

DEFENCE

Moratorium Act 25 of 1963

Summary: This Act ([RSA GG 468](#)) provides for moratoriums on contractual debts, prescription of civil legal remedies and similar matters for persons fulfilling their military service requirements. It repeals the *Moratorium Act 53 of 1962*. It has no practical effect in Namibia as it applies only to persons conscripted into military service.

Applicability to SWA: Section 7 states “This Act shall also apply in the territory of South West Africa.” This wording did not make amendments to the Act in South Africa automatically applicable to SWA, and none of the amending acts in South Africa prior to Namibian independence were made specifically applicable to SWA.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa.

Regulations: The Act makes no provision for regulations.

Protection of Information Act 84 of 1982

Summary: This Act ([RSA GG 8248](#)) makes it an offence to disclose certain information which might be prejudicial to the security or interests of South Africa. It authorises prosecution within South Africa for offences committed elsewhere. (It also repeals the *Official Secrets Act 16 of 1956* and its amendments.)

Applicability to SWA: The Security Matters Proclamation (AG 29/1985) ([OG 5059](#)) makes the Act applicable to SWA, with some amendments, with effect from 15 June 1985.

Transfer of administration to SWA: The Security Matters Proclamation (AG 29/1985) ([OG 5059](#)) meets the definition of a “transfer proclamation” in section 1 of the Transfer (General Provisions) Proclamation, AG 7 of 1977 – “a proclamation *by the Administrator-General* by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General” (emphasis added). There were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Security Matters Proclamation (AG 29/1985) ([OG 5059](#)) makes some amendments to the Act.

Section 45 of the National Intelligence Act 19 of 1987 ([OG 5423](#)) amends section 1 of the Act (definition of “security matter”). Act 19 of 1987 is repealed by the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)), which also amends section 1 of this Act (definition of “security matter”).

Regulations: The Act makes no provision for regulations.

Cases: *Director-General, Namibia Central Intelligence Service & Another v Haufiku & Others* 2018 (3) NR 757 (HC), upheld on appeal in *Director-General of the Namibian Central Intelligence Service v Haufiku* 2019 (2) NR 556 (SC) (section 4(1) of this Act read together with the Namibia Central Intelligence Service Act 10 of 1997).

Namibia Central Intelligence Service Act 10 of 1997

Summary: This Act ([GG 1699](#)) repeals the *National Intelligence Act 19 of 1987* inherited from South Africa by establishing a Namibia Central Intelligence Service. One matter of general interest is that a judicial direction is required in terms of the Act for the interception or monitoring of communications and the search of premises. The Act was brought into force on 5 June 1998 by Proc. 12/1998 ([GG 1876](#)).

Regulations: Section 37(2) contains a savings clause:

Anything done under the National Intelligence Act, and which could have been done under a provision of this Act, shall be deemed to have been done under a corresponding provision of this Act.

Pre-independence regulations that may survive have not yet been researched.

Regulations made under this Act are contained in GN 118/1998 ([GG 1876](#)).

Notices: Access to certain premises under the control of the Namibia Central Intelligence Service is prohibited by GN 133/2005 ([GG 3517](#)) and Proc. 8/2007 ([GG 3803](#)).

GN 178/2005 ([GG 3553](#)) contains directives relating to proceedings before a judge of the High Court under sections 19 and 25.

Appointments: The Director-General of the Namibia Central Intelligence Service is appointed in Proc. 14/1999 ([GG 2062](#)).

Cases: *Director-General, Namibia Central Intelligence Service & Another v Haufiku & Others* 2018 (3) NR 757 (HC), upheld on appeal in *Director-General of the Namibian Central Intelligence Service v Haufiku* 2019 (2) NR 556 (SC) (this Act read together with section 4(1) of the Protection of Information Act 84 of 1982).

Defence Act 1 of 2002

Summary: This Act ([GG 2749](#)) repeals the *Defence Act 44 of 1957* ([SA GG 5889](#)), as amended, which replaced the *South Africa Defence Act 13 of 1912*. The Namibian Defence Force established under the previous Act continues to exist under the new Act. The Act was brought into force on 15 July 2002 by GN 109/2002 ([GG 2765](#)).

Amendments: Schedule 1 is amended by the Correctional Service Act 9 of 2012 ([GG 5008](#)), which was brought into force on 1 January 2014 by GN 330/2013 ([GG 5365](#)).

Regulations: Regulations made under the repealed *Defence Act 44 of 1957* remained in force in terms of section 94 of this Act:

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.

Section 152(2) of the *Defence Act 44 of 1957* similarly provided that regulations made under the repealed *South Africa Defence Act 13 of 1912* remained in force:

Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by sub-section (1), shall be deemed to have been issued, made or done under the corresponding provisions of this Act. and shall in so far as it relates to any force. reserve or service established or any training or service provided for under any such repealed law, be construed as if it related to the corresponding force, reserve, service or training established or provided for under this Act.

Surviving regulations have not yet been comprehensively researched, but many have been explicitly repealed while some have no ongoing applicability.⁴⁷

Regulations relating to the Namibian Defence Force issued under the current Act are contained in GN 189/2010 ([GG 4547](#)).

Rules: Rules relating to the Military Discipline Code are contained in GN 223/2008 ([GG 4114](#)).

Notices: GN 193/1995 ([GG 1179](#)) and GN 46/1999 ([GG 2075](#)) designate certain areas for training purposes.

Cases:

Mwandingi v Minister of Defence of Namibia 1995 NR 91 (HC) concerns the Security Districts Proclamation (AG 9/1977), which has been repealed (focusing on the concept of “reasonable suspicion”).

S v Mushwena & Others 2004 NR 276 (SC) discusses section 95 of the Act in *dicta* at 423-424 (*per* Mtambanengwe AJA) and 393-34 (*per* O’Linn, AJA, minority judgment).

Note that this case was reversed in part by *S v Likanyi* 2017 (3) NR 771 (SC); see also *S v Munuma & Others* 2016 (4) NR 954 (SC). However, these subsequent rulings do not discuss this Act.

S v Myburgh 2008 (2) NR 592 (SC) discusses the language of section 103ter(4)-(5) as these provisions stood prior to Namibian independence in *dicta* at 615F-G

Keya v Chief of the Defence Force & Others 2013 (3) NR 770 (SC) (unreasonable delay in instituting review proceedings in respect of decision taken under section 23(2))

Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (section 14(1)).

⁴⁷ (1) The Government Notice that issued the regulations made under the current Act, GN 189/2010 (GG 4547), repeals the following regulations issued in terms of the *RSA Defence Act 44 of 1957*: RSA GN R.1739 of 30 October 1964; RSA GN R.1223 of 20 August 1965; RSA GN R.276 of 25 February 1966; RSA GN R.1204 of 5 August 1966; RSA GN R.25 of 6 January 1967; RSA GN R.719 of 19 May 1967; RSA GN R.1252 of 18 August 1967; RSA GN R.605 of 19 April 1968; RSA GN R.1322 of 2 August 1968; RSA GN R.1867 of 18 October 1968; RSA GN R.2334 of 20 December 1968; RSA GN R.122 of 31 January 1969; RSA GN R.203 of 13 February 1970; RSA GN R.331 of 27 February 1970; RSA GN R.1981 of 13 November 1970; RSA GN R.1983 of 13 November 1970; RSA GN R.36 of 8 January 1971; RSA GN R.169 of 12 February 1971; RSA GN R.270 and R.274 of 26 February 1971; RSA GN R.1724 of 1 October 1971; RSA GN R.2108 of 26 November 1971; RSA GN R.2110 of 26 November 1971; RSA GN R.2211 of 1 December 1972; RSA GN R.2213 of 10 December 1972; RSA GN R.261 of 23 February 1973; RSA GN R.1394 of 10 August 1973; RSA GN R.2360 of 14 December 1973; RSA GN R.507 of 29 March 1974; RSA GN R.678 of 26 April 1974; RSA GN R.1365 of 9 August 1974; RSA GN R.439 of 7 March 1975; RSA GN R.918 of 9 May 1975; RSA GN R.2194 of 19 December 1975; RSA GN R.2394 of 19 December 1975; RSA GN R.314 of 27 February 1976; RSA GN R.347 of 5 March 1976; RSA GN R.623 of 9 April 1976; RSA GN R.1387 of 13 August 1976; RSA GN R.341 of 24 February 1978; RSA GN R.572 of 23 March 1978; RSA GN R.832 of 21 April 1978; RSA GN R.2775 of 7 December 1979; RSA GN R.493 of 14 March 1980; RSA GN R.494 of 14 March 1980; RSA GN R.1298 of 20 June 1980; RSA GN R.1299 of 20 June 1980; RSA GN R.1300 of 20 June 1980; RSA GN R.1174 of 29 May 1981; RSA GN R.325 of 24 February 1984; RSA GN R.2772 of 13 December 1985 and RSA GN R.91 of 17 January 1986; RSA GN R.415 of 7 March 1986; RSA GN R.2203 of 24 October 1986; RSA GN R.1708 of 26 August 1988 and Namibian GN 241/1994 (GG 1002).

(2) Regulations relating to the performance of police duties by members of the Defence Force were made under the *Defence Act 44 of 1957* in GN 234/1994 (GG 993), as amended by GN 241/1994 (GG 1002) which was later repealed by GN 189/2010 (GG 4547). The original regulations have not been repealed, but they applied only to the 1994 election. (It should be noted that there were two Government Notices numbered 241 in 1994.)

(3) GN 189/2010 (GG 4547) repeals the regulations contained in GN 138/2005 (GG 3525), as amended, which in turn repealed the pre-independence regulations promulgated under RSA Government Notices R.274 of 26 February 1971 and R.2213 of 10 December 1971, as amended.

Commentary: Legal Assistance Centre, “Use of force by law enforcement officials in Namibia”, 2019, available [here](#).

APPOINTMENTS

Appointment of First Chief of Defence Force, Proc. 7/1990.

Chief of Defence Force, Proc. 16/2012 ([GG 4996](#))

Chief of Defence Force, Proc. 1/2014 ([GG 5387](#)).

INTERNATIONAL LAW

These four conventions are often referred to as the “Geneva Conventions”.

†*Geneva Convention for the Amelioration of Condition of Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949*

†*Geneva Convention for the Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949*

†*Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949*

†*Geneva Convention relative to Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949*

These two Protocols supplement the “Geneva Conventions”.

†*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977*

†*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977*

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

Rome Statute of the International Criminal Court, 1998

Agreement on the Privileges and Immunities of the International Criminal Court (APIC), 2002

SADC Protocol on Politics, Defence and Security Co-operation, 2001

SADC Mutual Defence Pact, 2003

See also Security Commission Act 18 of 2001 (**CONSTITUTION**).

See also **DISASTERS** (civil defence and involvement of uniformed forces in disaster situations).

See also National Supplies Procurement Act 89 of 1970 (**TRADE AND INDUSTRY**).