



Republic of Namibia
Annotated Statutes

Defence Act 1 of 2002

(GG 2749)

brought into force on 15 July 2002 by GN 109/2002 (GG 2765)

as amended by

Correctional Service Act 9 of 2012 (GG 5008)

brought into force on 1 January 2014 by GN 330/2013 (GG 5365)

Note that the inclusion of the crime of sodomy in section 68(4) of the Act is declared unconstitutional and invalid by *Dausab v Minister of Justice & Others* 2024 (3) NR 791 (HC).

ACT

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

(Signed by the President on 22 May 2002)

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**SCHEDULE 1
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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

**CHAPTER I
PRELIMINARY**

Definitions

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

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

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

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

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

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

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

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

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“force” means a military force;

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

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

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

[The phrase “an other rank” was probably intended to be “any other rank”.]

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

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

“Minister” means the Minister responsible for National Defence;

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

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

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

“order” means an order made under this Act;

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

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

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

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

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

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

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

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

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

“registered address”, in relation to a person, means the address of that person as notified from time to time to the proper authority in terms of this Act;

“regulation” means a regulation made under this Act;

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

“rule” means a rule made under this Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER II COMPOSITION AND ORGANIZATION OF DEFENCE FORCE

Continued existence and composition of Defence Force

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

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

Organization of Defence Force

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER III TRAINING AND SERVICE

Liability for training and services

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

- (2) The Defence Force or any portion or member thereof may -
 - (a) at any time be employed -
 - (i) on service in defence of Namibia;
 - (ii) on service in the prevention or suppression of terrorism;
 - (iii) on service in the prevention or suppression of internal disorder in Namibia;
 - (iv) on service in the preservation of life, health or property;
 - (v) on service in the maintenance of essential services;
 - (vi) on such other service as may be determined by the President; and
 - (b) while employed as contemplated in paragraph (a), be used on those police functions mentioned in section 13 of the Police Act, as may be prescribed.

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

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allowance while serving in any other headquarters, arm of the service, formation, unit or personnel mustering or performing any other duty.

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

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

CHAPTER IV MEMBERS OF DEFENCE FORCE

Appointment of officers and other ranks

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

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

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

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

Qualifications of members of Defence Force

- 7.** (1) No person may be appointed in the Defence Force, unless such person -
- (a) is a citizen;
 - (b) has, except where the Minister or any person acting under the authority of the Minister otherwise directs, passed any examination which such person may in terms of the conditions prescribed under this Act be required to pass as a condition for an appointment in that Force;

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- (c) has, notwithstanding anything to the contrary in any other law contained, undergone the prescribed medical examination and it has on account of such examination been established that such person does not have any physical or mental defect or does not suffer from any disease or ailment which -
- (i) will impair such person's ability to undergo any form of training required to be undertaken, or to perform such person's duties, as a member of that Force;
 - (ii) is likely to deteriorate to the extent that it will impair such person's ability to undergo any form of training required to be undertaken, or to perform such person's duties, as a member of that Force;
 - (iii) is likely to be aggravated by the undergoing by such person of any form of training required to be undertaken, or by the performance of such person's duties, as a member of that Force; and
- (d) meets such other requirements as may be prescribed.

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

Appointment of officers

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

Discharge of members from Defence Force

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

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

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

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

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

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Member of Defence Force not eligible for certain offices

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

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

Establishment of Council of Defence

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

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

Establishment of Defence Staff Council

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

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

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

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

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

13. The Minister may establish -

- (a) military commands, areas and districts throughout Namibia;
- (b) headquarters and arms of the service;
- (c) formations, units and personnel mustering of the Defence Force, or of members of that Force.

General powers of Minister

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

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

- (a) acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes;

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

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

- (a) the conveyance of any person other than an officer or a staff member acting in the execution of such officer's or staff member's duty, or on behalf of any such person of any goods, not being the property of the State, by means of any vehicle, aircraft or vessel which is the property of the State in the Ministry;
- (b) the rendering of any service to any person other than an officer or a staff member acting in the execution of such officer's or staff member's duty;
- (c) the use of any vehicle, aircraft, vessel, equipment or any other thing, being the property of the State in the Ministry, by any person other than an officer or a staff member acting in the execution of such officer's or staff member's duty.

Military training institutions

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

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

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

Areas for training

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

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

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

- (a) stating that such area, which must be defined in the notice, is proposed to be designated as a training area under that subsection; and
- (b) inviting all interested persons to furnish the Permanent Secretary not later than a date specified in the notice, with any representations such persons may wish to make in regard thereto.

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

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

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

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

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

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

Auxiliary services

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

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

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

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

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

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

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

Medical service

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

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

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

Reserve force

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

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

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

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

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

Commission

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

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

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

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

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

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

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

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

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

Retirement of officers and other ranks

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

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

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

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

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

Termination of service

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

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

Resignation of officer's commission or appointment

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

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

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

Identification marks and protection of defence property

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

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

commits an offence.

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

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

Prohibition of access to military premises

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

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

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

- (4) The Minister or an officer in command referred to in subsection (2) -
- (a) may further take or cause to be taken such measures as the Minister or such officer considers necessary for the defence or protection of any military camp, barracks, dockyard, installation, premises, land or area of water referred to in subsection (1); and

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- (b) must in connection with any measures so taken cause such notices to be published or such warning notices to be erected as the Minister or such officer may in each particular case consider necessary.

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

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

Employment of Defence Force

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

Mobilization of reserve force in time of national defence

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

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

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

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

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

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

Notification to persons called out

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

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

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

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

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

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

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

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

Service outside Namibia

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

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

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

- (a) in compliance with a resolution of the Security Council of the United Nations or the African Union or the Southern African Development Community; or
- (b) in the execution of an obligation arising from a bilateral or multilateral agreement to which Namibia is a party,

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

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

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

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

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

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

Release and discharge from service

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

(2) Notwithstanding anything to the contrary contained in this Act, and notwithstanding the expiration of the period of any appointment, no member of the Defence Force or of any reserve force employed on service in defence of Namibia or in the prevention or suppression of terrorism or in the prevention or suppression of internal disorder in Namibia or

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in the preservation of life, health or property or in the maintenance of essential services, is entitled to obtain such member's release or discharge from the Defence Force or the reserve force during the continuance of any such service.

Securing of harbours and aerodromes

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

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

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

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

(4) For the purposes of this section -

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

“harbour” means -

- (a) a port as defined in section 1 of the Namibian Ports Authority Act, 1994 (Act No. 2 of 1994); or
- (b) any area of land and sea which the President may by proclamation in the *Gazette* designate as a harbour or any area of land and sea which the President may in like manner assign to any harbour.

Safeguarding borders of Namibia

35. (1) The Minister may in defence of Namibia or for the prevention or suppression of terrorism cause any land to be entered upon, without the consent of any person who is or may be affected thereby, by persons with the necessary equipment and cause to be performed, within

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a strip not exceeding 10 kilometers in width along the border between Namibia and any state or country other than Namibia, such functions as the Minister may determine.

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

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

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

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

Commandeering

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

(2) Just compensation is pursuant to Article 16(2) of the Namibian Constitution and in accordance with the laws relating to the payment of compensation in respect of expropriated property, payable in respect of anything obtained or taken under subsection (1), to the person or body concerned.

Control and use of transport systems

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

Evacuation and concentration of persons

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

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

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

CHAPTER VII DISCIPLINE, LEGAL PROCEDURE AND OFFENCES

Military Discipline Code

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

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

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

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

Establishment of Rules Board

40. (1) There is hereby established a board to be known as the Rules Board.

(2) The Rules Board consists of the Chief of the Defence Force and such other persons, but not less than five, as the Minister may determine.

(3) The Minister may, in consultation with the Rules Board, make, alter or repeal such rules for giving effect to Schedule 1 as the Minister may consider necessary or expedient or as may be provided for in that Schedule.

(4) A rule or alteration or repeal of a rule made under subsection (3) must be published in the *Gazette*.

Jurisdiction of civil courts in regard to offences under the Code

41. (1) The High Court of Namibia or, subject to any other law prescribing its jurisdiction, a magistrate's court may -

- (a) try any person for an offence under the Code; and

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(b) impose any punishment which may be imposed for that offence under the Code and which is within the jurisdiction of such court, including, in the case of a magistrate's court, a sentence of detention.

(2) In imposing any punishment for an offence under this Act or the Code, the court must -

(a) take cognizance of the gravity of the offence in relation to its military bearing; and

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

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

Military courts

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

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

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

Jurisdiction of military courts in respect of offences under this Act

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

Person to be tried once only in respect of same offence

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

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

Right to review of proceedings

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

(a) that the proceedings are in accordance with justice; and

(b) that any finding or sentence is either correct, valid and appropriate, or remedied.

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

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

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

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

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

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

commits an offence.

Offences by persons against members of other forces

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

Arrest and trial of member of reserve force

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

- (a) is on service or undergoing training or on duty with any other portion of the Defence Force, be arrested and taken into military custody by any other member of the Defence Force acting under prescribed authority in accordance with the Code, pending the investigation and disposal of the charge; or

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- (b) is not so on service or undergoing training or on duty, be summoned to appear or be arrested and brought before a magistrate's court in accordance with law for the investigation and disposal of any charge brought against such member under the Code.

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

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

Warrants

49. (1) A prescribed officer may issue a warrant -

- (a) for the detention in any prison or gaol of any member of the Defence Force charged with an offence triable by a military court; or
- (b) for the imprisonment in any prison or gaol of any person sentenced to imprisonment by a military court.

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

Place of imprisonment for military offences

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

[The word "detention" is misspelt in the *Government Gazette*, as reproduced above.]

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

Misuse of uniforms

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

- (a) such person is a member of the Defence Force or of a force of such country who by reason of such member's rank is entitled to wear such uniform; or

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- (b) such person has been granted permission by the Chief of the Defence Force to wear such uniform.

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

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

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

Unauthorized use of decorations

52. (1) Any person who -

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

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

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

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

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

53. (1) No organization, association or other body of person, corporate or unincorporate, may, without the written approval of the Minister, take, use or in any manner whatever publish any name, title, description or symbol indicating or purporting to indicate or calculated or likely to lead persons to infer that it has been established under or in pursuance of any provision of this Act or in or by the Defence Force or any headquarters, arm of the service, formation, unit or personnel mustering thereof or that it is in any manner connected or

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associated with that Force or any such headquarters, arm of the service, formation, unit or personnel mustering if it has not been so established or is not so connected or associated.

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

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

Unauthorized disclosure of information

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

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

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

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

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

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

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

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

(5) To the extent that the provisions of this section provide for a limitation of the fundamental rights contemplated in paragraph (a) of Sub-Article (1) of Article 21 of the Namibian Constitution, in that they authorize interference with a person's freedom to publish or

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disclose information relating to national security and to the defence of Namibia, such limitation is enacted on authority of Sub-Article (2) of the said Article.

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

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

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

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

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

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

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

Obstructing Defence Force

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

Prohibition of certain acts in connection with liability to render service

57. Any person who -

- (a) agrees with or induces, or attempts to induce, any member of the Defence Force or any auxiliary services, medical service or reserve force to neglect or to act in conflict with such member's duty in the Defence Force, auxiliary or medical service or reserve force; or
- (b) is a party to or aids or abets or incites the commission of any act whereby any lawful order given to any member of the Defence Force or any auxiliary services,

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medical service or reserve force, or any law or regulation, with which it is the duty of any such member to comply, may be evaded or infringed; or

- (c) uses any language or does any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise cause any other person or any category of persons or persons in general to refuse or fail to render any service to which such other person or a person of such category or persons in general is or are liable or may become liable in terms of this Act,

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

Prohibition of certain acts in connection with service as mercenary

58. (1) Any person who -

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

commits an offence.

(2) A person convicted of a contravention of -

- (a) subsection (1)(a), is liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
- (b) subsection (1)(b), is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

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

Offences relating to intoxicating liquor

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

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

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

Impersonation

60. Any person who by word, conduct, demeanour or otherwise falsely represents himself or herself to be a member of the Defence Force or any auxiliary services, medical

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service or reserve force, or a particular member thereof or a person holding a particular rank or appointment therein, commits an offence.

Prohibition of citizens to serve in military forces of other countries

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

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

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

Wrongful disposal of property

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

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

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

Penalties

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

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

**CHAPTER VIII
VISITING FORCES****Discipline and internal administration of visiting forces**

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

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

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

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

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

(5) No proceedings in respect of pay, terms of service or discharge of a member of a visiting force may be entertained by any court of Namibia.

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

- (a) to arrest members of the visiting force alleged to have been guilty of offences under the law of that country; and
- (b) to hand over any person so arrested to the appropriate authorities of the visiting force.

Relation of visiting forces to civil power and civilians

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

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that Minister or person in relation to the Defence Force or members thereof, is exercisable by him or her or them in relation to the visiting force and members thereof.

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

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

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

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

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

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

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

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

Deserters from other forces

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

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

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

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

- (a) a document purporting to be a certificate under the hand of the Minister responsible for Foreign Affairs or of the Minister that a request has been made under subsection (2), is on its mere production at such proceedings admissible in evidence as proof of the making of such a request;
- (b) a document purporting to be a certificate under the hand of the officer in command of a unit or detachment of a force of any country that a named and described person was at the date of the certificate a deserter or absentee without leave from that force, is on its mere production at such proceedings admissible in evidence as proof of the facts so certified.

Attachment of personnel

67. (1) The Minister may -

- (a) attach temporarily to the Defence Force any member of a force or a reserve of any other country who is placed at the Minister's disposal for that purpose by the military authorities of that country;
- (b) subject to anything to the contrary contained in the conditions applicable to such member's service, place any member of the Defence Force at the disposal of the military authorities of any other country for the purpose of being attached temporarily by those authorities to the forces of that country.

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

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

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

(3) The President may, by proclamation in the *Gazette*, direct that in relation to members of a force of any country specified in the proclamation, the laws relating to the Defence Force apply with such exceptions and subject to such adaptations and modifications as may be so specified.

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

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

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

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

- (2) Subsection (1) does not apply -
- (a) if the alleged offender, at the time of the commission of the offence, was not subject to the jurisdiction of the military courts of the country to which the visiting force belongs;
- (b) in relation to a member of a civilian component of a visiting force, unless the offence in question is also an offence under the law of the country to which the visiting force concerned belongs;
- (c) in respect of any case in which the Prosecutor-General has certified that he or she has been notified by the appropriate authority of the country to which the visiting force belongs, that it is not proposed to charge the offender under the law of that country.

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

- (4) For the purposes of this section -

“offence against property” means -

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

“offence against the person” means -

- (a) murder, administering poison with intent to murder, culpable homicide, assault of whatever nature, rape, *crimen injuria*, incest, ~~sodomy~~, kidnapping, abduction or childstealing;

[“The inclusion of the crime of sodomy in section 68(4) of the Defence Act, 2002 (Act 1 of 2002) is declared unconstitutional and invalid.” *Dausab v Minister of Justice & Others* 2024 (3) NR 791 (HC); this case also declared the common law crime of sodomy to be unconstitutional and invalid.]

- (b) a contravention of section 66 of the Mental Health Act, 1973 (Act No. 18 of 1973), or section 18(1), 19 or 21 of the Children’s Act, 1960 (Act No. 33 of 1960); or

[The Children’s Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015.]

- (c) any offence relating to -
 - (i) the reckless or negligent driving of a motor vehicle whereby any person is injured;
 - (ii) the procuring or detention of a person for the purpose of unlawful carnal intercourse; or
 - (iii) the keeping of a brothel.
- (5) Any reference to an offence mentioned in subsection (4) is deemed to include a reference to -
 - (a) an attempt to commit that offence;
 - (b) a conspiracy to aid or procure the commission of or to commit that offence;
 - (c) an incitement or instigation, or a command or procurement to commit that offence; or
 - (d) being accessory to the commission of that offence.

Mutual powers of command

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

- (a) any member of the other force must be treated and has over members of the Defence Force the like powers of command as if such member were a member of the Defence Force of relative rank; and
- (b) if the forces are acting in combination, any officer of the other force appointed by the President, or in accordance with regulations made by or on the authority of the

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President after consultation with the appropriate authority of the country to which that force belongs, to command the combined forces or any part thereof, must be treated and has over members of the Defence Force the like powers of command and punishment, and may be invested with the like authority to convene and confirm the findings and sentences of courts martial, as if such member were an officer of the Defence Force of relative rank and holding the same command.

(2) For the purposes of this section, the Defence Force and any other force are deemed to be serving together or acting in combination whenever the President has by proclamation in the *Gazette* declared that they are so serving or acting, and the relative ranks of members of the Defence Force and such other force are as prescribed.

Proof of membership of visiting force

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

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

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

(2) Whenever a magistrate holding an inquest is satisfied that a person who is subject to the jurisdiction of the military courts of any other country is being detained for the purpose of being charged or has been charged before a court of that country with an offence arising out of the death which is the subject of the inquest, the magistrate must, unless the Minister otherwise directs, adjourn the inquest.

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

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

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

(6) Section 29 of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963), does not apply in respect of any case where the body of a deceased person who at the time of that person's death was a member of a visiting force or of a civilian component of such a force, is to be buried at any place outside Namibia, except as regards the burial of the body of a deceased person in relation to whose death an inquest has been held or resumed in pursuance of instructions given by the Minister under subsection (1) or (4).

**CHAPTER IX
GENERAL PROVISIONS**

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Regulations

72. (1) The Minister may make regulations, not inconsistent with this Act, relating to -

- (a) the training and inspection of the Defence Force and any auxiliary services, medical service or reserve force;
- (b) the establishment of training camps;
- (c) courses of instruction for persons undergoing training or engaged for service under this Act;
- (d) the control of funds which are administered by a committee or other like body under the chairpersonship of a member of the Defence Force and have been collected or accepted by or from members of that Force or any headquarters, arm of the service, formation, unit or personnel mustering thereof for the benefit of such members or their dependants;
- (e) the establishment, management and control of funds and non-trading institutions of the Defence Force the aims or some of the aims of which are the acquisition and possession of property, movable as well as immovable, for the provision of recreational facilities within Namibia exclusively for the benefit of members and ex-members of that Force or any headquarters, arm of the service, formation, unit or personnel mustering thereof and their dependants and other prescribed persons or classes of persons;
- (f) the seniority and precedence of headquarters, arms of the service, formations, units and personnel musterings and of members of the Defence Force and any auxiliary services, medical service or reserve force;
- (g) the leave of absence of members of the Defence Force;
- (h) the execution of police duties by members of the Defence Force;
- (i) the exemption of any member of the Defence Force from carrying out any full course of training prescribed for any one year;
- (j) the standards of physical fitness and the medical examination of members of the Defence Force, and authorizing medical authorities to determine such standards;
- (k) the provision of medical or dental treatment at sickbays established for members of the Defence Force;
- (l) the design, award, use, care and custody of colours, standards and flags for military use, and all matters pertaining to military ceremony;
- (m) honorary appointments and ranks in the Defence Force;
- (n) the furnishing by any person in Namibia of full and accurate information as to buildings, premises, vehicles, aircraft, vessels, animals, foodstuffs, forage, fuels, oils, materials, firearms, articles or things in such person's possession or under such person's control;

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- (o) the issue and care of arms, accoutrements, ammunition (including ammunition to be held in reserve for use in case of emergency), supplies, animals, transport, clothing and equipment;
- (p) the governance and management of, and the discipline which may be enforced in, places appointed as prisons under this Act;
- (q) the licensing of drivers of motor vehicles which are the property of the State in the Ministry;
- (r) the compulsory insurance of members of the Defence Force in respect of bodily injury, disablement or death occurring in the course of or as a result of military service or training, and the recovery from the salaries or pay or allowances payable to such members in terms of this Act of the premiums payable in respect of such insurance and the payment thereof to the insurers concerned;
- (s) the composition, organization and functions of a reserve force and the exemption from service thereof;
- (t) the recruitment of persons for appointment in the Defence Force;
- (u) any matter which in terms of this Act is required or permitted to be prescribed; and
- (v) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations for securing the discipline and good governance of the Defence Force or any auxiliary services, medical service or reserve force or for carrying out and giving effect to this Act.

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

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

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

Limitation of actions

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

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

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

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

Orders, decorations and medals

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

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

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

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

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

Language of instruction

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

Pay and allowances not to be assigned or attached

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

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

Exemption from registration and licensing of defence vehicles and drivers

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

Exemption from laws relating to conveyance of firearms

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

Exemption from tolls and dues

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

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

Railway charges

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

Compulsory immunization and prophylaxis

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

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

Payment of remuneration of missing member of Defence Force

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

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

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administer such salary or wages and allowances on behalf of the member's spouse or such other dependants.

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

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

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

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

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

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

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

Injuries received or illness contracted on service or training

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

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

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

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

Conveyance of members of Defence Force

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

Clubs, messes and trading institutions

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

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

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

Exemption from licence fees, taxes, duties and other fees

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

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

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

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

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- (a) that a club, mess or trading institution specified therein has been established under section 86 in or in connection with any base, camp, station or ship for any portion of the Defence Force in Namibia;
- (b) that a fund or non-trading institution specified therein has been established in accordance with regulations made under section 72(1)(e); or
- (c) that a fund or non-trading institution specified therein existed on the date of commencement of this Act and that its aims or some of its aims are the acquisition and possession of property for the provision of recreational facilities within Namibia for the benefit of members and ex-members of the Defence Force or any headquarters, arm of the service, formation, unit or personnel mustering therein, or any portion thereof, and their dependants,

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

Non-liability

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

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

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

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

- 89.** (1) Whenever the State -
- (a) has incurred any expenditure or has paid any amount in respect of medical, dental or hospital treatment of the bodily injuries of a member of the Defence Force or the supply of articles or the rendering of services in connection with that treatment; or
 - (b) has made any payments in respect of any salary, pay, allowances or any compensation to the member during that member's incapacity,

and the expenditure has been incurred or the payments have been made in circumstances where the member or the member's estate would otherwise have a claim against another person as a result of the bodily injury or incapacity of the member in respect of whom the expenditure was

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incurred or the payments were made, the State has the right of recourse against that person for that portion of the expenditure thus incurred or payments thus made as could have been claimed by that member or that member's estate from such person.

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

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

Suspension awaiting trial, appeal or review

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

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

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

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

Indemnity in respect of trespass and nuisance

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

Presumption as to delivery of notices

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

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

Act to apply both within and outside Namibia

93. This Act applies to all members of the Defence Force and of any auxiliary services, medical service or reserve force, whether such members are serving within or outside Namibia,

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and whenever it is necessary to enforce this Act outside Namibia any sentence, fine or penalty pronounced or imposed for the purpose of such enforcement is as valid and effectual and is carried into effect as if it had been pronounced or imposed in Namibia.

Repeal of laws, and savings

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

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

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

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

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

Short title and commencement

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

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

ARRANGEMENT OF SECTIONS

Section

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2. Application of Code
3. Application of Code beyond area of compulsory service
4. Offences endangering safety of forces punishable with life imprisonment
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6. Offences in relation to conduct in action

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

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“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;

“Correctional Service Act” means the Correctional Service Act, 2012 (Act No. 9 of 2012);

[definition of “Correctional Service Act” inserted by Act 9 of 2012]

“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
- (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;

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“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;

[definition of “Prisons Act” deleted by Act 9 of 2012]

“public property” means any property -

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

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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.

(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,

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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,

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,

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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;
 - (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.

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- (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 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.

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,

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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.

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

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- (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.

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;

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(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.

(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 referred

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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
 - (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 -

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- (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,

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 -

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- (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.

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

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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
 - (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.

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;

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- (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 thereat 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).

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
 - (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;

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- (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

- 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

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- (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;
 - (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 -

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- (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.

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 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.

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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
 - (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.

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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, 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

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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.

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.

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(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.

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 -
 - (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

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- (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 -

- (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

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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.

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

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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.

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

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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.

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.

(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

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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.

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.

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(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 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

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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

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.

(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.

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(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 -

- (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;

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- (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.

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;

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- (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
- (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.

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,

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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.

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 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).

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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
- (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,

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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.

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.

(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.

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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.

(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

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- (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
- (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 -

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- (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.

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 correctional facility established or deemed to have been established under the Correctional Service Act.

[paragraph (b) amended by Act 9 of 2012]

(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).

(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.

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(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.

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 -

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- (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.

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;

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- (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.

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

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imprisonment or a sentence referred to in subsection (1)(d) has been imposed on such person, or 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.

(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

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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.

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

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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.

(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.

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(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.

(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.

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

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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 -

- (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.

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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 -

(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 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,

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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.

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 -

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(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.

(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

(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.

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

SCHEDULE 2

LAWS REPEALED OR AMENDED

(Section 94(1) of the Act)

Number and year of law	Short Title	Extent 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
<u>Act No. 83 of 1962</u> [It is not clear why this entry in the table is bold and underlined in the	Defence Amendment Act, 1962	The repeal of the whole

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Government Gazette.]		
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	Amendments 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	Amendments to 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	Second General Law Amendment Act, 1974	The repeal of section 34
Act No. 57 of 1975	General Law Amendment Act, 1975	The repeal of sections 23 to 26, inclusive
Proclamation No. 126 of 1975	Amendments to the First Schedule to the Defence Act, 1957, Proclamation, 1975	The repeal of the whole
Act No. 1 of 1976	Defence Amendment Act, 1976	The repeal of the whole
Act No. 35 of 1977	Defence Amendment Act, 1977	The repeal of the whole
Act No. 68 of 1977	Second Defence Amendment Act, 1977	The repeal of the whole
Proclamation No. R.159 of 1980	Amendments to the First Schedule to the Defence Act, 1957, Proclamation, 1980	The repeal of the whole
Proclamation No. 111 of 1981	Amendments to the First Schedule to the Defence Act, 1957, Proclamation, 1981	The repeal of the whole
Act No. 8 of 1982	Defence Amendment Act, 1982	The repeal of the whole

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Proclamation No. 141 of 1982	Amendments to the First Schedule to the Defence Act, 1957, Proclamation, 1982	The repeal of the whole
Proclamation No. 47 of 1983	Amendments to the First Schedule to the Defence Act, 1957, Proclamation, 1983	The repeal of the whole
Proclamation No. 156 of 1983	Amendment to the First Schedule to the Defence Act, 1957, Proclamation, 1983	The repeal of the whole
Proclamation No. 29 of 1985	Amendment to the First Schedule to the Defence Act, 1957, Proclamation, 1985	The repeal of the whole
Proclamation No. AG.14 of 1989	First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes 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