



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 114

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 84

1990

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 20 of 1990: Defence Amendment Act, 1990.

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions proposed.

[] Words in bold type in square brackets indicate omissions proposed.

ACT

To amend the Defence Act, 1957, so as to establish the Namibia Defence Force, to provide for the composition and organization of the Defence Force; and to provide for matters incidental thereto.

(Signed by the President on 26 November 1990)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 44 of 1957, as amended by section 1 of Act 12 of 1961, section 1 of Act 42 of 1961, section 1 of Act 77 of 1963, section 20 of Act 39 of 1966, section 1 of Act 85 of 1967, section 1 of Act 26 of 1973, section 1 of Act 8 of 1974, section 1 of Act 1 of 1976 and section 1 of Act 35 of 1977.

1. (1) Section 1(1) of the Defence Act, 1957 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the substitution for the definition of "citizen" of the following definition:

" 'citizen' means a [South African] Namibian citizen [within the meaning of the South African Citizenship Act, 1949 (Act No. 44 of 1949)];";

(b) by the deletion of the definition of "commando";

(c) by the insertion after the definition of "court" of the following definition;

" 'Defence Force' means the Namibia Defence Force established by section 5";

(d) by the substitution for the definition of "member" of the following definition:

“ ‘member’ includes an officer and ~~[another]~~ any 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 the Republic and is not a ~~[South African]~~ Namibian citizen within the meaning of the ~~[South African Citizenship Act, 1949 (Act No. 44 of 1949)]~~ Namibian Constitution.”;

- (e) by the substitution for the definition of “officer” of the following definition:

“ ‘officer’, in relation to the ~~[South African]~~ Defence Force ~~[or the Reserve]~~, means a person who holds commissioned rank conferred upon him or her under section ~~[eighty-three]~~ 82.”;

- (f) by the substitution for the definition of “prescribed” of the following definition:

“ ‘prescribed’ means -

- (a) in relation to any matter affecting the ~~conditions of service, including conditions relating~~ to salaries, pay ~~[or]~~ and allowances, of members of the ~~[South African]~~ Defence Force ~~[the Reserve, the Cadet Corps]~~ or any auxiliary or ~~[nursing]~~ medical service established under this Act, recommended by the Public Service Commission in terms of ~~[section eighty-two bis]~~ this Act; and

- (b) in relation to any other matter, prescribed by regulation.”;

- (g) by the substitution for the definition of “Republic” of the following definition:

“ ‘Republic’ ~~[includes the territory of South West Africa]~~ means the Republic of Namibia.”; and

- (h) by the deletion of the definition of “service in the merchant fleet”.

(2) The following subsection is hereby substituted for subsection (3) of section 1:

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“(3) Any reference in this Act to any liability to render service in the [South African] Defence Force [or the Reserve] shall be construed as including a reference to a liability to undergo training therein.”.

Repeal of section 2 of Act 44 of 1957, as amended by section 20 of Act 39 of 1966 and section 2 of Act 85 of 1967.

2. Section 2 of the principal Act is hereby repealed.

Amendment of section 3 of Act 44 of 1957, as amended by section 2 of Act 77 of 1963, section 3 of Act 85 of 1967, section 2 of Act 1 of 1976 and section 1 of Proclamation AG. 14 of 1989.

3. Section 3 of the principal Act is hereby amended -

(a) by the insertion of the following subsection before subsection (2):

“(1) Subject to the provisions of this Act, every person serving in the Defence Force shall be liable to render service in that Force as hereinafter prescribed.”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) Any member who is employed on police duties in terms of subsection (2)(d) shall -

- (a) have all such powers and functions as are by law conferred upon or entrusted to a member of the Police Force;
- (b) in respect of acts done or omitted to be done by him or her, be liable to the same extent as he or she would have been liable in like circumstances if he or she were a member of the said Force; and
- (c) have the benefit of all the indemnities to which a member of that Force would in like circumstances be entitled:

Provided that if any member so employed commits an offence under this Act or the Military Discipline Code or under the laws governing the discipline command and control of the Police Force, the member shall be liable to prosecution either under this Act or the Military Discipline Code or under the laws governing the

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discipline, command and control of the Police Force, but shall not be liable to more than one prosecution for the act or omission constituting the offence."

Repeal of section 4 of Act 44 of 1957, as amended by section 3 of Act 77 of 1963 and section 4 of Act 85 of 1967.

4. Section 4 of the principal Act is hereby repealed.

Repeal of section 4A of Act 44 of 1957, as inserted by section 1 of Act 83 of 1974.

5. Section 4A of the principal Act is hereby repealed.

Substitution of heading of Chapter II of Act 44 of 1957.

6. The following heading is hereby substituted for the heading preceding section 5 of the principal Act:

"ESTABLISHMENT, COMPOSITION AND ORGANIZATION OF THE DEFENCE FORCE".

Substitution of section 5 of Act 44 of 1957.

7. The following section is hereby substituted for section 5 of the principal Act:

"Establishment and composition of Defence Force.

5. On the date of commencement of the Defence Amendment Act, 1990, there shall be established a defence force for Namibia, to be known as the Namibia Defence Force, which shall consist of the following armed services:

(a) the Namibian Army;

(b) the Namibian Air Force; and

(c) the Namibian Navy."

Repeal of section 6 of Act 44 of 1957, as amended by section 5 of Act 85 of 1967.

8. Section 6 of the principal Act is hereby repealed.

Substitution of section 7 of Act 44 of 1957.

9. The following section is hereby substituted for section 7 of the principal Act:

"Organization of Defence Force.

7. The [South African] Defence Force [and the Reserve] shall be organized in such arms, corps, formations and units as the Minister may determine or as may be prescribed [and any such service, arm, corps, formation or unit may consist of members of any

one or more of the forces and reserves mentioned in section *five* or *six*].”.

Substitution of section 8 of Act 44 of 1957.

10. The following section is hereby substituted for section 8 of the principal Act:

“Executive command.

8. (1) The executive military command of the Defence Force **[and the Reserve, or of any portion thereof]** shall, subject to the provisions of this Act, be vested in **[such officer or officers of the South African]** the Chief of the Defence Force [as the Minister may determine] appointed under the Namibian Constitution.

(2) The Chief of the Defence Force shall be responsible to the President as Commander-in-Chief of the Defence Force for the military effectiveness of the Defence force.”.

Substitution of heading of Chapter III of Act 44 of 1957.

11. The following heading is hereby substituted for the heading preceding section 9 of the principal Act:

“MEMBERS OF THE DEFENCE FORCE”.

Substitution of section 9 of Act 44 of 1957, as amended by section 6 of Act 85 of 1967.

12. The following section is hereby substituted for section 9 of the principal Act:

“Appointment of officers and other ranks.

9. (1) The **[Permanent]** Defence Force shall, in addition to the Chief of the Defence Force referred to in section 8, consist of such other officers and other ranks as may be appointed thereto [and other ranks engaged for service therein] by the Chief of the Defence Force, whether [appointed or engaged] in a permanent or temporary capacity, and shall be organized in such manner as may be prescribed. **[Provided that until such time as it is otherwise prescribed under this Act, the said Force shall be organized in accordance with the provisions which under the laws repealed by section *one hundred and fifty-two*, were immediately prior to the commencement of this Act applicable in respect of the South African Permanent Force referred to in section one of the South Africa Defence Act Amendment Act, 1922 (Act 22 of 1922)].**

(2) (a) The procedure in connection with the appointment and promotion of officers and [~~the engagement of~~] other ranks and [~~subject to the provisions of any law relating to the grant of pensions to members of the Permanent Force~~] the conditions of such appointment or [~~engagement~~] promotion shall be as may be prescribed by the Public Service Commission.

(b) The said conditions may provide for the payment of gratuities upon discharge to specified categories or kinds of persons appointed [~~or engaged~~] in a temporary capacity.

(3) Different conditions may be prescribed under subsection (2) for different categories or kinds of members of the [~~Permanent~~] Defence Force.

(4) Any person [~~engaging~~] appointed for service in the [~~Permanent~~] Defence Force shall be bound to serve therein until he or she has obtained his or her official discharge.”.

Substitution of section 10 of Act 44 of 1957, as amended by section 7 of Act 85 of 1967.

13. The following section is hereby substituted for section 10 of the principal Act:

“Qualifications of members of Defence Force.

10. (1) No person shall be [~~enrolled for service~~] appointed in the [~~Permanent~~] Defence Force unless -

(a) he or she is a citizen; [~~and~~]

(b) except where the Minister or any person acting under his or her authority otherwise directs, has passed [~~in both official languages of the Republic in the~~] any examination which he or she [~~is~~] may in terms of the conditions prescribed under section 9(2) be required to pass as a condition [~~precedent to~~] for an appointment [~~or engagement~~] in terms of that section [~~Provided that~~]

the Minister or any person acting under his authority may authorize the enrolment in such Force of any person in a temporary capacity, but not for a period exceeding three years at any one time in the case of a person who is not a citizen]; and

(c) he or she meets the requirements as prescribed by the Public Service Commission in consultation with the Minister.

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

Substitution of section 11 of Act 44 of 1957.

14. The following section is hereby substituted for section 11 of the principal Act:

"Appointment of officers.

11. Officers of the [**Permanent**] Defence Force shall as far as practicable be appointed from amongst persons who have been trained at a military training institution established under section [**seventy-seven**] 76 or such other institution as approved by the Minister [and members of the said Force]."

Amendment of section 12 of Act 44 of 1957.

15. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsection (2) of this section and sections 85 and 96, a member of the Defence Force shall be discharged from that Force -

- (a) if he or she resigns as a member in accordance with the provisions of 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."

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Substitution of section 14 of Act 44 of 1957.

16. The following section is hereby substituted for section 14 of the principal Act:

"Member of Defence Force not eligible for certain offices.

14. [No] A member of the [Permanent] Defence Force shall not be eligible for nomination, [or] election or appointment as a [senator or a] member of [the House of Assembly or any Provincial Council or the Legislative Assembly of South West Africa] Parliament or any prescribed public body."

Repeal of section 15 of Act 44 of 1957.

17. Section 15 of the principal Act is hereby repealed.

Repeal of section 56 of Act 44 of 1957, as amended by section 31 of Act 85 of 1967, section 3 of Act 28 of 1970, and section 1 of Proclamation AG. 14 of 1989.

18. Section 56 of the principal Act is hereby repealed.

Repeal of section 58 of Act 44 of 1957.

19. Section 58 of the principal Act is hereby repealed.

Repeal of section 61 of Act 44 of 1957, as amended by section 34 of Act 85 of 1967.

20. Section 61 of the principal Act is hereby repealed.

Substitution of heading of Chapter IX of Act 44 of 1957.

21. The following heading is hereby substituted for the heading of Chapter IX:

"ADMINISTRATION AND GENERAL POWERS
OF THE PRESIDENT, THE MINISTER
AND OFFICERS".

Insertion of sections 73 up to and including 88 in Act 44 of 1957.

22. (1) The following sections are hereby inserted under Chapter IX of the principal Act:

"Council of defence.

73. The President may establish a Defence Council which shall be constituted in such manner and shall perform such functions as the President may prescribe.

Defence staff council.

74. (1) The Minister may appoint a Defence Staff Council, consisting of officers of the Defence Force, or of such officers and other members of the public service as the Minister may determine, to investigate and make recommendations to the Minister in connection with any matter relating to the

defence of the Republic which the Minister may refer to it.

(2) The Minister shall designate one of the members of the Council referred to in subsection (1) as chairman and another such member as secretary thereof, and may make rules, not inconsistent with this Act, for regulating the procedure and the conduct of the business of such Council.

Establishment
of commands,
areas, armed
services, corps
and units.

75. The Minister may establish -

- (a) military commands, areas and districts throughout the Republic;
- (b) corps and units of the Defence Force, or of members of that Force.

General powers
of Minister.

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

(2) Without derogating from the generality of the power 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;
- (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 the provisions of 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) 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 of any category or kind 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 from time to time determine.

(3) The Minister, in consultation with the Minister of Finance, or any person acting under the authority of the Minister may, whenever the Minister or such person deems it expedient in the public interest or in case of emergency, authorize -

- (a) the conveyance, on such terms and conditions as the Minister or such person acting in consultation as aforesaid may deem fit, of any person other than an officer or employee of the State acting in the execution of his or her duty as such, 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 its Ministry of Defence;
- (b) the rendering of any service, on such terms and conditions as aforesaid to

any person other than an officer or employee of the State acting in the execution of his or her duty as such; or

- (c) the use, on such terms and conditions as aforesaid of any vehicle, aircraft, vessel, equipment or any other thing, the property of the State in its Ministry of Defence, by any person other than an officer or employee of the State acting in the execution of his or her duty as such.

Military
training
institutions.

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

(2) Subject to the provisions of 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 government of any such institution shall be as may be prescribed.

(3) All cadets under instruction at a military training institution shall be subject to the Military Discipline Code.

Areas for
training.

78. (1) (a) The Minister may from time to time designate areas wherein the Defence Force or any part thereof may, without the consent of any person affected or likely to be affected thereby, conduct military exercises: Provided that no camp shall be erected within a radius of five hundred metres of a private dwelling, except with the consent of the owner or occupier thereof.

(b) No area shall be designated under paragraph (a) unless the Permanent Secretary for Defence has published in respect of every district in which any land forming part of such area is situate, a notice in the *Gazette* and in a newspaper circulating in that district, to the effect that such area, which shall be defined in the notice, is proposed to be designated as a training area under paragraph (a) and inviting all interested persons to furnish the said Permanent Secretary not later than a date specified in the notice, with any representations they may wish to make in regard thereto: Provided that if no newspaper is circulated in such district, such notice shall be given in such manner as the Permanent Secretary, with the approval of the Minister, considers sufficient in the circumstances.

(c) Paragraph (a) shall not be so construed as to affect the right of any owner or occupier of land in any area designated under that paragraph, to claim compensation for damage or loss sustained by him or her in consequence of the conduct of such exercises on such land.

(2) 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 any area designated under subsection (1) or 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, and any person who disobeys or disregards any order or signal given in the exercise of the powers conferred by this subsection shall be guilty of an offence.

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Establishment
of auxiliary
services.

79. (1) The Minister may establish and 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, shall be as prescribed.

(3) The conditions of service of persons engaged in such auxiliary services shall be as prescribed by the Public Service Commission.

(4) The members of such auxiliary services shall be 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 or by an officer of such auxiliary services or of the Defence Force;
- (c) the review of proceedings at trials and of sentences;
- (d) the attendance and examination of witnesses, including witnesses who are not members of such auxiliary services, at such trials;
- (e) penalties for offences under such disciplinary rules by way of a fine not exceeding R8 000 or imprisonment with compulsory labour for a period not exceeding two years, or

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both such fine and such imprisonment, or by way of confinement to barracks or the performance of extra duties: Provided that no officer shall have jurisdiction to impose a penalty of imprisonment or a fine exceeding R100;

- (f) 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 Government;
- (g) the recovery by deductions from any pay and allowances or other moneys due or which may become due by the Government to a member of such auxiliary services of the amount of any deficiency, loss, injury, damage or destruction of Government property or of any expense to the Government caused by his or her wrongful act, omission, negligence or failure to carry out a duty; and
- (h) any other matter affecting the conduct and discipline of members of such auxiliary services.

Establishment
of medical
service.

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

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

(3) The conditions of service of persons appointed in such medical service shall be as prescribed by the Public Service Commission.

Application of laws governing the Public Service to members of Defence Force and auxiliary and medical services.

81. The provisions of the laws governing the Public Service, but excluding sections 15, 17 and 18 of the Public Service Act, 1980 (Act 2 of 1980), shall, to the extent that they are not in conflict with the provisions of this Act, apply to members of the Defence Force and persons engaged or appointed in any auxiliary or medical service.

Commissioned rank.

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

(b) The Minister may confer temporary commissioned rank in the Defence Force on -

(i) any citizen who is or who is eligible to become a member of that Force; or

(ii) any other person who is not a citizen and who has been appointed in a temporary capacity in the said Force under section 10(2).

(2) Subject to the provisions of subsection (3), a citizen on whom commissioned rank, other than temporary commissioned rank, has been conferred in terms of subsection (1), shall retain such commission on being transferred from one unit of the Defence Force to any other unit thereof.

(3) (a) Subject to the provisions of paragraph (c), all officers of the Defence Force on whom commissioned rank has been conferred by the President shall hold their commissions during the pleasure of the President, but the commission of an officer shall not be cancelled without the holder thereof being notified

in writing of any complaint or charge made against him or her and of any action proposed to be taken in respect thereof, nor without his or her being called upon to show cause in relation thereto: Provided that no notification shall be necessary in the case of an officer absent from duty without leave or failing to perform the duties of his or her appointment, for a period of three months or more.

(b) Subject to the provisions of paragraph (c), all officers of the Defence Force on whom temporary commissioned rank has been conferred shall hold their commissions during the pleasure of the Minister.

(c) The commission of any officer shall be deemed to have been cancelled on the date on which any sentence of cashiering or dismissal from the Defence Force, which may have been imposed on him or her, is confirmed under the First Schedule.

Retirement of
officers and
other ranks.

83. (1) The ages of retirement of officers and other ranks of the Defence Force shall be as prescribed, but in special cases and subject to the provisions of section 9, the Minister or any person acting under his or her authority may, with the consent of any officer, extend the date of his or her retirement to a date beyond that on which he or she attains the prescribed age.

(2) Officers of the Defence Force shall, at the termination of their service in the said Force be placed on a retired list and any officer on that list shall retain his or her commission and shall be entitled to wear uniform as prescribed: Provided that the President may direct that an officer shall not so be placed on a retired list.

Termination
of service.

84. The President may terminate the service of any member of the Defence Force.

Resignation
of officers.

85. (1) An officer may by notice in writing tender the resignation of his or her commission or appointment.

(2) Any such notice shall take effect upon the expiration of a period of three months after the date upon which it is lodged with such officer's commanding officer or on such earlier date as may be approved by the Minister or any person acting under the authority of the Minister: Provided that an officer shall not in consequence of his or her resignation be exempt from any service or training for which he or she may be liable under this Act.

Regulations.

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

- (a) the training and inspection of the Defence Force and any auxiliary or medical service established under this Act;
- (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 chairmanship of a member of the Defence Force and have been collected or accepted by or from members of that Force or any service, corps or unit therein 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 the Republic exclusively for the benefit of members and ex-members of that Force or any service, corps or unit therein and their dependants and other prescribed persons or classes of persons;

- (f) the seniority and precedence of services, corps and units and of members of the Defence Force and any auxiliary or medical service established under this Act;
- (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 sick-bays 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 the employers of persons engaged in specified occupations or industries of specified particulars in respect of such persons, the furnishing by such persons of their addresses to a specified officer, and the notification by them to such an officer of any changes in their addresses;
- (o) the furnishing by any person in the Republic of full and accurate information as to buildings, premises, vehicles, aircraft, vessels, animals, foodstuffs, forage, fuels, oils, materials, articles or things in such person's possession or under such person's control;
- (p) the issue and care of arms, accoutrements, ammunition, including ammunition to be held in reserve for use in cases of emergency, supplies, animals, transport, clothing and equipment;
- (q) the government and management of, and the discipline which may be enforced in places appointed as prisons under this Act;
- (r) the licencing of drivers of motor vehicles which are the property of the State in its Ministry of Defence;
- (s) 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;

(t) all other matters which are by this Act required or permitted to be prescribed or which are necessary or convenient to be prescribed for securing the good discipline and good government of the Defence Force or any auxiliary or medical service established under this Act or for carrying out and giving effect to this Act; and

(u) the penalties which may be imposed for breaches of the regulations, not exceeding a fine of R2 000 or imprisonment for a period of six months.

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

(3) Notwithstanding anything to the contrary contained in any other law, any such regulation relating to the conditions of service of members of the Defence Force or any auxiliary or medical service established under this Act, may be made with retrospective effect for a period not exceeding twelve months, except in so far as it provides for any reduction in the privileges of such members or for penalties in respect of acts or omissions for which no penalty was previously prescribed.

(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.

Protection
of defence
stores.

87. (1) The Minister, or any person acting under the authority of the Minister, may from time to time, by notice in the *Gazette*, designate a mark or marks to be applied to animals or articles to denote the ownership of the Republic or of any visiting force in those animals or articles.

(2) Any person who without lawful authority applies to any animal or article any such mark, or defaces or conceals any such mark on any animal or article or receives, possesses, sells or delivers any animal or article bearing any such mark or any animal or article which is forbidden under this Act to be sold, pledged or otherwise disposed of, shall be guilty of an offence.

(3) No animal or article the property of the Government or of any visiting force, which bears any such mark or which is forbidden by or in pursuance of this Act to be sold, pledged or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution which may be sued out against any member of the Defence Force or any visiting force, nor shall ownership of such animal or article pass by or under any order made for the sequestration of the estate of any such member.

Prohibition
of access to
military
premises.

88. (1) The Minister may by order issued under his or her 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 such camp, barracks, dockyard, installation, premises, land or area may by order issued under his or her hand and made known in such manner as he or she 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 camp, barracks, dockyard, installation, premises, land or area contrary to any prohibition or restriction contained

in an order under subsection (1) or (2), shall be guilty of an offence and liable on conviction to a fine not exceeding R60 000 or to imprisonment for a period not exceeding fifteen years or to both such fine and such imprisonment.

(4) The Minister or any such officer in command may further take or cause to be taken such measures as the Minister or such officer considers necessary for the efficient defence or protection of any such camp, barracks, dockyard, installation, premises, land or area, and shall 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) The Government or any person in the service of the State shall not be liable, except in the case of any negligent or wilful act or omission on the part of any such person, 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 in connection with any measures taken or works erected for the defence or protection of or the prohibition or restriction of access to any such camp, barracks, dockyard, installation, premises, land or area.".

(2) In so far as any provision of Chapter IX of the principal Act remained in force in terms of the provisions of the Annexure to the First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, 1989 (Proclamation AG. 14 of 1989), notwithstanding the repeal of that Chapter by section 1 of that Proclamation, such provision shall be deemed to have been substituted by the corresponding provision inserted by subsection (1) of this section.

Substitution of section 90 of Act 44 of 1957, as amended by section 11 of Act 12 of 1961 and section 14 of Act 77 of 1963.

23. The following section is hereby substituted for section 90 of the principal Act:

"Employment
of Defence
Force.

90. Subject to the provisions of this Act, the whole or any portion or any member of [Permanent] Defence Force [and the whole

or any portion or a member of the Citizen Force appointed or engaged for temporary whole-time service in terms of section twenty] may at any time be employed on service as provided in subsection (2) of section 3.”.

Repeal of section 91 of Act 44 of 1957, as amended by section 12 of Act 12 of 1961.

24. Section 91 of the principal Act is hereby repealed.

Repeal of section 92 of Act 44 of 1957, as substituted by section 4 of Act 1 of 1976.

25. Section 92 of the principal Act is hereby repealed.

Repeal of section 92 *bis* of Act 44 of 1957, as inserted by section 14 of Act 12 of 1961, amended by section 16 of Act 77 of 1963 and section 7 of Act 8 of 1974.

26. Section 92 *bis* of the principal Act is hereby repealed.

Repeal of section 92ter of Act 44 of 1957, as inserted by section 14 of Act 12 of 1961 and substituted by section 8 of Act 83 of 1974 and amended by section 5 of Act 1 of 1976 and section 7 of Act 68 of 1977.

27. Section 92ter of the principal Act is hereby repealed.

Repeal of section 93 of Act 44 of 1957, as amended by section 15 of Act 12 of 1961.

28. Section 93 of the principal Act is hereby repealed.

Repeal of section 95 of Act 44 of 1957, as substituted by section 6 of Act 1 of 1976.

29. The following section is hereby substituted for section 95 of the principal Act:

“Compulsory service outside the Republic.

95. Any member of the Defence Force may be required to perform service at any place outside the Republic whenever it is necessary -

(a) to combat, prevent or suppress -

(i) any attack or act of aggression in circumstances other than those contemplated in Article 26 of the Namibian Constitution and which is directed at the Republic by any armed force or group of persons;

(ii) any threat of such an attack or act of aggression, or

(b) to prevent the recurrence of any such an attack or act of aggression.”

Amendment of section 96 of Act 44 of 1957, as amended by section 18 of Act 77 of 1963 and section 7 of Act 1 of 1976.

30. Section 96 of the principal Act is hereby amended -

(a) by the deletion of subsection (1); and

(b) by the substitution for subsection (2) of the following subsection:

“(2) Notwithstanding anything to the contrary contained in this Act, and notwithstanding the expiration of the period of any appointment, [engagement or compulsory service], no member of the [South African] Defence Force employed on service in defence of the Republic or in the prevention or suppression of terrorism or in the prevention or suppression of internal disorder in the Republic or in the preservation of life, health or property or in the maintenance of essential services, shall be entitled to obtain his or her release or discharge from that Force during the continuance of such service.”

Repeal of section 97 of Act 44 of 1957, as amended by section 19 of Act 77 of 1963, section 53 of Act 85 of 1967, section 9 of Act 83 of 1974 and section 2 of Act 8 of 1982.

31. Section 97 of the principal Act is hereby repealed.

Repeal of section 98 of Act 44 of 1957, as amended by section 11 of Act 42 of 1961 and section 20 of Act 77 of 1963.

32. Section 98 of the principal Act is hereby repealed.

Repeal of section 99 of Act 44 of 1957, as amended by section 5 of Act 35 of 1977.

33. Section 99 of the principal Act is hereby repealed.

Repeal of section 99A of Act 44 of 1957, as inserted by section 3 of Act 49 of 1978.

34. Section 99A of the principal Act is hereby repealed.

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Repeal of section 100 of Act 44 of 1957, as amended by section 16 of Act 12 of 1961 and section 6 of Act 35 of 1977.

35. Section 100 of the principal Act is hereby repealed.

Repeal of section 101 of Act 44 of 1957, as amended by section 7 of Act 35 of 1977.

36. Section 101 of the principal Act is hereby repealed.

Repeal of section 102 of Act 44 of 1957, as substituted by section 8 of Act 35 of 1977.

37. Section 102 of the principal Act is hereby repealed.

Substitution of section 103 of Act 44 of 1957, as amended by section 21 of Act 77 of 1963 and section 55 of Act 85 of 1967.

38. The following section is hereby substituted for section 103 of the principal Act:

"Evacuation
or concentra-
tion of persons.

103. During a state of emergency declared by the President under Article 26(1) of the Namibian Constitution, the Minister or any officer 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 deem 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 and any person who fails to comply with such an order which is applicable to him or her, shall be guilty of an offence: Provided that no order under this section to assemble in any premises or area shall remain in force for longer than four days."

Amendment of section 104 of Act 44 of 1957, as amended by section 19 of Act 12 of 1961, section 56 of Act 85 of 1967, section 10 of Act 28 of 1970 and section 11 of Act 35 of 1977.

39. Section 104 of the principal Act is hereby amended -

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) The [State] President may, with the approval [by both Houses] of the National Assembly, by proclamation in the *Gazette* insert any new provision in or amend or repeal any provision of the First Schedule.";

(b) by the substitution for subsection (3) of the following subsection:

“(3) The [State] President may in consultation with a rules board consisting of the [Chiefs of Staff, the Adjutant-General and the Senior Legal Officer] Chief of the [South African] Defence Force and of such other members or other persons as [he] the President may determine, make, alter or repeal such rules for giving effect to the First Schedule as [he] the President may deem necessary or expedient or as may be provided for in the said Schedule.”;

- (c) by the substitution for paragraph (a) of subsection (5) of the following paragraph:

“(a) to all members of the [Permanent] Defence Force;”; and

- (d) by the deletion of paragraph (b) of subsection (5).

- (e) by the substitution for paragraph (d) of subsection (5) of the following paragraph:

“(d) to members of the auxiliary services, established in terms of section [80] 79, being on service as defined in the First Schedule.”.

Substitution of section 113 of Act 44 of 1957.

40. The following section is hereby substituted for section 113 of the principal Act:

“Limitation of actions.

(1) No civil action shall be 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, if a period of [six] twelve months (or where the cause of action arose outside the Republic and outside the territorial waters thereof, two years) has elapsed since the date on which the cause of action arose, and notice in writing of any such civil action and of the cause thereof shall be given to the defendant one month at least before the commencement thereof.

(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 shall be deemed to be a notice given to the State.”.

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Amendment of section
116 of Act 44 of 1957.

41. Section 116 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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

Amendment of section
118 of Act 44 of 1957, as
amended by section 57 of
Act 85 of 1967 and section
1 of Proclamation AG. 14
of 1989.

42. Section 118 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) No person shall publish in any newspaper, magazine, book or pamphlet or by radio or any other means any information relating to the composition, movements or dispositions of -

(a) the Defence Force or any auxiliary or medical service established under this Act, or any force of a country which is allied to the Republic; or

(b) any Namibian or allied ships or aircraft used for naval or military purposes; or

(c) any engines, rolling stock, vehicles, vessels or aircraft or any railway, road, inland water or sea, transport system or air service used by or for the purposes of the Defence Force,

or any statement, comment or rumour calculated directly or indirectly to convey such information, except where the information has been furnished or the publication thereof has been authorized by the Minister or under his or her authority.” and

(b) by the substitution for subsection (1A) of the following subsection -

“(1A) No prosecution in respect of an offence under subsection (1) shall be instituted except on the written authority of the Attorney-General [**having jurisdiction in the area concerned**] or of a member of his or her staff designated by him or her in writing.”.

Substitution of section 124 of Act 44 of 1957.

43. The following section is hereby substituted for section 124 of the principal Act:

“Prohibition of citizens to serve in military forces of other countries.

124. (1) No citizen may -

(a) without the written permission of the President serve or apply to serve in the military force or the reserve or any auxiliary force of any other country unless such citizen is resident in such country and is, in terms of the laws of that country, liable to serve in such military force, reserve or auxiliary force; or

(b) render service or bind himself or herself to serve as a mercenary.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.

Amendment of section 125 of Act 44 of 1957, as amended by section 60 of Act 85 of 1967.

44. Section 125 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any member of the [**South African**] Defence Force or [**the Reserve or the Cade Corps**] any person permitted under section 76(2)(f) to participate in training exercises with members of the Defence Force, or any auxiliary or medical service established under this Act, who without authority gives away, sells, pledges, lends or otherwise disposes of any moneys, animals, arms, ammunition, accoutrements, clothing, supplies or any other articles entrusted to or held by him or her for the service of

such defence force [**reserve, corps**] or auxiliary or medical service, or who as a result of his or her negligence loses any such articles so entrusted to or held by him or her, shall be guilty of an offence, and may, apart from any penalty which may be imposed upon him or her for such an offence under this Act, be ordered by the court or other competent authority which imposes that penalty, to make good any loss or deficiency caused by the commission of such offence, and every such gift, sale, pledge, loan or other disposition shall be null and void.”.

Repeal of section 126A of Act 44 of 1957, as inserted by section 10 of Act 66 of 1972.

45. Section 126A of the principal Act is hereby repealed.

Amendment of section 127 of Act 44 of 1957, as amended by section 62 of Act 85 of 1967 and section 11 of Act 83 of 1957.

46. Section 127 of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (c) of the following paragraphs:

- “(a) in the case of an offence referred to in section [88] 87, [101] 115, 118, 120 or 123, to a fine not exceeding [**five hundred pounds**] R20 000 or imprisonment for a period not exceeding five years or to both such fine and imprisonment;
- (b) in the case of an offence referred to in section 122, to a fine not exceeding [**one hundred pounds**] R4 000 or imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (c) in the case of any other offence, to a fine not exceeding [**one hundred pounds**] R2 000 or imprisonment for a period not exceeding six months.”.

Amendment of section 132 of Act 44 of 1957, as amended by section 12 of Act 28 of 1970.

47. Section 132 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (b) of the definition of “offence against the person” in subsection (4) of the following paragraph:

“(b) a contravention of [section 113 or 114 of the **General Law Amendment Act, 1935 (Act No. 46 of 1935)**, section 14 or 15 of the **Immorality Act, 1957 (Act No. 23 of 1957)**, section 74 of the **Mental Disorders Act,**

1916 (Act No. 38 of 1916)] section 66 of the Mental Health Act, 1973 (Act No. 18 of 1973), or section 18(1), 19, 21 or 25 of the Childrens Act, 1960 (Act No. 33 of 1960) [or section 92 of the Liquor Act, 1928 (Act No. 30 of 1928)]; or”; and

- (b) by the deletion of paragraph (c) of the definition of “offence against property” in subsection (4).

Amendment of section 135 of Act 44 of 1957.

48. Section 135 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Section [~~twenty-seven~~] 29 of the Births, Marriages and Deaths Registration Act, [~~1923 (Act No. 17 of 1923)]~~ 1963 (Act 81 of 1963), shall not apply in respect of any case where the body of a deceased person who at the time of his or her 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 the Republic 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 (3).”.

Amendment of section 136 of Act 44 of 1957.

49. Section 136 of the principal Act is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The [~~State~~] President may, in respect of conduct or service in peace or war which in his or her opinion requires or deserves suitable recognition, institute orders, decorations and medals which he or she may award, subject to such rules as he or she may in the case of every such order, decoration or medal consider necessary, to members of the [~~South African~~] Defence Force [~~or the Cadet Corps~~] or any auxiliary service or [~~voluntary nursing~~] medical service established under this Act or any armed force attached to or serving with or rendering any service to the [~~South African~~] Defence Force.”; and

- (b) by the deletion of subsection (4).

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Substitution of section
137 of Act 44 of 1957.

50. The following section is hereby substituted for section 137 of the principal Act:

"Language of
instruction.

137. Every officer and every non-commissioned officer of the Defence Force shall be instructed in giving and receiving executive words of command in the official language of the Republic, and the training and instruction of any citizen shall be given in the official language.

Repeal of section
140 of Act 44 of 1957.

51. Section 140 of the principal Act is hereby repealed.

Substitution of section
144 of Act 44 of 1957.

52. The following section is hereby substituted for section 144 of the principal Act:

"Railway
charges.

144. Any member of the [South African] Defence Force travelling on the service of that Force shall, when provided with a government warrant, be conveyed over any portion of any railway system in the Republic at fares which shall be determined by agreement between [the South African Railways and Harbours Administration] Transnamib Limited, established by section 2 of the National Transport Corporation Act, 1987 (Act 21 of 1987), and the [Department] Ministry of Defence acting in consultation with the Treasury.

Amendment of section
146 of Act 44 of 1957, as
amended by section 24 of
Act 12 of 1961, section 28
of Act 77 of 1963, section
14 of Act 83 of 1974 and
section 13 of Act 35 of
1977.

53. Section 146 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A member of the [South African] Defence Force [(other than a member of the Permanent Force), or the Reserve or the Cadet Corps] 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, notwithstanding that the duration of such treatment may extend beyond the [period of the service, camp, course, parade or other training on which he was engaged when he received the wound or injury or contracted the illness] date upon which the member concerned obtained his or her discharge, for whatever reason, from the Defence Force."

Repeal of section 146A of Act 44 of 1957, as inserted by section 65 of Act 85 of 1967 and amended by section 15 of Act 83 of 1974 and section 14 of Act 35 of 1977.

54. Section 146A of the principal Act is hereby repealed.

Repeal of section 146B of Act 44 of 1957, as inserted by section 65 of Act 85 of 1967.

55. Section 146B of the principal Act is hereby repealed.

Substitution of section 151 of Act 44 of 1957.

56. The following section is hereby substituted for section 151 of the principal Act:

"Act to apply both within and outside Republic.

151. This Act shall apply to all members of the [South African] Defence Force, [and the Reserve,] and of any auxiliary or [nursing] medical service established under this Act, whether such members are serving within or outside the Republic and whenever it is necessary to enforce this Act outside the Republic any sentence, fine or penalty pronounced or imposed for the purpose of such enforcement shall be as valid and effectual and shall be carried into effect as if it had been pronounced or imposed in the Republic."

Repeal of section 153 of Act 44 of 1957, as amended by section 26 of Act 12 of 1961 and section 66 of Act 85 of 1967.

57. Section 153 of the principal Act is hereby repealed.

Amendment of First Schedule to Act 44 of 1957 and construction of certain references in that Schedule.

58. (1) The Military Discipline Code set out in the First Schedule to the principal Act is hereby amended -

- (a) by the deletion in section 1 of the definition of "capital offence";
- (b) by the substitution in section 1 in the definition of "counsel" for the words "a provincial division of the Supreme Court" of the words "the High Court and the Supreme Court of Namibia";
- (c) by the deletion in section 1 of the definition of "General Officer Commanding, South African Defence Force";
- (d) by the substitution in section 1 for the definition of "pay" of the following definition:

“ ‘pay’, in relation to any person, includes all amounts to which such person is entitled in respect of any training, duty or service undergone or performed by him or her as a member of the Defence Force except amounts payable to him or her in terms of the laws relating to the grant of pensions to members of the Public Service;”;

- (e) by the substitution in section 1 in the definition of “superior court” for the words “a provincial or local division of the Supreme Court of South Africa” of the words “the High Court of Namibia”;
- (f) by the substitution for the heading of section 4 of the following heading:

**“OFFENCES ENDANGERING SAFETY
OF FORCE PUNISHABLE WITH
LIFE SENTENCE”;**

- (g) by the substitution in section 4 for the word “death” of the words “life imprisonment”;
- (h) by the deletion of subsection (1) of section 93;
- (i) by the deletion of section 105;
- (j) by the substitution for the words “South African Police”, wherever they occur in the said Code, of the words “Police Force”;
- (k) by the substitution for the expressions “sentence of death” and “penalty of death”, wherever they occur in the said Code, of the expression “sentence of life imprisonment”;
- (l) by the substitution for the expression “General Officer Commanding, South African Defence Force”, wherever it occurs in the said Code, of the expression “Chief of the Defence Force”; and
- (m) by the substitution for the expression “Adjutant-General”, wherever it occurs in the said Code, of the expression “Director of Personnel”.

(2) Any reference in the said Military Discipline Code to "capital offence" or "capital civil offence" shall be construed as a reference to any offence in respect of which the death sentence could have been imposed before the commencement of Article 6 of the Namibian Constitution.

Amendment of Act 44 of 1957.

59. The principal Act and the Military Discipline Code set out in the First Schedule to the Act, are hereby amended -

- (a) by the substitution for the expression "State President", wherever it occurs, of the expression "President";
- (b) by the deletion in the expression "South African Defence Force", wherever it occurs, of the words "South African";
- (c) by the substitution for the word "Department", wherever it occurs, of the word "Ministry";
- (d) by the substitution for the expression "voluntary nursing services", wherever it occurs, of the expression "medical service"; and
- (e) by the substitution for the expression of "any division of the Supreme Court of South Africa", wherever it occurs in the Act, and for the expression "Supreme Court of South Africa", wherever it occurs in the said Code, of the expression "High Court of Namibia".

Application of rules and regulations made under Act 44 of 1957.

60. (1) 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, 1989 (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.

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(2) For the purposes of subsection (1), such regulations and rules shall be construed in accordance with the provisions of the principal Act or the said Code, as the case may be, as amended by this Act.

Short title.

61. This Act shall be called the Defence Amendment Act, 1990.
