

# DEFENCE

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## *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 has no practical effect in Namibia as it applies only to persons conscripted into military service.

**Repeals:** The Act repeals the *Moratorium Act 53 of 1962*.

**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 (originally published in [RSA GG 8248](#)) makes it an offence to disclose certain information that might be prejudicial to national security or interests.

**Repeals:** The Act 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 Act 19 of 1987 is repealed by the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)), which also amends section 1 of this Act (definition of “security matter”).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](#)) establishes 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](#)).

**Repeals:** The Act repeals the National Intelligence Act 19 of 1987 ([OG 5423](#)).

**Savings:** Section 37(2) contains a broad 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.

**Regulations:** Regulations made under the current Act are contained in GN 118/1998 ([GG 1876](#)).

No regulations made under the repealed Act have been located.

**Notices:** GN 41/1989 ([OG 5684](#)), issued in terms of the repealed National Intelligence Act 19 of 1987, prohibits access to the “Remainder of Consolidated Erf 32, Klein Windhoek Township”, known as the “Berg Hotel”, by all persons other than those referred to in section 12 of the National Intelligence Act 19 of 1987 or those who have authority to enter that property from the Secretary or someone acting under his or her authority.

In terms of the current Act, 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); *President of the Republic of Namibia & Others v Shivute* 2024 (2) NR 561 (SC) (reg 11(13)).

## Defence Act 1 of 2002

**Summary:** This Act (originally published in [GG 2749](#)) regulates the Namibian Defence Force, which was established under the previous *Defence Act 44 of 1957* and continues to exist under this Act. This Act was brought into force on 15 July 2002 by GN 109/2002 ([GG 2765](#)).

**Repeals:** This Act repeals the *Defence Act 44 of 1957* ([SA GG 5889](#)), as amended, which replaced the *South Africa Defence Act 13 of 1912*.

**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](#)).

**Savings:** Section 94 of the current Act contains a savings clause in respect of the repealed *Defence Act 44 of 1957*:

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 contained a savings clause in respect of the *South Africa Defence Act 13 of 1912* which it repealed:

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.

For the purposes of understanding what regulations survive under the repealed laws, it should be noted that the Defence Matters in South West Africa Proclamation, RSA Proc. 131/1980 ([RSA GG 7166](#)), dated 1 August 1980, as amended by SWA Proc. AG 5/1985 ([OG 5003](#)) and by RSA Proc. 204/1986 ([RSA GG 10501](#)) - as corrected by RSA GN 2445/1986 ([RSA GN 10529](#)) - functioned as a transfer proclamation for certain portions of the *SA Defence Act 44 of 1957*: Chapters IV, V, VII, VIII and IX as applied to the South West African Territory Force.<sup>122</sup> Regulations were authorised by section 87 in Chapter IX (administration transferred for some purposes, but apparently not the power to make regulations). Emergency regulations in time of war were authorised by section 103 in Chapter X (which was not transferred at all). Regulations pertaining to decorations and medals were authorised by section 136 in Chapter XIII (which was to be transferred by proclamation).<sup>123</sup>

Paragraph 2(3) of the Defence Matters in South West Africa Proclamation concerned how regulations made after the transfer were to be construed:

In so far as a regulation by which anything is prescribed which is required to be prescribed in terms of or in connection with a provision of the Defence Act mentioned in subsection (2) [which listed the provisions being transferred], is inconsistent with the relevant provision as construed in terms of that subsection, such regulation shall be construed as if the reference to that provision in subsection (2) included a reference to such regulation.

In other words, regulations made under the Act were to be construed as the Act was to be construed in terms of the Defence Matters in South West Africa Proclamation.

**Regulations:** The following regulations were issued under the current Act:

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<sup>122</sup> Paragraph 2(1) of the Defence Matters in South West Africa Proclamation states: “Subject to the provisions of this Proclamation, the administration of the provisions of the Defence Act contained in Chapters IV, V, VII, VIII and IX thereof shall be carried on by the Administrator-General in and in respect of the Territory **in so far as those provisions apply or relate to or in respect of (a) any unit or member of the South West African Territory Force** by virtue of the fact that such unit or member is a unit or a member of the South African Defence Force, including the Citizen Force or commandos of the South African Defence Force; (b) the **training as cadets** of persons who are scholars or students at a school or other educational institution in the Territory; (c) the **registration and enrolment as contemplated in the said Chapter VIII** of persons who are required to or may apply for such registration or enrolment in terms of the provisions contained in that Chapter and are resident in the Territory, and the allotment as so contemplated of such persons to any unit of the Citizen Force or the commandos forming part of the South West African Territory Force.”

AG GN 105/1980 ([OG 4237](#)) established the South West African Territory Force.

The Second Defence Matters in South West Africa Proclamation, RSA Proclamation 198/1980 ([RSA GG 7259](#)), dated 17 October 1980, extended liability for military service under the *Defence Act 44 of 1957* to SWA.

<sup>123</sup> Paragraph 2(1) of the Defence Matters in South West Africa Proclamation states: “The provisions of this section relating to Chapter VIII of the Defence Act or any provision of that Chapter, shall come into operation on a date to be fixed by the Administrator-General by proclamation in the *Official Gazette* of the Territory.”

**Regulations relating to the Namibian Defence Force** are contained in GN 189/2010 ([GG 4547](#)),<sup>124</sup> which replaced the regulations in GN 138/2005 ([GG 3525](#)).<sup>125</sup>

Research on pre-independence regulations that may survive as a result of the chain of savings clauses is not yet complete.

**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.

**Warrants:** Pre-independence warrants pertaining to specific medals and decorations are not listed here.

**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*).

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<sup>124</sup> 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 [*R.274 of 26 February 1971 had in fact already been repealed by GN 138/2005 (GG 3525)*]; 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 [*which should refer to GN R.2213 of 10 December 1971, which had already been repealed by GN 138/2005 (GG 3525)*]; 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 [*this repeal is in error; it probably duplicates the following repeal of RSA GN R.2394 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; Namibian GN 241/1994 (GG 1002) and Government Notice 138/ 2005 (GG 3525) – which, as noted in the text of this entry, repealed RSA GN R.274 of 26 February 1971 and RSA GN R.2213 of 10 December 1971, as amended.

It appears that the list of repeals may have omitted RSA GN R.2360 of 14 December 1973, which amended Reg 19(1) in Chapter II, but the underlying regulation is repealed so the failure to repeal this amendment has no practical effect.

The list also appears to have omitted RSA GN R.2222 of 15 October 1982 (RSA GG 8416), which substituted **Chapter XI – Performance of Police Functions by Military Police Officials**, but this chapter was in any event substituted by RSA GN R.91 of 17 January 1986, which was repealed by GN 189/2010.

Note that the list of repeals does not deleted **Chapter XVI – Regulations relating to the Attachment of members of Citizen Force to other employers outside Defence Force for Training Service and Experience** of the **General Regulations for the SA Defence Force and the Reserve**, which was initially enacted by RSA GN R.2222 of 15 October 1982 ([RSA GG 8416](#)). Another chapter with the same name was subsequently issued in RSA GN R.2527/1988 ([RSA GG 11617](#)), but without repealing the previous one. *This is the only Chapter that appears to remain in force.*

<sup>125</sup> GN 138/2005 ([GG 3525](#)) repealed RSA Government Notices R.274/1971 ([RSA GG 3002](#)) and R.2213/1971 ([RSA GG 3327](#)), as amended.

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)).

**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 ([GG 45](#))

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).