

## **DEFENCE**

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### ***Moratorium Act 25 of 1963.***

**Summary:** This Act provides for moratoriums on contractual debts, prescription of civil legal remedies and similar matters for persons fulfilling their military service requirements. It has no practical effect in Namibia as it applies only to conscripts.

**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.

### ***Civil Defence Act 39 of 1966***, as amended in South Africa to 1977.

**Summary:** This Act provides for a Directorate of Civil Defence in the public service and deals with emergency powers. It was repealed in its entirety in South Africa by the *Civil Protection Act 67 of 1977*.

**Applicability to SWA:** Section 19 states “This Act and any amendments thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).” The Act’s applicability to South West Africa is affected by RSA Proc. 205/1969 (RSA GG 2495, dated 1 August 1969). The repealing act (which was not technically an amending act) was not made explicitly applicable to South West Africa.

**Amendments:** The Defence Act 1 of 2002 repeals sections 20, 21 and 22.

### ***General Law Amendment Act 101 of 1969, section 29***, as amended in South Africa by *General Law Amendment Act 102 of 1972*.

**Summary:** Section 29 authorises the withholding of evidence from any court of law if the Administrator-General (or the responsible Minister) is of the opinion that disclosure of the information could be detrimental to state security.

**Applicability to SWA:** Section 29(3) states “The provisions of this section and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

### ***Civil Defence Proclamation, AG 54 of 1978.***

**Summary:** This Proclamation deals with disasters and civil defence.

**Regulations:** Regulations are contained in AG GN 701/1980 and AG GN 3/1981.

### ***Civil Defence Ordinance 3 of 1979.***

**Summary:** This Ordinance deals with disasters and civil defence. It should be read together with the Civil Defence Proclamation, AG 54 of 1978.

**Amendments:** The Ordinance is amended by Act 19/1986.

**Regulations:** Regulations are contained in AG GN 9/1981.

### ***Protection of Information Act 84 of 1982.***

**Summary:** This Act 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) makes the Act applicable to South West Africa, with minor amendments.

**Amendments:** Section 45 of the National Intelligence Act 19 of 1987 amends section 7 of the Act. The Namibia Central Intelligence Service Act 10 of 1997 amends section 1.

### **Namibia Central Intelligence Service Act 10 of 1997..**

**Summary:** This Act replaces 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 came into force on 5 June 1998 (Proc. 12/1998, GG 1876).

**Regulations:** Regulations are contained in GN 118/1998 (GG 1876). 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).

### **Defence Act 1 of 2002.**

**Summary:** This Act replaces the *Defence Act 44 of 1957*. The Namibian Defence Force established under the previous Act continues to exist under the new Act. The Act came into force on 15 July 2002 (GN 109/2002, GG 2765).

**Regulations:** Regulations made under the previous Act remain in force in terms of section 94. The regulations in force under the previous Act are as follows (supplied for this publication by the Ministry of Defence):

Chapter I - Introduction  
RSA GN R.1204 of 5 August 1966

amended by:  
RSA GN R.605 of 19 April 1968

Chapter II - Organisation and Control  
RSA GN R.1208 of 26 November 1971  
amended by

RSA GN R.2360 of 14 December 1973 (Reg 19(1))  
RSA GN R.1387 of 13 August 1976 (Reg 21)  
RSA GN R.1298 of 20 June 1980 (Reg 4)  
RSA GN R.415 of 7 March 1986 (Reg 16(4))

Chapter III – Officers and Candidate Officers  
(now re-named Officers and Officer Cadets)  
RSA GN R.2213 of 10 December 1971

amended by:  
RSA GN R.507 of 29 March 1974 (Reg 3(1) + (2))  
RSA GN R.314 of 22 February 1976 (Regs 3, 9(2), 11(4),  
13(2) and 24)  
RSA GN R.572 of 23 March 1978 (Reg 8(1))  
RSA GN R.832 of 21 April 1978 (Reg 2(1) + (3))  
RSA GN R.2203 of 24 October 1986 (Reg 24(2))  
replaced by:  
GN 138/2005 (GG 3525)

Chapter IV – Other Ranks  
RSA GN R.274 of 26 February 1971

amended by:  
RSA GN R.2211 of 1 December 1972 (Regs 3(2), 22(3))  
RSA GN R.261 of 23 February 1973 (Reg 24(4))  
RSA GN R.918 of 9 May 1975 (Reg 21(4))  
RSA GN R.314 of 27 February 1976 (Regs 1(1)(c) + (8),  
5(2), 20, 22(1) + (3))  
RSA GN R.832 of 21 April 1978 (Reg 1(7))  
RSA GN R.2203 of 24 October 1986 (Reg 20(2))  
replaced by:  
GN 138/2005 (GG 3525)

Chapter V – Financial Matters  
RSA GN R.678 of 26 April 1974  
amended by:

RSA GN R.1365 of 9 August 1974 (Reg 5A)  
RSA GN R.314 of 27 February 1976 (Reg 16(1) + (3))  
RSA GN R.623 of 9 April 1976 (Regs 2, 3(2) + (4))  
RSA GN R.1387 of 13 August 1976 (Reg 42(5))  
RSA GN R.1708 of 26 August 1988 (Reg 9(2))

Chapter VI – Leave of Absence  
RSA GN R.2110 of 26 November 1971  
amended by:

RSA GN R.1387 of 13 November 1976 (Regs 19, 27, 46A,  
47(2))

Chapter VII – Training  
RSA GN R.1983 of 13 November 1971  
amended by:

RSA GN R.1365 of 9 August 1974 (Regs 7, 8, 9)

RSA GN R.314 of 27 February 1976 (Reg 4(2))

Chapter VIII – Compulsory Insurance for Military Service

RSA GN R.493 of 14 March 1980

amended by:

RSA GN R.2203 of 24 October 1986 (Reg 7(2))

Chapter IX – Institutions and Funds

RSA GN R.276 of 25 February 1966

amended by:

RSA GN R.25 of 6 January 1967 (Regs 32(2)(b), 71)

RSA GN R.605 of 19 April 1968 (Reg 62)

RSA GN R.1867 of 18 October 1968 (Reg 64A)

RSA GN R.2334 of 20 December 1968 (Reg 11)

RSA GN R.122 of 31 January 1969 (Reg 35(2) + (3))

RSA GN R.36 of 8 January 1971 (Regs 17(2), 32(2), 60(1),  
68(1))

RSA GN R.270 of 26 February 1971 (Regs 63(1)(a))

RSA GN R.1724 of 1 October 1971 (Reg 62)

RSA GN R.314 of 27 February 1976 (Reg 59(2))

RSA GN R.1387 of 13 August 1976 (Regs 59(2), 68(1))

RSA GN R.2775 of 7 December 1979 (Regs 10(3), 62(2))

RSA GN R.494 of 14 March 1980 (Preamble)

RSA GN R.1708 of 26 August 1988 (Regs 11(1)(c)(iii), 69,  
70, 71)

Chapter XI – Performance of Police Functions by Military Police Officials

RSA GN R.91 of 17 January 1986

Chapter XIII – Police functions by Defence Force

RSA GN R.2772 of 13 December 1985

Chapter XV – Medical Matters

RSA GN R.203 of 13 February 1970

amended by:

RSA GN R.169 of 12 February 1971 (Part V)

RSA GN R.1394 of 10 August 1973 (Reg 18)

RSA GN R.439 of 7 March 1975 (Regs 8, 9 14(5) + (7),  
25(1))

Chapter XIX – Combat Service

RSA GN R.1223 of 20 August 1965

amended by:

RSA GN R.1322 of 2 August 1968 (Reg 3)

RSA GN R.331 of 27 February 1970 (Reg 3)

RSA GN R.347 of 5 March 1976 (Reg 21)

RSA GN R.832 of 21 April 1978 (Reg 20(2) + (3)).

Regulations relating to the performance of police duties by members of the Defence Force are contained in GN 234/1994 (GG 993) and GN 241/1994 (GG 1002). (To avoid confusion, it should be noted that there were two Government Notices numbered 241 in 1994.) GN 193/1995 (GG 179) and GN 46/1999 (GG 2075) designate certain areas for training purposes.

In respect of these surviving regulations, it is relevant to note that section 60(1) of the Defence Amendment Act 20 of 1990 provided as follows: “The regulations made under the provisions of the principal Act and the rules made under the Military Discipline Code, which were in force on the date immediately prior to the commencement of the First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation (Proclamation AG. 14 of 1989), in so far as they relate to a provision of the principal act or the said Code, as the case may be, amended in terms of the provisions of this Act, shall, with effect from the commencement of this Act, apply in Namibia, unless the President determines otherwise or unless it would in any particular case be obviously inappropriate.”

Under the 2002 act, rules relating to the Military Discipline Code are contained in GN 223/2008 (GG 4114).

**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 423-24 (*per* Mtambanengwe AJA) and 393-34 (*per* O’Linn, AJA). *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.

## **APPOINTMENTS**

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

## **INTERNATIONAL LAW**

*The first four conventions are often referred to as the “Geneva Conventions”.*

### ***Amelioration of Condition of Wounded and Sick in Armed Forces in the Field, 1949***

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984).

### ***Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949***

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

### ***Geneva Convention relative to the Treatment of Prisoners of War, 1949***

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

### ***Geneva Convention relative to Protection of Civilian Persons in Time of War, 1949***

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

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

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

***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***

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

***Rome Statute of the International Criminal Court, 1998***

(came into force internationally on 1 July 2002)

signature: 27 October 1998

ratification: 25 June 2002 (source: [www.iccnw.org](http://www.iccnw.org))

***Agreement on the Privileges and Immunities of the International Criminal Court, 2002***

(came into force internationally on 22 July 2004)

signature: 10 September 2002

ratification approved by Parliament: 2 July 2003 (source: Parliament)

deposit: 29 January 2004 (source: [www.iccnw.org](http://www.iccnw.org))

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

(entered into force internationally on 12 February 2002)

signature: 8 September 2000 (source: Ministry of Foreign Affairs)

ratification: 16 April 2002 (source: UNICEF)

Note: Namibia's ratification of this Optional Protocol was accompanied by a declaration on the minimum recruitment age (age 18) for the Namibia Defence Force (source: Ministry of Foreign Affairs).

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

(entered into force within SADC on 2 March 2004) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 1 October 2002 (source: Parliament)

ratification: 8 November 2002 (source: Ministry of Foreign Affairs);

2 December 2002 (source: SADC)

***SADC Mutual Defence Pact, 2003***

(entered into force within SADC 17 August 2008) (source: SADC)

signature: 26 August 2003 (source: SADC)

ratification approved by Parliament: 19 November 2003 (source: Parliament)

ratification: 11 October 2004 (source: SADC)

***Agreement amending the Protocol on Politics, 2009***

(entered into force within SADC on 8 September 2009) (source: SADC)

signature: 8 September 2009 (source: SADC)

no ratification appears to be needed

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

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