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## THE PRESIDENCY

No. 1183 9 December 2010

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

**No. 22 of 2010: Defence Amendment Act, 2010**

## IHHOVISI LIKAMONGAMELI

Ino. 1183 9 December 2010

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelelwa umphakathi:—

**Ino. 22 Ka 2010: uMthetho oChibiyela ezokuVikela, wezi-2010**

**GENERAL EXPLANATORY NOTE:**

- [                    ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)  
(Assented to 7 December 2010.)

**ACT**

To amend the Defence Act, 2002, so as to state who comprises the Military Command of the South African National Defence Force and to further regulate the appointment of its members; to require members of the Reserve Force contemplated in section 53(1) to enter into a contract of service with the Defence Force; to require members of the Reserve Force to comply with a call-up order to report for duty; and to establish the Defence Force Service Commission which is to make recommendations to the Minister of Defence and Military Veterans concerning conditions of service of members of the Defence Force; and to provide for matters connected therewith.

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

**Amendment of section 1 of Act 42 of 2002**

1. Section 1 of the Defence Act, 2002 (Act No. 42 of 2002) (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion in subsection (1) after the definition of “Code” of the following definition:

“‘conditions of service’ includes conditions relating to—

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>(a) recruitment procedures and advertising and selection criteria;</li> <li>(b) appointment and appointment processes;</li> <li>(c) job classification and grading;</li> <li>(d) salaries, allowances and service benefits;</li> <li>(e) job assignments;</li> <li>(f) working environment and facilities;</li> <li>(g) education, training and development;</li> <li>(h) performance evaluation systems;</li> <li>(i) promotion;</li> <li>(j) transfers;</li> <li>(k) demotion;</li> <li>(l) disciplinary measures other than dismissals;</li> <li>(m) grievance and grievance procedures;</li> <li>(n) dismissal;</li> </ul> | <div style="border-left: 1px solid black; border-right: 1px solid black; border-bottom: 1px solid black; padding-left: 5px;"> <p>10</p> <p>15</p> <p>20</p> </div> |
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## INCAZELO EJWAYELEKILE:

[                      ] Amagama acaciswe ngombhalo ogqamile akubakaki abayisikwele abonisa okukhishwayo emthethweni osebenzayo.

\_\_\_\_\_ Amagama adwetshelwe ngomugqa ogqamile akhombisa okufakelwayo emthethweni osebenzayo.

\_\_\_\_\_  
*(English text signed by the President.)*  
*(Assented to 7 December 2010.)*

## UMTHETHO

Ukuchibiyela uMthetho wokuVikela ka, 2002 okuzodinga ukuthi amalunga oMbutho eliliBambela ohlongozwayo kwisigaba 53 (section 53) sokungena kwisivumelwano somsebenzi noMbutho wezokuVikela waseNingizimu Afrika; okubiza amalunga oMbutho angamaBambela avumelane nokubizelwa umsebenzi ngokuhambisana nomthetho; kanye nokusungulwa kweSigungu sokubhekela isimo sabasebenzi boMbutho wezokuVikela esizonikeza izincomo kuNgqongqoshe wezokuVikela kanye nomaKadebona kwezeMpi maqondana namaholo, inzuzo emsebenzini nezinye izimo zomsebenzi wamalunga oMbutho wezokuVikela; kanye nokubhekela okuphathelene nalezizindaba.

**U**ZOMISWA iPhalamende leRiphabliki yaseNingizimu Afrika, ngendlela elandelayo:—

### Uchitshiyelwa kwesigaba 1 soMthetho 42 ka 2002

**1.** ISigaba 1 soMthetho wokuVikela, 2002 (uMthetho 42 ka 2002) (kubhekiswe kuwona njengoMthetho omkhulu) ngalawa mazwi uyachitshiyelwa—

(a) Ngokufakelwa kwesiqeshana 1 emuva kokuchazwa kwegama “uPhawu” oluchazwe ngale ndlela elandelayo:

“ **izimo zomsebenzi**” ezibandakanya lokhu—

- |                                                                                               |    |
|-----------------------------------------------------------------------------------------------|----|
| (a) Indlela yokubutha amabutho, nesaziso ngokubuthwa, kanye nendlela yokunquma uma kukhethwa; | 10 |
| (b) Ukuqashwa kanye nohlelo lokuqashwa;                                                       |    |
| (c) Ukuhlelwa komsebenzi ngohlobo oluthile kanye nokulinganiswa kwawo.                        |    |
| (d) Amaholo, imali enqunyiwe kanye nenzuzo zasemsebenzini;                                    |    |
| (e) Ukwabelwa umsebenzi;                                                                      | 15 |
| (f) Indawo yokusebenzela kanye namathuba;                                                     |    |
| (g) Ukuqeqeshwa kanye nokuthuthukiswa;                                                        |    |
| (h) Uhlelo lokuhlolwa emsebenzini;                                                            |    |
| (i) Ukukhushulwa esikhundleni emsebenzini;                                                    |    |
| (j) Ukuthutha uye kwenye indawo;                                                              | 20 |
| (k) Ukweliswa esikhundleni emsebenzini;                                                       |    |
| (l) Izinyathelo zokujeziswa ngokomthetho ngaphandle kokuxoshwa;                               |    |
| (m) Ukubeka icala nonqubo yokubeka icala                                                      |    |
| (n) Ukuxoshwa emsebenzini;                                                                    |    |

- (o) scarce skills; |  
 (p) pay progression; |  
 (q) deployment benefits; |  
 (r) tools of trade; |  
 (s) accommodation; and | 5  
 (t) any other matter pertaining to conditions of service;; and  
 (b) by the insertion in subsection (1) after the definition of “**superior officer**” of  
 the following definition:  
 “**the Commission**” means the Defence Force Service Commission  
established by section 62A;” | 10

#### Insertion of section 4A in Act 42 of 2002

2. The following section is hereby inserted in the principal Act after section 4:

##### “**Military Command of Defence Force**

- 4A.** The Military Command of the Defence Force referred to  
 in section 202(1) of the Constitution consists of— | 15  
 (a) the Chief of the Defence Force;  
 (b) the Chief of the South African Army;  
 (c) the Chief of the South African Air Force;  
 (d) the Chief of the South African Navy;  
 (e) the Surgeon-General of the South African Military Health Service; | 20  
 (f) the Chief of Joint Operations of the Defence Force;  
 (g) the Chief of Defence Intelligence;  
 (h) the Chief of Human Resources; and  
 (i) the Chief of Logistics.” |

#### Amendment of section 13 of Act 42 of 2002 | 25

3. Section 13 of the principal Act is hereby amended—  
 (a) by the substitution for the heading of the following heading:  
 “**Chief of Defence Force, and appointment of other members of**  
**Military Command**”; and  
 (b) by the insertion after subsection (1) of the following subsection: | 30  
 “(1A) The President must appoint members of the Military Command  
 of the Defence Force referred to in section 4A.” |

#### Amendment of section 53 of Act 42 of 2002

4. Section 53 of the principal Act is hereby amended— | 35  
 (a) by the addition to subsection (1) of the following paragraph, the existing  
 subsection becoming subsection (1)(a):  
 “(b) (i) The members of the Defence Force contemplated in paragraph  
 (a) must, within 18 months after the commencement of the Defence  
 Amendment Act, 2010, enter into a contract of service with the Defence  
 Force as contemplated in subsection (1A)(a). | 40  
 (ii) Should any such members fail to conclude a contract contemplated  
 in subparagraph (i), the Minister must give the member notice of his or  
 her intention to terminate the membership of the member and afford such  
 member a reasonable opportunity to conclude the contract.  
 (iii) The Minister must terminate the membership of the member if | 45  
 such member fails to conclude the contract following the notice  
 contemplated in subparagraph (ii).” |

- (o) Ubungcweti obungavamile;
- (p) Inqubekela phambili yeholo;
- (q) Inzuzo yokuphakwa kwamabutho kumazwe angaphandle kweNingizimu Afrika;
- (r) Amathuluzi omsebenzi;
- (s) Indawo yokuhlala nokulala
- (t) Nezinye izinto eziphatelene ‘nezimo zomsebenzi;’ futhi
- (b) Ngokufakelwa kwesiqeshana l emuva kokuchazwa kwegama **“umsebenzi osesikhundleni esiphezulu”** ochazwe ngale ndlela elandelayo: **“‘ikhomishana’ ichaza iKhomishani yoPhiko loMbutho wezokuVikela esungulwe ngokwesigaba 62A;”**

#### Ukushutheka isigaba 4A eMthethweni 42 ka 2002

2. Ngakho-ke lesi sigaba esilandelayo sishuthekwe eMthethweningqangi ngemuva kwesigaba 4:

#### **“AbaKhuzi beMpi boMbutho wezokuVikela** 15

**4A. AbaKhuzi beMpi boMbutho wezokuVikela abashiwo esigatsheni sama- 202(1) kuMthethosisekelo babandakanya—**

- (a) uMphathi woMbutho wezokuVikela;
- (b) uMphathi wezeMpi waseNingizimu Afrika;
- (c) uMphathi woMbutho wezoMoya waseNingizimu Afrika;
- (d) uMphathi weMikhumbi yezeMpi yaseNingizimu Afrika;
- (e) uSayitsheni-Jikelele woPhiko lwezeMpilo kwezeMpi eNingizimu Afrika;
- (f) uMphathi weMisebenzi eHlanganyelwayo eMbuthweni wezokuVikela;
- (g) uMphathi wezoBunhloli kwezokuVikela;
- (h) uMphathi wezokuQashwa kwaBantu; kanye
- (i) noMphathi wezokuThutha.”

#### Ukuchibiyela isigaba 13 soMthetho 42 ka 2002

3. Ngakho-ke isigaba 13 soMthethongqangi sichitshiyelwe— 30

- (a) ngokufaka endaweni yesihloko lesi sihloko esilandelayo: **“uMphathi woMbutho wezokuVikela, nokuqokwa kwamanye amalungu abaKhuzi bezeMpi”**; kanye
- (b) nangokushutheka ngemuva kwesigatshana (1) lesi sigatshana esilandelayo: **“(1A) Umongameli kufanele aqoke amalungu abaKhuzi bezeMpi boMbutho wezokuVikela abashiwo esigatsheni sesi-4A.”** 35

#### Ukuchitshiyelwa kwesigaba 53 soMthetho 42 ka 2002

4. Isigaba 53 soMthethongqangi ngalawa mazwi siyachitshiyelwa—

- (a) Ngokungezwa kwesiqephu sesiqeshana (1) kulesi siqephu esilandelayo, isiqephu sesiqeshana ebesikhona senziwa isiqephu sesiqeshana (1)(a): 40
- “(b) (i) Amalunga oMbutho wezokuVikela abikwe kwisiqephu (a) kufuneka, ngezinyanga ezingu-18 ngemuva kokuqala ukusebenza koMthetho oChibiyela ezokuVikela, wezi-2010, kufanele enze isivumelwano somsebenzi noMbutho wezokuVikela njengoba kuvezwe isiqephu sesiqeshana (1A)(a).”** 45
- (ii) Uma amalunga ehluleka ukwenza isivumelwano esibekiwe kwisiqeshana (i), uNgqongqoshe kufuneka anikeze lelo lungu isaziso ngokwenhloso yokumisa ubulunga belungu lelo futhi anikeze lelo lungu ithuba elanele lokwenza isivumelwano sakhe.
- (iii) UNgqongqoshe kufuneka amise ubulunga belungu uma lelo lungu lehluleka ukuqedela isivumelwano salo ngemuva kwesaziso esethulwe kwisiqephu sesiqeshana (ii).”; 50

- (b) by the insertion after subsection (1) of the following subsection:  
“(1A) (a) Any member of the Reserve Force is liable to render service in terms of a contract entered into between the Defence Force and such member.  
 (b) The content and format of the contract contemplated in paragraph (a) must be prescribed.  
 (c) The period for which a member of the Reserve Force must render the service contemplated in paragraph (a) and the calculation thereof must be prescribed.”;
- (c) by the insertion after subsection (3) of the following subsection:  
“(3A) (a) A Reserve Force member must comply with a call-up order issued by that member’s commanding officer in terms of which such member must report for service as contemplated in this Act or the Constitution.  
(b) The content and format of such call-up order must be prescribed.”;  
 and
- (d) by the insertion after subsection (4) of the following subsection:  
“(4A) Where a Reserve Force member’s period of service terminates, lapses or expires during any form of employment contemplated in section 18(1), the Minister may, with the concurrence of such member, extend such service for a period not exceeding three months or until the conclusion of the operation, whichever is the shorter.”.

#### **Amendment of section 55 of Act 42 of 2002**

5. Section 55 of the principal Act is hereby amended by the addition of the following subsection after subsection (2):  
“(3) In the event that the processes contemplated in subsections (1) and (2) do not materialise, the Minister may, taking into account any recommendation by the Commission, and with the approval of the Minister of Finance, determine pay, salaries and entitlements of the members of the Defence Force.”.

#### **Insertion of sections 62A, 62B, 62C, 62D, 62E, 62F, 62G, 62H, 62I, 62J, 62K and 62L in Act 42 of 2002**

6. The following sections are hereby inserted in the principal Act after section 62:

#### **“Establishment and composition of Defence Force Service Commission**

- 62A.** (1) There is hereby established a Defence Force Service Commission.  
 (2) The Commission consists of no fewer than eight and no more than ten members appointed by the Minister.  
 (3) The Minister must designate one member as Chairperson and another as Deputy Chairperson of the Commission.  
 (4) If the Chairperson is absent or for any reason unable to act as Chairperson, the Deputy Chairperson must act as the Chairperson of the Commission.

#### **Functions of Commission**

- 62B.** (1) The Commission must—  
 (a) on an annual basis, make recommendations to the Minister on improvements of salaries and service benefits of members;  
 (b) make recommendations to the Minister on policies in respect of conditions of service;

- (b) Ngokufakelwa kamuva kwesiqephu sesiqeshana (1) salesi siqephu sesiqeshana esilandelayo:
- “(1A) (a) Noma eliphi ilungu loMbutho ongamaBambela lifanele ukusebenza ngokwesivumelwano elangena kuso kanye neMbutho wezokuVikela. 5
- (b) Okuqukethwe kanye nesimo sesivumelwano okubhekwa kwisiqephu (a) kufanele kube okunqunyiwe.
- (c) Isikhathi sokuba lilungu loMbutho amaBambela ekufuneka asebenze ngawo sibhekwa kwisiqephu (a) kanye nezibalo kanjalo kufanele ukuba zibe ezinqunyiwe. 10
- (c) Ngokufakelwa kamuva kwesiqephu sesiqeshana (3) kulesi siqephu sesiqeshana esilandelayo: ”
- (3A) (a) Ilungu loMbutho wamaBambela kufuneka livume ukubizelwa umsebenzi oyokhishwa ngumphathi wamahhovisi wakhe ngendlela okuvunyelwene ngayo nelunga okuya kubiza ukuba ilunga liye emsebenzini njengokwesivumelwano kulo Mthetho noma kuMthethosisekelo. 15
- (b) Okuqukethwe kanye nesimo salokho kubizelwa emsebenzini kufanele ukuba kube njengokunqunyiwe.”; kanye
- (d) Ngokufakelwa kamuva kwesiqephu sesiqeshana (4) kulesi siqephu sesiqeshana esilandelayo: 20
- “(4A) Lapho isikhathi somsebenzi selunga loMbutho wamaBambela simiswa, sidlula, noma siphela, ngesikhathi esasebenza ngokubikwa kwisigaba 18(1), uNgqongqoshe ngokuvumelana nalelo lungu, angaqhuba isikhathi sokusebenza selunga lelo kodwa kungabi ngaphezulu kwezinyanga ezintathu noma kuze kuphele lowo msebenzi obalulekile owenziwa yilungu, noma yikuphi okuphela kuqala.”. 25

#### Ukuchitshiyelwa kwesigaba 55 soMthetho 42 ka 2002

5. Ngakho-ke isigaba 55 soMthethongqangi sichitshiyelwe ngokwengeza lesi sigatshana esilandelayo ngemuva kwesigatshana sesi-(2): 30

“(3) Esimweni lapho izinhlelo ezivezwe ezigatsheni (1) no (2) zingasebenzi, uNgqongqoshe ngokubheka izincomo ezenziwe uKhomishana ngokuvumelana noNgqongqoshe wezeziMali, anganquma inkokhelo, amaholo nokufanele kukhokhelwe amalungu oMbutho wezokuVikela.”.

Ukushuthekwa kwezigaba 62A, 62B, 62C, 62D, 62E, 62F, 62G, 62H, 62I, 62J, 62K kanye no 62L woMthetho 42 ka 2002 35

6. Lezi zigaba ezilandelayo ziye zafakelwa kuMthethongqangi ngemuva kwesigaba 62:

**“Ukumiswa nokwakheka kweKhomishana yezeMisebenzi yoMbutho wezokuVikela 40**

**62A.** (1) Ngokokumiswa kweKhomishana yezeMisebenzi yoMbutho wezokuVikela.

(2) IKhomishana yenziwa ngamalunga angekho ngaphansi kwesishiyagalombili nangaphezulu kweshumi nakhethwa nguNgqongqoshe.

(3) UNgqongqoshe kufanele aqoke ilunga elilodwa elizokuba nguSihlalo nelinye ilungu elizoba iPhini likaSihlalo weKhomishana. 45

(4) Uma uSihlalo engekho noma ngesizathu simbe engakwazi ukusebenza njengoSihlalo, iPhini likaSihlalo kufanele lisebenze njengo-Sihlalo weKhomishana.

**Imisebenzi yeKhomishana 50**

**62B.** (1) IKhomishana kufanele—

(a) minyaka yonke, yenze izincomo kuNgqongqoshe zokwenza ngcono amaholo kanye nenzuzo yamalunga emisebenzini:

(b) yenze izincomo kuNgqongqoshe ngemigomo ephathelene nezimo zemisebenzi; 55

- (c) promote measures and set standards to ensure the effective and efficient implementation of policies on conditions of service within the Defence Force, and make recommendations to the Minister in this regard; and
- (d) for the purposes of making recommendations contemplated in paragraphs (a), (b) and (c)—
- (i) enquire into or conduct research on conditions of service;
  - (ii) review policies;
  - (iii) evaluate and monitor the implementation of such policies;
  - (iv) consult with the Secretary for Defence, the Chief of the Defence Force, members of the Defence Force, Reserve Force Council and any other interested person or body on conditions of service and any other matter relating to the purview of its functions;
  - (v) consider any representations made to the Commission;
  - (vi) consult with National Treasury;
  - (vii) confer with the Department responsible for public service and administration, the Public Service Commission and any other relevant stakeholder within the public service;
  - (viii) consider, among others—
    - (aa) the rank structure of the Defence Force;
    - (bb) the affordability of different levels of remuneration of the Defence Force;
    - (cc) current principles and levels of remuneration in the public service generally; and
    - (dd) inflationary increases.
- (2) The Commission must perform its functions impartially, without bias, fear or prejudice.
- (3) The Commission may, in consultation with the Minister, call upon any member of the Defence Force or employee of the Department to assist it in the execution of its functions, and such person is obliged to provide the necessary assistance.
- (4) The Minister determines the conditions of service for members of the Defence Force, in consultation with the Minister of Finance, after having received a recommendation from the Commission.

#### **Appointment of members of Commission and conditions of service**

- 62C.** (1) For the purposes of appointing the members of the Commission, the Minister must by notice in two national newspapers and in the *Gazette* invite interested persons to submit, within the period and in the manner mentioned in the notice, the names of persons fit to be appointed as members of the Commission.
- (2) The Minister must appoint five members of a nomination committee to make recommendations to the Minister for the appointment of the members of the Commission.
- (3) (a) In establishing a nomination committee, the Minister must ensure that the committee is broadly representative of the South African population and that both males and females are represented.
- (b) The members of the nomination committee must have sufficient knowledge and experience that would enable them to exercise a sound and objective discretion in making recommendations to the Minister.
- (4) The nomination committee must, in making a recommendation to the Minister, consider—
- (a) the proven skills, knowledge and experience of a candidate in matters relevant to the functioning of the Commission; and
  - (b) generally, whether the persons nominated represent a sufficient spread of qualifications, expertise and experience to ensure the efficient and effective functioning of the Commission.
- (5) The nomination committee must submit to the Minister a list of suitable candidates at least one and a half times the number of members of the Commission to be appointed.



- (c) ithathe izinyathelo zokuphakamisa nokubeka imigomo ukuqinisekisa ukuphumeleliswa nekhono lokwenza njengokunqunyweyo imigomo/inqubomgomo nezimiso zomsebenzi eMbuthweni wezokuVikela, futhi lenze izincomo kuNgqongqoshe mayelana nalokho; kanye
- (d) nenhloso yokwenza izincomo evezwe kwisiqephu (a), (b) kanye no (c)—
- (i) Buza noma wenze ucwaningo ngesimiso semisebenzi;
  - (ii) buyekeza imigomo/inqubomgomo;
  - (iii) hlola futhi uqaphelise ukwenziwa njengokunqunyweyo kwaleyo migomo/inqubomgomo;
  - (iv) xoxisana noMabhalana wezokuVikela, uMphathi oMkhulu woMbutho wezokuVikela, amalunga oMbutho wezokuVikela nezinye izinto ezihambisana nokuhloswe kwaphathwa ngokomthetho nemisebenzi yakho;
  - (v) cabanga iziboniso ezenziwe yiKhomishana;
  - (vi) xoxisana noMnyango weziMali zeZwe kaHulumeni;
  - (vii) cebisana noMnyango oqondene ngezemisebenzi kawonkewonke kunye nombuso, iKhomishana yaBasebenzi noma ngabaphi abanezabelo kwimisebenzi kawonkewonke;
  - (viii) cabanga, ngaphakathi kokunye—
    - (aa) isimo sezigaba zoMbutho wezokuVikela;
    - (bb) ukuba namandla okunika imali kwizigaba ezahlukahlukene zeMbutho wezokuVikela;
    - (cc) izimiso zamanje zezigaba zemali kwimisebenzi kawonkewonke; kanye
    - (dd) nokukhuphula amandla emali.
- (2) IKhomishana kufuneka yenze imisebenzi ngokungakhethi, ngokungena bandlululo, ukwesaba noma ngokukhetha okunobandlululo.
- (3) IKhomishana ngokuxoxisana noNgqongqoshe ingabiza noma yiliphi ilungu loMbutho wezokuVikela noma umsebenzi woMnyango ukusiza umnyango ukuqhubekisa imisebenzi yawo, futhi lowo muntu uphoqelekile ukunikeza lolo sizo oludingekayo.
- (4) uNgqongqoshe unquma izimiso zemisebenzi yamalungu oMbutho wezokuVikela, ngokuxoxisana noNgqongqoshe wezeziMali, ngemuva kokuthola izincomo kwiKhomishana.

#### **Ukubekwa ezikhundleni kwamalungu eKhomishana kanye nezimiso zemisebenzi**

- 62C.** (1) Ngokwenhloso yokukhetha amalunga eKhomishana, uNgqongqoshe kufuneka akhiphe izaziso kumaphephandaba kanye nakwiGazette ezimema abantu abanesifiso sokuba ngamalunga ukuba bafake izicelo zabo ngesikhathi nangendlela echazwa kwizaziso, amagama abantu abangakhethwa njengamalunga eKhomishana.
- (2) UNgqongqoshe kufuneka amise ikomidi elizokwenza izincomo kuNgqongqoshe zokumisa amalunga eKhomishana.
- (3) (a) Uma kumiswa ikomidi ezophakanyiswa, uNgqongqoshe kufanele aqinisekise ukuthi ikomidi limele abantu abaningi ngokwahlukahlukana kwabo eNingizimu Afrika, nokuthi abesilisa nabesifazane nabo bamelwe.
- (b) Amalungu ekomidi elizokuphakanyiswa kufuneka abe nolwazi olwanele nobungcweti okuyakubasiza ukuba babe nezwi elizwakalayo kanye nempokophelo yokukwazi ukuzenzela izincomo kuNgqongqoshe.
- (4) IKomidi eliphakanyisiwe uma lenza izincomo kuNgqongqoshe kufanele libheke lokhu—
- (a) Amakhono awufakazi, ulwazi kanye nobungcweti zekhandidethi ezindabeni eziqondene nemisebenzi yeKhomishani; kanye
  - (b) Okwejwayelekile ophakanyisiwe kufanele abe nolwazi oluphakeme olwanele, ulwazi lomsebenzi kanye nobungcweti ukuqinisekisa ukwenziwa komsebenzi weKhomishana ngekhono nangempumelelo.
- (5) IKomidi eliphakanyisiwe kufuneka lidlulisele kuNgqongqoshe uhide lwamakhandidethi afanelekile okungenani abe ngaphezulu ngohhafu ekhulwini lawo malunga eKhomishane amiselwe.

(6) If a suitable person or the required number of suitable persons is not recommended, the Minister must call for further nominations in the manner set out in subsection (1).

(7) (a) The Minister must appoint members of the Commission from the list of candidates submitted in terms of subsection (5).

(b) The Minister must, within 30 days after appointing the members, by notice in the *Gazette* publish the names of the members so appointed and the date of commencement of their terms of office.

(8) Any vacancy occurring in the Commission must be filled in the manner provided for in subsections (1) to (7).

(9) (a) A member of the Commission—

- (i) holds office for a period not exceeding five years;
- (ii) may, at the discretion of the Minister and in the interest of continuity, be reappointed, but may not serve more than two terms consecutively;
- (iii) is appointed according to the terms and conditions determined by the Minister; and
- (iv) may be appointed either on a full-time or a part-time basis.

(b) A member of the Commission who is not in the full-time employ of the State must be paid from the budget of the Department such remuneration and allowances in respect of his or her services as the Minister may determine, acting in consultation with the Minister of Finance.

#### **Disqualification from membership and removal from office**

**62D.** (1) No person may be appointed as a member of the Commission if he or she—

- (a) is a member of the Defence Force;
- (b) is an unrehabilitated insolvent; or
- (c) has been convicted of any offence for which that person has been sentenced to imprisonment without the option of a fine for a period of not less than 12 months, unless a period of at least five years has expired after the date on which the sentence was served.

(2) For the purposes of subsection (1)(c), no person is deemed to have been sentenced until an appeal against the conviction or sentence has been disposed of or until the period has expired within which an appeal may be lodged, as the case may be.

(3) The Minister may remove a member of the Commission from office on account of—

- (a) misconduct;
- (b) inability to perform the duties of that member's office effectively and efficiently; or
- (c) absence from three consecutive meetings of the Commission without the prior permission of the chairperson, except on good cause shown.

#### **Vacation of office**

**62E.** A member of the Commission must vacate office if he or she—

- (a) becomes subject to any disqualification referred to in section 62D;
- (b) becomes of unsound mind;
- (c) resigns by giving at least 30 days' written notice to the Minister; or
- (d) for whatever reason, becomes unfit or unable to remain a member of the Commission.

(6) Uma umuntu ofanele noma inani lelo elidingakalayo labantu abafanele lingavunywanga, uNgqongqoshe kufanele abize abantu ukuze kuphakanyiswe futhi amanye amagama abantu njengoba kuvezwe kwisiqephu sesiqeshana (1)

(7) (a) UNgqongqoshe kufanele amisele amalungu eKhomishana ngokuthatha amagama kuhide lamakhandidethi afake izicelo ngokwesimiso sesiqephu sesiqeshana (5).

(b) UNgqongqoshe kufanele ukuba zingekapheli izinsuku ezingamashumi amathathu-(30) emuva kokumiselwa kwamalunga, amemezele ngokukhipha isaziso kwiGazette samagama amalunga amisiwe, kanye nelanga abazokumiswa baqale ngalo emahhovisi abo.

(8) Uma kukhona isikhala somsebenzi kwiKhomishana kufanele sivalwe ngendlela echazwe kwisiqeshana (1) kuya ku (7).

(9) (a) ILungu leKhomishana—

(i) libamba umsebenzi ehhovisi isikhathi esiyiminyaka emihlanu;  
(ii) ngokubona kukaNgqongqoshe kanye nokufisa ukuthi kuqhubekela phambili abuye amiswe, kodwa angaphathi lesi sikhundla izikhathi ezimbili zilandelana;

(iii) ukumiswa ngokwemigomo yesivumelwano kanye nezimiso ezinqunywe nguNgqongqoshe; futhi

(iv) limiselwe emsebenzini isikhathi esiphelele noma isikhashana.

(b) ILungu leKhomishana elingaqashiwe esikhundleni ngokuphelelo kuhulumeni wezwe kufanele ukuba liholelwe ngemali ezothathwa kwisabelomali soMnyango, lokhu kukhokhelwa namalungelo ngokomsebenzi walo kwenziwa ngendlela enqunywe uNgqongqoshe, ngokuxoxisana kwakhe noNgqongqoshe wezeziMali.

#### Ukuphucwa izimfanelo zokuba lilunga nokususwa esikhundleni somsebenzi

**62D.** (1) Akufanele ukuba kumiswe umuntu abe lilunga leKhomishana uma—

(a) ulilunga loMbutho wezokuVikela;

(b) amenyezelwa inkantolo njengomuntu osehlulekile ukukhokha izikweletu; noma

(c) wake walahlwa licala, noma ngabe iliphi, wabuye wathola isigwebo sokuvalelwa ejele isikhathi esingekho ngaphansi kwezinyanga ezilishumi nambili, wangavunyelwa ukuba uhlawule imali yesijeziso, ngaphandle uma sekuphele isikhathi seminyaka emihlanu sewaphuma ejele.

(2) Ngenhloso yesiqeshana (1) (c), akukho muntu okuzothathwa sengathi wathola isigwebo kuze kubuyekwezwe isigwebo noma isigwebo esikhishwe noma isikhathi sesiphelile ebengacelela ngaso ushwele, ngokwecala lelo —

(3) UNgqongqoshe angalisusa ilungu leKhomishana emsebenzini uma—

(a) laphula umthetho;

(b) lihluleka ukwenza umsebenzi walo ngendlela eyimpumelelo nangekhono; noma

(c) lingakwazi ukuphumelela emihlanganweni yeKhomishana izikhawu ezintathu zilandelana ngaphandle kokuthola imvume kuSihlalo kuqala, ngaphandle kokuthi liveze isizathu esizwakalayo.

#### Ukushiya isikhundla

**62E.** Ilungu leKhomishana kufanele ukuthi lishiye isikhundla uma—

(a) lizibeka esimweni sokuba liphucwe izimfanelo eziphathelele nesigaba 62D;

(b) lingaphili kahle ekhanda;

(c) lishiya emsebenzini ngokunikeza isaziso esiyizinsuku ezingama-30 kuNgqongqoshe, noma

(d) ngesinye isizathu etholakala engakufanele noma engakwazi ukuqhubeka nokuba ilungu leKhomishana.

### Meetings of Commission

**62F.** (1) The Commission must meet at least twice a year at a time and place determined by the Chairperson of the Commission.

(2) Six members of the Commission form a quorum for a meeting of the Commission.

(3) The decision of a majority of the members of the Commission present at a meeting of the Commission constitutes a decision of the Commission and, in the event of an equality of votes on any matter, the person presiding at the meeting concerned has a casting vote in addition to his or her deliberative vote.

(4) The Commission must determine its own procedures to be followed at its meetings.

### Committees of Commission

**62G.** (1) The Commission may from time to time appoint one or more committees to perform any duties and exercise any powers assigned or delegated to it by the Commission, and may at any time dissolve or reconstitute such a committee.

(2) A committee consists of so many members of the Commission as the Commission may deem necessary.

(3) The Commission must designate one of the members of a committee as chairperson of that committee.

(4) A committee must perform its duties and exercise its powers subject to this Act and such directives as may be issued by the Commission.

(5) A decision of a committee taken in the performance of a duty or exercise of a power assigned or delegated to it is a decision of the Commission, subject to ratification by the Commission.

### Reporting

**62H.** (1) The Commission—

(a) is accountable to the Minister; and

(b) must within two months after the end of each financial year submit a report on its activities and findings to the Minister.

(2) The Minister must, as soon as practicable after receipt of a report contemplated in subsection (1), cause a copy of the report to be lodged with the Cabinet and tabled in Parliament.

(3) A report contemplated in subsection (1) must not contain confidential information that would be detrimental to national security.

(4) The Commission must, by notice in the *Gazette*, annually publish its findings and recommendations in respect of its work.

### Staff of Commission

**62I.** The Minister may, after consultation with the Commission, appoint or designate persons to give research, secretariat, logistical and technical support to the Commission or to perform other work incidental to the exercise or performance of the powers and duties of the Commission.

### Funding

**62J.** The costs and expenses connected with the administration of the affairs of the Commission must be defrayed from moneys appropriated by Parliament to the Department for that purpose.

**Imihlangano yeKhomishana**

**62F.** (1) IKhomishana kufanele ihlangane okungenani kabili ngonyaka endaweni futhi ngesikhathi esinqunywe nguSihlalo weKhomishana.

(2) Amalunga ayisithupha eKhomishana enza inani lamalungu agunyaza umhlangano weKhomishana.

(3) Isinqumo seningi samalunga eKhomishana akhona emhlanganweni weKhomishana kuba isino isinqumo seKhomishana, futhi uma kwenzeka kuvotwa kutholakala ukuthi amavoti ayalingana, owengamele umhlangano uzoba nevoti elinqumayo ngaphezu kwevoti lakhe laphambilini.

(4) IKhomishana kufanele inqume izinqubo zabo okufanele zilandelwe emihlanganweni yayo.

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**Amakomidi eKhomishana**

**62G.** (1) IKhomishana ngezikhathi ezithize ingamisa ikomidi elilodwa noma angaphezulu ukwenza imisebenzi kanye nokusebenzisa amandla abawanikeziwe noma okuthunyelwe yiKhomishana, futhi ingahlakaza noma imise kabusha lelo komidi.

(2) Ikomidi lenziwe ngamalungu amaningi eKhomishana ngendlela iKhomishana engabona kunesidingo.

(3) IKhomishani kufanele ukuba ikhethe omunye wamalunga ekomidi njengoSihlalo walelo komidi.

(4) Ikomidi kufanele lenze imisebenzi futhi lisebenzise amandla ngokomyalelo ongakhishwa iKhomishana.

(5) Isinqumo sekomidi esithathwe ngokwenziwa komsebenzi noma ngokusebenzisa amandla anikeziwe noma ngokuthunywa, singaphinda silungiswe yiKhomishana.

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**Ukubika**

**62H.** (1) IKhomishana—

(a) ibika kuNgqongqoshe; futhi

(b) kufanele ukuthi ngezinyanga ezimbili emuva kokuphela konyaka wezezimali idlulise umbiko ngokutholakele ngesikhathi kucwaningwa futhi nobekwenziwa ngamalungu kuNgqongqoshe

(2) UNgqongqoshe kufanele ngokushesha ngemuva kokuthola umbiko ovezwe kwisiqephu sesiqeshana (1), abeke ikhophi kuMkhandlu kahulumeni futhi ayifake kuluhlu lokuzoxoxwa ePhalamende.

(3) Umbiko ovezwe kwisiqeshana (1) akufanele ube nezindaba eziyimfihlo ezingalimaza abavikeli besizwe.

(4) IKhomishana minyaka yonke ikhipha isaziso *kwiGazette* ibike ngemiphumela etholakele ngesikhathi kucwaningwa kanye nezincomo eziphathelene nomsebenzi wayo.

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**Abasebenzi beKhomishani**

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**62I.** UNgqongqoshe ngemuva kokuxoxisana neKhomishana angamisa noma akhethe abantu abazoxhasa ngokwenza ucwaningo, umsebenzi womabhalane, ezokuthutha nokweseka ngezobuchwepheshe kuKhomishana ukuze iqhube imisebenzi noma isebenzise amandla eKhomishana.

**Izimali**

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**62J.** Izindleko ezihlangene nokuphatha izindaba zeKhomishana, kufanele zikhokhwe ngemali eyabiwe yiPhalamende kuMnyango liyabela leyo njongo.

### Intervention by Minister

**62K.** (1) The Minister may direct the Commission to take any action specified by the Minister if the Commission has failed to perform its functions in an effective and efficient manner.

(2) A directive contemplated in subsection (1) must state—

- (a) the reason for issuing the directive;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.

(3) (a) If the Commission fails to comply with the directive contemplated in subsection (1), the Minister may—

- (i) after having given the Commission a reasonable opportunity to be heard; and
- (ii) after having afforded the Commission a hearing on any submissions received,

replace the members of the Commission or, where circumstances so require, appoint a person as an administrator to take over one or more functions of the Commission subject to such conditions as the Minister may determine.

(b) Any vacancy occurring as a result of the application of paragraph (a) must be filled in the manner provided for in section 62C.

(4) If the Minister appoints an administrator in terms of subsection (3)—

- (a) the administrator may do anything which the Commission might otherwise be empowered or required to do under or in terms of this Act; and
- (b) the Commission may not, while the administrator is responsible for a particular function, exercise any of its powers or perform any of its duties relating to that function.

(5) Once the Minister is satisfied that the Commission is able to perform its functions in an effective and efficient manner, the Minister must terminate the appointment of the administrator.

(6) (a) Notwithstanding subsection (3), the Minister may dissolve the Commission if the Minister loses confidence in the ability of the Commission to perform its functions effectively and efficiently.

(b) The Minister may dissolve the Commission only after having—

- (i) provided the Commission with reasons for losing confidence in its abilities;
- (ii) given the Commission a reasonable opportunity to respond to those reasons; and
- (iii) afforded the Commission a hearing on any submissions received.

(c) If the Minister dissolves the Commission, the Minister—

- (i) may appoint an administrator to take over the functions of the Commission and to do anything which the Commission might otherwise be empowered or required to do under or in terms of this Act, subject to such conditions as the Minister may determine; and
- (ii) must, as soon as it is feasible, but not later than three months after the dissolution of the Commission, appoint the members of the Commission in the manner provided for in section 62C.

### Regulations in respect of Commission

**62L.** The Minister may make regulations regarding—

- (a) the manner in which consultation with the Commission must be conducted and the procedures relating thereto;
- (b) any matter relating to the functioning of the Commission that it is necessary to prescribe in order to ensure the efficient and effective functioning of the Commission; and
- (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of the provisions relating to the Commission.”

**Ukungenelela kukaNgqongqoshe**

**62K.** (1) UNgqongqoshe angayalela iKhomishana ukuba ithathe noma esiphi isinyathelo esinikezwe uNgqongqoshe uma iKhomishana ingaphumelelanga ukwenza imisebenzi yayo ngendlela eyimpumelelo nangekhono.

(2) Isiyalo ngokubika kwesiqephu sesiqeshana (1) kufanele sibalule—

- (a) isizathu sokukhipha lesi siyalo;
- (b) izinyathelo ekufanele ukuba zithathwe ukulungisa isimo; kanye
- (c) nesikhathi esanele okufanele kuthathwe ngaso izinyathelo ezisendimeni (b).

(3) (a) Uma iKhomishana yehluleka ukuvumelana nesiyalo esiyezwe kwisiqeshana (1), uNgqongqoshe anga—

- (i) ngemuva kokunika iKhomishana ithuba elanele lokuba bezwakale; futhi
- (ii) ngemuva kokunikeza iKhomishana ithuba lokulalela izicelo abazitholile, babuyise amalunga eKhomishana, noma isimo sivuma amise umuntu ozokuba ngumlawuli enze omunye noma eminye imisebenzi yeKhomishana ngokwesimiso, ngokuvunywa nangokunquma kukaNgqongqoshe.

(b) Uma kukhona isikhala somsebenzi esivela ngesizathu sokufaka izicelo esikwisiqephu (a) kufanele ukuba sigcwaliswe ngendlela enikezwe kwisiqeshana 62C.1

(4) Uma uNgqongqoshe emisa umlawuli ngokwezimiso ezikwisiqephu sesiqeshana (3)—

- (a) Umlawuli angenza noma yini iKhomishana enikezwe amandla noma edingakala ukuba iyenze ngokwezimiso zalo Mthetho; futhi
- (b) ngesikhathi umlawuli ebhekele imisebenzi ethile, iKhomishana ngeke ikwazi ukusebenzisa igunya layo noma ukwenza imisebenzi yayo ehambisana nalowo msebenzi.

(5) Uma uNgqongqoshe anelisekile ukuthi iKhomishana isiyakwazi ukwenza imisebenzi ngempumelelo kanye nangekhono, uNgqongqoshe kufanele akhawule umsebenzi womlawuli.

(6) (a) Nakuba kunesiqeshana (3), uNgqongqoshe angaqeda iKhomishana uma uNgqongqoshe engasayethembi ukuthi iKhomishana iyakwazi ukwenza imisebenzi yayo ngempumelelo kunye nangekhono.

(b) UNgqongqoshe angaqeda iKhomishana ngemuva koku—

- (i) Uma enikeza izizathu zokungayethembi iKhomishana;
- (ii) enikeze iKhomishana ithuba lokuba iziphendulele kulezi zizathu; futhi
- (iii) nikeze iKhomishana indlebe alalele izicelo azitholile.

(c) Uma uNgqongqoshe eqeda iKhomishana, uNgqongqoshe—

- (i) angaqoka umlawuli ukuba enze imisebenzi ebiyenziwa yiKhomishana nokunye iKhomishana enganikezwa igunya namandla okuba ikwenze ngokwesimiso salo Mthetho, ngokwesimiso nezinqumo zikaNgqongqoshe futhi
- (ii) uma kunokwenzeka, kodwa kungekadluli izinyanga ezintathu ngemuva kokuqedwa kweKhomishana, aqoke amalunga eKhomishana ngendlela echazwe kwisigaba 62C.

**Imithetho eqondene neKhomishana**

**62L.** UNgqongqoshe angenza imithetho maqondana—

- (a) Nendlela yokuxoxisana neKhomishana okufanele ukuba yenziwe ngokwemigomo efanele;
- (b) izindaba ezihlangene nemisebenzi yeKhomishana okudingeka izinqumo ezithile ukuqinisekisa impumelelo nekhono lokwenza umsebenzi weKhomishana; kanye
- (c) nokuba yisiphi isisekelo noma ukulandela umlawuli okuvamile noma inqubo yokwenza lokho okudingakalayo ukunquma ukwenza okufanele noma umlawuli namalungiselelo aqondene neKhomishana.”

**Amendment of section 104 of Act 42 of 2002**

7. Section 104 of the principal Act is hereby amended—

(a) by the substitution for subsection (12) of the following subsection:

“(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 or, without a valid reason, fails 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.”; 5

(b) by the deletion in subsection (21)(a) of the word “or” at the end of subparagraph (ii), and the insertion of the expression “; or” at the end of paragraph (iii); and 10

(c) by the addition to subsection (21)(a) of the following subparagraph:

“(iv) having been duly notified of his or her call-up for service by way of a call-up order issued in terms of section 53(3A), fails to present himself or herself at the time and place specified in the call-up order.” 15

**Transitional provision and saving**

8. (1) Any person who is a member of the body known as the interim National Defence Force Service Commission when this Act takes effect, is regarded as having been appointed in terms of section 62C and holds office until the Minister has appointed the members of the Commission in terms of that section. 20

(2) Anything done by the interim National Defence Force Service Commission prior to the commencement of this Act which could have been done by the Commission in terms of this Act, must be regarded as having been done by the Commission in terms of this Act.” 25

**Short title and commencement**

9. This Act is called the Defence Amendment Act, 2010, and takes effect on a date fixed by the President by proclamation in the *Gazette*.



**Ukuguqulwa kwesigaba 104 soMthetho 42 ka 2002****7. Isigaba 104 soMthethongqangi siyaguqulwa—**

- (a) ngokufaka omunye endaweni yawo kulesi siqeshana (12) salesi siqephu sesiqeshana esilandelayo: 5  
 “(12) Noma ubani okufanele enze umsebenzi kuMbutho wokuVikela ngokungena kwisivumelwano somsebenzi sokuba isosha loMbutho wokuVikela, enqaba noma ehluleka ukuwenza lo msebenzi, utholakala enecala futhi ufanele ukulahlwa icala lokuba akhokhe inhlawulo noma avalelwe ejele isikhathi esingekho ngaphezu konyaka.”
- (b) ngokukhishwa kwesiqeshana (21)(a) igama “noma” ekupheleni kwesiqeshana sesiqephu (ii), kanye nokufakwa kwesimiso “;noma” ekupheleni kwesiqephu (iii); futhi 10
- (c) ngokwengeza kwisiqephu sesiqeshana (21)(a) sale sisiqephu esilandelayo:  
“(iv) aziswe ngokufanele ngesikhathi ukuba ayokuqala emsebenzini ngendlela ekukhishwa ngazo izimemezelo zokuqala emsebenzini njengokwesivumelwano kwisigaba 53(3A), ahluleke ukuza emsebenzini ngesikhathi nokuya kuleyo ndawo ephakanyisiwe azosebenzela kuyona.” 15

**Umbandela wesikhashana kanye nokonga**

**8. (1)** Noma yimuphi umuntu oyilunga lomkhandlu obizwa ngokuthi iKhomishana yesikhashana yeSizwe yoMbutho wezokuVikela ebhekele Isimo sezeMisebenzi yesikhashana uma lo Mthetho uphumelela, uthathwa njengomiswe ngokwenqubo yesigaba 62C futhi uhlala emsebenzini aze uNgqongqoshe amise amalunga eKhomishana ngokwenqumo yalesi sigaba. 20

(2) Noma yini eyenziwa yiKhomishana yeSizwe yoMbutho wezokuVikela ebhekele iSimo sezeMisebenzi yesikhashana ngaphambi kokuqala kwalo Mthetho obekufanele kwenziwa yiKhomishana ngokwezinqumo zalo Mthetho, kufanele ukuba kuthathwe njengokwenziwe yiKhomishana ngokwenqubo yalo Mthetho. 25

**Isihloko esifingqiwe nokuqala ukusebenza**

**9.** Lo Mthetho ubizwa ngokuthi uMthetho oChibiyela ezokuVikela, wezi-2010, futhi uyoqala ukusebenza ngosuku oluyakukhethwa nguMongameli wezwe oluyakume- nyezela *kwiGazette*. 30