

POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT ACT 17 OF 1996

[ASSENTED TO 26 JULY 1996] [DATE OF COMMENCEMENT: 13 AUGUST 1996]

(Signed by the President)

ACT

To provide for the expression of the right of freedom of speech and debate in Parliament; to provide for certain privileges, immunities and powers in connection with Parliament; to provide for Committees of Privileges to investigate conduct of members; and to provide for matters incidental thereto.

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1 Definitions

In this Act, unless the context otherwise indicates-

"Assembly" means the National Assembly referred to in Chapter 7 of the Namibian Constitution;

"Chairperson" -

- (a) means the member elected under Article 73 of the Namibian Constitution to be the Chairperson of the Council; and

- (b) includes-
- (i) the member elected under that Article as Vice-Chairperson; or
- (ii) any other member of the Council referred to in that Article,

when acting for the Chairperson;

"committee" means any standing or select committee established by the Assembly or a committee contemplated in Article 74(2) of the Namibian Constitution, and includes the Committee of Privileges;

"Committee of Privileges" , in relation to the Assembly, means the Committee of Privileges of the National Assembly established by section 7(1) (a) and, in relation to the Council, means the Committee of Privileges of the National Council established by section 7(1) (b) ;

"Council" means the National Council referred to in Article 68 of the Namibian Constitution;

"enquiry" means an enquiry in terms of section 14;

"House" , in relation to Parliament, means the Assembly or the Council;

"journals" means the minutes of the proceedings of the House;

"member" means a member of the House;

"officer" , in relation to the Assembly, means any officer contemplated in Article 52(3) of the Namibian Constitution and, in relation to the Council, means any person appointed to the staff of the Council, and include the Secretary and any member of the Namibian police as defined in section 1 of the Police Act, 1990 (Act 19 of 1990), who is on duty within the precincts of Parliament;

"Parliament" means the Assembly or the Council, and includes any committee;

"precincts of Parliament" means the Chamber in which the proceedings of the House are conducted, and include any galleries, lobbies, offices, or areas used principally in connection with the proceedings of Parliament and every part of the building in which the Chamber is situated and any forecourt, yard, garden, enclosure, or open space appurtenant thereto and used or provided for the purposes of the House;

"Secretary" , in relation to the Assembly, means the Secretary of the Assembly appointed or designated under Article 52(1) of the Namibian Constitution and, in relation to the Council, means the person appointed to perform the functions of Secretary for the Council;

"Speaker" -

- (a) means the member elected under Sub-Article (1) of Article 51 of the Namibian Constitution to be the Speaker of the Assembly; and
- (b) includes-
- (i) the member elected under that Sub-Article as Deputy-Speaker; or
- (ii) any other member of the Assembly referred to in Sub-Article (4) of that Article,

when acting for the Speaker;

"Standing Rules and Orders" , in relation to the Assembly, means the Standing Rules and Orders of the Assembly made by the Assembly under Article 59(1) of the Namibian Constitution and, in relation to the Council, means the Standing Rules and Orders of the Council made by the Council under Article 74(2) of the Namibian Constitution; and

"stranger" , in relation to Parliament, means any person other than a member or an officer.

PART I

PRIVILEGES AND IMMUNITIES OF MEMBERS AND OFFICERS (ss 2-6)

2 Immunity from legal proceedings

Notwithstanding the provisions of any law, no member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of-

- (a) anything done in the exercise of that member's right to freedom of speech in Parliament;
- (b) any matter or thing which such member-
 - (i) brought by report, petition, bill, resolution, motion, or otherwise in or before Parliament;
 - (ii) said in Parliament, whether as a member or a witness, or otherwise may have communicated while taking part in any proceedings in Parliament.

3 Service of process issued by court of law

(1) No process issued by any court of law shall be served or executed within the precincts of Parliament-

- (a) while a sitting of the House is in progress; or
- (b) on or against any member or officer while such member or officer is in attendance at a committee.

(2) If a member is-

- (a) arrested or detained in custody under a warrant or an order of a court; or
- (b) sentenced by a court to a term of imprisonment,

the registrar, in the case of the High Court, or the magistrate concerned, in the case of a magistrate's court, shall so inform the Speaker or Chairperson as the case may be.

4 Members and officers exempted from certain obligations

(1) No member or officer shall be required to appear in any legal proceedings in any court of law while such member or officer is in attendance at Parliament.

(2) A certificate by the Speaker or Chairperson, as the case may be, or, in the absence or incapacity of the Speaker or Chairperson, by the Secretary, stating that a member or an officer is in attendance at Parliament shall be sufficient proof of the attendance of such a member or officer for the purposes of subsection (1).

5 Persons not liable for acts done under authority of Parliament

No person shall be liable for damages or otherwise for anything done under the authority of Parliament.

6 Journals and minutes *prima facie* evidence of matters contained therein

In any inquiry relating to, or affecting the privileges, immunities and powers of Parliament or of any member-

- (a) any copy of the journals printed or purporting to be printed by order or under the authority of the House or the Speaker or Chairperson, as the case may be; or

- (b) any copy of the minutes of any committee confirmed as accurate by the signature of the chairperson of such committee,

shall upon the mere production of such journals or minutes at any such inquiry be *prima facie* evidence of the matters contained therein.

PART II

COMMITTEE OF PRIVILEGES (ss 7-13)

7 Committees of Privileges

(1) There shall be-

- (a) a committee of the Assembly to be known as the Committee of Privileges of the National Assembly; and
- (b) a committee of the Council to be known as the Committee of Privileges of the National Council.

(2) The Committee of Privileges of the National Assembly shall comprise-

- (a) the Speaker, who shall be the chairperson; and
- (b) five members of the Assembly, appointed by the Assembly.

(3) The Committee of Privileges of the National Council shall comprise-

- (a) the Chairperson, who shall preside at any meeting of that Committee; and
- (b) five members of the Council, appointed by the Council.

8 Tenure of office of members of Committees of Privileges

(1) (a) A member of the Committee of Privileges of the National Assembly referred to in section 7(1) (a) , other than the Speaker, shall hold office for the period from the time of his or her appointment until the next ensuing election of members of the Assembly in accordance with Articles 46 and 50 of the Namibian Constitution, or until the Assembly is dissolved by the President under Article 57(1) of the said Constitution, and such member shall be eligible for re-appointment if re-elected in such election.

(b) The Assembly may at any time remove a person, other than the Speaker; as a member of the Committee of Privileges referred to in paragraph (a) .

(2) (a) A member of the Committee of Privileges of the National Council referred to in section 7(1) (b) , other than the Chairperson, shall hold office for the period from the time of his or her appointment until the next ensuing election of members of the Council in accordance with Articles 69 and 70 of the Namibian Constitution, and such member shall be eligible for re-appointment if re-elected in such election.

(b) The Council may at any time remove a person, other than the Chairperson, as a member of the Committee of Privileges referred to in paragraph (a) .

(3) Any vacancy in the Committee of Privileges arising from a circumstance referred to in subsection (1) (b) or (2) (b) , as the case may be, or caused by the death of any member of that Committee, shall be filled by the appointment of another person in accordance with the provisions of section 7(2) (b) or (3) (b) , as the case may be, and every member so appointed shall hold office for the unexpired portion of the period of office of the member who has vacated his or her office or who has died, as the case may be.

9 Vice-chairperson and acting chairperson of Committee of Privileges

(1) The members of the Committee of Privileges shall elect one of their number to be the

vice-chairperson of that Committee, who shall act for the chairperson if the chairperson is unable to perform his or her duties.

(2) If both the chairperson and vice-chairperson are absent from a meeting of the Committee of Privileges, the members present at that meeting shall elect one of their number to preside at that meeting.

10 Quorum

A quorum for any meeting of the Committee of Privileges shall be a majority of its members.

11 Standing Rules and Orders applicable to Committee of Privileges

The relevant Standing Rules and Orders shall be applicable to the Committee of Privileges to the extent as may be determined by the House concerned.

12 Powers and functions of Committee of Privileges

The Committee of Privileges-

- (a) shall, subject to the approval of the House, issue directives providing for-
 - (i) such disclosure by members of their financial or business affairs as it may consider to be appropriate; and
 - (ii) the form and frequency in which the particulars contemplated in subparagraph (i) shall be furnished;
- (b) may, subject to Part III, investigate, either of its own accord or upon a complaint made by-
 - (i) the House, any matter relating to the conduct of any member within the precincts of Parliament or an alleged breach by any member of the relevant Standing Rules and Orders;
 - (ii) any person, any matter relating to an alleged breach by a member of his or her duty in terms of section 22 to disclose an interest as contemplated in that section;
- (c) may, for the purposes of paragraph (b) , in writing require a member to submit to it a return of assets and liabilities or furnish it with such particulars or information or to submit or make available to it such books, documents, statements, or records as it may require, and to examine such return or particulars, information, books, documents, statements, or records;
- (d) shall report and make recommendations to the House with regard to its findings in any investigation in terms of paragraph (b) .

13 Powers of House with regard to report by Committee of Privileges

The House-

- (a) shall, in accordance with its Standing Rules and Orders, consider a report and recommendation made to it under section 12 (d) ; and
- (b) may take such disciplinary action against the member concerned as it may deem appropriate in accordance with its Standing Rules and Orders.

PART III

ATTENDANCE BEFORE COMMITTEE (ss 14-20)

14 Power to order attendance of persons before Committee

(1) The Committee of Privileges may, by way of a summons issued in terms of section 15, subpoena any person to attend before it and to give evidence or to produce any document or thing in the possession or custody or under the control of that person.

(2) The powers conferred by subsection (1) may be exercised by any committee other than the Committee of Privileges if such a committee is authorized by a resolution of the House to exercise those powers in respect of any matter or question specified in that resolution.

15 Summonses

(1) A summons for the attendance of a person or for the production of any document or thing before the Committee of Privileges or any committee contemplated in section 14(2) shall-

- (a) be issued under the hand of the Secretary on the directions of the Speaker or Chairperson of the Council or chairperson of the committee concerned, as the case may be;
- (b) state-
 - (i) the name of the person required to attend;
 - (ii) the time and place at which he or she is required to attend; and
 - (iii) the description of the document or thing, if any, which he or she is required to produce; and
- (c) be served on the person referred to in subparagraph (i) of paragraph (b) by an officer by delivering a copy of such summons-
 - (i) to him or her in person; or
 - (ii) at his or her usual or last known place of residence or place of employment or business to a person apparently over the age of sixteen years and apparently residing or employed there.

(2) A return by the person who served the summons that service thereof has been effected in terms of paragraph (c) of subsection (1) shall be *prima facie* proof of such service.

16 Procedure at enquiries

(1) The procedure at any enquiry shall be in accordance with the relevant Standing Rules and Orders.

(2) The Speaker, the Chairperson of the Council, or the chairperson of a committee contemplated in section 14(2), as the case may be, may at an enquiry require an oath or affirmation from, and administer such oath to or accept such affirmation from, any person subpoenaed under section 15.

(3) Subject to Article 12(1) (f) of the Namibian Constitution and section 17 of this Act, every person referred to in subsection (2) shall-

- (a) answer any question which may be put to him or her;
- (b) produce any document or thing which he or she is required to produce.

17 Privileges of witnesses

(1) Every person referred to in section 16(2) shall, in respect of the evidence which he or she is required to give or any document or thing which he or she is required to produce, be entitled to the same rights and privileges as before a court of law.

(2) (a) Subject to paragraph (b), no person referred to in subsection (1) shall be required to answer any question which does not affect the subject of the enquiry in question or which is of a private nature.

(b) If a person referred to in paragraph (a) refuses to answer any question put to him or her or to produce any document or thing on the ground that it does not affect the subject of the enquiry or is of a private nature, the Speaker or Chairperson, as the case may be, may, and in the case of an enquiry by a committee contemplated in section 14(2), upon a report to him or her of such refusal by the chairperson thereof, exempt the person concerned from the obligation to answer that question or to produce that document or thing, or order such person to answer that question or to produce that document or thing.

18 Offences by or in connection with witnesses

(1) Subject to section 17, any person who-

- (a) without sufficient cause disobeys a summons issued in terms of paragraph (a) of subsection (1) of section 15 and served upon him or her in terms of paragraph (c) of that subsection;
- (b) during an enquiry-
 - (i) refuses to answer or knowingly gives a false answer to any question which may be put to him or her by the Committee of Privileges or any committee contemplated in section 14(2);
 - (ii) produces to the Committee of Privileges or any committee contemplated in section 14(2) any false document or thing with the intent to deceive such Committee of Privileges or committee;
 - (iii) fails to remain in attendance until the Speaker, Chairperson of the Council, or the chairperson of the committee concerned, as the case may be, has excused him or her from further attendance,

shall be guilty of an offence.

(2) Any person who tampers with or discourages, threatens, or in any way unduly influences any person with regard to evidence to be given or a document or thing to be produced by such person at an enquiry shall be guilty of an offence.

19 Witness expenses

Any person, other than a person who is in the full-time employment of the Public Service or a local or regional authority or a body or institution established by or under any law, who has been subpoenaed under section 15 shall be paid, if he or she does not reside within the vicinity of the place of attendance stated in the summons, such expenses and fees as are payable to witnesses in magistrate's court proceedings.

20 Giving evidence elsewhere of proceedings at enquiry

(1) No member or officer, and no person employed to take the minutes of the proceedings at an enquiry, shall give evidence elsewhere in respect of the contents of the minutes of such enquiry or of the contents of any document or thing produced at that enquiry, without first having obtained leave with regard thereto from the House concerned.

(2) The leave contemplated in subsection (1) may be given during a recess or an adjournment of the House by the Speaker or Chairperson, as the case may be.

PART IV MISCELLANEOUS (ss 21-28)

21 Powers of Parliament

(1) Subject to subsection (2), Parliament shall have full powers to control, regulate and dispose of its internal affairs.

(2) Subject to Articles 5, 79(2) and 80(2) of the Namibian Constitution, no proceedings of, or decision taken by, Parliament in accordance with the relevant Standing Rules and Orders or this Act shall be subject to any court proceedings.

22 Disclosure of interest

(1) A member shall not in Parliament take part in any proceedings in which such member has any interest, whether direct or indirect, which precludes him or her from performing his or her functions as a member in a fair, unbiased and proper manner.

(2) If at any stage during the proceedings in Parliament it appears that a member has or may have an interest which may cause a conflict of interests to arise on his or her part, that member shall forthwith fully disclose the nature of his or her interest.

(3) A disclosure contemplated in subsection (2) shall be recorded in the journals of the House or the minutes of the committee concerned, as the case may be.

(4) Subsection (1) shall not apply to any deliberations or vote on any matter concerning the remuneration or allowances or other benefits to be received by members in their capacity as members.

(5) In the event that a member fails to comply with subsection (2), the House may, after investigation and recommendation by the Committee of Privileges in terms of section 12, take such disciplinary action against such member as it may deem appropriate in accordance with its Standing Rules and Orders.

23 Printing or tendering in evidence matters purporting to have been printed under authority of Parliament, Speaker, or Chairperson

(1) Any person who prints or causes to be printed as purporting to have been printed by order or under the authority of Parliament, the Speaker, or Chairperson a copy of any law or report, paper, minutes, or journals that have not been so printed, or who tenders in evidence any such copy as purporting to have been so printed, knowing that it was not so printed, shall be guilty of an offence.

(2) A defendant or an accused in civil or criminal proceedings instituted in respect of the publication by him or her or his or her servant of any law or report, paper, minutes, or journals referred to in subsection (1) may, on giving to the plaintiff or the prosecutor, as the case may be, 24 hours' written notice of his or her intention to do so, bring before the court in which such civil or criminal proceedings are being held, a certificate under the hand of the Speaker, Chairperson, or Secretary stating that the law or report, paper, minutes, or journals in respect of which such proceedings have been instituted, were published by such person or his or her servant by order or under the authority of Parliament, the Speaker, or Chairperson, and such court shall thereupon immediately stay such civil or criminal proceedings, which, together with every process issued therein, shall thereupon be deemed to be finally determined.

24 Other offences

(1) Any person who-

- (a) assaults, obstructs, molests, threatens, or insults any member coming to, being within, or going from the precincts of Parliament, or endeavours to compel any member by force, insult, or menace to declare himself or herself in favour of or against any proposal or matter pending or expected to be brought in or before Parliament;
- (b) assaults, interferes with, molests, threatens, resists, or obstructs any officer while in the execution of his or her duties;
- (c) creates or joins in any disturbance which interrupts or is likely to interrupt the proceedings of Parliament while a sitting of Parliament is in progress;
- (d) contravenes or fails to comply with the provisions of section 20; or
- (e) is not an officer and who enters or attempts to enter the precincts of Parliament with any firearm or other object which is likely to cause serious bodily injury if it were used to commit an assault,

shall be guilty of an offence.

(2) Subject to Article 61 of the Namibian Constitution, any stranger who-

- (a) enters or attempts to enter the precincts of Parliament in contravention of any order of the Speaker or Chairperson, as the case may be;

- (b) fails or refuses to withdraw from the precincts of Parliament when so ordered by the Speaker or Chairperson or any officer authorized thereto by the Speaker or Chairperson,

shall be guilty of an offence.

25 Penalties

Any person convicted of any offence under this Act shall on conviction be liable to a fine not exceeding 20,000 Namibian dollars or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

26 Prosecution under this Act only on authorization of Prosecutor-General

No prosecution for an offence under this Act shall be instituted except with the written authorization of the Prosecutor-General.

27 Jurisdiction of magistrate's court in respect of penalties

Notwithstanding anything to the contrary in any law contained, a magistrate's court shall have jurisdiction to impose any sentence provided for in section 25.

28 Short title

This Act shall be called the Powers, Privileges and Immunities of Parliament Act, 1996.