

# 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 repeals the *Moratorium Act 53 of 1962*. It has no practical effect in Namibia as it applies only to persons conscripted into military service.

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

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

## *Protection of Information Act 84 of 1982*

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

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

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 Act 19 of 1987 is repealed by the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)), which also amends section 1 of this Act (definition of “security matter”).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

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

**Summary:** This Act ([GG 1699](#)) repeals the *National Intelligence Act 19 of 1987* inherited from South Africa by establishing a Namibia Central Intelligence Service. One matter of general

interest is that a judicial direction is required in terms of the Act for the interception or monitoring of communications and the search of premises. The Act was brought into force on 5 June 1998 by Proc. 12/1998 ([GG 1876](#)).

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

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

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

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

## **Defence Act 1 of 2002**

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

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

**Regulations:** Regulations made under the previous Act remained in force in terms of section 94 of this Act. The *Defence Act 44 of 1957* similarly provided that regulations made under the *South Africa Defence Act 13 of 1912* remained in force pursuant to section 152(2) of the *Defence Act 44 of 1957*. However, pre-independence regulations have not been researched.

**Regulations relating to the performance of police duties by members of the Defence Force** were made under the *Defence Act 44 of 1957* in GN 234/1994 ([GG 993](#)), as amended by GN 241/1994 ([GG 1002](#)), which was later repealed by GN 189/2010 ([GG 4547](#)). These regulations have not been repealed, but they applied only to the 1994 election.

It should be noted that there were two Government Notices numbered 241 in 1994.

A long list of regulations made in terms of the *Defence Act 44 of 1957* are repealed and replaced by the **General Regulations** relating to the Namibian Defence Force in GN 189/2010 ([GG 4547](#)). The 2010 regulations repeal the regulations contained in GN 138/2005 ([GG 3525](#)), which in turn repealed the pre-independence regulations promulgated under RSA Government Notices R.274 of 26 February 1971 and R.2213 of 10 December 1971, as amended.

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

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

### **Cases:**

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

*S v Mushwena & Others* 2004 NR 276 (SC) discusses section 95 of the Act in *dicta* at 423-24 (*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  
*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 at [www.lac.org.na](http://www.lac.org.na).

## **APPOINTMENTS**

Appointment of First Chief of Defence Force, Proc. 7/1990.  
Chief of Defence Force, Proc. 16/2012 ([GG 4996](#))  
Chief of Defence Force, Proc. 1/2014 ([GG 5387](#)).

## **INTERNATIONAL LAW**

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

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

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

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

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

These two Protocols supplement the “Geneva Conventions”.

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

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

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

*Rome Statute of the International Criminal Court, 1998*

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

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

*SADC Mutual Defence Pact, 2003*

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

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

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