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Government Notice

OFFICE OF THE PRIME MINISTER

No. 256 2001

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 18 of 2001: Security Commission Act, 2001.

ACT

To provide for the tenure of office of members of the Security Commission; to provide for functions of the Security Commission; to provide for procedural matters relating to the Security Commission; and to provide for incidental matters.

(Signed by the President on 11 December 2001)

ARRANGEMENT OF SECTIONS

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates -

"Commission" means the Security Commission established by Article 114 of the Namibian Constitution;

"Minister" means the Minister responsible for Home Affairs.

Chairperson of Commission

2. The President must designate a member of the Commission as chairperson of the Commission and another member as deputy-chairperson of the Commission.

Tenure of office of members of the Commission

3. (1) Subject to subsection (3), the two members of the National Assembly referred to in Article 114(2) of the Constitution hold office as members of the Commission for as long as they are members of the National Assembly.

(2) A member of the Commission referred to in subsection (1) may, by written notice addressed to the President, resign from office as a member of the Commission.

(3) The President, on the recommendation of the National Assembly, may remove a member referred to in subsection (1) from membership of the Commission, if there are reasonable grounds to do so.

(4) Before making a recommendation to the President under subsection (3), the National Assembly must -

- (a) in writing, notify the member concerned of the grounds on which the member is to be removed from membership of the Commission;

- (b) give that member an opportunity to make an oral or a written representation on the matter to a committee appointed by the National Assembly for the purpose of hearing or receiving the representation; and
- (c) consider any representation made.

Procedure for suspension or removal from office of certain members

4. (1) When making a decision under Article 117, 120 or 123 of the Constitution, the President must consult the Commission on the removal from office of the Inspector-General of Police, Chief of the Defence Force and Commissioner of Prisons.

(2) The Commission may recommend to the President that any of the persons referred to in subsection (1) be suspended from office pending an investigation on whether or not the Commission should recommend to the President that person be removed from office.

(3) For the purposes of a recommendation under subsection (1) or (2), the member of the Commission in respect of whom a recommendation is being considered, must not participate in proceedings wherein the matter is being considered.

(4) Subject to subsection (5), before making a recommendation contemplated in subsection (1) or (2), the Commission must -

- (a) in writing, notify the member concerned of the grounds on which it is considered that he or she ought to be suspended or removed from office;
- (b) give the member concerned an opportunity to make an oral or a written representation to it on the matter; and
- (c) consider any representation made.

(5) The Commission may, on reasonable grounds, comply with subsection (4) only at the time that recommendations for suspension as contemplated in subsection (2) are made to the President.

(6) Where a person is removed from office following a recommendation made under subsection (1), or suspended following a recommendation made under subsection (2), the suspension or removal must be on terms and conditions which the President may, on the advice of the Public Service Commission, impose.

Functions of the Commission

5. (1) In addition to the functions assigned to the Commission by Article 114(1) of the Constitution, the Commission must -

- (a) if so required by the President, advise the President on the exercise of the powers under Article 26 of the Constitution concerning the declaration of the existence of a state of emergency in Namibia or any part thereof and on any matter relating to the state of emergency;
- (b) advise the President on any matter relating to defence or internal security which the President has referred to it for advice or which the Commission raised of its own accord;
- (c) where there are reasonable grounds to do so, recommend to the Minister that the presence in Namibia of a named person is inimical to peace and the public interest or that a named person, by his or her conduct, is a danger or likely to be a danger to peace and good order in Namibia;

(d) perform any other function which it is required to perform under any other law.

(2) On receipt of a recommendation made under subsection (1)(c), the Minister must determine whether the named person should be declared a prohibited immigrant with respect to Namibia, and in making that determination the Minister must comply with Article 18 of the Constitution.

(3) Before making the declaration contemplated in subsection (2), the Minister must give the person against whom the declaration is proposed to be made written notice informing him or her -

(a) of the grounds on which the proposed declaration is to be made;

(b) that he or she has a right to voluntarily leave Namibia within 24 hours or within a longer period specified by the Minister in the notice; and

(c) that if he or she does not wish to leave Namibia as contemplated in subparagraph (a), he or she must make a representation to the Minister within 48 hours of receiving the notice.

(4) On receipt of a representation made under subsection (3)(c) the Minister must consider that representation after which he or she may -

(a) stop the proposed declaration; or

(b) declare the person to be a prohibited immigrant in respect of Namibia and that declaration is sufficient authority for that person to be arrested and detained under the Immigration Control Act, 1993 (Act No. 7 of 1993).

(5) The deportation of a person declared a prohibited immigrant under this section must be done in accordance with Part VI of the Immigration Control Act (Act No. 7 of 1993).

(6) For the purposes of subsection (1), the Commission may conduct an inquiry, and for that purpose it may -

(a) by written notice, require any person who, in its opinion, is able to furnish information which is relevant to the inquiry or who it has reason to believe has in his or her possession or custody or under his or her control any document or other evidence which is relevant to the inquiry -

(i) to appear before the Commission at a time and place specified in the notice; and

(ii) to produce the document or evidence specified in the notice at a time and place specified in the notice, or

(b) retain for examination or make copies of any document or evidence produced under paragraph (a)(ii).

Meetings and decisions of the Commission

6. (1) The Commission must meet at such times and places as the chairperson of the Commission may determine.

(2) The chairperson of the Commission or, in his or her absence, the deputy chairperson of the Commission must, at the written request of at least two members of the Commission, convene a special meeting of the Commission.

(3) The chairperson of the Commission, or in his or her absence, the deputy chairperson, presides at meetings of the Commission, or if both the chairperson and the deputy chairperson are absent from the meeting, or are unable to preside at the meeting, the members present must elect one member from among their number to preside at the meeting.

(4) A majority of the members of the Commission constitute a quorum.

(5) The Commission determines the procedures to be followed at its meetings.

(6) A decision of a majority of members of the Commission present at a meeting is the decision of the Commission and, in the event of an equality of votes, the person presiding at the meeting has a casting vote in addition to the ordinary vote.

(7) The Commission must cause a record of its proceedings at meetings to be kept.

Administrative work

7. The administrative work of the Commission will be performed by staff members made available for that purpose by the Permanent Secretary of the Ministry of Home Affairs.

Short title and commencement

8. This Act is called the Security Commission Act, 2001 and it will come into operation on a date to be determined by the Minister by notice in the *Gazette*.
