

**MILITARY DISCIPLINE CODE
SCHEDULE 1**

**SCHEDULE 1
MILITARY DISCIPLINE CODE
(Section 39(1) of the Act)**

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Definitions

1. (1) In this Code any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned to it, and unless the context otherwise indicates -

“board of inquiry” means a board of inquiry convened under section 134 or 135;

“board of review” means a board of review established under section 144;

“capital civil offence” means any civil offence in respect of which life imprisonment may be imposed;

“capital offence” means any offence, whether under this Code or any other law of Namibia, in respect of which life imprisonment may be imposed;

“chief of staff ” means any officer of the rank and command not below that of brigadier or its equivalent who is empowered by warrant to convene general courts martial and includes, for the purposes of sections 61 and 67, any officer of the rank not below the said rank who is authorized in writing by such chief of staff to exercise or perform in any particular case the powers and duties conferred or imposed on a chief of staff by sections 61 and 67, respectively;

“civil offence” means any offence of a criminal nature in respect of which any penalty may be imposed by a court of law, not being an offence under sections 4 to 50, inclusive;

“confirming authority” means a confirming authority referred to in section 102(1);

“convening authority” means any person empowered by warrant to convene courts martial;

“council of review” means the council of review appointed in terms of section 143;

“court martial” means a court martial convened by virtue of section 68 or 69;

“defending officer” means an officer subject to this Code with knowledge of law assigned by a convening authority to undertake the defence at a trial by court martial of an accused not represented by a legal practitioner;

“desert”, in relation to any person, includes, without in any way limiting its ordinary meaning -

- (a) being absent without leave while on service from the unit or formation of such person with the intention of avoiding service;
- (b) missing any form of transport, by which such person has been warned to travel, with the intention of not accompanying his or her unit or formation on service or not proceeding on service;
- (c) failing to report for any service under the Act within seven days after having been called up for such service;
- (d) being, in circumstances other than those contemplated in paragraph (a), absent without leave for a continuous period exceeding 90 days; and

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- (e) accepting any employment other than in the Defence Force while such person has not obtained his or her official discharge or release from that Force,

and “desertion” has a corresponding meaning;

“enemy” means soldiers of a foreign military force engaged in armed conflict with the Defence Force, and includes any armed rebels or mutineers;

“field punishment” means the performance in custody in the field of such labour and extra drills and duties as may be prescribed;

“field rank” means any rank not lower than that of major or any equivalent rank;

“hospital” includes any military medical institution for the treatment of patients;

“institution” means a club, mess or trading or other institution established or conducted under section 86 of the Act and any fund controlled under the regulations;

“legal practitioner” means a person who, in terms of the Legal Practitioners Act, 1995 (Act No. 15 of 1995), has been admitted and authorized to practise as a legal practitioner or is deemed to have been so admitted and authorized;

“legal representative” means any legal practitioner, and includes a defending officer;

“member”, when used in relation to a court martial or board of inquiry, includes the president thereof ;

“Mental Health Act” means the Mental Health Act, 1973 (Act No. 18 of 1973);

“oath” includes a solemn declaration or affirmation;

“pay” means -

- (a) in relation to any person other than a person referred to in paragraph (b), all amounts to which such person is entitled in respect of any training, duty or service undergone or performed by that person as a member of the Defence Force, but does not include amounts payable to such person under the laws relating to the grant of pension to staff members of the Public Service; and
- (b) in relation to a person suspended under this Code, the net amount to which such person is entitled in respect of any training, duty or service so undergone or performed after all applicable statutory deductions have been effected;

“prescribed” means prescribed by rule made under section 40 of the Act;

“Prisons Act” means the Prisons Act, 1998 (Act No. 17 of 1998);

“public property” means any property -

- (a) belonging to or in the possession or under the control of the Government of Namibia; or

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(b) belonging to any force acting in co-operation with the Defence Force;

“safeguard” means a group of soldiers detached for the protection of any person or of any place, including any village or house or other property;

“service” means service in defence of Namibia or in the prevention or suppression of internal disorder in Namibia or of terrorism;

“superior officer”, in relation to a person subject to this Code, means any officer, warrant officer or non-commissioned officer subject to this Code who holds a higher rank than such person, or who holds the same or an equivalent rank but is in a position of authority over such person;

“vary” includes alter, remit, mitigate and commute.

(2) Except as otherwise provided in this Code, any reference in this Code to a particular section is to be construed as a reference to that section of this Code.

Application of Code

2. (1) Except as otherwise provided in the Act, this Code also applies to all persons not otherwise subject thereto who, with the consent of the commanding officer of any portion of the Defence Force, accompany or perform duty with or are under training with that portion of that Force.

(2) Any person subject to this Code by virtue of any consent given under subsection (1), is so subject thereto -

- (a) where such consent has been given in writing, on the basis indicated in such consent; or
- (b) where such consent has not been given in writing, on the basis on which such person has been accepted and treated for living and messing facilities.

Application of Code beyond area of compulsory service

3. (1) Any person subject to this Code who in time of national defence or during any deployment, and owing to circumstances connected with such national defence or deployment, is moved or taken beyond the area in which such person may be required to render service, remains at all times subject to this Code as if such person were within the said area, until such person’s return thereto can reasonably be effected.

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(2) For the purposes of this section, “deployment” means a deployment contemplated in section 32(2) of the Act.

Offences endangering safety of forces punishable with life imprisonment

4. Any person who, being on service -
- (a) without reasonable cause abandons or surrenders or induces or compels any other person on service without reasonable cause to abandon or surrender any garrison, place, post, guard, aircraft or vessel which it was the duty of such person or such other person to defend;
 - (b) with intent to commit treason, communicates with or gives intelligence to the enemy;
 - (c) with intent to commit treason, makes known the watchword or countersign to any person not entitled to receive it or treacherously gives a watchword or countersign different from what such person received;
 - (d) goes over to the enemy;
 - (e) having been taken a prisoner of war, voluntarily serves with or aids the enemy;
 - (f) gives to the enemy or assists the enemy in acquiring arms or ammunition or any material or equipment;
 - (g) knowingly commits any act calculated to imperil the success or safety of the Defence Force or any forces co-operating with the Defence Force or any part of any such forces; or
 - (h) conspires with any other person to mutiny or cause mutiny in the Defence Force or joins in any such mutiny,

commits an offence and is liable on conviction to imprisonment for life.

Offences by person in command of troops, vessels or aircraft

5. Any person in command of troops of the Defence Force or of any vessel or aircraft who -
- (a) when such person’s duty requires him or her to engage the enemy, fails to do so or to do so as expeditiously or effectively as circumstances permit;
 - (b) being in action, without proper cause withdraws from the action or forsakes such person’s post; or
 - (c) improperly fails to pursue an enemy or to consolidate any portion gained,

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commits an offence and is liable on conviction to imprisonment for a period not exceeding ten years.

Offences in relation to conduct in action

6. Any person who -
- (a) without reasonable cause and in the presence of the enemy abandons or casts away any arms, ammunition, equipment or tools;
 - (b) behaves before the enemy in such manner as to show cowardice;
 - (c) improperly delays or discourages any action against the enemy;
 - (d) improperly does or omits to do anything which -
 - (i) results or is calculated to result in the capture by the enemy of a member of the Defence Force or of any forces co-operating with the Defence Force;
 - (ii) endangers or is calculated to endanger any member referred to in subparagraph (i); or
 - (iii) results or is calculated to result in the capture or destruction by the enemy of any aircraft, vessel, arms, ammunition or other material used for military or defence purposes;
 - (e) In action or before going into action, acts in a manner or uses words calculated to create alarm or despondency;
 - (f) without authority communicates with the enemy or sends a flag or signal of truce to the enemy;
 - (g) knowingly harbours or protects an enemy, not being a prisoner of war; or
 - (h) is taken prisoner of war through want of precaution, neglect of duty or disobedience to orders, or having been taken prisoner of war fails to rejoin the Defence Force when able to do so,

commits an offence and is liable on conviction to imprisonment for a period not exceeding ten years.

Offences relating to failure to report activities likely to endanger safety of Defence Force

7. Any person who, being aware or having reasonable suspicion that any other person -
- (a) is communicating with the enemy or giving intelligence to the enemy;

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- (b) is giving to the enemy or is assisting the enemy to acquire arms, ammunition or any material or equipment; or
- (c) is about to commit any act calculated to imperil the success or safety of the Defence Force or any forces co-operating with the Defence Force or any part of any such forces,

fails to report without delay to his or her superior officer the facts within his or her knowledge concerning the activities or contemplated or suspected activities of such other person, commits an offence and is liable on conviction to imprisonment for a period not exceeding ten years.

Offences relating to signals, watchwords and disclosure of information

- 8.** (1) Any person who -
- (a) without authority or contrary to such person's duty in any way uses, alters, adjusts or interferes with any instrument, machine or device designated or used for signalling, directing or detecting;
 - (b) without authority or contrary to such person's duty alters, mutilates or delays any signal;
 - (c) makes known the parole, watchword or countersign to any person not entitled to receive it;
 - (d) wilfully or negligently gives or conveys to a person entitled to receive it, any parole, watchword or countersign different to that which such first-mentioned person has received;
 - (e) without proper authority discloses any information concerning -
 - (i) the numbers, movements, location or preparations of the Defence Force or any forces co-operating with the Defence Force; or
 - (ii) any weapons, aircraft, vessels, stores, machines, instruments, devices or signal codes used or intended for use by the Defence Force or any such forces,
- to the prejudice of the Defence Force or any such forces; or
- (f) contrary to such person's duty discloses the contents of any document or is negligent in the performance of any duty, in consequence of which an unauthorized person becomes or might become aware of the contents of any document, to the prejudice of the Defence Force,

commits an offence.

- (2) A person convicted of a contravention of subsection (1) is liable -

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- (a) in the case where such person committed the offence while on service, to imprisonment for a period not exceeding five years;
- (b) in any other case, to imprisonment for a period not exceeding two years.

Interference with aircraft, vehicles, vessels, weapons, machines or instruments

9. Any person who, in circumstances not amounting to an offence under any other provision of this Code, contrary to such person's duty or without proper authority alters, adjusts or interferes with -

- (a) any aircraft, motor vehicle, vessel, weapon, machine or instrument used or intended for use by the Defence Force; or
- (b) any part or accessory of any aircraft, motor vehicle, vessel, weapon, machine or instrument used or intended for use by the Defence Force,

commits an offence and is liable on conviction to imprisonment for a period not exceeding two years.

Mutiny

10. Any person who, in circumstances not amounting to an offence under any other provision of this Code -

- (a) conspires with any other person to mutiny or to cause a mutiny;
- (b) joins in any mutiny;
- (c) being present at a mutiny, fails to do such person's utmost to suppress the mutiny; or
- (d) being aware or suspecting that any other person is conspiring to cause any mutiny or has joined in any mutiny, fails to report without delay to his or her superior officer all the facts within his or her knowledge in that regard,

commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

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Interference with guards, sentries or watchkeepers

- 11.** (1) Any person who -
- (a) forces or evades any safeguard;
 - (b) assaults a sentry or watchkeeper;
 - (c) in any manner whatever prevents a sentry or watchkeeper from doing his or her duty;
or
 - (d) occasions false alarm,

commits an offence.

- (2) A person convicted of a contravention of subsection (1) is liable -
- (a) in the case where such person committed the offence while on service, to imprisonment for a period not exceeding five years;
 - (b) in any other case, to imprisonment for a period not exceeding one year.

Dereliction of duty by sentry or watchkeeper

- 12.** (1) Any person who -
- (a) while on sentry duty or on duty as a watchkeeper -
 - (i) leaves such person's post before he or she is regularly relieved;
 - (ii) sleeps; or
 - iii) is under the influence of intoxicating liquor or narcotic drugs; or
 - (b) while on duty with such person's unit or at a post or guard, leaves such unit, post or guard without orders or good and sufficient cause,

commits an offence.

- (2) A person convicted of a contravention of subsection (1) is liable -
- (a) in the case where such person committed the offence while on service, to imprisonment for a period not exceeding five years;
 - (b) in any other case, to imprisonment for a period not exceeding one year.

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Desertion

13. Any person who deserts from the Defence Force commits an offence and is liable on conviction -

- (a) in the case where such person committed the offence while on service, to imprisonment for a period not exceeding ten years;
- (b) in any other case, to imprisonment for a period not exceeding two years.

Absence without leave and non-attendance where required to attend

14. Any person who -

- (a) absents himself or herself without leave;
- (b) fails to appear at a place of parade or duty or at any other place appointed by such person's commanding officer, or leaves any such place without good and sufficient cause; or
- (c) being required to attend any school or other educational institution, whether civilian or otherwise, fails to attend thereat or absents himself or herself therefrom without leave,

commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Assaulting superior officer

15. Any person who assaults or points a firearm at or draws any weapon against such person's superior officer, commits an offence and is liable on conviction to imprisonment for a period not exceeding three years.

Assaulting or ill-treating subordinate

16. Any person who assaults or points a firearm at or draws any weapon against or ill-treats any other person who is by reason of rank or appointment subordinate to him or her, commits an offence and is liable on conviction to imprisonment for a period not exceeding three years.

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Using threatening or insulting language or displaying insubordination

17. Any person who uses threatening or insulting language to, or by word or conduct displays insubordination or behaves with contempt towards, such person's superior officer commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Malingering, feigning disease, maiming or injuring

- 18.** Any person who -
- (a) malingers or feigns disease or infirmity;
 - (b) maims or injures himself or herself with the intention of avoiding any service or duty;
 - (c) wilfully commits or omits to perform an act in consequence whereof such person becomes or is likely to become unable to perform any service or duty; or
 - (d) wilfully maims or injures any other person who is subject to this Code, whether at the request or with the connivance of such other person or otherwise, thereby rendering such other person unfit for service or duty,

commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

Disobeying lawful commands or orders

19. (1) Any person who in wilful defiance of authority disobeys any lawful command given personally by such person's superior officer in the execution of his or her duty, whether orally, in writing or by signal, commits an offence and is liable on conviction -

- (a) in the case where such person committed the offence while on service, to imprisonment for a period not exceeding five years;
- (b) in any other case, to imprisonment for a period not exceeding two years.

(2) Any person who disobeys any lawful command given by such person's superior officer, in circumstances not amounting to an offence under subsection (1), commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

(3) Any person who disobeys any lawful direction of the commander of any aircraft or vessel in which such person is being conveyed, whether such commander is a member of any armed force or a civilian, and irrespective of the rank or status of such commander, commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

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(4) Any person who, being a patient in any hospital, wilfully disobeys any lawful direction concerning such person's hospital or medical treatment, given to such person by any member of the hospital staff within whose hospital duty and authority it is to give such direction, commits an offence and is liable on conviction to imprisonment for a period not exceeding six months.

(5) Any person who neglects to obey any unit, formation or force order of which it is such person's duty to have knowledge, commits an offence and is liable on conviction to imprisonment for a period not exceeding six months.

Theft of public or other property

- 20.** (1) Any person who -
- (a) steals any public property or property belonging to any institution;
 - (b) steals any property belonging to a person who is subject to this Code; or
 - (c) receives or possesses any property referred to in paragraph (a) or (b) knowing such property to have been stolen,

commits an offence.

- (2) A person convicted of a contravention of subsection (1) is liable -
 - (a) in the case of an offence under subsection (1)(a), to imprisonment for a period not exceeding ten years;
 - (b) in the case of an offence under subsection (1)(b), to imprisonment for a period not exceeding two years;
 - (c) in the case of an offence under subsection (1)(c), to the penalty prescribed in paragraph (a) or (b), depending on whether the property received was property referred to in subsection (1)(a) or property referred to in subsection (1)(b).

Offences in relation to acquisition or disposal of public property

- 21.** Any person who -
- (a) without authority sells, barter or otherwise disposes of or lends or pledges any public property or property belonging to any institution;
 - (b) being aware or suspecting that any other person is, without authority, selling, bartering or in any other way disposing of or lending or pledging property

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referred to in paragraph (a), fails to report without delay to his or her superior officer all the facts within his or her knowledge in that regard;

- (c) when it is such person's duty to acquire by purchase or otherwise any property for the use of the Defence Force or any institution, demands, solicits or accepts contrary to such person's duty any commission, fee, reward or personal advantage in respect of such acquisition;
- (d) having acquired property which it was such person's duty to acquire by purchase or otherwise for the use of the Defence Force or any institution, fails or neglects to cause such property to be delivered to an appropriate place or store; or
- (e) agrees to pay or connives at the payment of any exorbitant price for any property purchased for the use of the Defence Force or any institution,

commits an offence and is liable on conviction to imprisonment for a period not exceeding ten years.

Causing or allowing vehicle, vessel or aircraft to be endangered, stranded or wrecked

22. Any person who wilfully or negligently causes or allows any vehicle, vessel or aircraft, being public property, to be endangered, stranded or wrecked, commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

Abandoning public property or diverting or detaining supplies

- 23.** Any person who -
- (a) without good and sufficient cause wilfully abandons, damages or destroys any public property or property belonging to any institution; or
 - (b) improperly diverts or detains supplies,

commits an offence and is liable on conviction to imprisonment for a period not exceeding two years.

Negligently losing kit, arms, equipment or other property

- 24.** Any person who -
- (a) negligently loses such person's kit, arms or equipment or any public property or any property issued to such person at public expense for personal use in the execution of such person's duties; or

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- (b) negligently damages or destroys any public property or any property issued to such person at public expense for personal use in the execution of such person's duties,

commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Negligently or wilfully causing damage to or destruction of public property

25. Any person who -

- (a) negligently or wilfully commits any act which causes or is likely to cause damage to or destruction of public property or property belonging to any institution; or
- (b) negligently or wilfully omits to take action to prevent damage to or destruction of public property or property belonging to any institution,

commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Deficiencies in stores, stocks or moneys

26. Any person who, being responsible for stores, stocks or moneys in any store, office or institution of the Defence Force, negligently performs such person's duty so as to cause any deficiency in such stores, stocks or moneys, commits an offence and is liable on conviction to imprisonment for a period not exceeding two years.

Using or taking article issued to or under control of another person

27. Any person who -

- (a) improperly uses or takes or removes from the possession or control of any other person who is subject to this Code any article issued to such other person for personal use in the execution of his or her duties or the personal property of such other person without the permission of that person;
- (b) without proper authority takes or removes any article, being public property, from its appointed place, or uses such article for any purpose otherwise than in the public interest; or
- (c) without proper authority uses or takes or removes from its appointed place any article belonging to any institution,

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commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Offences in relation to driving of vehicles and flying of aircraft

- 28.** Any person who -
- (a) drives any motor vehicle, being public property, in a negligent or reckless manner or at an excessive speed or while such person is under the influence of intoxicating liquor or narcotic drugs; or
 - (b) flies any aircraft, being public property, in a negligent or reckless manner or at an unauthorized altitude or while such person is under the influence of intoxicating liquor or narcotic drugs,

commits an offence and is liable on conviction, where no other penalty is specially prescribed in this Code, to imprisonment for a period not exceeding two years.

Fraudulent enlistment

- 29.** (1) Any person who -
- (a) being a member of any portion of the Defence Force and not having been regularly discharged therefrom, enrolls in any other portion of that Force;
 - (b) having been discharged with disgrace from the Defence Force or from a military, naval or air force of any country, enrolls in the Defence Force without disclosing such discharge with disgrace at the time of enrolment; or
 - (c) wilfully gives a false answer to any question set forth on any enrolment or enlistment document,

commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

(2) For the purposes of subsection (1)(b), “discharge with disgrace” means dismissed because of misconduct or discharged on account of imprisonment.

(3) Any person who, having given a false answer to any question set forth on an enrolment or enlistment document, is thereupon enrolled as a member of the Defence Force, is deemed to have been subject to this Code at the date on which such false answer was given.

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False statements in official documents

- 30.** Any person who -
- (a) knowingly or negligently makes a false statement or entry in a document made or signed by such person that is required or made for official purposes;
 - (b) orders any other person to make or sign a statement or entry in a document that is required or made for official purposes, knowing such statement or entry to be false;
 - (c) when signing a document that is required or made for official purposes leaves in blank any material part for which such person's signature is a voucher;
 - (d) with intent to deceive, alters, defaces, suppresses or makes away with any document required, made, kept or issued for official purposes; or
 - (e) forges any signature on any document required, made, kept or issued for official purposes, or uses any document for official purposes knowing the signature thereon to be forged,

commits an offence and is liable on conviction to imprisonment for a period not exceeding two years.

False statements in writing

31. Any person who in any complaint made and lodged by such person or in any document prepared or signed by such person relating to the Defence Force or any member thereof or affecting any interest of that Force or any such member, knowingly makes a false statement, commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

False accusations or statements

32. Any person who makes any false accusation or statement against or concerning any other person who is subject to this Code, commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Offences in relation to redress of wrongs

- 33.** (1) Any person who -
- (a) when a complaint by another person who is subject to this Code has been lodged with such person, unduly delays in redressing the wrong complained of or referring the complaint to higher authority in accordance with this Code; or

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- (b) complains to higher authority or to the Minister when it is such person's duty to direct the complaint to such person's commanding officer or other authority as directed in this Code,

commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

(2) Subsection (1)(b) does not apply in respect of a complaint lodged with the Office of the Ombudsman.

Scandalous behaviour

34. Any officer who behaves in a manner unbecoming the character of an officer commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

Drunkenness and other offences relating to intoxicating liquor

35. Any person who -

- (a) is drunk while on duty;
- (b) is drunk off duty and behaves in an unbecoming manner;
- (c) becomes unfit for the proper performance of such person's duty by the excessive use of alcohol or narcotic drugs; or
- (d) purchases, receives, uses or carries about intoxicating liquor while such person -
 - (i) is on duty; or
 - (ii) except as otherwise prescribed, is in military uniform,

commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

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Offences in relation to court martial

- 36.** (1) Any person who -
- (a) having been duly subpoenaed or warned to attend as a witness before a court martial, without sufficient cause fails to attend or to remain in attendance until authorized to leave;
 - (b) being present at a court martial after having been duly subpoenaed or warned to attend as a witness, refuses to be sworn or to affirm as a witness;
 - (c) when giving evidence at a court martial -
 - (i) refuses to answer any question which in law such person could be compelled to answer; or
 - (ii) fails or refuses to produce any document or thing in such person's possession or under such person's control which in law such person could be compelled to produce; or
 - (d) uses threatening or insulting language at a court martial or wilfully causes a disturbance or interruption thereof or wilfully commits any other act calculated or likely to bring such a court into contempt, ridicule or disrepute,

commits an offence and is liable on conviction to imprisonment for a period not exceeding six months.

(2) The court martial at a sitting whereof an offence mentioned in subsection (1)(d) is committed, may summarily order the offender -

- (a) to be imprisoned for a period not exceeding 21 days; or
- (b) to undergo any less severe punishment to which a person convicted of an offence under this Code by a court martial could be sentenced.

(3) An order issued under subsection (2) has the same effect and may be executed in the same manner as if it were a sentence imposed by a court martial in the course of a trial in respect of an offence under this Code before such a court.

(4) Section 97 applies in connection with any order issued under subsection (2).

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False evidence before court martial

37. Any person who at a court martial wilfully gives false evidence, commits an offence and is liable on conviction to imprisonment for a period not exceeding the maximum period of imprisonment which could in terms of this Code be imposed in respect of any offence which formed the subject of the charge in connection with which such evidence was given.

Refusing to answer questions or produce documents, or giving false evidence at preliminary investigation, summary trial or board of inquiry

38. (1) Any person who -
- (a) having been duly subpoenaed or warned to attend as a witness before a preliminary investigation, summary trial or board of inquiry, without sufficient cause fails to attend or to remain in attendance until authorized to leave;
 - (b) being present at a preliminary investigation, summary trial or board of inquiry after having been duly subpoenaed or warned to attend as a witness, refuses to be sworn or to affirm as a witness;
 - (c) when giving evidence at a preliminary investigation, summary trial or board of inquiry -
 - (i) refuses to answer any question which in law such person could be compelled to answer; or
 - (ii) fails or refuses to produce any document or thing in such person's possession or under such person's control which in law such person could be compelled to produce; or
 - (d) uses threatening or insulting language at a preliminary investigation, summary trial or board of inquiry or wilfully causes a disturbance or interruption thereat or wilfully commits any other act calculated or likely to bring the recording officer, trial officer or board of inquiry into contempt, ridicule or disrepute,

commits an offence and is liable on conviction to imprisonment for a period not exceeding three months.

(2) Any person who at any board of inquiry, preliminary investigation or summary trial under this Code wilfully gives false evidence, commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

(3) For the purposes of this section, "summary trial" means a trial under section 61, 62 or 63.

Obstruction in relation to arrest, custody or confinement of a person subject to this Code

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- 39.** Any person who -
- (a) resists or wilfully obstructs any member of the Defence Force in the performance of any duty relating to the arrest, custody or confinement of a person who is subject to this Code;
 - (b) when called upon by any member of the Defence Force, refuses or neglects to assist that member in the performance of any duty referred to in paragraph (a); or
 - (c) when called upon by any appropriate civil authority to deliver over any person under such person's control, accused of an offence punishable by civil court, fails or neglects to do so,

commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Offences in relation to arrest

- 40.** Any person who -
- (a) without due and just cause orders a person into arrest or custody;
 - (b) unnecessarily detains a person in arrest or custody;
 - (c) contrary to such person's duty fails to bring the case of a person under arrest or in custody before the proper authority within the prescribed time; or
 - (d) having committed a person to the custody of an authorized person, fails to deliver to such authorized person within 24 hours of such committal an account in writing signed by himself or herself of the offence with which the person so committed is charged,

commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Resisting arrest

- 41.** Any person who -
- (a) being ordered into arrest, refuses to obey such order or assaults the person ordering him or her into arrest;
 - (b) being ordered into arrest, resists the person whose duty it is to apprehend him or her or have him or her in charge;
 - (c) assaults any person in whose custody he or she has been placed;

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- (d) escapes from custody; or
- (e) hinders or obstructs any person lawfully carrying out a search of his or her person, personal kit or belongings or his or her living quarters,

commits an offence and is liable on conviction to imprisonment for a period not exceeding two years.

Offences in relation to a person in custody

- 42.** Any person who -
- (a) without reasonable excuse allows any person committed to his or her custody or charge to escape;
 - (b) without proper authority releases any person committed to his or her custody or charge; or
 - (c) uses unnecessary force against any person in custody or otherwise ill-treats such person,

commits an offence and is liable on conviction to imprisonment for a period not exceeding two years.

False representations concerning rank

43. Any person who holds himself or herself out to be the holder of a rank other than his or her own rank in the Defence Force, whether such holding out is by the wearing of rank badges, rank stripes or other insignia of rank or in any other manner, commits an offence and is liable on conviction to imprisonment for a period not exceeding six months.

Offences in relation to orders, decorations or medals

- 44.** Any person who knowingly wears -
- (a) any order, decoration, medal or clasp or any order, decoration or medal ribbon or wound stripe to which such person is not entitled; or
 - (b) any badge, emblem, colours or other insignia of a political organization,

commits an offence and is liable on conviction to imprisonment for a period not exceeding three months.

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Riotous or unseemly behaviour

- 45.** Any person who -
- (a) at any time behaves in a riotous or an unseemly manner; or
 - (b) when able to do so, does not suppress any riotous or unseemly behaviour by any person who is subject to this Code,

commits an offence and is liable on conviction to imprisonment for a period not exceeding six months.

Conduct prejudicial to military discipline

46. Any person who by act or omission causes actual or potential prejudice to good order and military discipline, commits an offence and is liable on conviction to imprisonment for a period not exceeding one year.

Civil offences committed outside Namibia

47. Any person who outside Namibia commits or omits to do any act in circumstances under which such person would, if he or she had committed or omitted to do that act in Namibia, have committed a civil offence, commits an offence under this Code and is liable on conviction to any penalty which could under section 92 be imposed by a court martial in respect of such an offence, but no such penalty of such a nature that it could, if the offence in question had been committed within Namibia, have been imposed by any competent civil court, may exceed the maximum penalty that could be imposed in respect of such an offence by that civil court.

Aiding, abetting, inciting, inducing, instigating, instructing or commanding

- 48.** Any person who -
- (a) aids, abets, incites, induces, instigates, instructs or commands any other person to commit an offence under this Code; or
 - (b) procures the commission of such an offence,

commits an offence and is liable on conviction to the penalties prescribed in this Code for the principal offence.

Defeating course of justice

49. Any person who, with intent to defeat or obstruct the course of justice, assists or harbours any other person who to such person's knowledge has committed an offence under this

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Code, commits an offence and is liable on conviction to the penalties prescribed in this Code for the offence committed by the person so assisted or harboured.

Attempt

50. Any person who attempts to commit any offence under this Code, commits an offence and is liable on conviction to the penalties prescribed in this Code for the offence such person so attempted to commit.

Alternative penalties

- 51.** (1) Subject to subsection (2), the court convicting any person -
- (a) of an offence under section 4 may, instead of imposing on that person a sentence of life imprisonment, impose on that person any other penalty within the jurisdiction of that court;
 - (b) of any other offence under this Code may, instead of imposing on that person any penalty prescribed in this Code in respect of such offence, impose on that person any other penalty within the court's jurisdiction which is provided for in this Code in respect of any offence, not being a more severe penalty than the maximum penalty so prescribed,

but only if the court is satisfied that substantial and compelling circumstances exist which justify the imposition of such other penalty.

(2) An alternative penalty imposed under subsection (1) must be in conformity with section 61, 62, 63 or 92, whichever may be applicable.

Arrest

- 52.** (1) Any person who -
- (a) in the presence of such person's superior officer commits an offence under this Code; or
 - (b) is on reasonable grounds suspected by such person's superior officer of having committed an offence under this Code,

may be arrested or ordered into arrest by that superior officer.

- (2) Subject to subsection (3), any person who -
- (a) is engaged in any mutiny or riotous or unseemly behaviour; or

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- (b) commits a capital civil offence or culpable homicide or an offence under section 4 or any other prescribed offence,

may be arrested by any person subject to this Code in whose presence such person is so engaged or commits any such offence.

(3) An officer is not liable to arrest under subsection (2) by any person other than an officer.

(4) A person who under this section arrests any other person or orders any other person into arrest must forthwith inform the person so arrested of the reason for the arrest.

Search

53. (1) Whenever it appears to a convening authority from information contained in at least one sworn statement that there are reasonable grounds for suspecting that there is on any person subject to this Code who is under that convening authority's command, or upon or at or in any premises, place, vehicle, vessel, aircraft or receptacle of whatever nature belonging to or occupied by or under the control of the Defence Force within the area in which that convening authority exercises command -

- (a) stolen property or anything with respect to which any offence under this Code has been or is suspected on reasonable grounds to have been committed;
- (b) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence,

that convening authority may in writing authorize any superior officer of the person on whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at or in which such property or thing is suspected to be -

- (i) to search such person, place, vehicle, vessel, aircraft or receptacle or any other person found upon or in such premises, place, vehicle, vessel, aircraft or receptacle; and
- (ii) to seize any such property or thing, if found, and to deliver it safely to the commanding officer of the person on whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at or in which such property or thing was found.

(2) If an officer of field rank believes on reasonable grounds that the delay in obtaining written authority under subsection (1), would defeat or prejudice the object of a search,

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that officer may, if he or she is the superior officer of the person on whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at or in which such property or thing is suspected to be, authorize the search without such authority.

(3) A search under subsection (1) or (2) must be conducted in the presence of the person on whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at or in which the property or thing in question is suspected to be.

(4) Notwithstanding subsection (3), such search may be made in the absence of the person concerned if -

- (a) the delay in securing the presence of that person is likely to prejudice the object of the search; or
- (b) that person's presence cannot, with due regard to the exigencies of the service, be readily secured,

but then only in the presence of one or more persons who are subject to this Code.

(5) To the extent that this section authorizes the interference with a person's fundamental right to privacy by conducting a search thereunder, such interference is authorized only on the grounds of the prevention of crime and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution.

Jurisdiction of civil courts

54. Nothing in this Code affects the jurisdiction of any civil court in Namibia to try a person for any offence within its jurisdiction.

Person convicted or acquitted not to be tried again

55. No person who has been convicted or acquitted by a competent civil or military court of an offence is triable by a military court for the same offence or any other offence of which such person might have been convicted (by the court which tried him or her in the first instance) on a charge of the first-mentioned offence.

Civil offence may be tried under this Code

56. A person who is subject to this Code may be tried by a military court having jurisdiction for any civil offence (other than treason, murder, rape or culpable homicide committed by such person within Namibia), and may in respect of that offence be sentenced to any penalty within the jurisdiction of the military court convicting such person.

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Territorial jurisdiction of military court

57. Any person charged with an offence in respect of which a military court has jurisdiction, may be tried and punished for that offence at any place by such a court having jurisdiction in respect of such person at the time of the commencement of the trial.

Prescription of offences

58. (1) Subject to subsection (2), no person is triable by a military court for any offence in respect of which that military court has jurisdiction unless the trial commences within three years after the date of the commission of the offence.

(2) A person charged with a capital civil offence committed by such person outside Namibia or an offence under section 4, 10, 13 or 29 may be tried by a competent military court at any time after the commission of the offence.

Trial under this Code when person no longer subject to Code

59. (1) Any person who, while such person is subject to this Code, commits an offence in respect of which a military court has jurisdiction, and who ceases to be subject to this Code before being tried and punished for that offence, may -

- (a) in the case where the offence is a capital civil offence committed outside Namibia or an offence under section 4, 10, 13 or 29, be tried and punished for that offence by that military court at any time after such person has ceased to be subject to this Code;
- (b) in the case where the offence is an offence other than one contemplated in paragraph (a), but subject to section 58, be tried and punished for that offence by that military court at any time within a period of three months after such person has ceased to be subject to this Code.

(2) For the purpose of effecting the arrest of a person referred to in subsection (1), bringing such person to trial and imposing punishment, such person is deemed to be subject to this Code in the rank and status such person had at the time of the commission of the offence.

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Person arrested to be brought before officer

60. (1) A person charged with an offence other than an offence which in terms of section 56 may not be tried by a military court must, within the prescribed period, be brought before a prescribed officer who must -

- (a) try such person summarily; or
- (b) direct that a preliminary investigation be held.

(2) A preliminary investigation contemplated in subsection (1)(b) must be held by a prescribed officer in the prescribed manner.

Jurisdiction of chief of staff

61. Subject to section 64, a chief of staff may, in such manner and under such conditions and for such offences as may be prescribed, try summarily any officer of the rank of lieutenant-colonel or major or of equivalent rank and subject to this Code who is under the command of that chief of staff, and may on conviction sentence such officer -

- (a) to a fine not exceeding N\$2 500;
- (b) to reversion from any acting or temporary rank to such officer's substantive rank;
or
- (c) to a reprimand.

Jurisdiction of convening authority

62. Subject to section 64, a convening authority may, in such manner and under such conditions and for such offences as may be prescribed, try summarily any officer below field rank or any warrant officer subject to this Code who is under the command of that convening authority, and may on conviction sentence the offender to a fine not exceeding N\$2 000 or to such lesser penalty as may be prescribed.

Jurisdiction of commanding officer

63. (1) Subject to section 64, any commanding officer may, in such manner and under such conditions and for such offences as may be prescribed, try summarily any person (other than an officer or a warrant officer) subject to this Code who is under the command of that commanding officer, and may on conviction sentence such person -

- (a) in the case of a non-commissioned officer -

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- (i) to a fine not exceeding N\$2 000;
 - (ii) to reversion from any acting or temporary non-commissioned rank to such person's substantive rank; or
 - (iii) to a reprimand; or
- (b) in the case of a private -
- (i) subject to subsection (2), to detention or field punishment for a period not exceeding 40 days;
 - (ii) to a fine not exceeding N\$1 500; or
 - (iii) to a reprimand,

or in either case to such other penalties as may be prescribed.

(2) The field punishment referred to in subsection (1)(b)(i) may be imposed only outside Namibia.

(3) A convening authority may in writing authorize any officer under the command of that convening authority to exercise all or any of the powers conferred on a commanding officer by subsection (1).

(4) A commanding officer may in writing delegate to any officer under his or her command all or any of the powers conferred on him or her by subsection (1).

(5) For the purposes of this section, "commanding officer" means any officer who has been empowered under subsection (3) to exercise all or any of the powers contemplated in that subsection, and includes any officer to whom powers have been delegated under subsection (4).

Objections to trial officer

64. (1) No person charged with an offence in respect of which a military court has jurisdiction has the right to object to being tried by an officer authorized thereto by or under section 61, 62 or 63 or by this section, except on the ground that the officer concerned has such knowledge concerning the facts of the case that that officer's decision is likely to be prejudiced thereby.

(2) An objection under subsection (1) must be heard and determined by the officer against whom the objection is raised, and that officer must record the objection and his or her finding thereon, and -

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- (a) if the objection is overruled, that officer must proceed with the trial of the accused; or
 - (b) if the objection is upheld, the chief of staff, convening authority or commanding officer concerned must, subject to subsection (3), delegate power to try the accused to any other appropriate officer.
- (3) If a commanding officer with delegated powers upholds an objection as contemplated in subsection (2)(b), that officer must report to the commanding officer who delegated those powers, who may thereupon -
- (a) himself or herself try the accused; or
 - (b) delegate power to try the accused to any other appropriate officer.

Review of sentences passed by commanding officer

65. (1) Whenever an officer has by virtue of powers vested in that officer by or under section 63 or 64, convicted an offender at a trial under section 63, that officer must as soon as possible cause the record of the proceedings to be sent for review to the appropriate convening authority.

(2) A convening authority to whom the record of proceedings has been sent in terms of subsection (1) may, after three days from the date of the conviction, exercise with the necessary changes in respect of those proceedings the powers conferred on the council of review by section 114(1), (2) and (3).

Review of sentences passed by convening authority

66. (1) Whenever a convening authority or an officer to whom powers have been delegated by the convening authority in terms of section 64(2)(b), has convicted an offender at a trial under section 62, that convening authority or officer must as soon as possible cause the record of the proceedings to be sent for review to the appropriate chief of staff.

(2) A chief of staff to whom the record of proceedings has been sent in terms of subsection (1) may, after three days from the date of the conviction, exercise with the necessary changes in respect of those proceedings the powers conferred on the council of review by section 114(1), (2) and (3).

(3) After exercising the powers contemplated in subsection (2), the chief of staff concerned must submit the record of the proceedings to the Head of Defence Force Personnel.

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Review of sentences passed by chief of staff

67. (1) Whenever a chief of staff or an officer to whom powers have been delegated by the chief of staff in terms of section 64(2)(b), has convicted an offender at a trial under section 61, that chief of staff or officer must as soon as possible cause the record of the proceedings to be sent for review to the Chief of the Defence Force.

(2) Where the record of proceedings has been sent for review as required by subsection (1), the Chief of the Defence Force may, after three days from the date of the conviction, exercise with the necessary changes in respect of those proceedings the powers conferred on the council of review by section 114(1), (2) and (3).

Power to convene general courts martial

68. The President may -

- (a) convene general courts martial;
- (b) issue a warrant to the Chief of the Defence Force to convene general courts martial;
- (c) delegate power by warrant to the Chief of the Defence Force to issue warrants to officers under the command of the Chief of the Defence Force, of rank and command not below that of brigadier or its equivalent, to convene general courts martial,

for the trial of persons subject to this Code for any offence triable by a general court martial.

Power to convene ordinary courts martial

69. (1) An officer empowered by warrant to convene general courts martial may also, unless such warrant is for the convening of one or more general courts martial for the trial of named persons or a fixed number of persons -

- (a) convene ordinary courts martial;
- (b) issue warrants to officers commanding commands or to officers under his or her command, of rank and command not below that of lieutenant-colonel or its equivalent, to convene ordinary courts martial,

for the trial of persons subject to this Code for any offence triable by an ordinary court martial.

(2) For the purposes of subsection (1), “officer commanding command” means any officer commanding a command, group, brigade or any equivalent command.

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Limitation of power to confirm findings and sentences of courts martial

70. (1) Notwithstanding section 99, every person authorized by or under this Code to issue to an officer a warrant to convene courts martial may, in such warrant -

- (a) limit either generally or specially the powers of that officer to confirm the findings and sentences of courts martial convened by that officer; or
- (b) prohibit that officer from exercising the powers referred to in paragraph (a).

(2) Any person who has under subsection (1) limited the powers of any officer to confirm the findings and sentences of courts martial convened by that officer, or prohibited that officer from exercising those powers, may confirm the findings or sentences or the unconfirmed finding or sentence of any court martial which, but for such limitation or prohibition, could have been confirmed by that officer.

Convening of court martial for trial of more than one person

71. If two or more persons are charged jointly with the same offence, the officer having power to convene a court martial for the trial of the most senior in rank of those persons may convene a court martial for the joint trial of all those persons.

Jurisdiction of general court martial

72. A general court martial has jurisdiction to try any person who is subject to this Code for any offence other than an offence which in terms of section 56 is not triable by a military court, and may, subject to this Code, impose in respect of any such offence -

- (a) in the case of an offence under this Code, any penalty prescribed therein in respect of such an offence;
- (b) in the case of a civil offence, any penalty that may under section 92 be imposed in respect of an offence under this Code by a court martial, but no such penalty of such a nature that it could have been imposed in respect of that offence by any competent civil court, may exceed the maximum penalty that could be imposed in respect of such an offence by that civil court.

Jurisdiction of ordinary court martial

73. An ordinary court martial has jurisdiction to try any person who is subject to this Code, not being an officer, for any offence (other than a capital civil offence or culpable homicide committed by such person within Namibia or an offence under section 4 or 5), and may in respect of any such offence impose any penalty which could be imposed in respect thereof by a general court martial, except imprisonment for a period exceeding two years.

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Composition of general court martial

74. (1) A general court martial consists, subject to subsection (2), of not less than three or, in the case of a trial for a capital offence or culpable homicide, not less than five members, all of whom must be officers of the Defence Force who have held commissioned rank other than temporary commissioned rank for not less than three years, and is constituted and convened as prescribed, but -

- (a) the president of a general court martial may not be below the rank of colonel or its equivalent, or less than one rank above that of the accused or the most senior rank of the accused in a joint trial;
- (b) no member of a general court martial may be of lower rank than the accused or the most senior in rank of the accused in a joint trial, and not more than one member may be of the same rank as the accused or the most senior in rank of the accused in a joint trial;
- (c) a judge advocate must be appointed to every general court martial, unless the president thereof holds any of the qualifications referred to in paragraph (d); and
- (d) subject to paragraphs (a) and (b), an officer who has held commissioned rank other than temporary commissioned rank for not less than one year may be appointed as president or as another member of a general court martial, if such officer holds a degree in law of any university in Namibia or holds an equivalent degree in law of any other university recognized by the Minister for the purposes of this section.

(2) A general court martial convened by the President consists of so many members, not being more than five, as the President may determine, but no person other than an officer of the Defence Force (not being an officer holding temporary commissioned rank) or a judge or a retired judge of the Supreme Court of Namibia or of the High Court of Namibia or a practising legal practitioner of at least ten years' standing may be a member of such court martial.

(3) Paragraphs (a) and (b) of subsection (1) apply with reference to any officer appointed as a member of a general court martial convened by the President.

Composition of ordinary court martial

75. (1) Subject to subsections (2) and (3), an ordinary court martial consists of not less than three members, all of whom must be officers of the Defence Force who have held commissioned rank other than temporary commissioned rank for not less than three years, and is constituted and convened as prescribed.

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(2) The president of an ordinary court martial may not be below the rank of captain or its equivalent.

(3) An officer of the Defence Force who has held commissioned rank other than temporary commissioned rank for not less than one year may be appointed as president or as another member of an ordinary court martial, if such officer holds a degree in law of any university in Namibia or holds an equivalent degree in law of any other university recognized by the Minister for the purposes of this section.

Disqualification for service on court martial

76. (1) No officer is qualified to serve on a court martial as president or member or judge advocate, if such officer -

- (a) convened that court martial;
- (b) investigated the charge or any of the charges to be tried by that court martial;
- (c) being the commanding officer of the accused, applied for the accused's trial by court martial;
- (d) is the prosecutor or defending officer or a witness; or
- (e) has personal knowledge of any material fact or evidence relating to the charge or any of the charges.

(2) Nothing in subsection (1)(d) contained is to be construed as preventing a member of a court martial which has convicted an offender of any offence from being called by the defence as a witness to give evidence in respect of the offender's character or his or her service in the Defence Force or any other military force or in mitigation of sentence.

(3) An officer appointed to serve as president or member or judge advocate on any court martial who is not qualified to serve on such court martial, or who has any doubt as to whether he or she is so qualified -

- (a) must report to the convening authority or the president of the court martial as soon as he or she becomes aware that he or she is not qualified or of the fact giving rise to his or her doubt; and
- (b) must not serve or continue to serve on such court martial, unless the convening authority or the president is satisfied that he or she is so qualified to serve.

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Accused may object to members of court martial

77. (1) When a court martial has assembled, the names of the members thereof must be read out to the accused who must then be asked if he or she objects to be tried by any of those members.

(2) An objection by an accused under subsection (1) must be decided by the court martial in the prescribed manner.

Members of court martial to be sworn

78. (1) A court martial composed of members in respect of whom no objection has been made and sustained, must be sworn in, and for that purpose -

- (a) the president of the court martial may administer the prescribed oath to each of the members and to the judge advocate, if one has been appointed; and
- (b) the most senior in rank of the members of the court martial may administer the prescribed oath to the president.

(2) The president of a court martial or the judge advocate, if one has been appointed, may administer the prescribed oath -

- (a) to any witness at a trial before that court; and
- (b) to any interpreter or shorthand writer employed at or during the trial.

Vacancy in membership and dissolution of court martial

79. (1) If, after the commencement of a trial by a court martial -

- (a) the number of members thereof is, through death or otherwise, reduced below the minimum number required in terms of this Code, the court martial must be dissolved;
- (b) the president dies or is for any other reason unable to attend, and the number of members of the court martial is not reduced below the required minimum number -
 - (i) the convening authority must appoint the most senior in rank of those members, if of sufficient rank, to be the president; and
 - (ii) if, in the case of a general court martial, the member so appointed as president does not hold any of the qualifications referred to in section

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74(1)(d), the convening authority must also, where a judge advocate has not already been appointed, appoint a judge advocate,

but if the member referred to in subparagraph (i) is not of sufficient rank for appointment as president, the court martial must be dissolved.

(2) If on account of the illness of the accused before the finding or for any other reason it is impossible to continue the trial, the court martial must be dissolved.

(3) Where a court martial is dissolved under this section, the accused may be tried again, and in that event the accused's trial must commence anew before a new court martial.

Trial to be in open court in presence of accused

80. (1) Subject to subsections (2) and (3), the trial of any person by a court martial must be in open court in the presence of such person.

(2) A court martial may, to the extent authorized thereto by the proviso to Article 12(1)(a) of the Namibian Constitution, at any time either before the commencement or during the course of a trial order that persons other than the accused, the accused's legal representative and the necessary court officials, must not be present at the trial.

(3) A court martial may at any time order any witness, whether for the prosecution or the defence, to leave the courtroom.

(4) To the extent that subsection (2) provides for a limitation of the fundamental right to a public hearing as contemplated in paragraph (a) of Article 12(1) of the Namibian Constitution, in that it authorizes the exclusion of the public from a trial or any part thereof, such limitation is enacted on authority of the said paragraph (a).

Charge and charge sheet

81. Every charge and every charge sheet must be framed as prescribed, but so that every charge discloses the nature of the offence, the time and place of the commission of the offence and sufficient particulars to enable the accused to identify the act or omission to which the charge relates.

More than one charge may be joined in same charge sheet

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82. (1) Subject to subsection (2), any number of charges, including alternative charges, may be brought against an accused either separately or on the same charge sheet.

(2) No other charge may be brought on a charge sheet on which an accused is charged with an offence under section 4 or the civil offence of treason, murder or rape.

(3) If an accused is charged with more than one offence in the same charge sheet, except in the alternative, the court may, on the application of the accused, dispose of each charge or some of the charges separately if it is satisfied that the accused will be prejudiced in his or her defence if the trial were to proceed on all the charges simultaneously.

Joinder of persons

83. (1) Any number of persons may be charged jointly in one charge sheet with the same offence.

(2) A person who is charged jointly with one or more other persons and whose defence is likely to be prejudiced by a joint trial, may apply to be tried separately.

(3) A court martial may, in the case of a joint trial, direct that the trial of the accused persons or any of them must be held separately from the trial of the other or others of such persons.

Person charged entitled to legal representation

84. Every person charged with an offence before a court martial is entitled to be represented thereat -

- (a) by a legal practitioner of own choice at such person's own expense; or
- (b) if not represented as contemplated in paragraph (a), by a defending officer assigned by the appropriate convening authority at public expense.

Rules of evidence applicable in civil courts to apply also in military courts

85. (1) The rules of evidence as applied by the civil courts of Namibia must be followed in and by military courts.

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(2) No person is required to answer any question or to produce any document or thing which such person could not be compelled to answer or produce in similar proceedings before a civil court.

Evidence must be given orally and in open court

86. (1) Every witness appearing to give evidence at a trial before a court martial must give such evidence orally and on oath.

(2) If through incapacity a witness is unable to attend court to give evidence, the court martial may hear such evidence at that witness's home, or at any other place where the witness may be, in the presence of the accused, the accused's legal representative and the prosecutor.

Recording of proceedings

87. The judge advocate or, in the absence of a judge advocate, the president of a court martial must record or cause to be recorded the proceedings at any trial before that court.

Adjournment of court martial

88. (1) A court martial may adjourn from time to time and from place to place.

(2) If the adjournment of a court martial under subsection (1) is for a period longer than 14 days -

- (a) the accused may be released from custody for the period of the adjournment;
- (b) the president of that court must, if the accused is not released from custody under paragraph (a) for the period of the adjournment, immediately report that fact to the appropriate convening authority who may then give such directions in the matter as the convening authority may consider necessary, including the release or otherwise of the accused without prejudice to re-arrest.

(3) A court martial may adjourn to view any place or any object which cannot conveniently be brought before court, but such viewing must be in the presence of the accused, the accused's legal representative and the prosecutor.

Competent verdicts

89. (1) Any person who is charged -

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- (a) with desertion, may be found guilty of having been absent without leave;
- (b) with having used threatening language to such person's superior officer, may be found guilty of having used insulting language to or having by word or conduct display insubordination or of having behaved with contempt towards such person's superior officer;
- (c) with having by word or conduct display insubordination or of having behaved with contempt towards such person's superior officer, may be found guilty of having used insulting or threatening language to such person's superior officer;
- (d) with malingering, may be found guilty of feigning or producing disease or infirmity;
- (e) with maiming, may be found guilty of injuring;
- (f) with an offence under section 19(1), may be found guilty of having committed an offence under section 19(2);
- (g) with theft, may be found guilty of receiving or possession of stolen property knowing it to have been stolen;
- (h) with any other offence under this Code, may, failing proof of the commission of an offence in circumstances involving a higher degree of punishment, be found guilty of the same offence as having been committed in circumstances involving a lesser degree of punishment;
 - (i) with any offence under this Code, may be found guilty of having attempted to commit that offence or of having aided, abetted, incited, induced, instigated, instructed or commanded another person to commit that offence or having procured the commission of that offence.

(2) If a person is charged before a court martial with an offence under section 47, and the charge is one on which such person could, if such person had been tried by a civil court for such an offence committed within Namibia, have been found guilty of any other offence, the court martial may find such person guilty of that other offence.

(3) Where a person is charged before a court martial with a civil offence, and the charge is one on which such person could, if such person had been tried by a civil court in Namibia for such an offence, have been found guilty of any other offence, the court martial may find such person guilty of that other offence.

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Findings and sentences of court martial

90. (1) Subject to subsection (2), the finding of a court martial is determined by the vote of a majority of its members, all of whom must vote, and in the event of an equality of votes the accused must be acquitted.

(2) A finding of guilty of a capital offence requires the votes of at least two thirds of the members of a court martial.

(3) Subject to subsection (4), the sentence of a court martial and all other questions arising for decision at a trial is determined by the vote of a majority of its members, all of whom must vote, and in the event of an equality of votes the president has and must exercise a casting vote in addition to a deliberative vote.

(4) A sentence of life imprisonment may not be imposed unless at least two thirds of the members of the court martial vote in favour of that sentence.

Finding and sentence to be announced in open court

91. The finding and sentence and the decision on any other question arising at a trial must be announced by the president of the court martial to the accused in open court.

Penalties

92. (1) Whenever a court martial convicts any person of an offence, it may, subject to the maximum penalty prescribed in this Code for that offence and the limits of its own penal jurisdiction, and subject to section 94, impose on the convicted person a penalty of -

- (a) in the case of an officer -
 - (i) life imprisonment;
 - (ii) imprisonment (other than life imprisonment);
 - (iii) dismissal from the Defence Force;
 - (iv) reduction to any lower commissioned rank;
 - (v) reduction in seniority in rank;
 - (vi) a fine not exceeding N\$15 000; or
 - (vii) a reprimand; or

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- (b) in the case of a warrant officer or a non-commissioned officer -
 - (i) life imprisonment;
 - (ii) imprisonment (other than life imprisonment);
 - (iii) discharge from the Defence Force;
 - (iv) detention for a period not exceeding two years;
 - (v) reduction to any lower rank, to non-commissioned rank or to the ranks;
 - (vi) reduction in seniority in rank;
 - (vii) a fine not exceeding N\$10 000; or
 - (viii) a reprimand; or

- (c) in the case of a private -
 - (i) life imprisonment;
 - (ii) imprisonment (other than life imprisonment);
 - (iii) discharge from the Defence Force;
 - (iv) detention for a period not exceeding two years;
 - (v) field punishment for a period not exceeding three months;
 - (vi) reduction in seniority in rank;
 - (vii) a fine not exceeding N\$5 000; or
 - (viii) a reprimand.

(2) Any penalty prescribed in any subparagraph of paragraph (a), (b) or (c) of subsection (1) is for the purposes of this Code deemed to be less severe and less serious in its consequences than any penalty prescribed in any preceding subparagraph of the applicable paragraph.

One sentence imposed in respect of all charges

93. (1) Whenever an accused is convicted by a court martial of more than one offence alleged in the same charge sheet, that court may, subject to section 94, impose only one sentence in respect of all the charges.

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(2) If the sentence imposed under subsection (1) is a valid sentence in respect of any one of the charges on which the accused has been convicted, such sentence is deemed to be a valid sentence in respect of all the charges on which the accused has been convicted.

Certain provisions to apply in respect of sentences

94. (1) No other sentence may be combined with a sentence of life imprisonment.

(2) A sentence of imprisonment may not -

(a) except as otherwise provided in section 36(2), be for a shorter period than 30 days; and

(b) be combined with a sentence of field punishment or detention.

(3) An officer sentenced to imprisonment must also be sentenced to be dismissed from the Defence Force, and such dismissal must be executed before the officer concerned is lodged in any prison, gaol or other place to serve the sentence of imprisonment.

(4) A warrant officer, non-commissioned officer or private who is sentenced to imprisonment must also be sentenced to be discharged from the Defence Force.

(5) A warrant officer or non-commissioned officer who is sentenced to detention -

(a) must also be sentenced to reduction to the ranks; and

(b) may also be sentenced to be discharged from the Defence Force.

(6) Field punishment may be imposed only outside Namibia and may not be combined with a sentence of detention.

(7) Any person whose trial commences or is concluded after such person has ceased to be subject to this Code may on conviction, if a sentence of a fine is imposed, be sentenced to imprisonment for a period not exceeding two months in default of the payment of the fine.

(8) A sentence of imprisonment or detention continues to run even though the offender ceases to be subject to this Code during the currency of the sentence.

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Suspension of sentences

95. (1) Whenever a military court sentences any offender to detention or to imprisonment, it may order the operation of the whole or any portion of the sentence of detention, or the whole of the sentence of imprisonment, to be suspended for a period not exceeding three years on such conditions as that court may specify in the order.

(2) A confirming or reviewing authority may, when considering any sentence of detention for confirmation or on review, or at any later stage during the currency of the sentence, order the operation of the whole or any portion of the sentence or the unexpired portion thereof to be suspended for a period not exceeding three years on such conditions as may be specified in the order.

(3) If the operation of any sentence or the unexpired portion of a sentence has been suspended under subsection (1) or (2), and the offender has, during the period of suspension, observed all the conditions of suspension or is promoted to a higher rank in accordance with the regulations, the sentence or the unexpired portion of the sentence may not be enforced.

(4) Any authority empowered by this Code to suspend a sentence may cause an investigation to be carried out in the prescribed manner during the period of suspension of a sentence, concerning any complaint or allegation that the offender concerned has not fulfilled any condition of the suspension of the offender's sentence, and may, if satisfied that the offender has not fulfilled any such condition which the offender could reasonably have fulfilled, order that the offender be committed to serve the unexpired portion of the sentence.

(5) An offender who during the period of suspension of his or her sentence ceases to be subject to this Code must be absolved from the sentence and from compliance with the conditions, if any, of suspension of the sentence.

Court martial may order deductions or forfeitures of pay

96. Whenever a court martial imposes on any person a sentence prescribed in this Code, it may order such deductions from or forfeitures of pay of such person as may be authorized by or under this Code.

Sentence may not be enforced unless it has been confirmed

97. A sentence of a court martial may not be enforced or executed unless and until the finding and the sentence have been confirmed in accordance with the applicable provisions of this Code.

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Acquittal not subject to confirmation

98. A finding of not guilty is not subject to confirmation and becomes effective when announced in open court.

Convening authority may confirm findings and sentences of certain courts martial

99. Subject to section 100 and any limitation or prohibition which may have been imposed under section 70 on the powers of a convening authority, every convening authority may confirm the findings and sentences of courts martial convened by that convening authority.

Convening authority with limited or no powers of confirmation must reserve confirmation

100. An officer having full or limited powers to confirm the finding and the sentence of a court martial, who has served on or at a court martial as a member, judge advocate, defending officer or prosecutor or has given material evidence thereat, may not confirm the finding or the finding and the sentence of that court martial, but must reserve confirmation in terms of section 103.

Offender may make representations to confirming authority

101. (1) Any offender may, within 48 hours after having been sentenced by court martial, lodge any written representations the offender may wish to make concerning the finding or the sentence, or both, with the authority who has power to confirm the finding and the sentence.

(2) An authority with powers of confirmation must, in considering for confirmation any finding and sentence, take cognizance of any representations made under subsection (1).

Powers of confirming authority

102. (1) Any authority with powers of confirmation (in this Code referred to as a confirming authority) may, within the limits of that authority's powers, in respect of a court martial -

- (a) confirm the finding or some of the findings;
- (b) refuse to confirm the finding or any of the findings;
- (c) if that authority confirms the finding or any of the findings, confirm the sentence;
- (d) vary the finding or the sentence, or both; or

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- (e) reserve confirmation of the finding and the sentence, in whole or in part, in terms of section 103.

(2) Whenever a confirming authority has under subsection (1)(b) refused to confirm any finding of a court martial, the accused is deemed to have been acquitted of the charge to which that finding relates.

(3) If a finding or sentence of a court martial has been ambiguously expressed or seemingly incorrectly recorded, the confirming authority -

- (a) may refer the case back to the court martial to record an unambiguous or correctly worded finding or sentence; or
- (b) may himself or herself record an unambiguous or correctly worded finding or sentence, but in doing so the confirming authority must give the offender the benefit of any reasonable doubt arising out of the finding or sentence as recorded by the court martial.

Confirming authority may reserve confirmation

103. Every officer having full or limited powers to confirm the finding and the sentence of a court martial, may reserve the finding and the sentence, or the finding or some of the findings and the sentence, or the sentence, for confirmation by the authority under whose warrant that officer convened the court martial, and such authority may thereupon -

- (a) confirm such finding and sentence or the unconfirmed portions thereof; or
- (b) reserve confirmation for the authority from whom the first-mentioned authority derives the power to confirm findings and sentences of courts martial.

Certain sentences to be reviewed by board or council of review before executed

104. Notwithstanding anything to the contrary contained in this Code, a sentence of -

- (a) dismissal of an officer;
- (b) discharge of a warrant officer; or
- (c) imprisonment of any member of the Defence Force for a period of three months or more,

may not be executed although confirmed, unless and until the proceedings of the case have been reviewed by a board of review or the council of review.

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When sentence to be executed

105. Subject to section 104, any sentence must be executed as soon as possible after it has been confirmed.

Reasons for judgment

106. (1) A confirming or reviewing authority, a board of review or the council of review may direct a court martial to give written reasons for any ruling or finding of that court, which reasons must show -

- (a) the facts the court found to be proved;
- (b) the grounds upon which the court arrived at the finding;
- (c) the reasons for any ruling of law or for the admission or rejection of any evidence,

as may be specified in the direction.

- (2) The reasons referred to in subsection (1) must -
 - (a) be furnished within such period as the direction contemplated in that subsection may specify, but not being less than four days from the date of receipt of the direction by the court martial; and
 - (b) be prepared and signed by all the members of the court martial or, if all the members are not reasonably available, by such member or members as are available, in which event the reason which precluded the other member or members from signing must also be indicated.

(3) An offender must, on request, be supplied with a copy of any reasons for judgment furnished in terms of this section.

Review of sentences passed by court martial convened by officer commanding command, group, brigade or equivalent command

107. (1) Whenever an offender has been convicted by a court martial convened by order of an officer commanding a command, group, brigade or any equivalent command, the confirming authority must, as soon as possible after the date of announcement of the sentence, send the record of the proceedings for review to the appropriate chief of staff or divisional or equivalent commander.

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(2) A chief of staff or a divisional or equivalent commander to whom the record of proceedings has been sent in terms of subsection (1) may, after three days from the date of announcement of the sentence, exercise with the necessary changes in respect of those proceedings the powers conferred on the council of review by section 114(1), (2) and (3).

(3) After exercising the powers contemplated in subsection (2), the chief of staff or divisional or equivalent commander concerned must submit the record of the proceedings to the Head of Defence Force Personnel.

Review of sentences passed by court martial convened by chief of staff or divisional or equivalent commander

108. (1) Whenever an offender has been convicted by a court martial convened by order of a chief of staff or a divisional or equivalent commander, the chief of staff or divisional or equivalent commander must, as soon as possible after the date of announcement of the sentence, send the record of the proceedings for review to the Chief of the Defence Force.

(2) Where the record of proceedings has been sent for review as required by subsection (1), the Chief of the Defence Force may, after three days from the date of announcement of the sentence, exercise with the necessary changes in respect of those proceedings the powers conferred on the council of review by section 114(1), (2) and (3).

Duties of Head of Defence Force Personnel with regard to review of cases

109. (1) Except as otherwise provided in this Code, if the Head of Defence Force Personnel considers that the proceedings in any case submitted to him or her in terms of section 66(3) or section 107(3) are not in accordance with justice, the Head of Defence Force Personnel must submit the record of the proceedings, together with his or her views on the case, to the Chief of the Defence Force.

(2) On receipt of the record of proceedings under subsection (1), the Chief of the Defence Force may, with the necessary changes in respect of those proceedings, exercise the powers conferred on the council of review by section 114(1), (2) and (3).

Offender may make representations to reviewing authority

110. (1) Whenever the record of the proceedings in any case is required to be sent for review, the offender may, not later than three days from the date of the conviction or announcement of the sentence, as the case may be, furnish the authority to whom the case must be sent for review with such representations in writing concerning the facts or law of the case as the offender may wish to make.

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(2) Any representations made under subsection (1) must, together with the record of the proceedings, be duly considered by the reviewing authority.

Offender may apply for review by council of review

111. An offender may, within the prescribed time and in the prescribed manner, apply for the review of the proceedings of his or her case by the council of review.

Prosecutor may make representations to council of review

112. Whenever the record of proceedings of a case is referred for review to the council of review on the application of the offender, the officer who prosecuted at the trial may submit written representations within the prescribed time and in the prescribed manner to the council of review.

Council of review to hear argument in certain cases

113. The council of review must -

- (a) in any case in which a sentence of imprisonment for a period of 12 months or more has been imposed on an offender; or
- (b) where application has been made by an offender under section 111 for the review of the proceedings of his or her case,

at the request of the offender, allow the offender or the offender's legal representative and the officer who prosecuted at the trial or any other person appointed for the purpose by the Head of Defence Force Personnel in that officer's stead, to appear before it and hear argument on the issues in the case.

Powers of council of review

114. (1) The council of review may, after due consideration of the record of proceedings of any case and of any representations submitted to it in terms of this Code -

- (a) endorse the finding or the finding and sentence;
- (b) quash the finding and set aside the sentence;
- (c) substitute for the finding any finding which the evidence on record supports beyond a reasonable doubt and which could have been brought on the charge by the court martial under section 89; or

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(d) if it has endorsed the finding or substituted a finding, vary the sentence.

(2) The council of review may correct any patent error in the finding or sentence as recorded in respect of any case referred to it.

(3) The council of review may refer back to a court martial any finding or sentence not clearly or correctly recorded or any invalid sentence, to be clearly and correctly recorded or to impose a valid sentence, and where it is not reasonably practicable in the opinion of the council of review so to refer back to the court martial any finding or sentence, the council of review may itself -

(a) record a finding or sentence; or

(b) impose a valid sentence,

but in doing so the council of review must give the offender the benefit of any reasonable doubt arising out of the finding or sentence as recorded by the court martial.

(4) The council of review may increase any sentence of imprisonment, detention, field punishment, fine, reprimand or of reduction in rank.

(5) For the purposes of subsections (1), (2) and (3), “sentence” includes an order made under section 128(1).

Finding and sentence as confirmed, substituted or varied deemed to be finding and sentence of court martial

115. Any finding or sentence as confirmed, substituted or varied by a confirming authority or the council of review is deemed to be the finding or sentence of the court martial which passed the original sentence.

Chief of the Defence Force may remit, mitigate or commute sentence

116. The Chief of the Defence Force may -

(a) mitigate, remit or commute any sentence imposed on an offender by a military court;

(b) order a confirming authority who has refused to confirm the finding or any findings of a court martial convened by order of an officer commanding a command, group, brigade or equivalent command, to give written reasons for such refusal.

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Commencement of sentence

117. (1) Except as otherwise provided or prescribed, every sentence commences or is deemed to commence immediately after the sentence has been announced in open court.

(2) Where a sentence is varied to one of imprisonment, detention or field punishment, such imprisonment, detention or field punishment is deemed to have commenced on the date of commencement of the sentence which is so varied.

Prisons and detention barracks

118. (1) The Minister may -

- (a) establish one or more prisons in Namibia to which offenders sentenced to imprisonment under this Code may be committed to serve such sentences; or
- (b) direct that offenders sentenced to imprisonment under this Code be committed to any prison established or deemed to have been established under the Prisons Act.

(2) The Minister may -

- (a) establish one or more detention barracks in Namibia to which offenders sentenced to detention under this Code may be committed to serve such sentences; or
- (b) direct that certain premises or portions of premises be deemed to be detention barracks to which offenders sentenced to detention under this Code may be committed to serve such sentences.

(3) The Minister may make regulations, not inconsistent with the Act, relating to all or any of the following matters or things in regard to prisons or detention barracks established or premises or portions thereof deemed to be detention barracks under this section, namely -

- (a) supervision and management;
- (b) discipline of the staff, offenders and inmates;
- (c) the admission, safe custody and release of offenders and inmates;
- (d) the release of offenders on parole or the remission of sentences for good behaviour;
- (e) the labour that may be performed by offenders;

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- (f) the punishments which may be imposed for offences committed in such prisons or detention barracks, and the persons by whom and the manner in which such punishments may be imposed or executed;
- (g) the powers of the officers in charge of such prisons or detention barracks;
- (h) the restraint which may be applied to offenders;
- (i) visitors;
- (j) inspections;
- (k) death of offenders and inmates;
- (l) the extent to which all or any of the regulations under the Prisons Act may be applied to such prisons;
- (m) any matter which the Minister considers necessary or expedient for the purposes for which such prisons or barracks are established or such premises or portions thereof are intended.

Where sentences of imprisonment, field punishment or detention to be served

119. (1) The whole or any portion of any sentence of imprisonment or field punishment imposed by a military court may by order of the Head of Defence Force Personnel, be served in a detention barracks.

(2) Any sentence of detention imposed under this Code must be served in a detention barracks.

How sentences of imprisonment and detention imposed outside Namibia to be served

120. (1) The Chief of the Defence Force may authorize any officer in command of troops on service outside Namibia to establish such detention barracks as that officer may consider necessary, to which offenders sentenced to detention under this Code may be committed to serve such sentences.

(2) An offender sentenced outside Namibia to imprisonment under this Code must be removed to Namibia to serve such sentence, but if owing to distance, lack of means of conveyance or other circumstances such removal is not reasonably practicable, the offender may serve such sentence or any portion thereof in any detention barracks established under subsection (1).

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(3) The Minister may direct that offenders sentenced outside Namibia to imprisonment or detention under this Code, may serve any such sentence or portion thereof in any prison, detention barracks or like place of confinement established or controlled or supervised by any country or by the commander of any force serving in co-operation with the Defence Force.

(4) Any person outside Namibia who is charged or to be charged with an offence under this Code, which offence would normally be tried by a general court martial, may be committed to and detained in any prison, detention barracks or like place of confinement referred to in subsection (3), while such person is awaiting trial or confirmation of sentence, but no officer may be so committed or detained unless the consent of the convening authority under whose command the officer is serving has been obtained.

(5) Subject to subsection (6), the regulations applicable to detention barracks in Namibia apply to detention barracks established under subsection (1).

(6) The officer in general command of the Defence Force in the area in which detention barracks established under subsection (1) are situated may in writing authorize such amendments or additions to the regulations for such detention barracks as local or service conditions render necessary, but such amendments or additions may not make the conditions more severe for the offenders or inmates.

Person in charge of prison, cell or lock-up to receive and detain person charged under this Code

121. Every superintendent or other person in charge of any prison, police cell or lock-up in Namibia must receive, admit, keep in custody or release from custody any person charged with an offence or committed or sentenced under this Code -

- (a) in accordance with the regulations applicable in respect of such prison, cell or lock-up; and
- (b) in compliance with the warrant of committal or release given to such superintendent or other person by the commanding officer of the person charged, committed or sentenced or by any other prescribed officer.

Mental illness at time of commission of offence

122. Whenever a military court trying an accused for an offence is satisfied from evidence (including medical evidence) given before it that at the time of the commission of the offence the accused was mentally ill so as not to be responsible according to law for the act or omission constituting the offence, that court must find the accused not guilty.

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Mental illness while under arrest or in custody

123. (1) If any person while under arrest or in custody under this Code in Namibia on a charge of an offence is committed by a magistrate to an institution under the Mental Health Act, the charge against such person may, in the discretion of the Head of Defence Force Personnel, be withdrawn or be proceeded with when that person is fit to stand trial.

(2) If any person under arrest or in custody outside Namibia on a charge under this Code is, in the opinion of two registered medical practitioners appointed by the senior military medical authority in the area concerned, mentally ill as defined in section 1 of the Mental Health Act, such person must be committed by his or her commanding officer to such hospital, prison, detention barracks or other place as the circumstances may permit, and must be detained therein in safe custody until that person's removal to Namibia can reasonably be effected or until that person is fit to stand trial, whichever is the earlier.

(3) The charge against a person committed under subsection (2) may, with the concurrence of the Head of Defence Force Personnel or his or her authorized representative, be withdrawn by the commanding officer of that person on such committal or it may be proceeded with when that person is fit to stand trial.

Mental illness upon arraignment or during trial in Namibia

124. (1) If upon arraignment before a military court in Namibia on a charge of an offence, or at any time during the trial and before the finding, an accused appears to be incapable of understanding the proceedings at the trial, the court must -

- (a) report the condition of the accused to the magistrate of the district; and
- (b) order that the accused be detained in proper custody until the decision of the magistrate is made known.

(2) If, in circumstances contemplated in subsection (1), the accused is not committed by the magistrate to an institution under the Mental Health Act, the accused may be charged before the same or any other court of competent jurisdiction.

(3) If, in circumstances contemplated in subsection (1), the accused is committed by the magistrate to an institution under the Mental Health Act, the charge against the accused -

- (a) may, in the discretion of the Head of Defence Force Personnel, be withdrawn; or
- (b) may, when the accused is fit to stand trial, be proceeded with before the same court or be commenced anew before another court.

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Mental illness upon arraignment or during trial outside Namibia

125. (1) If upon arraignment before a military court outside Namibia on a charge of an offence under this Code, or at any time during the trial and before the finding, it appears to the court that an accused is not capable of understanding the proceedings at the trial, the court must hear evidence (including medical evidence) to determine whether the accused is capable of understanding the proceedings at the trial so as to make a proper defence.

- (2) If, after hearing evidence in terms of subsection (1), the court finds -
 - (a) that the accused is capable of understanding the proceedings so as to make a proper defence, the trial must proceed; or
 - (b) that the accused is not so capable of understanding the proceedings, the court must order -
 - (i) that the accused be removed to Namibia and there detained in detention barracks or any other prescribed place pending the signification of the President's decision; and
 - (ii) that pending the accused's removal to Namibia, the accused be detained in a hospital, prison, detention barracks or other place as the circumstances may permit.

(3) If an accused who is under this section found incapable of understanding the proceedings becomes fit to stand trial, whether before removal to Namibia or thereafter, the accused may be charged and tried for the offence.

Only authorized deductions may be made from pay

126. (1) The pay of any member of the Defence Force must be paid without any deductions other than -

- (a) such deductions as are authorized by the Act (including any regulation made thereunder) or this Code, or as may be required to be made by virtue of the State Finance Act;
- (b) deductions in settlement of a debt due to the State; or
- (c) deductions in pursuance of an emoluments attachment order issued under any law in force in Namibia.

(2) Any deductions from the pay of a member of the Defence Force made in terms of subsection (1) at the date of death, termination of appointment, retirement or discharge of the member concerned, must be made in the order in which the paragraphs under which those deductions are made, appear in that subsection.

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Forfeiture of pay

127. (1) Every person who is subject to this Code forfeits such person's full pay for every period during which such person -

- (a) has been absent from duty, whether on desertion or without leave, in respect of which such person has been convicted by a competent court;
- (b) has been detained under arrest or in custody for an offence, in respect of which -
 - (i) such person has been sentenced to imprisonment; or
 - (ii) a sentence referred to in paragraph (d) has been imposed on such person;
- (c) has been imprisoned in pursuance of a sentence of a competent court;
- (d) has been under detention in pursuance of a sentence of a competent court with which there has been combined a sentence of discharge;
- (e) is in hospital in consequence of an offence under section 18(b) of which such person has been convicted by a competent court;
- (f) has been detained under arrest by or in the custody of the Police Force for an offence in respect of which such person has been convicted by a competent court;
- (g) is absent from duty as a prisoner of war due to such person's own wilful act or omission;
- (h) voluntarily serves the enemy;
- (i) has been on bail or released on such person's own recognizance by a civil court but failed to return to duty; or
- (j) is not on duty owing to such person having been ordered by the Chief of the Defence Force under section 90(1) of the Act not to return to duty during any period subsequent to such person's release from arrest or custody pending or during trial in respect of an offence of which such person has thereafter been convicted.

(2) Subsection (1)(j) also applies to a person who has been convicted by a competent court and intends appealing against such conviction or applying for the review of the proceedings of the case.

(3) Any person who is subject to this Code forfeits, in respect of any period of detention under arrest or in custody for an offence in respect of which a sentence other than imprisonment or a sentence referred to in subsection (1)(d) has been imposed on such person, or

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in respect of any period of field punishment or detention served by such person in pursuance of a sentence of a competent court other than a sentence referred to in subsection (1)(d) -

- (a) one third of such person's pay, if such person is married or is a person who has a child, stepchild or legally adopted child who lives with and is maintained by that person; or
- (b) two thirds of such person's pay, if such person is unmarried and without a child for whose maintenance that person is legally liable.

(4) For the purpose of this section the full pay of any person who is subject to this Code, or such portion thereof as the Chief of the Defence Force or an officer authorized thereto by him or her may determine, must be withheld as from the date upon which such person has been absent without leave, was arrested or taken into custody or detained as prisoner of war or admitted to hospital or released from arrest or custody, whether on bail or on such person's own recognizance or otherwise, for the period during which such person is so absent, under arrest or in custody, a prisoner of war, in hospital or released from arrest or custody, until such time as it has been established whether such person forfeits his or her pay in terms of subsection (1) or (3).

(5) The full amount withheld under subsection (4) must be paid to the person from whom it has been withheld -

- (a) if such person is acquitted by any court of competent jurisdiction; or
- (b) if, in the opinion of the Head of Defence Force Personnel, such person is not charged before any court of competent jurisdiction within a reasonable time.

Deductions from pay in respect of loss of or damage to public or other property

128. (1) Whenever a competent court convicts any person who is subject to this Code of an offence, and any act or omission constituting such offence has caused any loss of or damage to public property or property belonging to any institution not being a loss or damage arising from or attributable to a vehicle accident, the court must, notwithstanding anything to the contrary in any other law contained but subject to subsection (2), in addition to any sentence which it may impose in respect of that offence, order that the convicted person be placed under deductions of pay to the amount of the actual loss or damage suffered, but if the court is satisfied that the offence was not committed wilfully, it may order that the convicted person be placed under deductions of pay to such lesser amount as the court may determine.

(2) Where more than one person is convicted jointly of an offence, the court in making an order in terms of subsection (1), must order that all the convicted persons be placed under deductions of pay in such a manner as to ensure that the amount in question will be recovered from them jointly and severally.

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(3) Any amount deducted from a member's pay in pursuance of an order made under subsection (1) in respect of loss of or damage to property belonging to any institution must be paid to the institution concerned.

(4) Whenever a competent court convicts a person who is subject to this Code of having in contravention of section 24 negligently lost, damaged or destroyed such person's kit, arms, equipment or any other property issued to such person at public expense for personal use in the execution of such person's duties, the court must, in addition to any sentence which it may impose in respect of that offence, order that such kit, arms, equipment or other property be replaced or repaired and that the cost involved in such replacement or repair be recovered from the convicted person, but no such order may be made in the case of a sentence of dismissal from the Defence Force or discharge from the Defence Force, if the said kit, arms, equipment or other property has at the time of sentence become the property of the convicted person pursuant to the regulations.

(5) Any loss or damage suffered by the State arising from or attributable to a vehicle accident caused by a person who is subject to this Code must be recovered in accordance with section 11 of the State Finance Act, and for that purpose any reference in that section to a ministry is to be construed as including a reference to the Namibian Defence Force.

Fine may be deducted from pay

129. Whenever a military court sentences any person who is subject to this Code to pay a fine, the court may order that such person be placed under deductions of pay to the amount of the fine, and such amount may thereupon be deducted from such person's pay in such monthly instalments as may be determined by the Director of Finance of the Defence Force taking into account the personal circumstances of that person.

Maintenance orders

130. (1) If the Chief of the Defence Force is satisfied that a magistrate's court or the High Court of Namibia has made an order against a member of the Defence Force for the periodical payment of a specified amount towards the maintenance of another person, the Chief of the Defence Force may order that the member concerned be placed under deductions of pay to the amount of the order of court.

(2) Any amount deducted from the pay of a member of the Defence Force in pursuance of a maintenance order referred to in subsection (1) must be utilized to make on behalf of such member such payments at such times and in such manner as may be specified in that order.

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Emoluments attachment orders

131. (1) Notwithstanding anything to the contrary in any other law contained, no emoluments attachment order may be issued in terms of any law in force in Namibia in respect of the pay of any member of the Defence Force -

- (a) while such member is on service outside Namibia; or
 - (b) before the expiration of a period of three months after such member's return from service outside Namibia.
- (2) Section 126(1)(c) does not apply to the pay of any member of the Defence Force
- (a) while such member is on service outside Namibia; or
 - (b) during the period of three months referred to in subsection (1)(b),

in respect of any emoluments attachment order issued while such member was not so on service.

Chief of the Defence Force may remit forfeitures

132. If the Chief of the Defence Force is satisfied that any forfeiture of pay of a member of the Defence Force in terms of section 127 will, having regard to such member's pay and the nature of the offence, if any, create or result in undue hardship, the Chief of the Defence Force may remit the whole or any portion of such forfeiture.

Redress of wrongs

133. (1) Any person subject to this Code (hereinafter referred to as the complainant) who is aggrieved by any act or omission of any other person subject to this Code, may complain in writing to his or her commanding officer, and if such complaint is against the commanding officer or such commanding officer is unable to redress the wrong or otherwise to satisfy the complainant within a reasonable time, such commanding officer must refer the complaint to the officer under whose command such commanding officer is serving who holds a warrant to convene courts martial.

(2) The officer to whom a complaint has been referred by a commanding officer in terms of subsection (1) must, if he or she is unable to redress the wrong or otherwise to satisfy the complainant, without delay refer the complaint to the appropriate chief of staff for decision, and such chief of staff must, if he or she is unable to redress the wrong or otherwise to satisfy the complainant, without delay refer the complaint to the Chief of the Defence Force.

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(3) If the Chief of the Defence Force is unable to redress the wrong or otherwise to satisfy the complainant, the Chief of the Defence Force must, if requested by the complainant to do so, refer the complaint to the President, whose decision is final.

(4) If an officer who has received a complaint refers such complaint to higher authority in terms of this section, such officer must at the same time notify the complainant in writing thereof.

(5) Any person who has lodged a complaint with his or her commanding officer and whose wrong is not redressed or who is not otherwise satisfied within a reasonable time, or who has not been advised within a reasonable time that his or her complaint has been sent to higher authority, may, subject to subsection (6), complain directly to that higher authority and ultimately to the Chief of the Defence Force.

(6) A complainant complaining to higher authority or to the Chief of the Defence Force under subsection (5), must at the same time send a copy of such further complaint to his or her commanding officer.

(7) Any person who receives a complaint under this section must as soon as possible, but not later than 14 days from the date of receipt of the complaint, in writing acknowledge receipt thereof, and thereafter the complaint must be dealt with in accordance with the preceding subsections.

Board of inquiry in relation to absence without leave

134. (1) If any person has been absent without leave for a continuous period exceeding 90 days, a board of inquiry may be convened to inquire -

- (a) into such absence; and
- (b) into any deficiencies there may be in such person's kit, arms and equipment or any articles, being public property, issued to such person.

(2) A board of inquiry referred to in subsection (1) is convened and conducts its inquiry in the prescribed manner and takes evidence on oath, for which purpose the president of the board of inquiry may administer the prescribed oath to witnesses, interpreters and shorthand writers.

(3) If a board of inquiry convened under subsection (1) finds that a person has been absent for a continuous period exceeding 90 days, and is still so absent, it must record such finding, including the date of commencement of the absence without leave, and also its finding on any deficiencies in such person's kit, arms and equipment or any articles, being public property, issued to such person, and the estimated value thereof.

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(4) If a person in respect of whom any finding has been recorded in terms of subsection (3) is not thereafter arrested, or until such person is arrested, the finding of the board of inquiry has the force and effect of a finding of guilty by a court martial on a charge of desertion, and if there is any finding by the board of inquiry of any deficiencies, such finding has the force and effect of a finding of guilty on a charge of an offence under section 24(a).

(5) A copy of any finding of a board of inquiry under this section, if duly certified to be a true copy of the original by the commanding officer of the person concerned or the appropriate chief of staff or the officer in charge of the records of that chief of staff, is on its mere production admissible in evidence against such person on a charge of desertion or absence without leave or on a charge under section 24(a) as *prima facie* proof of such person's absence without leave or of any deficiencies and the value thereof.

Boards of inquiry

135. (1) The Chief of the Defence Force or any prescribed officer may at any time or place convene a board of inquiry to inquire into any matter concerning the Defence Force, any member thereof or any public property or the property or affairs of any institution or any regimental or sports funds of that Force, and to report thereon or to make a recommendation as may be directed.

(2) The president of a board of inquiry convened under subsection (1) may administer the prescribed oath to witnesses, interpreters and shorthand writers at such inquiry.

Attendance of witnesses at and composition of boards of inquiry

136. (1) The president of any board of inquiry convened under section 134 or 135 may, in the prescribed manner, subpoena any person in Namibia, whether or not otherwise subject to this Code, to attend such board of inquiry and, subject to subsection (2), to give evidence or to produce any document or thing in such person's possession or under such person's control.

(2) No witness is required to answer any question or to produce any document or thing at any board of inquiry which such witness could not be compelled to answer or produce in proceedings before a civil court.

(3) The composition of boards of inquiry, the method of convening such boards and the procedure to be followed by such boards are as prescribed.

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Competent but not compellable witness giving evidence outside Namibia

137. If at any trial by a military court outside Namibia a competent but not compellable witness gives evidence but refuses to answer any question put to such witness by that court, or by the defence if such witness has been called by the prosecution, or by the prosecutor if such witness has been called by the defence, to which question such witness would be bound in law to reply if such witness were a witness at such a trial in Namibia, the court must, if satisfied that the answer to the question is material, order the witness to stand down and strike the whole of the witness's evidence from the record of the proceedings.

Documentary evidence

138. (1) Whenever a person who is subject to this Code is required to produce at the trial before a civil court or a military court of any person for an offence, any document made or intended for official use, such person may in lieu of the original document produce a copy certified by him or her to be a true copy of the original and such copy is admissible in evidence as proof of its contents as if it were the original, but if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of such document must be produced.

(2) A photographic reproduction of a document, if certified by the officer having the custody of the original to be a photographic reproduction of the original, is admissible in evidence before a civil court or a military court trying an offence as proof of its existence and of its contents as if it were the original, but if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of such document must be produced.

(3) Any entry in the records of the Defence Force concerning the pay or any allowances of any person who is subject to this Code may, unless objection is made by any interested party, be proved in evidence before a civil court or a military court trying an offence by the production of a copy or a photographic reproduction of such entry, if such copy or reproduction purports to be certified by the officer having charge of the original record to be a true copy or reproduction of such entry.

(4) Any document of attestation or enrolment purporting to have been signed by any person, is proof of such person having given the answers to questions which such person is therein represented as having given, and the existence and the contents of such document of attestation or enrolment may, unless objection is made by any interested party, be proved in evidence before a civil court or a military court by the production of a copy or a photographic reproduction thereof, if certified to be a true copy or reproduction of the original by the officer having charge of the original.

(5) A certificate purporting to be signed by an officer having charge of the records of any person charged with an offence, stating -

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- (a) the rank or appointment held by such person at any time during such person's service;
- (b) the date of such person's enrolment or discharge;
- (c) the decorations, medals, clasps, good conduct or long service badges or wound stripes or other emblems of merit to which such person is or is not entitled; or
- (d) the rate of pay or any allowances to which such person is or was at any time entitled,

is on its mere production at the trial of such person for that offence by a civil court or a military court admissible in evidence as proof of the contents thereof, but if such person so requests, that officer must be called to give oral evidence.

How persons arrested for desertion or absence without leave to be dealt with

139. (1) Whenever a person surrenders himself or herself to or is arrested by a member of the military police, a superior officer or a member of the Police Force on a charge under this Code of desertion or absence without leave, the person to whom such person surrenders himself or herself or who arrests such person must prepare and sign a certificate stating the facts of such surrender or arrest and the time, date and place thereof.

(2) A certificate prepared and signed in terms of subsection (1) in respect of a person charged with desertion or absence without leave, is on its mere production at the trial of such person by a civil court or a military court admissible in evidence as proof of the surrender or arrest and of the time, date and place thereof as stated in the certificate.

(3) Where a person surrenders himself or herself to or is arrested by a member of the Police Force on a charge of desertion or absence without leave, and such person cannot be delivered within 48 hours to his or her commanding officer or the military police, such person must without delay be brought before a magistrate of the district in which such person then is, and

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- (a) if the magistrate, on evidence adduced to him or her, is satisfied that such person is a deserter or an absentee without leave or that there are reasonable grounds for suspecting that such person is a deserter or an absentee without leave, the magistrate may order that such person -
 - (i) be delivered to his or her commanding officer or the military police; and
 - (ii) be committed to custody in a prison, police cell or lock-up or other place of confinement until such delivery can be effected,

but if such person is not so delivered within 14 days of such person's committal to custody by the magistrate, such person must again be brought before a magistrate

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who may order such person's committal for a further period not exceeding 14 days;
or

- (b) if there is no sufficient evidence available to enable the magistrate to determine whether such person is a deserter or an absentee without leave or whether there are reasonable grounds for suspecting that such person is a deserter or an absentee without leave, the magistrate may remand such person in custody from time to time for a period not exceeding seven days at a time.

(4) Where a person, on being brought before a magistrate as required by subsection (3), voluntarily confesses to being a deserter or an absentee without leave, the magistrate must record such confession and obtain the signature of such person thereto, if he or she is willing to sign it, and must thereafter himself or herself sign such record and cause a copy thereof to be made, which copy must be certified by the magistrate or the clerk of the court to be a true copy of the original.

(5) A certified copy of a confession made in terms of subsection (4) is on its mere production at the trial of such person by a civil court or a military court on a charge of desertion or absence without leave admissible in evidence as proof of such confession.

Orders by Chief of the Defence Force may be signified by order, instruction or letter

140. (1) Where any order is authorized by this Code to be made by the Chief of the Defence Force or any other commanding officer, such order may be signified by an order, instruction or letter under the hand of any officer authorized to issue such order on behalf of the Chief of the Defence Force or other commanding officer, and an order, instruction or letter purporting to be signed by any officer appearing therein to be so authorized is proof of that officer being so authorized.

(2) An order deviating from any form that may be prescribed for it is not rendered invalid merely because of such deviation.

Registrar or clerk of civil court to furnish particulars of trial by civil court of persons subject to this Code

141. Whenever any person who is subject to this Code has been tried by a civil court, the registrar or clerk of such court must, if requested thereto by such person's commanding officer or by any other officer, transmit to such commanding or other officer a certificate setting forth the offence for which such person was tried, the judgment and the sentence, and any order of court or, if such person was acquitted, a statement to that effect, and such certificate is for all purposes proof of the conviction and the sentence, or of the order of court or of the acquittal of such person.

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Member of Defence Force deemed to have been properly attested or enrolled in certain circumstances

142. (1) Every person who has served as a member of the Defence Force for a period of not less than one month, or who has accepted pay as a member of that Force, is deemed to have been properly attested or enrolled and has no right to claim his or her discharge or release on the ground of any error, illegality or misunderstanding in such person's attestation or enrolment.

(2) If a person claims his or her discharge or release within one month of engagement for service on the ground of any error, illegality or misunderstanding in such person's attestation or enrolment, and obtains such discharge or release as a result of that claim, such person is nevertheless deemed to have been properly attested or enrolled to the date of that claim.

Council of review

- 143.** (1) The Minister must appoint a council of review -
- (a) in matters where any capital offence is involved, composed of five members, being -
 - (i) three judges or retired judges of the Supreme Court of Namibia or of the High Court of Namibia, one of whom must be appointed by the Minister as chairperson;
 - (ii) one officer of the Defence Force; and
 - (iii) one person who has experience in the Defence Force in the field on service; and
 - (b) in matters other than those referred to in paragraph (a), composed of three members, being -
 - (i) either -
 - (aa) one judge or retired judge of the Supreme Court of Namibia or of the High Court of Namibia; or
 - (bb) one magistrate or retired magistrate who has held that office for a continuous period of not less than ten years,who is the chairperson;
 - (ii) one officer of the Defence Force; and
 - (iii) one person who has experience in the Defence Force in the field on service.

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(2) The members of the council of review may be employed on a part-time basis and may, in the case of members who are not in the full-time employment of the State, be remunerated at such rates as may be determined by the Minister in consultation with the Minister responsible for Finance.

(3) The council of review exercises the powers and performs the duties conferred or imposed on such council by or under this Code.

Boards of review

144. (1) The Chief of the Defence Force may during service establish as many boards of review in the field as the Chief of the Defence Force may consider necessary.

(2) A board of review consists of not less than three members, one of whom must be appointed by the Chief of the Defence Force as chairperson.

(3) The powers, duties, qualifications and status of members of a board of review are as prescribed.

Restitution or confiscation of property

145. (1) Whenever a person is convicted by a military court of theft or any other offence whereby such person has unlawfully obtained any property, and such property or any portion thereof is found in the possession or under the control of such person, that court may order that such property or such portion thereof be restored to the lawful owner.

(2) A military court convicting any person of an offence which was committed by means of any weapon, instrument or other article produced to that court may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the State.

Field punishment

146. (1) An offender undergoing field punishment may be required to perform any or all of such offender's normal military duties.

(2) Field punishment may be carried out regimentally -

(a) when the unit to which the offender belongs is on the move or about to move; or

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(b) when the military police is not reasonably available.

(3) An offender who is undergoing field punishment may be handcuffed or otherwise secured to prevent the escape of the offender.

(4) If a unit is not on the move or about to move, and the military police is available at the unit, an offender sentenced to field punishment must be handed over to the military police to undergo the sentence.

Exercise of powers vested in holders of military office

147. Any power or jurisdiction given to and any act or thing to be done by, to, or before any person holding an office in the Defence Force, may be exercised or done by, to, or before any other person for the time being authorized in that behalf according to the customs of the service or as may be prescribed.

Defending officer as witness

148. No defending officer appointed under this Code to defend an accused is competent to give evidence against the accused at his or her trial without the consent of the accused, concerning any fact, matter or thing which came to that defending officer's knowledge after and by reason of his or her appointment and duties as the defending officer of the accused.

Trials commenced before commencement of Code

149. (1) The trial of any person subject to this Code which commenced before the date of the coming into operation of this Code must be proceeded with and concluded in all respects as if this Code had not been in operation.

(2) In respect of any trial referred to in subsection (1), the finding and the sentence must be confirmed, the sentence or any order must be executed and the proceedings must be reviewed as if this Code had not been in operation.

(3) Any proceedings which may be instituted in any civil court arising out of or based on any proceedings under subsection (1) or (2) must likewise in all respects be dealt with as if this Code had not been in operation.

(4) For the purposes of this section, a trial is deemed to have commenced if the accused has pleaded or has been required to plead to the charge or charges against him or her or if

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any evidence has been recorded at a summary of evidence in respect of any charge or charges against the accused.

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SCHEDULE 2

LAWS REPEALED OR AMENDED
(Section 94(1) of the Act)

Number and year of law	Short Title	Extend of repeal or amendment
Act No. 44 of 1957	Defence Act, 1957	The repeal of the whole
Act No. 12 of 1961	Defence Amendment Act, 1961	The repeal of the whole
Act No. 42 of 1961	Defence Further Amendment Act, 1961	The repeal of the whole
Act No. 83 of 1962	Defence Amendment Act. 1962	The repeal of the whole
Proclamation No. 166 of 1962	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1962	The repeal of the whole
Act No. 77 of 1963	Defence Amendment Act, 1963	The repeal of the whole
Proclamation No. 162 of 1963	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1963	The repeal of the whole
Act No. 81 of 1964	Defence Amendment Act. 1964	The repeal of the whole
Proclamation No. 145 of 1964	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1964	The repeal of the whole
Act No 39 of 1966	Civil Defence Act, 1966	The repeal of sections 20, 21 and 22
Proclamation No 75 of 1966	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1966	The repeal of the whole
Act No. 85 of 1967	Defence Amendment Act. 1967	The repeal of the whole
Act No. 3 of 1969	Defence Amendment Act. 1969	The repeal of the whole
Proclamation No. R.2 of 1970	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1970	The repeal of the whole
Act No. 28 of 1970	Defence Amendment Act. 1970	The repeal of the whole
Act No. 80 of 1971	General Law Amendment Act, 1971	The repeal of section 20
Proclamation No. 85 of 1971	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1971	The repeal of the whole
Act No. 66 of 1972	Defence Amendment Act. 1972	The repeal of the whole
Act No. 26 of 1973	Defence Amendment Act. 1973	The repeal of the whole
Act No. 8 of 1974	Defence Amendment Act. 1974	The repeal of the whole
Act No. 83 of 1974	Defence Further Amendment Act, 1974	The repeal of the whole
Act no. 94 of 1974	Defence Amendment Act. 1974	The repeal of section 34
Act No. 57 of 1975	Defence Amendment Act. 1974	The repeal of sections 23 to 26, inclusive
Proclamation No. 126 of 1975	Amendment of the First Schedule to the Defence Act, 1957,	The repeal of the whole

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	Proclamation, 1975	
Act No. 1 of 1976	Defence Amendment Act. 1974	The repeal of the whole
Act No. 35 of 1977	Defence Amendment Act. 1974	The repeal of the whole
Act No. 68 of 1975	Second Defence Amendment Act, 1977	The repeal of the whole
Proclamation No. R. 159 of 1980	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1971	The repeal of the whole
Proclamation No. 111 of 1981	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1971	The repeal of the whole
Act No. 8 of 1982	Defence Amendment Act. 1974	The repeal of the whole
Proclamation No 141 of 1982	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1971	The repeal of the whole
Proclamation No. 47 of 1983	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1971	The repeal of the whole
Proclamation No. 156 of 1983	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1971	The repeal of the whole
Proclamation No. 29 of 1985	Amendment of the First Schedule to the Defence Act, 1957, Proclamation, 1971	The repeal of the whole
Proclamation No. AG. 14 of 1989	First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purpose of Free and Fair Election) Proclamation, 1989	The amendment of the Annexure by the deletion of the entries relating to the Defence Act, 1957
Act No. 20 of 1990	Defence Amendment Act, 1990	The repeal of the whole
Act No 1 of 1996	Married Persons Equality Act, 1996	The repeal of section 22
Act No. 8 of 2001	Defence Amendment Act, 2001	The repeal of the whole