

DEFENCE ACT, 2002 (ACT 1 of 2002)

(Signed by the President on 22 May 2002 and promulgated under Government Notice No. 83 of 2002. Came into operation on 15 July 2002 under GN No 109 of 2002.)

ACT

To provide for the defence of Namibia and for matters incidental thereto.

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**SCHEDULE 1
MILITARY DISCIPLINE CODE**

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LAWS REPEALED OR AMENDED**

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

**CHAPTER I
PRELIMINARY**

Definitions

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

“auxiliary services” means any auxiliary services established or designated under section 17(1);

“Chief of the Defence Force” means the Chief of the Defence Force appointed in terms of Article 32(4)(c)(aa) pursuant to Article 119 of the Namibian Constitution;

“citizen” means a Namibian citizen within the meaning of Article 4 of the Namibian Constitution;

“civil court” means any competent court (other than a military court) in Namibia having jurisdiction in criminal matters;

“court”, in relation to a visiting force, means any body which or person who by the laws of the country to which such visiting force belongs, is empowered to investigate any matter or to try any person for an offence under the military laws of that country 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;

“Defence Force” means the Namibian Defence Force which continues to exist in terms of section 2;

“enrol”, in relation to any person, means accept and record the enlistment of that person as a member of any portion of the Defence Force;

“force” means a military force;

“internal disorder in Namibia” means any serious disturbance of the public order, peace or security in Namibia;

“medical service” means a medical service established or designated under section 18(1);

“member” includes an officer and an other rank, and in relation to a visiting force from any country, any person subject to the military laws of that country who is a member of another force and is attached to the visiting force, or is a civilian employed in connection with the visiting force, who entered into his or her engagement outside Namibia and is not a Namibian citizen within the meaning of the Namibian Constitution;

“military” includes army, air force and naval force, as well as medical service;

“military court”, with reference to a military court of Namibia, means any court or officer deriving jurisdiction from the Code or from an officer to try persons subject to the Code who are charged under the Code with offences and to impose punishment;

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“Minister” means the Minister responsible for National Defence;

“Ministry” means the Ministry charged with the administration of affairs relating to National Defence;

“non-commissioned officer”, in relation to the Defence Force, means a member of that Force of a rank below a commissioned rank, and includes a warrant officer, but does not include a private;

“officer”, in relation to the Defence Force, means a person on whom a commission has been conferred under section 21;

“order” means an order made under this Act;

“other force” means a force of a country or state other than Namibia;

“other rank” means a person other than an officer;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“Police Force” means the Namibian Police Force established by section 2 of the Police Act;

“Police Act” means the Police Act, 1990 (Act No. 19 of 1990);

“portion”, in relation to any force, includes, for the purposes of sections 27, 28 and 29, persons belonging to that force who are -

- (a) of or below or above a prescribed age; or
- (b) engaged in a prescribed profession, trade, occupation or calling or in a profession, trade, occupation or calling other than a prescribed profession, trade, occupation or calling; or
- (c) resident in a particular area;

“prescribed”, except for the purposes of the Code, means -

- (a) in relation to any matter affecting the conditions of service (including conditions relating to salaries, pay and allowances) of members of the Defence Force or any auxiliary services, medical service or reserve force established or designated under this Act, recommended by the Public Service Commission in terms of this Act; and
- (b) in relation to any other matter, prescribed by regulation;

“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;

“regulation” means a regulation made under this Act;

“reserve force” means a reserve force established under section 19(1);

“rule” means a rule made under this Act;

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“service in defence of Namibia” means military service and operations in defence of Namibia -

- (a) in time of national defence; or
- (b) for the prevention or suppression of any armed conflict which, in the opinion of the President, may be a threat to the security of Namibia;

“staff member” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

“State Finance Act” means the State Finance Act, 1991 (Act No. 31 of 1991);

“terrorism” means the use of violence against persons or property, or the threat to use such violence, to intimidate or coerce the Government, the public or any section of the public in order to achieve or promote any tribal, ethnic, racial, political, religious or ideological objective;

“the Code” means the Military Discipline Code referred to in section 39(1);

“this Act” includes any regulation, rule or order;

“time of national defence” means any time during which an actual state of national defence exists or may be reasonably anticipated by the President;

“Treasury” means the Treasury as defined in section 1(1) of the State Finance Act;

“violence against persons or property” includes, but is not limited to, any act which -

- (a) endangers or is likely to endanger the safety, health or free movement of persons;
- (b) causes or is likely to cause serious damage to property;
- (c) seriously disrupts the rendering or supply of any essential service to the public or puts the public in fear; or
- (d) endangers the maintenance of law and order;

“visiting force” means a military force of any country present in Namibia at any time with the consent of the Government of the Republic of Namibia.

(2) Any reference in this Act to any liability to render service in the Defence Force is to be construed as including a reference to a liability to undergo training therein.

**CHAPTER II
COMPOSITION AND ORGANIZATION OF DEFENCE FORCE**

Continued existence and composition of Defence Force

2. The Namibian Defence Force established by section 5 of the Defence Act, 1957 (Act No. 44 of 1957), continues, notwithstanding the repeal of that Act by this Act, to exist and consists of -

- (a) the Namibian Army;
- (b) the Namibian Air Force; and
- (c) the Namibian Navy.

Organization of Defence Force

3. The Defence Force is organized in such headquarters, arms of the service, formations, units and personnel mustering as the Minister may determine or as may be prescribed.

Executive command and functions and removal of Chief of the Defence Force

4. (1) The executive command of the Defence Force is, subject to this Act, vested in the Chief of the Defence Force.

(2) In addition to such other functions and duties as may be prescribed, the Chief of the Defence Force is responsible for the organization, training, discipline and efficiency of the Defence Force and any auxiliary services, medical service and reserve force.

(3) The Chief of the Defence Force may, subject to this Act, make such rules as the Chief of the Defence Force may consider expedient for the efficient command and control of the Defence Force.

(4) The Chief of the Defence Force ceases to hold office if the Chief of the Defence Force -

- (a) is, subject to subsections (5) and (8), removed from office by the President pursuant to Article 120 of the Namibian Constitution; or
- (b) resigns as Chief of the Defence Force by notice in writing addressed and delivered to the President.

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(5) The President must, before acting as contemplated in subsection (4)(a), refer the matter to the Security Commission for its recommendation as to whether or not the Chief of the Defence Force should be removed from office.

(6) On receipt of the President's request for its recommendation referred to in subsection (5), the Security Commission -

- (a) must -
 - (i) in writing notify the Chief of the Defence Force of the grounds on which it is considered the Chief of the Defence Force ought to be removed from office; and
 - (ii) afford the Chief of the Defence Force an opportunity to make oral or written representations on the matter to that Commission; and
- (b) must thereupon, having due regard to any oral or written representations made to it by the Chief of the Defence Force, make such a recommendation and submit that recommendation together with such written representations (if any) to the President.

(7) For the purposes of subsections (5) and (6), the Chief of the Defence Force may not participate in the deliberations of the Security Commission involving the removal from office of the Chief of the Defence Force.

(8) The President may, after having considered the recommendation and written representations (if any) referred to in subsection (6)(b), exercise the power conferred by Article 120 of the Namibian Constitution and remove the Chief of the Defence Force from office.

CHAPTER III TRAINING AND SERVICE

Liability for training and services

5. (1) Subject to this Act, every person serving in the Defence Force is liable to render service in that Force as hereinafter provided.

(2) The Defence Force or any portion or member thereof may -

(a) at any time be employed -

- (i) on service in defence of Namibia;
- (ii) on service in the prevention or suppression of terrorism;

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- (iii) on service in the prevention or suppression of internal disorder in Namibia;
 - (iv) on service in the preservation of life, health or property;
 - (v) on service in the maintenance of essential services;
 - (vi) on such other service as may be determined by the President; and
- (b) while employed as contemplated in paragraph (a), be used on those police functions mentioned in section 13 of the Police Act, as may be prescribed.

(3) A member of the Defence Force may be required, subject to such limitations and restrictions as may be prescribed, to serve in any portion of that Force, and any such member serving in any headquarters, arm of the service, formation, unit or personnel mustering or performing any duty in respect of which a special allowance is prescribed, is not entitled to such allowance while serving in any other headquarters, arm of the service, formation, unit or personnel mustering or performing any other duty.

- (4) A member who is employed on police functions under subsection (2)(b) -
- (a) has all such powers and duties as are by law conferred or imposed on a member of the Police Force;
 - (b) is, in respect of acts done or omitted to be done by that member, liable to the same extent as that member would have been liable in like circumstances if that member were a member of the Police Force; and
 - (c) has the benefit of all the indemnities to which a member of the Police Force would in like circumstances be entitled.

(5) If an act or omission by a member employed on police functions under subsection (2)(b) constitutes an offence under both this Act (including the Code) and the Police Act (including any regulations, rules and directions made thereunder), such member is not liable to more than one prosecution for the same act or omission constituting that offence.

**CHAPTER IV
MEMBERS OF DEFENCE FORCE**

Appointment of officers and other ranks

6. (1) The Defence Force consists, in addition to the Chief of the Defence Force, of such officers and other ranks as may be appointed thereto by the Chief of the Defence Force, whether in a permanent or temporary capacity.

- (2) (a) The procedure for the appointment and promotion of officers and other ranks and the conditions of such appointment or promotion are as prescribed.
- (b) The said conditions may provide for the payment of gratuities upon discharge to specified categories or classes of persons appointed in a temporary capacity.
- (c) The appointment of members of the Defence Force must in so far as practicable take into account the desirability that such members be representative of the demographic characteristics of the population of Namibia.

(3) Different conditions may be prescribed under subsection (2) for different categories or classes of members of the Defence Force.

(4) Any person appointed for service in the Defence Force is bound to serve therein until such person resigns, retires or is otherwise removed.

Qualifications of members of Defence Force

7. (1) No person may be appointed in the Defence Force, unless such person -

- (a) is a citizen;
- (b) has, except where the Minister or any person acting under the authority of the Minister otherwise directs, passed any examination which such person may in terms of the conditions prescribed under this Act be required to pass as a condition for an appointment in that Force;
- (c) has, notwithstanding anything to the contrary in any other law contained, undergone the prescribed medical examination and it has on account of such examination been established that such person does not have any physical or mental defect or does not suffer from any disease or ailment which -
 - (i) will impair such person's ability to undergo any form of training required to be undertaken, or to perform such person's duties, as a member of that Force;

- (ii) is likely to deteriorate to the extent that it will impair such person's ability to undergo any form of training required to be undertaken, or to perform such person's duties, as a member of that Force;
 - (iii) is likely to be aggravated by the undergoing by such person of any form of training required to be undertaken, or by the performance of such person's duties, as a member of that Force; and
- (d) meets such other requirements as may be prescribed.

(2) Notwithstanding subsection (1)(a), the Minister may authorize the appointment of any person who is not a citizen in the Defence Force in a temporary capacity, but the period of any such appointment may not exceed five years.

Appointment of officers

8. Officers of the Defence Force are as far as practicable appointed from amongst persons who have been trained at a military training institution established under section 15, or any other like institution approved by the Minister.

Discharge of members from Defence Force

9. (1) Subject to section 24 and subsection (2) of this section, a member of the Defence Force is discharged from the Defence Force -

- (a) if such member resigns as a member in accordance with this Act;
- (b) in the case of a person appointed in a temporary capacity, upon the expiration of the period of appointment; or
- (c) on such other grounds as may be prescribed.

(2) A member of the Defence Force who has undergone special training in pursuance of an undertaking by such member to serve the State for a specified period after the completion of such training, is not entitled to be relieved of duties or to be discharged until such member -

- (a) has served the State for such period; or
- (b) has paid to the State an amount specified in the undertaking by way of compensation for any expenditure incurred by the State in providing such training.

(3) The Minister in consultation with the Public Service Commission may, notwithstanding subsection (2) and on such conditions as the Minister may determine, relieve a member referred to in that subsection of duties or discharge such member.

Member of Defence Force not eligible for certain offices

10. No member of the Defence Force is eligible for nomination, election or appointment as a member of Parliament or any prescribed public body.

**CHAPTER V
ADMINISTRATION AND GENERAL POWERS OF THE
PRESIDENT, THE MINISTER AND OFFICERS**

Establishment of Council of Defence

11. (1) There is hereby established a council to be known as the Council of Defence which is responsible for guidelines on the military strategy of Namibia.

(2) The Council of Defence consists of the President as chairperson and not less than six other members appointed by the President.

Establishment of Defence Staff Council

12. (1) There is hereby established a staff council to be known as the Defence Staff Council.

(2) The Defence Staff Council consists of the Minister as chairperson and not less than five officers appointed by the Minister.

(3) The Defence Staff Council is responsible for the policy on the defence of Namibia and must investigate any matter relating to the defence of Namibia.

(4) The Minister may make rules, not inconsistent with this Act, for regulating the procedure and conduct of the business of the Defence Staff Council.

Establishment of military commands, areas, headquarters, arms of the service, formations, units and personnel musterings

13. The Minister may establish -

- (a) military commands, areas and districts throughout Namibia;
- (b) headquarters and arms of the service;

- (c) formations, units and personnel musterings of the Defence Force, or of members of that Force.

General powers of Minister

14. (1) The Minister may do or cause to be done all things which are necessary for the efficient defence and protection of Namibia or any part thereof.

(2) Without derogating from the generality of the powers conferred by subsection (1), the Minister may -

- (a) acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes;
- (b) establish, maintain and operate factories for the manufacture and repair of arms, ammunition, vehicles, aircraft, vessels, military clothing and other stores and equipment;
- (c) notwithstanding anything contained in any law relating to the seashore or aviation, but subject to any law relating to harbours, acquire, construct, maintain, manage and control harbours, docks, quays, jetties, aerodromes and other facilities necessary for vessels or aircraft of the Defence Force;
- (d) acquire arms, ammunition, vehicles, aircraft, vessels, clothing, animals, stores and other equipment required for defence purposes;
- (e) in consultation with the relevant office, ministry or agency sell, let or otherwise dispose of any land, building, animal or thing mentioned in any of the preceding paragraphs which is no longer required for defence purposes;
- (f) permit persons who are not members of the Defence Force and have registered in such manner as the Minister may determine, to participate voluntarily in any training exercises with members of the Defence Force, subject to such conditions as the Minister may determine.

(3) The Minister in consultation with the Minister responsible for Finance (or any person acting under the Minister's authority in consultation with any staff member of the Ministry of Finance authorized thereto by the Minister responsible for Finance) may, whenever the Minister or such person considers it expedient in the public interest or in case of emergency, authorize, on such terms and conditions as the Minister or such person acting in consultation as aforesaid may determine -

- (a) the conveyance of any person other than an officer or a staff member acting in the execution of such officer's or staff member's

duty, or on behalf of any such person of any goods, not being the property of the State, by means of any vehicle, aircraft or vessel which is the property of the State in the Ministry;

- (b) the rendering of any service to any person other than an officer or a staff member acting in the execution of such officer's or staff member's duty;
- (c) the use of any vehicle, aircraft, vessel, equipment or any other thing, being the property of the State in the Ministry, by any person other than an officer or a staff member acting in the execution of such officer's or staff member's duty.

Military training institutions

15. (1) The Minister may establish or designate military training institutions for the purpose of providing training and instruction for members of the Defence Force.

(2) Subject to this Act, the appointment of the staff of a military training institution, the duration and description of the courses of instruction and training therein, the conditions of admission thereto of cadets (including the admission as cadets of members of other forces), the conditions of future service required from graduates of the institution and all matters relating to the management, control and good governance of any such institution are as prescribed.

(3) All cadets under instruction at a military training institution are subject to the Code.

Areas for training

16. (1) The Minister may from time to time designate areas wherein the Defence Force or any portion thereof may, without the consent of any person affected or likely to be affected thereby but subject to subsection (2), conduct military exercises.

(2) No military camp may be erected within a radius of 500 meters of a private dwelling, except with the consent of the owner or occupier of such dwelling.

(3) No area may be designated under subsection (1) unless the Permanent Secretary has published in respect of every district in which any land forming part of such area is situated, a notice in the *Gazette* and in a newspaper circulating in that district -

- (a) stating that such area, which must be defined in the notice, is proposed to be designated as a training area under that subsection; and

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- (b) inviting all interested persons to furnish the Permanent Secretary not later than a date specified in the notice, with any representations such persons may wish to make in regard thereto.

(4) If no newspaper is circulated in a district referred to in subsection (3), such notice must be given in such manner as the Permanent Secretary, with the approval of the Minister, considers sufficient in the circumstances.

(5) Nothing in subsection (1) contained is to be so construed as to affect the right of any owner or occupier of land in any area designated under that subsection, to claim compensation -

- (a) for damage or loss sustained by such owner or occupier in consequence of the conduct of such exercises on such land; or
- (b) for the loss of any right concomitant to the use and enjoyment of such land in accordance with Article 16 of the Namibian Constitution.

(6) The officer in command of any portion of the Defence Force which is undergoing training or is engaged in military exercises may temporarily stop all traffic by land, air or water in or in the vicinity of -

- (a) any area designated under subsection (1); or
- (b) any other area used for range practice or other training, in so far as may in such officer's opinion be necessary for the security of life or the proper conduct of the training or military exercises.

(7) Any person who disobeys or disregards any order or signal given in the exercise of the powers conferred by subsection (6), commits an offence.

Auxiliary services

17. (1) The Minister may establish or designate for the purposes of the Defence Force, or any portion thereof, auxiliary services to perform such functions as the Minister may determine.

(2) The organization of such auxiliary services, including engagement, attestation, discharge, ranks, duties and uniforms and any other matters necessary or expedient for the establishment or control of such auxiliary services, is as prescribed.

(3) The members of such auxiliary services are subject to such disciplinary rules as may be prescribed, which may include provisions relating to -

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- (a) the exercise of authority over members of such auxiliary services by other members of such auxiliary services or by members of the Defence Force;
- (b) the trial and sentence of members of such auxiliary services by a military court for offences under such disciplinary rules;
- (c) the review of proceedings at trials and sentences;
- (d) the attendance and examination of witnesses, including witnesses who are not members of such auxiliary services, at such trials;
- (e) the recovery of any fine imposed upon a member of such auxiliary services by deductions from any pay or allowances or other moneys due or which may become due to such member by the State;
- (f) the recovery by deductions from any pay or allowances or other moneys due or which may become due by the State to a member of such auxiliary services of the amount -
 - (i) of any deficiency, loss, injury, damage or destruction of property of the State; or
 - (ii) of any expense to the State caused by such member's wrongful act, omission, negligence or failure to carry out a duty; and
- (g) any other matter relating to the conduct and discipline of members of such auxiliary services.

(4) Disciplinary rules made pursuant to subsection (3) may prescribe penalties for any contravention thereof or failure to comply therewith of a fine not exceeding N\$8 000 or imprisonment for a period not exceeding two years, or both such fine and such imprisonment, or a confinement to barracks or performance of extra duties.

(5) Notwithstanding anything to the contrary contained in the Code, no officer presiding at a trial (other than a trial by court martial) contemplated in subsection (3)(b) has jurisdiction to impose a penalty of imprisonment or a fine exceeding N\$1 500 on a member of such auxiliary services.

(6) The conditions of service of persons engaged in such auxiliary services are determined by the Minister in consultation with the Public Service Commission.

Medical service

18. (1) The Minister may establish or designate a medical service for tending the sick and wounded.

(2) Notwithstanding anything to the contrary in any other law contained, the organization of such medical service or training and duty therein and all other matters pertaining thereto are as prescribed.

(3) The conditions of service of persons appointed in such medical service are determined by the Minister in consultation with the Public Service Commission.

Reserve force

19. (1) The Minister may for the purposes of the Defence Force establish a reserve force to perform such functions as may be prescribed.

(2) The composition and organization of such reserve force, including the engagement, attestation, discharge, ranks, duties and uniforms and any other matters necessary for the establishment or control of such reserve force, are as prescribed.

(3) The conditions of service of persons engaged in such reserve force are determined by the Minister in consultation with the Public Service Commission.

Application of laws governing the Public Service to members of Defence Force and auxiliary services, medical service and reserve force

20. The laws governing the Public Service are, to the extent that they are not in conflict with this Act, applicable to all members of the Defence Force and to all persons engaged or appointed in any auxiliary services, medical service or reserve force.

Commission

21. (1) The President may confer a commission, other than a temporary commission, on any citizen who is a member of the Defence Force, and may issue to such citizen a deed of commission bearing the signature of the President or a replica thereof.

(2) The Minister may confer a temporary commission in the Defence Force on -

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- (a) any citizen who is or who is eligible to become a member of that Force;
or
- (b) any other person who is not a citizen and who has been appointed under section 6(1) in a temporary capacity in that Force pursuant to section 7(2).

(3) Subject to subsections (4) and (7), a citizen on whom a commission has been conferred under subsection (1), retains such commission on being transferred from one unit to another within the Defence Force.

(4) Subject to subsection (7), an officer of the Defence Force on whom a commission has been conferred by the President holds such commission during the pleasure of the President, but such commission may not be cancelled without the holder thereof -

- (a) being notified in writing of any complaint or charge made against such holder and of any action proposed to be taken in respect thereof; and
- (b) being called upon to show cause as to why such holder's commission should not be cancelled.

(5) No notification under subsection (4) is necessary in the case of an officer absent from duty without leave, or failing to perform the duties of such officer's appointment, for a continuous period of one month or more.

(6) Subject to subsection (7), an officer of the Defence Force on whom a temporary commission has been conferred, holds such commission during the pleasure of the Minister.

(7) The commission (including a temporary commission) of any officer is deemed to have been cancelled on the date a sentence of dismissal from the Defence Force which may have been imposed on such officer is confirmed on review in terms of the Code.

Retirement of officers and other ranks

22. (1) The age of retirement of officers and other ranks of the Defence Force is as prescribed.

(2) The Minister or any person acting under the Minister's authority may, with the consent of any officer of the Defence Force but subject to section 6, extend in special cases the date of such officer's retirement to a date beyond that on which such officer attains the prescribed age of retirement.

(3) Officers of the Defence Force must, at the termination pursuant to this section of their service in that Force, be placed on a retired list and any officer on that list -

- (a) retains the commission conferred on such officer; and
- (b) is entitled to wear uniform as prescribed.

(4) Notwithstanding subsection (3), the President may for good cause direct that an officer must not be placed on a retired list.

Termination of service

23. (1) Subject to section 9, the President or the Chief of the Defence Force acting on the President's behalf may for good cause terminate the service of any member of the Defence Force.

(2) The termination of service under subsection (1) may only be effected after the member whose service is to be terminated has been given an opportunity to make representations in that regard to the President or the Chief of the Defence Force.

Resignation of officer's commission or appointment

24. (1) An officer of the Defence Force may, by notice in writing, tender the resignation of such officer's commission or appointment.

- (2) Any notice under subsection (1) takes effect -
 - (a) upon the expiration of a period of three months from the date on which such notice is lodged with such officer's commanding officer; or
 - (b) on such earlier date as may be approved by the Minister or any person acting under the Minister's authority.

(3) An officer is not in consequence of such officer's resignation exempt from any service, liability or training for which such officer may be liable under this Act.

Identification marks and protection of defence property

25. (1) The Minister or any person acting under the Minister's authority may, by notice in the *Gazette*, designate a mark or marks to be applied to animals or articles to denote the ownership of the Defence Force or of any visiting force in such animals or articles.

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- (2) Any person who without lawful authority -
 - (a) applies a mark designated under subsection (1) to any animal or article;
 - (b) defaces or conceals such mark on any animal or article; or
 - (c) receives, possesses, sells or delivers any animal or article bearing such mark or any animal or article which is forbidden by or under this Act to be sold, pledged or otherwise disposed of,

commits an offence.

(3) No animal or article which is the property of the Defence Force or of any visiting force, which bears any mark designated under subsection (1) or which is forbidden by or under this Act to be sold, pledged or otherwise disposed of, is capable of being seized or attached under or by virtue of a writ of execution which may be sued out against a member of the Defence Force or of any visiting force.

(4) Ownership of any animal or article referred to in subsection (3) does not pass under or by virtue of any order made for the sequestration of the estate of a member of the Defence Force or of any visiting force.

Prohibition of access to military premises

26. (1) The Minister may, by order issued under the Minister's hand and published in the *Gazette* or made known in any other manner which the Minister considers sufficient in the circumstances, prohibit or restrict the access of any person or category of persons to any military camp, barracks, dockyard, installation or other premises or any land or area of water, used for military or defence purposes or which is under military control.

(2) The officer in command of any military camp, barracks, dockyard, installation, premises, land or area of water referred to in subsection (1) may, by order issued under such officer's hand and made known or displayed in such manner as such officer considers sufficient in the circumstances, temporarily prohibit or restrict the access of any person or category of persons to such camp, barracks, dockyard, installation, premises, land or area.

(3) Any person who enters or is within or on any such military camp, barracks, dockyard, installation, premises, land or area of water contrary to any prohibition or restriction contained in an order under subsection (1) or (2), commits an offence and is liable on conviction to a fine not exceeding N\$60 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

(4) The Minister or an officer in command referred to in subsection (2) -

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- (a) may further take or cause to be taken such measures as the Minister or such officer considers necessary for the defence or protection of any military camp, barracks, dockyard, installation, premises, land or area of water referred to in subsection (1); and
- (b) must in connection with any measures so taken cause such notices to be published or such warning notices to be erected as the Minister or such officer may in each particular case consider necessary.

(5) Neither the State nor any member of the Executive Authority of the State nor any person in the service of the State nor any member of the Defence Force is liable for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property or livestock caused by or arising out of or connected with any act or omission by any such member or person in connection with any measures taken or works erected for the defence or protection of, or the prohibition or restriction of access to, any military camp, barracks, dockyard, installation, premises, land or area of water referred to in subsection (1), unless the loss or damage is due to any negligent or wilful act or omission on the part of any such member or person.

CHAPTER VI

NATIONAL DEFENCE, TERRORISM, ARMED CONFLICT, INTERNAL DISORDER AND OTHER EMERGENCIES

Employment of Defence Force

27. Subject to this Act, the whole or any portion or any member of the Defence Force may at any time be employed on service as provided in section 5(2).

Mobilization of reserve force in time of national defence

28. The President may in time of national defence, by proclamation in the *Gazette* or in such other manner as the President may consider expedient, call out the whole or any portion of a reserve force for mobilization for service in defence of Namibia.

Mobilization of reserve force for the combating of terrorism, internal disorder or other emergency

29. (1) The President may, by proclamation in the *Gazette* or in such other manner as the President may consider expedient, call out the whole or any portion of a reserve force for service -

- (a) in the prevention or suppression of terrorism;

- (b) in the prevention or suppression of internal disorder in Namibia;
- (c) in the preservation of life, health or property; or
- (d) in the maintenance of essential services.

(2) Where in the opinion of the Minister the urgency of the circumstances requires that the whole or any portion of a reserve force be called out for mobilization for any service referred to in subsection (1) before action can be taken under that subsection, the Minister may, in anticipation of such action, by order under the Minister's hand or in such other manner as the Minister may consider expedient, call out for mobilization for any such service the whole or any portion of the reserve force, and any action by the Minister under this subsection has the same force and effect as any corresponding action by the President under subsection (1), and remains in force until the whole or any portion of the reserve force is called out under the last-mentioned subsection, but not in any case for longer than four days.

(3) Where the urgency of the circumstances in a magisterial district of Namibia requires the immediate employment of members of the Defence Force in any service referred to in subsection (1) before action can be taken under subsection (1) or (2), all or some of the members of any reserve force who are resident in the magisterial district concerned, may, in anticipation of such action, on the authority of the Chief of the Defence Force or any officer authorized thereto by the Chief of the Defence Force, in such manner as may be considered expedient, be called up for any such service, and any action under this subsection has the same force and effect as any corresponding action by the President under subsection (1), but does not remain in force in any case for longer than 24 hours.

Notification to persons called out

30. (1) Any member of a reserve force who has been called out for mobilization for service under section 28 or section 29(1) or (2) or called up for service under section 29(3), may be notified by the Chief of the Defence Force or any officer authorized thereto by the Chief of the Defence Force, by radio or telecommunication or through the press or by letter or by word of mouth or by public notice or in such other manner as the Chief of the Defence Force or such officer may consider fit, of the time and place at which such member is to report for mobilization or service.

(2) If for any reason beyond the control of a member referred to in subsection (1) such member is unable to report for mobilization or service at the time notified under that subsection, such member must without delay personally or through any police station communicate such reasons to such member's commanding officer or the commanding officer of the nearest military headquarters, and if such commanding officer is satisfied that such member is unable to report at the time so notified such commanding officer may, in accordance with this Act, authorize such member to report at such later time as may be determined by such commanding officer either at the place notified under subsection (1) or at such other place as may be so determined.

(3) Subject to subsection (2), any person who fails to report for mobilization or service at the time and place notified under subsection (1), may be apprehended as a deserter and be tried and punished under the Code for the offence of desertion committed while on service.

(4) In any proceedings under subsection (3), the onus to prove that a notification under subsection (1) did not come to the notice of the accused lies, subject to section 92, with the accused.

Where training is to be undergone and service is to be performed

31. (1) Any training required to be undergone and any service to be performed in terms of this Act, must be undergone or performed in such areas or at such places, whether within or outside Namibia, as the Minister may direct.

(2) Where in the opinion of the Chief of the Defence Force the urgency of the circumstances requires that members of the Defence Force or of any reserve force who have been employed on service for the prevention and suppression of terrorism be immediately engaged on such service in a particular area or at a particular place before the Minister can act under subsection (1), the Chief of the Defence Force may authorize such engagement.

(3) An authorization by the Chief of the Defence Force under subsection (2) lapses upon the expiry of 24 hours, unless the Minister confirms such authorization before such expiry.

Service outside Namibia

32. (1) Any member of the Defence Force may be required to perform service at any place outside Namibia whenever it is necessary -

- (a) to combat, prevent or suppress any attack or act of aggression which is directed at Namibia in any manner by any armed force or group of persons, or any threat of such attack or act of aggression; or
- (b) to prevent the recurrence of any such attack or act of aggression or any threat of such attack or act of aggression.

(2) The President may, with the concurrence of the Cabinet, deploy members of the Defence Force outside Namibia -

- (a) in compliance with a resolution of the Security Council of the United Nations or the African Union or the Southern African Development Community; or

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- (b) in the execution of an obligation arising from a bilateral or multilateral agreement to which Namibia is a party,

for the purpose of maintaining, bringing about or restoring peace, security and stability in a country other than Namibia.

(3) The President must as soon as possible, but not later than 30 days after a deployment was ordered under subsection (2), inform the National Assembly of the deployment.

(4) If a deployment contemplated in subsection (2) is ordered at a time when the National Assembly is not in session, the President must forthwith summon the National Assembly to meet as soon as possible, but not later than 30 days after the deployment was ordered.

(5) Upon being informed in terms of subsection (3) of a deployment referred to in that subsection, the National Assembly may by resolution, proposed by at least one third of all the members of the National Assembly and passed by a two-thirds majority of all the members of the National Assembly, disapprove of the President's decision to deploy members of the Defence Force.

(6) In the event of a disapproval under subsection (5), the President is obliged to withdraw the members of the Defence Force not later than 30 days from the date of such disapproval.

(7) If a resolution contemplated in subsection (5) is not so proposed or carried, the deployment in question is deemed to have been approved by the National Assembly.

Release and discharge from service

33. (1) Any person called out for service under section 28 or section 29(1), may be held to do that service until such time as the President may, by proclamation in the *Gazette*, declare that the portion of the reserve force under which such person is serving is released from that service.

(2) Notwithstanding anything to the contrary contained in this Act, and notwithstanding the expiration of the period of any appointment, no member of the Defence Force or of any reserve force employed on service in defence of Namibia or in the prevention or suppression of terrorism or in the prevention or suppression of internal disorder in Namibia or in the preservation of life, health or property or in the maintenance of essential services, is entitled to obtain such member's release or discharge from the Defence Force or the reserve force during the continuance of any such service.

Securing of harbours and aerodromes

34. (1) The President may in time of national defence issue orders and instructions to be made known in such manner as the President considers most suitable in the circumstances -

- (a) forbidding or restricting, in any way the President may think fit, all entrance to or egress of vessels or aircraft from a harbour or aerodrome;
- (b) forbidding or restricting, in any way the President may think fit, the movements of vessels or aircraft within the limits of a harbour or aerodrome;
- (c) for the examination of all vessels or aircraft seeking to enter or leave a harbour or an aerodrome or being within a harbour or on an aerodrome or within the airspace above Namibia and for requiring or forcing any such aircraft within the airspace above Namibia to land within Namibia for the purpose of being examined;
- (d) for the taking of such other steps as may be considered necessary or desirable for securing the safety of any harbour or aerodrome or otherwise for the purpose of defence, the generality of this provision not being limited by the particular matters provided for in paragraphs (a), (b) and (c).

(2) The President may vest in any person such powers as the President may consider necessary for the execution or enforcement of any order or instruction issued under subsection (1).

(3) Any person who fails to comply with an order or instruction issued under subsection (1), commits an offence and is liable on conviction to a fine not exceeding N\$60 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

(4) For the purposes of this section -

“aerodrome” means a defined area of land or water (including any building, installation and equipment thereon) intended to be used, either wholly or in part, in connection with the arrival, departure or movement of aircraft, and includes any area which the President may by proclamation in the *Gazette* designate as an aerodrome, and the airspace above any aerodrome;

“harbour” means -

- (a) a port as defined in section 1 of the Namibian Ports Authority Act, 1994 (Act No. 2 of 1994); or

- (b) any area of land and sea which the President may by proclamation in the *Gazette* designate as a harbour or any area of land and sea which the President may in like manner assign to any harbour.

Safeguarding borders of Namibia

35. (1) The Minister may in defence of Namibia or for the prevention or suppression of terrorism cause any land to be entered upon, without the consent of any person who is or may be affected thereby, by persons with the necessary equipment and cause to be performed, within a strip not exceeding 10 kilometers in width along the border between Namibia and any state or country other than Namibia, such functions as the Minister may determine.

(2) Without derogating from the generality of the functions referred to in subsection (1), those functions may comprise of the removal of trees, plants, buildings and structures, the erection of buildings and structures and the planting of trees and plants, but the Minister must endeavour as much as possible to avoid environmental degradation and destruction.

(3) Neither the State nor any member of the Executive Authority of the State nor any member of the Defence Force nor any other person is liable by reason of anything done in good faith by virtue of subsection (1).

(4) Any person who obstructs or hinders any other person in the performance of such other person's functions referred to in subsection (1), commits an offence.

(5) Any person who without the written authority of the Minister or any person authorized thereto by the Minister removes, alters, damages, destroys or interferes with anything done or effected or planted on land by virtue of subsection (1), commits an offence.

Commandeering

36. (1) The President may during operations in defence of Namibia or for the prevention or suppression of terrorism or for the prevention or suppression of internal disorder in Namibia, authorize and appoint officers of the Defence Force or staff members to obtain, in the manner and subject to the conditions prescribed, from any person or any public or other body, corporate or unincorporate, and, without the consent of such person or body, to take possession of buildings and other premises, vehicles, aircraft, vessels, machinery, equipment, animals, foodstuffs, forage, fuels, oils and any other materials, articles or things necessary for the mobilization or the maintenance of the Defence Force or any portion thereof or of any other forces acting in co-operation therewith.

(2) Just compensation is pursuant to Article 16(2) of the Namibian Constitution and in accordance with the laws relating to the payment of compensation in respect of expropriated

property, payable in respect of anything obtained or taken under subsection (1), to the person or body concerned.

Control and use of transport systems

37. The President may during operations in defence of Namibia or for the prevention or suppression of terrorism or for the prevention or suppression of internal disorder in Namibia, authorize any officer of the Defence Force to assume control over any railway, road, inland water or sea transport system or any air service, or any portion thereof, within Namibia.

Evacuation and concentration of persons

38. (1) During a state of emergency declared by the President under Article 26(1) of the Namibian Constitution, the Minister or any officer of the Defence Force acting under the Minister's authority may, for the efficient defence or protection of national security, public safety or the maintenance of law and order, by order made known in such manner as the Minister or any such officer may consider sufficient in the circumstances, require any person or category of persons to evacuate or to assemble in any specified premises or area within a time specified in the order.

(2) No order made under subsection (1) requiring any person or category of persons to assemble in any premises or area remains in force for longer than is necessary regard being had to the purpose for which such order was made.

(3) Any person who fails to comply with an order under subsection (1) which is applicable to such person, commits an offence.

CHAPTER VII DISCIPLINE, LEGAL PROCEDURE AND OFFENCES

Military Discipline Code

39. (1) The provisions of Schedule 1, together with any rules made under section 40(3), comprise, and may for all purposes be cited as, the Military Discipline Code.

(2) The President may, with the approval by resolution of the National Assembly, by proclamation in the *Gazette* insert any new provision in or amend or repeal any provision of Schedule 1.

(3) The Code applies, to the extent and subject to the conditions prescribed therein -

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- (a) to all members of the Defence Force;
- (b) to all members of any reserve force in relation to any service, training or duty undertaken or to be undertaken by such members in pursuance of this Act;
- (c) to all persons (other than members of a visiting force) lawfully detained by virtue of or serving sentences of detention or imprisonment imposed under the Code;
- (d) to members of any auxiliary services and medical service, being on service as defined in Schedule 1.

Establishment of Rules Board

- 40.** (1) There is hereby established a board to be known as the Rules Board.
- (2) The Rules Board consists of the Chief of the Defence Force and such other persons, but not less than five, as the Minister may determine.
- (3) The Minister may, in consultation with the Rules Board, make, alter or repeal such rules for giving effect to Schedule 1 as the Minister may consider necessary or expedient or as may be provided for in that Schedule.
- (4) A rule or alteration or repeal of a rule made under subsection (3) must be published in the *Gazette*.

Jurisdiction of civil courts in regard to offences under the Code

- 41.** (1) The High Court of Namibia or, subject to any other law prescribing its jurisdiction, a magistrate's court may -
- (a) try any person for an offence under the Code; and
 - (b) impose any punishment which may be imposed for that offence under the Code and which is within the jurisdiction of such court, including, in the case of a magistrate's court, a sentence of detention.
- (2) In imposing any punishment for an offence under this Act or the Code, the court must -
- (a) take cognizance of the gravity of the offence in relation to its military bearing; and

- (b) have due regard to the necessity for the maintenance of a proper standard of discipline in the Defence Force.

(3) If a non-commissioned officer of the Defence Force is convicted of any offence under this Act or the Code, such officer may, in addition to any penalty imposed by the court, be reduced to the ranks or a lower rank or grade by the prescribed authority.

Military courts

42. (1) There are military courts which are to be convened in accordance with the Code.

(2) The composition of every military court is as provided in the Code.

(3) Every military court exercises the jurisdiction and powers conferred on it by the Code.

Jurisdiction of military courts in respect of offences under this Act

43. A military court may try any person who is subject to the Code for an offence under this Act as if the offence were an offence under the Code, but such a court may not impose in respect of any such offence a penalty which is beyond the jurisdiction of that court in terms of the Code or exceeds the penalty prescribed for that offence by this Act.

Person to be tried once only in respect of same offence

44. (1) Any person subject to the Code who has been convicted or acquitted of an offence by the High Court of Namibia or by a magistrate's court is not liable to be tried again in respect of that offence, or any other offence of which such person could have been convicted on a charge of the first-mentioned offence, by a military court.

(2) Any person who has been convicted or acquitted of an offence by a military court is not liable to be tried again in respect of that offence, or any other offence of which such person could have been convicted on a charge of the first-mentioned offence, by the High Court of Namibia or by a magistrate's court.

Right to review of proceedings

45. Subject to the Code, every person who is convicted of an offence by a military court has the right to a speedy and competent review of the proceedings of the case to ensure -

- (a) that the proceedings are in accordance with justice; and
- (b) that any finding or sentence is either correct, valid and appropriate, or remedied.

Contempt of military court by persons not subject to the Code and attendance of witnesses at military courts, preliminary investigations or boards of inquiry

46. (1) Any person not subject to the Code who in Namibia wilfully causes any disturbance or interruption at any military court or wilfully commits any other act calculated or likely to bring such a court into contempt, ridicule or disrepute, commits an offence.

(2) Any person who, within the precincts of a military court, causes any disturbance or interruption or commits any act referred to in subsection (1) may be ordered by such a court to be removed from the precincts of that court by any member of the Defence Force and to be taken into police custody, whereupon a member of the Police Force must cause such person to be brought before a magistrate's court.

(3) Any person not subject to the Code who is required to give evidence or to produce any document or thing in such person's possession or under such person's control at any military court, preliminary investigation or board of inquiry in Namibia, may be subpoenaed in the prescribed manner to attend such military court, preliminary investigation or board of inquiry and to give such evidence or to produce such document or thing.

(4) Any person not subject to the Code who has been subpoenaed in the prescribed manner to attend any military court, preliminary investigation or board of inquiry to give evidence or to produce any document or thing in such person's possession or under such person's control, and who -

- (a) without sufficient cause fails to attend or to remain in attendance until authorized to leave;
- (b) refuses to be sworn or to affirm as a witness or to answer any question which in similar proceedings before a civil court such person could be compelled to answer; or
- (c) fails or refuses to produce any such document or thing which in similar proceedings before a civil court such person could be compelled to produce,

commits an offence.

Offences by persons against members of other forces

47. Whenever the Defence Force and any other force are associated together under one command, the provisions of this Act and the Code apply with the necessary changes to any act or omission on the part of a member of the Defence Force in respect of or in relation to the members or institutions of that other force in the same manner as if it were an act or omission on the part of that member in respect of or in relation to the members or institutions of the Defence Force.

Arrest and trial of member of reserve force

48. (1) Any member of a reserve force charged with an offence under this Act, including any offence under the Code, may, if such member -

- (a) is on service or undergoing training or on duty with any other portion of the Defence Force, be arrested and taken into military custody by any other member of the Defence Force acting under prescribed authority in accordance with the Code, pending the investigation and disposal of the charge; or
- (b) is not so on service or undergoing training or on duty, be summoned to appear or be arrested and brought before a magistrate's court in accordance with law for the investigation and disposal of any charge brought against such member under the Code.

(2) If the charge brought against any such member taken into military custody under subsection (1) has not been disposed of by a military court before the expiry of the period of such member's service, training or duty, such member -

- (a) must, on the expiry of that period, be released from military custody; and
- (b) may thereupon be summoned to appear or be arrested and brought before a magistrate's court on that charge.

Warrants

49. (1) A prescribed officer may issue a warrant -
- (a) for the detention in any prison or gaol of any member of the Defence Force charged with an offence triable by a military court; or
 - (b) for the imprisonment in any prison or gaol of any person sentenced to imprisonment by a military court.

(2) The superintendent, gaoler or other keeper of any prison or gaol to whom a warrant under subsection (1) is addressed must act in accordance with such warrant.

Place of imprisonment for military offences

50. (1) Any person sentenced under the Code to imprisonment or detention may be ordered to undergo the sentence of imprisonment or detention in any place which the Minister may, subject to subsection (2), appoint for such purpose in lieu of a place established as a prison or gaol under the law relating to prisons, and whenever a court orders that any person be imprisoned for any offence under this Act, including any offence under the Code, for a period not exceeding 14 days, the court may order the offender to be imprisoned in a place so appointed.

(2) A place appointed under subsection (1) must meet the requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Misuse of uniforms

51. (1) Any person who wears any uniform of the Defence Force, or any part of such uniform, or any dress having the appearance or bearing the regimental badge or other distinctive marks of any such uniform or part thereof, or who in time of national defence wears a uniform of any force of a country which is allied to Namibia, or any part of such uniform, or any dress having the appearance or bearing the regimental badge or other distinctive marks of any such uniform or part thereof, commits an offence, unless -

- (a) such person is a member of the Defence Force or of a force of such country who by reason of such member's rank is entitled to wear such uniform; or
- (b) such person has been granted permission by the Chief of the Defence Force to wear such uniform.

(2) A person who wears or displays any uniform of the Defence Force, or any part of such uniform, or any dress having the appearance or bearing the marks of any such uniform or part thereof, or who in time of national defence wears or displays a uniform of any force of a country which is allied to Namibia, or any part of such uniform, or any dress having the appearance or bearing the marks of any such uniform or part thereof, in such a manner and in such circumstances as to bring or is likely to bring contempt or ridicule upon the uniform or service of the Defence Force or of a force of such country, or who employs any other person so to wear or display such uniform or part thereof or such dress, commits an offence.

(3) Any person who without due authority uses as a crest or other distinctive mark, any representation of a badge or of any distinctive mark of the Defence Force or of any headquarters, arm of the service, formation, unit or personnel mustering thereof, commits an offence.

(4) Any person who without due authority manufactures, sells, supplies or deals in any uniform of the Defence Force, or any part of such uniform, or any dress having the appearance or bearing the regimental badge or other distinctive marks of any such uniform or part thereof, commits an offence.

Unauthorized use of decorations

- 52.** (1) Any person who -
- (a) wears or uses any military decoration or the distinctive ribbon thereof; or
 - (b) represents himself or herself to be a person who is or has been entitled to wear or use any such decoration or ribbon,

commits an offence, unless such person is a person to whom such decoration has been awarded or such person has been authorized by a competent authority to wear or use such decoration or ribbon.

(2) Any person who for gain supplies or offers to supply any military decoration, or the distinctive ribbon thereof, to a person who is not entitled to wear or use such decoration or ribbon, or who is not authorized to acquire such decoration or ribbon, commits an offence.

(3) For the purposes of this section, "military decoration" means any order, decoration, medal, bar or clasp instituted by the President which has been or may be awarded to members of the Defence Force and includes, in time of national defence, any order, decoration, medal, bar or clasp of a force of any country which during such national defence is allied to Namibia, and any other decoration, medal, emblem, badge or wound stripe which the President has by proclamation in the *Gazette* declared to be a military decoration, but does not include a regimental badge or any brooch or ornament containing or representing such badge.

Use of name, title, description or symbol indicating connection with Defence Force

53. (1) No organization, association or other body of person, corporate or unincorporate, may, without the written approval of the Minister, take, use or in any manner whatever publish any name, title, description or symbol indicating or purporting to indicate or calculated or likely to lead persons to infer that it has been established under or in pursuance of any provision of this Act or in or by the Defence Force or any headquarters, arm of the service, formation, unit or personnel mustering thereof or that it is in any manner connected or associated with that Force or any such headquarters, arm of the service, formation, unit or personnel mustering if it has not been so established or is not so connected or associated.

(2) Any approval granted under subsection (1) may in the discretion of the Minister be withdrawn by notice sent by registered post to the chairperson, secretary or other executive officer of the organization, association or body concerned as from a date specified in that notice.

- (2) Any person who contravenes subsection (1) commits an offence.

Unauthorized disclosure of information

54. (1) No person may publish in any newspaper, magazine, book or pamphlet or by radio, television or any other means -

- (a) any information calculated or likely to endanger national security or the safety of members of the Defence Force; or
- (b) any statement or comment calculated directly or indirectly to convey any information referred to in paragraph (a),

except where the information has been furnished or the publication thereof has been authorized by the Minister or on the Minister's authority.

(2) Any proprietor, printer, publisher or editor of any newspaper, magazine, book or pamphlet in which any information referred to in subsection (1) is published, and any person responsible for the publication of such information by such or any other means, commits an offence, and proceedings in respect thereof may be instituted against all or any of such persons.

(3) Any person who discloses to any other person any secret or confidential information relating to the defence of Namibia -

- (a) which came to such person's knowledge -
 - (i) by reason of such person's membership of the Defence Force; or
 - (ii) by reason of such person's employment in the Public Service or in any other office, post, appointment or capacity in the service of the State; or
 - (iii) by reason of any contract relating to the defence of Namibia or any employment by a contractor under such a contract; or
- (b) which was given to such person in confidence by any person who was authorized or whose duty it was to give such person such information,

commits an offence, unless such disclosure was authorized by the Minister or on the Minister's authority or by order of a competent court or it was the duty of such person in the interests of the State to disclose such information to such other person.

(4) Nothing in this section contained is to be construed as preventing any person from being prosecuted and punished under any other law relating to the unlawful disclosure of information.

(5) To the extent that the provisions of this section provide for a limitation of the fundamental rights contemplated in paragraph (a) of Sub-Article (1) of Article 21 of the Namibian Constitution, in that they authorize interference with a person's freedom to publish or disclose information relating to national security and to the defence of Namibia, such limitation is enacted on authority of Sub-Article (2) of the said Article.

Prohibition on taking of photographs or making of sketches, plans, models or notes of military premises or installations

55. (1) No person may, unless authorized thereto by the Minister or on the Minister's authority -

- (a) take any photograph or make any sketch, plan, model or note of any military camp, barracks, dockyard, installation or other premises or any land or area of water used for military or defence purposes or which is under military control, or of any part thereof or any object therein; or
- (b) have in such person's possession while in or on such camp, barracks, dockyard, installation, premises, land or area any camera or other apparatus which may be used for the taking of photographs.

(2) A member of the Defence Force may seize -

- (a) any photograph taken or sketch, plan, model or note made in contravention of subsection (1)(a);
- (b) any camera or other apparatus in the possession of any person in contravention of subsection (1)(b);
- (c) any film or negative used or prepared in connection with a photograph taken in contravention of subsection (1)(a).

(3) Any person who contravenes subsection (1)(a) or (b) commits an offence.

(4) Any photograph, sketch, plan, model, note, camera or other apparatus, film or negative seized under subsection (2) may, on the conviction of the person concerned of a contravention of subsection (1)(a) or (b), be declared by the court convicting such person to be forfeited to the State.

Obstructing Defence Force

56. Any person who wilfully obstructs or interferes with any portion of the Defence Force or of any auxiliary services, medical service or reserve force, or any member of the

Defence Force or any auxiliary services, medical service or reserve force, in the performance of any service or duty commits an offence.

Prohibition of certain acts in connection with liability to render service

57. Any person who -

- (a) agrees with or induces, or attempts to induce, any member of the Defence Force or any auxiliary services, medical service or reserve force to neglect or to act in conflict with such member's duty in the Defence Force, auxiliary or medical service or reserve force; or
- (b) is a party to or aids or abets or incites the commission of any act whereby any lawful order given to any member of the Defence Force or any auxiliary services, medical service or reserve force, or any law or regulation, with which it is the duty of any such member to comply, may be evaded or infringed; or
- (c) uses any language or does any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise cause any other person or any category of persons or persons in general to refuse or fail to render any service to which such other person or a person of such category or persons in general is or are liable or may become liable in terms of this Act,

commits an offence and is liable on conviction to a fine not exceeding N\$24 000 or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.

Prohibition of certain acts in connection with service as mercenary

58.(1) Any person who -

- (a) binds himself or herself to serve or renders service as a mercenary; or
- (b) makes any utterance or performs any act or does anything with intent to advise, encourage, assist, incite, instigate, suggest to or otherwise persuade any person to bind himself or herself to serve or to render service as a mercenary,

commits an offence.

(2) A person convicted of a contravention of -

- (a) subsection (1)(a), is liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

- (b) subsection (1)(b), is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Any court of law with penal jurisdiction may try a person for a contravention of subsection (1)(a) or (b), notwithstanding the fact that the whole or any part of the act constituting the offence was committed outside Namibia.

Offences relating to intoxicating liquor

59. Any person who supplies or is a party to supplying any member of the Defence Force or any auxiliary services, medical service or reserve force with intoxicating liquor while such member -

- (a) is on duty; or
- (b) is in military uniform (whether on duty or not),

and is prohibited under this Act (including the Code) or any orders or instructions from purchasing, receiving or taking intoxicating liquor, commits an offence and is liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Impersonation

60. Any person who by word, conduct, demeanour or otherwise falsely represents himself or herself to be a member of the Defence Force or any auxiliary services, medical service or reserve force, or a particular member thereof or a person holding a particular rank or appointment therein, commits an offence.

Prohibition of citizens to serve in military forces of other countries

61. (1) No citizen may, without the written permission of the Minister, serve or apply to serve in the military force or the reserve or any auxiliary force of any country other than Namibia, unless such citizen -

- (a) is resident in such other country ; and
- (b) is, in terms of the laws of that country, liable to serve in such military force, reserve or auxiliary force.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Wrongful disposal of property

62. Any member of the Defence Force or any auxiliary services, medical service or reserve force, or any person permitted under section 14(2)(f) to participate in training exercises with members of the Defence Force, who -

- (a) without authority gives away, sells, pledges, lends or otherwise disposes of any moneys, animals, arms, ammunition, accoutrement, clothing, supplies or any other articles entrusted to or held by any such member or person for the service of that Force or any auxiliary services or medical service or reserve force; or
- (b) as a result of such member's or person's negligence, loses any such moneys, animals, arms, ammunition, accoutrement, clothing, supplies or other articles so entrusted to or held by such member or person,

commits an offence and may, in addition to any penalty which may be imposed on such member or person for that offence, be ordered by the court or other competent authority which imposes the penalty, to make good any loss or deficiency caused by the commission of that offence, and every such gift, sale, pledge, loan or other disposition is null and void.

Penalties

63. Any person who is convicted of an offence under this Act for which no penalty is specially prescribed, is liable -

- (a) in the case of an offence referred to in section 25(2), 51, 53, 54(1), (2) or (3), 55, 56 or 60, to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- (b) in the case of any other such offence, to a fine not exceeding N\$2 000 or to imprisonment for a period no exceeding six months or to both such fine and such imprisonment.

**CHAPTER VIII
VISITING FORCES**

Discipline and internal administration of visiting forces

64. (1) A military court or other authority of any country may exercise within Namibia in relation to members of a visiting force of that country in matters concerning discipline and the internal administration of that force (including the administration of the property or the estate of a deceased member of that force) all such powers as are conferred on such court or authority by the law of that country.

(2) The laws of Namibia applicable to the powers, immunities and privileges of a military court of Namibia and to proceedings before such a court is, in so far as such laws can be applied, applicable also to a military court of a country exercising jurisdiction by virtue of this Act.

(3) Where any sentence has, whether within or outside Namibia, been imposed on a member of a visiting force by a military court of any country, that court is, for the purposes of any legal proceedings within Namibia, deemed to have been properly constituted and its proceedings is deemed to have been regularly conducted and the sentence is deemed to be within the jurisdiction of the court and in accordance with the law of that country, and if executed according to the tenor thereof is deemed to have been lawfully executed, and any member of that visiting force who is detained in custody in pursuance of such sentence, or pending the determination by a military court of that country of a charge brought against such member, is, for the purposes of any such proceedings, deemed to be in lawful custody.

(4) For the purposes of any proceedings referred to in subsection (1), a certificate under the hand of the officer in command of a visiting force -

- (a) that a member of that force is being detained for either of the causes mentioned in subsection (3), is *prima facie* proof of such member's detention, but not of his or her being such a member;
- (b) that the persons specified in the certificate sat as a military court of the country to which that force belongs, is *prima facie* proof 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 Namibia.

(6) For the purpose of enabling the military courts and military authorities of any country to exercise more effectively the powers conferred on them by this section, the Minister may, if so requested by the government of that country or by the officer in command of a visiting force, by general or special order to the Defence Force, direct the members thereof -

- (a) to arrest members of the visiting force alleged to have been guilty of offences under the law of that country; and

- (b) to hand over any person so arrested to the appropriate authorities of the visiting force.

Relation of visiting forces to civil power and civilians

65. (1) The President may, by proclamation in the *Gazette*, authorize any Minister or any other person in Namibia to perform, at the request of such authority of any country as may be specified in the proclamation, but subject to such limitations as may be so specified, any function in relation to a visiting force of that country and members thereof which that Minister or person performs or could perform in relation to any portion of the Defence Force of like nature to the visiting force, or in relation to members of such a portion thereof, and for the purpose of the performance of any such function, any power exercisable by virtue of any law by that Minister or person in relation to the Defence Force or members thereof, is exercisable by him or her or them in relation to the visiting force and members thereof.

(2) Nothing in subsection (1) contained is to be construed as authorizing any interference by the Minister or person referred to in that subsection with the visiting force in matters relating to discipline or to the internal administration of that force.

(3) If the President by proclamation in the *Gazette* so provides, members of a visiting force, if sentenced by a military court of the country to which such force belongs, to imprisonment or detention, may under the authority of the Minister, given at the request of the officer in command of the visiting force, be detained in custody in prisons, goals or detention barracks in Namibia during the whole or any part of the term of their sentences, and the President may by the same or a subsequent proclamation in the *Gazette* make provision relating to any of the following matters -

- (a) the reception of such members from and their return to the military authorities of the country concerned;
- (b) their treatment while in such custody or while so imprisoned;
- (c) the circumstances under which they are to be discharged; and
- (d) the manner in which they are to be dealt with in the event of their mental illness while in such custody or while so imprisoned.

(4) Any costs incurred in the maintenance and return of, or otherwise in connection with, any person dealt with in accordance with subsection (3), is defrayed in such manner as may be agreed upon between the Minister, acting in consultation with the Minister responsible for Finance, and the government of the country concerned.

- (5) Except as hereinafter provided, any law (including this Act) which -

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- (a) exempts or provides for the exemption of any vessel, vehicle, aircraft, machine or apparatus of, or employed for the purposes of, the Defence Force or any portion thereof from any tax, licence, duty, fee or any charge;
- (b) confers a privilege or immunity on any person by virtue of a connection with the Defence Force or any portion thereof;
- (c) exempts any property, trade or business, in whole or in part, 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;
- (d) imposes on any person or undertaking obligations in relation to the Defence Force or any portion thereof, or any member or military court thereof; or
- (e) penalizes misconduct by any person in relation to the Defence Force or any portion thereof, or any member or military court thereof,

applies with any necessary modifications to a visiting force as it would apply to the Defence Force.

(6) The President may, by proclamation in the *Gazette*, direct that any law referred to in subsection (5) does not apply to a visiting force, or applies to that force with such exceptions and subject to such adaptations or modifications as may be specified in the proclamation.

(7) A proclamation under this section may apply either generally or in relation to any particular visiting force or in relation to any particular place.

Deserters from other forces

66. (1) Subject to this section, section 139 of the Code applies within Namibia in relation to a deserter or absentee without leave from any military force of any other country (including any member of a reserve or auxiliary force of that country who, having failed to obey a notice calling upon such member to appear at any place for service, is by the law of that country liable to the same punishment as a deserter or as an absentee without leave) as it applies in relation to a deserter or absentee without leave from the Defence Force.

(2) Subject to subsection (3), no person who is alleged to be a deserter or absentee without leave from a force of any other country may be apprehended or dealt with under subsection (1), except in compliance with a request from the government of that country, and a person so dealt with must be handed over to the authorities of that country at such a place within Namibia as may be agreed.

(3) A person who is alleged to be a deserter or absentee without leave from a visiting force may be apprehended and dealt with in compliance with a request from the officer in command of that force.

(4) For the purposes of any proceedings under this section -

(a) a document purporting to be a certificate under the hand of the Minister responsible for Foreign Affairs or of the Minister that a request has been made under subsection (2), is on its mere production at such proceedings admissible in evidence as proof of the making of such a request;

(b) a document purporting to be a certificate under the hand of the officer in command of a unit or detachment of a force of any country that a named and described person was at the date of the certificate a deserter or absentee without leave from that force, is on its mere production at such proceedings admissible in evidence as proof of the facts so certified.

Attachment of personnel

67. (1) The Minister may -

(a) attach temporarily to the Defence Force any member of a force or a reserve of any other country who is placed at the Minister's disposal for that purpose by the military authorities of that country;

(b) subject to anything to the contrary contained in the conditions applicable to such member's service, place any member of the Defence Force at the disposal of the military authorities of any other country for the purpose of being attached temporarily by those authorities to the forces of that country.

(2) Subject to subsection (3), while a member of a force of any other country is attached temporarily to the Defence Force such member -

(a) is subject to the law applicable to that portion of the Defence Force to which such member is attached; and

(b) must be treated and has over members of the Defence Force the like powers of command and punishment as if such member were a member of the Defence Force of a rank equivalent to that held by such member as a member of the force of that country.

(3) The President may, by proclamation in the *Gazette*, direct that in relation to members of a force of any country 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.

Members of visiting forces not subject to jurisdiction of local courts in certain respects

68. (1) Notwithstanding anything to the contrary in any other law contained, no court of Namibia has jurisdiction to try any member of a visiting force or of a civilian component of such a force for an offence against the person or against property which, in the case of -

- (a) an offence against the person, was committed with or in relation to a person who, at the time of the commission of the offence, was a member of or directly associated with the same or another visiting force of the same country; or
- (b) an offence against property, was committed in relation to the property of -
 - (i) the country to which the visiting force belongs;
 - (ii) a member of the same or another visiting force of the same country; or
 - (iii) a person directly associated with any such force,

or for any other offence which arose out of and in the course of the performance of his or her duties as such a member.

(2) Subsection (1) does not apply -

- (a) if the alleged offender, at the time of the commission of the offence, was not subject to the jurisdiction of the military courts of the country to which the visiting force belongs;
- (b) in relation to a member of a civilian component of a visiting force, unless the offence in question is also an offence under the law of the country to which the visiting force concerned belongs;
- (c) in respect of any case in which the Prosecutor-General has certified that he or she has been notified by the appropriate authority of the country to which the visiting force belongs, that it is not proposed to charge the offender under the law of that country.

(3) Subsection (1) does not affect the validity of any trial or of anything done or omitted in the course of a trial unless, either before its commencement or during the course thereof, objection was made on the ground that by virtue of that subsection the court has no jurisdiction to try the offender.

(4) For the purposes of this section -

“offence against property” means -

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- (a) theft (whether at common law or as provided by statute), housebreaking with intent to commit a crime, robbery, fraud, forgery and uttering a forged instrument knowing it to be forged, extortion, receiving stolen property knowing it to have been stolen, malicious injury to property; or
- (b) any offence relating to the driving of a motor vehicle without the consent of the owner;

“offence against the person” means -

- (a) murder, administering poison with intent to murder, culpable homicide, assault of whatever nature, rape, *crimen injuria*, incest, sodomy, kidnapping, abduction or childstealing;
- (b) a contravention of section 66 of the Mental Health Act, 1973 (Act No. 18 of 1973), or section 18(1), 19 or 21 of the Children’s Act, 1960 (Act No. 33 of 1960); or
- (c) any offence relating to -
 - (i) the reckless or negligent driving of a motor vehicle whereby any person is injured;
 - (ii) the procuring or detention of a person for the purpose of unlawful carnal intercourse; or
 - (iii) the keeping of a brothel.

(5) Any reference to an offence mentioned in subsection (4) is deemed to include a reference to -

- (a) an attempt to commit that offence;
- (b) a conspiracy to aid or procure the commission of or to commit that offence;
- (c) an incitement or instigation, or a command or procurement to commit that offence; or
- (d) being accessory to the commission of that offence.

Mutual powers of command

69. (1) Whenever the Defence Force and any other force are serving together, whether alone or not -

- (a) any member of the other force must be treated and has over members of the Defence Force the like powers of command as if such member were a member of the Defence Force of relative rank; and

- (b) if the forces are acting in combination, any officer of the other force appointed by the President, or in accordance with regulations made by or on the authority of the President after consultation with the appropriate authority of the country to which that force belongs, to command the combined forces or any part thereof, must be treated and has over members of the Defence Force the like powers of command and punishment, and may be invested with the like authority to convene and confirm the findings and sentences of courts martial, as if such member were an officer of the Defence Force of relative rank and holding the same command.

(2) For the purposes of this section, the Defence Force and any other force are deemed to be 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 ranks of members of the Defence Force and such other force are as prescribed.

Proof of membership of visiting force

70. A certificate issued under the hand or on the authority of the appropriate authority of any country, stating that at a time specified therein a person so specified was or was not a member of a visiting force of that country or of a civilian component of such a force, is *prima facie* proof of the facts so stated.

Inquest on and removal of body of deceased member of visiting force

71. (1) Notwithstanding anything to the contrary in any other law contained, no inquest may, unless the Minister otherwise directs, be held as to the cause of death of any deceased person who at the time of that person's death was a member of a visiting force or of a civilian component of such a force.

(2) Whenever a magistrate holding an inquest is satisfied that a person who is subject to the jurisdiction of the military courts of any other country is being detained for the purpose 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, the magistrate must, unless the Minister otherwise directs, adjourn the inquest.

(3) If a magistrate adjourns an inquest in terms of subsection (2), the magistrate must furnish the registrar or assistant registrar of births and deaths with such particulars necessary for the registration of the death as the magistrate may have ascertained at the inquest up to the time of its adjournment.

(4) No inquest which has been adjourned in terms of subsection (2) may be resumed, unless the Minister so directs.

(5) If an inquest is resumed on the Minister's directions, the magistrate having jurisdiction must commence the proceedings anew, but may not furnish the registrar or assistant registrar of births and deaths with any particulars or further particulars for the registration of the death.

(6) Section 29 of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963), does not apply in respect of any case where the body of a deceased person who at the time of that person's death was a member of a visiting force or of a civilian component of such a force, is to be buried at any place outside Namibia, except as regards the burial 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 (4).

CHAPTER IX GENERAL PROVISIONS

Regulations

72. (1) The Minister may make regulations, not inconsistent with this Act, relating to -
- (a) the training and inspection of the Defence Force and any auxiliary services, medical service or reserve force;
 - (b) the establishment of training camps;
 - (c) courses of instruction for persons undergoing training or engaged for service under this Act;
 - (d) the control of funds which are administered by a committee or other like body under the chairpersonship of a member of the Defence Force and have been collected or accepted by or from members of that Force or any headquarters, arm of the service, formation, unit or personnel mustering thereof for the benefit of such members or their dependants;
 - (e) the establishment, management and control of funds and non-trading institutions of the Defence Force the aims or some of the aims of which are the acquisition and possession of property, movable as well as immovable, for the provision of recreational facilities within Namibia exclusively for the benefit of members and ex-members of that Force or any headquarters, arm of the service, formation, unit or personnel mustering thereof and their dependants and other prescribed persons or classes of persons;
 - (f) the seniority and precedence of headquarters, arms of the service, formations, units and personnel musterings and of members of the Defence Force and any auxiliary services, medical service or reserve force;

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- (g) the leave of absence of members of the Defence Force;
- (h) the execution of police duties by members of the Defence Force;
- (i) the exemption of any member of the Defence Force from carrying out any full course of training prescribed for any one year;
- (j) the standards of physical fitness and the medical examination of members of the Defence Force, and authorizing medical authorities to determine such standards;
- (k) the provision of medical or dental treatment at sickbays established for members of the Defence Force;
- (l) the design, award, use, care and custody of colours, standards and flags for military use, and all matters pertaining to military ceremony;
- (m) honorary appointments and ranks in the Defence Force;
- (n) the furnishing by any person in Namibia of full and accurate information as to buildings, premises, vehicles, aircraft, vessels, animals, foodstuffs, forage, fuels, oils, materials, firearms, articles or things in such person's possession or under such person's control;
- (o) the issue and care of arms, accoutrements, ammunition (including ammunition to be held in reserve for use in case of emergency), supplies, animals, transport, clothing and equipment;
- (p) the governance and management of, and the discipline which may be enforced in, places appointed as prisons under this Act;
- (q) the licensing of drivers of motor vehicles which are the property of the State in the Ministry;
- (r) the compulsory insurance of members of the Defence Force in respect of bodily injury, disablement or death occurring in the course of or as a result of military service or training, and the recovery from the salaries or pay or allowances payable to such members in terms of this Act of the premiums payable in respect of such insurance and the payment thereof to the insurers concerned;
- (s) the composition, organization and functions of a reserve force and the exemption from service thereof;
- (t) the recruitment of persons for appointment in the Defence Force;
- (u) any matter which in terms of this Act is required or permitted to be prescribed; and
- (v) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations for securing the discipline and

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good governance of the Defence Force or any auxiliary services, medical service or reserve force or for carrying out and giving effect to this Act.

(2) A regulation made under subsection (1) may prescribe a penalty, not exceeding a fine of N\$2 000 or imprisonment for a period of six months or both such fine and such imprisonment, for any contravention of or failure to comply with any provision thereof.

(3) The Minister may under subsection (1) make different regulations for different categories of members of the Defence Force.

(4) For the purposes of subsection (1), “motor vehicle” means any vehicle which is self-propelled by mechanical or electrical power, and is intended or adapted for the conveyance of persons or goods.

Limitation of actions

73. (1) No civil action is capable of being instituted against the State or any person in respect of anything done or omitted to be done in pursuance of this Act after the lapse of -

- (a) a period of two years from the date on which the claimant became aware of the cause of action or could reasonably have been expected to have become aware of the cause of action, whichever is the earlier; or
- (b) where the cause of action arose outside Namibia and outside the territorial waters thereof, a period of three years from the date contemplated in paragraph (a),

and notice in writing of any such action and of the cause thereof must be given to the defendant not less than one month before it is instituted.

(2) If notice is to be given to the State in connection with a civil action referred to in subsection (1), any notice given to the Chief of the Defence Force is deemed to be a notice given to the State.

Orders, decorations and medals

74. (1) The President may, in respect of (1) conduct or service in time of peace or national defence which in the President’s opinion requires or deserves suitable recognition, institute orders, decorations and medals which may, subject to such rules as the President may in the case of every such order, decoration or medal consider necessary, be awarded by the President or the Minister -

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- (a) to members of the Defence Force or any auxiliary services, medical service or reserve force; or
- (b) subject to subsection (3), to members of any armed force attached to or serving with or rendering any service to the Defence Force.

(2) The President may, in time of peace or national defence, institute orders, decorations and medals which may, subject to such rules as the President may in the case of every such order, decoration or medal consider necessary, be awarded by the President or the Minister to civilian persons of a foreign State and to Namibian citizens who render services of military importance to the Defence Force.

(3) No order, decoration or medal instituted under subsection (1) may be awarded to a member of any armed force, unless the government of the force to which such member belongs has signified its concurrence in the award of such order, decoration or medal to such member.

(4) The President may, in respect of every order, decoration or medal instituted under subsection (1), make regulations relating to the grant, forfeiture and restoration thereof and such other matters concerning such order, decoration or medal as the President may consider expedient.

Language of instruction

75. Every officer and every non-commissioned officer of the Defence Force must be instructed in giving and receiving executive words of command in the English language, and the training and instruction of any citizen must be given in the English language.

Pay and allowances not to be assigned or attached

76. (1) No member of the Defence Force may, without the approval of the Minister or a person authorized thereto by the Minister, assign the whole or any portion of any pay or allowance due to such member for service in that Force.

- (2) No pay or allowance referred to in subsection (1) or any portion thereof -
 - (a) is capable of being seized or attached under or by virtue of any writ of execution, other than an emoluments attachment order issued under any law in force in Namibia, sued out against any member entitled to such pay or allowance;
 - (b) passes under or by virtue of any order made for the sequestration of the estate of such a member.

Exemption from registration and licensing of defence vehicles and drivers

77. No law relating to the registration and licensing of motor vehicles or the licensing of drivers of such vehicles applies in respect of any motor vehicle which is the property of the State in the Ministry.

Exemption from laws relating to conveyance of firearms

78. No law relating to the conveyance of firearms applies in respect of the conveyance of firearms by any person where such conveyance takes place in connection with training, service or performance of duty under this Act.

Exemption from tolls and dues

79. (1) At any wharf, landing place, bridge, pond, ferry or toll-bar where the payment of a toll or due may lawfully be demanded, that toll or due is not payable by any member of the Defence Force if such member is proceeding to or from any place on the service of that Force, or in respect of any animal or vehicle when employed on any such service.

(2) Any person duly authorized to collect tolls or dues at any place referred to in subsection (1) who wilfully subjects a member of the Defence Force, or any animal or vehicle on service as contemplated in that subsection, to unreasonable delay or detention commits an offence.

Railway charges

80. Any member of the Defence Force traveling on the service of that Force must, when provided with a government warrant, be conveyed over any portion of any railway system in Namibia at fares which are determined by agreement between the operator of the railway and the Ministry acting in consultation with the Treasury.

Compulsory immunization and prophylaxis

81. (1) Any member of the Defence Force or any auxiliary services, medical service or reserve force may be required to submit to, and if so required must submit to, immunization or prophylaxis against such communicable, infectious or epidemic illness as may be determined from time to time by a prescribed authority.

(2) Such immunization or prophylaxis may be carried out by means of vaccination or injection with, or oral administration of, the specific prophylactic medicament determined for the purpose by a registered medical officer.

Payment of remuneration of missing member of Defence Force

82. (1) If a member of Defence Force is missing and the Chief of the Defence Force is satisfied that the member's absence arose from the performance of his or her duties or functions while he or she was rendering service in terms of this Act, that member is for all purposes deemed to be still serving in the Defence Force from the first day after the day on which such absence commenced until the day on which the member again reports for duty or, in the opinion of the Chief of the Defence Force, should again have reported for duty, or on which a competent court issues an order whereby the death of the member is presumed.

(2) The salary or wages and allowances accruing to a member during the member's absence contemplated in subsection (1) must, subject to subsection (4), be paid to the member's spouse or, if the member has no spouse, to his or her other legal dependants, or to any other person who, in the opinion of the Chief of the Defence Force, is competent to receive and administer such salary or wages and allowances on behalf of the member's spouse or such other dependants.

(3) Payment of any salary or wages and allowances in terms of subsection (2) is for all purposes deemed to be payment thereof to the member concerned, and an amount so paid is not recoverable by the State from any person.

(4) Notwithstanding subsection (2), the Chief of the Defence Force may direct that only a portion of the salary or wages and allowances of a member be paid in terms of that subsection or that no portion thereof be so paid.

Payment of remuneration of member of Defence Force who has been taken prisoner of war

83. (1) If a member of the Defence Force is captured and the Chief of the Defence Force is satisfied that the member's capture arose from the performance of his or her duties or functions while he or she was rendering service in terms of this Act, that member is for purposes of salary or wages and allowances deemed to be still serving in the Defence Force from the first day on which such capture became known until the day on which the member again reports for duty or, in the opinion of the Chief of the Defence Force, should again have reported for duty, or on which a competent court issues an order whereby the death of the member is presumed, but a member who is captured while serving in terms of section 17, 18 or 19, is, for the duration of the member's captivity and for the purposes of salary, wages or allowances, deemed to be still so serving.

(2) The salary or wages and allowances accruing to a member during the member's captivity contemplated in subsection (1) must, subject to subsection(4), be paid to the member's spouse or, if the member has no spouse, to his or her other legal dependants, or to any other person who, in the opinion of the Chief of the Defence Force, is competent to receive and administer such salary or wages and allowances on behalf of the member's spouse or such other dependants.

(3) Payment of any salary or wages and allowances in terms of subsection (2) is for all purposes deemed to be payment thereof to the member concerned, and an amount so paid is not recoverable by the State from any person.

(4) Notwithstanding subsection (2), the Chief of the Defence Force may direct that only a portion of the salary or wages and allowances of a member be paid in terms of that subsection or that no portion thereof be so paid.

Injuries received or illness contracted on service or training

84. (1) A member of the Defence Force or any auxiliary services, medical service or reserve force who receives a wound or injury or contracts an illness while on military service or undergoing training may, under such conditions and for such period as may be prescribed, be provided with any medical or other treatment necessary for such wound, injury or illness.

(2) The duration of treatment referred to in subsection (1) may extend beyond the date upon which the member concerned is released or discharged, for whatever reason, from the Defence Force, auxiliary or medical service or reserve force.

(3) Any member while receiving the treatment referred to in subsection (1) may, for such period and under such conditions as may be prescribed, be paid the emoluments of such member's rank, but only if the wound, injury or illness was not due to the member's own misconduct.

(4) A period of treatment referred to in subsection (1) is, unless the wound, injury or illness is attributable to the member's own misconduct, regarded as duty for the purposes of sections 17, 18 and 19.

Conveyance of members of Defence Force

85. Any member of the Defence Force may, in connection with or for the purpose of such member's service, training or duty, be conveyed by any means whatever as may be ordered by that member's superior officer.

Clubs, messes and trading institutions

86. Clubs, messes and trading institutions for the exclusive use or benefit of -

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- (a) members of the Defence Force or other forces, or of any auxiliary services, medical service or reserve force;
- (b) the families of members referred to in paragraph (a); and
- (c) other prescribed persons or classes of persons,

may be established and conducted under such conditions and in such manner as may be prescribed.

Exemption from licence fees, taxes, duties and other fees

87. (1) No licence fee, tax, duty or any other fee (other than value-added tax or customs or excise duty where leviable by law, but including any tax on or in respect of property, whether moveable or immovable) under any law is payable -

- (a) by or in respect of any club, mess or trading institution established under section 86 in or in connection with any base, camp, station or ship for any portion of the Defence Force in Namibia;
- (b) in respect of any article on sale at any club, mess or trading institution referred to in paragraph (a); or
- (c) by or in connection with a fund or non-trading institution established in accordance with regulations made under section 72(1)(e).

(2) For the purposes of subsection (1), any fund or non-trading institution which existed on the date of commencement of this Act is deemed to have been established in accordance with regulations made under section 72(1)(e), whether or not such regulations exist or existed at any relevant time, if the aims or some of the aims of such fund or non-trading institution are the acquisition and possession of property for the provision of recreational facilities within Namibia for the benefit of members and ex-members of the Defence Force or any headquarters, arm of the service, formation, unit or personnel mustering therein, or any portion thereof, and their dependants.

(3) A certificate under the hand of the Minister or of a person authorized thereto by the Minister, stating -

- (a) that a club, mess or trading institution specified therein has been established under section 86 in or in connection with any base, camp, station or ship for any portion of the Defence Force in Namibia;
- (b) that a fund or non-trading institution specified therein has been established in accordance with regulations made under section 72(1)(e);
or

- (c) that a fund or non-trading institution specified therein existed on the date of commencement of this Act and that its aims or some of its aims are the acquisition and possession of property for the provision of recreational facilities within Namibia for the benefit of members and ex-members of the Defence Force or any headquarters, arm of the service, formation, unit or personnel mustering therein, or any portion thereof, and their dependants,

is on its mere production by any person in any proceedings before any court of law *prima facie* proof of the correctness of the statements contained therein.

Non-liability

88. (1) If any person is conveyed in or makes use of any vehicle, aircraft or vessel which is the property of the State and which is used by or on behalf of the Defence Force, the State or any member of the Executive Authority of the State or any member of the Defence Force is, subject to subsection (2), not liable to such person or such person's spouse, parent, child or other dependant 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 conveyance of such person in, or the use of such vehicle, aircraft or vessel, unless such person is conveyed therein or makes use thereof in or in connection with the performance of the functions of the State.

(2) Subsection (1) does not affect the liability of a member of the Defence Force who wilfully causes the loss or damage referred to in that subsection.

(3) Whenever the State has paid any compensation to any person referred to in subsection (1) in respect of a claim for any loss or damage suffered by such person, the State may, without having obtained any formal cession of right of action, recover from the person who caused the loss or damage the amount paid by way of compensation or so much thereof, if anything, as the Minister in consultation with the Minister responsible for Finance (or any person acting under the Minister's authority in consultation with any staff member of the Ministry of Finance authorized thereto by the Minister responsible for Finance) and acting on advice of the Attorney-General considers the circumstances justify the State in claiming.

Right of recourse of State in respect of expenditure for injuries of members

- 89.** (1) Whenever the State -
- (a) has incurred any 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 services in connection with that treatment; or

- (b) has made any payments in respect of any salary, pay, allowances or any compensation to the member during that member's incapacity,

and the expenditure has been incurred or the payments have been made in circumstances where the member or the member's estate would otherwise have a claim against another person as a result of the bodily injury or incapacity of the member in respect of whom the expenditure was incurred or the payments were made, the State has the right of recourse against that person for that portion of the expenditure thus incurred or payments thus made as could have been claimed by that member or that member's estate from such person.

(2) A certificate issued by the Chief of the Defence Force, or by an officer authorized thereto for that purpose by the Chief of the Defence Force, in which a statement of the expenditure incurred or payments made under subsection (1) is given, is on its mere production in any proceedings before any court of law *prima facie* proof that the said expenditure or payments were incurred or made.

(3) The right of recourse referred to in subsection (1) may be exercised by the institution of an action or by intervention in an action instituted by the member or the member's estate against the other person referred to in that subsection.

Suspension awaiting trial, appeal or review

90. (1) Where in the opinion of the Chief of the Defence Force it will be in the interests of the good governance or reputation of the Defence Force, or in the interests of justice, the Chief of the Defence Force may, subject to subsection (2), order any person who is subject to the Code not to return to duty during any period subsequent to such person's -

- (a) release from arrest or custody pending or during trial, whether on bail or on such person's own recognizance or otherwise; or
- (b) conviction by a competent civil or military court, if such person intends appealing against the conviction or applying for the review of the proceedings of the case,

pending the conclusion of the trial, appeal or review, as the case may be.

(2) The Chief of the Defence Force must give written notice to the person concerned of the intention to consider exercising the power conferred by subsection (1), and must allow that person to respond in writing within 24 hours, or such longer period as the Chief of the Defence Force may determine, of that person's receipt of such notice.

Indemnity in respect of trespass and nuisance

91. No action lies in respect of trespass or nuisance by reason only of the flight of aircraft, being the property of the State in the Defence Force, over any property at a height which, having regard to wind, weather and all the circumstances of the case, is reasonable, or in respect of the ordinary incidents of such flight.

Presumption as to delivery of notices

92. A notice sent by registered post to a person's registered address is, in the absence of evidence to the contrary, deemed -

- (a) to have been delivered to such person at the time when it would have reached such person in the ordinary course of post; and
- (b) to have been duly served on such person.

Act to apply both within and outside Namibia

93. This Act applies to all members of the Defence Force and of any auxiliary services, medical service or reserve force, whether such members are serving within or outside Namibia, and whenever it is necessary to enforce this Act outside Namibia any sentence, fine or penalty pronounced or imposed for the purpose of such enforcement is as valid and effectual and is carried into effect as if it had been pronounced or imposed in Namibia.

Repeal of laws, and savings

94. (1) Subject to subsections (2), (3) and (4), the laws mentioned in Schedule 2 are hereby repealed or amended to the extent indicated in the third column thereof.

(2) Any regulation or notice issued or appointment made or anything done under a provision of any law repealed by subsection (1), and which could have been issued, made or done under a provision of this Act, is deemed to have been issued, made or done under the corresponding provision of this Act, and is in so far as it relates to any force, auxiliary services or medical service established or any training or service provided for under any such repealed law, to be construed as if it were related to the corresponding force, auxiliary services, medical service or training established or provided for under this Act.

(3) Any person who at the commencement of this Act is a member of any force, auxiliary services or medical service established under any law repealed by subsection (1), is as from such commencement deemed to have been duly enrolled as a member of the corresponding force, auxiliary services or medical service established under this Act and to have been assigned to the headquarters, arm of the service, formation, unit, personnel mustering or duties in which such person is serving at such commencement, and any training undergone or service performed

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by any such person in any such force, auxiliary services or medical service before such commencement, is deemed to have been undergone or performed in the corresponding force, auxiliary services or medical service established under this Act.

(4) For the purposes of this section, any force, auxiliary services or medical service established or training or service provided for under any law repealed by subsection (1), is deemed to correspond to the force, auxiliary services or medical service established or training or service provided for under this Act, to which in name, designation or description it most closely corresponds.

(5) Any reference in this section to a force established under this Act is to be construed as including a reference to the Defence Force which continues to exist under this Act.

Short title and commencement

95. This Act is called the Defence Act, 2002, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.