noma yiliphi ilungu loMbutho wezokuVikela lingangena emhlabeni wangasese ngokusebenzisa indawo engengaphezu kwamakhilomitha angu 10 ububanzi ngasemngceleni waseRiphabhlikhi uma liyogada umngcele kazwelonke linemvume yomhlali noma umnikazi walowomhlaba ngokomthetho.

(2) Uma imvume igodlwa ngokungafanele noma ingatholakali emva kokuzama, uNgqongqoshe angayikhipha imvume ebhaliwe yokuba kungenwe ngezizathu esezichaziwe.

(3) (a) Akukho lungu elingangena kunoma yimuphi umhlaba ngaphandle kokuba umhlali walowomhlaba ekhiphe imvume noma enikwe ikhophi yencwadi yemvume kaNgqongqoshe yokuba kungenwe kulowomhlaba.

(b) Uma umhlali womhlaba okukhulunywa ngawo engatholakali, ikhophi yemvume kaNgqongqoshe kufanele ichonywe endaweni egqamile kulowomhlaba ngaphambi kokuba kugadwe lowomngcele.

(4) Kufanele uNgqongqoshe abeke izimo isinxephezelo esingakhishwa ngaso sinikwe umhlali wendawo okufohlwe kuyo uma kunomonakalo noma ukulahekelwa okudaleke ngenxa yokungena kuwo ngokwalesigaba.

**ISAHLUKO 14****ISIMO SOKUVIKELWA KOMBUSO****Ukumenyezelwa kwesimo sokuvikelwa kwezwe**

**89.** UMongameli, ngesimemezelwe ephaphandabeni likahulumeni (iGazette) angamemezela isimo sokuvikelwa kwezwe esicetshwa esigabeni somThethosisekelo uma phakathi kokunye ubukhosi noma indawo yeRiphabhuliki—

- (a) kuzulelwa yimpi, okuhlanganisa ukungenelwa yimpi, ukuhlaselwa kuhlonyiwe noma ngamagciwane ukungqubuzana kuhlonyiwe; noma
- (b) kungenelwa noma kungenelwe yimpi noma ngama-cyber noma kungaphansi kokuhlaselwa kuhlonyiwe noma kungaphansi kwesimo sokungqubuzana kuhlonyiwe.

**Ukuviva ngesikhathi sesimo sokuvikelwa kwezwe**

**90.** Ngemuva kokumenyezelwa kwesimo sokuvikelwa kwezwe uMongameli anganika ngesimemezelwe ephaphandabeni likahulumeni (iGazette) ukugunyaziswa kokuviviswa kwabantu ukuba bazosebenza eMbuthweni wezokuVikela uma kudingeka ukuba kugcwaliselwe inani lamalungu asebenzayo.

**Izimiso zesimo sokuvikelwa kwezwe**

**91.** (1) UMongameli, kungathi uma efuna ukuqoqa umbutho maqondana nesinyathelo okufuneka sithathwe ngesikhathi sesimo sokuvikelwa kwezwe, futhi uma kusaseshenziswa isimemezelwe ezimemezela isimo sokuvikelwa kwezwe, ngesimemezelwe ePhaphandabeni likaHulumeni (iGazette), angenza izimiso ezidingekayo noma ezifanele ukubhekana nanoma yisiphi isimo esivelile noma esingahle sivele ngenxa yesimo sokuvikelwa kwezwe kanye nokwenza amalungiselelo enele okuqeda isimo sokuvikela kwezwe.

- (2) The regulations contemplated in subsection (1) may include matters regarding—
- (a) persons eligible for mobilisation, including the minimum age of persons (which may not be below 18 years), and the maximum age of persons to be mobilised;
  - (b) persons exempted from mobilisation; 5
  - (c) the terms and conditions of service and training;
  - (d) the terms and conditions of release and discharge from service;
  - (e) the method of notification of persons to be mobilised;
  - (f) exemptions and deferments from service, and the appointment of exemption boards; 10
  - (g) the security of national key points and other places that may be designated;
  - (h) censorship of information;
  - (i) the evacuation or concentration of persons, including curfew laws;
  - (j) the control and use of transport systems, air traffic and use of the territorial waters of the Republic; 15
  - (k) the offences and penalties applicable for contravention of the regulations;
  - (l) places of custody or detention; and
  - (m) the demobilisation of persons on completion of service and when the declaration of the state of national defence is revoked.

## CHAPTER 15

20

### CO-OPERATION WITH OTHER FORCES AND FORCES VISITING REPUBLIC

#### Agreements

92. Any agreement between the Government of the Republic and any other state or international institution or organisation regarding the use or provision of military forces must provide for the legal status of— 25

- (a) members of the Defence Force placed at the disposal of the military authorities of such state, institution or organisation; and
- (b) foreign military personnel and their mission while the personnel are deployed in the Republic. 30

#### Service by members in fulfilment of international obligation

93. Service in fulfilment of an international obligation which entails participation by any member of the Defence Force in a military force under the control or with the approval of an international body—

- (a) is subject to such member's rights and conditions of service under this Act, and must be rendered by every member for such additional emoluments and benefits, including medical, travelling and subsistence, transport, leave, maintenance, assurance, insurance, tax, disability and death benefits as may be determined by agreement with the international body; 35
- (b) may not be rendered by any such member in a rank lower than that which he or she holds in the Defence Force; 40
- (c) must be rendered in compliance with the customary international law and treaties or other international agreements binding on the Republic; and
- (d) may not have the effect of detracting from the powers and duties of the President, the Minister, the Chief of the Defence Force or the Secretary for Defence in relation to such member. 45

(2) Imithetho ecetshwa esigabeni esingaphansi (1) ingafaka phakathi izindaba ezimayelana—

- (a) nabantu abalungele ukuviviswa, kufaka phakathi nobuncane beminyaka yabantu (okumele ingabi ngaphansi kweminyaka eyishumi nesishiyagalombili), kanye nobukhulu beminyaka yabantu okumele bajutshwe; 5
- (b) abantu abakhululiwe ekuvivisweni;
- (c) nemiyalelo nezimiselo zokusebenza nokuqeqeshwa;
- (d) nemiyalelo nezimiselo zokudedelwa nokukhipha ensebenzweni;
- (e) nendlela yokwaziswa kwabantu okumele baviviswe; 10
- (f) nokukhululwa nokuhlehliswa ensebenzweni, kanye nokubekwa kwamabhodi okukhululwa;
- (g) ukulondeka kwezindawo ezisemqoka zikazwelonke kanye nezinye izindawo ezingahle zikhonjwe; 15
- (h) ukukhishwa ngokuhlolwa okusemthethweni kolwazi;
- (i) ukukhishwa noma ukuhlanganisa ndawonye kwabantu, kufaka phakathi nemithetho enqumel isikhathi;
- (j) ukuphathwa nokusetshenziswa kwezinhlelo zezokuthutha, ukuhamba kwezasemoyeni kanye nokusetshenziswa kwamanzi asendaweni yomhlaba waseRiphabhuliki; 20
- (k) amacala nezijezi ezisetshenziselwa ukwephulwa kwezimiso;
- (l) izindawo zokugcina noma zokuvalela; kanye
- (m) nokuyekiswa kwabantu ekuqedeni kwabo insebenzo kanye nalapho ukumenyezelwa kwesimo esiphuthumayo susiwe.

## ISAHLUKO 15

25

### UKUBAMBISANA NAMANYE AMABUTHO KANYE NEMIBUTHO EHAMBELE IRIPHABHULIKI

#### Izivumelwano

**92.** Noma yisiphi isivumelwano phakathi kukahulumeni weRiphabhuliki kanye nanoma yimuphi omunye uMbuso noma inhlango yamazwe ngamazwe, mayelana nokusetshenziswa noma ukulethwa kwemibutho yamasosha kufanele silungiselele isimo sezomthetho— 30

- (a) samalungu oMbuso wezokuVikela abekwe ukuba asebenze ngaphansi kweziphathimandla zoMbuso, isikhungo noma inhlango inhlango; noma
- (b) sabasebenzi bamasosha bangaphandle kanye nabakuhlosile ngenkathi abasebenzi bethunyelwe kuRiphabhuliki. 35

#### Insebenzo yamalungu ekugcwalisweni kwezibopho zamazwe ngamazwe

**93.** Insebenzo ekugcwalisweni kwesibopho samazwe ngamazwe okubandakanya ukuhlanganyela kwanoma yiliphi ilungu loMbuso wezokuVikela eMbuthweni wamasosha ongaphansi kwempatho noma ngemvume yenhlangano yamazwe ngamazwe— 40

- (a) ingaphansi kwamalungelo nezimiselo zensebenzo zamalungu ngaphansi kwalo Mthetho, futhi kufanele yenziwe yilelo nalelo lungu ukuthola inkokhelo nokusizwa kufaka phakathi usizo ngezemithi, ukuhamba kanye nokokuziphilisa, ilivu, ukondliwa, umshuwalense wempilo, umshuwalense, intela, ukukhubazeka kanye nokusizwa okuvela ngokufa okungahle kunqunywe ngesivumelwano nenhlango yamazwe ngamazwe; 45
- (b) ayinakwenziwa yinoma yiliphi ilungu esikhundleni esingaphansi kwaleso elikuso eMbuthweni wezokuVikela;
- (c) kufanele yenziwe ngokulandela uMthetho olisiko wamazwe ngamazwe kanye nezinye izivumelwano zamazwe ngamazwe eziyizibopho kuRiphabhuliki; futhi ayinakuba nomphumela wokuhoxisa emagunya nemisebenzi kaMongameli, kaNgqongqoshe, koMkhuzi womButho wezokuVikela noma uNobhala wezokuVikela mayelana nelungu elinje. 50

**Attachment of personnel**

**94.** (1) The Minister may—

- (a) temporarily attach to the Defence Force any member of a force of any country or international body who is placed at the disposal of the Minister for that purpose by the military authorities of that country or international body, as the case may be; and 5
- (b) subject to the conditions applicable to his or her service, place any member of the Defence Force at the disposal of the military authorities of any country or international body for purposes of being attached temporarily by those authorities to the forces of that country or, in accordance with sections 93 and 95, the international body, as the case may be. 10

(2) (a) Subject to paragraph (b), a member of a force of any other country or international body who is attached temporarily to the Defence Force is subject to the law applying to that portion of the Defence Force to which he or she is attached and must be treated, and has the same power of command and punishment over members of the Defence Force, as if he or she were a member of that Force of a rank equivalent to that held by him or her as a member of the force of the country or international body from which he or she came. 15

(b) The President may, by proclamation in the *Gazette*, direct that in relation to members of a force of any country or international body specified in the proclamation, the laws relating to the Defence Force apply with such exceptions and subject to such adaptations and modifications as may be so specified. 20

(3) Sections 93 and 95 apply with the necessary changes to any member of the Defence Force placed at the disposal of the military authorities of another country by the Minister— 25

- (a) for the purpose of being attached temporarily by those authorities to a force of that country in terms of subsection (1)(b); and
- (b) in accordance with an international agreement, regardless of whether or not such member, in consequence of the Minister's decision, becomes attached temporarily to the defence force or any other organ of state of that other country. 30

**Command over members serving under control of international body**

**95.** Whenever the service contemplated in section 93 entails members of the Defence Force and any military force under the control of an international body—

- (a) serving together, every member of that military force must be treated, and has powers of command over those members of the Defence Force, as if he or she were a member of the Defence Force of the relative rank; and 35
- (b) acting in combination, every officer of that military force appointed to command the combined forces or any portion thereof, must be treated, and has powers of command and punishment over those members of the Defence Force, as if he or she were an officer of the Defence Force of the relative rank. 40

**Command over members serving together with other military force**

**96.** (1) Whenever members of the Defence Force and any military force of another country are—

- (a) serving together, every member of that military force must be treated, and has powers of command over those members of the Defence Force, as if he or she were a member of the Defence Force of the relative rank; and 45

**Ukufakwa kwabasebenzi kwezinye izindawo****94. (1) UNgqongqoshe—**

- (a) angafaka okwesikhashana eMbuthweni wezokuVikela noma yiliphi ilungu lombutho wanoma yiliphi izwe noma inhlango yamazwe ngamazwe ebekwe ezandleni zikaNgqongqoshe ngaleyo nhloso yiziphathimandla zezamasosha zalelo zwe noma inhlango yamazwe ngamazwe; kanye
- (b) ngaphansi kwezimiselo ezisebenza kulelo lungu, angabeka noma yiliphi ilungu lenhlango yamazwe ngamazwe ezandleni zeziphathimandla zezamasosha zanoma yiliphi izwe noma inhlango yamazwe ngamazwe ngezinhloso zokuba lifakwe okwesikhashana yilezo ziphathimandla emibuthweni yalelo zwe ngokulandela izigaba 88 no-94, inhlango yamazwe ngamazwe, njengoba kungahle kudingeke.

(2) (a) Ngaphansi kwesigaba (b), ilungu lombutho wanoma yiliphi elinye izwe noma inhlango yamazwe ngamazwe elifakwe okwesikhashana eMbuthweni wezokuVikela lingaphansi komthetho osebenza kuleyo ngxenye yoMbutho wezokuVikela elifakwe kuwe futhi kufanele liphathwe futhi linegunya elifanayo lokwengamela nokujezisa kumalungu oMbutho wezokuVikela sengathi belilungu lalowo Mbutho wesikhundla esilingana naleso esiphethwe yilo njengelungu lezwe noma inhlango yamazwe ngamazwe eliqhamuka kuyo.

(b) UMongameli, ngesimemezelo ephephandabeni likahulumeni (iGazette), angayalela ukuthi mayelana namalungu ombutho wanoma yiliphi izwe noma inhlango yamazwe ngamazwe echazwe esimemezeleni, imithetho ephathelene noMbutho wezokuVikela isebenza nokukhishwayo futhi nangaphansi kokuphendukisela nezinguqulo ezingahle zichazwe kanjalo.

(3) Izigaba 93 no-95 zisebenza nezinguqulo ezidingekayo kunoma yiliphi ilungu loMbutho wezokuVikela elibekwe ezandleni zeziphathimandla zasemasosheni zeline izwe nguNgqongqoshe—

- (a) ngezinhloso zokufakwa okwesikhashana yiziphathimandla eMbuthweni walelo zwe ngokwesigaba esingaphansi (1)(b) kanye;
- (b) nangokulandela isivumelwano samazwe ngamazwe, kunganakiwe ukuthi ngabe ilungu elinje, ngokomphumela wesinqumo sikaNgqongqoshe, lifakwa okwesikhashana eMbuthweni wezokuVikela noma kusiphi esinye isitho soMbuso salelo zwe elinye.

**Ukuphathwa kwamalungu asebenza ngaphansi kwezimhlango zoMhlaba**

**95.** Njalo lapho insebenzo ecetshwa esigabeni 93 ibandakanya amalungu oMbutho wezokuVikela kanye nanoma yimuphi uMbutho wamasosha ongaphansi kwenhlango yamazwe ngamazwe—

- (a) esebenza ndawonye, lelo nalelo lungu lalowo mbutho wamasosha kufanele lithathwe njengelinegunya futhi linegunya lokwengamela kulawo malungu oMbutho wezokuVikela, anjengoba uma beliyilungu loMbutho wezokuVikela wesikhundla esihambelana naleso; futhi
- (b) esebenza ngokuhlangana, lowo nalowo mphathisikhundla walowo mbutho wamasosha obekwe ukuba engamele amabutho ehlanganisiwe noma yinoma iyiphi ingxenye yayo kufanele athathwe njengonegunya futhi unamagunya okwengamela nokujezisa ngaphezu kwalawo malungu oMbutho wezokuVikela anjengoba belingumphathisikhundla woMbutho wezokuVikela wesikhundla esihambelana naleso.

**Ukuphathwa kwamalungu asebenza kanye namanye amabutho yezempi**

**96. (1)** Uma amalungu oMbutho wezokuVikela noMbutho wakwelinye izwe—

- (a) esebenza ndawonye, lelo nalelo lungu lalowo mbutho kufanele liphathwe futhi linamagunya okwengamela kulawo malungu oMbutho wezokuVikela, sengathi belililungu loMbutho wezokuVikela lesikhundla esihambisana naleso; futhi



(b) acting in combination, every officer of that military force appointed to command the combined forces or any part thereof must be treated, and has powers of command and of punishment over those members of the Defence Force, as if he or she were an officer of the Defence Force of the relative rank.

(2) For purposes of this section, the Defence Force and any other force must be regarded as serving together or acting in combination whenever the President has by proclamation in the *Gazette* declared that they are so serving or acting, and the relative rank of members of the Defence Force and of such other force is as designated by such proclamation.

(3) Sections 93 and 95 apply with the necessary changes to any member of the Defence Force who serves or acts as contemplated in subsection (1).

### *Visiting forces*

#### **Discipline and internal administration of visiting forces**

97. (1) (a) Subject to paragraph (b), a military court or other authority of a visiting force may in matters concerning discipline and the internal administration of that force, which may include the administration of the property or the estate of a deceased member of that force, within the Republic exercise all such powers as are conferred upon such court or authority by the law of that country.

(b) No cruel, inhuman or degrading punishment contemplated in section 12(1)(e) of the Constitution may be meted out or administered by a military court or other authority in terms of paragraph (a) while in the Republic.

(2) The laws which are applicable in connection with the powers, immunities and privileges of, and proceedings before, a military court of the Republic are, in so far as they can be applied, applicable also with reference to a military court of a country exercising jurisdiction by virtue of this Act.

(3) For purposes of any legal proceedings in the Republic, where any sentence has been passed by a military court of a visiting force upon any of its members—

- (a) that court must be regarded as having been properly constituted;
- (b) any proceedings before such court must be regarded as having been regularly conducted;
- (c) the sentence must be regarded as being within the jurisdiction of the court and in accordance with the law of the applicable country;
- (d) the sentence must, if executed according to the tenor of the law of that country, be regarded as having been lawfully executed; and
- (e) any member detained in pursuance of any such sentence or pending the determination of the charge brought against him or her, must be regarded as being in legal custody.

(4) For purposes of any legal proceedings in the Republic, a certificate under the hand of the officer in command of a visiting force to the effect that—

- (a) a member of that force is being detained for the cause set out in the certificate, constitutes evidence of the cause of his or her detention, but not of his or her being such a member; and
- (b) the persons specified in the certificate sat as a military court of the country to which that force belongs, constitutes evidence of that fact.

(5) No proceedings in respect of pay, terms of service or discharge of a member of a visiting force may be entertained by any court of the Republic.

(6) For purposes of enabling the military courts and military authorities of a visiting force to exercise the powers conferred upon them by this section more effectively, the Minister may, if so requested by the officer in command of the visiting force or the applicable government, by general or special orders to the Defence Force direct the arrest of any member of the visiting force alleged to be guilty of an offence against the law of that country and the handing over of the person so arrested to the appropriate authorities of the visiting force.

(b) asebenza ngokuhlangana, lowo nalowo mphathisikhundla walowo mbutho wamasosha obekwe ukuba engamele amabutho ehlanganisiwe noma yinoma iyiphi ingxenye yawo, kufanele aphathwe futhi unamagunya okwengamela nokujezisa ngaphezu kwalawo malungu sengathi ubengumphathisikhundla woMbutho wezokuVikela wesikhundla esihambisana naleso. 5

(2) Mayelana nezinhloso zalesi sigaba, uMbutho wezokuVikela kanye nanoma yimuphi uMbutho kufanele ithathwe njengesebenza ndawonye njalo uma uMongameli, ememezele ngezimezele ePhephandabeni likaHulumeni (iGazette) ukuthi isebenza kanjalo, futhi isikhundla esihambisanayo samalungu oMbutho wezokuVikela kanye nesombutho omunye onjalo sinjengoba kubekwe yisimezele esinje. 10

(3) Izigaba 93 no-95 zisebenza nezinguquko ezidingekayo kunoma yiliphi ilungu loMbutho wezokuVikela elisebenza noma elenza njengoba kucetshwa esigabeni esingaphansi (1).

### *Imabutho evakashile*

#### **Ukuqondiswa kwezigwegwe nokuphathwa kwemabutho evakashile**

97. (1) (a) Ngokwendima (b), inkantolo yamasosha noma okunye ukuphathwa kwamandla kombutho ohambe ezindabeni ezithinta ukuphatha kwangaphakathi kwalowombutho, okungafaka phakathi ukuphathwa kwempahla noma kwefa lelungu elishonile lalowo mbutho, ingasebenzisa wonke amagunya anjengoba ebekwe enkantolo noma kokunye ukuphathwa kwamandla nguMthetho walelozwe. 20

(b) Akunasijeziro esikhohlakele, esingenabantu nesihlaziyo esichazwe kwisigaba 12 (1) (e) soMthethosisekelo okumele sikhishwe noma sisetshenziswe yiNkantolo yamaSotsha noma omunye umbutho ngokwendima (a) iseRiphabhliki.

(2) Imithetho esebenza mayelana namagunya, ukuvikeleka kanye namalungelo, kanye nokuqhubeka ngaphambi kwenkantolo yamasosha yeRiphabhuliki, kuyasebenza lapho kungasetshenziswa khona, namayelana nenkantolo yamasosha yezwe elisebenzisa amandla esikhundla ngokwaloMthetho. 25

(3) Ngokwezinhloso zanoma yikuphi okwenzekayo komthetho eRiphabhuliki, lapho noma yisiphi isigwebo sethuliwe yinkantolo yamasosha yombutho ohambe kunoma yiliphi elamalungu awo— 30

(a) leyo nkantolo kufanele ithathwe njengehlanganiswe ngokufanele;

(b) okuqhubekayo ngaphambi kwenkantolo enje kufanele kuthathwe njengokwenziwe ngokwejoyalekile;

(c) isigwebo kufanele sithathwe njengokusemandleni esikhundla senkantolo futhi nanjengokuhambisana nomthetho wezwe elithintekayo; 35

(d) isigwebo kufanele, uma sikhishwe ngengokwenhloso yomthetho, kufanele sithathwe njengesikhishwe ngokusemthethweni; futhi

(e) noma yiliphi ilungu elivalelwe ngokulandela isigwebo esinje noma kusalindelwe ukunqunywa kwecala eliboshelwe lona, kufanele lithathwe njengelisekugcinweni okusemthethweni. 40

(4) Ngokwezinhloso zanoma yikuphi okuqhubekayo kwezomthetho eRiphabhuliki, isitifiketi esingaphansi kwasandla sesiphathimandla esengamele umbuso ohambe esikhombisa ukuthi—

(a) ilungu lalowo butho livalelwe ngenxa yembangela ebekwe kusitifiketi, singubufakazi bembangela yokuvalwa kwalo, kepha hhayi obokuthi uyilungu elinje; futhi 45

(b) nabantu abaphawulwe kusitifiketi bahlale njengenkantolo yamasosha yezwe lowo mbutho ongowalo, singubufakazi balelo qiniso.

(5) Akukho okuzoqhubeka okumayelana nenkokhelo izimiselo zensebenzo noma ukudelwa kwelungu lombutho ohambe ezizokwethanyelwa yinoma iyiphi inkantolo yeRiphabhuliki. 50

(6) Ngokwezinhloso zokusiza izinkantolo zamasosha kanye neziphathimandla zamasosha zombutho ohambe ukuba zisebenzise amagunya eziwanikwe yilesi sigaba ngokusebenza kangcono, uNgqongqoshe, uma ecelwe ngalokho ngumphathisikhundla owengamele wombuso ohambe noma uhulumeni othintekayo, yimiyalo eyejwayelekile noma ekhethekile eqondiswe eMbuthweni wezokuVikela, angalayela ukuboshwa kwanoma yiliphi ilungu elisolwa ngokuba necala eliqophisana nomthetho walelo zwe futhi nokwedluliselwa komuntu oboshwe kanjalo kuziphathimandla ezifanele zombutho ohambe. 55

**Application of laws in relation to visiting forces****98. A law which—**

- (a) provides for the exemption from registration, licensing or any other authorisation of any vessel, vehicle, aircraft, machine or apparatus under the control of the Defence Force; 5
- (b) confers a privilege or immunity on any person by virtue of a connection with the Defence Force;
- (c) exempts any property or business from the operation of any law or from any tax, rate, licence, imposition, toll or charge by virtue of a connection with the Defence Force; 10
- (d) imposes upon any person obligations in relation to the Defence Force; or
- (e) penalises any act or omission by any person in relation to the Defence Force, applies with the necessary changes to a visiting force. 10

**Deserters from visiting forces****99. (1) Subject to subsection (2), the Code applies to—** 15

- (a) any deserter or absentee without leave of a visiting force; and
  - (b) any member of a reserve or auxiliary force of a visiting force who, having failed to obey a notice calling upon that member to appear at any place for service, is by the law of that country liable to the same punishment as a deserter or an absentee without leave. 20
- (2) (a) No member of a visiting force may be apprehended or dealt with under this section except in compliance with a request from—
- (i) the applicable government, if such member is alleged to be a deserter; or
  - (ii) the officer in command of that force, if such member is alleged to be an absentee without leave. 25
- (b) A member contemplated in paragraph (a) must be handed over to the authorities of that country at such a place in the Republic as may be agreed upon with the particular government or officer, as the case may be.
- (3) For purposes of any proceedings under this section a document purporting to be a certificate under the hand of— 30
- (a) the Minister of Foreign Affairs or the Minister to the effect that a request has been made under subsection (2)(a)(i), is admissible as evidence of the making of such a request; and
  - (b) the officer in command of the visiting force to the effect that a named and described person was at the date of the certificate an absentee without leave 35 from that force, is admissible as evidence of the facts so certified.

**Inquests and removal of bodies of deceased members of visiting forces**

**100. (1)** Unless the Minister directs otherwise, no inquest may be held as to the cause of death of any deceased person who at the time of his or her death was a member of a visiting force or of a civilian component of such a force. 40

(2) Whenever a magistrate holding an inquest is satisfied that a person who is subject to the jurisdiction of the military courts of a visiting force is being detained for the purposes of being charged, or has been charged before a court of that country, with an offence arising out of the death which is the subject of the inquest, he or she shall, unless the Minister directs otherwise, adjourn the inquest and furnish the Director-General: Home Affairs with such particulars necessary for the registration of the death as he or she may have ascertained at the inquest up to the time of its adjournment. 45

(3) (a) No inquest which has been adjourned in terms of subsection (2), may be resumed unless the Minister so directs.

(b) Where an inquest has resumed on the Minister's directions, the magistrate having jurisdiction must commence the proceedings afresh but may not furnish the Director-General: Home Affairs with any particulars or further particulars for the registration of the death. 50

**Ukusetshenziwa kwemithetho mayelana nemibutho evakashile****98. uMthetho owenza okulandelayo—**

- (a) onika ilungelo lokukhululwa ekubhaliseni umkhumbi, isithuthi, indiza, umshini noma okusetshenziswayo okungaphansi koMbutho wezokuVikela;
- (b) ubeka kunoma yimuphi umuntu ilungelo noma ukuvikeleka ngenxa yokuxhumana kwakhe noMbutho wezokuVikela; 5
- (c) ukhulula noma iyiphi impahla noma ibhizinisi ekusebenzeni kwanoma iyiphi intela, izinga, ilayisese, ukubekwa, ukukhokhela ngenxa yokuxhumana noMbutho wezokuVikela;
- (d) ubeka kunoma yimuphi umuntu izibopho mayelana noMbutho wezokuVikela; noma 10
- (e) kujezisa noma yisiphi isenzo noma ukushiywa yinoma yimuphi umuntu mayelana noMbutho wezokuVikela kusebenza ngezinguquko ezifanele kwimibutho evakashile.

**Abahlubuki abaqhamuka emibuthweni evakashile**

15

**99. (1) Ngokwesigaba (2) uMthetho usebenza—**

- (a) kunoma yimuphi umhlubuki noma ongekho ngaphandle kwelivu yombutho ovakashile; kanye
- (b) nakunoma yiluphi ilungu lombutho obekwe eceleni noma lombutho ovakashile elithi ngokwehluleka ukulandela isaziso esasilibiza ukubalizozenza kunoma iyiphi indawo ngomthetho walelo zwe kungenzeka abhekane nesijeziso esifanayo nesomhlubuki, noma esomuntu ongekho ngaphandle kwelivu. 20
- (2) (a) Akunalungu lombutho ohambele elingabanjwa noma lidingidwe ngaphansi kwalesi sigaba ngaphandle kokulandela isicelo esivela— 25
  - (i) kuhulumeni othintekayo, uma ilungu elinje lisolwa ngokuba ngumhlubuki; noma
  - (ii) umphathisikhundla owengamele lowo mbutho, uma ilungu lelo lisolwa ngokungabikho ngaphandle kwelivu.
- (c) Ilungu okukhulunywa ngalo esigabeni (a) kufanele ledluliselwe kuziphathimandla zalelo zwe endaweni ekuRiphabhulikhi okuvunyelenwe ngayo nguhulumeni nomaumphathisikhundla; njengoba kungahle kudingeke. 30
- (3) Ngokwezinhloso zanoma yikuphi okuqhubekayo ngaphansi kwalesi sigaba umbhalo ovela njengesitifiketi ngaphansi kwesandla—
  - (a) sikaNgqongqoshe wezaNgaphandle noma uNgqongqoshe othi isicelo senziwe ngaphansi kwalesi sigaba 2 (a) (i) kuyemukeleka njengobufakazi bokwenza lesosicelo; 35
  - (b) umphathisikhundla owengamele umbutho ohambele othi umuntu ogaguliwe nochaziwe wayengekho ngaphandle kwelivu ngosuku lwesitifiketi kulowo mbutho uyemukeleka njengobufakazi bamaphuzu aqinisekise kanjalo. 40

**Ukuhlolwa nokususwa kwemizimba yamalungu ashonile emibutho evakashile**

- 100. (1)** Ngaphandle kokuthi uNgqongqoshe ayalele ngenye indlela, akunakuhlolwa kwendaba yokufa okungabanjwa ngembangela yokufa kwanoma yimuphi umuntu oshonile okuthe ngesikhathi sokufa kwakhe abe wayeyilungu lombutho ohambele noma ingxenye yabangewona amasosha ombutho onje. 45
- (2) Uma umantshi ohlola ngodaba lokufa enelisiwe ukuthi umuntu ongaphansi kwamandla ezinkantolo zombutho ohambele ubanjwe ngezinhloso zokubekwa icala, noma ubekwe icala ngaphambi kwenkantolo yalelo zwe, ngecala elisuselwa ekufeni okudingidwa ekuhlolweni; ngaphandle kokuthi uNgqongqoshe ayalele ngenye indlela uMqondisi-Jikelele:wezaseKhaya ngemininingwane edingekayo yokubhaliswa kokufa. 50
- (3) (a) Akunakuhlolwa kwendaba yokufa okumisiwe ngokwesigaba esingaphansi (2), okungaqalwa futhi ngaphandle kokuthi uNgqongqoshe ayalele kanjalo.
- (b) Lapho ukuhlolwa kwendaba yokufa kuphinde kwaqala ngokwemiyalo kaNgqongqoshe, umantshi onamandla kufanele aqala okwenziwayo kabusha kepha akanakunikeza uMqondisi-Jikelele:wezaseKhaya noma iyiphi imininingwane noma eminye imininingwane yokubhaliswa kokufa. 55



(4) Section 20(3) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), does not apply in respect of any case where the body of a deceased person who at the time of his or her death was a member of a visiting force or of a civilian component of such a force, is to be buried or cremated at any place outside the Republic except as regards the burial or cremation of the body of a deceased person in relation to whose death an inquest has been held or resumed in pursuance of instructions given by the Minister under subsection (1) or (3). 5

## CHAPTER 16

### BOARDS OF INQUIRY

#### Convening boards of inquiry

10

101. (1) The Minister, the Secretary for Defence or the Chief of the Defence Force may, at any time or place, convene a board of inquiry to inquire into any matter concerning the Department, any employee thereof or any member of the Defence Force or any auxiliary service, any public property or the property or affairs of any institution or any regimental or sports funds of the said Force, and to report thereon or to make a recommendation. 15

(2) Despite subsection (1), a Chief of a Service or Division may at any time and place convene a board of inquiry to inquire into any matter concerning that Service or Division, as the case may be, or any member or employee, any public property, the property or affairs of any institution or any regimental or sports fund of the said Service or Division, and to report or to make a recommendation thereon. 20

(3) (a) A Chief of a Service or Division may, subject to such conditions as he or she may impose, in writing delegate any power conferred upon him or her in terms of subsection (2) to any member or employee in his or her Service or Division, as the case may be. 25

(b) A delegation in terms of paragraph (a) does not prevent the Chief concerned from exercising the power in question himself or herself.

(4) A board of inquiry must be convened by means of a written convening order and must consist of so many persons who are in the employ of the Department of Defence as the person convening the board may determine, but where a board is convened by a military officer it must consist of at least one officer and as many warrant officers, non-commissioned officers or civilians who are in the employ of the Department of Defence as the officer convening the board may determine. 30

(5) Any reference to the president of a board of inquiry must, when a board consists of one person, be construed as a reference to such person. 35

(6) The convening order must—

- (a) designate a person serving on the board as president;
- (b) set forth the number, rank or identity number, as the case may be, and the full names of every member and any secretary to the board;
- (c) set forth clearly and specifically the terms of reference of the board of inquiry; 40
- and
- (d) indicate when the board is required to report on the findings and recommendations with regard to the matter referred to it for investigation.

(7) Where any matter to be investigated by a board of inquiry is of a secret or confidential nature, the convening order must state that fact and that the terms of reference will be communicated to the president personally in writing. 45

(8) The person convening a board of inquiry may appoint a person as secretary to the board, and such secretary must perform the duties, including the leading of the evidence heard by the board, that the president of the board may require him or her to perform.

(9) Every board of inquiry may be conducted in private and each president of a board of inquiry must determine— 50

- (a) the time and place of every meeting of the board;
- (b) the witnesses to be called by the board; and
- (c) the order in which witnesses are to be called.



(4) Isigaba 20(3) soMthetho wokuBhaliswa kokuZalwa noKufa (Act No. 51 of-1992), asisebenzi mayelana nalapho umzimba womuntu oshonile okuthe ngesikhathi sokushona kwakhe abe eyilungu lombutho ohambele noma lengxenye yabangewona amasosha yombutho onje, kumele ungcwatshwe noma ushiswe kunoma iyiphi indawo ngaphandle kweRiphabhulikhi ngaphandle kokuthi kungokungcwatshwa noma ukushiswa komzimba womuntu oshonile okumayelana n okufa kwakhe kwenziwe ukuhlolwa ngokufa lokho noma ukuhlolwa kuphindwe kwaqalwa ngokulandela imiyalo enikezwe nguNgqongqoshe ngaphansi kwesigaba esingaphansi (1) noma(3).

## ISIAHLUKO 16

### AMABHODI OPHENYO

#### Ukuhlanganisa amabhodi ophenyo

101. (1) UNgqongqoshe, uNobhala wezokuVikela noma uMkhuzi woMbutho wezokuVikela, kunoma yisiphi isikhathi noma indawo, angahlanganisa ibhodi ukuba lihlele noma yiluphi udaba oluthinta uMnyango, noma yiliphi ilungu noma isisebenzi, noma iyiphi impahla yomphakathi noma impahla noma izindaba zanoma iyiphi inhlangano noma izimali zamabutho noma zezemidlalo zombutho oshwoyo, kanye nokunika umbiko ngalokho noma ukwenza isincomo.

(2) Yize kunesigaba (1)u Mkhuzi wesikhungo esithize noma umkhakha othize angayibiza noma nini noma kuphi ibhodi ukuba ihlangane iphenye ngomsebenzi walesosikhungo noma umkhakha noma yimuphi umsebenzi noma ilungu noma indawo kahulumeni noma izindaba zanoma iyiphi inhlangano noma isikhwama sebutho noma sezemidlalo salesosikhungo noma umkhakha bese lethula umbiko noma likhiphe isincomo.

(3) (a) uMkhuzi wesikhungo noma umkhakha kungathi ngemithetho ayibekayo adlulisele ngencwadi amandla akhe awanikwe ngokwesigaba (2) kunoma yimuphi umsebeni noma ilungu elingaphansi kwakhe.

(b) ukwedluliswa kwamandla ngokwesigaba (a) akumvimbi Mucus okukhulunywa ngaye ekusebenziseni lawomandla yena ngokwakhe.

(4) Ibhodi lokuphenya kufanele lihlanganiswe ngomyalo wokuhlanganisa obhaliwe futhi kufanele liqukathe abantu abasebenza eMnyangweni wezokuVikela njengoba umuntu ohlanganisa ibhodi enganquma, kodwa lapho ibhodi lihlanganiswa ngumphathisikhundla wamasosha kufanele liqukathe okungenani umphathisikhundla oyedwa kanye nabaphathisikhundla abamaphakathi nabaphathisikhundla abanikezwe izikhundla ukwenza imisebenzi ethile nabangekho ezikhundleni ngoba bekhethiwe, abaphathisikhundla abangekho ezikhundleni ngoba bekhethelwe ukwenza umsebenzi othile noma izakhamuzi eziqashwe nguMnyango wezokuVikela abaningi kangangokungahle kunqunywe ngumphathisikhundla ohlanganisa ibhodi.

(5) Noma yikuphi ukubhekisa kumongameli webhodi lokuhlola kufanele, lapho ibhodi liqukethe umuntu oyedwa, kuthathwe njengokubhekisa kulowo muntu.

(6) Umyalo wokuhlanganisa kufanele—

(a) ukhombe umuntu osebenza ebhodini njengomongameli;

(b) ubeke inani, isikhundla, namagama aphelele alelo nalelo lungu kanye nanoma yimuphi umabhalane webhodi;

(c) ubeke ngokucacile nangochazayo izimiso kuzosetshenzelwa kuzo yibhodi lokuhlola; futhi

(d) ukhombise ukuthi ibhodi kudingeka libike nini ngelikutholile kanye nezincomo mayelana nodaba olubhekiswe kulo ukuba luhlolwe.

(7) Lapho noma yiluphi udaba okumele luhlolwe yibhodi lokuhlola lungolohlobo oluyimfihlo noma oluyisifuba, umyalo ohlanganisa ungalisho lelo phuzu nokuthi izimiso okuzosetshenzelwa kuzo zizokwaziswa umongameli uqobo ngokuthi kubhalwe lokho.

(8) Umuntu ohlanganisa ibhodi lokuhlola angabeka umuntu njengomabhalane webhodi futhi umabhalane onje kufanele enze imisebenzi, kufaka phakathi ukwethulwa kobufakazi obethanyelwe yibhodi, umongameli webhodi angadinga ukuthi akwenze.

(9) Noma yiliphi ibhodi lokuhlola kufanele lenziwe esitha futhi lowo nalowo mongameli webhodi lokuhlola kufanele anqume—

(a) isikhathi nendawo yalowo nalowo mhlango webhodi;

(b) ofakazi okumele babizwe yibhodi; kanye

(c) nomyalo ofakazi abazobizwa kuwo.

(10) (a) The report of a board of inquiry must be dated and signed by every member of the board and submitted without delay, together with the record of proceedings, to the officer who convened the board.

(b) Where any member of the board of inquiry disagrees with the report, or any finding, conclusion or view expressed by any other member or members on any matter, he or she may as part of the report furnish his or her own report or express his or her own finding, conclusion or view in relation to that matter. 5

### Attendance of persons at board of enquiry, and witnesses

102. (1) The president of any board of inquiry may summon any person in the Republic to attend such board of inquiry and to give evidence thereat. 10

(2) The president of any board of inquiry may administer the prescribed oath or affirmation to witnesses, interpreters and stenographers at such inquiry.

(3) (a) Any person giving evidence before a board of inquiry may be compelled to answer any question or to produce any article if the president of the board of inquiry so orders. 15

(b) No incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a question in terms of paragraph (a) is admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law, except in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 104(21). 20

(4) Subject to subsection (5), the evidence of every witness called by a board of inquiry must be given orally and on oath or affirmation and must be recorded by or under the supervision of the president.

(5) A board of enquiry may admit a sworn statement by a witness as evidence where, with due regard to the exigencies of the service— 25

- (a) by reason of his or her illness, the witness cannot attend;
- (b) undue expense would be incurred by the attendance of the witness; or
- (c) the evidence of the witness is of a purely formal nature.

(6) Where the evidence is of such a nature that it is likely that the findings or recommendations would seriously affect the professional reputation of a person who is subject to the Code or a person who is in the employ of the Department, or that any disciplinary or other legal steps might be taken against such a person— 30

- (a) the witness concerned must, despite subsection (5), be called to give evidence orally if the person who is likely to be affected, so requests; 35
- (b) the person who is likely to be affected may be present at every meeting of the board where such evidence is led, to cross-examine any witness giving such evidence, to give evidence himself or herself, even if otherwise called as a witness by the board, and to call witnesses.

(7) The president of the board must timeously notify a person contemplated in subsection (6) of the time and place of every such meeting and advise that person of the rights conferred upon him or her by that subsection. 40

(8) Any person contemplated in subsection (6) may at any stage of the proceedings determined by the board, address the board on the evidence referred to in that subsection and may— 45

- (a) in the exercise of his or her rights under that subsection be represented by a legal representative of his or her own choice at his or her own expense; or
- (b) if the person so requests, be assigned military defence counsel at State expense.

(9) Before the record of proceedings is submitted to the person who convened the board, the relevant findings and recommendations of a board of inquiry must be communicated to each person who is adversely affected by such findings and recommendations and that person has the right to make written representations to the person who convened the board of inquiry within 14 days of receipt of the relevant findings and recommendations. 50

(10) Subsections (6) and (7) do not apply in relation to any board of inquiry convened under section 103. 55

(10) (a) Umbiko webhodi lokuphenya kufanele ubekwe usuku futhi usayinwe yilelo nalelo lungu lebhodi futhi wethulwe ngaphandle kokubambezuleka, kanye nerekhodi lokuqhubekile, kumphathisikhundla ohlanganise ibhodi.

(b) Lapho noma yiliphi ilungu lingavumelani khona nombiko, noma yikuphi okutholiwe, isiphetho noma umbono ovezwe yinoma yiliphi elinye ilungu noma amalungu nganoma yiluphi udaba, ilungu lingethula njengengxenywe yombiko, owalo umbiko noma liveze okwalo elikuthoile, isiphetho salo noma umbono walo mayelana nalolodaba. 5

### Ukuya kwabantu emabhodini ophenyo kanye nofakazi

102. (1) UMongameli wanoma yiliphi ibhodi lokuhlola angabiza noma yimuphi umuntu eRiphabhuliki ukuba abe khona kubhodi lokuhlola nokuthi anike ubufakazi lapho. 10

(2) UMongameli wanoma yiliphi ibhodi lokuphenya anganikeza isifungo esibekiwe noma ukuvunywa kofakazi, abahumushi kanye nabaqophi ohlolweni olunje.

(3) (a) Noma yimuphi umuntu onika ubufakazi ngaphambi kwebhodi lokuphenya angaphoqwa ukuba aphendule noma yimuphi umbuzo noma akhiphe noma yimuphi umbhalo uma umongameli webhodi lokuhlola eyala kanjalo. 15

(b) Akunampendulo ethela ngecala noma ulwazi olutholiwe noma ubufakazi obuthela ngecala obutholwe ngokuqondile noma okungaqondile embuzweni ngokwendima (a) okwemukeleka njengobufakazi obubhekene nomuntu othintekayo ekuqhubekeni kwe-cala enkantolo yomthetho noma ngaphambi lapho umuntu ebizelwe icala lokukhuluma amanga efungile noma elicetshwa esigabeni 104(21). 20

(4) Ngaphansi kwesigaba esingaphansi (5), ubufakazi balowo nalowo fakazi obiziwe yibhodi lokuphenya kufanele bunikezwe ngomlomo futhi ngokufungelwe noma futhi kufanele buqoshwe ngumongameli noma ngaphansi kweso lakhe. 25

(5) Ibhodi lokuphenya lingemukela isitatimende esifungelwe ngufakazi njengobufakazi lapho, ngokunakwa okufanele kwezidingo zensebenzo—

(a) ngenxa yokugula kwakhe, ufakazi akakwazi ukuba khona;

(b) izindleko ezingafanele zingahle zivezwe ukuba khona kukafakazi; noma

(c) ubufakazi bukafakazi bungobohlobo olungolomthetho. 30

(6) Lapho ubufakazi bungobohlobo olungadala ukuthi okutholiwe noma izincomo zithinte ngokubucayi igama lesikhundla somuntu ongaphansi kwenqubomthetho noma umuntu oqashwe nguMnyango, noma ukuthi noma yiziphi izinyathelo zokuqondisa izigwegwe noma ezinye izinyathelo zomthetho zingahle zithathwe ngomuntu onje—

(a) ufakazi othintekayo, kufanele, yize kunesigaba esingaphansi (5), abizwe ukuba azonika ubufakazi ngomlomo uma umuntu ongahle athinteki, ecela kanjalo; 35

(b) umuntu ongahle athinteki angaba khona kuyo yonke imihlangano yebhodi lapho ubufakazi obunje bethulwa khona, ukuze abuzisise noma yimuphi ufakazi onika ubufakazi obunje, ukuze anike ubufakazi yena luqobo lwakhe, yize kungabe ebizwe njengofakazi yibhodi, kanye nokuthi abize ofakazi. 40

(7) UMongameli webhodi kufanele kusenesikhathi azise umuntu ocetshwa esigabeni esingaphansi (6) ngesikhathi nendawo yalowo nalowo mhlango onje futhi ameluleke ngamalungelo akhe anikezwe wona yileso sigaba esingaphansi.

(8) Noma yimuphi umuntu ocetshwa esigabeni esingaphansi (6) angathi nganoma yiliphi izinga eliqhubekayo elinqunywe yibhodi, akhulume nebhodi ngobufakazi okubhekiwe kubo kuleso sigaba esingaphansi futhi— 45

(a) ekusebenziseni amalungelo akhe ngaphansi kwaleso sigaba esingaphansi angamelwa ngomele ezomthetho azikhethele yena ngezindleko zakhe; noma

(b) uma umuntu ecela kanjalo, anikezwe umeluleki wezokuvikela emasosheni ngezindleko zoMbuso. 50

(9) Ngaphambi kokuba kwethulwe irekhodi lokuqhubekile ngaphambi komuntu ohlanganise ibhodi, nezincomo ezifanele zebhodi lokuphenya kufanele zaziswe lowo nalowo muntu othinteki ngokungekuhle okutholiwe okunje kanye nezincomo futhi lowo muntu unelungelo lokubeka izikhalo zakhe zibhaliwe kumuntu ohlanganise ibhodi esikhathini esiyizinsuku ezi-14 zokwemukela okufinyelelwe nezincomo ezifanele. 55

(10) Izigaba ezingaphansi (6) no-(7) azisebenzi mayelana naliphi ibhodi lokuphenya elihlanganiswe ngaphansi kwesigaba 103.

**Board of inquiry in relation to absence without leave**

**103.** (1) When any member of the Defence Force has been absent without leave for more than 30 days and is still absent, a board of inquiry must be convened by the commanding officer of the absent member to inquire into such absence.

(2) If a routine inspection reveals any deficiency in the kit, arms and equipment or any public property issued to the person contemplated in subsection (1), the board of enquiry may also inquire into such deficiency. 5

(3) If the board of inquiry finds that such member has been so absent for more than 30 days and is still so absent, it must record such finding, including the date of the commencement of the absence without leave, and also its finding on any deficiencies of the kit, arms and equipment and any public property issued to him or her and the estimated value thereof. 10

**CHAPTER 17****OFFENCES AND PENALTIES**

15

**Offences and penalties**

**104.** (1) Any employer who unfairly discriminates against any of his or her employees on the grounds that the employee wishes to be or is a voluntary member of the Reserve Force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year. 20

(2) Any person who marks, defaces or conceals any mark on any equipment, article or animal where such mark denotes the ownership of the Republic or of any visiting force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(3) Any person who, without the necessary authority, disposes of any article or animal in the possession of the Department, or who through negligence loses any such article or animal, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 15 years. 25

(4) Any person who obstructs, damages, removes, destroys or commits any other act on or against any property used for protecting or safeguarding the Republic, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years. 30

(5) Any person who, without authority, possesses or wears prescribed uniforms distinctive marks or crests, or performs any prohibited act while wearing such uniform or with such uniform, distinctive marks or crests, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 35

(6) Any person who, without authority, uses or is responsible for the use of any name, title or any other symbol of the Department, where such use is calculated or likely to lead people to infer that it has been authorised under this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 40

(7) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), any person who, without authority, discloses or publishes any information, or is responsible for such disclosure or publication, whether by print, the electronic media, verbally or by gesture, where such information has been classified in terms of this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 45

(8) Any person who, without authority, gains access to the computer systems or computer data bases of the Department, or who, without authority, changes, alters,



**Ibhodi lokuphenya mayelana nokulova ngaphandle kwelivu**

103. (1) Lapho noma yiliphi ilungu belingekho ngaphandle kwelivu isikhathi esingaphezu kwezinsuku ezi-30 futhi alikabikho, ibhodi lokuhlola kufanele lihlenganiswe ngumphathisikhundla owengamele ilungu elingekho ukuba liphenye ngokungabikho okunje. 5

(2) Uma uphenyo olujwayelekile luveza noma yikuphi ukungapheleli kokugqokwayo, ezikhalini kanye nezinto ezisetshenziswayo noma noma iyiphi impahla kahulumeni enikezwe umuntu ocetshwa esigabeni esingaphansi (1), ibhodi lokuphenya lingahle libuye liphenye ngoku okunje.

(3) Uma ibhodi lokuphenya lithola ukuthi ilungu elinje belingekho kanjalo izinsuku ezingaphezu kwa-30 futhi alikho ngaleyo ndlela, kufanele liqophe okutholiwe okunje, kufaka phakathi usuku lokuqala kokungabikho ngaphandle kwelivu, kanye nelikutholile nganoma yikuphi ukungabikho kokuthile kokugqokwayo izikhali nezinto ezisetshenziswayo kanye nanoma iyiphi enye impahla kahulumeni ayinikeziwe kanye nobungako bayo obulinganisiwe. 10 15

**ISAHLUKO 17****AMACALA NEZIJEZISO****Amacala nezijeziso**

104. (1) Noma yimuphi umqashi obandlulula ngokufanele basebenzi bakhe ngezizathu zokuthi isisebenzi leso sifisa ukuba yilungu loMbutho wamaRizevu ngokuzithandela, uba necala futhi kungenzeka ekulahlweni enecala akhokhiswe inhlawulo noma agqunywe ejele isikhathi esingendluli kunyaka owodwa. 20

(2) Noma yimuphi umuntu obeka uphawu, owonakalisa noma ofihla noma yiluphi uphawu olukunoma iyiphi into esetshenziswayo, okuthile noma isilwane lapho uphawu olunje lukhombisa ubunini beRiphabhuliki noma banoma yimuphi uMbutho ohambele, unecala futhi ungenzeka ekulahlweni yicala akhokhiswe inhlawulo noma agqunywe ejele isikhathi esingendluli iminyaka emihlanu. 25

(3) Noma yimuphi umuntu, othi ngaphandle kwegunya elidingekayo, alahle oma yikuphi okithile noma isilwane esisezandleni zoMnyango, noma othi ngenxa yokunganaki, alahle okuthile noma isilwane okunje, unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma angagqunywa ejele isikhathi esingendluli iminyaka eyishumi nanhlano. 30

(4) Noma yimuphi umuntu ovimbela, owona, osusa, oshabalalisa noma owenza noma yisiphi isenzo kunoma iyiphi impahla esetshenziselwa ukuvikela noma ukuphephisa iRiphabhuliki, unecala futhi ekulahlweni yicala kungenzeka akhokhiswe inhlawulo noma agqunywe ejele isikhathi esingendluli iminyaka engama-25. 35

(5) Noma yimuphi umuntu othi, ngaphandle kwemvume, abe nomfaniswano noma ogqoka imifaniswano ebekiwe, izimpawu ezigqamisayo noma izinto ezihambisana nezikhali noma izimpahla, noma owenza noma yisiphi isenzo esingavunyelwe ngenkathi egqoke umfaniswano onje, noma ngomfaniswano onje, izimpawu ezigqamisayo nezinto ezihambisana nezikhali noma izimpahla ezinje unecala futhi ekulahlweni yicala kungenzeka akhokhiswe inhlawulo noma agqunywe ejele isikhathi esingendluli iminyaka emihlanu. 40

(6) Noma yimuphi umuntu, othi ngaphandle kwemvume, asebenzise noma obhekene nokusetshenziswa kwanoma yiliphi igama, isihloko noma uphawu loMnyango, lapho ukusetshenziswa okunje kuhleliwe noma kungahle kuholele abantu ukuba bacabange ukuthi kugunyazwe ngaphansi kwalo Mthetho, unecala futhi ekulahlweni yicala kungenzeka akhokhiswe inhlawulo noma agqunywe ejele isikhathi esingendluli iminyaka emihlanu. 45

(7) Ngokukhuthazwa koMthetho wokutholakala koLwazi ka 2000 (Act No. 2 of 2000), noma yimuphi umuntu othi ngaphandle kwemvume aveze noma ashicilele noma yiluphi ulwazi, noma okunguye odale ukuvezwa noma ukushicilelwa okunje, okungaba ngokusebenzisa okubhaliwe, okweze-elektronikhi, ngamazwi nomangeminyakazo yomzimba, lapho ulwazi olunje lubekwe emunxeni othile ngokwaloMthetho, unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingendluli iminyaka emihlanu. 50 55

(8) Noma yimuphi umuntu othi ngaphandle kwemvume athole indlela yokungena ezinhlelweni zamakhompiyutha noma lapho kugcinwa khona imininingwa-



corrupts, copies or withdraws data from any such systems or data bases, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years.

(9) Any person who falsely represents himself or herself to be a member or an employee of the Defence Force or Department, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 5

(10) Any person who obstructs or interferes with the Defence Force in the execution of its duties in terms of this Act or the Constitution, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years.

(11) Any person who induces or attempts to induce any member of the Defence Force to neglect, or to act in conflict with, his or her duty to the Defence Force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 10

(12) Any person who is liable to render service in the Defence Force by virtue of a military service contract with the Defence Force, and refuses to render such service, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year. 15

(13) Any person who recruits or attempts to recruit any member of the Regular Force for membership of any trade union other than a military trade union which is duly authorised to act as such, or incites or attempts to incite a member of the Defence Force to participate in strikes, demonstrations or protests prohibited in terms of the regulations, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 20

(14) Any member of the Defence Force or of any auxiliary service who participates in any strike or secondary strike action, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 25

(15) Any member or employee of the Department who, in a wilful or negligent manner, contravenes or fails to comply with any regulation made under this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year. 30

(16) Any person who, without authority, discloses the identity of a covert source of the Department, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years.

(17) Any person who undermines or stifles, or seeks to undermine or stifle, any procedure for the redress of grievances, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 35

(18) Any member of the Defence Force who neglects to inform a prescribed officer of his or her change of address and such other particulars as may be prescribed, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months. 40

(19) (a) A person is guilty of an offence if he or she, without proper authority—

- (i) enters, overflies or otherwise collects or gains access to classified information from specific classified facilities, installations or instruments of the Department;
- (ii) is in possession of, makes copies of, sketches, photographs, makes print-outs of, electronically or in any other manner records or obtains digital data from classified facilities, installations or instruments of the Department; or 45
- (iii) hands over or discloses to any person or loses or obtains from any member or employee of the Department, copies, sketches, photographs, print-outs, elec-

neyoMnyango kumakhompiyutha, noma othi, ngaphandle kwemvume aguqule, ashintshe, onakalise, enze isifanekiso noma akhiphe imininigwane kunomayiziphi izinhlelo noma izikhungo zokukhweza imininigwane, unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli iminyaka eyi-25. 5

(9) Noma yimuphi umuntu oziveza ngokungelona iqiniso azenze ilungu loMbutho wezokuVikela noma loMnyango, unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli iminyaka emihlanu. 10

(10) Noma yimuphi umuntu ovimbela noma ophazamisa uMbutho wezokuVikela ekwenzeni umsebenzi wawo ngokwalomthetho woMthethosisekelo, unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli iminyaka engamashumi amabili nanhlanu. 15

(11) Noma yimuphi umuntu ovumisa noma ozama ukuvumisa noma yiliphi ilungu loMbutho wezokuVikela ukuba linganaki, noma lenze okuqophisana nomsebenzi walo eMbuthweni wezokuVikela, unecala futhi kulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli iminyaka emihlanu. 20

(12) Noma yimuphi umuntu okufanele asebenze Mbuthweni wezokuVikela ngenxa yenkontileka yensebenzo kwezamasosha anayo noMbutho wezokuVikela, futhi owenqaba ukwenza umsebenzi onje, unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli unyaka owordwa. 25

(13) Noma yimuphi umuntu obutha noma ozama ukubutha noma yiliphi ilungu loMbutho oseMbuthweni ngokuPhelele ukuba lithathe ubulungu banoma iyiphi inyunyana yezemisebenzi ngaphandle kwenyunyana yezemisebenzi yasemasosheni evunyelwe ngokufanele ukuba isebenze kanjalo, noma obhebezela noma ozama ukubhebezela ilungu loMbutho wezokuVikela ukuba lihlanganyele ezitelekani, ekukhombiseni ukukhononda ezitaladini noma ekukhonondeni, okwenqatshelwe ngokwemithetho unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli iminyaka emihlanu. 30

(14) Noma yiliphi ilungu loMbutho wezokuVikela noma lanoma iyiphi insebenzo engeyokusiza elihlanganyela kunoma yisiphi isiteleka noma isenzo sokuteleka esivela kamuva, linecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli iminyaka emihlanu. 35

(15) Noma yiliphi ilungu noma isisebenzi zoMnyango esithi, ngendlela yenhloso nokunganaki sephule noma sehluleke ukulandela izimiso ezenziwe ngaphansi kwalo Mthetho, unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli unyaka owordwa. 40

(16) Noma yimuphi umuntu othi, ngaphandle kwemvume, aveze ukwaziwa komthombo ocashile woMnyango, unecala futhi ekulahlweni yicala Angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli iminyaka engamashumi amabili nanhlanu. 45

(17) Noma yimuphi umuntu obukela phansi noma ovalela, noma ofuna ukubukela phansi noma avalele noma iyiphi inqubo yokwenza yokulungiswa kwezikhalelo, unecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli iminyaka emihlanu. 50

(18) Noma yiliphi ilungu loMbutho wezokuVikela elingazihluphi ukwazisa umphathisikhundla obekiwe ngekheli lalo kanye nokunye ukuguquka kwemininingwane njengoba kungahle kubekwe, linecala futhi ekulahlweni yicala angakhokhiswa inhlawulo noma agqunywe ejele isikhathi esingedluli izinyanga eziyisithupha. 55

(19) (a) Umuntu unecala uma, ngaphandle kwegunya elifanele—

(i) engena, endiza ngaphezulu noma ngandlela thize eqoqa noma ethola indlela yokungena olwazini olubekwe ngokohlobo lokuthi lungafinyelelwa yinoma ngubani ezikhungweni ezithile ezingavulelwe noma ngubani, izinto ezifakiwe noma ezikhalini zoMnyango. 60

(ii) ephethe, noma enza imifanekiso yemidwebo, izithombe, enza izinyatheliso, ngokwe-elektronikhi noma nganoma iyiphi enye indlela eqopha noma ethola imininigane yezemishini ezikhungweni ezingavulelwe noma ngubani, izinto ezifakiwe noma ezikhalini zoMnyango. 65

(iii) enikezela noma eveza komunye umuntu noma elahlekelwa noma ethola kunoma yiliphi ilungu noma isisebenzi soMnyango, amakhophi, imidwebo, izithombe, izinyatheliso, okuqoshiwe kweze-elektronikhi nokungekhona 70

tronic or non-electronic recordings of the digital data referred to in subparagraph (ii).

(b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine or imprisonment for a period not exceeding 25 years.

(20) (a) A person is guilty of an offence if he or she in respect of public property or State money under the control of the Department— 5

- (i) sells, barter or otherwise disposes of or lends or pledges any such property without authority;
- (ii) agrees to pay or connives at the payment of any exorbitant price for any such property purchased for use, or any service hired, by the Department; 10
- (iii) without good cause abandons, damages or destroys any such property;
- (iv) being responsible for stores, stocks or money in the Department, so negligently perform his or her duties as to cause a deficiency in such stores, stocks or money;
- (v) without authority takes or removes any article from its designated place;
- (vi) uses any article or money for any purpose other than in the public interest; 15
- (vii) through gross negligence or intentionally omits to take action to prevent damage or destruction or loss of any such property or money;
- (viii) intentionally or through gross negligence commits any act which causes or is likely to cause damage to or destruction or loss of any such property or money;
- (ix) intentionally or through gross negligence fails to take effective steps to prevent unauthorised, irregular, fruitless or wasteful expenditure as contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999); or 20
- (x) intentionally or through gross negligence and without good cause under-collects revenue due to the Department.

(b) Any person convicted of an offence contemplated in paragraph (a) is liable on conviction to a fine or to imprisonment for a period not exceeding 10 years. 25

(21) (a) A person is guilty of an offence if he or she—

- (i) having been duly summoned or warned to attend as a witness before a board of inquiry, fails to attend or to remain in attendance until authorised to leave;
- (ii) being present at a board of inquiry after having been duly summoned or warned to attend as a witness, fails or refuses to be sworn or to affirm; or 30
- (iii) uses threatening or insulting language at a board of inquiry or wilfully causes a disturbance or interruption thereat or wilfully commits any other act likely to bring the board of inquiry into contempt, ridicule or disrepute.

(b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine or imprisonment for a period not exceeding three months. 35

(22) Any person who at any board of inquiry deliberately misleads the board, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.

okwe-elektronikhi kolwazi lwezemishini okubhekiswe kulo endimeni engaphansi kweyesibili.

(b) Noma yimuphi umuntu olahlwe yicala elishiwo endimeni (a) kungenzeka ahlawuliswe noma agqunywe ejele isikhathi esingedluli iminyaka engama-25.

(20) (a) Umuntu unecala uma kuthi ngempahla kahulumeni noma ngemali engaphansi kwesandla soMnyango— 5

- (i) athengise, ashintshisane noma akusebenzise ngandlela thize noma atshelekise noma ayisebenzise leyompahla ngaphandle kwemvume;
- (ii) avume ukukhokha noma akhwabanise ngokukhokha kwemali eshisiwe ngaleyompahla ethengelwe ukusetshenziswa noma umsebenzi oqashwe ngumnyango; 10
- (iii) okuthi kungenasizathu ashiye phansi, alimaze noma ayimoshe leyompahla.
- (iv) obhekene nendawo okubekwa kuyo izinto, impahla nemali yomnyango kepha awenze budedengu futhi angawunaki umsebenzi wakhe ngndlela edala ukuba kungahambi kahle kuleyondawo okugcinwa kuyo izinto, kuleyompahla nemali engaphansi kwesandla sakhe; 15
- (v) okuthi ngaphandle kwemvume athathe noma asebenzise noma yini ayisuse lapho kufuneka ibekhona;
- (vi) asebenzise noma iyiphi impahla noma imali noma ngasiphi isizathu esingahlangene nemisebenzi kahulumeni; 20
- (vii) okuthi ngokunganaki noma ngamabomu angazithathi izinyathelo ezifanele ukuvimba umonakalo kuleyompahla noma imali kugcine kunomonakalo noma ukulahleka kwaleyompahla noma imali;
- (viii) okuthi ngenhloso noma ngokunganaki enze noma yini edala noma engadala umonakalo nokulahleka kwempahla noma imali; 25
- (ix) okuthi ngenhloso noma ngokunganaki ehluleke ukuthatha izinyathelo ezifanele ukuvimba ukusetshenziswa ngokungemthetho, ngendlela engafanele, ngendlela yokumosha njengoba kubekwe kuMthetho wokuBhekwa kweziMali zikaHulumeni ka 1999 (Act No. 1 of 1999); noma
- (x) kuthi ngenhloso noma ukunganaki ngaphandle kwesizathu esizwakalayo aqoqe izimali ezingaphansi kwalezo okudingeka aziqoqe uMnyango. 30

(b) Noma yimuphi umuntu olahlwe yicala elishiwo endimeni (a) uyolindeleka ukuba akhokhe inhlawulo noma agqunywe ejele isikhathi esiyiminyaka engengaphezu kwengu 10.

(21) (a) Noma ubani ubekwa icala uma— 35

- (i) kuthi enikwe amasamanisi noma etshelwe ukuba abekhona ebhodini yophenyo anike ubufakazikepha yena angezi noma angahlali kuze kuqedwe anikwe imvume yokuhamba;
- (ii) kuthi ekhona ebhodini yophenyo emva kokufakelwa amsamanisi noma ukutshelwa ukuba eze njengofakazi, ale noma ehluleke ukuthatha izifungo noa ukusho ukuthi okushiwoyo kuyiqiniso yini oma cha; noma 40
- (iii) asebenzise ulimi oluqojeme nolunenhamba ebhodini yophenyo noma adala isimo sokuphazamisa okwenziwa, ukwesabisa noma enze noma yisiphi esinye isenzo esingahudulela igama leBodi yoPhenyo phansi ngezindlela ezehlukene. 45

(b) noma yimuphi umuntu oyotholwa enecala eliphathelene nokubekwe kwindima (b) uyohlawuliswa noma agqunywe ejele isikhathi esingengaphezu kwezinyanga ezintathu.

(22) Noma ubani okuyothi ebhodini yophenyo atshele ibhodi okungelona iqiniso ngamabomu unecala angahlawuliswa noma agqunywe ejele isikhathi esingengaphe konyaka. 50

**Offensive behaviour**

**105.** (1) Any member of the Defence Force or employee of the Department whose verbal or physical conduct denigrates, humiliates or shows hostility or aversion to any other person on the grounds of that person's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth, is guilty of an offence and liable on conviction to imprisonment not exceeding five years. 5

(2) Where a member or employee of the Department is convicted of any offence and the commission of the offence is accompanied by any offensive behaviour contemplated in subsection (1), such behaviour must be regarded as being an aggravating factor in passing sentence on the accused. 10

**CHAPTER 18****GENERAL****Repeal of laws, and savings**

**106.** (1) Subject to subsections (2), (3) and (4), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of that Schedule. 15

(2) Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by subsection (1), must be regarded as having been issued, made or done under the corresponding provisions of this Act, and must in so far as it relates to any force, reserve or service established or any training or service provided for under any such repealed law be construed as if it related to the corresponding force, reserve, service or training established or provided for under this Act. 20

(3) Any person who at the commencement of this Act is a member of any force, reserve or service established under any such repealed law, must be regarded as having been duly enrolled as a member of the corresponding force, reserve or service established under this Act and as having been assigned to the unit, corps or duties in which he or she is serving at such commencement, and any training undergone or service performed by any such person in any such force, reserve or service prior to such commencement, must be regarded as having been undergone or performed in the corresponding force, reserve or service established under this Act. 25 30

(4) For purposes of this section, any force, reserve or service established or training or service provided for under any such repealed law, is deemed to correspond to the force, reserve or service established or training or service provided for under this Act, to which in name, designation or description it most closely corresponds. 35

(5) A reference in any law to a provision of the Defence Act, 1957 (Act No. 44 of 1957), must be construed as a reference to the corresponding provision of this Act.

**Short title and commencement**

**107.** This Act is called the Defence Act, 2002, and takes effect on a date to be determined by the President by proclamation in the *Gazette*. 40



**Ukuziphatha ngendlela ethunazayo**

**105.** (1) Noma ililphi ilungu loMbutho wezokuVikela noma umsebenzi woMnyango ukuziphatha kwalo noma elikushoyo okuthunaza kwehlise isithunzi noma kukhombise inzondo kwabanye ngenxa yobuhlanga balowo muntu, ubulili, ukukhulelwa, isimo sokushada, imvelaphi yobuzwe noma yezokuhlalisana, ibala, ubunjalo ngokwezocansi, 5  
ubudala, ukukhubazeka, inkolo, unembeza, inkolelo, isiko, ulimi noma ukuzalwa, liyotholakala linecala elingagqunywa ejele ngalo iminyaka engengaphezu kwemihlanu.

(2) Lapho ilungu noma isisebenzi soMnyango silahlwe yinoma yiliphi icala futhi nokwenziwa kwecala okucetshwa kuhambisana nokuziphatha okucunulayo okucetshwa esigabeni (1), ukuziphatha okunje kufanele kuthathwe njengephuzu elenza kube kubi 10  
kakhulu ekubekeni isigwebo kobekwe icala.

**ISAHLUKO 18****OKUNYE****Ukwesulwa kwemithetho nokonga**

**106.** (1) Ngokwezigaba (2), (3) no (4) imithetho ephawulwe ohlwini iyachithwa 15  
ngalokhu ukufika ebangeni elibekwe emhlandleni wesithathu walolo luHla.

(2) Noma yimuphi umthetho noma isaziso esikhishiwe noma ukuqashwa osekwenziwe noma yini eyenziwe ngaphansi komthetho osulwe ngokwesigaba (1) kuyothathwa sengathi kukhishwe, kwenziwa ngokuhambisana nemithetho engaphansi kwaloMthetho kanti kufuneka kuthi maqondana nanoma yimuphi uMbutho, 20  
nemisebenzi ukuqeqeshwa nemisebenzi eyayenziwa ngaphansi kwawo ithathwe sengathi ihambisana nemibutho nemisebenzinokuqeqeshwa okungaphansi kwalomthetho.

(3) Noma wubani ekuqaleni kwalomthetho owayeyilungu lanoma yimuphi umbutho noma umsebenzi owasungulwa ngaphansi komthetho osuwasulwa kufanela athathwe 25  
njengobhalisiwe njengelungu lombutho ofana nalowo, imisebenzi esungulwe ngaphansi kwalomthetho enikwe iyunithi nabanye abasebenza kuyo kusukela ekuqalweni komthetho, nokuqeqeshwa okwenziwe noma umsebenzi owenziwe ngumuntu onjalo noma kuwuphi umbutho noma umsebenzi ngaphambi kokuba uqale ukusebenza kufuneka athathwe njengowakwenza konke loko noma owasebenza emibuthweni noma 30  
emisebenzini efana naleyo esungulwe ngaphansi kwalomthetho.

(4) Maqondana nalesigaba, noma yimuphi umbutho, irizevu noma umsebenzi owasungulwa noma ukuqeqeshwa noma umsebenzi owenziwa ngaphansi kwanoma yimuphi umthetho osewasulwa uyohambisana nombutho, irizevu noma umsebenzi owasungulwa noma ukuqeqeshwa noma umsebenzi obekelwe ukwenziwa ngaphansi 35  
kwalomthetho igama, incazelo nesikhundla sawo esicishe sifane.

(5) Ukuphathwa kwanoma yimuphi omunye umthetho maqondana nokutholakala eMthethweni wezokuVikela ka 1957 (Act No. 44 of 1957) kufanele kuthathwe njengaloko esingakusebenzisa maqondana nalomthetho.

**Isihloko esifishane nesiqalo**

**107.** LoMthetho ubizwa ngokuthi nguMthetho wezokuVikela ka 2002. Uyoqala ukusebenza ngosuku oluyonqunywa nguMongameli ngokuwushicilela kwiGazethi.

Act No. 42, 2002

DEFENCE ACT, 2002

**SCHEDULE****Laws repealed****(Section 106)**

No. and year of Act	Short title	Extent of repeal	
No. 44 of 1957	Defence Act, 1957	The whole, save for sections 104, 105, 106, 108, 109, 111 and 112 and the First Schedule	5
No. 12 of 1961	Defence Amendment Act, 1961	The whole	10
No. 42 of 1961	Defence Further Amendment Act, 1961	The whole	
No. 83 of 1962	Defence Amendment Act, 1962	The whole	15
No. 77 of 1963	Defence Amendment Act, 1963	The whole	
No. 81 of 1964	Defence Amendment Act, 1964	The whole	
No. 85 of 1967	Defence Amendment Act, 1967	The whole	20
No. 3 of 1969	Defence Amendment Act, 1969	The whole	
No. 28 of 1970	Defence Amendment Act, 1970	The whole	25
No. 80 of 1971	General Law Amendment Act, 1971	Section 20	
No. 66 of 1972	Defence Amendment Act, 1972	The whole	
No. 26 of 1973	Defence Amendment Act, 1973	Sections 1 and 2	30
No. 8 of 1974	Defence Amendment Act, 1974	The whole	
No. 83 of 1974	Defence Further Amendment Act, 1974	The whole	35
No. 94 of 1974	Second General Law Amendment Act, 1974	Section 34	
No. 57 of 1975	General Law Amendment Act, 1975	Sections 23 to 26	
No. 1 of 1976	Defence Amendment Act, 1976	Sections 1 to 9	40
No. 35 of 1977	Defence Amendment Act, 1977	The whole	
No. 68 of 1977	Second Defence Amendment Act, 1977	The whole	45
No. 34 of 1978 (Transkei)	Defence Act, 1978	The whole	

**ISHEDULI**  
Imithetho esuliwe

(Isigaba 106)

Inombolo nonyaka woMthetho	Isihloko Esifishane	Ukulwe kangakanani
No. 44 ka 1957	Umthetho wezokuVikela ka 1957	Ucinywe wonke ngaphandle kwesigaba 104,105, 106, 108,109, 111 no 112 neSheduli yokuqala
No. 12 ka 1961	Umthetho wokuChibiyelwa kwezokuVikela 1961	Wonke
No. 42 ka 1961	Umthetho wokuChibiyelwa kwezokuVikela 1961	Wonke
No. 83 ka 1962	Umthetho wokuChibiyelwa kwezokuVikela 1962	Wonke
No. 77 ka 1963	Umthetho wokuChibiyelwa kwezokuVikela 1963	Wonke
No. 81 ka 1964	Umthetho wokuChibiyelwa kwezokuVikela 1964	Wonke
No. 85 ka 1967	Umthetho wokuChibiyelwa kwezokuVikela 1967	Wonke
No. 3 ka 1969	Umthetho wokuChibiyelwa kwezokuVikela 1969	Wonke
No. 28 ka 1970	Umthetho wokuChibiyelwa kwezokuVikela 1970	Wonke
No. 80 ka 1971	Umthetho wokuChibiyela 1971	Isigaba 20
No. 66 ka 1972	Umthetho wozokuChibiyelwa kwezokuVikela 1972	Wonke
No. 26 ka 1973	Umthetho wokuChibiyelwa kwezokuVikela 1973	Isigaba 1 no 2
No. 8 ka 1974	Umthetho wokuChibiyelwa kwezokuVikela 1974	Wonke
No. 83 ka 1974	Umthetho wokuChibiyelwa kwezokuVikela 1974	Wonke
No. 94 ka 1974	Umthetho wokuChibiyelwa kwezokuVikela 1974	Isigaba 34
No. 57 ka 1975	Umthetho wokuChibiyela 1975	Isigaba 23 kuya 26
No. 1 ka 1976	Umthetho wokuChibiyelwa kwezokuVikela 1976	Isigaba 1 kuya ku 9
No. 35 ka 1977	Umthetho wokuChibiyelwa kwezokuVikela 1977	Wonke
No. 68 ka 1977	Umthetho wokuChibiyelwa kwezokuVikela 1977	Wonke
No. 34 ka 1978 (Transkei)	Umthetho wezokuVikela 1978 (Transkei)	Wonke

## Act No. 42, 2002

## DEFENCE ACT, 2002

No. and year of Act	Short title	Extent of repeal	
No. 49 of 1978	Defence Amendment Act, 1978	The whole	5
No. 42 of 1979	Defence Amendment Act, 1979	The whole	
No. 77 of 1980	Defence Amendment Act, 1980	The whole	
No. 15 of 1982 (Venda)	Defence Act, 1982	The whole	10
No. 103 of 1982	Defence Amendment Act, 1982	The whole	
No. 7 of 1983 (Venda)	Defence Amendment Act, 1983	The whole	
No. 34 of 1983	Defence Amendment Act, 1983	The whole	15
No. 87 of 1984	Defence Amendment Act, 1984	The whole	
No. 6 of 1985 (Venda)	Defence Amendment Act, 1985	The whole	
No. 17 of 1986 (Ciskei)	Defence Act, 1986	The whole	20
No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Sections 27 and 28	
No. 45 of 1987	Defence Amendment Act, 1987	The whole	
No. 13 of 1991 (Bophuthatswana)	National Defence Act, 1991	The whole	25
No. 51 of 1991	Transfer of Powers and Duties of the State President Act, 1991	Sections 3 and 4	
No. 58 of 1992 (Bophuthatswana)	National Defence Amendment Act, 1992	The whole	
No. 132 of 1992	Defence Amendment Act, 1992	The whole	30
No. 32 of 1993	Defence Amendment Act, 1993	The whole	
No. 132 of 1993	General Law Fourth Amendment Act, 1993	Section 12	
No. 134 of 1993	Defence Second Amendment Act, 1993	The whole	35
No. 72 of 1995	Defence Amendment Act, 1995	The whole	
No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	Sections 15 to 19	
			45

## UMTHETHO WEZOKUVIKELA KA-2002

Act No. 42, 2002

Inombolo nonyaka woMthetho	Isihloko Esifishane	Ukulwe kangakanani
No. 49 ka 1978	Umthetho wokuChibiyelwa kwezokuVikela 1978	Wonke
No. 42 ka 1979	Umthetho wokuChibiyelwa kwezokuVikela 1979	Wonke
No. 77 ka 1980	Umthetho wokuChibiyelwa kwezokuVikela 1980	Wonke
No. 15 ka 1982 (Venda)	Umthetho wezokuVikela 1982 (Venda)	Wonke
No. 103 ka 1982	Umthetho wokuChibiyelwa kwezokuVikela 1982	Wonke
No. 7 ka 1983 (Venda)	Umthetho wokuChibiyelwa kwezokuVikela 1983 (Venda)	Wonke
No. 34 ka 1983	Umthetho wokuChibiyelwa kwezokuVikela 1983	Wonke
No. 87 ka 1984	Umthetho wokuChibiyelwa kwezokuVikela 1984	Wonke
No. 6 ka 1985	Umthetho wokuChibiyelwa kwezokuVikela 1985 (Venda)	Wonke
No. 17 ka 1986	Umthetho wezokuVikela 1986 (Ciskei)	Wonke
No. 97 ka 1986	Umthetho wokweDluliswa kwaMandla nemiSebenzi kaMongameli	Isigaba 27 no 28
No. 45 ka 1987	Umthetho wokuChibiyelwa kwezokuVikela 1987	Wonke
No. 13 ka 1991 (Bophutatswana)	Umthetho wezokuVikela 1991 (Bophuthatswana)	Wonke
No. 132 ka 1992	Umthetho wokuChibiyelwa kwezokuVikela 1992	Wonke
No. 32 ka 1993	Umthetho wokuChibiyelwa kwezokuVikela 1993	Wonke
No. 132 ka 1993	UkuChibiyelwa koMthetho kwesine	Isigaba 12
No. 134 ka 1993	Umthetho wesibili wokuChibiyelwa kwezokuVikela 1993	Wonke
No. 72 ka 1995	Umthetho wokuChibiyelwa kwezokuVikela 1995	Wonke
No. 88 ka 1996	Umthetho wokuQedwa KokuFinyezwa kwaMandla eziNkantolo 1996	Isigaba 15 kuya 19
No. 4 ka 1997	Umthetho wokuChibiyelwa kwezokuVikela 1997	Wonke
No. 105 ka 1997	uChibiyelwa koMthetho wamacala egazi	Isigaba 2 kuya 24



Act No. 42, 2002

DEFENCE ACT, 2002

No. and year of Act	Short title	Extent of repeal
No. 4 of 1997	Defence Amendment Act, 1997	The whole
No. 105 of 1997	Criminal Law Amendment Act, 1997	Sections 2 to 24

## UMTHETHO WEZOKUVIKELA KA-2002

Act No. 42, 2002

Inombolo nonyaka woMthetho	Isihloko Esifishane	Usulwe kangakanani
No. 51 ka 1991	Umthetho wokweDluliswa kwaMandla nemiSebenzi kaMongameli	Isigaba 3 no 4
No. 58 ka 1992 Bophuthatswana	Umthetho Wezokuvikela 1992	Wonke

