

REPUBLIC OF SOUTH AFRICA

MILITARY DISCIPLINE BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 42346
of 28 March 2019)
(The English text is the official text of the Bill)*

(MINISTER OF DEFENCE AND MILITARY VETERANS)

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BILL

To provide for an effective administration of military justice system and maintenance of discipline in the Defence Force; to establish and regulate military courts and appointment of judicial officers and court officials; to provide for the appointment of the Judge Advocate General and Provost Marshal General of the Defence Force; to provide for administrative processes; to repeal the Military Discipline Supplementary Measures Act, 1999; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless the context otherwise indicates—
- “**appeal authority**” means the authority authorised to consider any appeal against any sanction, order, discharge or dismissal in terms of this Act or any regulations;
- “**appropriately qualified**” means the successful completion of the official departmental military qualification course in military law presented by the School of Military Justice and other military courses which are required for his or her current rank; 5
- “**board of inquiry**” means the board of inquiry contemplated in Chapter 16 of the Defence Act; 10
- “**camp**” includes a ship of the South African Navy;
- “**cashiering**” means the dishonourable dismissal of an officer, which includes the withdrawal and cancellation of that officer’s commission, the withdrawal of military post-nominal letters and the return of military insignia, rank epaulets, qualification badges, proficiency badges, military medals and decorations, as well as commendation certificates and citations and is executed according to military policy on parade with due regard to human dignity; 15
- “**Chaplain**” means an officer who fulfils the function of minister of religion in the Defence Force;
- “**Chief of the Defence Force**” means the Military Commander appointed by the President as Chief of the Defence Force in terms of the Defence Act; 20
- “**child**” means a person under the age of 18 years;
- “**civilian authority**” means—
- (a) a civilian court; or
- (b) the National Director of Public Prosecutions, a Deputy National Director of Public Prosecutions or a Director of Public Prosecutions appointed in terms of the National Prosecuting Authority Act; 25
- “**civilian court**” means a court contemplated in section 166(b), (c) or (d) of the Constitution having jurisdiction in criminal matters in the Republic;
- “**civilian offence**” means any— 30
- (a) offence not being an offence under Schedule 1; and
- (b) crime in terms of international law, including customary international law, which is punishable under South African law, in respect of which a penalty may be imposed by a civilian court;
- “**commanding officer**” means an officer who is assigned or appointed to command a military force structure element that is below that of a unit or ship; 35
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**correctional centre**” means such place as established under the Correctional Services Act;
- “**correctional confinement**” means custody in a correctional facility in execution of a sentence contemplated in section 84; 40
- “**correctional facility**” means a military facility established or deemed to have been established under section 98;
- “**Correctional Services Act**” means the Correctional Services Act, 1998 (Act No. 111 of 1998); 45
- “**corrective punishment**” means supervised training, work, instruction or forfeiture of privileges as contemplated in sections 84(2), 84(3)(c), 84(3)(e) to (h), 125 and 126;
- “**court official**” means a Senior Military Judge or Military Judge, Military Prosecution Counsel, assessor, legal representative, interpreter, court orderly, escorts, recording officer or member under instruction, including any other person required for the proper functioning of a military court; 50
- “**Criminal Law (Sexual Offences and Related Matters) Amendment Act**” means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); 55
- “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- “**custody**” includes any confinement in military facilities or civilian facilities;
- “**Defence Act**” means the Defence Act, 2002 (Act No. 42 of 2002);
- “**Defence Force**” means the South African National Defence Force contemplated in section 11 of the Defence Act; 60

“degree in law” means a degree of Bachelor of Laws, conferred by any university in the Republic, or any law degree recognised to be equivalent to such degree;

“Department” means the Department of Defence and Military Veterans;

“deploying authority” means the Chief Joint Operations of the Defence Force or a General or Flag Officer designated for such purpose; 5

“Disciplinary Adjutant” means an appropriately qualified Warrant Officer or officer appointed or designated by an Officer Commanding or commanding officer to perform the functions of a Disciplinary Adjutant as provided in this Act, or a Military Law Practitioner contemplated in section 119;

“enemy” includes any armed rebels, mutineers or members of a belligerent force; 10

“extra labour” means supervised additional physical work intended to clean, repair or maintain military property or premises and contribute towards the advancement of military discipline with due regard to human dignity;

“fatigue duties” for purposes of this Act, includes, but is not limited to, cleaning, digging or other laborious tasks; 15

“field rank” means any rank not lower than that of Major or any equivalent rank;

“Firearms Control Act” means the Firearms Control Act, 2000 (Act No. 60 of 2000);

“Geneva Convention” means the Geneva Convention Relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, 1949; 20

“implicated member” means any person who is the subject of an official investigation or military disciplinary hearing;

“inmate” means any person serving a penalty of correctional confinement in a correctional facility;

“institution” includes a club, mess, trading institution or other institution 25 established or conducted under the Defence Act, and includes any fund established and controlled under that Act, including those institutions referred to in regulations;

“Judge Advocate General” means the Judge Advocate General of the Defence Force appointed in terms of section 28;

“legal representative” means any person who is admitted to practice as an 30 advocate, an attorney or candidate attorney with the right of appearance in the High Court or a Magistrate’s Court of the Republic, and includes any Military Law Practitioner who has been assigned as a Military Defence Counsel;

“member” means any officer or any other rank appointed in the Defence Force;

“member of a visiting force” means any person who is— 35

(a) subject to the military law of the country of that visiting force;

(b) a member of another force but who is attached to such visiting force; or

(c) a civilian who entered into employment in connection with such visiting force outside the Republic;

“military disciplinary offence” means any offence in terms of Schedule 1, for 40 which the maximum prescribed punishment does not exceed imprisonment for a period of one year;

“Military Discipline Supplementary Measures Act” means the Military Discipline Supplementary Measures Act, 1999 (Act No. 16 of 1999);

“Military Law Practitioner” means an appropriately qualified officer holding a 45 degree in law, who is admitted to practice as an advocate or an attorney with right of appearance in the High Court or a Magistrate’s Court of the Republic;

“military offences” means an offence referred to in Schedule 1 for which the maximum punishment prescribed exceeds imprisonment of one year;

“military police official” means a person contemplated in terms of Chapter 5 of 50 the Defence Act;

“military property or premises” means any property or premises, or any land or area of water, including any facility used or intended for residential purposes, camp, cantonment, barracks, wharf, landing place, dockyard, bridge, ferry, toll-bar, gate or point of entry or exit, installation or road either inside or outside the borders 55 of the Republic managed by or under the control or custody of the Defence Force or utilised either temporarily or permanently in support or pursuance of military security and the Defence Force’s constitutional mandate to defend and protect the Republic, its territorial integrity and its people;

“Minister” means the Minister of Defence and Military Veterans; 60

“motor vehicle” means any motorised or mechanised vehicle that is a self propelled wheeled or tracked vehicle, motorcycles, motorised bicycles, electric

- motor, hybrid electric vehicles and plug-in-hybrids, including any towed vehicle motioned or propelled by any of the aforementioned;
- “National Prosecuting Authority”** means the National Prosecuting Authority established in terms of the National Prosecuting Authority Act;
- “National Prosecuting Authority Act”** means the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);
- “National Road Traffic Act”** means the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- “national security”** means an all-encompassing condition in which all South Africans—
- (a) live in freedom, peace and safety;
 - (b) participate fully in the process of democratic governance;
 - (c) enjoy the protection of fundamental rights;
 - (d) have access to resources and the basic necessities of life; and
 - (e) inhabit an environment which is not detrimental to their health, well-being and bodily integrity;
- “National Strategic Intelligence Act”** means the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);
- “offender”** means any person who has been convicted by any court;
- “officer”** means an officer defined in section 1 of the Defence Act;
- “Officer Commanding”** includes the Chief of the Defence Force and any General Officer, Flag Officer or officer who has been appointed to command any Service, Division, Formation or Fleet, Brigade, Contingent, Unit or equivalent Force Structure in the Defence Force, including—
- (a) a local representative of the Judge Advocate General and a uniformed member who is a director in the Defence Legal Services Division of the Defence Force;
 - (b) an officer or person in charge or superintendent of a military correctional facility or military prison;
 - (c) an officer in command or in charge of any camp or facility in which prisoners of war are held;
 - (d) for purposes of conducting a military disciplinary hearing—
 - (i) an appropriately qualified officer with a rank not lower than Captain or its equivalent, or a subordinate in rank, authorised by any person contemplated in this definition, to conduct a military disciplinary hearing;
 - (ii) the Officer Commanding within the next level of command where the Officer Commanding of first instance is not available or is prohibited to conduct such military disciplinary hearing in the interest of a fair hearing, or any other practical circumstances;
 - (iii) in the case of General Officers or Flag Officers, the Service Chief determined by the Service affiliation of the implicated member or a Divisional Chief; or
 - (iv) Chief of the Defence Force in the case of Chiefs of Services or Divisional Chiefs;
 - (e) a commandant of any military training institution, school or facility; and
 - (f) any officer in charge of a semi-autonomous section of a unit or Force Structure Element of the Defence Force;
- “operational deployment”** includes military service in fulfilment of an international obligation or in cooperation with the South African Police Service and other organs of state or in cooperation with multi-national military organisations or any force cooperating with the Defence Force or against an enemy or against acts threatening the national security of the Republic;
- “other rank”** means a member of the Defence Force other than an officer;
- “peace officer”** means any person as defined in section 1 of the Criminal Procedure Act;
- “person who is mentally disabled”** means a person affected by any mental disability, including any disorder or disability of the mind, to the extent that he or she, at the time of the alleged commission of the offence in question, was—
- (a) unable to appreciate the nature and reasonably foreseeable consequences of a sexual act;
 - (b) able to appreciate the nature and reasonably foreseeable consequences of such an act, but unable to act in accordance with that appreciation;
 - (c) unable to resist the commission of any such act; or
 - (d) unable to communicate his or her unwillingness to participate in any such act;

“person who is subject to this Act” means any person referred to in section 3;
“police official” includes any member of the South African Police Service or of any statutory police force or service or of any recognised statutory body of persons exercising police powers;
“prescribed” means prescribed by regulation or rules; 5
“Promotion of Access to Information Act” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
“Prosecution Counsel” means any Military Law Practitioner assigned as a Prosecution Counsel under section 30(a);
“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 10
“public property” means any property belonging to, in the possession of, or under the control of, the State or under the control of any security force acting in cooperation with the Defence Force;
“Regular Force” means the component of the Defence Force referred to section 15 11(a) of the Defence Act;
“rehabilitative labour” means supervised work, service, labour or regimental tasks commensurate to the offence or misconduct the member was convicted of or was pronounced to have committed and which is the most suitable form of punishment or sanction to rehabilitate such member and correct any performance 20 deficiency or offending behaviour or to improve military discipline standards or to change the deficient or recalcitrant attitude, disposition, behaviour or military orientation, with due regard to human dignity;
“Reserve Force” means the component of the Defence Force referred to in section 25 11(b) of the Defence Act;
“Review Authority” means the Court of Military Appeals, Court of Senior Military Judicial Reviews or Court of Military Judicial Reviews established in terms of this Act;
“Road Traffic Management Corporation Act” means Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999); 30
“safeguard” means a party of military personnel, or member thereof, detached for the protection of any person, place, aircraft, military installation or military property or premises or the protection of or watch of a vessel, including any officer on duty, officer of the day, officer of the guard or officer of the watch or Warrant Officer or Non-Commissioned Officer or ratings on duty; 35
“Service Chief” means the Chief of each individual Service as contemplated in section 12 of the Defence Act;
“Services” means the Services as contemplated in section 12 of the Defence Act;
“sexual act” has the same meaning as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act; 40
“sexual offence” has the same meaning as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act;
“Shareholders Committee” means the body established in terms of section 6(1) of the Road Traffic Management Corporation Act;
“superior officer”, in relation to a person who is subject to this Act, means any 45 officer, Warrant Officer or Non-Commissioned Officer who holds a higher rank than that person, or who holds the same or an equivalent rank but is in a position of authority over that person: Provided that for the purpose of—
(a) enforcing this Act, a Chaplain bearing a Chaplain’s rank insignia is an officer of a military rank below Second Lieutenant; and 50
(b) a trial or disciplinary hearing in respect of a person bearing a Chaplain’s rank insignia, such a Chaplain is of a military rank of a Colonel;
“this Act” includes the Schedules to this Act and any regulations or rules made under this Act;
“unit” includes Services, Divisions at Level 2, Formations or Fleet at Level 3, 55 Command Structures, Brigades, Contingents, Bases, Ships, Submarines, Squadrons or other Force Structure Elements at Level 4, in the Defence Force, as well as any entity under the command of the Judge Advocate General or a local representative of the Judge Advocate General; and
“vessel” refers to any craft designed for transportation on water, and includes a 60 submarine.

CHAPTER 1

OBJECT AND APPLICATION

Object of Act

2. The object of this Act is to ensure and maintain proper order and discipline in the Defence Force as required by the Constitution by— 5
- (a) empowering commanders to effect military discipline in the Defence Force;
 - (b) providing for the proper administration of military justice;
 - (c) establishing military courts and procedures;
 - (d) providing for access to the High Court of South Africa by an accused;
 - (e) establishing military disciplinary hearings and procedures; 10
 - (f) establishing processes and procedures for the suspension of members;
 - (g) establishing processes and procedures for an administrative discharge or dismissal;
 - (h) providing for the appointment, functions, powers and duties of the Provost Marshal General as well as military police officials and related matters; and 15
 - (i) empowering the Minister and Officers Commanding or commanding officers to provide for the—
 - (i) prohibition of access of any person to;
 - (ii) the removal or exiting of any person from; and
 - (iii) control over any person on, 20
 military property or premises.

Application of Act

3. (1) This Act applies to the following persons:
- (a) Every member of the Regular Force;
 - (b) every member of the Reserve Force— 25
 - (i) while rendering any service, undergoing any training or carrying out any duty in terms of the Defence Act; or
 - (ii) when liable or called up therefor, and fails to render that service or to undergo that training or carry out that duty;
 - (c) every person, other than members of a visiting force, lawfully detained by virtue of, or serving sentences of, correctional confinement or imprisonment, if served in a military prison or facility, imposed under this Act; 30
 - (d) every member of an auxiliary service established in terms of the Defence Act;
 - (e) every member of the Military Skills Development System or similar developmental system established in terms of the Defence Act; 35
 - (f) every person attached to the Defence Force in terms of the Defence Act, including any military or civilian member of a force of any other State or international body who is attached temporarily to the Defence Force;
 - (g) every learner under instruction or training at a Defence Force training institution or unit; 40
 - (h) every person not otherwise subject to this Act, who with the consent of the Officer Commanding or commanding officer, as the case may be, of any portion of the Defence Force is with, or accompanies, or performs duty with, that portion of the Defence Force;
 - (i) every prisoner of war contemplated in— 45
 - (i) the Implementation of the Geneva Conventions Act, 2012 (Act No. 8 of 2012); or
 - (ii) customary international law,
 and who is under the power of the Republic and detained by the Defence Force; 50
 - (j) every person, not otherwise subject to this Act, who is a member of a voluntary medical, nursing or relief organisation registered with, or attached to, the Defence Force or the Department and who, outside the borders of the Republic, accompanies or otherwise renders services to, or with, the Defence Force; 55
 - (k) in relation to a visiting force—
 - (i) a deserter or absentee without leave;

- (ii) a member of a reserve force or auxiliary service who, having failed to obey a notice calling upon that member to appear at any place for service or duty, is by the law of the State of that force or service, liable to punishment for a military offence;
 - (iii) any other person who is subject to the military law of the State of that visiting force; 5
 - (iv) a member of another force but who is attached to such visiting force; or
 - (v) a civilian who entered into employment in connection with such visiting force outside the Republic;
 - (l) any civilian who, with the written consent of any Officer Commanding or commanding officer or in terms of an agreement, operates or uses military vehicles, vessels or equipment or operates specialised military equipment or machinery whether inside or outside the borders of the Republic; 10
 - (m) any employee or member of the South African Police Service, or an employee of another organ of state, who, with the written consent of the Chief of the Defence Force, or relevant Service Chief or Operational Formation Authority or the designated Officer Commanding or commanding officer, accompanies or participates in a military exercise or military operation on land, in the air or at sea, whether inside or outside the borders of the Republic; 15
 - (n) any person who has been seconded by another organ of state or organisation to the Defence Force; and 20
 - (o) any person not otherwise subject to this Act but who is contemplated in item 34 of Schedule 1.
- (2) Despite subsection (1), a person referred to in subsection (1)(f), (g), (h), (j) or (k) may be subject to an international agreement between the Defence Force and other forces, which may determine the measures to be taken against such a person in the case of an offence committed in terms of South African law. 25
- (3) A person referred to in subsection (1)(k) may only be apprehended in compliance with a written request from the applicable government or the officer who is in command of the visiting force and such person must be handed over to the authorities of that State at a place in the Republic agreed upon with the particular government or officer. 30
- (4) Every person who is subject to this Act, other than a member, is deemed to bear the rank of a Private or its equivalent: Provided that—
- (a) every rank bearing member in another service or force, is deemed to bear a Defence Force rank equivalent to that held by him or her in the force or service of which he or she is a member; 35
 - (b) where there is uncertainty as to which Defence Force rank the person contemplated in paragraph (a) should be deemed to bear, the Director of Military Prosecutions must make a ruling in this regard; and
 - (c) where paragraph (a) does not apply and an agreement in terms of subsection (2) provides for the rank that such person should be deemed to bear, such person is deemed to bear that rank. 40
- (5) Subject to section 84(9), a person other than a member or a rank bearing member of a visiting force referred to in subsection (1), must, if convicted, be sentenced to either imprisonment, a fine or orders related to such sentences. 45
- (6) Any civilian or disciplinary proceedings that may be instituted against the person contemplated in subsection (5) must be considered in the alternative only.
- (7) A prisoner of war may not be tried by a military court for a contravention of item 39(e) of Schedule 1: Provided that a prisoner of war may be brought before a military disciplinary hearing for the misconduct contemplated in item 21 of Schedule 2. 50

Extra-territorial application of Act

4. (1) This Act applies inside and outside the borders of the Republic to members of the Defence Force and all persons attached to the Defence Force.

(2) Whenever this Act is enforced outside the borders of the Republic, each trial or hearing held, including any finding, penalty, sanction, order or declaration made, pronounced or imposed in terms of its provisions, must be as valid and effective, as if it had been made, pronounced or imposed in the Republic. 55

(3) For the purposes of ensuring access to a High Court of the Republic, anything done outside the borders of the Republic in pursuance or purported pursuance of this Act, is deemed to have been done within the jurisdictional area of the North Gauteng High Court in Pretoria. 60

Conflict with other Acts

5. If any conflict relating to any matter dealt with in this Act arises between this Act and the provisions of any other law, except the Constitution or any Act expressly amending this Act, the provisions of this Act prevail.

CHAPTER 2

5

ESTABLISHMENT AND JURISDICTION OF MILITARY COURTS

Establishment of military court system

6. (1) The military court system is hereby established and consists of the—
- (a) Court of Military Appeals;
 - (b) Court of Senior Military Judicial Reviews; 10
 - (c) Court of Military Judicial Reviews;
 - (d) Court of Senior Military Judge; and
 - (e) Court of Military Judge.

(2) Every military court referred to in subsection (1) must exercise the jurisdiction and powers conferred on it by this Act and must do so in accordance with the spirit of the Constitution. 15

(3) The Court of Military Appeals is the highest military court and a judgment thereof binds all other military courts.

Limitation of jurisdiction of military courts

7. No military court is competent to pronounce on the validity of any— 20
- (a) act of the President; or
 - (b) law, including the common law, regulation or rule.

Territorial jurisdiction of military courts

8. Any person, charged with an offence in respect of which a military court has jurisdiction, may be tried and sentenced for that offence at any place by that court having jurisdiction in respect of that person at the time of the commencement of the trial. 25

Offences of concurrent jurisdiction with civilian courts

9. (1) When a person who is subject to this Act is suspected of having committed treason, espionage, public violence, terrorism, sedition, murder, culpable homicide, robbery, kidnapping, arson, torture or a sexual offence, or an attempt to commit any of these offences or crimes, within the Republic, the matter must be dealt with in accordance with the provisions of the National Prosecuting Authority Act, and any ensuing trial must take place in a civilian court. 30

(2) Despite the provisions of subsection (1), when a person who is subject to this Act is suspected of having committed outside the Republic— 35

- (a) any crime under international law or an offence punishable under South African law;
- (b) any offence contemplated in subsection (1) against any other member; or
- (c) an offence against the property of another member, or property or premises under control of the Defence Force, 40

such offences or crimes may be tried before an appropriate military court as contemplated in section 20(1).

(3) Subject to subsection (2), when called upon by the appropriate civilian authority to do so, a person who is subject to this Act must deliver to that civilian authority a person under his or her control who is accused of an offence punishable by a civilian court. 45

Civilian offences under Act

10. (1) Subject to sections 9 and 21(2), a person who is subject to this Act, excluding a civilian subject to this Act, may be tried by a military court for a civilian offence and

may in respect of such offence be sentenced to any penalty within the jurisdiction of the court convicting him or her.

(2) A military court may try any person who is subject to this Act for any offence under the Defence Act or this Act as if the offence was an offence under Schedule 1: Provided that such court may not, in respect of any such offence, impose a penalty which is beyond the jurisdiction of such a court in terms of this Act or exceeds the penalty prescribed for that offence by the Defence Act or this Act. 5

Composition and jurisdiction of Court of Military Appeals

11. (1) The Minister may appoint the following persons as members of a Court of Military Appeals: 10

- (a) Three judges of any Division of the High Court of the Republic in consultation with the Judge President concerned, of whom one must be appointed by the Minister as Chairperson;
- (b) the Director Military Judges or one appropriately qualified officer, holding a degree in law, who holds a rank not below that of Colonel or its equivalent and who has not less than nine years' experience in the administration of military justice; and 15
- (c) one person who has experience in exercising command in the field in the conducting of operations.

(2) The Court of Military Appeals must hear matters concerning the commission, outside the Republic, of the offence of treason, espionage, public violence, terrorism, sedition, murder, culpable homicide, robbery, kidnapping, arson, torture or a sexual offence, or an attempt to commit any of these offences or crimes, or where any contravention of items 4, 5 or 79 of Schedule 1 is involved. 20

(3) In respect of matters other than those referred to in subsection (2), the Court of Military Appeals must hear the related appeals or reviews of such other matters, and be composed of three members, being— 25

- (a) a Chairperson who must be a judge of any Division of the High Court of the Republic;
- (b) the Director Military Judges or one appropriately qualified officer holding a degree in law, who holds a rank not below that of Colonel or its equivalent and who has not less than nine years' experience in the administration of military justice; and 30
- (c) one person who has experience in exercising command in the field in the conducting of operations. 35

(4) For purposes of considering conflicting judgments of the Court of Military Appeals or for the purpose of obtaining clarity on any point of law, the Minister may, in consultation with the Chief Justice, appoint—

- (a) three Judges of any Division of the High Court in consultation with the Judge President concerned or any three judges of the Supreme Court of Appeal of the Republic, who have not been appointed in terms of subsection (1)(a) or (3)(a), of whom one must be appointed by the Minister as Chairperson and two as alternate chairpersons; and 40
- (b) two appropriately qualified officers as Military Assessors, each— 45
 - (i) holding a degree in law;
 - (ii) holding a rank not below that of Colonel or its equivalent; and
 - (iii) not having less than nine years' legal experience in the application of military law.

(5) The Registrar of the Court of Military Appeals must advise the Judge Advocate General on the judges and members appointed in terms of subsection (4) who are available at any given time, when requested to do so. 50

(6) The Judge Advocate General may upon receipt of an application contemplated in section 12(9), schedule and convene the Court of Military Appeals consisting of—

- (a) any three of the judges of any Division of the High Court, with one as Chairperson, who must be appointed by the Minister; 55
- (b) the Director Military Judges;
- (c) two appropriately qualified officers each holding a degree in law, who hold a rank not below that of Colonel or its equivalent and who have not less than nine years' experience in the administration of military justice;
- (d) the Director Military Judges and one appropriately qualified officer holding a degree in law and who holds a rank not below that of Colonel or its equivalent, 60

and who has not less than nine years' experience in the administration of military justice; and

- (e) two appropriately qualified officers, each holding a degree in law, and holding a rank not below that of Colonel or its equivalent and each of whom has not less than nine years' experience in the administration of military justice. 5

(7) In the event of any one of the members of the Court of Military Appeals becoming unavailable for whatever reason during the course of the proceedings of the Court of Military Appeals, the Chairperson must, if deemed appropriate at that stage, determine whether a decision by means of voting as contemplated in section 12 is possible, and if not, approach the Judge Advocate General, who must nominate a suitable substitute for such member or schedule the Court of Military Appeals to start afresh after considering any recommendation of the Chairperson in this regard. 10

(8) The Minister may appoint one or more additional members, who meet the criteria referred to in subsection (1) or (3), to alternate for any member, including the chairperson, of a Court of Military Appeals. 15

(9) The Court of Military Appeals may sit at any place inside or outside the borders of the Republic.

(10) A member of the Court of Military Appeals may be employed on a part-time or full-time basis.

(11) A member of the Court of Military Appeals who is not in the full-time employment of the State or an organ of state must receive remuneration at the prescribed rate and may be paid the determined travelling, accommodation and subsistence allowances in connection with the execution of his or her duties as a member of that Court. 20

(12) The Minister, with the concurrence of the Minister of Finance, may determine the terms and conditions, remuneration and allowances contemplated in subsection (11). 25

(13) A judge of any Division of the High Court of the Republic appointed to the Court of Military Appeals and the other members of the Court of Military Appeals must be appointed for a fixed period that is determined by the Minister.

Powers of Court of Military Appeals 30

12. (1) The Court of Military Appeals contemplated in section 11(1) or (3)—

- (a) must exercise review and appeal competencies in respect of the proceedings of any case conducted before any military court and has appeal powers upon application for appeal; and
- (b) may, after due consideration of the record of the proceedings of any case, hearing or of any representations submitted to it, or argument heard by it in terms of this Act— 35
- (i) uphold the finding or the finding and the sentence;
 - (ii) set the finding and sentence aside;
 - (iii) substitute for the finding any finding which the evidence on record supports beyond a reasonable doubt and which was put at the trial as an alternative charge or could have been brought on the charge as a competent alternative verdict by the military court under any other law; or 40
 - (iv) if it has upheld the finding, or substituted a finding, vary the sentence: 45
Provided that in the case of an appeal it may not increase any sentence unless the offender and the Prosecution Counsel have been given the opportunity to address the Court to make submissions to it on the appropriateness or otherwise of the sentence imposed by the court which convicted the offender. 50

(2) The Court of Military Appeals contemplated in section 11(1) or (3) may correct any error in any finding, sentence, order or declaration recorded in any case considered by that Court.

(3) Where any finding, sentence, order or declaration was not clearly or correctly recorded or where an invalid sentence, order or declaration was imposed, made or pronounced, the Court of Military Appeals contemplated in section 11(1) or (3) may— 55

- (a) refer the matter back to the military court or Senior Military Judge to—
- (i) impose a valid sentence or to make a valid order or valid declaration; or
 - (ii) be clearly and correctly recorded;

- (b) on its own accord—
- (i) impose a valid sentence or make a valid order or valid declaration that the military court or Senior Military Judge could or should have made; or
 - (ii) record a clear and correct finding, sentence, order or declaration, and, in doing so, it must apply the interpretation which is most favourable to the accused; or
- (c) make or alter declaratory orders on—
- (i) habitual offenders;
 - (ii) fitness to possess a firearm;
 - (iii) forfeiture or retention of military driving licence or pilot's licence or vessel steering competency certificate;
 - (iv) forfeiture of pay and allowances; or
 - (v) any other court orders referred to in section 93.

(4) When the Court of Military Appeals contemplated in section 11(1) or (3), considers a case involving more than one offender in circumstances in which not all the offenders or such persons have applied for the record of proceedings to be referred to a Court of Military Appeals in terms of section 108, such court may of its own accord exercise a competence contemplated in subsection (1) to the benefit of an offender or such person who has not so applied.

(5) The Court of Military Appeals contemplated in section 11(1) or (3) may, in respect of a case being considered by the said court, if it considers that the interests of justice and the convicted offender may be served thereby, of its own accord, order the execution of a sentence to be temporarily stayed until the conclusion of the appeal process.

(6) For the purposes of subsection (1), "sentence" includes any order which may or must be made by a military court in terms of this Act.

(7) Whenever it considers cases brought to it, the Court of Military Appeals, contemplated in section 11(1) or (3), must consider the record of evidence, and determine, in each case, whether the proceedings were in accordance with justice.

(8) A written judgment, containing the majority decision as well as any minority judgment and reasons therefor, must be appended to the original record of proceedings.

(9) Any officer assigned in terms of section 31(1)(a) may apply to the Judge Advocate General to schedule and convene the Court of Military Appeals contemplated in section 11(4) to make a declaratory order as contemplated in subsection (13).

(10) The Judge Advocate General must consider an application contemplated in subsection (9) and may schedule and convene the Court of Military Appeals consisting of the members as contemplated in section 11(6).

(11) The members of the Court of Military Appeals convened in terms of section 11(6) must deliberate and consider the matter before it and may call for any addresses, consultations or evidence as may be required in reaching its decision.

(12) The decision of the Court of Military Appeals must be determined by the vote of the majority of the members: Provided that no vote may be conducted unless at least one of the members contemplated in section 11(6)(b) to (e) votes.

(13) The Court of Military Appeals scheduled and convened in terms of section 11(6) must issue a judgment and declaratory order on conflicting judgments or points of law, which declaratory order is binding on the Court of Military Appeals and other military courts.

Powers of Court of Military Appeals to require argument or evidence

13. (1) When adjudicating an appeal or review, a Court of Military Appeals may direct—

- (a) that any case submitted to it be argued; and
- (b) the presentation before it of such evidence on affidavit or orally as the Court of Military Appeals considers relevant to the just resolution of the case.

(2) When oral evidence is led in terms of subsection (1)(b), the Chairperson of a Court of Military Appeals must administer the oath or affirmation to a witness.

Appointment of Registrar of Court of Military Appeals

14. The Judge Advocate General may designate an appropriately qualified officer of a rank not less than field rank as Registrar to the office of Registrar of Court of Military Appeals and as many other support personnel as may be prescribed.

Functions of Registrar of Court of Military Appeals

- 15.** (1) The Registrar of the Court of Military Appeals must—
- (a) ensure the rendering of a full administrative service to the Court of Military Appeals under the direction of the Director Military Judges; 5
 - (b) compile, publish and distribute judgments of the Court of Military Appeals;
 - (c) draft legal references or notes upon judgments of the Court of Military Appeals;
 - (d) research and conduct comparative legal studies; and
 - (e) collate, compile, publish and distribute legal opinions.
- (2) Where the Court of Military Appeals makes any ruling which affects any declaratory order made under section 93, including the confirmation thereof, the Registrar of the Court of Military Appeals must— 10
- (a) notify the clerk of the relevant court *a quo*; and
 - (b) if such declaratory order was made or altered by a Court of Senior Military Judicial Reviews or Military Judicial Reviews, notify the clerk of such court 15 of the outcome of such ruling in writing, who must deal with the matter in accordance with section 93(14), if applicable.

Composition and jurisdiction of Court of Senior Military Judicial Reviews

- 16.** (1) A Court of Senior Military Judicial Reviews must review matters where a sentence of imprisonment, including a suspended sentence of imprisonment, cashiering, 20 discharge with ignominy, dismissal or discharge, were imposed by a court contemplated in section 6(1)(d) and (e), and in such cases be composed of three members, being—
- (a) any Senior Military Judicial Reviews Judge as Chairperson; and
 - (b) two Military Judicial Review Judges, 25 appointed by the Minister upon the recommendation of the Judge Advocate General.
- (2) A Court of Senior Military Judicial Reviews must review matters tried by Courts of Senior Military Judges, where a sentence other than those referred to in subsection (1) was imposed, and in such cases be composed of one Senior Military Judicial Review Judge.

Powers of Court of Senior Military Judicial Reviews 30

- 17.** (1) A Court of Senior Military Judicial Reviews may, after due consideration of the record of the proceedings of any case—
- (a) uphold the finding or uphold the finding and the sentence;
 - (b) set the finding and sentence aside;
 - (c) substitute for the finding, any finding which the evidence on record supports 35 beyond a reasonable doubt and which—
 - (i) was put at the trial as an alternative charge; or
 - (ii) could have been brought on the charge as a competent alternative verdict by the military court; or
 - (d) if it has upheld the finding, or substituted a finding, vary the sentence. 40
- (2) A Court of Senior Military Judicial Reviews may correct any patent error in any finding, sentence or order recorded in any case considered by that Court.
- (3) Where any finding, sentence or order was not clearly or correctly recorded or where an invalid sentence was imposed or no order was made where it was required to be made, a Court of Senior Military Judicial Reviews may— 45
- (a) refer the matter back to the military court to—
 - (i) impose a valid sentence or to make a valid order; or
 - (ii) be clearly and correctly recorded; or
 - (b) on its own accord—
 - (i) impose a valid sentence or make a valid order that the military court 50 could or should have made;
 - (ii) record a clear and correct finding, sentence or order, and, in doing so, apply the interpretation which is most favourable to the accused; or
 - (iii) make or alter any declaratory order contemplated in this Act.
- (4) Whenever it considers any case brought before it, a Court of Senior Military 55 Judicial Reviews must consider the record of evidence and determine, in each case, whether the proceedings were in accordance with justice, or whether the conviction and sentence were justifiable in relation to the evidence appearing on the record.

(5) In the event of a Court of Senior Military Judicial Reviews comprising one member, a written judgment containing the decision and reasons for such decision must be appended to the record of proceedings.

(6) In the event of a Court of Senior Military Judicial Reviews comprising three members—

- (a) the majority decision constitutes the decision of the court; and
- (b) a written judgment, containing the majority decision as well as any minority judgment and reasons, must be appended to the original record of proceedings.

Composition and jurisdiction of Court of Military Judicial Reviews

18. (1) A Court of Military Judicial Reviews must consist of one Military Judicial Review Judge.

(2) A Court of Military Judicial Reviews must review every finding of guilty, any sentence imposed and every order made by a Court of Military Judge, excluding appeals lodged in terms of section 11(3) and sentences referred to in section 16(1).

Powers of Court of Military Judicial Reviews

19. (1) A Court of Military Judicial Reviews may, after due consideration of the record of the proceedings of any case—

- (a) uphold the finding or the finding and the sentence;
- (b) set the finding and sentence aside;
- (c) substitute for the finding any finding which the evidence on record supports beyond a reasonable doubt and which—
 - (i) was put at the trial as an alternative charge; or
 - (ii) could have been brought on the charge as a competent alternative verdict by the military court; or
- (d) if it has upheld the finding, or substituted a finding, vary the sentence: Provided that the effect of the varied sentence may not be more severe.

(2) A Court of Military Judicial Reviews may correct any patent error in any finding, sentence or order recorded in any case considered by that Court.

(3) Where any finding, sentence or order was not clearly or correctly recorded or where an invalid sentence was imposed or no order was made where it was required to be made, a Court of Military Judicial Reviews may—

- (a) refer the matter back to the military court to—
 - (i) impose a valid sentence or to make a valid order; or
 - (ii) be clearly and correctly recorded; or
- (b) itself—
 - (i) impose a valid sentence or make a valid order that the military court could or should have made;
 - (ii) record a clear and correct finding, sentence or order, and in doing so, apply the interpretation which is most favourable to the accused; or
 - (iii) make or alter any declaratory orders contemplated in this Act.

(4) Whenever it considers cases brought to it, a Court of Military Judicial Reviews must consider the record of evidence and determine, in each case, whether the proceedings were in accordance with justice, or whether the conviction and sentence were justifiable in relation to the evidence appearing on the record.

(5) A written judgment containing the decision and reasons must be appended to the record of proceedings.

Composition and jurisdiction of Court of Senior Military Judge

20. (1) The Minister may, upon the recommendation of the Judge Advocate General, where one of the charges brought or to be brought against an accused is—

- (a) treason, espionage, public violence, terrorism, sedition, murder, culpable homicide, robbery, kidnapping, arson, or a sexual offence, committed outside the Republic, or an attempt to commit any of these offences;
- (b) a crime under international law or international customary law punishable in terms of item 48(1) of Schedule 1 or otherwise punishable under South African law; or

- (c) a contravention of items 4, 5 or 79 of Schedule 1, appoint three Senior Military Judges as members of a Court of Senior Military Judge.
- (2) The senior in rank of the judges referred to in subsection (1) must be the Chairperson and exercise the powers conferred by this section in any case.
- (3) Subject to subsection (1) and sections 3(5) and 10, a Court of a Senior Military Judge may try any person who is subject to this Act for any offence cognisable by a military court in terms of this Act and may, on conviction, sentence the offender to any punishment referred to in section 84. 5
- (4) All offences where the prescribed sentence in terms of this Act or any other Act of Parliament exceeds imprisonment for a period of 10 years or more, must be tried before a Court of Senior Military Judge. 10

Composition and jurisdiction of Court of Military Judge

- 21.** (1) Subject to section 22(1), a Court of Military Judge consists of a Military Judge.
- (2) Subject to section 10, a Court of Military Judge may try any person who is subject to this Act, other than an officer of field or higher rank or a Chaplain bearing a Chaplain's rank insignia, for any offence cognisable by a military court in terms of this Act, other than treason, espionage, public violence, terrorism, sedition, murder, culpable homicide, robbery, kidnapping, arson or a sexual offence, or an attempt to commit any of these offences, or an offence under items 4, 5 or 79 of Schedule 1, and may on conviction sentence the offender to any sentence referred to in section 84, subject to a maximum sentence of imprisonment for a period of 10 years. 15 20

Military assessors

- 22.** (1) The presiding Senior Military Judge or Military Judge, as the case may be, may elect to appoint not more than two military assessors who, in his or her opinion, have the necessary experience in the administration of justice or skills in any matter which may be considered at the trial. 25
- (2) A military assessor must in the performance of his or her duties in terms of this Act—
- (a) be independent and subject only to the Constitution and this Act;
 - (b) be impartial and without fear, favour or prejudice; 30
 - (c) participate in trial proceedings in a manner befitting a member of a court of law; and
 - (d) not express any opinion whatsoever on any matter relating to any trial or on the finding or any sentence except in the prescribed course of the proceedings or as may otherwise be required by law. 35
- (3) A military assessor must only commence his or her functions at a trial after—
- (a) the accused's plea has been recorded; and
 - (b) that assessor has, in open court before the presiding Senior Military Judge or Military Judge, as the case may be, taken an oath or made an affirmation as referred to in section 35. 40
- (4) Any question of law arising for decision at the proceedings and any question during such proceedings as to whether a matter for decision is a matter of fact or law, must be decided by the presiding Senior Military Judge or Military Judge, as the case may be.
- (5) The presiding Senior Military Judge or Military Judge must adjourn the proceedings regarding any matter or question referred to in subsection (4) and must sit alone for the hearing of such proceedings and the decision of such matter or question. 45
- (6) In respect of all matters of fact, the decisions or findings of the military court must be announced after consultation with the military assessors.
- (7) The presiding Senior Military Judge or Military Judge must, after conclusion of the arguments, but before judgment, explain to any military assessor assisting him or her any specific rule of evidence or any other matter that is relevant in respect of the evidence tendered to the court. 50
- (8) The record of any proceedings where a presiding Senior Military Judge or Military Judge has been assisted by military assessors, must— 55
- (a) in respect of the evidence adduced at the proceedings, include any explanation or instruction given to the assessors by the presiding Senior Military Judge or Military Judge in respect of an applicable rule of evidence or any other matter; and

- (b) in respect of the judgment, indicate clearly whether the findings in respect of each material aspect of the evidence—
- (i) are the unanimous findings of the members of the court; and
 - (ii) in the event of any member of the court making a finding of fact different to that of the other members, set out the reasons for that different finding. 5
- (9) A presiding Senior Military Judge or Military Judge may, of his or her own accord or on application by the Prosecution Counsel or the accused, order the recusal of a military assessor from the proceedings if that judge is satisfied that—
- (a) the assessor has a personal interest in the proceedings;
 - (b) there are reasonable grounds for believing that there is— 10
 - (i) likely to be a conflict of interest as a result of the assessor’s participation in the proceedings; or
 - (ii) a likelihood of bias on the part of the assessor; or
 - (c) the assessor is disqualified from serving as such for the reason that he or she— 15
 - (i) investigated the charge or any of the charges concerned;
 - (ii) is the Officer Commanding or commanding officer of the accused, or is in the chain of command between the accused and his or her Officer Commanding or commanding officer;
 - (iii) is a Prosecution Counsel, Military Defence Counsel or witness in the case; or 20
 - (iv) has personal knowledge of any material fact or evidence relating to the charge or any of the charges.
- (10) Before the powers provided for in subsection (9) are exercised, the Prosecution Counsel and the accused must be afforded the opportunity to apply for, and to present arguments to the presiding Senior Military Judge or Military Judge on the desirability and recusal of the assessor. 25
- (11) An application and the arguments provided for in subsections (9) and (10), respectively, must be heard by the presiding Senior Military Judge or Military Judge in the absence of the relevant assessor.
- (12) The presiding Senior Military Judge or Military Judge must make an order in respect of the recusal or otherwise of the assessor in his or her presence. 30
- (13) The presiding Senior Military Judge or Military Judge must give reasons for an order made in respect of a recusal.
- (14) A military assessor must, on the direction of the presiding Senior Military Judge or Military Judge, recuse himself or herself from the proceedings. 35
- (15) If an assessor dies, becomes unable to act, is absent for any reason, has been ordered to recuse himself or herself, or has recused himself or herself at any stage after swearing-in but before the completion of the proceedings, those proceedings must continue before the remaining members of the military court.
- (16) Local representatives of the Judge Advocate General must compile a list of officers who comply with the requirements for appointment as military assessors including their relevant skills and fields of expertise within each local representative’s area of responsibility. 40
- (17) When a presiding Senior Military Judge or Military Judge identifies a need for the appointment of one or more military assessors, he or she must request the local representatives of the Judge Advocate General for the appointment of a military assessor and include in such request the particulars pertaining to the technical issues or specialised field of expertise required. 45
- (18) Upon receipt of the request contemplated in subsection (17), the relevant local representatives of the Judge Advocate General must identify a military assessor that is to be appointed from the list contemplated in subsection (16). 50
- (19) In the event that a military assessor, who complies with the requirements with regard to skills or technical expertise, cannot be identified from the list contemplated in subsection (16), the relevant local representatives of the Judge Advocate General must request any Officer Commanding or commanding officer to provide relevant details of officers who may comply with such requirements and identify a suitable officer to be appointed as a military assessor. 55
- (20) When the relevant local representatives of the Judge Advocate General requires an Officer Commanding or commanding officer to ensure the attendance of an officer to serve as a military assessor, the Officer Commanding or commanding officer of that identified officer must instruct such officer to attend the relevant military court as a military assessor. 60

(21) The list contemplated in subsection (16) as well as the relevant details contemplated in subsection (19) must in respect of each officer, at least contain the following:

- (a) Force number;
- (b) rank; 5
- (c) full names and surname;
- (d) service affiliation, corps, division and unit; and
- (e) occupational qualifications, experience and expertise.

Members under instruction

23. (1) Any officer may be appointed in a military court as a member under instruction at a trial before a military court for him or her to observe the proceedings of the military court in order to acquire experience. 10

(2) Any officer appointed in terms of subsection (1) must attend all the proceedings of the relevant court unless excused therefrom by the presiding Senior Military Judge or Military Judge and may not partake in the proceedings, deliberations or decisions of the military court. 15

Prescription of offences

24. (1) Subject to section 26, no person is liable to be tried by a military court for any offence committed outside the Republic, which is not a military disciplinary offence, in respect of which that court has jurisdiction, unless that person is brought or arraigned before a military court within 30 years after the date of the commission of the offence: Provided that a person charged with— 20

- (a) treason, espionage, public violence, terrorism, sedition, murder, culpable homicide, robbery, kidnapping, arson or a sexual offence, or an attempt to commit any of these offences; 25
- (b) an offence under any law giving effect to an international agreement;
- (c) the possession or distribution of child pornography as contemplated in section 24B of the Films and Publications Act, 1996 (Act No. 65 of 1996);
- (d) commercial sexual exploitation of children as contemplated in section 141(1)(b), read with section 305(1)(c), of the Children's Act, 2005 (Act No. 38 of 2005); 30
- (e) an offence under section 4, 5, 7 or 10 of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013); or
- (f) torture as contemplated in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013), 35

may be charged by a military court, with jurisdiction, at any time after the commission of the offence.

(2) Subject to section 26, no person is liable to be tried by a military court for military disciplinary offences in respect of which that court has jurisdiction, unless the accused is brought or arraigned before that court within five years after the commission of the offence: Provided that an offence under items 4, 10, 13, 29, 48 or 79 of Schedule 1 may be tried by a military court at any time after the commission of the offence. 40

Trial when accused no longer in employ or service of Defence Force

25. (1) Any person who, while he or she is subject to this Act, commits an offence in respect of which a military court has jurisdiction, may, in the case of— 45

- (a) an offence referred to in the proviso to section 24(1) and (2), be tried and punished for that offence by that military court at any time after he or she ceased to be in the employ or service of the Defence Force;
- (b) an offence other than one provided for in paragraph (a), excluding military disciplinary offences, be tried and punished for that offence by that military court at any time after he or she ceased to be in the employ or service of the Defence Force, provided that the trial commences before the expiration of the prescription periods determined in section 24; or 50
- (c) a military disciplinary offence, other than an offence referred to in the proviso to section 24(2), be tried and punished for that offence by that military court at any time after he or she ceased to be in the employ or service of the Defence Force: Provided that the trial commences within one year from the date upon 55

which such a person ceased to be in the employ or service of the Defence Force.

(2) For the purpose of a warning, effecting an arrest, bringing or arraigning before a military court, bringing him or her to trial, imposing punishment and executing any sentence or order, a person referred to in subsection (1) is deemed to be subject to this Act in the rank and status he or she had at the time he or she ceased to be in the employ or service of the Defence Force. 5

Computation of specified period

26. (1) When a person who is subject to this Act is brought before a military court or a civilian court in terms of this Act, that person's first appearance interrupts and absolutely bars the passing of time in respect of any period determined in section 24. 10

(2) Where a person cannot as a result of—

(a) his or her default or any act performed by him or her; or

(b) his or her non-availability or incapacity or illness or other reason precluding the exercise of any competence conferred by this Act in respect of him or her, 15
be brought or arraigned before a military court within any period determined in section 24 or 25, that period must be extended by a period equal to the period taken up by such default, act, non-availability, incapacity, illness, other reason or application of an agreement.

Prohibition of double jeopardy 20

27. No person—

(a) who has been convicted or acquitted of an offence by a military court; or

(b) who has been convicted or acquitted of an offence by any other court, including any foreign civilian or military court or the International Criminal Court, 25

is liable to be tried again by any civilian or military court in respect of that offence or any other offence of which he or she could have been convicted in terms of the provisions of any law on a charge of the same offence.

CHAPTER 3

APPOINTMENTS, ASSIGNMENTS, FUNCTIONS AND RELATED MATTERS 30

Appointment of Judge Advocate General

28. (1) The Minister may, on recommendation of the Chief of the Defence Force, appoint an appropriately qualified serving officer of the Defence Force who has been admitted as an advocate or attorney of the High Court of South Africa and with not less than nine years' experience in military law, or in the administration of criminal or military justice, as Judge Advocate General. 35

(2) The Judge Advocate General referred to in subsection (1) must—

(a) have served for not less than nine years as a Military Law Practitioner;

(b) have completed other prescribed military courses which are required for the military rank coupled to the post of Judge Advocate General; and 40

(c) hold a degree in law.

(3) The Judge Advocate General holds office for a term not exceeding seven years.

(4) The term of office referred to in subsection (3) may not be extended.

(5) The salary and other terms and conditions of service of the Judge Advocate General must be determined by the Minister in concurrence with the Minister of Finance: Provided that— 45

(a) the salary of the Judge Advocate General must not be less than the salary of a judge of the High Court, as determined by the President in terms of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); and 50

(b) such salary may not be reduced and such terms and conditions may not be adversely altered during the term of office of the Judge Advocate General.

Functions of Judge Advocate General

- 29.** (1) The Judge Advocate General—
- (a) must be responsible for the overall management, promotion, facilitation and coordination of activities in order to ensure the effective administration of military justice and legal services in the Department; 5
 - (b) must annually, not later than three months after the end of the preceding financial year, submit to the Minister a written report on the execution of all his or her functions during that year;
 - (c) must advise the Minister, the Secretary for Defence and the Chief of the Defence Force in matters relating to military law and any other legal matter in the Department; 10
 - (d) must conduct, or cause to be conducted, regular reviews of systemic efficiency of the responsibilities referred to in paragraph (a);
 - (e) must exercise command function and supervision over the Directors and the Senior Staff Officer referred to in section 31(1) and other persons placed under his or her command; 15
 - (f) must determine the suitability of a Military Law Practitioner to be recommended for assignment in terms of section 31(5) and advise the Chief of the Defence Force accordingly;
 - (g) may exercise the powers provided for in section 30; 20
 - (h) may exercise the power provided for in section 36; and
 - (i) may designate persons as—
 - (i) Registrar of the Court of Military Appeals;
 - (ii) clerks of a court;
 - (iii) court orderlies; 25
 - (iv) interpreters; and
 - (v) other support personnel.
- (2) Any power or duty that a local representative of the Judge Advocate General may exercise or perform in terms of this Act—
- (a) must be exercised or performed under the control of the Judge Advocate General; and 30
 - (b) may be exercised or performed by the Judge Advocate General.
- (3) The Judge Advocate General must, when it is required, conduct any inquiry into, and advise the Chief of the Defence Force on—
- (a) the fitness, competence and character of any person who is to be or may be considered for appointment or assignment by the Minister or the Chief of the Defence Force to a post or a function in terms of this Act or to continue to serve in that capacity or assignment; 35
 - (b) the appropriateness or otherwise of a person to be considered for appointment or re-appointment or assignment or re-assignment to a post or a function in terms of this Act; and 40
 - (c) the need or desirability of removing a person from his or her appointment or assignment.
- (4) For purposes of any inquiry provided for in subsection (3), the Judge Advocate General must request the consent of the person contemplated in subsection (3) in order to obtain or cause to be obtained information pertaining to that person's financial status, educational qualification and competency from any organ of state, financial institution, educational institution or any other source which the person may indicate and to enquire therein. 45
- (5) A refusal to give the consent contemplated in subsection (4) disqualifies that person from being considered for appointment or assignment. 50
- (6) The Judge Advocate General may exercise the powers necessary for, or appropriate to, the conducting of an inquiry referred to in subsection (3), including the power to subpoena and question witnesses and any person contemplated in subsection (3). 55
- (7) In the interest of justice, the Judge Advocate General may initiate or cause to be initiated any investigation or inquiry regarding any legal matter in the Department.

Powers of Judge Advocate General in respect of assignment

- 30.** The Judge Advocate General may—
- (a) assign a Military Law Practitioner to the— 60

- (i) function of Senior Prosecution Counsel or Prosecution Counsel; or
- (ii) function of Senior Military Defence Counsel or Military Defence Counsel;
- (b) assign a Military Law Practitioner to any function attached to a Defence Legal Services Division post other than a function referred to in this Act; 5
- (c) subject to due process, terminate the assignment of the assignee referred to in paragraph (a) or (b) in the interest of the Defence Force; or
- (d) add an additional assignment to any officer already assigned to a function in terms of paragraph (a) or (b).

Powers of Minister in respect of assignment of functions 10

31. (1) Only an appropriately qualified officer holding a degree in law who has served for not less than nine years as a Military Law Practitioner within the Defence Legal Services Division of a rank not below that of Colonel or its equivalent, with experience in the administration of military justice, may be assigned to the post of—

- (a) Director Military Judges; 15
- (b) Director Military Prosecutions; or
- (c) Senior Staff Officer Military Defence Counsel.

(2) Only an appropriately qualified officer holding a degree in law and of a rank not below that of Colonel or its equivalent and who has nine years' experience in the administration of military justice as a Military Law Practitioner within the Defence Legal Services Division, may be assigned to the function of— 20

- (a) Senior Military Judicial Review Judge; or
- (b) Senior Military Judge.

(3) Only an appropriately qualified officer holding a degree in law and of a rank not below that of Major or its equivalent and who has six years' experience in the administration of military justice as a Military Law Practitioner within the Defence Legal Services Division, may be assigned to the function of— 25

- (a) Military Judicial Review Judge; or
- (b) Military Judge.

(4) The Minister may, on the recommendation of the Chief of the Defence Force, as advised by the Judge Advocate General, assign Military Law Practitioners to the functions of— 30

- (a) Directors and Senior Staff Officers referred to in subsection (1);
- (b) Senior Military Judicial Review Judges and Military Judicial Review Judges; 35
- and
- (c) Senior Military Judges and Military Judges.

(5) The Chief of the Defence Force may not recommend any Military Law Practitioner for assignment to any function referred to in subsections (1) to (3) unless it is established, upon due and diligent enquiry, that the Military Law Practitioner is a fit and proper person who is of sound character and who meets the minimum service requirements contemplated in subsections (1) to (3) for such assignment. 40

(6) The Chief of the Defence Force must recommend the removal of any Military Law Practitioner from his or her assignment if upon due and diligent enquiry and after being convinced that the Military Law Practitioner is not a fit and proper person who is of sound character and who meets the minimum service requirements contemplated in subsections (1) to (3) for such assignments. 45

Period of appointment or assignment of Director, Senior Staff Officer Military Defence Counsel and Military Law Practitioners

32. (1) An assignment as Director or Senior Staff Officer Military Defence Counsel in terms of section 31(1)(b) or (c) may, subject to section 34, be for a period of five years and may be extended in terms of this section. 50

(2) Upon expiry of the first period in office, a Director or Senior Staff Officer Military Defence Counsel referred to in subsection (1) may be re-assigned for a period not exceeding three years.

(3) An assignment of the Military Law Practitioners assigned as Directors other than those assigned in terms of section 31 must, subject to section 34, be for a period of five years or for a specific deployment, operation or exercise and may be extended in terms of this section. 55

(4) Upon expiry of the first period in office, Military Law Practitioners appointed as Directors as contemplated in subsection (3) may be re-assigned for a period not exceeding three years.

(5) Section 34 applies to this section with the necessary changes required by the context.

5

General provisions with regard to assignments

33. (1) In the event that a Military Law Practitioner's assignment expires, he or she must be sworn in again at the commencement of any new assignment period.

(2) In the event that a Military Law Practitioner assigned to any function in terms of this Act is involved in a case before a military court after plea proceedings and when such assignment expires, is cancelled and he or she is redeployed or removed from his or her assignment or the assignment is cancelled in terms of section 34, such assignment is deemed to have been extended for the purpose of finalising such case only.

(3) Upon the expiry of the second term in office, the Military Law Practitioner may be rotated or redeployed if he or she is appropriately qualified for any other assignment in the Defence Legal Services Division or appointment in the Department.

Termination of appointment and assignment

34. (1) The Minister may terminate the Judge Advocate General's appointment if—

- (a) he or she reasonably believes that the Judge Advocate General lacks the ability to perform his or her functions effectively and efficiently; or
- (b) the Judge Advocate General ceases to be a fit and proper person of sound character for purposes of his or her functions.

(2) The Minister, acting upon the recommendation of the Chief of the Defence Force as advised by the Judge Advocate General, may terminate an assignment issued by the Minister in terms of this Chapter—

- (a) due to—
 - (i) the assignee's conduct that brings the Military Law Practitioner's profession into disrepute;
 - (ii) the assignee's repeated failure to perform his or her tasks effectively and efficiently;
 - (iii) the assignee's incompetence;
 - (iv) job necessity for reassignment;
 - (v) the assignee's own written request; or
 - (vi) organisational requirements of the Department; or

(b) if the assignee ceases to be a fit and proper person of sound character for purposes of his or her functioning in his or her assignment.

(3) In the case of the termination of an assignment in terms of—

- (a) subsection (2)(a)(v), the Minister may assign that person to another function in terms of section 31(5); or
- (b) subsection (2)(a)(iv) to (vi), the Judge Advocate General may assign that person in terms of section 30(a) or (b).

(4) The Judge Advocate General may terminate an assignee's assignment issued by the Judge Advocate General in terms of this Chapter—

- (a) due to—
 - (i) the assignee's conduct that brings the Military Law Practitioner's profession into disrepute;
 - (ii) the assignee's repeated failure to perform his or her tasks effectively and efficiently;
 - (iii) the assignee's incompetence;
 - (iv) the assignee's own written request; or
 - (v) organisational requirements of the Defence Force; or

(b) if the assignee ceases to be a fit and proper person of sound character for purposes of his or her functioning in his or her assignment.

(5) In the case of the termination of an assignment in terms of subsection (4)(a)(iv) or (v), the Judge Advocate General may assign that person to another function in terms of section 30(a) or (b).

(6) Any person whose assignment is terminated in terms of subsection (4)(a)(i) to (iii) must be administratively discharged from the Defence Force.

(7) An appointment may only be terminated in terms of this section subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

Oaths and affirmations

35. (1) An officer assigned to a function in terms of this Chapter must, before commencing to perform any duties in accordance with that assignment or appointment, take an oath or affirmation, except where the assignment of such officer is extended in terms of section 32. 5

(2) Every oath or affirmation provided for in subsection (1) must be taken or made before a Chairperson of the Court of Military Appeals, the Judge Advocate General or a local representative of the Judge Advocate General. 10

(3) The Chairperson of a Court of Military Appeals must administer the oath or affirmation of the Judge Advocate General.

Assignment and functions of local representative of Judge Advocate General

36. (1) The Judge Advocate General may in writing assign a Military Law Practitioner of rank not lower than Lieutenant-Colonel or its equivalent and with at least 12 years' experience in the administration of military justice as a local representative of the Judge Advocate General. 15

(2) The functions of local representatives of the Judge Advocate General are to—

- (a) manage, promote, facilitate and coordinate activities in any designated area or place or in respect of any specific deployment, operation or exercise, legal advice or litigation support, ensuring the effective administration of military justice and military legal services; 20
- (b) execute the functions of the Judge Advocate General in any designated area or place or in respect of any specific deployment, operation or exercise;
- (c) exercise command function and supervision over Military Law Practitioners and others placed under his or her command; and 25
- (d) perform any other function.

Functions, direction and control of Military Prosecution Councils

37. (1) The Director Military Prosecutions—

- (a) institutes and conducts prosecutions in military courts on behalf of the State; 30
- (b) carries out all necessary functions incidental to instituting, and conducts, prosecutions in military courts, including the determination of whether or not investigations are complete;
- (c) may decline, discontinue or withdraw prosecutions; and
- (d) determines the forum before which any person is to be brought or arraigned in terms of this Act. 35

(2) If the available evidence against any person who is subject to this Act discloses the commission of an offence, or in the opinion of the Director Military Prosecutions or his delegate there is a reasonable prospect of successful prosecution, that person must be prosecuted unless the charge has been rendered non-justiciable, or has prescribed, or any other legal impediment renders the charge or person incapable of being tried. 40

(3) A Senior Prosecution Counsel must, subject to the functional control and the directions of the Director Military Prosecutions, exercise the powers referred to in subsection (1) in respect of the area of jurisdiction for, or field of, responsibility to which he or she has been appointed, and in respect of any offence not excluded, either generally or in any specific case, from his or her competence by the Director Military Prosecutions. 45

(4) A Prosecution Counsel must exercise the powers referred to in subsection (1) subject to the control and directions of the relevant Senior Prosecution Counsel.

(5) (a) The Director Military Prosecutions or the relevant Senior Prosecution Counsel may withdraw, limit or regulate the authority referred to in subsection (4). 50

(b) If the authority referred to in subsection (4) is withdrawn, limited or regulated by a Senior Prosecution Counsel, he or she must forthwith report that action, together with the reasons thereof, to the Director Military Prosecutions.

(6) The Director Military Prosecutions may, after consultation with the Judge Advocate General, determine prosecution policy for Military Prosecution Councils in relation to matters contemplated in subsection (1). 55

(7) All investigations conducted by a member of the military police or any person who is subject to this Act in respect of an alleged offence or which disclose the commission of an offence, must be submitted to the Director Military Prosecutions or a Senior Prosecution Counsel within whose area of jurisdiction or field of responsibility such offence was committed, or allegedly committed, for a decision as contemplated in subsection (1). 5

Prosecution Counsel

38. A Senior Prosecution Counsel or Prosecution Counsel acts as Prosecution Counsel in all military courts.

Functions, direction and control of Military Defence Counsels 10

39. (1) Military Defence Counsels—

- (a) may, subject to this Act, represent persons—
 - (i) against whom prosecutions are being instituted or conducted in a military court; or
 - (ii) who have been convicted by a military court and who still have a remedy or recourse provided for in this Act;
- (b) must perform any duty incidental to the representation contemplated in paragraph (a) or contained in a policy as directed by the Senior Staff Officer Military Defence Counsel;
- (c) may discontinue representation for sound reasons— 20
 - (i) before a trial commences and inform the Senior Staff Officer Military Defence Counsel; and
 - (ii) during a trial, with the leave of the court; and
- (d) may represent persons subject to this Act at boards of inquiry as contemplated in section 102(8) of the Defence Act. 25

(2) A Senior Military Defence Counsel must, subject to the functional control and the directions of the Senior Staff Officer Military Defence Counsel, exercise the powers referred to in subsection (1) in respect of—

- (a) the area of jurisdiction for, or field of, responsibility to which he or she has been appointed; and 30
- (b) any offence not excluded, either generally or in any specific case, from his or her competence by the Senior Staff Officer Military Defence Counsel.

(3) A Military Defence Counsel must exercise the powers referred to in subsection (1) subject to the control and directions of the Senior Military Defence Counsel.

(4) (a) The Senior Staff Officer Military Defence Counsel or the relevant Senior Military Defence Counsel may withdraw, limit or regulate the authority referred to in subsection (1). 35

(b) If the authority referred to in subsection (1) is withdrawn, limited or regulated by the Senior Military Defence Counsel, he or she must forthwith report that action, together with the reasons therefor, to the Senior Staff Officer Military Defence Counsel. 40

(5) The Senior Staff Officer Military Defence Counsel may—

- (a) determine defence counsel policy for Military Defence Counsel in consultation with the Judge Advocate General; and
- (b) issue policy directives.

General duties of Prosecution Counsels and Military Defence Counsels 45

40. (1) In addition to any other duty imposed by this Act, a Senior Prosecution Counsel, Prosecution Counsel, Senior Military Defence Counsel and Military Defence Counsel must, during a trial by a military court—

- (a) assist the court in the administration of justice;
- (b) treat the court and every member thereof with due respect; 50
- (c) present their cases fairly;
- (d) act in conformity with the provisions of this Act and, in relation to the examination, cross-examination and re-examination of witnesses, the practice of the civilian courts in the Republic;
- (e) not refer to a matter which is not relevant to any charge preferred against the accused; and 55

(f) not state as a fact anything which has not been proven or which is not intended to be proven in evidence.

(2) In addition to the duties imposed by subsection (1), a Prosecution Counsel must bring before the court the whole of any transaction on which any charge is based and may not take any unfair advantage of, or withhold from the court, any evidence in favour of the accused. 5

(3) Where, in a trial preceded by a pre-trial investigation, a Prosecution Counsel closes the case for the prosecution without having called all the witnesses for the prosecution that Prosecution Counsel must advise the court that any witness not called by him or her is available to be called either by the court or the defence. 10

General duties of Military Judges and Senior Military Judges

41. Every Military Judge and Senior Military Judge, in the exercise of his or her judicial or other authority under this Act, must—

- (a) be independent and subject only to the Constitution and the law;
- (b) apply the Constitution and the law impartially and without fear, favour or prejudice; 15
- (c) conduct every trial, inquiry and all proceedings in a manner befitting a court of justice;
- (d) ensure that the accused, whether represented or unrepresented, does not suffer any disadvantage— 20
 - (i) because of his or her position as such;
 - (ii) because of ignorance or incapacity to examine or cross-examine witnesses; or
 - (iii) for any other reason;
- (e) not express any opinion whatsoever on a matter relating to a trial or inquiry or on the finding or a sentence except in the course of the proceedings or as may otherwise be required by law; 25
- (f) be responsible for the safekeeping of the record of proceedings and of every exhibit produced at the trial or inquiry until the record of proceedings is handed over at the conclusion of the trial or inquiry to the relevant authority; 30

and
- (g) endeavour to assist the Chief of the Defence Force and Service Chiefs to manage the Defence Force as a disciplined military force.

Duties of Military Judicial Review Judges and Senior Military Judicial Review Judges 35

42. (1) Military Judicial Review Judges and Senior Military Judicial Review Judges must—

- (a) review proceedings in accordance with this Act;
- (b) perform any duty incidental to such review;
- (c) provide review judgments and reasons therefor; 40
- (d) recommend to the appropriate authority the taking of any remedial action required; and
- (e) draw attention to any matter requiring comment.

(2) Military Judicial Review Judges and Senior Military Judicial Review Judges must exercise the review powers provided for in sections 17 and 19, and perform their duties in respect of any offence or sentence not excluded, either generally or in any specific case. 45

(3) The Director Military Judges—

- (a) has the responsibility and authority to ensure that Military Judicial Review Judges and Senior Military Judicial Review Judges exercise review powers and perform their duties in accordance with the law; 50
- (b) may, after consultation with a Chairperson of the Court of Military Appeals, determine review policy on procedure and issue functional guidelines which may be applied by Courts of Military Judicial Reviews and Courts of Senior Military Judicial Reviews during the review process; and 55
- (c) must exercise the powers referred to in sections 17 and 19 and perform the duties that may be determined in this Act or any other law.

Interpretation of Chapter

43. This Chapter may not be interpreted to exclude members of the Reserve Force from being assigned to functions.

CHAPTER 4

CIVILIAN COURTS

5

Jurisdiction of civilian courts

44. (1) Nothing in this Act affects the jurisdiction of any civilian court in the Republic to try a person for any offence within its jurisdiction.

(2) Any High Court or Magistrate's Court of the Republic, subject to any other law prescribing its jurisdiction, may try any person for any offence under Schedule 1 and may impose any punishment and make any orders which may be imposed or made for that offence under this Act and which is within the jurisdiction of that court, including a sentence of correctional confinement. 10

(3) In imposing any punishment for an offence under Schedule 1, the civilian court must take cognisance of the gravity of the offence in relation to its military bearing and have due regard to the necessity for the maintenance of the required standard of military discipline in the Defence Force, in accordance with section 200(1) of the Constitution. 15

Furnishing of particulars of trial by civilian court

45. (1) Whenever a person who is subject to this Act has been tried by a civilian court, the registrar or clerk of that court must transmit to the Director Military Prosecutions a certificate setting out the offence for which that person was tried including— 20

- (a) the judgment, sentence and any order of the court; or
- (b) if he or she was acquitted, a statement to that effect.

(2) Whenever a person who is subject to this Act has been tried by a civilian court, the member must report the outcome of such case to his or her Officer Commanding or commanding officer. 25

(3) The certificate contemplated in subsection (1) is for all purposes proof of the conviction, sentence and order of the court, or acquittal of the relevant person.

CHAPTER 5

ARREST, WARNING AND CONFINEMENT

30

Persons authorised to arrest without warrant

46. (1) A superior officer or any military police official may arrest or, by his or her order or instruction, cause the arrest of any person who is subject to this Act who—

- (a) commits any offence in the presence of that superior officer or such military police official; or 35
- (b) in operational circumstances, is on reasonable grounds suspected of having committed an offence,

and may cause the arrested person to be detained in terms of this Act: Provided that an officer is not subject to arrest in terms of this subsection by any person other than an officer. 40

(2) A military police official or any person who is subject to this Act in whose presence any person who is subject to this Act—

- (a) engages in any mutiny or riotous behaviour;
- (b) commits any offence under item 4 or 79 of Schedule 1; or
- (c) who has been declared an habitual offender, commits the same offence for which he or she has been declared an habitual offender, 45

must arrest and detain such person in accordance with the provisions of this Act: Provided that an officer is not subject to arrest in terms of this subsection by any person other than an officer or a military police official and where the arrest of an officer is effected by a military police official, who is not an officer, such military police official must hand the arrested officer over to an officer without delay, who must deal with such officer as if he or she had personally effected the arrest. 50

- (3) A peace officer or Non-Commissioned Officer, as the case may be, may arrest without a warrant or, by his or her order or instruction, cause the arrest of any person who is subject to this Act who in his or her presence—
- (a) commits or attempts to commit any offence listed in section 104 of the Defence Act; 5
 - (b) escapes or who attempts to escape from lawful custody;
 - (c) has in his or her possession any implement of housebreaking or car-breaking as contemplated in section 82 of the General Law Third Amendment Act, 1993 (Act No. 129 of 1993), and who is unable to account for such possession to the satisfaction of the peace officer or Non-Commissioned Officer; 10
 - (d) is found in possession of anything which the peace officer or Non-Commissioned Officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer or Non-Commissioned Officer reasonably suspects of having committed an offence in respect of such property; 15
 - (e) is found in any place at night in circumstances which afford reasonable grounds for believing that such person has committed or is about to commit an offence;
 - (f) contravenes any law relating to the prevention or suppression of gambling or games of chance or installs or uses gambling devices or games; 20
 - (g) commits or attempts to commit any other offence that involves military property or premises or that relates to military security; or
 - (h) conducts himself or herself in a manner that may inflict or cause—
 - (i) bodily injury to any person; or
 - (ii) damage to any person's property, 25
 while being on military property or premises, or relating to military property or premises: Provided that such an arrest may be effected anywhere if the conditions provided for in subsection (9) have been complied with and it is effected without delay.
- (4) A peace officer or Non-Commissioned Officer may arrest without a warrant or, by his or her order or instruction, cause the arrest of any person who is reasonably suspected of—
- (a) committing or of having committed an offence under any law governing the making of, supply of, possession of, or the conveyance of alcohol or intoxicating liquor or of dependence-producing drugs or drugs having a narcotic effect or the possession or disposal of arms or ammunition; or 35
 - (b) having committed any act outside the Republic which, if committed in the Republic, would have been punishable as an offence, and for which he or she is, under any law relating to extradition or fugitive offenders, liable to be arrested or detained in custody in the Republic, 40
- where such act or offence or suspected act or offence was committed on military property or premises.
- (5) A peace officer or Non-Commissioned Officer may arrest without a warrant or, by his or her order or instruction, cause the arrest of any person who is reasonably suspected of— 45
- (a) being a prohibited, undesirable or illegal foreigner in the Republic in contravention of any law regulating entry into or residence in the Republic; or
 - (b) having failed to surrender himself or herself in order that he or she may undergo periodical imprisonment when and where he or she is required to do so under an order of court or any law relating to prisons or correctional facilities or correctional centres, 50
- irrespective of where such status originated or conduct occurred: Provided that any such arrest may only be effected on military property or premises, unless he or she attempts to escape such arrest, in which case he or she may be pursued in order to effect such arrest. 55
- (6) A peace officer or Non-Commissioned Officer may, whilst deployed or employed for service inside the Republic and its territorial waters or in international waters, in order to preserve the internal security of the Republic, and where it is reasonably necessary for the purposes of control over the unlawful movement of people or goods across the borders of the Republic, arrest without a warrant or, by his or her order or instruction, cause the arrest of any person who is not subject to this Act, who is reasonably suspected of— 60

- (a) having committed or attempting to commit any offence listed in section 104 of the Defence Act;
 - (b) having escaped or who attempts to escape from lawful custody;
 - (c) having in his or her possession any implement of housebreaking or car-breaking as contemplated in section 82 of the General Law Third Amendment Act, 1993 (Act No. 129 of 1993), and who is unable to account for such possession to the satisfaction of the peace officer or Non-Commissioned Officer; 5
 - (d) being in possession of anything which the peace officer or Non-Commissioned Officer reasonably suspects to be stolen property or suspects to be property dishonestly obtained, and whom the peace officer or Non-Commissioned Officer reasonably suspects of having committed an offence in respect to such property; 10
 - (e) having committed or attempts to commit any offence that involves military property or premises or relates to military security; 15
 - (f) having committed or attempts to commit any offence that involves any physical barrier on, or at any of, the borders of the Republic;
 - (g) having conducted himself or herself in a manner that may inflict or cause—
 - (i) bodily injury to any person; or
 - (ii) damage to any person's property; 20
 - (h) having entered an area of deployment with the intent to steal or lure an animal, including game, or to disperse such animal or game from that area;
 - (i) having stolen an animal, including game, or has unlawfully hunted, caught or taken into possession such animal or game or the meat, skin, carcass, organ or any portion thereof; 25
 - (j) entering or departing from the Republic at a place other than an official port of entry; or
 - (k) having committed or is about to commit any offence under this Act, while being in the area of borderline protection or deployment: Provided that such an arrest may be effected anywhere, irrespective of where such an offence or attempt originated or conduct occurred, if the conditions provided for in subsection (9) have been complied with and it is effected without delay. 30
- (7) If the person to be arrested as contemplated in subsection (6) attempts to escape such arrest, such person may be pursued in order to effect such arrest at any place in the Republic within 10 kilometers or any reasonable distance from any border between the Republic and any foreign State, or in the territorial waters of the Republic, or inside the Republic within 10 kilometers or any reasonable distance from such territorial waters, or at any airport as defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), or within any reasonable distance from such airport. 35
- (8) A member who arrests a person in terms of subsection (6) may seize and retain any firearm or other dangerous weapon or illegal goods in possession of, or under the control of, the arrestee. 40
- (9) Any arrest in terms of subsections (3) to (6) may be effected only if—
- (a) a member of the South African Police Service is unavailable to effect such an arrest to secure the suspect for purposes of the lodging of a charge or for investigation purposes or for the securing of the suspect for appearance at a trial; and 45
 - (b) the exigencies of the circumstances require that an arrest be effected without delay.
- (10) A peace officer and Non-Commissioned Officer must hand over any other person arrested in terms of this section without delay to the military police or the South African Police Service for further handling or administration. 50

Warrant of arrest

47. (1) A Senior Military Judge or Military Judge who, by reason of information given under oath or affirmation, has reasonable grounds to suspect a person who is subject to this Act of having committed an offence under Schedule 1, or any other offence cognisable by a military court, may issue a warrant for the arrest of that person. 55

(2) A presiding Military Judge may, on his or her own accord, issue a warrant for the arrest of any person who is subject to this Act, who is suspected by him or her to have committed an offence provided for in item 34(3) of Schedule 1 in relation to any proceedings or trial being conducted before that Military Judge. 60

- (3) A warrant issued under subsection (1)—
- (a) authorises the arrest of the person identified in the warrant of arrest;
 - (b) may be executed by any police official, military police official or any person specified in the warrant in accordance with the terms of the warrant; and
 - (c) is authority for the arrestee to be detained in accordance with this Act. 5

(4) A Senior Military Judge or Military Judge who issued a warrant in terms of subsection (1) may communicate the existence of that warrant by means of a telephonic, telegraphic, facsimile or similar written or printed communication stating that a warrant has been issued for the arrest of a person and that communication is sufficient authority to any person referred to in subsection (3) for the arrest and detention of the person specified in the communication. 10

Manner and effect of arrest

48. (1) When a person authorised by this Act to arrest a person, is about to arrest a person, he or she must—

- (a) identify himself or herself to the person to be arrested; and 15
- (b) inform that person that he or she is being taken into custody.

(2) Unless a person to be arrested submits to arrest custody, the arrest must be effected by actually touching the body of the person being arrested.

(3) Subject to subsection (1), any person effecting an arrest must promptly inform the arrested person of— 20

- (a) the cause of the arrest and in the case of an arrest effected by virtue of a warrant or a communication referred to in section 47, display a copy of the warrant or communication, as the case may be, to that person if such warrant or communication is available or when it becomes available;
- (b) his or her right to remain silent and that any statement which he or she may voluntarily make, may be admissible as evidence against him or her at his or her trial; 25
- (c) his or her right to be brought before a court within 48 hours; and
- (d) his or her right to legal representation and consultation as set out in section 83. 30

(4) If any person who may arrest a person under this Act attempts to arrest such person and that person resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and such person cannot be arrested without the use of force, the person seeking to arrest may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to— 35

- (a) take sufficient physical control of the person being arrested in order to ensure that the arrest and detention of that person is effective; and
- (b) overcome the resistance or to prevent such person from fleeing, and, in addition, the person effecting the arrest may use deadly force only if such person— 40
 - (i) poses a threat of serious violence or death to the person seeking to effect the arrest or any other person; or
 - (ii) is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later. 45

(5) The effect of an arrest is that the person arrested is in lawful custody and that he or she must be detained in custody until he or she is lawfully discharged or released from custody.

Personal non-liability for wrongful arrest 50

49. Any person who, with or without a warrant, is authorised under this Act to arrest another person and who—

- (a) in the reasonable belief that he or she is arresting the right person, arrests the wrong person, is exempt from personal liability in respect of that wrongful arrest; or 55
- (b) acts under a warrant which is defective in substance or form, is exempt from personal liability in respect of that act, if he or she had no knowledge that the warrant was defective and regardless of whether or not that defect is apparent on the face of the warrant.

Saving of constitutional rights and liability

50. No provision of this Chapter relating to arrest may be construed as removing or diminishing any constitutional right or liability of any person who is subject to this Act in respect of a wrongful or malicious arrest.

Saving of other powers of arrest

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51. No provision of this Chapter relating to arrest may be construed as removing or diminishing any authority expressly conferred by any other law to arrest, detain or put any restraint upon any person.

Breaking open premises for purpose of arrest

52. (1) Any person who is authorised under this Act to arrest— 10

- (a) a person and who knows or reasonably suspects that such person as identified in the warrant of arrest to be on military premises; or
- (b) another person and who knows or reasonably suspects that such person as identified in the warrant of arrest to be on any military property or premises, may, after audibly demanding entry into that premises and audibly notifying the purpose for which entry is sought and then failing to be granted entry, break open, enter and search those premises for the purpose of effecting the arrest. 15

(2) If the person contemplated in subsection (1)(b) attempts to escape such arrest, then he or she may be pursued in order to effect such arrest, including the entry into, breaking open and searching of private premises. 20

Warning

53. Any person who may lawfully arrest any person for an offence and who has reason to believe that such person—

- (a) may fail to attend his or her trial; 25
- (b) may interfere with any witness;
- (c) may conceal, destroy, do away with, or in any manner interfere with, any article or item which may be used in evidence at his or her trial;
- (d) may persist in or continue the commission of the offence in question;
- (e) is likely to injure himself or herself or others; 30
- (f) having regard to the nature or prevalence of the alleged offence which is under investigation, should, in the interest of discipline, not be at large or allowed to consort with his or her comrades,

must, instead of arresting or causing the arrest of that person, warn that person or cause that person to be warned that a charge specified by him or her may be preferred against that person. 35

Handing over of arrested person

54. (1) Subject to section 80, any person arrested or ordered into arrest by a person who is subject to this Act must, as soon as reasonably possible, be handed over to—

- (a) the Disciplinary Adjutant of his or her unit; or 40
- (b) a military police official at the nearest—
 - (i) military police client service centre;
 - (ii) military police cell;
 - (iii) military police lock-up; or
 - (iv) military police detachment. 45

(2) If it is not possible to hand the arrested person over as contemplated in subsection (1), such person must be handed over to the South African Police Service.

(3) Where the arrested person was in his or her unit at the time of his or her arrest, that person must immediately be confined in accordance with section 55, pending handing over in terms of subsection (1). 50

(4) Subject to section 80, where an arrested person is handed over as contemplated in subsection (1)(b) or caused to be taken over from the South African Police Service in terms of subsection (5), the person in charge of the—

- (a) military police client service centre;

- (b) military police cell;
- (c) military police lock-up; or
- (d) military police detachment,

must as soon as possible thereafter, transport and present the arrested person to the Disciplinary Adjutant of his or her unit together with a written account of the arrest. 5

(5) Subject to section 80, where an arrested person is handed over to the South African Police Service in terms of subsection (2), the person in charge of the police station to which the arrested person is taken, must as soon as possible thereafter notify the Disciplinary Adjutant of the arrested person's unit or the person in charge of the nearest— 10

- (a) military police client service centre;
- (b) military police cell;
- (c) military police lock-up; or
- (d) military police detachment,

of the presence of the arrested person and that Disciplinary Adjutant or such person in charge must, as soon as possible, cause the arrested person to be taken over from the South African Police Service, together with the written account of the arrest. 15

(6) Subject to section 80, where a person who is subject to the Act is arrested by a member of the South African Police Service or other police force established by any other Act under a warrant or communication referred to in section 47 or surrenders himself or herself to the said member on any charge of desertion or absence without leave under Schedule 1, the person in charge of the police station to which the arrested person is taken must— 20

- (a) as soon as possible after the arrest or surrender, notify the Disciplinary Adjutant of the arrested person's unit or the person in charge of the nearest military police detachment, of the presence of the arrested person, and that Disciplinary Adjutant or the person in charge of that detachment must as soon as possible thereafter cause the arrested person to be taken over from the South African Police Service or other police force established by any other Act, together with any relevant documentation; and 25
- (b) if that person cannot be handed over within 48 hours to the Disciplinary Adjutant of his or her unit or the person in charge of the nearest military police detachment, without delay, cause the arrested or surrendered person to be brought before any military court or, if that is not possible, a magistrate of the relevant district. 30

(7) When a magistrate referred to in subsection (6)(b) is satisfied, after due inquiry, that the person arraigned before him or her— 35

- (a) is the person described in the relevant warrant or communication; or
- (b) is on reasonable grounds suspected to be a deserter or to be absent without leave, that magistrate may order that— 40
 - (i) the person be handed over to the Disciplinary Adjutant of his or her unit or to the person in charge of the nearest military police client service centre or military police detachment;
 - (ii) the person be committed to custody in a military prison, military correctional facility, military police cell, military lock-up or a correctional centre or any other place of confinement until the delivery provided for in subparagraph (i) can be effected; or 45
 - (iii) if the person is not handed over as provided for in subparagraph (i) within seven days of his or her committal to custody by the magistrate, subject to a warrant of committal, in the prescribed form, issued by the magistrate, that person again be brought before a magistrate who may then order his or her committal for a further period not exceeding seven days. 50

(8) Any person to whom this section applies may, within the period determined in section 80, be brought before any military court if it is not possible to hand such person over or present him or her to the Disciplinary Adjutant of his or her unit within 48 hours after the arrest. 55

Confinement of arrested person

55. (1) Subject to subsections (2) and (4), every person arrested and not released must, after he or she has been handed over or presented to the Disciplinary Adjutant of his or her unit or arraigned before a military court, be kept in confinement and— 60

- (a) in the case of an officer or Warrant Officer, in his or her living quarters under the charge of an officer or Warrant Officer of, where possible, equal or higher rank;
 - (b) in the case of a Non-Commissioned Officer, in his or her living quarters or a guardroom under the charge of a Non-Commissioned Officer of, where possible, equal or higher rank; or
 - (c) in the case of a Private, in a guardroom, correctional facility, military police cell, military police lock-up or military police detachment.
- (2) Where local conditions or other circumstances render compliance with subsection (1) not possible, the arrested person may be confined in any other place which his or her Officer Commanding or commanding officer, or any other authorised officer who is empowered to issue a remand warrant or a warrant of committal, deems suitable.
- (3) Every person who has been confined in terms of this section, must be deprived of every article or instrument including any weapon, fire-arm and ammunition, which may be used to effect his or her escape or which may endanger that person's, or any other person's, health or safety.
- (4) Every person arrested for the commission, outside the Republic, of the offence of treason, espionage, public violence, terrorism, sedition, murder, culpable homicide, robbery, kidnapping, arson, a sexual offence or for an offence under item 4 or 79 of Schedule 1 or who is arrested for an attempt to commit any of these offences, must be confined in a military prison, military correctional facility, military police cell, military police lock-up, military police detachment during deployments or a correctional centre in terms of the Correctional Services Act.
- (5) For the purposes of subsection (1), the expression "living quarters" does not include quarters which have not been provided by the State or quarters occupied by the arrested person together with that person's spouse and children, if any.

Persons arrested for desertion or absence without leave

- 56.** (1) Whenever a person who is subject to this Act surrenders to, or is arrested by, a superior officer, a military police official, or a police official on a charge under this Act or the Defence Act, of desertion or absence without leave, the person to whom he or she surrenders, or who arrests him or her, must prepare and sign a certificate stating the fact of, as well as the time, date and place of such surrender or arrest.
- (2) A certificate prepared and signed in terms of subsection (1) must, at the trial of that person on that charge by a civilian or military court, on its mere production, be admissible in evidence.

Rights in respect of custody

- 57.** A person who is in custody in terms of this Act must be—
- (a) detained in conditions that are consistent with human dignity;
 - (b) accommodated adequately at State expense;
 - (c) afforded necessary medical treatment at State expense;
 - (d) afforded the opportunity, at his or her own cost, to communicate with, and to be visited by, his or her—
 - (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; or
 - (iv) chosen medical practitioner;
 - (e) entitled—
 - (i) at his or her own cost, to choose and to consult with a legal practitioner; or
 - (ii) if he or she is without the means to exercise the right as provided in subparagraph (i), to have a Military Defence Counsel assigned to assist him or her; and
 - (f) entitled to challenge the lawfulness of the custody or detention in person before a competent court.

Warrant of committal or release

- 58.** (1) The warrant of committal to custody of any person charged with an offence and subsequently convicted and sentenced under this Act may be signed by a Senior Military Judge, Military Judge or magistrate within the relevant area of jurisdiction.
- (2) Any warrant for the release from custody of any person charged with an offence and subsequently convicted and sentenced under this Act, may be signed by a Senior Military Judge or Military Judge, a magistrate within the relevant area of jurisdiction or Chairperson of the Court of Military Appeals or a judge of the Court of Military Judicial Reviews which set aside, varied or suspended the sentence.
- (3) Any property or item found or seized as a result of a search contemplated in subsection (5) must be delivered safely to—
- (a) the Disciplinary Adjutant of the person—
 - (i) on whom that property or item was found; or
 - (ii) suspected of having committed an offence under this Act in respect of which that property or item was seized, unless a military police official seized the property or item; or
 - (b) a military police official in any case in which a suspect has not been identified.
- (4) The Disciplinary Adjutant receiving any property or item seized in terms of subsection (3)(a) must submit such property or item at the first opportunity thereafter to a military police official.
- (5) A Senior Military Judge or Military Judge who is presiding at military court proceedings to whom it appears that there are reasonable grounds for believing that there is, in the possession of, or under the control of, or upon any person or at any premises, place, vehicle, vessel, aircraft, container, data storage device, receptacle of whatever nature or in any thing whatsoever, any property or item referred to in section 60(1)(a), (b) or (c) and that, such property or item is required in evidence at those military court proceedings, may, in writing issue a search warrant authorising any person referred to in section 60(1)(i) to (iv) to search that person, place, vehicle, vessel, aircraft, container, receptacle or any thing, and to seize any such property or item, if found, and to deliver it safely to any person referred to in subsection (3).
- (6) (a) An officer of not lower than field rank who has the consent of the person to be searched or of the person who may consent to the search of the premises, place, vehicle, vessel, aircraft, container, data storage device or receptacle concerned or in any thing whatsoever, may authorise the search without a search warrant, the seizure of any property or item found as well as its safe delivery to—
- (i) the Disciplinary Adjutant of the person—
 - (aa) on whom that property or item was found; or
 - (bb) suspected of having committed an offence under this Act in respect of which that property or item was seized; or
 - (ii) a military police official, in any case where a suspect has not been identified.
- (b) The Disciplinary Adjutant receiving any property or item seized in paragraph (a)(i) must submit such property or item at the first opportunity thereafter to a military police official.
- (7) An officer of not less than field rank who, on reasonable grounds believes that the delay in obtaining written authority in terms of subsection (5) would defeat or prejudice the object of a search may, if he or she is—
- (a) the superior officer of the person upon whom that property or item is suspected to be;
 - (b) the person in charge or control of the military premises, place, vehicle, vessel, aircraft, container, data storage device or receptacle upon, or at which that property or item is suspected to be; or
 - (c) a military police official,
- without such authority, authorise the search and seizure of any property or item found as well as its safe delivery to—
- (i) the Disciplinary Adjutant of the person—
 - (aa) on whom that property or item was found; or
 - (bb) suspected of having committed an offence under this Act in respect of which that property or item was seized, unless a military police official seized the property or item; or
 - (ii) a military police official, in any case in which a suspect has not been identified.

(8) The Disciplinary Adjutant receiving any property seized in terms of subsection (7)(a) or (b), must submit such property or item at the first opportunity thereafter to a military police official.

(9) Subject to subsection (10), any search in terms of this section must be conducted— 5

- (a) in the case of property or an item found upon, belonging to, or suspected to belong to a person, in the presence of such person;
- (b) in the presence of the person in charge or control of the premises, place, vehicle, vessel, aircraft, container, data storage device or receptacle or anything whatsoever at which that property or item in question is suspected to be; 10
- (c) in the presence of any person found on or at the premises upon which the property or item in question is suspected to be;
- (d) with strict regard to decency and good order;
- (e) by a person of the same gender as the person searched and, to this end, every person authorised by this Act to effect that search may designate any person who is subject to this Act, which is of the same gender as the person to be searched to effect that search; and 15
- (f) in strict compliance with the instructions and conditions contained in the search warrant. 20

(10) A search may be conducted in the absence of a person referred to in subsection (9)(a) or (b) if—

- (a) the delay in securing the presence of that person is likely to prejudice the object of the search; or
 - (b) his or her presence cannot, despite diligent efforts, be readily secured, 25
- and such search must be conducted by the person authorised thereto under this Act in the presence of not less than one person who is subject to this Act.

(11) A warrant issued under this section is of force until it is—

- (a) executed;
- (b) cancelled by the person who issued it; or 30
- (c) if the person who issued it is not available, cancelled by a person with the same authority.

(12) A warrant issued under this section—

- (a) must authorise the search of any person identified in it, premises, property or item identified in it or any person found on or at such premises; 35
- (b) must be executed only by the person specified in the warrant; and
- (c) is authority for the seizure of any property or item specified in the warrant or referred to in section 59.

(13) Any person executing a search in accordance with a warrant issued in terms of this section or a communication contemplated in subsection (14) must display that warrant or communication to the person whose rights may be affected by the search or seizure of any property or item in consequence of that search. 40

(14) Any person who issued a warrant in terms of this section may communicate the existence of that warrant by means of a telephonic, telegraphic, facsimile or similar written or printed communication stating that a warrant has been issued for the search of a specified person, premises, property or item and that communication is sufficient authority to any person referred to in subsection (12) to effect the search and seizure contemplated in this section, subject to such warrant or communication being later shown to the affected person. 45

(15) Where any vehicle, property or item under the control of the Department was seized as a result of a search contemplated in this section, it must be reported to the Officer Commanding or commanding officer in charge of the relevant military property or premises as well as the Officer Commanding or commanding officer of the relevant military police official together with any details incidental to such seizure. 50

(16) The provisions of this Chapter do not derogate from or limit any, power conferred by this Act or any other law to enter or search any premises, place, vehicle, vessel, aircraft, container, data storage device, or receptacle of whatever nature or anything whatsoever, or to search any person or to seize, dispose of, or declare forfeited, any property or item. 55

CHAPTER 6

INVESTIGATIONS AND PRE-TRIAL PROCEDURES

*Part 1**Search and seizure***Search of arrested person** 5

59. Subject to section 48, any person effecting an arrest in terms of this Act must search the arrested person or cause that person to be searched and—

- (a) seize any item or instrument including any weapon, fire-arm or ammunition which may be used to effect his or her escape or which may be used to endanger that person's or any other person's life, health or safety or is intended to be used in the commission of an offence; and 10
- (b) may seize any item then found, which may afford evidence of the commission of an offence, including any item contemplated in section 60(1).

Search with or without search warrant

60. (1) A Senior Military Judge or a Military Judge, to whom it appears from information contained in at least one sworn statement that there are reasonable grounds for believing that there is in the possession of, or under the control of, or upon any person, or at any premises, place, vehicle, vessel, aircraft, container, data storage device, receptacle of whatever nature or in any thing whatsoever— 15

- (a) stolen property or any other item with respect to which an offence has been committed or is suspected on reasonable grounds to have been committed by a person; 20
- (b) any item as to which there are reasonable grounds for believing that it may afford evidence of the commission of any offence under this Act by a person; or 25
- (c) any item as to which there are reasonable grounds for believing that it is intended to be used or was used for the purpose of committing any offence by a person,

that Senior Military Judge or Military Judge may, in writing, issue a search warrant authorising— 30

- (i) any superior officer of the person on whom such property or item is believed to be; 30
- (ii) any person who is subject to this Act and who is in charge or control of the military premises, place, vehicle, vessel, aircraft, container, data storage device or receptacle upon, or at which, that property or item is believed to be; 35
- (iii) any military police official; or
- (iv) any person or class of persons subject to this Act,

specified in the warrant, to search that person, place, vehicle, vessel, aircraft, container, data storage device or receptacle, or any person found therein or thereupon, and seize any such property or item identified in the search warrant, if found. 40

(2) Any property or item found or seized as a result of a search contemplated in subsection (1) must be delivered safely to—

- (a) the Disciplinary Adjutant of the person— 45
 - (i) on whom that property or item was found; or
 - (ii) suspected of having committed an offence under this Act in respect of which that property or item was seized, unless a military police official seized the property or item; or
- (b) a military police official in any case in which a suspect has not been identified.

(3) The Disciplinary Adjutant receiving any property or item seized in terms of subsection (2)(a) must submit such property or item at the first opportunity thereafter to a military police official. 50

(4) A Senior Military Judge or Military Judge who is presiding at military court proceedings to whom it appears that there are reasonable grounds for believing that there is, in the possession of, or under the control of, or upon any person or at any premises, place, vehicle, vessel, aircraft, container, data storage device, receptacle of whatever nature or in any thing whatsoever, any property or item referred to in subsection (1)(a), 55

(b) or (c) and that, such property or item is required in evidence at those military court proceedings may, in writing, issue a search warrant authorising any person referred to in subsection (1)(c)(i) to (iv) to search that person, place, vehicle, vessel, aircraft, container, receptacle or anything, to seize any such property or item, if found, and to deliver it safely to any person referred to in subsection (2). 5

(5) (a) An officer of not less than field rank who has the consent of the person to be searched or of the person who may consent to the search of the premises, place, vehicle, vessel, aircraft, container, data storage device or receptacle concerned or in any thing whatsoever, may authorise the search without a search warrant, the seizure of any property or item found as well as its safe delivery to— 10

(i) the Disciplinary Adjutant of the person—

(aa) on whom that property or item was found; or

(bb) suspected of having committed an offence under this Act in respect of which that property or item was seized; or

(ii) a military police official, in any case where a suspect has not been identified. 15

(b) The Disciplinary Adjutant receiving any property or item seized in paragraph (a)(i) must submit such property or item at the first opportunity thereafter to a military police official.

(6) An officer of not less than field rank who on reasonable grounds believes that the delay in obtaining written authority in terms of subsection (1) would defeat or prejudice the object of a search may, if he or she is— 20

(a) the superior officer of the person upon whom that property or item is suspected to be;

(b) the person in charge or control of the military premises, place, vehicle, vessel, aircraft, container, data storage device or receptacle upon or at which that property or item is suspected to be; or 25

(c) a military police official,

without such authority, authorise the search and seizure of any property or item found as well as its safe delivery to—

(i) the Disciplinary Adjutant of the person— 30

(aa) on whom that property or item was found; or

(bb) suspected of having committed an offence under this Act in respect of which that property or item was seized,

unless a military police official seized the property or item; or

(ii) a military police official, in any case in which a suspect has not been identified. 35

(7) The Disciplinary Adjutant receiving any property seized in terms of subsection (6)(a) or (b), must submit such property or item at the first opportunity thereafter to a military police official.

(8) Subject to subsection (9), any search in terms of this section must be conducted—

(a) in the case of property or an item found upon, belonging to, or suspected to belong to, a person, in the presence of such person; 40

(b) in the presence of the person in charge or control of the premises, place, vehicle, vessel, aircraft, container, data storage device or receptacle or anything whatsoever at which that property or item in question is suspected to be; 45

(c) in the presence of any person found on or at the premises upon which the property or item in question is suspected to be;

(d) with strict regard to decency and good order;

(e) by a person of the same gender as the person searched and, to this end, every person authorised by this Act to effect that search may designate any person who is subject to this Act, which is of the same gender as the person to be searched to effect that search; and 50

(f) in strict compliance with the instructions and conditions contained in the search warrant.

(9) A search may be conducted in the absence of a person referred to in subsection (8)(a) and (b) if— 55

(a) the delay in securing the presence of that person is likely to prejudice the object of the search; or

(b) his or her presence cannot, despite diligent efforts, be readily secured, and such search must be conducted by the person authorised thereto under this Act in the presence of not less than one person who is subject to this Act. 60

(10) A warrant issued under subsection (1) is of force until it is—

(a) executed;

- (b) cancelled by the person who issued it; or
- (c) if the person who issued it is not available, cancelled by a person with the same authority.

(11) A warrant issued under subsection (1)—

- (a) must authorise the search of any person identified in it, premises, property or item identified in it or any person found on or at such premises; 5
- (b) must be executed only by the person specified in the warrant; and
- (c) is authority for the seizure of any property or item specified in the warrant or referred to in section 59.

(12) Any person executing a search in accordance with a warrant issued in terms of subsection (1) or a communication contemplated in subsection (13) must display that warrant or communication to the person whose rights may be affected by the search or seizure of any property or item in consequence of that search.

(13) Any person who issued a warrant in terms of subsection (1) may communicate the existence of that warrant by means of a telephonic, telegraphic, facsimile or similar written or printed communication stating that a warrant has been issued for the search of a specified person, premises, property or item and that communication is sufficient authority to any person referred to in subsection (11) to effect the search and seizure contemplated in this section, subject to such warrant or communication being later shown to the affected person. 20

(14) Where any vehicle, property or item under control of the Department was seized as a result of a search contemplated in subsection (1), it must be reported to the Officer Commanding or commanding officer in charge of the relevant military property or premises as well as the Officer Commanding or commanding officer of the relevant military police official together with any details incidental to such seizure. 25

(15) The provisions of this Chapter do not derogate from, or limit any, power conferred by this Act or any other law to enter or search any premises, place, vehicle, vessel, aircraft, container, data storage device, or receptacle of whatever nature or anything whatsoever, or to search any person or to seize, dispose of or declare forfeited, any property or item. 30

Personal non-liability for wrongful search

61. Any person who is authorised under this Act to search any person, premises, place, vehicle, vessel, aircraft, container, receptacle or anything whatsoever under a search warrant and who—

- (a) in the reasonable belief that he or she is searching the right person, premises, place, vehicle, vessel, aircraft, container or receptacle, but searches the wrong person, premises, place, vehicle, vessel, aircraft, container, receptacle or anything whatsoever, is exempt from personal liability in respect of that wrongful search; or 35

(b) acts under a warrant which is defective in substance or form, 40
is exempt from personal liability in respect of that act if he or she had no knowledge that the warrant was defective and regardless of whether or not that defect is apparent on the face of the warrant.

Entering of premises for purposes of obtaining evidence

62. (1) A person who may lawfully search a person or any military premises or property under the control of the Department or who may lawfully enter any military premises or property under the control of the Department, may use the force that may be reasonably necessary to overcome any resistance against that search or against entry of the military or State-controlled premises, including the breaking of any door or window of those premises or property: Provided that the person who intends to search or gain admission to the premises or property must first audibly demand admission to the premises or property and notify the purpose for which he or she seeks to enter those premises or property. 50

(2) The proviso to subsection (1) does not apply where the relevant person is on reasonable grounds of the opinion that any property or item which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with. 55

Transfer of seized property or item to military court for purposes of trial

63. (1) If any property or item seized in terms of this Part or otherwise obtained is required at a trial before a military court for the purposes of evidence or for the purposes of an order of court, the person who has such property or item in his or her control must, at the request of the court or the Prosecution Counsel, deliver that property or item to that court at the commencement of the trial or when required by the court or the Prosecution Counsel, as the case may be. 5

(2) If it is impossible or undesirable, by reason of the nature, bulk or value of the property or item in question that it should be delivered to the court, the court may require the person who has such property or item to retain it in his or her control. 10

(3) Any person who is required to retain any property or item in accordance with subsection (2) must place that property or item in safe custody and may, in the case of money, deposit that money in an official banking account as directed by the Chief Financial Officer of the Department if it is not required at the trial for the purpose of evidence. 15

Part 2

Forfeiture and disposal of property or item

Disposal of property or item after seizure

- 64.** A person who in terms of section 59 or 60 received any property or item seized—
- (a) may, if the property or item is perishable, with due regard to the interests of the persons concerned, record and catalogue such with full identifying features and distinguishing information such as weight, length, value, photograph, and may also take samples for forensic analysis, and if necessary, seal such item in the presence of the person from whom it had been seized, and thereafter, if possible, retain or dispose of the property or item in the manner that the circumstances may require; 20 25
 - (b) may, if the property or item is stolen property or property suspected to have been stolen, with the consent of the person from whom it was seized, record and catalogue such with full identifying features and distinguishing information such as weight, length, value, photograph and may also take samples for forensic analysis, in the presence of the person from whom it had been seized, and thereafter deliver the property or item to the person from whom that property or item was stolen or believed to have been stolen, and must warn that person to hold that property or item available for production at any resultant court proceedings, if required to do so; or 30 35
 - (c) must, if the property or item is not disposed of or delivered in terms of paragraph (a) or (b), give it a distinctive identification mark and retain it in custody or make other arrangements with regard to its custody that the circumstances may require. 35

Disposal of property or item where no prosecution is instituted or where property or item is not required for purposes of prosecution 40

65. (1) If any property or item provided for in section 64 is not required at a trial for purposes of evidence or for purposes of an order of court, that property or item must be returned to the person from whom it was seized if that person may lawfully possess that property or item or, if that person may not lawfully possess that property or item, to the person who may lawfully possess it. 45

(2) If no person may lawfully possess the property or item contemplated in subsection (1) or if the military police official or the Prosecution Counsel cannot identify any person who may lawfully possess that property or item, the property or item is forfeited to the State. 50

(3) The person who may lawfully possess the property or item provided for in subsection (1) must be notified at his or her last-known address that he or she may take possession of the property or item and if that person fails to take delivery of the property or item within 30 days from the date of the notification, the property or item is forfeited to the State. 55

(4) Property or an item forfeited to the State in terms of this section, section 66 or section 67, is public property for the account of the Department: Provided that any such property or item which may not ordinarily be lawfully possessed, must be destroyed.

Disposal of property or item after conclusion of military trial proceedings

66. (1) Subject to this Act or any other law under which any property or item may be forfeited, a military court must, at the conclusion of a trial, make an order that any property or item provided for in section 63—

- (a) be returned to the person from whom it was seized, if that person is entitled to it and may lawfully possess it;
- (b) if the person from whom it was seized is not entitled to it or may not lawfully possess it, be returned to any person or institution entitled to it, if that person or institution may lawfully possess it; or
- (c) if no person is entitled to it or may lawfully possess it or if the person who is entitled to it cannot be traced or is unknown, be forfeited to the State.

(2) The military court may, for the purposes of an order under subsection (1), consider any additional evidence, either by affidavit or orally, that it may deem fit.

(3) If no order under subsection (1) is made by the relevant court, any military court may at any time after the conclusion of the proceedings make any such order, and for that purpose consider any additional evidence, either by affidavit or orally, that it may deem fit: Provided that this subsection does not derogate from the competence of the Court of Military Judicial Reviews, Court of Senior Military Judicial Reviews, Director Military Judges or any Court of Military Appeals.

(4) Any order made under subsection (1) or (3) may be suspended pending any appeal or review.

(5) Where a military court makes an order under subsection (1)(a) or (b), section 65(3) must, with the necessary changes required by the context, apply with reference to the person in favour of whom that order is made.

(6) If the circumstances so require or if the military trial proceedings in question cannot for any reason be completed or otherwise disposed of, the relevant military court may make an order referred to in subsection (1) at any stage of the proceedings.

Forfeiture of property or item to State on conviction

67. (1) A military court which convicts an accused of any offence may declare—

- (a) any weapon, instrument or other property or item which was used for the purpose of, or in connection with, the commission of, that offence; or
- (b) any vehicle, container, receptacle, data storage device or other property or item or anything whatsoever, which was used for the purpose of, or in connection with the commission of, the offence in question or for the conveyance or removal of stolen property,

and which was seized under this Act, forfeited to the State.

(2) The forfeiture contemplated in subsection (1) must not affect any right of any person who—

- (a) did not know that such weapon, instrument, vehicle, container, receptacle, data storage device or other property or item or anything whatsoever, was being used or would be used for the purpose of, or in connection with, the commission of the offence in question, or for the conveyance or removal of the stolen property in question, or could not prevent such use; and
- (b) may lawfully possess that weapon, instrument, vehicle, container, receptacle, data storage device or other property or item or anything whatsoever.

(3) A military court which convicts or acquits an accused of any offence, may declare forfeited to the State any property or item seized under this Act which is forged or counterfeit or which cannot lawfully be possessed by any person.

Part 3**General provisions****Powers in respect of prints, photographs and samples of accused without warrant**

- 68.** (1) A military police official, when executing investigative duties, may, without a warrant, and, if directed to do so by a Prosecution Counsel, must, without a warrant— 5
- (a) take the finger prints, palm prints, foot prints, body prints or a photograph of any person—
 - (i) warned or arrested in terms of this Act upon any charge; or
 - (ii) convicted by a military court;
 - (b) take the steps that are reasonably necessary to ascertain whether the body of any person referred to in paragraph (a)(i) has any mark, characteristic, distinguishing feature or tattoo or shows any distinct condition or appearance. 10
- (2) No such military police official may—
- (a) if not a registered medical practitioner or nurse in the service of the Department, take any blood sample of the person concerned; or 15
 - (b) make any examination of the body of a person, provided that person and the military police official concerned are of the same gender.
- (3) The Officer Commanding or commanding officer of the person referred to in subsection (1)(a)(i) must make such person available or cause that person to be made available for identification in the condition, position or apparel that the said military police official may determine. 20
- (4) If requested by the Officer Commanding or commanding officer of the person referred to in subsection (1)(a)(i), the Prosecution Counsel or the military police official, any registered medical practitioner or nurse, whether in the service of the Department or not, may take the steps, including the taking of a blood sample, that may be reasonably necessary to ascertain whether the body of any person referred to in subsection (1)(a)(i), has any mark, characteristic, distinguishing feature or tattoo or shows any distinct condition or appearance. 25
- (5) A military court before which proceedings in terms of this Act are pending or are being conducted, may order that— 30
- (a) the finger prints, palm prints, foot prints, body prints or a photograph of an accused be taken; or
 - (b) steps are taken, including the taking of a blood sample, to ascertain—
 - (i) whether the body of any person has any mark, characteristic, distinguishing feature or tattoo or shows any distinct condition or appearance; or 35
 - (ii) the state of health of an accused, which the court may deem necessary for the purposes of the proceedings.
- (6) The presiding Senior Military Judge or Military Judge, as the case may be, must, upon convicting the accused, direct the Prosecution Counsel to cause the accused's finger prints, palm prints, foot prints, body prints or photographs to be taken and submitted to the Criminal Record Centre of the South African Police Service or any official responsible to administer a national register of convicted offenders, including the Registrar of the National Register for Sex Offenders as established by the Criminal Law (Sexual Offences and Related Matters) Amendment Act and to the Child Protection Register established in terms of the Children's Act, 2005 (Act No. 38 of 2005). 40 45

Part 4**Pre-trial investigations****Duty of Officers Commanding and commanding officers**

- 69.** An Officer Commanding or commanding officer must, if he or she becomes aware of an allegation or circumstances that indicate that a Schedule 1 offence with a prescribed sentence of imprisonment exceeding one year has or may have been committed by any member under the command of such Officer Commanding or commanding officer, as soon as is reasonably possible, ensure that the matter is reported to a military police official, irrespective of whether a board of inquiry has been convened. 50 55

Accounts of arrest or warning

70. (1) Any person who arrests a person under this Act or orders a person into arrest for an offence, must, within 24 hours after the arrest or order, lodge a written account of the arrest with the person in whose charge the arrested person is delivered and the account of the arrest must certify that the arrested person was informed of his or her rights: Provided that the account of arrest must be completed prior to any subsequent appearance before a military court or civilian court. 5

(2) Any person who warns a person or causes such person to be warned that an investigation may be conducted into his or her conduct must, within 48 hours after such warning, lodge with the Disciplinary Adjutant of such person's unit or a Prosecution Counsel, a written account of the warning, signed by himself or herself, of the conduct for which such person was warned: Provided that where the account of warning together with any supporting statements, documents or other evidence is handed to a Prosecution Counsel, a copy must be handed to the Disciplinary Adjutant without delay. 10

(3) If either the 24-hour or 48-hour time periods expire on a weekend or public holiday or before four o'clock in the afternoon on the next day not being a weekend or public holiday, it is deemed to expire at four o'clock in the afternoon of the day following that weekend or public holiday. 15

Obtaining and completion of account of arrest or warning

71. (1) Whenever a person warns or intends to warn another person, he or she must— 20

- (a) against signature, obtain from the relevant Disciplinary Adjutant an account of warning;
- (b) upon receipt, complete or cause the warning to be completed as prescribed; and
- (c) submit such completed account of warning together with any supporting statements, documents or other evidence to the relevant Disciplinary Adjutant or a Prosecution Counsel, who must record it in the register determined by policy: Provided that where the account of warning together with any supporting statements, documents or other evidence is handed to a Prosecution Counsel, a copy must be submitted to the Disciplinary Adjutant without delay. 25 30

(2) Whenever a person arrests a person in terms of this Act, he or she must—

- (a) against signature, obtain from the relevant Disciplinary Adjutant an account of arrest;
- (b) upon receipt, complete or cause it to be completed as prescribed; and 35
- (c) submit such completed account of arrest to the person in whose charge the arrestee is delivered and submit a copy thereof to the relevant Disciplinary Adjutant who must record it in the register determined in the policy.

Procedure after warning of person

72. (1) The Disciplinary Adjutant must ensure that the account of warning and supporting statements, documents and other evidence is submitted within 48 hours of receipt thereof to the office of the local representative of the Judge Advocate General for evaluation and decision by the relevant Prosecution Counsel. 40

(2) The Prosecution Counsel must, upon receipt of the account of the warning, conduct such evaluation and— 45

- (a) if satisfied that sufficient evidence exists to proceed with the matter before a Court of a Senior Military Judge or a Military Judge, draft the charge sheet and submit it to the Senior Prosecution Counsel together with a summary of evidence for evaluation and a prosecution decision;
- (b) if satisfied that sufficient evidence exists to proceed with the matter before a military disciplinary hearing, the Prosecution Counsel on instruction from the local Senior Prosecution Counsel must submit the record to the Disciplinary Adjutant who must further deal with the matter in accordance with the provisions of Chapter 11; 50
- (c) if not satisfied that sufficient evidence has been gathered to proceed with the matter before a Court of a Senior Military Judge, a Court of a Military Judge or a military disciplinary hearing, the Prosecution Counsel must refer the matter to the Disciplinary Adjutant for further investigation and collation of 55

- the required evidence, within a period specified by the Director Military Prosecutions, until all investigative requirements are met and when so satisfied and sufficient evidence has been gathered, the Prosecution Counsel must comply with paragraph (a), (b) or (d); and
- (d) if satisfied that all available evidence has been gathered and that there is no reasonable prospect—
- (i) of a successful prosecution; or
 - (ii) to proceed successfully with the matter before a military disciplinary hearing,
- the Prosecution Counsel must refer the matter to the local Senior Prosecution Counsel with a recommendation to decline prosecution.
- (3) Upon receipt of a recommendation to decline prosecution in terms of subsection (2)(d), the local Senior Prosecution Counsel must consider such recommendation and—
- (a) if he or she declines prosecution, inform the Officer Commanding or commanding officer of the person affected about such a decision as soon as reasonably possible, who must inform the relevant member as soon as reasonably possible; or
 - (b) if he or she refuses to decline prosecution, refer the matter to the relevant Prosecution Counsel with such instructions as he or she deems appropriate.
- (4) If the Senior Prosecution Counsel is satisfied with the charge sheet, he or she must sign and submit it to the relevant Prosecution Counsel to deal with in terms of subsection (5).
- (5) The relevant Prosecution Counsel must, after receipt of the signed charge sheet, record the case in a register and forward the notice to appear as well as copies of the charge sheet and the pre-trial investigation to the Officer Commanding or commanding officer of the accused, who must hand such notice and copies to the Disciplinary Adjutant.
- (6) The Disciplinary Adjutant must explain the contents of the notice to appear and the charge sheet to the accused and hand him or her copies thereof as well as a copy of the pre-trial investigation.

Function of Disciplinary Adjutant regarding pre-trial investigation

- 73.** (1) A Disciplinary Adjutant who receives an account of warning or an account of arrest or upon instruction from the relevant Prosecution Counsel to conduct further investigation, must investigate the matter and during the course of such investigation—
- (a) interview a person other than a suspect who may be able to furnish information in connection with the case;
 - (b) take sworn statements, where necessary, from a person interviewed;
 - (c) trace the whereabouts of a person who may furnish information in connection with the case; and
 - (d) seize or take charge of any document, property or item which may be used in evidence at the trial, excluding military police dockets, and submit any relevant document, property or item collated in terms of this section with the account of warning or arrest and submit any supplementary investigation material to the relevant Prosecution Counsel.
- (2) Upon receipt of the completed account of warning or arrest and the finalised investigation material, the relevant Prosecution Counsel must record in a register the account of the warning or arrest and investigation material as a case within the functional responsibility of the prosecution environment.

Duty to refer case following investigation by military police or civilian police

- 74.** (1) A military police official who investigated an allegation which indicates, or circumstances which indicate, that a Schedule 1 offence has or may have been committed or who has been informed of such allegations or circumstances by a South African Police Service official or a recognised local or foreign statutory or established police force or police service official, must refer the case to the local Senior Prosecution Counsel as soon as reasonably possible.
- (2) A military police official who considers that there is sufficient evidence to justify the appearance of an implicated member before a military disciplinary hearing for misconduct under Schedule 2, must refer the case to the Officer Commanding or commanding officer, as the case may be, of such member.

(3) Subject to section 76, when a military police official does not refer the case to the Officer Commanding or commanding officer under subsection (2), he or she must consult the local Senior Prosecution Counsel as soon as is reasonably possible.

(4) Where the gathered evidence discloses—

- (a) the commission of an offence and is of such a nature that a reasonable prospect of success at prosecution exists, that person must be prosecuted unless the charge has been rendered non-justiciable, has prescribed or there is any other legal impediment which renders the charge or person incapable of being tried by a military court; and 5
- (b) misconduct of such a nature that upon evaluation of probabilities, a reasonable prospect of success at establishing the commission of such misconduct could be pronounced, that person must be brought before a military disciplinary hearing, unless the act of misconduct has prescribed or any other legal impediment renders the case of misconduct incapable of being heard by a military disciplinary hearing. 10 15

Notification of referral to Officer Commanding or commanding officer

75. (1) The military police official must as soon as reasonably possible after referral of the case in terms of section 74(1), notify the relevant Officer Commanding or commanding officer of the referral or submission.

(2) In circumstances provided for in section 74(2), the military police official must as soon as reasonably possible provide the investigation documents to the relevant Officer Commanding or commanding officer and specify the circumstances which the relevant military police official regards as qualifying the conduct as a Schedule 2 misconduct. 20

Investigation and process following receipt of military police dockets

76. (1) During the investigation process, a military police official may approach a Prosecution Counsel for guidance and assistance and such Prosecution Counsel may direct the military police official to conduct further investigation and return such at instructed target dates until the Prosecution Counsel is satisfied. 25

(2) All military police dockets, including the account of arrest or warning, if any, must upon completion of the investigation be presented to the relevant Prosecution Counsel for a prosecution decision and if such Prosecution Counsel is satisfied that sufficient evidence exists to proceed with the matter before a Court of a Senior Military Judge or Military Judge, he or she must draft the charge sheet and submit it to the Senior Prosecution Counsel together with a summary of evidence for evaluation and a prosecution decision. 30 35

(3) If the Senior Prosecution Counsel is satisfied that a reasonable prospect of success at prosecution exists, he or she must sign the charge sheet and instruct the relevant Prosecution Counsel to issue a notice to appear to the accused: Provided that if the Senior Prosecution Counsel is not satisfied either—

- (a) refer the matter back for further investigation and upon receipt of the required additional evidence sign the amended charge sheet; or 40
- (b) in person, effect any changes or amendments to the charge sheet in accordance with the provided evidence before the signing thereof. 35

Receipt of findings of board of inquiry by Judge Advocate General

77. (1) When the convening authority of a board of inquiry confirms the findings and recommendations of a board of inquiry, such board of inquiry convened at the level of the Secretary for Defence, the Chief of the Defence Force or the Chiefs of Services and Divisions, its findings and recommendations must be forwarded to the office of the Judge Advocate General to be reviewed for technical and legal compliance. 45

(2) In the case of boards of inquiry relating to maritime or aviation safety matters or other specialist fields, the findings and recommendations of such boards must be considered by the Maritime Safety Board of the South African Navy, Vessel Certification Authority Board of the South African Navy or Aviation Safety Board of the South African Air Force or other specialist advisory or statutory boards, before being forwarded to the office of the Judge Advocate General. 50 55

(3) If it appears to a Military Law Practitioner, during the review, that evidence contained in the board of inquiry suggests that an offence in terms of this Act may have

been committed by a person, the matter must be forwarded to the Director Military Prosecutions for a prosecution decision or recommendation.

(4) The Director Military Prosecutions must—

- (a) if satisfied that there is a reasonable prospect of success at prosecution, forward the evidence from the board of inquiry to the office of the local representative of the Judge Advocate General who must then inform the relevant Officer Commanding or commanding officer of the implicated member of the decision to prosecute; 5
- (b) if not satisfied that all relevant evidence was gathered in order to proceed with the matter before a Court of a Senior Military Judge or a Court of a Military Judge, submit the evidence to the office of the local representative of the Judge Advocate General to instruct the military police to obtain any additional evidence as required; or 10
- (c) if satisfied that all available evidence has been gathered and that there is no reasonable prospect of success at prosecution, decline to prosecute, and notify the convening authority of the decision taken with regard to the institution of prosecution or otherwise. 15

(5) The local representative of the Judge Advocate General must—

- (a) upon receipt of any additional evidence referred to in subsection (4)(b), forward such evidence to the office of the Director Military Prosecutions for a prosecution decision or recommendation, whereafter the Director Military Prosecutions may execute actions as referred to in subsection (4)(a); or 20
- (b) upon receipt of the evidence from the board of inquiry as referred to in subsection (4)(a), notify the relevant Officer Commanding or commanding officer of the implicated person of the prosecution decision, who must instruct the Disciplinary Adjutant to warn the implicated person and submit the signed account of warning within 48 hours to the Senior Prosecution Counsel at the office of the relevant local representative of the Judge Advocate General. 25

(6) The Senior Prosecution Counsel at the office of the relevant local representative of the Judge Advocate General must, upon receipt of the arrest or warning, instruct a Prosecution Counsel to proceed in accordance with subsection (7) and to issue a notice to appear to the accused. 30

(7) The relevant Prosecution Counsel must sign the charge sheet, record the case in a prescribed register and forward the notice to appear as well as a copy of the charge sheet over to the Officer Commanding or commanding officer of the accused, who must hand such notice and charge sheet over to the Disciplinary Adjutant. 35

(8) The Disciplinary Adjutant must explain the contents of the notice to appear and the charge sheet to the accused and hand him or her copies thereof.

Receipt of findings of board of inquiry by local representative of Judge Advocate General 40

78. (1) When the convening authority of a board of inquiry confirms the findings and recommendations of a board of inquiry, other than a board of inquiry referred to in section 77(1), the findings and recommendations must be forwarded to the office of the local representative of the Judge Advocate General to be reviewed for technical and legal compliance. 45

(2) In the case of a board of inquiry relating to maritime or aviation safety matters or other specialist fields, the findings and recommendations of such boards must be considered by the Maritime Safety Board of the South African Navy, Vessel Certification Authority Board of the South African Navy or Aviation Safety Board of the South African Air Force or other specialist advisory or statutory boards, before being forwarded to the office of the local representative of the Judge Advocate General. 50

(3) If it appears to a Military Law Practitioner, during the review, that evidence contained in the board of inquiry suggests that an offence in terms of this Act may have been committed by a person, the matter must be forwarded to the Senior Prosecution Counsel for a prosecution decision or recommendation. 55

(4) Subject to section 37, the Senior Prosecution Counsel must—

- (a) if satisfied that there is a reasonable prospect of success at prosecution, inform the relevant Officer Commanding or commanding officer of the implicated member of the decision to prosecute, who must, in turn, instruct the Disciplinary Adjutant to warn the implicated person and submit the signed 60

- account of warning within 48 hours to the office of that Senior Prosecution Counsel;
- (b) if not satisfied that all relevant evidence was gathered in order to proceed with the matter before a Court of Senior Military Judge or a Court of Military Judge, instruct the military police to obtain any additional evidence as required; or 5
- (c) if satisfied that all available evidence has been gathered and that there is no reasonable prospect of success at prosecution, decline to prosecute.
- (5) The Senior Prosecution Counsel must—
- (a) upon receipt of the account of warning referred to in subsection (4)(a), instruct a Prosecution Counsel to proceed in accordance with subsection (6) and to issue a notice to appear to the accused; or 10
- (b) upon receipt of the evidence from the board of inquiry referred to in subsection (3), notify the Officer Commanding or commanding officer of the implicated person of the prosecution decision. 15
- (6) The relevant Prosecution Counsel must sign the charge sheet, record the case in a prescribed register and forward the notice to appear as well as a copy of the charge sheet to the Officer Commanding or commanding officer of the accused, who must hand such notice and charge sheet over to the Disciplinary Adjutant.
- (7) The Disciplinary Adjutant must explain the contents of the notice to appear and the charge sheet to the accused and hand him or her copies thereof. 20

Collation of evidence during pre-trial investigation phase

- 79.** (1) The Prosecution Counsel, Disciplinary Adjutant or military police investigating official must obtain any required statement or evidence, including visiting any person for such purpose, from any person whether subject to this Act or not. 25
- (2) A Disciplinary Adjutant or Prosecution Counsel conducting a pre-trial investigation may—
- (a) procure the attendance of witnesses;
- (b) have witnesses summoned to give evidence or to produce a document or item thereat; 30
- (c) administer oaths or affirmations;
- (d) admit sworn and unsworn statements into evidence; and
- (e) collate evidence into the pre-trial investigation in accordance with subsection (3).
- (3) A pre-trial investigation must comprise of, if applicable— 35
- (a) a cover sheet reflecting the reference of the pre-trial investigation;
- (b) an index with page numbering;
- (c) a certified copy of the account of warning or account of arrest;
- (d) a certified copy of the certificate of surrender or arrest, in the prescribed form, if applicable; 40
- (e) original statements or certified copies of original statements; and
- (f) documentary evidence.
- (4) Where an incident leads to a report of misconduct and an account of warning or account of arrest, such incident must be investigated under this Part.

CHAPTER 7 45

ARREST AND APPEARANCE BEFORE COURT

Arraignment of arrestees

- 80.** Any person arrested in terms of this Act must be brought before a military court that has jurisdiction to try the accused, and if a court with jurisdiction to try the accused is not available, he or she may appear before a Court of a Military Judge for purposes of this section, within 48 hours after such arrest for purposes of— 50
- (a) arraignment; or
- (b) considering the release of that accused in terms of section 81 or the remand in custody in terms of section 82: Provided that if the period of 48 hours expires on a weekend or public holiday or before four o'clock in the afternoon on the next day not being a weekend or public holiday, it is deemed to expire at four 55

o'clock in the afternoon of the next day following that weekend or public holiday.

Non-arraignment of arrestee

81. Where an arrestee has not been brought before a military court within 48 hours after arrest, such person must be released from custody without a release warrant, subject to the right to re-arrest, and the Disciplinary Adjutant must record a notification hereof on the account of arrest. 5

Remand in custody

82. (1) A military court may only remand a person in custody after giving both the accused and the Prosecution Counsel an opportunity to present arguments to the court and, if necessary, to lead evidence in support of, or in opposition to, the remand in custody. 10

(2) When a military court considers the remand of an accused in terms of subsection (1) and there is reason to believe that the accused—

- (a) may abscond; 15
- (b) may interfere with the investigation or any witness;
- (c) may conceal, destroy, do away with, or in any manner interfere with, any article or item which may be used in evidence at his or her trial;
- (d) may persist in, or continue, the commission of the offence in question;
- (e) is likely to injure himself or herself or others; or 20
- (f) having regard to the nature or prevalence of the alleged offence which is under investigation, should, in the interest of discipline, not be at large or allowed to consort with his or her comrades,

that military court must remand the accused in custody.

CHAPTER 8 25

LEGAL REPRESENTATION AND ASSISTANCE TO ACCUSED

Part 1

Legal representation

Right to legal representation

83. (1) (a) In respect of legal proceedings in terms of this Act, excluding Chapter 11, every accused has the right to be represented by— 30

- (i) a legal representative of his or her own choice at his or her own expense, other than a Military Defence Counsel contemplated in section 30(a)(ii); or
- (ii) an allocated Military Defence Counsel at State expense.

(b) During external operational deployments or circumstances, an accused may be compelled to be represented by a Military Defence Counsel, unless he or she waives the right to legal representation. 35

(2) Whenever an accused appears before a military court or a Military Judge or a Senior Military Judge without legal representation, the presiding Military Judge or Senior Military Judge— 40

- (a) must ensure that the accused does not suffer any prejudice because of—
 - (i) the accused's position as such;
 - (ii) the accused's ignorance or incapacity to examine or cross-examine witnesses; or
 - (iii) the accused's ignorance or incapacity to make his or her defence or opposition, clear and intelligible; 45
- (b) must advise the accused of—
 - (i) his or her right to legal representation;
 - (ii) his or her rights at the various stages of the proceedings;
 - (iii) any onus which may be placed on him or her; and 50
 - (iv) any possible verdict, alternative verdict or declaration; and

- (c) may, if the accused indicates a wish to be represented by a legal representative, postpone the matter to afford the accused reasonable opportunity to obtain the representation of his or her choice.

(3) Whenever any accused appears before a military court, a Military Judge or a Senior Military Judge without legal representation after the lapse of the reasonable time afforded in terms of subsection (2)(c) by the presiding Military Judge or Senior Military Judge, the accused must be directed to the relevant Senior Military Defence Counsel for the appointment of a Military Defence Counsel and a date must be set by the presiding Military Judge or Senior Military Judge for the case to continue. 5

Part 2 10

Penalties

Sentences

84. (1) Subject to subsections (2) to (9), a military court may, whenever it convicts an accused of any offence and subject to the maximum penalty provided for by law for that offence, impose upon the offender a sentence consisting of one or more of the following: 15

- (a) Imprisonment for a maximum of 30 years in the case of a Court of Senior Military Judge and a maximum of 10 years in a case of a Court of Military Judge;
- (b) in the case of an officer, cashiering or dismissal from the Defence Force;
- (c) in the case of another rank— 20
 - (i) discharge with ignominy from the Defence Force; or
 - (ii) discharge from the Defence Force;
- (d) in the case of another rank, military correctional confinement for a period not exceeding two years: Provided that the rank of a person must be suspended with retention of pay for the duration of the confinement; 25
- (e) in the case of an officer, reduction to any lower commissioned rank;
- (f) in the case of another rank—
 - (i) reduction to any lower class of rank, to any lower rank, to any non-commissioned rank or to the ranks;
 - (ii) fatigue duties not exceeding two hours per day for a non-consecutive 30
 - period not exceeding 60 days under supervision of any person appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose;
 - (iii) rehabilitative labour not exceeding two hours per day for a non-consecutive period not exceeding 60 days under supervision of any 35
 - person appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose; or
 - (iv) extra drills not exceeding two hours per day for a non-consecutive period not exceeding 14 days under supervision of any person appointed by the 40
 - Officer Commanding or commanding officer, as the case may be, for that purpose;
- (g) reversion from any acting or temporary rank to his or her substantive rank;
- (h) compulsory rehabilitation including after-care process for alcohol, narcotic or substance addiction or abuse;
- (i) military community service of a non-remunerative nature, as ordered by the 45
 - court, of four hours per weekday to commence one hour after normal working hours and eight hours per day over weekends and public holidays, for a period not exceeding 90 days;
- (j) suspension of a military driving or pilot's licence or vessel steering competency certificate for a specified period not exceeding 12 months or 50
 - cancellation of a military driving or pilot's licence or vessel steering competency certificate;
- (k) reduction in seniority in rank;
- (l) in the case of another rank, confinement to barracks or unit lines for a period not exceeding 60 days with or without corrective behaviour drills during 55
 - training, operations or deployments: Provided that in the case of Warrant Officers, such sentence must be without corrective behaviour drills;
- (m) extra non-consecutive duties for a period not exceeding 60 days;

- (n) a fine not exceeding R200 000.00 in the case of a Court of Senior Military Judge and R150 000.00 in the case of a Court of Military Judge; or
- (o) a reprimand.
- (2) A military court may, when it convicts another rank for an offence committed while serving a sentence of correctional confinement, irrespective of the number of offences upon which he or she has been found guilty, impose upon the inmate any sentence provided for in this Act, including an additional sentence of corrective punishment consisting of any one of the following:
- (a) Forfeiture of any remission or discount on account of good behaviour with regard to that sentence of correctional confinement; 10
 - (b) solitary confinement for a period not exceeding 14 consecutive days under the supervision of any person appointed by the superintendent of the correctional facility for that purpose, at the termination of which he or she may not be required to serve any further sentence of solitary confinement within seven days thereafter; 15
 - (c) rehabilitative labour not exceeding two hours per day for a period not exceeding seven days under the supervision of any person appointed by the superintendent of the correctional facility for that purpose;
 - (d) fatigue duties not exceeding two hours per day for a period not exceeding seven days under supervision of any person appointed by the superintendent of the correctional facility for that purpose; 20
 - (e) extra military instruction not exceeding one hour per day for a period not exceeding 21 days under the supervision of any person appointed by the superintendent of the correctional facility for that purpose; or
 - (f) partial or complete forfeiture of privileges or facilities for a period not exceeding seven days. 25
- (3) A military court may, when it convicts an accused who is a prisoner of war of any offence, impose upon the accused a sentence of—
- (a) imprisonment;
 - (b) correctional confinement for a period not exceeding two years; 30
 - (c) forfeiture of any remission or discount on account of good behaviour with regard to that sentence of correctional confinement;
 - (d) a fine of not more than 50 percent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 of the Geneva Convention, during a period of 180 days; 35
 - (e) solitary confinement for a period not exceeding 14 consecutive days under the supervision of any person appointed by the camp commander for that purpose, at the termination of which he or she may not be required to serve any further sentence of solitary confinement within seven days thereafter;
 - (f) fatigue duties not exceeding two hours per day for a period not exceeding seven days under the supervision of any person appointed by the camp commander for that purpose; 40
 - (g) extra labour not exceeding two hours per day for a period not exceeding seven days under the supervision of any person appointed by the camp commander for that purpose; 45
 - (h) discontinuance of privileges granted over and above the treatment provided for by the Geneva Convention; or
 - (i) a reprimand.
- (4) The competence of a military court to impose a sentence in terms of subsections (1), (2), or (3) or the proviso in subsection (9), is limited by— 50
- (a) the maximum penalty provided by law for that offence;
 - (b) its own penal or disciplinary jurisdiction; and
 - (c) the provisions of this Act.
- (5) For the purposes of this Act, each penalty provided for in subsections (1), (2) and (3) is deemed to be less severe and less serious than the preceding penalty for the relevant rank. 55
- (6) A sentence of correctional confinement—
- (a) subjects, as its primary purpose, the offender to military training while in custody in a correctional facility with the view to returning that offender to his or her unit as a better trained and better disciplined member after the completion of the sentence; 60
 - (b) is subject to an automatic remission or discount for good behaviour of one quarter of the period of correctional confinement imposed as a sentence:

Provided that such remission or discount may be forfeited by means of the imposition of a sentence contemplated in subsection (2)(a) or (3)(c); and

- (c) must be served in a facility which allows the ingress of natural light.
- (7) A sentence—
- (a) referred to in subsections (2)(a) and (3)(c) may not be imposed or enforced after the expiration of the sentence of correctional confinement which that person was serving at the time of the offence; and
- (b) of solitary confinement referred to in subsections (2)(b) and (3)(e) must—
- (i) be served in a facility which allows the ingress of natural light; and
- (ii) not commence within three days of the expiration of a prior sentence of solitary confinement, if the duration of that prior sentence was 10 or more days.
- (8) A military court which has convicted an accused may, if the accused is serving outside the Republic or on a ship which is at sea, and that court is of the opinion that it is impractical to impose the punishment of correctional confinement or confinement to barracks, instead of that punishment, sentence the accused to be deprived of his or her salary in an amount calculated at the rate of one half-day's salary for every day's correctional confinement not exceeding a period of 10 days or one quarter-day's salary for every day's confinement to barracks not exceeding a period of 20 days which, but for this provision, the military court would have imposed on the accused.
- (9) Subject to section 86(5), when a military court convicts a civilian who is subject to this Act in terms of an offence contained in Schedule 1, such court may only impose a sentence of a fine to the maximum of R50 000.00: Provided that, if the offence was committed outside the borders of the Republic, the court may also impose a sentence of imprisonment limited by the maximum penalty provided for by law for that offence and the jurisdiction of the court.

Alternative punishments

85. A military court which has convicted an accused of any offence may, instead of imposing upon that person the maximum penalty prescribed in this Act in respect of that offence, impose upon him or her any other penalty within the court's jurisdiction, which is not a more severe penalty than the maximum penalty so prescribed.

Certain provisions to apply in case of particular punishments

- 86.** (1) Save as provided in item 19(2) of Schedule 1, no sentence of imprisonment may be for a period shorter than 30 days.
- (2) The punishment of imprisonment may not be combined with the punishment of correctional confinement.
- (3) An officer sentenced to imprisonment must also be sentenced to cashiering, and the latter sentence must be executed before the officer concerned is lodged in any military prison or correctional centre to serve the sentence of imprisonment.
- (4) In the event of a Warrant Officer, Non-Commissioned Officer or Private who is sentenced to imprisonment, he or she must also be sentenced to discharge with ignominy.
- (5) Any person whose trial commences or is concluded after he or she would, but for the provisions of sections 25 and 26(2), have ceased to be subject to this Act, may on conviction, if a sentence of a fine is imposed, be sentenced to a period of imprisonment not exceeding six months in default of the payment of the fine or the court may order him or her to remain in custody until the payment of the fine into an approved Treasury account, but in any event not longer than six months.
- (6) Every sentence of imprisonment or correctional confinement imposed under this Act must continue to run even if the offender would, but for the provisions of section 3(1)(c), otherwise have ceased to be subject to this Act during the currency of the sentence.
- (7) An officer sentenced to cashiering or dismissal from the Defence Force in terms of this Act must, within 48 hours of announcement of the sentence, surrender his or her Deed of Commission, citations and commendations to his or her Officer Commanding or commanding officer.
- (8) At the cashiering, the officer must hand in his or her rank insignia and all medals received to the relevant Service Chief during the parade.

(9) The punishments of fines in terms of section 84(1)(n) and (o) may be combined.

(10) When a military court sentences a civilian who is subject to this Act to a fine, such court must order him or her to remain in custody until the payment of the fine into an approved Treasury account, but in any event not for longer than six months.

Right of offender to benefit by least of prescribed punishments 5

87. An offender has the right to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.

Prohibition of corporal punishment

88. Despite anything to the contrary in any other law, no civilian court, military court or military disciplinary hearing may in respect of any offence or act of misconduct under this Act, sentence or sanction an offender or implicated member to any form of corporal punishment. 10

Temporary inability to serve sentence or sanction

89. Where the circumstances of an offender, prisoner of war or sanctioned member under this Act as a result of— 15

(a) his or her default or any act performed by him or her; or

(b) his or her non-availability or temporary incapacity or illness or other reason, precludes the immediate or continued execution of any sentence or sanction or any part thereof as imposed on him or her, the period of sentence or sanction must be extended by a period equal to the period taken up by such default, act, non-availability, incapacity, illness, or other lawful reason. 20

Effect of sentence of reduction or reversion in rank

90. (1) When an offender is sentenced to reduction to—

(a) any lower commissioned rank; 25

(b) any lower class of rank or any lower rank;

(c) any non-commissioned rank; or

(d) the ranks,

that offender must take the most junior position on the seniority list of the rank to which he or she is reduced, and his or her salary and any benefit of rank must be reduced to that which pertains to the rank to which he or she is reduced. 30

(2) When an offender is sentenced to reversion from any temporary or acting rank to his or her substantive rank, his or her salary and any benefit related to rank, must be reduced to that which pertains to his or her substantive rank.

(3) When an offender is sentenced to any reduction in rank contemplated in subsection (1) and that offender's salary or any benefit is not determined by his or her military rank, his or her salary and any such benefit must be reduced, if reduced by— 35

(i) one rank, to the starting notch of the current level of remuneration on his or her applicable salary dispensation; or

(ii) two or more ranks, to the starting notch of the previous level of remuneration. 40

Suspension of sentence

91. (1) When a military court sentences an offender, it may suspend the operation of that sentence, partially or in the whole, for a period not exceeding three years on the conditions that the court may determine.

(2) A military court must not suspend the operation of the sentence if the imposed sentence is— 45

(a) confinement to barracks;

(b) corrective punishment;

(c) extra non-consecutive duties;

(d) compulsory rehabilitation including after-care process for alcohol, narcotic or substance addiction or abuse; 50

(e) fatigue duty or extra labour;

(f) reversion from any acting or temporary rank to substantive rank;

- (g) suspension of a military driving licence permanently or for a specified period not exceeding 12 months; or
- (h) a reprimand.

(3) When a court orders a suspended sentence into operation in respect of a person on whom a suspended sentence of correctional confinement was imposed when he or she was a Private, and who was thereafter promoted, the temporary reduction to the ranks as provided for in section 84(1)(d) applies. 5

Adjustment of fines

92. The provisions of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), are not applicable to military courts. 10

Declaratory orders

93. (1) If on the information contained in an offender's record of service it is evident that an offender has numerous convictions for a similar offence upon which the military court has convicted the offender, the Prosecution Counsel must apply to the court for a declaratory order declaring the offender an habitual offender. 15

(2) The military court must, in the presence of the offender and his or her legal representative, if any, hear and record evidence concerning an application to be declared an habitual offender, including any evidence that may be tendered by the offender.

- (3) Any witness called by the Prosecution Counsel may— 20
- (a) be cross-examined by the offender or his or her legal representative; and
 - (b) thereafter be re-examined by the Prosecution Counsel.

(4) If the offender elects to give evidence and call any witnesses—

- (a) the offender or witness may be cross-examined by the Prosecution Counsel;
- (b) in the case of the offender, after giving evidence, the offender may adduce further evidence that he or she may deem necessary; or 25
- (c) in the case of a witness called by the offender, the witness may be re-examined by the offender or his or her legal representative concerning any evidence given under direct examination.

(5) After hearing all available evidence, the military court must make a determination whether or not to declare the offender an habitual offender. 30

(6) In the event of a sentence of suspension or cancellation of a driving licence, pilot's licence or vessel steering competency certificate, being imposed on an offender and if the court did not impose a sentence of cashiering, dismissal, discharge with ignominy or discharge, the matter must, after the review or appeal processes, where applicable, be referred to the Director Military Judges who must cause it to be referred to the offender's direct Officer Commanding or commanding officer, who may direct the offender's— 35

- (a) redeployment in a different capacity within the Defence Force to the relevant Service or Divisional Chief; or
- (b) administrative discharge or dismissal as prescribed.

(7) The Officer Commanding or commanding officer must, from the date of conviction, or where an appeal has been lodged against such conviction, or pending a decision to dismiss or discharge as prescribed, forthwith temporarily prohibit the convicted person from using, driving, steering, piloting or handling any military vehicles, vessels, aircrafts or specialised equipment or components thereof. 40

(8) Whenever the driving or pilot's licence or vessel steering competency certificate of a member has been suspended for any period, the court may order that the suspension remain effective until such offender's competence has been confirmed after being re-tested. 45

(9) When a military court imposes a sentence in terms of section 84(1)(f), (g), (i), (l) or (m), such court must, prior to making its order, require the Officer Commanding or commanding officer to advise on the suitability of continued deployment or the option to return the member to home base and thereafter consider an order to direct the offender to serve such sentence within the deployment area for the duration or remainder of his or her deployment period. 50

(10) The deploying authority may upon completion of the sentence by an offender, administratively direct the offender's return to the Republic from his or her deployment, based on the suitability of the offender's continued deployment. 55

(11) In the event of an offender being sentenced to cashiering or dismissal, the military court must order the termination of that offender's commission and such court order is the authority for the simultaneous termination of that offender's appointment.

(12) In the event of an offender being sentenced to discharge with ignominy or discharge, the military court must order the termination of that offender's appointment, and in the case of the offender being a Warrant Officer, also the termination of such offender's deed of warrant.

(13) In the event of an offender being sentenced to cashiering, discharge with ignominy, dismissal or discharge, the military court must order the withdrawal of any military post-nominal letters and the return of military insignia, rank epaulets, qualification badges, proficiency badges, military medals and decorations, including any commendation certificates and citations, in a military manner before either the Chief of the Defence Force or the relevant Service Chief.

(14) When a military court convicts an accused of a sexual offence, the court must order the clerk of the court to—

- (a) enter the conviction in a register containing at least the full particulars of the offender, the offence and the conviction; and
- (b) notify the Service Chief and the Officer Commanding or commanding officer of such convicted member in writing of such order as well as the outcome of an appeal or review, including the correction or the making or alteration of any declaratory order, if any,

and order that such offender be removed from any functional environment involving children, learners at military training institutions, persons with mental disabilities, or vulnerable persons or from any deployment: Provided that where subsection (15) applies, this fact must also be recorded in such register.

(15) When a military court convicts an accused of a sexual offence, the court must order, where necessary, that the offender be subjected to relevant medical and blood tests at a local military hospital, district or provincial hospital, to ascertain the offender's status relating to Human Immunodeficiency Virus, sexually transmittable diseases and other contagious diseases, and for the confidential disclosure thereof to the victim including the receipt by the victim of post exposure prophylaxis or other medical treatment as medical circumstances may require.

(16) Where a military court has made an order under subsection (14) and where section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act requires inclusion in the Register contemplated in that Act, the clerk of the military court must forthwith forward to the Registrar of the National Register for Sex Offenders as contemplated in section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act—

- (a) the court order, together with all the particulars of the offender referred to in subsection (14), as well as the particulars referred to in section 49 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act;
- (b) relevant finger prints, palm prints, foot prints, body prints and photographic images;
- (c) the outcome of an appeal or review; and
- (d) any correction or alteration of any declaratory order.

(17) When a military court imposes a sentence of compulsory rehabilitation including aftercare process for alcohol, narcotic or substance addiction or abuse, the court must order that such compulsory rehabilitation including aftercare process for alcohol, narcotic or substance addiction or abuse, be at the first instance at the cost of the State on condition that the offender completes the programme, and for the relevant healthcare practitioner to submit a report to the Officer Commanding or commanding officer stipulating the completion of the intervention programme and the success or otherwise thereof, and if required, any subsequent treatment must be at the cost of the offender: Provided that if the offender fails to complete the programme, he or she must reimburse the State.

(18) Nothing contained in this Act prohibits a military court from executing the functions and responsibilities contained in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, and to issue any order contemplated therein.

Payment whilst awaiting appeal or review

94. An offender sentenced to cashiering, discharge with ignominy, dismissal or discharge does not forfeit his or her salary for any period of actual service rendered whilst awaiting a review or appeal decision in his or her case.

CHAPTER 9

5

PROMULGATION, EXECUTION OF SENTENCES AND ORDERS AND MATTERS RELATED TO CORRECTIONAL CONFINEMENT

Execution and promulgation

95. (1) Every finding, sentence and order by a military court must be promulgated and published as contemplated in subsection (3) as soon as possible after the proceedings of the case have been reviewed by a Review Authority. 10

(2) An acquittal must be promulgated and published as soon as possible after it has been announced.

(3) The promulgation of every finding, be it a conviction or acquittal, sentence or order by a military court must be— 15

(a) promulgated either on parade according to the custom of the Service or in the manner that the offender's Officer Commanding or commanding officer may direct; and

(b) published in unit orders.

(4) Every sentence of cashiering or discharge with ignominy must be executed on parade simultaneously with the promulgation thereof. 20

(5) Subject to section 105, the Officer Commanding or commanding officer of a convicted person must ensure that any sentence imposed or order made by the court that convicted that person is executed as soon as possible.

Commencement of sentence

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96. (1) Subject to section 105, every sentence is enforceable and must be executed as soon as possible after announcement in open court and must be effectively executed.

(2) If an offender is detained in custody after announcement of a sentence of imprisonment or correctional confinement, the period spent in custody pending the execution of his or her sentence must be taken— 30

(a) to have been served in execution of that sentence; and

(b) into account in determining the date of the completion of the serving of the sentence.

(3) When a sentence is varied by a Review Authority or a High Court of the Republic of South Africa— 35

(a) subsections (1) and (2) must, subject to the changes required by the context, apply; and

(b) the varied sentence must, for purposes of record only, be deemed to have been announced on the date on which the original sentence was announced in open court by the court which convicted the offender. 40

Sentenced offender not immediately transferred

97. An offender sentenced to imprisonment under circumstances where such offender cannot be immediately transferred to a military prison or correctional centre, may be confined to any suitable facility as may be determined by the Officer Commanding or commanding officer for such purpose until the transfer can be effected. 45

Correctional centre, military prison, military correctional facility, military police cell, military police detachment or military lock-up

98. (1) Subject to subsections (2) and (3), the Minister may—

(a) establish one or more military prisons in the Republic to which arrestees, accused persons or offenders— 50

(i) may be received, admitted and kept in custody pending, or during, their trial; and

- (ii) who have been sentenced to imprisonment in terms of this Act, may be committed to serve sentences; and
- (b) direct that offenders sentenced to imprisonment in terms of this Act be committed to any military prison or correctional centre established or deemed to have been established under the Correctional Services Act. 5
- (2) The Minister may—
- (a) establish one or more military correctional facilities, military police cells, military lock-up or detachment facilities inside or outside the borders of the Republic to which arrestees, accused persons or offenders—
- (i) may be received, admitted or kept in custody pending, or during, his or her trial; or 10
- (ii) sentenced to correctional confinement, may be committed to serve such sentences; or
- (b) direct that certain premises or portion of premises be deemed to be a correctional facility to which such arrestees, accused persons or offenders, 15 may be so committed.
- (3) Where the Minister has not established a military prison as provided for in subsection (1), offenders sentenced to imprisonment in terms of this Act must be committed to a correctional centre established or deemed to have been established under the Correctional Services Act. 20
- (4) Where the Minister has not established any military correctional facilities, military police cells, military lock-up or detachment facilities as provided for in subsection (2), in the case of arrestees or accused persons awaiting trial or during trial, such arrestees or accused persons may be kept in custody at the local South African Police Service holding facilities or the trial awaiting or holding facility of the Department of Correctional Services, pending his or her release from custody or finalisation of his or her trial. 25
- (5) An offender who has been sentenced to correctional confinement must only serve such sentence within a military correctional facility.
- (6) Military correctional facilities established before the commencement of this Act must be deemed to have been established under this Act. 30
- (7) In ensuring that an offender referred to in subsection (1) is treated on the same basis as, and has the same rights as, an offender who has been sentenced to imprisonment in terms of the Criminal Procedure Act, every competence which may, in terms of the Correctional Services Act, be exercised in respect of an offender serving a sentence of imprisonment imposed under the Criminal Procedure Act, must be exercised in respect of that offender. 35
- (8) In ensuring that an arrestee or accused contemplated in subsection (4) is treated on the same basis as, and has the same rights as, an arrestee or accused who is temporarily kept in custody in terms of the Criminal Procedure Act, any competence which may be exercised in terms of the Correctional Services Act or the Criminal Procedure Act in respect of an arrestee or accused who is temporarily kept in custody pending release or finalisation of his or her trial, must be exercised in respect of that arrestee or accused. 40
- (9) In terms of this subsection, read with subsection (10)—
- (a) members of the Defence Force; 45
- (b) foreign military personnel of a visiting force within the borders of the Republic or the territorial waters of the Republic;
- (c) members of a force of any foreign State or international body who are placed at the disposal of, and who are temporarily attached to, the Defence Force by the military authorities of that State or body; 50
- (d) deserters or absentees without leave of a visiting force; or
- (e) deserters or absentees without leave of members of a force of any foreign State or international body who are placed at the disposal of, and who are temporarily attached to, the Defence Force by the military authorities of that State or body, 55
- who have been committed to the trial awaiting or holding facilities of correctional centres or the trial awaiting or holding facilities of the South African Police Service, pending the conclusion of an investigation or whilst awaiting trial, in matters arising from such members having performed official duties, may be dealt with in terms of subsection (10). 60
- (10) Subject to subsection (9), members, arrestees or detainees referred to in subsection (9)(a), (c) and (e), when granted bail by a South African Police official of the rank of a Non-Commissioned Officer or higher, or the Director of Public Prosecutions,

or a State prosecutor authorised by the Director of Public Prosecutions, in writing or a civilian court, may with conditions be—

- (a) released in the interest of the Defence Force;
- (b) released into the confinement of the Defence Force or relevant visiting force, whichever may be applicable; 5
- (c) handed over to the appropriate authorities of the relevant visiting force; or
- (d) released on cognisance into the care of the Defence Force or relevant visiting force, whichever may be applicable, or handed over to the appropriate authorities of the visiting force.

(11) An Officer Commanding or commanding officer of members, arrestees or detainees provided for in subsection (9)(a), (c) and (e) may, in accordance with regulations made in terms of section 162, pay the amount set for bail on behalf of such members: Provided that—

- (a) such payment is not in conflict with any provision of the Public Finance Management Act or applicable Treasury Regulations; and 15
- (b) in the case of non-compliance with any bail condition that may have been set and the bail amount the Officer Commanding or commanding officer posted on behalf of such member has been forfeited to the State, such Officer Commanding or commanding officer must deduct or cause the deduction of the relevant amount of bail posted from such member's salary or pension fund 20 for the purpose of forfeiting it to the Defence Force.

(12) The Officer Commanding or commanding officer of members, arrestees or detainees provided for in subsection (9)(a), (c) and (e), may, in the case of the non-compliance with any bail condition—

- (a) trace, apprehend and place such members or arrestees in custody; and 25
- (b) hand over such members or arrestees to the South African Police Service to remain in custody until the matter is finalised or otherwise dealt with by the court or authorities.

Sentences of imprisonment and correctional confinement imposed outside Republic 30

99. (1) The Chief of the Defence Force may authorise any officer in command of troops beyond the borders of the Republic to establish a correctional facility to which offenders sentenced to correctional confinement under this Act may be committed to serve such sentences.

(2) Subject to subsection (3), any offender sentenced beyond the borders of the Republic to— 35

- (a) imprisonment under this Act; or
- (b) correctional confinement under this Act,

must be removed to the Republic to serve that sentence as soon as reasonably possible.

(3) If in the opinion of an officer in command of troops beyond the borders of the Republic, a removal provided for in subsection (2) is not reasonably practicable owing to distance, lack of means of conveyance or other circumstances, he or she may direct that the offender serves part of his or her sentence in— 40

- (a) a correctional facility established under subsection (1); or
- (b) a military or civilian prison, a military or civilian correctional facility or correctional centre or like place of confinement established or controlled or supervised by any foreign State or by the commander of any force serving in cooperation with the Defence Force, in accordance with the spirit of any relevant Memorandum of Understanding, Status of Forces Agreement or bi- or multi-lateral agreement, if the Minister has given general or specific authority therefor, 50

until such time that it is reasonably possible to be removed to the Republic.

(4) Any accused beyond the borders of the Republic who is charged or stands to be charged with any offence, which offence would normally be tried by a Court of a Senior Military Judge, may be committed to, and detained in, any prison, correctional facility or correctional centre or like place of confinement referred to in subsection (3), while that accused is awaiting trial, review or appeal, but may not be so committed or detained, unless the consent of his or her Officer Commanding or commanding officer has been obtained. 55

(5) The regulations applicable to correctional facilities and the constitutional rights of detainees in the Republic apply to a correctional facility established under subsection (1).

(6) The Minister may, on request by the Chief of the Defence Force, provide the officer in general command of the Defence Force in the area in which such correctional facility is situated, written permission to authorise in writing, additional or other measures for such correctional facility, that local or service conditions render necessary or advisable. 5

Detention of person charged under Act by head of correctional centre or person in charge of military prison, military correctional facility, military police cell, military police detachment or military lock-up 10

100. Every head of a correctional centre established in terms of the Correctional Services Act, a superintendent of any military prison, military correctional facility, military police cell, military police detachment or military lock-up inside or outside the borders of the Republic must receive, admit, keep in custody or release from custody any accused, arrestee or detainee, in compliance with a warrant of committal or release given by any court or Military Judge, Officer Commanding or commanding officer of the accused, arrestee or detainee or by any other officer authorised thereto by this Act. 15

Segregation of accused and convicted persons

101. Accused persons must be segregated from offenders and must be treated in accordance with the provisions of this Act, any regulations promulgated under this Act and any other applicable law. 20

Transfer of offenders

102. Any offender who has been committed to a military prison or a military correctional facility or correctional centre, whether inside or outside the borders of the Republic, to serve a sentence of correctional confinement may, on the written order of the Officer Commanding, commanding officer or the superintendent of the military correctional facility having jurisdiction in respect of such military correctional facility or by order of the Provost Marshal General of the Military Police Region under whom the command of the military correctional facility resorts, be removed from such military correctional facility to any other military correctional facility to serve the remaining portion of his or her sentence. 25 30

CHAPTER 10

APPEALS AND REVIEWS

Right to review of trial or declaration 35

103. Every person who is convicted and sentenced by a military court has the right to the automatic, speedy and competent review of the proceedings of his or her trial or inquiry.

Acquittal not subject to review

104. An acquittal is effective when announced in open court and is not subject to review. 40

Review

105. (1) Subject to section 106, the proceedings of every trial conducted by a military court, where an offender was convicted and a sentence was imposed, must be reviewed by a relevant Review Authority, which may execute the functions and powers as referred to in sections 12, 17 and 19. 45

(2) For the purposes of subsection (1), “sentence” includes any order which may or must be made by a military court in terms of any provision of this Act.

(3) Sentences linked to a conviction upon the offences as provided for in section 11(2) and sentences as contemplated in section 16(1), must not be executed until the review contemplated in subsection (1) has been completed.

Waiver

106. An offender may, at the time of the announcement of sentence or within 14 days thereafter, in writing, waive the right contemplated in section 103 to have his or her record of proceedings reviewed, in which case the promulgation contemplated for in section 95 may be effected without further delay. 5

Review Authority may call for reasons

107. (1) A Review Authority may direct a military court to give written reasons for any ruling, finding, sentence or order of such court, which reasons must show— 10

- (a) the facts the court found to have been proved;
- (b) the grounds upon which the court arrived at the finding, sentence or order; and
- (c) the reasons for any ruling of law or for the admission or rejection of any evidence, 15

as may be specified in the direction.

(2) The reasons contemplated in subsection (1) must be furnished within the period that the direction may stipulate, but not less than 30 days from the date of receipt by the military court upon direction of the Review Authority.

(3) The reasons contemplated for in subsection (1) must be prepared and signed by the presiding Military Judge or, in the case of a Court of a Senior Military Judge consisting of three judges, by all the Military Judges. 20

(4) For purposes of subsection (3), if one or two of the three Military Judges are not reasonably available, the Military Judge or judges who are available must prepare and sign the reasons indicating the reason which precluded the other Military Judge or judges from signing. 25

(5) An offender must, if he or she so requests and at his or her own cost, be supplied with a copy of any reason for judgment furnished in terms of this section.

Application to Court of Military Appeals

108. (1) An offender may lodge an appeal or submit an application for review to the Court of Military Appeals on the findings, sentences, court orders or substantial irregularities in military court proceedings. 30

(2) The Registrar of the Court of Military Appeals must upon receipt of such application and heads of argument, cause the Prosecution Counsel to receive a copy of the application and of such heads of argument and thereafter provide the Prosecution Counsel a period of 30 days, or the Senior Military Judge a period of 15 days, to respond thereto before placing such matter on the roll to serve before the Court of Military Appeals. 35

Right of prosecution to appeal to Court of Military Appeals

109. The Director Military Prosecutions may lodge an appeal to the Court of Military Appeals on any finding, sentence, court order or ruling made by that court with regard to questions of law, including the jurisdiction to try a case made by that military court. 40

Saving with regard to convictions set aside

110. (1) Subject to subsection (2), when a conviction is set aside by a review or appeal authority on the ground that— 45

- (a) the court which convicted the accused was not competent to do so;
- (b) the charge on which the accused was convicted was invalid or defective in any respect; or
- (c) there has been any other technical irregularity or defect in the procedure,

proceedings in respect of the same offence to which the conviction referred, may again be instituted either on the original charge, suitably amended where necessary, or upon any other charge as if the accused had not previously been brought or arraigned before 50

a military court or tried and convicted: Provided that no Military Judge or assessor before whom the original trial took place may take part in such proceedings.

(2) A technical irregularity or defect in the procedure contemplated for in subsection (1) includes, for the purposes of this section and without derogating from the generality of its meaning, a failure to administer a required oath or affirmation or non-compliance with the procedure prescribed in section 83(2). 5

Recusal by member of Court of Military Appeals

111. Any presiding judge or other member of a Court of Military Appeals who—

- (a) is, or during the consideration of a case becomes, related to any accused or the complainant by affinity or consanguinity in the first or second degree; 10
- (b) has, or during the consideration of a case, gained knowledge concerning the facts of the case to be considered by the court that his or her decision is likely to be prejudiced thereby;
- (c) bears any accused, or during the consideration of a case, develops towards any accused, such animosity as is likely to prejudice his or her decision; or 15
- (d) was contacted directly by the accused or his or her legal representative with regard to the merits of the accused's case,

must recuse himself or herself.

Prerogative of mercy

112. Nothing in this Act affects the power of the President under any law to extend mercy to any person. 20

CHAPTER 11

MILITARY DISCIPLINARY HEARING

Establishment of military disciplinary hearing

113. Subject to this Chapter, a military disciplinary hearing may be established. 25

Composition, jurisdiction of military disciplinary hearing and prescription

114. (1) Every appropriately qualified Officer Commanding or commanding officer and every officer subordinate in rank to such Officer Commanding or commanding officer and of a rank not lower than Captain or its equivalent, who is appropriately qualified and authorised thereto in writing by such Officer Commanding or commanding officer, has the jurisdiction and powers conferred by this Chapter, including administering of the oath or affirmation as provided for in this Act. 30

(2) With due regard to the provisions of section 119, an Officer Commanding or commanding officer may conduct a military disciplinary hearing of any member under his or her command. 35

(3) The requirement for the implicated member to be under the direct command of the Officer Commanding or commanding officer, does not apply—

- (a) where an Officer Commanding or commanding officer has been authorised in writing by another Officer Commanding or commanding officer to conduct military disciplinary hearings; 40
- (b) to the Chief of the Defence Force personnel with the rank of Colonel or its equivalent or higher, who may be heard by the Service Chief as determined by the Service affiliation of the implicated member;
- (c) to the Chief of the Defence Force personnel other than those provided for in paragraph (b), who may be heard by the Officer Commanding or commanding officer of the Force Structure Element responsible for personnel actions including disciplinary matters of such members; and 45
- (d) to the Chiefs of Services personnel below the rank of Colonel or its equivalent, who may be heard by the Officer Commanding or commanding officer of the Force Structure Element responsible for personnel actions including disciplinary matters of such members. 50

(4) The Officer Commanding or commanding officer must be of higher rank than the implicated member who has to appear before a military disciplinary hearing in terms of this Act.

(5) If the Officer Commanding or commanding officer under whose direct command the implicated member serves, or the Officers Commanding or commanding officers referred to in subsection (3), is unavailable or prohibited to conduct such military disciplinary hearing, the Officer Commanding or commanding officer within the next level of command must conduct the military disciplinary hearing. 5

(6) The following is applicable in respect of subsection (5):

- (a) Chiefs of Services personnel with the rank of Colonel or its equivalent or higher, must be heard by any Officer Commanding or commanding officer authorised thereto in writing by the Service Chief of the implicated member; 10
- (b) General Officers or Flag Officers under direct command of Divisional Chiefs must be heard by the Service Chief determined by the Service affiliation of the implicated member; and 15
- (c) Divisional Chief personnel, with the rank of Colonel or its equivalent, may be heard by the relevant Service Chief as determined by the Service affiliation of the implicated member.

(7) In the case where a Service Chief or a Divisional Chief is an implicated member, the military disciplinary hearing for such member must be conducted by the Chief of the Defence Force: Provided that any member bearing a rank not lower than the implicated member and who is authorised in terms of subsection (1) by the Chief of the Defence Force, is deemed to be of higher rank to the implicated member for the purpose of conducting such military disciplinary hearing. 20

(8) A military disciplinary hearing must hear any misconduct as provided for under Schedule 2 and may impose on the implicated member, on pronouncement that such implicated member is guilty of such act of misconduct, one or a combination of not more than three of the prescribed sanctions or corrective measures as provided for in this Chapter. 25

(9) A military disciplinary hearing may be conducted for the alleged misconduct of more than one implicated member at the same time in circumstances in which alleged incidents or the misconduct or alleged misconduct by two or more members have been investigated during the same investigation: Provided that, where the Officer Commanding or commanding officer anticipates that an injustice may result from the process of a combined hearing, he or she must order that the hearings be conducted separately or be referred to the Senior Prosecution Counsel for further handling. 30 35

(10) No person is liable to be heard by a military disciplinary hearing for any misconduct in respect of which that military disciplinary hearing has jurisdiction, unless that person is brought before a military disciplinary hearing within—

- (a) five years after the date of the alleged commission of the misconduct; or 40
- (b) one year from the date upon which such a person ceased to be in the employ or service of the Defence Force.

(11) In the case where a person ceased to be in the employ or service of the Defence Force and for the purpose of effecting an arrest, bringing such person before a military disciplinary hearing, imposing a sanction or executing such sanction, that person is deemed to be subject to this Act in the rank and status he or she had at the time of termination of employment or service. 45

(12) When a person is brought before a military disciplinary hearing, that person's first appearance interrupts and absolutely bars the passing of time in respect of any period determined in subsection (10). 50

(13) Where a person cannot as a result of—

- (a) his or her default or any act performed by him or her; or
- (b) his or her non-availability or incapacity or illness or other reason precluding the exercise of any competence conferred by this Act in respect of him or her, be brought before a military disciplinary hearing within any period provided for in subsection (10), that period must be extended by a period equal to the period taken up by such default, act, non-availability, incapacity, illness, other reason or application of an agreement. 55

Duty of Officer Commanding, commanding officer or superior officer with regard to allegations of misconduct

115. The Officer Commanding, commanding officer or superior officer must, if he or she becomes aware of an allegation reported by a military police official or circumstances exist which would indicate an act of misconduct under Schedule 2 has or may have been committed by any member, as soon as is reasonably possible, ensure that the Disciplinary Adjutant of such member is notified and that the matter is investigated in such a way and to such extent as is appropriate. 5

Duty of Disciplinary Adjutant when case referred to military disciplinary hearing

116. A Disciplinary Adjutant must, as soon as possible after an allegation of misconduct has been referred to him or her by any military police official, Senior Prosecution Counsel or Prosecution Counsel, Director Military Prosecutions or office of the Judge Advocate General, deal with such a matter in terms of this Chapter. 10

Duties of military police officials with regard to allegations of misconduct

117. (1) A military police official, who has investigated an allegation which indicates, or circumstances which indicate, that a Schedule 2 misconduct has or may have been committed or who has been informed of such allegations or circumstances by a South African Police Service official or recognised local or foreign statutory or established police force or service official, must notify the relevant Officer Commanding or commanding officer of the alleged misconduct or circumstances. 15 20

(2) A military police official who considers that there is sufficient evidence to justify the appearance of a member before a military disciplinary hearing resulting from a Schedule 2 misconduct, must, after consulting with the local Senior Prosecution Counsel, refer the case to the relevant Disciplinary Adjutant. 25

(3) Whenever a military police official proposes not to refer the case to the relevant Disciplinary Adjutant under subsection (2), he or she must refer the matter to the local Senior Prosecution Counsel for a prosecutorial decision as soon as reasonably possible, who must direct the military police official on the further handling of the matter and provide him or her with copies of the investigation documents. 30

(4) For the purposes of subsections (2) and (3), where the available evidence discloses—

- (a) the commission of an offence and is of such nature that a reasonable prospect of success at prosecution exists, that person must be prosecuted unless the charge has been rendered non-justiciable, has prescribed or any other legal impediment renders the charge or person incapable of being tried by a military court; or 35
- (b) a misconduct which is of such a nature that upon evaluation, a reasonable prospect of establishing the commission of such misconduct could be pronounced, that member must be brought before a military disciplinary hearing, unless the act of misconduct has prescribed or any other legal impediment renders such misconduct or member incapable of being heard by a military disciplinary hearing. 40

Rights of implicated member

118. Every implicated member instructed to appear before a military disciplinary hearing has the right to— 45

- (a) consult with a Military Defence Counsel or legal representative of his or her own choice within the seven day notification period, provided that a consultation with such private legal representative must be at an implicated member's own expense;
- (b) bring any witnesses that are reasonably available on whose evidence he or she is going to rely upon during the military disciplinary hearing; 50
- (c) bring any other document, instrument or evidence that he or she is going to rely upon during the military disciplinary hearing;
- (d) be accompanied by any uniformed member of his or her choice, who is available at the time of the hearing, as an observer during the proceedings of the military disciplinary hearing; and 55

- (e) the services of an interpreter during the proceedings of the military disciplinary hearing, if required.

Limitation on legal representation

- 119.** (1) During a military disciplinary hearing, neither the implicated member nor the Disciplinary Adjutant may be represented by a legal representative. 5
- (2) Where the implicated member is—
- (a) a Military Law Practitioner, the Disciplinary Adjutant and presiding officer must be Military Law Practitioners; or
- (b) the Judge Advocate General, the Disciplinary Adjutant must be a Military Law Practitioner. 10

Failure to comply with summons

- 120.** (1) Any person who is not subject to this Act, who has been summoned to attend any military disciplinary hearing to give evidence or to produce any document or thing, and who—
- (a) fails to attend or to remain in attendance until authorised to leave; 15
- (b) refuses to be sworn in or to affirm;
- (c) refuses to answer any question which in similar proceedings in a civilian court he or she could be compelled to answer; or
- (d) fails or refuses to produce any document or thing which in similar proceedings in a civilian court he or she could be compelled to produce, 20
- is guilty of an offence and liable on conviction by a civilian court to imprisonment for a period not exceeding three months.

Competent but not compellable witness giving evidence outside Republic

- 121.** If during the proceedings of a military disciplinary hearing beyond the borders of the Republic, a competent but not compellable witness gives evidence but refuses to answer any question to which a witness at a trial in the Republic could be bound in law to reply, the military disciplinary hearing may, if satisfied that the answer to the question is material, order the witness to stand down and strike the whole of his or her evidence from the record of the proceedings. 25

Witness to make use of approved accommodation and transport 30

- 122.** (1) Any person who is not subject to this Act and who has been summoned to attend any military disciplinary hearing, who requires any form of accommodation and transport to enable him or her to attend that military disciplinary hearing must for that purpose, unless the use of suitable military accommodation or an alternative mode of transport has been arranged and approved by the official who issued the summons, make use of approved and reasonable private accommodation or the available public transport services at State expense. 35
- (2) Any person referred to in subsection (1) may, if he or she has not been furnished with confirmation of reserved accommodation or with a railway or bus ticket or any alternative public transport ticket, token, voucher or confirmation or undertaking to pay the prescribed tariff for any reasonable accommodation required or for any journey to be undertaken by him or her, request, from the Officer Commanding or commanding officer of the implicated member to be furnished with confirmation of reserved accommodation or with a railway or bus ticket or any alternative public transport ticket, token, voucher or confirmation or undertaking to pay the prescribed tariff for any reasonable accommodation required or for any journey to be undertaken by him or her. 40 45

Language

- 123.** Every person called to give evidence before a military disciplinary hearing is entitled to give evidence in a language preferred by him or her.

Sanctions of military disciplinary hearing

124. (1) Subject to the provisions of sections 125 and 126, every presiding officer must, at the conclusion of a military disciplinary hearing and upon a pronouncement that the implicated member is guilty of an act of misconduct, pronounce an appropriate sanction consisting of one or a combination of not more than three of the sanctions provided in this Chapter: Provided that any combination of sanctions must consist of different categories of suitable and compatible sanctions. 5

(2) When a military disciplinary hearing sanctions any member for committing more than one act of misconduct alleged in the same notice of misconduct, the presiding officer must at the conclusion of the military disciplinary hearing, pronounce a sanction contemplated in subsection (1) in respect of each act of misconduct dealt with in that hearing. 10

(3) One or a combination of not more than three of the following sanctions may be pronounced for the rank of Private or its equivalent, or for the rank of Senior Non-Commissioned Officer or its equivalent: 15

- (a) Confinement to barracks or unit lines for a period not exceeding 21 days with or without corrective behaviour drills during training, operations or deployment under supervision of any member appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose; 15
- (b) extra non-consecutive duties for a period not exceeding 21 days; 20
- (c) a fine calculated in the format of a number of days salary for a period not exceeding 10 days;
- (d) a fine calculated in the format of a percentage of daily allowances during training, operations or deployment for a period not exceeding 14 days;
- (e) compulsory rehabilitation including aftercare process for alcohol, narcotic or substance addiction or abuse; 25
- (f) re-training in any component of a recognised curriculum within the Defence Force;
- (g) partial or complete forfeiture of regimental privileges or facilities for a period not exceeding three months; 30
- (h) extra regimental duties for a period not exceeding 21 days under supervision of any member appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose;
- (i) fatigue duties not exceeding two hours per day for a non-consecutive period not exceeding 14 days under the supervision of any member appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose; 35
- (j) rehabilitative labour not exceeding two hours per day for a non-consecutive period not exceeding 14 days under supervision of any member appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose; 40
- (k) reversion from any acting or temporary rank to a substantive rank;
- (l) military community service of a non-remunerative nature ordered by the military disciplinary hearing of four hours per weekday to commence one hour after normal working hours and eight hours per day over weekends and public holidays, for a period not exceeding 90 days, under supervision of any member appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose; 45
- (m) suspension of a military driving or pilot's licence or vessel steering competency certificate for a specified period not exceeding six months; 50
- (n) prohibition of entering specified areas or facilities for a period not exceeding six months;
- (o) compulsory physical training of one hour per day for a period not exceeding 21 days supervised by a military physical training instructor;
- (p) extra drills not exceeding two hours per day for a non-consecutive period not exceeding 14 days under supervision of any person appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose; 55
- (q) returning him or her to his or her home unit within the borders of the Republic, whether deployed inside or outside the borders of the Republic; or
- (r) reprimand. 60

(4) One or a combination of not more than three of the following sanctions may be pronounced to Warrant Officers and officers below the field rank or its equivalent:

- (a) Compulsory rehabilitation including aftercare process for alcohol, narcotic or substance addiction or abuse;
- (b) a fine calculated in the format of a number of days salary for a period not exceeding 10 days;
- (c) reversion from any acting or temporary rank to substantive rank; 5
- (d) a fine calculated in the format of a percentage of daily allowances received during training, operations or deployment for a period not exceeding 14 days;
- (e) prohibition of entering specified areas or facilities for a period not exceeding six months;
- (f) extra non-consecutive duties for a period not exceeding 21 days; 10
- (g) re-training in any component of a recognised curriculum within the Defence Force;
- (h) partial or complete forfeiture of regimental privileges or facilities for a period not exceeding three months;
- (i) suspension of a military driving or pilot's licence or vessel steering competency certificate for a specified period not exceeding six months; 15
- (j) military community service of a non-remunerative nature ordered by the military disciplinary hearing of four hours per weekday to commence one hour after normal working hours and eight hours per day over weekends and public holidays, for a period not exceeding 90 days under supervision of any member appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose; 20
- (k) Warrant Officers may be sanctioned to confinement to barracks or unit lines for a period not exceeding 21 days without corrective behaviour drills during training, operations or deployment under supervision of any member appointed by the Officer Commanding or commanding officer, as the case may be, for that purpose; 25
- (l) returning any member to his or her home unit within the borders of the Republic, whether deployed inside or outside the borders of the Republic; or
- (m) a reprimand. 30
- (5) One or a combination of not more than three of the following sanctions may be pronounced for senior Officers up to the rank of Colonel or its equivalent:
- (a) Compulsory rehabilitation for alcohol, narcotic or substance addiction or abuse;
- (b) a fine calculated in the format of a number of days salary for a period not exceeding 10 days; 35
- (c) return from any acting or temporary rank to substantive rank;
- (d) a fine calculated in the format of a percentage of daily allowances received during Defence Attaché service, training, operations or deployment for a period not exceeding 14 days; 40
- (e) prohibition of entering specified areas or facilities for a period not exceeding six months;
- (f) extra non-consecutive duties for a period not exceeding 21 days;
- (g) re-training in any component of a recognised curriculum within the Defence Force; 45
- (h) partial or complete forfeiture of regimental privileges or facilities for a period not exceeding three months;
- (i) suspension of a military driving or pilot's licence or vessel steering competency certificate for a specified period not exceeding six months;
- (j) returning any member to his or her home unit within the borders of the Republic, whether deployed inside or outside the borders of the Republic; or 50
- (k) reprimand.
- (6) One or a combination of not more than three of the following sanctions may be pronounced for General Officers or Flag Officers:
- (a) Prohibition of entering specified areas or facilities for a period not exceeding six months; 55
- (b) compulsory rehabilitation including for alcohol, narcotic or substance addiction or abuse;
- (c) a fine calculated in the format of a number of days salary for a period not exceeding 10 days; 60
- (d) reversion from any acting or temporary rank to substantive rank;

- (e) a fine calculated in the format of a percentage of daily allowances received during military attaché service, training or deployment for a period not exceeding 14 days; or
- (f) reprimand.

(7) Subject to section 133(3), any sanction or combination of sanctions pronounced by a military disciplinary hearing is of immediate effect and, in the event where more than one sanction has been imposed, those sanctions must be executed in the sequence in which they were pronounced: Provided that a fine must be deducted immediately as contemplated in section 128. 5

Specific sanction for member serving correctional confinement 10

125. A superintendent of a military prison or military correctional facility who conducts a military disciplinary hearing in respect of an inmate for any act of misconduct committed by that inmate while serving a sentence of correctional confinement may, on pronouncement that the implicated member is guilty of such act of misconduct, order such member to be subjected to any one of the following sanctions: 15

- (a) Forfeiture of the whole or part of any remission or discount on account of good behaviour with regard to that sentence of correctional confinement;
- (b) solitary confinement for a period not exceeding 14 consecutive days under supervision of any member appointed by the superintendent of a military prison or military correctional facility for that purpose, at the termination of which he or she may not be required to serve any further sentence of solitary confinement within seven days thereafter; 20
- (c) fatigue duties not exceeding two hours per day for a period not exceeding seven days under the supervision of any member appointed by the superintendent of a military prison or military correctional facility for that purpose; 25
- (d) extra labour not exceeding two hours per day for a period not exceeding seven days under the supervision of any member appointed by the superintendent of a military prison or military correctional facility for that purpose;
- (e) extra military instruction not exceeding one hour per day for a period not exceeding 21 days under the supervision of any member appointed by the superintendent of a military prison or military correctional facility for that purpose; or 30
- (f) partial or complete forfeiture of privileges or facilities for a period not exceeding seven days. 35

Specific sanctions for prisoner of war

126. An Officer Commanding or commanding officer of a facility in which a prisoner of war is held, or such commander's delegate, who conducts a military disciplinary hearing in respect of that prisoner of war for any act of misconduct, including a contravention or attempted contravention of item 39(e) of Schedule 1, committed by that prisoner while being a prisoner of war, may on pronouncement that the prisoner is guilty of the act of misconduct, order that the prisoner be subjected to any one of the following sanctions: 40

- (a) Correctional confinement for a period not exceeding 40 days;
- (b) solitary confinement for a period not exceeding 14 consecutive days under supervision of any person appointed by the camp commander for that purpose, at the termination of which he or she may not be required to serve any further sentence of solitary confinement within seven days thereafter; 45
- (c) in the case of a prisoner who is not an officer, fatigue duties not exceeding two hours per day for a period not exceeding seven days under supervision of any member appointed by the camp commander for that purpose; 50
- (d) extra labour not exceeding two hours per day for a period not exceeding seven days under supervision of any member appointed by the camp commander for that purpose;
- (e) discontinuance of privileges granted and the treatment provided for in terms of the Geneva Convention; 55
- (f) a fine calculated in the format of an amount not exceeding 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise

- receive under the provisions of Articles 60 and 62 of the Geneva Convention,
during a period of 30 days; or
(g) a reprimand.

Orders by military disciplinary hearing

127. (1) The salary of any member of the Defence Force must be paid without any deductions other than such deductions as authorised by this Act or any other national legislation. 5

(2) Where a member of the Defence Force is sanctioned to pay a fine, the military disciplinary hearing may in its discretion, without prejudice to any other power under this Act relating to the payment of a sanction, enforce payment of the whole sanction or part thereof. 10

(3) The presiding officer must inform the member and the Disciplinary Adjutant of any order that is made and afford the opportunity to present argument or evidence relevant thereto: Provided that the presiding officer may on his or her own accord call any witness. 15

(4) Subject to section 133(3), any order made by a military disciplinary hearing is of immediate effect.

Deduction of fine

128. When a presiding officer sanctions any member to pay a fine, he or she must order that such member be placed under deduction of salary in the amount of the fine. 20

Forfeiture of salary

129. (1) Any member of the Defence Force forfeits his or her full salary for every period he or she is—

- (a) absent from duty without leave;
- (b) hospitalised or otherwise absent from duty in consequence of an act prohibited by item 18(1)(a), (b) or (c) of Schedule 1; 25
- (c) detained under arrest by, or in custody of, the South African Police Service or of any statutory police force for an act or omission in respect of which he or she has subsequently been sanctioned for an act of misconduct by a military disciplinary hearing; or 30
- (d) on bail or released on his or her own recognisance by a civilian court but failed to return to duty.

(2) When a military disciplinary hearing announces a sanction in respect of a member, that military disciplinary hearing must, in relation to the act of misconduct in respect of which it has pronounced upon the member, record and explain to the member the applicable compulsory forfeitures of salary contemplated in subsection (1). 35

(3) If one of the incidents contemplated in subsection (1) occurs, a member forfeits—

- (a) the full salary for the period during which he or she is absent, in custody or hospitalised or released from custody; or
- (b) that portion of the salary that the Chief of the Defence Force or an officer authorised for that purpose may determine, the amount to be withheld or forfeited, 40

subject to subsection (5).

(4) The full amount withheld under subsection (3) must be paid to the member from whom it has been withheld if the appropriate departmental authority or a military disciplinary hearing determines that the circumstances contemplated in subsection (1) for the forfeiture of that member's salary did not exist. 45

(5) For the purpose of calculating any amount to be forfeited in terms of this section, any period of—

- (a) three working hours or less, must not be taken into account; and 50
- (b) 24 hours is deemed to be one day.

Compensation for loss of or damage to public property

130. (1) When a military disciplinary hearing imposes upon any member any sanction for misconduct, other than misconduct relating to the authorised driving of a motor vehicle, and the act or omission constituting that misconduct has caused a loss of or 55

damage to public property or property belonging to any institution, the military disciplinary hearing must, subject to subsection (4), order that the member be placed under deduction of salary to the amount of the loss or damage limited to the maximum amount of R5 000.00 per month: Provided that where the military disciplinary hearing is satisfied that the misconduct was committed negligently, it may order that the member be placed under deduction of salary to a lesser amount that it may determine in its discretion. 5

(2) Any amount deducted from a member's salary in pursuance of an order made under subsection (1) in respect of the loss of, or damage to, property belonging to any institution or the Department, must be paid or credited by the Chief Paymaster to the institution concerned or the Department. 10

(3) When making an order under subsection (1) in circumstances in which more than one member has been sanctioned, the military disciplinary hearing must order that the amount in question, limited to the maximum total amount of R5 000.00, be recovered from them in equal proportions. 15

(4) When a military disciplinary hearing imposes upon any member any sanction for misconduct in terms of item 2 of Schedule 2, it must order that such equipment, kit or any public property or any property issued to him or her at public expense, excluding controlled items, be replaced or repaired and that the costs involved in such replacement or repair, limited to the maximum amount of R5 000.00, be recovered from the member concerned. 20

Orders relating to compulsory rehabilitation

131. (1) When a military disciplinary hearing imposes a sanction upon any member for compulsory rehabilitation for alcohol, narcotic or substance addiction or abuse, the military disciplinary hearing must order that such compulsory rehabilitation be at the cost of the State on condition that the offender completes the programme, and if the offender fails to complete the programme, the treatment must be at the cost of the offender. 25

(2) When a military disciplinary hearing imposes upon any member a sanction of compulsory rehabilitation for alcohol, narcotic or substance addiction or abuse, the relevant healthcare practitioner must submit a report to the Officer Commanding or commanding officer stipulating the completion of the intervention programme and the success thereof. 30

Orders relating to suspension of driving licence, pilot's licence or vessel steering competency certificate 35

132. Whenever a driving licence, pilot's licence or vessel steering competency certificate of a member is suspended for a maximum period of six months, a military disciplinary hearing may order that the suspension remain effective until such offender's competence has been confirmed after being re-tested.

Scrutiny and appeal process of military disciplinary hearing 40

133. (1) Subject to subsection (3), any sanction or order pronounced or made by the military disciplinary hearing must be of immediate effect.

(2) An appeal, as prescribed, must be submitted not later than seven days after the pronouncement of the sanction.

(3) An appeal suspends the implementation of the sanction and order until such appeal process has been concluded. 45

(4) The decision of the relevant appeal authority is final.

Publication and announcement of finding, sanction and order

134. (1) Every finding, sanction or order by a military disciplinary hearing must, where no appeal has been lodged, be recorded in a register and kept in a manner determined by the Chief of the Defence Force. 50

(2) The manner of access to the register must be prescribed.

(3) Every Officer Commanding and commanding officer must at the end of each month provide his or her relevant Service Chief with the particulars of all military

disciplinary hearings finalised in his or her area of responsibility during the previous month.

(4) The record of proceedings of the military disciplinary hearing when returned to the unit must be filed upon the sanctioned member's personnel file and the particulars thereof must form part of such member's record of service. 5

Notification by Officer Commanding or commanding officer upon completion of military disciplinary hearing

135. The Officer Commanding or commanding officer, as the case may be, upon completion of a military disciplinary hearing subsequent to a referral in terms of section 72(2)(b) or section 117, must inform the local Senior Prosecution Counsel or investigating military police official of the outcome of the matter. 10

CHAPTER 12

MILITARY POLICE

Part 1

Chief of Defence Force and Provost Marshal General 15

Military policing, powers and duties of Chief of Defence Force

136. (1) Military policing powers, functions and duties, including municipal policing powers, functions and duties, vest in the Chief of the Defence Force for purposes of enforcing this Act or any other law, including the common law, with regard to military property or premises, and to any person who is subject to this Act or employee of the Defence Force or the Department. 20

(2) Military policing powers, functions and duties must be exercised taking into account the interests of the administration of military justice.

Appointment of Provost Marshal General

137. (1) (a) The Chief of the Defence Force must appoint as a Provost Marshal General, any appropriately qualified and suitable serving officer of the Defence Force who has— 25

- (i) not less than seven years experience in the field of military policing;
- (ii) no conviction of a criminal offence; and
- (iii) a sound character. 30

(b) The Provost Marshal General must exercise military policing powers and perform military policing functions and duties assigned to him or her by the Chief of the Defence Force.

(2) The Provost Marshal General, or any person designated in writing by him or her, may appoint an officer who is a military police official to exercise military policing powers and perform military policing functions and duties, and exercise command and control over and issue directions to military police officials under his or her command. 35

Term of office of Provost Marshal General

138. (1) The Provost Marshal General must hold office for a period determined by the Chief of the Defence Force. 40

(2) Where a specific period has been determined as contemplated in subsection (1), the Chief of the Defence Force must notify the Provost Marshal General in writing at least six months before the expiry of such period or any subsequent extended period, whether or not the term shall be extended and in the case of an extension, the period involved. 45

(3) The period provided for in subsection (2) shall not expire before six months have lapsed from the date on which the Chief of the Defence notified the Provost Marshal General in terms of subsection (2).

Powers and duties of Provost Marshal General

139. (1) The Provost Marshal General must exercise command, control and supervision over military police officials and others placed under his or her command.

(2) The Provost Marshal General or any person he or she delegated to perform such duty, must exercise control over and manage the military police in accordance with military policy. 5

(3) The Provost Marshal General may delegate, in writing, a power or duty conferred upon him or her by this Act or any other law, to any military police official who must exercise such power or perform such duty subject to the directions determined by the Provost Marshal General. 10

Powers conferred by statutory provisions

140. When exercising any military policing power or performing any military policing function or duty provided for in this Act, every statutory provision that confers any power, provides for any function or imposes any duty upon—

(a) the National Commissioner of the South African Police Service, must be construed as a reference to the Chief of the Defence Force and the Provost Marshal General; 15

(b) a member of the South African Police Service or a municipal police service holding a specified rank or office, must be construed as a reference to the military rank or office equivalent to such rank or office: Provided that a reference to a rank or office in the South African Police Service or a municipal police service must be deemed to be a reference to an equivalent or any higher rank or office in the Defence Force, except where a limitation is placed on a member of the South African Police Service or a municipal police service holding a specified rank or office; and 20

(c) a member of the South African Police Service or a municipal police service, must be construed as a reference to a military police official. 25

Part 2

Military police general provisions

Handing over of arrested person 30

141. (1) Any military police official who arrests any person not subject to this Act, must, without delay, hand such person over to the South African Police Service.

(2) In case of deployments outside the borders of the Republic, a military police official who arrests any person not subject to this Act, must hand the arrestee who is in custody or under the control of such official, at a place within that State, to an appropriate authority of that foreign State or military authorities or police authorities, and where any agreement which may have been concluded with that State exists, in accordance with the terms of such agreement. 35

Self-defence and use of force

142. When a military police official performs an official police duty, he or she may use the force, including deadly force that is reasonably necessary and proportionate in the circumstances to protect his or her own or any other person's life or personal safety. 40

Hindering or obstructing of military police official

143. Any person who resists or wilfully hinders or obstructs a military police official in the exercise of his or her powers, or the performance of his or her duties or functions, or wilfully interferes with his or her uniform or equipment or any part thereof, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years. 45

Traffic control powers and duties of military police officials

144. Subject to sections 46 and 48, and in accordance with any legislation relating to road traffic or its management, or military prescripts or instructions with regard to the regulating, operating or driving requirements of military vehicles, a military police official must at any time and in any place exercise traffic control military policing powers and perform traffic control military policing duties, which include the following powers and duties relating to traffic policing, control and inspection of licences: 5

- (a) In respect of any military motor vehicle, the power to demand from the operator or driver thereof to immediately produce a licence, document or other prescribed authorisation required for the operation or driving of such vehicle; and 10
- (b) in respect of any civilian vehicle found within military property or premises, the power to demand from the operator or driver thereof to immediately produce any licence, document or other prescribed authorisation required for the operation or driving of such vehicle. 15

Confessions

145. (1) Evidence of any confession in relation to the commission of any offence must, if such confession is proved to have been freely and voluntarily made by a person, in his or her sound and sober senses and without having been unduly influenced thereto, be admissible in evidence against such person at criminal proceedings relating to such offence: Provided that— 20

- (a) a confession made to a military police official is not admissible in evidence unless confirmed and reduced to writing in the presence of a magistrate or justice of the peace appointed in terms of section 2 or contemplated in section 4 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), or in the case of a person who is subject to this Act, a magistrate, such justice of the peace, or if outside the borders of the Republic, also any Military Law Practitioner or a military police official who is a commissioned officer; and 25
- (b) where the confession is made to a magistrate, a Senior Military Judge or Military Judge and reduced to writing by him or her, or is confirmed and reduced to writing in the presence of a magistrate, a Senior Military Judge or Military Judge, the confession is, upon the mere production thereof at the proceedings in question— 30
 - (i) admissible in evidence against such person if it appears from the document in which the confession is contained that the confession was made by a person whose name corresponds to that of such person and, in the case of a confession made to a magistrate, a Senior Military Judge or Military Judge or confirmed in the presence of a magistrate or a Senior Military Judge or Military Judge through an interpreter, if a certificate by the interpreter appears on such documents to the effect that he or she interpreted truly and correctly and to the best of his or her ability with regard to the contents of the confession and any question put to such person by the magistrate, a Senior Military Judge or Military Judge; and 40
 - (ii) presumed, unless the contrary is proved, to have been freely and voluntarily made by such person, in his or her sound and sober senses and without having been unduly influenced thereto, if it appears from the document in which the confession is contained that the confession was made freely and voluntarily by such person, in his or her sound and sober senses and without having been unduly influenced thereto. 45
- (2) The prosecution may lead evidence in rebuttal of evidence adduced by an accused in rebuttal of the presumption under subsection (1)(b)(ii). 50
- (3) Any confession which is under subsection (1) inadmissible in evidence against the person who made it, becomes admissible against him or her — 55
 - (a) if he or she adduces in the relevant proceedings any evidence, either directly or in cross-examining any witness, of any oral or written statement made by him or her either as part of or in connection with such confession; and
 - (b) if such evidence is, in the opinion of the Senior Military Judge or Military Judge presiding at such proceedings, favourable to such person.

Oaths and affirmations of military police officials

146. Any person may, when required to take an oath in terms of this Part, make a solemn affirmation instead of taking the oath, and such affirmation must be made in the form contemplated in sections 147 and 148 for the applicable oath but with the words “solemnly and sincerely affirm and declare” substituted for the word “swear” and the words “So help me God” omitted. 5

Oath of appointment as Provost Marshal General

147. Every Provost Marshal General must, before commencing his or her duties of office, take the following oath of office:

“I (full particulars) swear that I will be faithful to the Republic of South Africa in the Office of the Provost Marshal General, and will obey, respect and uphold the Constitution and all other laws of the Republic; and I undertake to hold my office as Provost Marshal General with honour and dignity; and to ensure the effective administration of the military police function in the Defence Force; and to perform the functions of my office conscientiously, with fairness, integrity, diligence and impartiality and to the best of my ability. So help me God.”. 15

Oath of appointment as military police official

148. Every military police official must, before commencing his or her duties of office, take the following oath of office:

“I (full particulars) swear that I will be faithful to the Republic of South Africa as a Military Police Official, and will obey, respect and uphold the Constitution and all other laws of the Republic, and I undertake to strive to prevent and combat crime, maintain law and order and uphold and enforce the law with honour and dignity, and to perform the functions of my office conscientiously, with fairness, integrity, diligence and impartiality and to the best of my ability. So help me God.”. 20 25

Military order policing capability

149. (1) The Chief of the Defence Force may ensue or cause a military order policing capability in the Department.

(2) The Provost Marshall General or any person designated in writing by him or her may deploy the military order policing capability or any part thereof. 30

Military special crime investigation capability

150. (1) The Chief of the Defence Force may ensue or cause a military special crime investigation capability to prevent, combat and investigate priority offences, in particular fraud and corruption and organised crime in the Department.

(2) The military special crime investigation capability must follow a multi-disciplinary approach and an integrated methodology involving the cooperation of all relevant units, government departments and institutions. 35

CHAPTER 13

GENERAL PROVISIONS, REGULATIONS, RULES, TRANSITIONAL PROVISIONS AND REPEAL OF LAWS 40

Part 1

General provisions

Suspension of privileges

151. (1) When a member—

(a) is the subject of a criminal investigation relating to civilian or military offences; 45

- (b) is the subject of any military disciplinary or criminal action, or any relevant process, enquiry or application which could lead to his or her discharge or dismissal;
- (c) has been convicted by a civilian or military court of any offence which is regarded to be of such gravity and seriousness as to justify suspension of favourable personnel actions or privileges and who has not been sentenced to discharge or dismissal from the Defence Force;
- (d) after failing the prescribed physical fitness tests, fails to comply with instructions relating to remedial action as prescribed in departmental policy; or
- (e) is suspended from the Defence Force or has been placed on compulsory leave under instruction,

his or her Officer Commanding or commanding officer may suspend any favourable personnel actions or privileges of such member.

(2) The suspension of favourable personnel action or privileges contemplated in subsection (1) may include a prohibition of a member to—

- (a) be promoted to any temporary or substantive rank with effect from a date within the period of suspension;
- (b) be functionally promoted with effect from a date within the period of suspension;
- (c) be awarded or to receive awards, medals, citations, decorations, commendations or honours;
- (d) attend any military or academic courses at State expense;
- (e) be deployed; or
- (f) benefit from any other relevant personnel action or privilege that the member may otherwise be entitled to.

(3) A favourable personnel action or privilege of a member may be suspended by his or her Officer Commanding or commanding officer for the duration of the cause that resulted in the suspension: Provided that such suspension may not exceed a period of two years from the date of the incident or occurrence and may not have retrospective effect.

(4) A record of the terms of suspension of favourable personnel actions must be filed in a member's military personnel file and may not be taken into account after a period of two years for any administrative purposes: Provided that the said record must indicate the date from which the suspension became effective and that the period of two years commences from that date.

(5) An Officer Commanding or commanding officer suspending favourable personnel action or privileges must notify the affected member in writing including reasons for the intended suspension and inform the member affected of his or her right to appeal before such intended suspension is effected against him or her.

(6) The member may, in writing, provide his or her Officer Commanding or commanding officer with reasons why the suspension should not be effected against him or her before the Officer Commanding or commanding officer takes the decision to suspend him or her.

(7) The member affected by a suspension of favourable personnel action or privilege may, at any time during such suspension or as soon as possible thereafter, through the channel of command, apply to the Chief of the Defence Force or any person he or she appointed to perform such function, to the relevant Service Chief, Divisional Chief, General Commanding Officer of a Formation or equivalent force structure, who must consider such suspension and may exercise any of the following powers:

- (a) Confirm the suspension;
- (b) revoke the suspension from a current date or with retrospective effect; or
- (c) vary the terms of the suspension.

Accused entitled to verdict after pleading

152. Save as specifically otherwise provided in this Act, an accused who has pleaded to any charge against him or her in the proceedings before a military court is entitled to apply, at the appropriate stage of the proceedings, for a verdict of his or her acquittal or on the merit of the case.

Privilege

153. Every privilege which in law attaches to communications between any practising advocate or attorney and the client of such practitioner, applies to communications between any member of the Defence Legal Services Division, law personnel and the individual or departmental client of such personnel. 5

Corrective training

154. (1) Nothing contained in this Act precludes an Officer Commanding or commanding officer or superior officer from implementing corrective training as an immediate or periodical non-punitive measure in order to correct any performance deficiency or to improve military discipline standards. 10

(2) Corrective training—

- (a) may not be used as a punishment or appear to be a punishment;
- (b) must relate directly to and specifically address the observed deficiency or non-conformity to minimum military standards; and
- (c) must be discontinued once the deficiency or non-conformity to minimum 15 military standards is corrected.

Delegation of powers by Judge Advocate General

155. (1) The Judge Advocate General may, either generally or subject to conditions, in writing, delegate to any member or suitable person any power vested in him or her in terms of this Act and may revoke or amend such delegation at any time, subject to any 20 rights that may have accrued to such person.

(2) A delegation in terms of this section does not prevent the exercise of a delegated power by the Judge Advocate General.

Administration

156. (1) The Judge Advocate General or any person delegated by him or her for this purpose may determine longer working hours or additional working days with a view to efficient completion of cases by military courts. 25

(2) Despite any other law, every determination contemplated in subsection (1) is deemed to be a valid authorisation for the payment to the personnel affected thereby of prescribed overtime remuneration in terms of the relevant regulations. 30

(3) Despite section 30, the Judge Advocate General may authorise—

- (a) any appropriately qualified person to act as Prosecution Counsel for the purposes of applying for the postponement of any case; or
- (b) any person with the right of appearance in a civilian court, to act as Prosecution Counsel before military courts. 35

(4) Any person authorised under subsection (3) to act as Prosecution Counsel is deemed to have been assigned as Prosecution Counsel in terms of this Act.

Appointment or enlistment in Defence Force

157. No person may be appointed or enlisted in the Defence Force—

- (a) unless— 40
 - (i) a police clearance certificate is obtained from the South African Police Service;
 - (ii) where so directed, a security clearance has been issued to that person in terms of section 2A(6) of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), or in terms of section 37(2) of the Defence Act; and 45
 - (iii) section 45(1)(b) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act has been complied with;
- (b) if he or she has been convicted by any civilian or military court for—
 - (i) treason, espionage, public violence, terrorism, sedition;
 - (ii) murder, culpable homicide, a sexual offence or a contravention of item 50 62 of Schedule 1;
 - (iii) kidnapping;
 - (iv) fraud, robbery or arson;

- (v) any crime in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
- (vi) any schedule 1 offence, where his or her sentence of cashiering, discharge with ignominy, discharge or dismissal from the Defence Force has been confirmed; and 5
- (vii) an attempt to commit any of these offences;
- (c) if he or she has appeared before a civilian or military court on a charge of a sexual offence and has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act or section 109 or 110 of this Act, whether committed before or after the commencement of the Criminal Law (Sexual Offences and Related Matters) Amendment Act and whether committed inside or outside the borders of the Republic or whose particulars have been included in the Register as contemplated in that Act; 10
- (d) if he or she has been declared unfit to possess a firearm by a civilian or military court; or 15
- (e) if he or she has been administratively discharged or dismissed from the Defence Force as prescribed.

Database of members

- 158.** The Chief of the Defence Force must cause the establishment and maintenance of a database of all members who have been— 20
- (a) discharged or dismissed; or
 - (b) discharged or dismissed by a military court subsequent to the confirmation of a sentence.

Responsibility of military command group in relation to discipline

- 159.** The members of the military command group are individually and jointly entrusted with the responsibility and duty for the effective and efficient enforcement and maintenance of military discipline within the Defence Force. 25

Independent performance of functions

- 160.** (1) Military Law Practitioners assigned to functions in terms of section 31 must perform those functions in a manner which is consistent with this Act, but free from executive or command interference. 30
- (2) Members assigned to functions in terms of section 30 or 156, must perform those functions in a manner as is appropriate having regard to the nature of the specific function and without fear, favour or prejudice.

Functions of Clerk of Court of Senior Military Judicial Reviews and Clerk of Court of Military Judicial Reviews 35

- 161.** (1) As soon as possible after the conclusion of a trial before a military court, the presiding Military Judge must hand the record of proceedings, mechanical recordings and documentary evidence to the Clerk of the Court of Senior Military Judicial Reviews or the Clerk of the Court of Military Judicial Reviews at the offices of the local representative of the Judge Advocate General, and the Clerk of such military court must report periodically to the local representative of the Judge Advocate General on compliance. 40
- (2) The Clerk of the Court of Senior Military Judicial Reviews or the Clerk of the Court of Military Judicial Reviews must register the case and forward it to the transcription service for transcription of the record of proceedings without delay. 45
- (3) Upon receipt of the transcription, the Clerk must submit the record of those proceedings to the appropriate Court of Senior Military Judicial Reviews or Court of Military Judicial Reviews without delay.
- (4) Where the Court of Senior Military Judicial Reviews or the Court of Military Judicial Reviews makes any ruling which affects any declaratory order made under section 93(14), including the confirmation thereof, the Clerk of such court must notify the clerk of the relevant military court *a quo* of the outcome of such ruling in writing, who must deal with the matter in accordance with section 93(15). 50

(5) The Clerk of the Court of Senior Military Judicial Reviews or the Clerk of the Court of Military Judicial Reviews must be responsible for the effective and efficient administration of the Court of Senior Military Judicial Reviews or the Court of Military Judicial Reviews.

Part 2

5

General regulations and rules

Regulations and rules

- 162.** (1) The Minister may, by notice in the *Gazette*, make regulations relating to—
- (a) the powers of the officers in charge or commanders of military prisons, military correctional facilities, military trial awaiting facilities, military police cells, military lock-up or military detachment facilities established during deployments or premises or portions thereof deemed to be military prisons, including, but not limited to, the following:
 - (i) Supervision and management;
 - (ii) the admission, safe custody and release of offenders and inmates;
 - (iii) discipline of the staff, offenders and inmates;
 - (iv) the release of offenders on parole or the remission of sentences for good behaviour;
 - (v) the rehabilitative labour that may be performed by offenders;
 - (vi) the punishments, not including corporal punishment, which may be imposed for offences in such establishments and the persons by whom, and the manner in which, such punishments may be imposed or executed;
 - (vii) the restraint which may be applied to offenders;
 - (viii) visitors;
 - (ix) inspections;
 - (x) death of offenders and inmates;
 - (xi) the extent to which all or any of the regulations under the Correctional Services Act may be applied to any establishment contemplated in this paragraph; and
 - (xii) any matter which he or she considers necessary or expedient for the purposes for which the prisons or facilities are established or such premises or portions thereof are intended;
 - (b) the segregation of accused persons from convicted persons and their treatment while in custody under this Act;
 - (c) the authorisation of any person to—
 - (i) exercise a power or jurisdiction given to the holder of any office in the Defence Force under this Act; or
 - (ii) do any act or anything under this Act, in the absence of the holder of that office;
 - (d) the serving of any sentence contemplated in section 84;
 - (e) the disclosure by any person serving in the Defence Legal Services Division, or seeking to serve therein, of information of whatever nature which may serve to ensure the maintenance of the integrity, non-partisanship, competence and fitness of character appropriate to the responsibilities imposed by this Act;
 - (f) the powers which may be necessary for, or appropriate to, the conducting of investigations or inquiries by the Judge Advocate General contemplated in section 29, including the power to summons and question witnesses and any person contemplated in section 29;
 - (g) any method additional to a warning or arrest or military court convening order contemplated in this Act for obtaining the presence of any person who is subject to this Act at a military court for the purposes of that person's appearance or arraignment as an accused;
 - (h) for the purposes of the application of section 3(1)(g), the status of non-military persons undergoing instruction at a military training institution;
 - (i) for the payment of overtime remuneration for authorised longer working hours or additional working days as determined by the Judge Advocate General or any person delegated by him or her for this purpose with a view to efficient completion of cases by military courts;

- (j) for the execution of traffic control duties or access or exit control measures performed by the military police within designated military areas, property or premises;
 - (k) the military traffic policing, control and inspection of licences of vehicles by military police officials and ancillary matters related thereto, with the concurrence of the Minister of Police and the Minister of Transport; 5
 - (l) the custodial delegations of military property or premises—
 - (i) and the standing at law to determine his or her competence to act as applicant, respondent, plaintiff, defendant or party in any legal proceedings; and 10
 - (ii) in matters arising or resulting from possession or custody or use of such property or premises and the zoning, allocation, demarcation, declaration, proclamation or control of an area as a military area, property or premises, with the concurrence of the Minister of Public Works, the Minister of Cooperative Governance and Traditional Affairs and the Minister of Rural Development and Land Reform; 15
 - (m) procedures for random testing for the possible use or abuse of alcohol or intoxicating liquor or of dependence producing drugs or drugs having a narcotic effect, by persons subject to this Act who are—
 - (i) expected or appointed to handle or operate or assist with the handling or operation of specialised military equipment or machinery or military vehicles, vessels, aircraft or equipment; or 20
 - (ii) suspected, on reasonable grounds, of the abuse of alcohol or drugs;
 - (n) measures for integrity testing of members of the military police which may include random entrapment, testing for the use or abuse of alcohol or drugs, or the use of the polygraph or similar instrument to ascertain, confirm or examine in a scientific manner the truthfulness of a statement or report made by such member; 25
 - (o) measures for the necessary taking of bodily samples from persons subject to this Act, required for any test referred to in this Act; 30
 - (p) the payment of bail in terms of section 98(11);
 - (q) the deduction of any amount of bail forfeited to the State from a member's salary or pension fund in terms of section 98(11)(b);
 - (r) additional measures for the suspension with or without pay of any person who is subject to this Act; 35
 - (s) admonitions and non-punitive administrative measures;
 - (t) suspension, administrative, automatic and summary discharge or dismissal of members of the Defence Force; and
 - (u) any other matter which must or may be prescribed in terms of this Act or which is reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act. 40
- (2) The Minister may make rules relating to the process and procedure in the conducting of military discipline.

Part 3

Transitional Provisions

45

Transitional provisions

163. (1) Every establishment, appointment or assignment made, in terms of any law repealed by this Act, is deemed to have been done under the related provisions of this Act.

(2) Any assignment given in terms of the Military Discipline Supplementary Measures Act is deemed to have been issued in terms of, and in compliance with, this Act as an assignment given under sections 31 to 33 and must expire before a minimum period of five years after the commencement of this Act. 50

(3) For the purposes of the application of subsection (1), any arrest, warning, appearance, arraignment, trial or other proceedings conducted in terms of the Military Discipline Supplementary Measures Act, must, in relation to a trial which has not been completed at the time of the commencement of this Act, be deemed to have been conducted in terms of the related provisions of this Act. 55

(4) For the purposes of the application of subsection (1), every finding, sentence or order pronounced, imposed or made in terms of any law repealed by this Act, before the commencement of this Act, is as valid and effectual and must be given effect to as if it had been pronounced, is deemed to have been imposed, or made in terms of this Act.

(5) The review of the proceedings of every trial before a military court at which a sentence was imposed, which trial was completed immediately before the commencement of this Act, must be conducted by the relevant Review Authority exercising the competence conferred on it by, and in accordance with, the provisions of this Act. 5

(6) The promulgation and execution of every sentence imposed or order made by a military court at a trial completed before the commencement of this Act must— 10

(a) if not yet promulgated, be promulgated on completion of the required review contemplated in subsection (5); and

(b) if such sentence or order has not been executed, be effected in accordance with the applicable provisions of this Act.

(7) For the purposes of finalising pending proceedings before a military court or a matter designated for review purposes in terms of the Military Discipline Supplementary Measures Act, all such cases or proceedings that commenced before the commencement of this Act must be dealt with and finalised in accordance with the provisions of the Military Discipline Supplementary Measures Act, and the functionaries who commenced dealing with such cases or proceedings are deemed to have the assignments they had at the commencement of such cases or proceedings under the Military Discipline Supplementary Measures Act until the conclusion thereof. 15 20

(8) No penalty imposed in terms of this Act in respect of an act or omission which took place before this Act came into operation may exceed the maximum penalty which could have been imposed on the date when the act or omission took place. 25

(9) Any officer who, immediately before the commencement of this Act, was exercising a function to which such officer was assigned to in terms of section 13 of the Military Discipline Supplementary Measures Act, must be deemed as having been so assigned in terms of the corresponding provisions of this Act.

Part 4 30

Repeal of laws, short title and commencement

Repeal of laws

164. The Acts set out in Schedule 3 are hereby repealed to the extent indicated in the third column thereof.

Short title and commencement 35

165. This Act is called the Military Discipline Act, 2019, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

DISCIPLINARY AND OTHER MILITARY OFFENCES

Definitions

1. In this Schedule, any word or expression to which a meaning has been assigned in this Act has the meaning so assigned and, unless the context otherwise indicates— 5
- “**calculated**” includes “likely”;
- “**desert**”, in relation to any person who is subject to this Act, includes, without in any way limiting its ordinary meaning—
- (a) being absent without authority from that person’s unit or formation while on service with the intention of avoiding service; 10
- (b) missing any form of transport, by which that person has been warned to travel, with the intention of either not accompanying his or her unit or formation on service or not proceeding on service; and
- (c) failing to report for any service under the Defence Act within seven days after having been called up for such service; 15
- “**improperly**” includes “without reasonable cause”;
- “**mutiny**” includes collective insubordination;
- “**scandalous**”, in relation to the conduct of an officer, includes any military or social behaviour which is so unbecoming as to ordinarily warrant the termination of such officer’s service; and 20
- “**unbecoming**” includes inappropriate, improper or disgraceful.
2. For the purposes of item 42 and the concepts “**higher authority**”, “**other authority**”, “**appropriate higher authority**” and “**duty**”, the following applies:
- (a) It is the duty of every person who is subject to this Act who is aggrieved by any act or omission of any other person who is subject to this Act and who wishes to have his or her complaint addressed by higher authority, to direct his or her complaint in writing— 25
- (i) to his or her Officer Commanding or commanding officer;
- (ii) if the complaint is not resolved within a reasonable time by his or her Officer Commanding or commanding officer and upon written notice to that Officer Commanding or commanding officer, to the officer under whose command that Officer Commanding or commanding officer is serving; 30
- (iii) if the complaint is not resolved within a reasonable time by the officer contemplated in subparagraph (ii) and upon written notice to that officer, to the next higher commander in the chain of command; and 35
- (iv) if the complaint is not resolved within a reasonable time by the commander contemplated in subparagraph (iii) and upon written notice to that commander, to the Chief of the Defence Force;
- (b) when a complaint contemplated in paragraph (a) is made to or received by a Officer Commanding, commanding officer or an officer under whose command that Officer Commanding or commanding officer is serving, the complaint must be referred to— 40
- (i) the next higher commander in the chain of command when—
- (aa) that complaint is against the person to whom it has been made or by whom it was received; or 45
- (bb) that person to whom the complaint was made is unable to resolve the complaint or otherwise satisfy the complainant within a reasonable time; or
- (ii) the Chief of the Defence Force or an officer authorised by the Chief of the Defence Force for that purpose, if the complaint is not resolved within a reasonable time by that commander; and 50
- (c) if a complaint reaches the Chief of the Defence Force or an authorised officer provided for in paragraph (b)(ii), he or she must deal with the complaint and thereafter— 55
- (i) if the complaint is still unresolved, must; or
- (ii) for any other reason, may, refer it to the Minister.

Saving

3. (1) Item 2 does not derogate from any right, recourse or remedy which a person has in law.

(2) No sentence provided for in this schedule is excluded from the provisions of section 84. 5

Offences endangering safety of forces or threatening national security

4. Any person who is subject to this Act who, being on service—

(a) shamefully abandons or surrenders or induces or compels any member on service shamefully to abandon or surrender any garrison, place, post, guard, aircraft, or vessel or military equipment which it was the duty of that person, or that other member, to defend; 10

(b) treacherously communicates with or gives intelligence to the enemy;

(c) treacherously makes known the parole, watchword or countersign to any person not entitled to receive it or treacherously gives a parole, watchword or countersign different from what he or she received; 15

(d) goes over or defects to the enemy;

(e) having been made a prisoner of war, voluntarily serves with or aids the enemy;

(f) gives to the enemy or assists the enemy to acquire arms or ammunition or any material or equipment;

(g) commits any act calculated to imperil the success or safety of the Defence Force or any force cooperating with the Defence Force or any part of any such force; or 20

(h) threatens national security,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 30 years. 25

Offences by person in command of troops, vessels or aircraft

5. Any person who is subject to this Act in command of troops of the Defence Force or of any vessel or aircraft who—

(a) when that person's duty requires him or her to engage the enemy, fails to do so or to do so as expeditiously or effectively as circumstances permit; 30

(b) being in action, without proper cause withdraws from the action or forsakes his or her post; or

(c) improperly fails to pursue an enemy or to consolidate any position gained, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 35

Offences relating to conduct in action

6. Any person who is subject to this Act who—

(a) shamefully and in the presence of the enemy abandons or casts away any arms, ammunition, equipment or tools;

(b) behaves before the enemy in such a manner as to show cowardice; 40

(c) improperly delays or discourages any action against the enemy;

(d) improperly does or omits to do anything, which act or omission—
(i) results in, or is calculated to result in, the capture by the enemy of any member of the Defence Force or of any forces cooperating with the Defence Force; 45

(ii) endangers, or is calculated to endanger, any member contemplated in subparagraph (i); or

(iii) results in, or is calculated to result in, the capture or destruction by the enemy of any aircraft, vessel or military equipment;

(e) in action or prior to going into action, acts in a manner or uses words likely to create alarm or despondency; 50

(f) without authority communicates with the enemy or sends a flag or signal of truce to the enemy;

(g) intentionally harbours or protects or provides supplies to an enemy, not being a prisoner of war; 55

- (h) is taken as a prisoner of war through want of precaution, neglect of duty or disobedience to orders;
- (i) having been taken as a prisoner of war and fails to rejoin the Defence Force when able to do so; or
- (j) intentionally prevents or discourages any person from taking any reasonable steps to rejoin the Defence Force after he or she has been captured by the enemy,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

Failure to report activities likely to endanger safety of forces 10

7. Any person who is subject to this Act who, being aware or having reasonable suspicion that any person—

- (a) is communicating with the enemy or giving intelligence to the enemy;
- (b) is giving to the enemy or is assisting the enemy to acquire arms, ammunition or any material or other military equipment; or
- (c) is about to commit any act calculated to imperil the success or safety of the Defence Force or any part of the Defence Force or any forces cooperating with the Defence Force or any part of those forces,

fails to report without delay to his or her superior officer the facts within his or her knowledge concerning the activities or contemplated or suspected activities of such person, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

Offences relating to signals, watchwords and disclosure of information

8. Any person who is subject to this Act who—

- (a) without authority or contrary to his or her duty in any way uses, alters, adjusts or interferes with any instrument, machine or device designed or used for signalling, directing or detecting;
- (b) without authority or contrary to his or her duty alters, mutilates or delays any signal;
- (c) makes known the parole, watchword or countersign to any person not entitled to receive it;
- (d) intentionally or negligently gives or conveys to a person not entitled to receive it, any parole, watchword or countersign different to that which he or she has received;
- (e) without proper authority discloses any information concerning the numbers, movements, location or preparations of the Defence Force or any part thereof or any force cooperating with it, or concerning any weapons, aircraft, vessels, stores, machines, instruments, devices or signal codes used or intended for use by the Defence Force or cooperating forces, to the prejudice of the Defence Force or cooperating forces; or
- (f) contrary to his or her duty or without authority, and subject to the Promotion of Access to Information Act—
 - (i) discloses or publishes any record or information, or is responsible for such disclosure or publication, whether by print, the electronic media, verbally or by gesture or otherwise, where such information is classified as restricted, confidential, secret or top secret or has been unclassified, or where contents thereof are in nature of a classified character for use within designated departmental channels or authority; or
 - (ii) is negligent in the performance of any duty relating to the safekeeping of any official document or classified or unclassified information, in consequence of which an unauthorised person becomes or might become aware of the contents of any official document or classified or unclassified information, to the prejudice of the Department or Defence Force or any portions thereof or officials or members or persons,

is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 25 years, and in any other case, to imprisonment for a period not exceeding 15 years.

Interference with aircraft, vehicles, vessels, weapons, machines or instruments

9. Any person who is subject to this Act who contrary to his or her duty or without proper authority alters, adjusts or interferes with any aircraft, motor vehicle, vessel, weapon, machine or instrument used or intended for use by the Defence Force or any part or accessory of any such aircraft, motor vehicle, vessel, weapon, machine or instrument, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 5

Mutiny

10. Any person who is subject to this Act who— 10
 (a) assumes leadership of, causes, takes part or joins in mutiny;
 (b) conspires with any person to mutiny or to cause mutiny in the Defence Force or join in any such mutiny;
 (c) being present at a mutiny, fails to do his or her utmost to suppress it; or
 (d) being aware or suspecting that any person is conspiring to cause any mutiny or has joined in any mutiny, fails to report without delay to his or her superior officer all the facts within his or her knowledge in that regard, 15
 is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 30 years.

Offences relating to safeguards, guards and sentries

11. Any person who is subject to this Act who— 20
 (a) forces or evades any safeguard;
 (b) hinders or assaults a sentry, guard or watch-keeper;
 (c) in any manner whatsoever prevents a sentry, guard or watch-keeper from doing his or her duty; or
 (d) occasions false alarm, 25
 is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 15 years, and in any other case, to imprisonment for a period not exceeding 10 years.

Dereliction of duty by sentry, guard or watch-keeper

12. Any person who is subject to this Act who— 30
 (a) while on sentry or guard duty or on duty as a watch-keeper leaves his or her post before he or she is regularly relieved or sleeps or is under the influence of intoxicating liquor or a drug having a narcotic effect; or
 (b) while on duty with his or her unit or at a post or guard leaves that unit, post or guard without orders or good and sufficient cause, 35
 is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 15 years, and in any other case, to imprisonment for a period not exceeding 10 years.

Desertion

13. Any person who is subject to this Act who deserts from the Defence Force is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 20 years, and in any other case, to imprisonment for a period not exceeding 10 years. 40

Absence without leave and non-attendance where required to attend

14. Any person who is subject to this Act who— 45
 (a) is absent without leave;
 (b) fails to appear at a place of parade or duty or at any other place designated by his or her superior officer or leaves any such place without good and sufficient cause;
 (c) without good and sufficient cause goes into any prohibited area or beyond the fixed confines of his or her camp; or 50

(d) being required to attend any school or other educational institution, whether civilian or otherwise, fails to attend thereat or is absent there from without leave,
is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 5

Assault and pointing of firearm

15. Any person who is subject to this Act who assaults, points a firearm at, draws any weapon against or threatens any person, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

Ill-treatment of subordinate 10

16. Any person who is subject to this Act who ill-treats any member who is by reason of rank or appointment subordinate to him or her, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

Insubordination

17. Any person who is subject to this Act who uses threatening or insulting language to, or by word or conduct displays insubordination or behaves with contempt towards his or her superior officer, is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 15 years, and in any other case, to imprisonment for a period not exceeding 10 years. 15

Malingering 20

18. (1) Any person who is subject to this Act who—
(a) malingers or feigns or produces disease or infirmity;
(b) maims or injures himself or herself with the intention of avoiding any service or duty;
(c) intentionally commits or omits to perform an act, in consequence whereof he or she becomes or is likely to become unable to perform any service or duty;
or
(d) intentionally maims or injures any person who is subject to this Act, whether at the request or with the connivance of that person or otherwise, thereby rendering that person unfit for service or duty, 30
is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

(2) The fact that a person had intended to commit suicide does not preclude his or her conviction under sub-item (1)(a), (b) or (c).

Disobeying lawful command or order 35

19. (1) Any person who is subject to this Act who in wilful defiance of authority disobeys any lawful command given personally by his or her superior officer in the execution of a duty, whether orally, in writing or by signal, is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 15 years, and in any other case, to imprisonment for a period not exceeding 10 years. 40

(2) Any person who is subject to this Act who disobeys any lawful command given by his or her superior officer, in circumstances not amounting to an offence under sub-item (1), is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 10 years, and in any other case, to imprisonment for a period not exceeding five years. 45

(3) Any person who is subject to this Act who disobeys any lawful direction of the commander of any aircraft or vessel in which he or she is being conveyed, whether that commander is a member of any armed force or a civilian, and irrespective of the rank or status of that commander, is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 15 years, and in any other case, to imprisonment for a period not exceeding 10 years. 50

(4) Any person who is subject to this Act who, being a patient in any hospital, intentionally disobeys any lawful direction concerning his or her hospital or medical treatment, given to that person by any member of the hospital staff within whose hospital duty and authority it is to give such a direction, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years. 5

(5) Any person who is subject to this Act who neglects to obey any Unit, Formation, Force, Division, Service or Defence Force or departmental order or instruction which is applicable to him or her and of which it is the duty of that person to have knowledge, is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 10 years, and in any other case, to imprisonment for a period not exceeding five years. 10

(6) Any person who is subject to this Act upon whom a suspended sentence has been imposed by a military court and who fails to comply with a condition of suspension in circumstances not otherwise amounting to an offence cognisable by a military court, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years: Provided that this sub-item does not derogate from the competence of a military court to order the suspended sentence or unexpired portion of it, to be brought into operation. 15

(7) Any person who is subject to this Act who fails to—

(a) comply with any condition on which he or she was released on parole from a military prison or correctional facility; or 20

(b) return to a military prison or correctional facility upon expiration of the period for which he or she was released on parole,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 25

(8) Any person who is subject to this Act who serves in the Ministry of Defence or Defence Secretariat and who in wilful defiance of authority fails to comply with the lawful instruction of his or her civilian supervisor, is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding five years, and in any other case, to imprisonment for a period not exceeding two years. 30

(9) Any person who is subject to this Act who serves in the Ministry of Defence or Defence Secretariat and who, in circumstances not amounting to an offence under sub-item (8), fails to comply with the lawful instruction of his or her civilian supervisor, is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding five years, and in any other case, to imprisonment for a period not exceeding three years. 35

Theft, misappropriation of property and possession of implement or object

20. (1) Any person who is subject to this Act, who—

(a) steals any public property or property belonging to any institution of the Defence Force; 40

(b) steals any property belonging to a person who is subject to this Act;

(c) receives any property referred to in paragraph (a) or (b), knowing it to have been stolen or ought reasonably to have known it to have been stolen;

(d) receives any property that was obtained dishonestly, knowing it to have been obtained dishonestly or ought reasonably to have known it to have been obtained dishonestly; or 45

(e) possesses any implement or object in respect of which there is a reasonable suspicion that it was used or is intended to be used to commit housebreaking, or to break open a motor vehicle, vessel or aircraft or to gain unlawful entry into a facility, property, motor vehicle, vessel or aircraft, and who is unable to give a satisfactory account of such possession, 50

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

(2) Any person who is subject to this Act who, being on service— 55

(a) fails to secure all public property taken from the enemy for the service of the Republic in its Defence Force;

(b) fails to give notice of or turn over to the proper authority, without delay, all captured or abandoned public property in his or her possession, custody, or control; 60

(c) engages in looting or pillaging; or

(d) contrary to his or her duty takes, appropriates, retains, buys, sells, trades in, or in any way deals in or disposes of captured or abandoned private or public property,
is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 5

(3) For the purposes of sub-item (2) “public property” means “enemy public property”.

Offences relating to acquisition or disposal of public property

21. Any person who is subject to this Act who—

(a) without authority sells, barter or otherwise disposes of or lends or pledges any public property or property belonging to any institution or, being aware or suspecting that any person is without authority selling, bartering or in any other way disposing of or lending or pledging such property, fails to report the facts within his or her knowledge in that regard to his or her superior officer without delay; 10 15

(b) when it is his or her duty to acquire by purchase or otherwise any property for the use of the State, the Defence Force or any institution, demands, solicits or accepts contrary to that person’s duty any commission, fee, reward or personal advantage in respect of such acquisition;

(c) having acquired property which it was his or her duty to acquire by purchase or otherwise for the use of the State, the Defence Force or any institution, fails or neglects to cause such property to be delivered to an appropriate place or store; or 20

(d) agrees to pay or connives at the payment of any exorbitant price for any property purchased for the use of the State, the Defence Force or any institution, 25

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.

Causing or allowing vessel or aircraft to be hazarded, stranded or wrecked

22. Any person who is subject to this Act who intentionally or negligently causes or allows a vessel or aircraft to be hazarded, stranded or wrecked, is guilty of an offence and, where no other penalty is prescribed in this Schedule or this Act, liable on conviction to imprisonment for a period not exceeding 20 years. 30

Abandoning or diverting public property or supplies

23. Any person who is subject to this Act who— 35

(a) without good and sufficient cause intentionally abandons, damages or destroys any public property or property belonging to any institution; or

(b) improperly diverts or detains supplies,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 40

Negligently losing arms, money, vehicles, vessels, animals, ammunition kits, equipment or public property

24. (1) Any person who is subject to this Act who fails—

(a) to produce when required, any firearm, other weapon, money, vehicle, vessel, animal, ammunition or other controlled item issued to him or her at public expense for use in the execution of his or her duties; 45

(b) to produce when required, any kit, equipment or any public property issued to him or her at public expense for use in the execution of his or her duties; or

(c) damages or destroys any public property or any property issued to him or her at public expense for use in the execution of his or her duties, 50

is guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (a) or (b), to imprisonment for a period not exceeding 15 years, and in any other case, to imprisonment for a period not exceeding 10 years.

(2) If in any proceedings before a military court for a contravention of sub-item (1)(a), (b), or (c), it is proved that any article or property referred to in those paragraphs which 55

is alleged in the charge to have been lost, was issued or entrusted to or held by the accused and that on a date subsequent to such issue the accused was found not to be in possession of such article or property, that military court may, in the absence of evidence to the contrary, deduce or conclude that such article or property was negligently lost by the accused. 5

Intentionally or negligently causing damage to or destruction of public property or property belonging to an institution

25. Any person who is subject to this Act who intentionally or negligently—
- (a) commits any act which causes or is likely to cause damage to or destruction of public property or property belonging to any institution; or 10
 - (b) omits to take action to prevent damage to or destruction of public property or property belonging to any institution,
- is guilty of an offence and liable on conviction to, in the case of—
- (i) the intentional commission of any act referred to in paragraph (a) or the intentional omission to prevent damage or destruction referred to in paragraph (b), imprisonment for a period not exceeding 15 years; or 15
 - (ii) the negligent commission of an act referred to in paragraph (a) or the negligent omission to prevent damage referred to in paragraph (b), imprisonment for a period not exceeding 10 years.

Deficiencies in stores, stocks or money 20

26. (1) Any person who is subject to this Act who, being responsible for stores, stocks or money in any Defence Force store, office or institution, so negligently performs his or her duties as to cause any deficiency in such stores, stocks or money, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.
- (2) If in any prosecution before a military court for a contravention of sub-item (1), it is proved that the accused as alleged in the charge was responsible for stores, stocks or money in any Defence Force store, office or institution and that while he or she was so responsible, a deficiency in such stores, stocks or money was caused, that military court may, in the absence of evidence to the contrary, deduce or conclude that the accused so negligently performed his or her duties which resulted in the said deficiency. 30

Using, removing or taking article in possession or control of, issued to or under control of person, an institution or public property

27. Any person who is subject to this Act who—
- (a) improperly uses, takes or removes from the possession or control of any person who is subject to this Act any article— 35
 - (i) issued to that person for use in the execution of his or her duties; or
 - (ii) which is the personal property of that person, without the permission of that person;
 - (b) without authority takes or removes any article of public property from its appointed place, or uses that article for any purpose other than in the public interest; or 40
 - (c) without authority takes or removes from its appointed place, or uses, any article belonging to any institution,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 45

Offences relating to driving of vehicle, flying of aircraft and controlling of vessel

28. (1) Any person who is subject to this Act who, in a reckless or negligent manner—
- (a) drives any motor vehicle at an excessive speed;
 - (b) flies an aircraft at an unauthorised altitude or in contravention of the Aviation Safety Manual; 50
 - (c) drives any motor vehicle while he or she has consumed liquor or an intoxicating drug or substance having a narcotic effect;
 - (d) steers any vessel being public property at an unauthorised depth, or in a manner endangering the safety of crew on board or in contravention of policies and directives of the South African Navy Vessel Certification 55

Authority Board, or any other Board established to facilitate material safety, harbour safety, sea safety, weapons safety or combat safety in the South African Navy; or

- (e) controls or fails to ensure the control of any vessel being public property in a manner endangering the safety of crew on board or acts in contravention with policies and directives of the South African Navy Vessel Certification Authority Board, or any other prescriptions of any Board established to facilitate weapons safety or combat safety in the South African Navy,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

(2) Any person subject to this Act who drives any—

- (a) unsafe motor vehicle on military property or premises; or
 (b) military motor vehicle which does not comply with the requirements—
 (i) for roadworthiness certification provided for in the National Road Traffic Act or in any other law; or
 (ii) of any military prescript with regard to operating or driving requirements of such vehicle,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Fraudulent enrolment or enlistment 20

29. (1) Any person who is subject to this Act who—

- (a) being a member of any portion of the Defence Force and not having been regularly discharged therefrom, enrolls or enlists in any other portion of that Force;
 (b) having been discharged with disgrace from the Defence Force or from a military organisation of any country, enrolls or enlists in the Defence Force without disclosing such discharge with disgrace at the time of his or her application, recruitment enrolment or enlistment; or
 (c) intentionally gives a false answer to any question in any application, recruitment, enrolment or enlistment procedure,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 20 years.

(2) For the purposes of this section, the expression “discharged with disgrace” means cashiered, discharged with ignominy, dismissed because of misconduct or discharged on account of imprisonment.

(3) Any person who is subject to this Act who, having given a false answer to any question in an application, recruitment, enrolment or enlistment paper, is thereupon enrolled or enlisted as a member of the Defence Force, is deemed to have been subject to this Act at the date upon which such false answer was given.

(4) Any person who is subject to this Act who appoints, enrolls, re-enrolls, enlists, re-enlists or assists to appoint, enrol, re-enrol, enlist or re-enlist, any person mentioned in sub-item (1) is guilty of an offence and liable upon conviction to imprisonment for a period not exceeding 15 years.

False statement in official document

30. Any person who is subject to this Act who— 45

- (a) intentionally makes a false statement or entry in a document made or signed by him or her that is required or made for official purposes;
 (b) negligently makes a false statement or entry in a document made or signed by him or her that is required or made for official purposes;
 (c) intentionally orders, requests, incites or permits any person to make or sign a statement or entry in a document that is required or made for official purposes, while knowing such statement or entry to be false;
 (d) when signing a document that is required or made for official purposes, intentionally leaves in blank any material part for which his or her signature is a voucher;
 (e) with the intent to deceive, alter, deface, suppress or remove any document required, made, kept or issued for official purposes; or

(f) forges any signature upon any document required, made, kept or issued for official purposes or uses any document for official purposes knowing the signature thereon to be forged,
is guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (b), to imprisonment for a period not exceeding one year, and in any other case, to imprisonment for a period not exceeding 10 years. 5

False accusation or statement

31. Any person who is subject to this Act who intentionally or negligently makes any false accusation or statement against or concerning any person subject to this Act, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 10

Scandalous behaviour

32. Any officer who behaves in a scandalous manner unbecoming the character of an officer, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 15

Drunkenness, excessive use of alcohol or drugs and driving under influence

33. Any person who is subject to this Act, who, whether on or off duty—
(a) is drunk;
(b) unfits himself or herself for the proper performance of duty by excessive use of alcohol or drugs having a narcotic effect; or
(c) drives a military vehicle, steers a vessel or flies an aircraft whilst under the influence of alcohol or drugs having a narcotic effect,
is guilty of an offence and liable on conviction—
(i) if the offence is committed while on service or on duty, to imprisonment for a period not exceeding 10 years; and
(ii) in any other case, to imprisonment for a period not exceeding five years. 20 25

Offences relating to military courts

34. (1) Any person who is subject to this Act, including any assessor, accused, witness, legal representative, appointed Prosecution Counsel and Military Defence Counselor or any other court official who—
(a) having been duly summoned, instructed or warned to attend a military court, fails to attend or to remain in attendance until authorised to leave, or fails to appear on time;
(b) being present at a military court after having been duly summoned, instructed or warned to attend, refuses to take the oath or to make an affirmation;
(c) uses threatening or insulting language or conduct at a military court or intentionally causes a disturbance or interruption thereat or intentionally commits any other act calculated to bring that court into contempt, ridicule or disrepute or affects the professional decorum of the court;
(d) in any manner not contemplated in this Act and with the intention of influencing the outcome of any trial or proceedings, communicates with any chairperson or member of a Court of Military Appeals or any Military Judge, assessor, Officer Commanding or commanding officer regarding the merits of that trial or proceedings;
(e) fails to be properly attired for military court proceedings in accordance with accepted professional dress prescripts and Service dress regulations; or
(f) brings or attempts to bring into court any unauthorised firearm or weapon,
is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 30 35 40 45
(2) Any person who is subject to this Act who, when giving evidence at a military court—
(a) refuses to answer any question which in law he or she could be compelled to answer; or
(b) refuses or fails to produce any document or thing in his or her possession or under his or her control which in law he or she could be compelled to produce, 50 55

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

(3) When during any proceedings or trial before a military court, the Military Judge instructs or warns any person who is subject to this Act, including any assessor, accused, witness or necessary official, to appear at a place, on a date and at a time, specified by that Military Judge for the continuation of those proceedings or a trial and that person fails to—

(a) so appear; or

(b) remain in attendance at such proceedings until authorised to leave,

that person is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

(4) A military court contemplated in sub-items (1)(c), (2) or (3) may, if reasonably necessary, issue a warrant of arrest contemplated in section 47(2) and may in the presence of the offender and after summary inquiry—

(a) convict the offender of contravening a provision of this section; and

(b) sentence him or her to be imprisoned for a period not exceeding 30 days, or to undergo any less severe punishment to which that person may be sentenced under this Act: Provided that any such sentence has the same effect and must be executed as if it were a sentence imposed by a military court in the course of a separate trial, and the provisions of Chapter 10, subject to the changes required by the context, apply.

(5) The Officer Commanding or commanding officer of any person who is subject to this Act, who is required to attend a military court to give evidence or to produce any document or thing thereat, who fails to comply with the instructions and make the necessary arrangements for the attendance of the accused or witness at such military court in accordance with such instructions, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Offences relating to evidence

35. (1) Any person who is subject to this Act who at an investigation, military court or military disciplinary hearing, intentionally gives false evidence under oath or affirmation, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding the maximum period of imprisonment which could in terms of this Act be imposed in respect of any offence which formed the subject of the charge in a military court in connection with which such evidence was given and in the case of an investigation or a military disciplinary hearing to imprisonment for a period not exceeding five years.

(2) Any person who is subject to this Act who has made a statement on oath or affirmation whether orally or in writing, and thereafter on another oath or affirmation makes another statement as aforesaid, which is in conflict with that first statement, is guilty of an offence and may, on a charge alleging that he or she made the two conflicting statements, and upon proof of those two conflicting statements and without proof as to which of the said statements was false, be convicted of such offence and is liable on conviction to imprisonment—

(a) for the maximum period which could in terms of this Act be imposed in respect of any offence which formed the subject of a charge in connection with which any of the statements were made; or

(b) in any other case, for a period not exceeding two years.

Offences relating to pre-trial investigation

36. Any person who is subject to this Act who—

(a) having been duly summoned or instructed to attend as a witness before a pre-trial investigation, fails to attend or to remain in attendance until authorised to leave;

(b) being present at a pre-trial investigation after having been duly summoned or warned to attend as a witness, refuses to take the oath or to make an affirmation;

(c) when giving evidence at a pre-trial investigation, refuses to answer any questions which in law he or she could be compelled to answer, or refuses or fails to produce any document, property or item in his or her possession or under his or her control which in law he or she could be compelled to produce;

- (d) intentionally gives false evidence at a pre-trial investigation under this Act; or
 - (e) uses threatening or insulting language at a pre-trial investigation or intentionally causes a disturbance or interruption thereat or intentionally commits any other act calculated to bring the recording officer or Senior Military Judge into contempt, ridicule or disrepute, 5
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Obstruction

37. Any person who is subject to this Act who—
- (a) resists or intentionally obstructs a member of the Defence Force in the performance of a duty or competence relating to the arrest, custody or confinement of a person; 10
 - (b) when called upon by any member of the Defence Force, refuses or neglects to assist that member in the performance of any duty or competence contemplated in paragraph (a); or 15
 - (c) when called upon by an appropriate civilian authority to hand over any person under his or her control accused of an offence punishable by a civilian court, unreasonably fails or neglects to do so, 15
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 20

Offences relating to arrest, appearance and arraignment

38. Any person who is subject to this Act who—
- (a) without being lawfully entitled to do so orders any person who is subject to this Act into arrest or custody;
 - (b) unnecessarily detains a person who is subject to this Act in arrest or custody; 25
 - (c) contrary to his or her duty fails to bring the case of a person who is subject to this Act before the proper authority within the time prescribed in section 80;
 - (d) having committed a person who is subject to this Act to the custody of any authorised person, fails to deliver to that authorised person, within 24 hours of such committal, an account in writing signed by himself or herself of the offence with which the person so committed is charged; 30
 - (e) having warned a person who is subject to this Act on a charge, fails to deliver to a Prosecution Counsel or the Disciplinary Adjutant of that person, within seven days of such warning, an account in writing signed by himself or herself of the offence with which the person so warned is charged; 35
 - (f) without due and just cause and when obliged and in a position to do so, fails to—
 - (i) bring or arraign a person before a military court within a period of—
 - (aa) five years after the commission of any offence other than a military disciplinary offence; or 40
 - (bb) two years after the issuing of a warning or effecting of an arrest;
 - (ii) bring or arraign a person before a military court within a period of—
 - (aa) one year after the commission of a military disciplinary offence; or
 - (bb) six months after the issuing of a warning or effecting of an arrest for a military disciplinary offence; 45
 - (iii) bring or arraign a person before a military court within a period of—
 - (aa) five years after such person ceased to be in the employ or service of the Defence Force; or
 - (bb) two years after the issuing of a warning or effecting of an arrest where such person ceased to be in the employ or service of the Defence Force, 50

where such person committed an offence other than a military disciplinary offence;
 - (iv) bring or arraign a person before a military court within a period of—
 - (aa) one year after such person ceased to be in the employ or service of the Defence Force; or 55
 - (bb) six months after the issuing of a warning or effecting of an arrest where such person ceased to be in the employ or service of the Defence Force,

- where such person committed any military disciplinary offence;
- (v) bring a person before a military disciplinary hearing within a period of—
 - (aa) five years after the commission of a misconduct; or
 - (bb) two years after the report of misconduct has been submitted in terms of Chapter 11; or
 - (vi) bring a person before a military disciplinary hearing within a period of—
 - (aa) one year after such person ceased to be in the employ or service of the Defence Force; or
 - (bb) six months after the report of misconduct has been submitted in terms of Chapter 11, where such person ceased to be in the employ or service of the Defence Force, where such person committed any misconduct,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Resisting arrest 15

- 39.** Any person who is subject to this Act who—
- (a) being ordered into arrest, refuses to obey that order;
 - (b) being arrested or ordered into arrest, assaults the person arresting or ordering him or her into arrest;
 - (c) being arrested or ordered into arrest, resists the person whose duty or competence it is to apprehend him or her, or to have him or her in charge;
 - (d) assaults any person in whose custody he or she has been placed;
 - (e) escapes from lawful custody; or
 - (f) hinders or obstructs any person lawfully carrying out a search of his or her person, property, belongings, residence or living quarters,
- is guilty of an offence and liable on conviction to imprisonment—
- (i) in a case involving assault, for a period not exceeding 10 years; or
 - (ii) in any other case, for a period not exceeding five years.

Offences relating to person in custody

- 40.** Any person who is subject to this Act who—
- (a) allows any person committed to his or her custody to escape;
 - (b) without authority releases any person committed to his or her custody; or
 - (c) uses unnecessary violence on any person in custody or otherwise ill-treats such person,
- is guilty of an offence and liable on conviction to imprisonment—
- (i) in a case involving assault, for a period not exceeding 10 years;
 - (ii) in a case involving ill-treatment, for a period not exceeding 10 years; or
 - (iii) in any other case, for a period not exceeding 10 years.

False or unfounded allegations

- 41.** (1) Any person who is subject to this Act who in any complaint made or lodged by him or her or in any document made or signed by him or her relating to the Defence Force or any other individual in the service of the Department or affecting any interest of the Defence Force or any such individual, intentionally makes a false or unfounded allegation, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.
- (2) Any person who is subject to this Act who verbally makes a false or unfounded allegation against the Department or any individual in the employ of the Department, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Offences relating to complaints or grievances 50

- 42.** Any person who is subject to this Act who—
- (a) when a complaint by a person has been made to, or received by, him or her through the chain of command, unduly delays in—
 - (i) addressing the complaint; or

- (ii) referring it to the appropriate higher authority through the chain of command when the complaint is against the person to whom it has been made or by whom it was received, or when that person is unable to resolve the complaint or otherwise to satisfy the complainant; or
 - (b) complains directly to a higher authority, to the Secretary for Defence or to the Minister when it is his or her duty to direct his or her complaint to his or her Officer Commanding or commanding officer or other authority in accordance with item 2 of this Schedule, 5
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 10

False representation concerning rank

43. Any person who is subject to this Act who, in any manner whatsoever, including through wearing of rank badges or rank stripes or other insignia of rank or other means, holds himself or herself out to be the holder of a rank other than his or her own rank in the Defence Force, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 15

Offences relating to uniforms, decorations or medals

- 44.** Any person who is subject to this Act who—
- (a) wears any decoration, medal, clasp, medal ribbon or wound stripe to which he or she is not entitled or which has been forfeited for a specific period; 20
 - (b) displays any unauthorised badge, emblem, colours or any other insignia of a political or associated organisation, trade union, religious or cultural organisation in unit lines or on any military property or premises or upon official uniform; or
 - (c) possesses or wears Service uniforms, distinctive marks or crests, other than for official purposes or controlled items to which he is not entitled, 25
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Unseemly behaviour

- 45.** Any person who is subject to this Act who— 30
- (a) behaves in an unseemly manner;
 - (b) when able to do so, does not suppress any unseemly behaviour by any person who is subject to this Act; or
 - (c) engages in the— 35
 - (i) fraternisation with the spouse of any member;
 - (ii) uttering of indecent language;
 - (iii) sexual interaction, exploitation or participation during deployments with sex workers or prostitutes or members of the local population;
 - (iv) furthering of the interests of a political or associated organisation, trade union or cultural organisation within the work environment; or 40
 - (v) displaying of insolent or indolent behaviour in the workplace,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

Riotous behaviour

- 46.** Any person who is subject to this Act who— 45
- (a) behaves in a riotous manner;
 - (b) when able to do so, does not suppress any riotous behaviour by any person who is subject to this Act;
 - (c) engages in an affray or fights with any person; or
 - (d) uses threatening, abusive, insulting or profane language, 50
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

Conduct to prejudice of military discipline

47. (1) Any person who is subject to this Act who by act or omission causes actual or potential prejudice to good order and military discipline, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

(2) Without derogating from the ordinary meaning of sub-item (1), the conduct prohibited includes any—

- (a) abuse of authority;
- (b) negligent or improper performance of a duty;
- (c) failure to perform a duty;
- (d) unauthorised communication by a person with higher or other military authority when that communication relates to his or her or any person's service, status or interest in the Defence Force, and is in disregard of the chain of command; and
- (e) engaging in recurring and persistent pestering, stalking or persecution of persons in the workplace.

Offences under customary international law, laws giving effect to international law and offences committed outside Republic

48. (1) Any person who is subject to this Act who at any place, whether inside or outside the borders of the Republic, commits any crime or offence under customary international law, which is not otherwise punishable under South African law or laws giving effect to international law, is guilty of an offence and liable on conviction to any penalty which may under section 84 be imposed by a military court.

(2) Any person who is subject to this Act who beyond the borders of the Republic commits or omits to do any act in circumstances under which he or she would, if he or she had committed or omitted to do that act in the Republic, have been guilty of a civilian offence, is guilty of an offence and liable on conviction to any penalty which may under section 84 be imposed by a military court in respect of such offence: Provided that no such penalty exceeds the maximum penalty that could be imposed by a competent civilian court if the offence in question had been committed within the Republic.

(3) Any person who is subject to this Act, who beyond the borders of the Republic, commits or omits to do any act which constitutes an offence under the national law of the country in which he or she is guilty of an offence and liable on conviction to any penalty which may under section 84 be imposed by a military court: Provided that no such penalty exceeds the maximum penalty that could be imposed in respect of such offence under the law of the country in which he or she committed the offence.

(4) Any person not subject to this Act who commits any crime or offence referred to in sub-items (1) to (3) and who thereafter becomes subject to this Act, must be deemed to have been subject to this Act at the time of the commission of the crime or offence.

Defeating the course of justice

49. Any person who is subject to this Act who—

- (a) in circumstances which do not constitute any other offence under this Schedule, obstructs or hinders any person who is subject to this Act in the exercise of any power or the performance of any duty in terms of this Act;
- (b) defeats or obstructs the course of justice; or
- (c) assists or harbours any person who is subject to this Act who to his or her knowledge has committed an offence,

is guilty of an offence and liable on conviction to—

- (i) in the case of an offence under paragraph (b) or (c), imprisonment for a period not exceeding the maximum period prescribed in law for the offence in respect of which he or she defeated or obstructed the course of justice or for the offence committed by the person he or she so assisted or harboured; and
- (ii) in the case of an offence under paragraph (a), imprisonment for a period not exceeding 15 years.

Attempting, conspiring, aiding or abetting

50. (1) Any person who is subject to this Act who attempts to commit any offence is guilty of an offence and liable on conviction to the penalties provided for in this Act for the offence he or she so attempted to commit.

(2) Any person who is subject to this Act who conspires with another person or aids, abets, induces, incites, instigates, instructs or commands a person to commit an offence, or who procures the commission of an offence, is guilty of an offence and liable on conviction to the penalties provided for in this Act for the principal offence. 5

(3) Any person who is subject to this Act who, knowing that a person who is subject to this Act has committed or is planning or attempting to commit an offence— 10

(a) being the superior officer of such person, fails to act against him or her in terms of this Act;

(b) fails to report without delay to his or her Officer Commanding or commanding officer all the facts within his or her knowledge in that regard; or

(c) fails to take reasonable action to prevent its commission, 15

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Non-compliance with provision applicable to military disciplinary hearing

51. Any person who is subject to this Act who fails to comply with or implement any provision applicable to a military disciplinary hearing is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 20

Participation in unauthorised or illegal labour or related actions

52. Any person who is subject to this Act who participates in any strike or unlawful or illegal labour action or picket, or who incites strike or unlawful or illegal labour action or picket is guilty of an offence and liable on conviction, in the case of any person who acted individually, to imprisonment for a period not exceeding five years and in any other manner to imprisonment for a period not exceeding 10 years. 25

Participation in secondary strike or conduct in contemplation or furtherance of strike

53. Any person who is subject to this Act who participates in any secondary strike, or conduct in contemplation or furtherance of a strike, or in support of a strike or in solidarity with a strike undertaken by persons other than such person against any employer, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 30

Participation in peaceful and unarmed assembly, demonstration, picket or petition in support of strike or secondary strike 35

54. Any person who is subject to this Act who participates in peaceful and unarmed assembly, demonstration, picket or petition in support of a strike or secondary strike in respect of any matter concerning either the employment relationship with the Department or any matter related to the Department, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 40

Recruitment or attempt to recruit any member of Defence Force for membership of trade union other than military trade union

55. Any person who is subject to this Act who recruits or attempts to recruit any member of the Defence Force for membership of any trade union other than a military trade union which is duly authorised to act as such, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 45

Incitement or attempt to incite member of Defence Force to participate in strikes, demonstrations or protests

56. Any person who is subject to this Act who incites or attempts to incite a member of the Defence Force to participate in strikes, demonstrations or protests prohibited in terms of the regulations, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 5

Participation by member of Defence Force in lawful, peaceful and unarmed assembly, demonstration, picket and petition in official or private capacity

57. Any person who is subject to this Act who—

(a) participates in any lawful, peaceful and unarmed assembly, demonstration, picket and petition in his or her official or private capacity; or 10

(b) incites such assembly, demonstration, picket and petition while in private clothing or uniform or wearing any part of a uniform or displaying any insignia linked to the Defence Force, in a manner which indicates in any other way employment in the Defence Force or the Department, or bearing any military rank, epaulets, qualification badges, proficiency badges, military medals and decorations, regalia, distinct military symbol or any military uniform item, 15

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years. 20

Illegal actions with regard to military or State-controlled property or premises

58. Any person who is subject to this Act who, while lawfully occupying military property or premises, or State-owned property under control of the Department, sublets such property or any part thereof, conducts prohibited business from such property or engages in any illegal or unauthorised trading therefrom, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years. 25

Unlawful use of military property or premises, or State-owned property under control of Department

59. Any person who is subject to this Act who, while lawfully occupying or is in control of military property or premises, or State-owned property under control of the Department, utilises it or allows it to be utilised for purposes other than for residential or designated official purposes or uses such property for any purpose other than authorised occupation, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years. 30

Unauthorised occupation or utilisation of military property or premises, or State-owned property under control of Department 35

60. Any person who is subject to this Act who without authority occupies or utilises military property or premises, or State-owned property under control of the Department, or allows it to be occupied or utilised, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years. 40

Illegal occupation or control of, or accommodation in military property or premises, or State-owned property under control of Department

61. Any person who is subject to this Act who is found to be illegally occupying or in control of or accommodated in military property or premises, or State-owned property under control of the Department, sublets such property or any part thereof, or engages in any illegal or unauthorised trading therefrom, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years. 45

Failure to report civilian court conviction

62. Any person who is subject to this Act who has been tried and convicted by a civilian court and fails to report the outcome of such case to his or her Officer Commanding or commanding officer within 48 hours thereof, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years. 5

Sexual and related offences

63. (1) Any person who is subject to this Act who commits or attempts to commit or conspires with any other person to commit or aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person to commit a sexual offence, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 30 years. 10

(2) Any person who is subject to this Act who displays, possesses, manufactures, prints or distributes child pornography or pornography, as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, within unit lines or on military property or premises, vehicles, aircraft, vessels or property under the control of the Defence Force, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 30 years. 15

(3) For purposes of this item, “sexual offence” includes any consensual sexual relations between a person who is subject to this Act and members of the local general population, during operational deployment outside the Republic, in exchange for food, goods, services or money, even if such exchange occurs through an intermediary. 20

Offences by civilian person handling or operating specialised military equipment

64. Any person who is subject to this Act who with the written consent of any Officer Commanding or commanding officer of any unit within the Defence Force and who is appointed to handle or operate specialised military equipment or machinery whether inside or outside the borders of the Republic, intentionally or negligently causes personal injury to any person or harm or damage to any property whilst handling or operating such equipment or machinery, is guilty of an offence and liable on conviction to a fine not exceeding R50 000.00. 25

Offences by Officer Commanding or commanding officer relating to failure to report allegation 30

65. Any Officer Commanding or commanding officer who fails to comply with the provisions of section 69 is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

Offences by military police officials relating to failure to report allegation 35

66. Any military police official who fails to comply with the provisions of section 74 or 75 is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Dereliction of duty imposed by law

67. Any member who without good cause fails to comply with a duty imposed by this Act or performs the duty negligently, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years. 40

Endangering morale of own forces or allies

68. Any member who with the intent to instill fear, create despondency or unnecessary alarm amongst own forces or allies, is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 25 years, and in any other case to imprisonment for a period not exceeding 10 years. 45

Embarking on business while on deployment

69. Any person who is subject to this Act who, beyond the borders of the Republic, while being deployed with the Defence Force or any force operating with the Defence Force, embarks on, operates, opens, initiates, negotiates to open or solicits any person, either from the host country or anywhere to open any business, enters into any prohibited financial agreement or transaction or agreement or transaction relating to land, minerals, animals of the host country, or territory or transports, conveys or assists to transport or convey, couriers or assists to courier any item involved in or destined to be used in any way in the actions prohibited above, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 25 years. 5 10

Looting and related offences

70. (1) Any member who loots any property or searches with the intent of looting—
 (a) any property which has been left exposed or unprotected in consequence of; or
 (b) from a person who has been killed, injured, captured or detained in the course of,
 of,
 armed conflict or an operation of the Defence Force or of any force cooperating with the Defence Force or in the course of the execution of a mandate from a multi-national organisation, is guilty of an offence under this section and liable on conviction to imprisonment for a period not exceeding 25 years. 15

(2) Any member who—
 (a) takes, otherwise than for the public interest, any vehicle, equipment or stores abandoned by the enemy; or
 (b) contrary to his or her duty takes, appropriates, retains, buys, sells, trades in, or in any way deals in or disposes of captured or abandoned private or public property,
 is guilty of an offence under this section and liable on conviction to imprisonment for a period not exceeding 25 years. 20 25

(3) Any person who is subject to this Act who unloads, unpacks or otherwise interferes with any goods on board a vehicle, vessel or aircraft that has been detained in the exercising of a belligerent right or under any law, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 25 years. 30

Removing, disclosing, copying of classified documents or materials or articles

71. (1) Any person who is subject to this Act who without lawful authority—
 (a) removes, copies, releases, transfers or communicates the contents of any classified document, material, article or related content which is in the lawful possession of the Department or any of its components, or the Armaments Corporation of South Africa Limited, or its subsidiaries; 35
 (b) transfers or communicates the contents of any classified document or material or related content which is in the lawful possession of any person, or the Ministry of Defence or Secretary for Defence or any component of the Defence Force or the Armaments Corporation of South Africa Limited, or its subsidiaries to any person, institution, organisation or foreign government; 40
 (c) removes, hides, copies, releases, transfers or communicates the contents of any document, record or related material from the personnel file of any member to any person, institution, organisation or foreign government or destroys, shreds, obliterates or defaces any such document, record or related material; 45
 (d) discloses any medically confidential documents, record or information of any member of the Defence Force; or
 (e) discloses any classified record or information, 50
 is guilty of an offence and liable on conviction, if he or she committed the offence while on service, to imprisonment for a period not exceeding 25 years, and in any other case to imprisonment for a period not exceeding 15 years.

Failure to report information received from enemy

72. Any person who is subject to this Act who—
 (a) receives information from or about the enemy; 55

- (b) does not make the information known to the competent authority and the information is likely to be directly or indirectly useful in operations against the enemy; and
 - (c) knows or could reasonably be expected to know that the information is likely to be directly or indirectly useful in operations against the enemy,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 25 years.

Use of force or threat of force against safeguard, guard or sentry

- 73.** Any person who is subject to this Act who—
- (a) uses force or the threat of force or intimidation against a member of the Defence Force, or of any force cooperating with the Defence Force, who is—
 - (i) on guard duty, posted or ordered to patrol;
 - (ii) on watch or sentry duty; or
 - (iii) under orders to regulate traffic by land, water or air;
 - (b) by the threat of force, compels such a person to derelict his or her safeguard, guard duty, sentry duty or watch,
- is guilty of an offence and liable on conviction to, if he or she committed the offence while on service, imprisonment for a period not exceeding five years, and in any other case to imprisonment for a period not exceeding 10 years.

Offences in relation to members of Executive and Head of Department.

- 74.** Any member of the Defence Force who uses contemptuous or disrespectful words, whether by print, the electronic or networking media, verbally, by gesture or otherwise against, towards or in relation to, or undermines the authority of, the Office of the President, the Deputy President, the Minister or the Secretary for Defence, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Offences in relation to military authority

- 75.** Any member of the Defence Force who—
- (a) uses contemptuous or disrespectful words, whether by print, the electronic or networking media, verbally, by gesture or otherwise against, towards, or in relation to, or undermines the military authority; or
 - (b) commits any conduct in flagrant and wilful defiance of military authority or uses threatening or insulting language to, or by word or conduct displays insubordination or behaves with contempt towards military authority,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

Offences relating to separation board

- 76.** Any person who is subject to this Act who—
- (a) having been duly instructed or warned to attend as a witness before separation board proceedings, fails to attend or to remain in attendance until authorised to leave;
 - (b) gives false evidence at a separation board; or
 - (c) uses threatening or insulting language at a separation board or intentionally causes a disturbance or interruption thereof or intentionally commits any other act calculated to bring the proceedings of the separation board into contempt, ridicule or disrepute,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Offences relating to military correctional facilities

- 77.** (1) Any person who is subject to this Act, who—
- (a) aids, abets, induces, incites, instigates, instructs or commands any inmate to escape from any correctional facility;

- (b) gives, hands, supplies or in any other manner makes available to any inmate any unauthorised article;
 - (c) brings an unauthorised article into any correctional facility or is found in possession thereof in any correctional facility;
 - (d) interferes with or obstructs any staff member in the execution of any duty; 5
 - (e) fails to obey any lawful or reasonable order or instruction given by any staff member;
 - (f) without authority speaks or makes contact with any inmate;
 - (g) contravenes or fails to comply with any provision of this section which it is his or her duty to comply; or 10
 - (h) attempts to commit any offence provided for in this section,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

(2) Any inmate who—

- (a) by any act or omission causes prejudice to the good order and military discipline; 15
 - (b) neglects or fails to obey any order or instruction issued in terms of this Act or disobeys any lawful command given to him or her by a staff member;
 - (c) neglects or fails to comply with any condition on which he was released on parole or to return to the correctional facility after the period for which he was released on parole has lapsed or by the time such period expires; 20
 - (d) aids, abets, induces, incites, instigates, instructs or commands any other inmate to commit any offence provided for in this section; or
 - (e) attempts to commit any offence referred to in this section,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 25

Offences relating to fingerprints and related matters

78. Any person who is subject to this Act who, with regard to any finger prints, palm prints, foot prints, body prints or photographic images provided for in this Act—

- (a) uses or allows the use of such finger prints, palm prints, foot prints, body prints or photographic images for any purpose that is not related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution; 30
 - (b) tampers with or manipulates such finger prints, palm prints, foot prints, body prints, images or the relevant process; or 35
 - (c) falsely claims such finger prints, palm prints, foot prints, body prints or images to have been taken from a specific person whilst knowing them to have been taken from another person or source,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years. 40

Torture

79. Any person who is subject to this Act who—

- (a) commits torture;
 - (b) attempts to commit torture; or 45
 - (c) incites, instigates, commands or procures any person to commit torture,
- is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 30 years.

Dishonesty and plagiarism

80. Any member who commits any form of dishonesty, including plagiarism, during examinations, assessments, tests, research or assignments, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years. 50

Conclusion of contracts

81. Any member who concludes any contract that entails a legal obligation for, or binds, the Department to another party to the contract without— 55

- (a) prior authority of his or her Officer Commanding or commanding officer; or

(b) following the prescribed processes, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 30 years.

SCHEDULE 2

MILITARY DISCIPLINARY HEARING ACTS OF MISCONDUCT 5

Absence without leave and non-attendance where required to attend

1. Any member who—
- (a) is absent without leave for a period not exceeding nine days;
 - (b) fails to appear at a place of parade or duty or at any other place appointed by his or her Officer Commanding or commanding officer, or leaves any such place without good and sufficient cause; 10
 - (c) without good and sufficient cause goes into any prohibited area or beyond the fixed confines of his or her camp; or
 - (d) being required to attend any school or other educational institution, whether civilian or otherwise, fails to attend thereat or absents himself or herself there from without leave, 15

is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act.

Losing kit or equipment 20

2. Any member who fails to produce when required, his or her kit or equipment or any public property or any property issued to him or her at public expense, excluding controlled items or items exceeding the value of R5 000.00, for personal use in the execution of his or her duties is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 25

Causing damage to or destruction of public property

3. Any member who—
- (a) commits any act which causes or is likely to cause damage to or the destruction of public property or property belonging to any institution, excluding property exceeding the value of R5 000.00; or 30
 - (b) omits to take action to prevent damage to or destruction of public property or property belonging to any institution, excluding property exceeding the value of R5 000.00,

is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 35

Deficiencies in stores

4. Any member who, being responsible for stores, stocks or monies in any Defence Force store, office or institution, so performs his or her duties as to cause any deficiency in such stores, stocks or monies not exceeding the value of R5 000.00 is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 40

Acts of misconduct in relation to military disciplinary hearing

5. (1) Any member who—
- (a) having been duly instructed or warned to attend as a witness before a military disciplinary hearing, fails to attend or to remain in attendance until authorised to leave; 45
 - (b) being present at a military disciplinary hearing after having been duly summoned or warned to attend as a witness, refuses to be sworn or to affirm;

- (c) when giving evidence at a military disciplinary hearing, refuses to answer any questions which in law he could be compelled to answer, or refuses or fails to produce any document or thing in his or her possession or under his or her control which in law he could be compelled to produce; or
- (d) uses threatening or insulting language at a military disciplinary hearing or wilfully causes a disturbance or interruption thereat or wilfully commits any other act calculated or likely to bring such military disciplinary hearing into contempt, ridicule or disrepute,

is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 10

False evidence before military disciplinary hearing

6. Any member who at a military disciplinary hearing gives false evidence is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act.

Refusing to answer questions or produce documents, or giving false evidence at military disciplinary hearings or boards of inquiry 15

7. (1) Any member who—
- (a) having been duly summoned or warned to attend as a witness before a military disciplinary hearing or board of inquiry, fails to attend or to remain in attendance until authorised to leave; 20
 - (b) being present at a military disciplinary hearing or board of inquiry after having been duly summoned or warned to attend as a witness, fails or refuses to be sworn or to affirm;
 - (c) when giving evidence at a military disciplinary hearing or board of inquiry, refuses to answer any questions which in law he or she could be compelled to answer, or refuses or fails to produce any document or thing in his or her possession or under his or her control which in law he or she could be compelled to produce; or 25
 - (d) uses threatening or insulting language at a board of inquiry or military disciplinary hearing, or wilfully causes a disturbance or interruption thereat or wilfully commits any other act calculated or likely to bring the recording officer, board of inquiry or officer conducting a military disciplinary hearing into contempt, ridicule or disrepute, 30

is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 35

(2) Any member who at any investigation in terms of this Act wilfully gives false evidence is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act.

Conduct to prejudice of military discipline

8. (1) Any member who causes prejudice to good order and military discipline is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 40

(2) “Prejudice to good order and military discipline” includes but is not limited to the acts of—

- (a) fraternisation— 45
 - (i) with any learner or with any member under command;
 - (ii) between directing staff of a training institution or unit;
 - (iii) between students or learners attending a training institution or unit;
 - (iv) between superior officers and subordinates;
 - (v) between deployed members during deployments or exercises; 50
 - (vi) with another person during deployments or exercises; or
 - (vii) with the spouse of another member;
- (b) gambling on or within military property or premises;
- (c) the consumption of liquor or an intoxicating substance whilst on duty or during office hours whilst on deployments, operations or training exercises; 55
- (d) smelling of liquor whilst on duty or during office hours whilst on deployments, operations or training exercises;

- (e) non-compliance with Defence Force dress regulations;
- (f) conviction by any civilian court of offences relating to narcotic or dependence forming substances;
- (g) lending or borrowing of money from or to a subordinate member;
- (h) habitual late arrival at work or places of duty; 5
- (i) general untidiness in personal appearance and work environment;
- (j) tainting the image and good name of the Defence Force or members by means of false verbal or written accusations;
- (k) unauthorised communication with media on official matters;
- (l) prejudicing the administration, discipline or efficiency of a department, office 10 or institution of the State;
- (m) non-declaration of gifts, where declaration is required;
- (n) misusing his or her position in the Defence Force for personal gain or favour, or to promote or to prejudice the interest of any political party;
- (o) performs poorly or unsatisfactorily for reasons other than incapacity; 15
- (p) without authority sleeping whilst on duty;
- (q) indolent behaviour; or
- (r) failure to follow channels of command.

Endangering lives or safety of self or others

9. Any member who endangers or potentially endangers the lives of himself or herself or others by disregarding safety, fire rules or regulations, including emergency evacuation or bomb drills is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 20

Performing of unauthorised work 25

10. Any member who, without written official approval, performs work for compensation in a private capacity for another person or organisation either during or outside working hours is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act.

Unauthorised firearms or dangerous weapons 30

11. Any member who carries or keeps a private firearm, a dangerous weapon or unauthorised ordnances on military property or premises without authority is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act.

Refusal to obey security regulations 35

12. Any member who fails to obey security regulations is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act.

Failure to obey domestic rules

13. Any member who fails to obey the domestic rules of mess or wardroom facilities, living quarters, military sport facilities or other military institutions or units is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 40

Acts of misconduct in relation to smoking

14. Any member who, at any time, smokes on military property or premises outside a designated smoking area or who smokes in a military vehicle is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 45

Acts of misconduct relating to driving of military vehicles

15. Any member who drives a military vehicle, flies an aircraft or steers a vessel after having consumed any amount of liquor or intoxicating substance or smelling of liquor is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 5

Computer-related acts of misconduct

16. Any member who, without the necessary authority, gains access to or downloads onto any official computer or electronic storage device, any software or programmes, including computer games, pornographic material, music or other non-official material is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 10

Failure to advise on change of address or personal particulars

17. Any member who neglects to inform the relevant authority of his or her change of address or other particulars as may be required is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 15

Misconduct related to firearm

18. Any member who—

- (a) fails to maintain or clean a firearm issued to him or her;
- (b) negligently discharges a firearm under training circumstances; 20
- (c) discharges a firearm contrary to specific command under training circumstances;
- (d) fails to execute safety precautions and drills applicable to a specific firearm;
- (e) contrary to specific command, cocks a firearm whilst loaded with live ammunition under training circumstances; 25
- (f) without authority, possesses ammunition, including ball, blank, practice or drill, detonators, explosives, gases, blinds, shrapnel, grenades or bombs under training circumstances;
- (g) without authority, discharges pyrotechnics or munitions under training circumstances; 30
- (h) fails to declare ammunition, detonators, explosives, gases, blinds, shrapnel, grenades or bombs under training circumstances when required to do so;
- (i) fails to properly complete an ammunition expenditure certificate or completes such certificate contrary to actual expenditure; or
- (j) fails to comply to shooting range practices, orders or instructions, 35

is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act.

Conclusion of contracts

19. Any member who concludes any contract that entails a legal obligation for, or binds the member to another party to the contract, including a marriage contract, during deployment or operation without prior authority of his or her Officer Commanding or commanding officer is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 40

Prohibited physical relationship

20. Any member who engages in any physical or sexual relationship with any person whilst on deployment or operation is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act. 45

Escape from custody

21. Any prisoner of war who escapes from lawful custody is, upon being found guilty of such misconduct, liable to one or a combination of not more than three of the sanctions provided in section 124 of this Act.

SCHEDULE 3**REPEAL OF ACTS**

Number and year of law	Short title	Extent of repeal
Act No. 44 of 1957	Defence Act, 1957	The whole.
Act No. 16 of 1999	Military Discipline Supplementary Measures Act, 1999	The whole.

MEMORANDUM ON THE OBJECTS OF THE MILITARY DISCIPLINE BILL

1. BACKGROUND

- 1.1 The Military Discipline Bill, 2019 (“Bill”), seeks to provide for effective administration of military justice and maintenance of discipline in the Defence Force. The military is an organisation that by its nature requires command and control by commanders over the members in order to maintain discipline and build a strong force. The Constitution, 1996, requires that the Defence Force be structured and managed as a disciplined military force.
- 1.2 The Military Discipline Supplementary Measures Act, 1999, has to a certain extent dealt with the discipline matters of the members of the Defence Force. It has since emerged that the aforesaid Act does not adequately deal with all matters of discipline, especially judicial appointment, administration of courts, military police services and the internal disciplinary matters at the unit level. In order to enact legislation that would attend to all matters in one package, the Department of Defence and Military Veterans (“Department”) has therefore embarked on the process of drafting the Bill to fill the vacuum left by the Military Discipline Supplementary Measures Act, 1999.

2. OBJECTS OF THE BILL

The Bill addresses three crucial issues, namely the administration of the military judicial system, the creation and appointment of the military police services and disciplinary hearings at the unit level in the Defence Force. In this regard, the Bill aims to provide for effective administration of the military justice system and maintenance of discipline in the Defence Force, to establish and regulate military courts and the appointment of judicial officers and court officials and for the appointment of the Judge Advocate General and Provost Marshal General of the Defence Force and administrative processes.

3. CHAPTER BY CHAPTER ANALYSIS

3.1 Chapter 1

This Chapter contains provisions dealing with the objects and application of the Bill and with the extra-territorial jurisdiction of the Bill for all members of the Defence Force and all persons attached to the Defence Force. In the case of a conflict between the envisaged Military Discipline Act and the provisions of any other law, except the Constitution or an Act expressly amending the envisaged Act, the provisions of the envisaged Military Discipline Act must prevail.

3.2 Chapter 2

This Chapter 2 provides for the establishment of a military court system which comprises the following courts:

- Court of Military Appeals;
- Court for Senior Military Judicial Reviews;
- Court of Military Judicial Reviews;
- Court of Senior Military Judge; and
- Court of Military Judge.

Furthermore, this Chapter provides for the composition and jurisdiction of the aforementioned courts. Every military court must exercise its jurisdiction and powers in accordance with the spirit of the Constitution. The Chapter also provides for the appointment by the presiding Senior Military Judge or

Military Judge, of not more than two military assessors who, in his or her opinion, have the necessary experience in the administration of justice or skills in any matter which may be considered at the trial. A court of Military Appeals is the highest military court and a judgment thereof binds all other military courts.

3.3 Chapter 3

This Chapter deals with the appointment of the Judge Advocate General by the Minister, the Minister's powers in respect of assignment of functions, functions of the Judge Advocate General, period of appointment of Military Judges and Military Review Judges as well as the functions of the military Prosecution Counsel and Defence Counsel, assignment of Director, Senior Staff Officer Military Defence Counsel and Military Law Practitioners, local representative of Judge Advocate General, duties of Military Judges, Senior Military Judges, Military Judicial Review Judges and Senior Military Judicial Review Judges.

3.4 Chapter 4

This Chapter confirms the jurisdiction of civilian courts to try a person for an offence and impose a punishment and the furnishing of particulars of the outcome of a trial by the registrar or clerk of such a court to the Director Military Prosecutions or to report the outcome of such case to the relevant commanding officer or Officer Commanding of the affected member.

3.5 Chapter 5

This Chapter deals with the arrest, warning and confinement of persons who are subject to the envisaged Military Discipline Act. The Chapter further provides for the arrest of members of the Defence Force with or without a warrant. Every person arrested and not released must, after he or she has been handed over to the Disciplinary Adjutant of his or her unit or arraigned before a military court, be kept in confinement.

3.6 Chapter 6

This Chapter makes provision for investigations and pre-trial procedures. It provides for the search of arrested persons, searches with or without a warrant as well as the forfeiture and disposal of seized property after the conclusion of the military trial proceedings. Chapter 6 further provides for the procedures during pre-trial investigations by the military police, civilian police, Disciplinary Adjutant or Prosecution Counsel.

3.7 Chapter 7

This Chapter deals with the arrest of accused persons and their appearance before military courts. This includes the remand in custody of an accused and the release of an accused due to non-arraignment.

3.8 Chapter 8

This Chapter makes provision for the right of an accused person to legal representation of his or her own choice at his or her own expense and the right of the accused person to be allocated a Military Defence Counsel at State expense. The Chapter further provides for various types of sentences, fines, declaratory orders and alternative punishments that a military court is competent to impose.

3.9 Chapter 9

This Chapter deals with the promulgation and execution of sentences and orders, and matters related to the correctional confinement and segregation of

accused and convicted persons in a correctional centre, military prison, military correctional facility, military police cell, military police detachment or military lock-up.

3.10 Chapter 10

This Chapter provides for appeals and reviews. Every person who is convicted and sentenced by a military court has the right to the automatic, speedy and competent review of the proceedings of his or her trial or inquiry by a Review Authority such as the Court of Military Appeals, Court of Senior Military Judicial Reviews or Court of Military Judicial Reviews. An offender may lodge an appeal or submit an application for review to the Court of Military Appeals on the findings, sentences, court orders and substantial irregularities in military court proceedings.

3.11 Chapter 11

This Chapter provides for the composition and jurisdiction of military disciplinary hearings and the duties of military police officials with regard to allegations of misconduct, the rights of implicated members, evidence, attendance of witnesses at military disciplinary hearings, sanctions and orders of military disciplinary hearings.

3.12 Chapter 12

This Chapter provides for general military policing. Furthermore, the Chapter provides for the military policing powers, functions and duties, including municipal policing powers, functions and duties vested in the Chief of the Defence Force for purposes of enforcing the envisaged Military Discipline Act or any other law, including the common law, regarding military property or premises and any person who is subject to the envisaged Act or an employee of the Defence Force or the Department, or with regard to military property or premises. The Chapter also deals with the appointment of, and military policing powers and duties of, the Provost Marshal General.

3.13 Chapter 13

This Chapter contains general provisions such as the suspension by a commanding officer or Officer Commanding of favourable personnel actions or privileges of a member who is the subject of a criminal investigation relating to civilian or military offences or who is the subject of any military disciplinary or criminal action, or any relevant process, enquiry or application which could lead to his or her discharge or dismissal. The Chapter further provides for corrective training, delegation of powers of the Judge Advocate General to a member or suitable person, appointment or enlistment in the Defence Force and their database, regulations, rules, transitional provisions, repeal of laws, short title and commencement.

4. SCHEDULES

Schedule 1 to the envisaged Military Discipline Act lists the disciplinary and other military offences in terms of which a person who is subject to the envisaged Act may be charged and the sentences which a military court may impose for such offences. Schedule 2 lists the acts of misconduct over which a military disciplinary hearing has jurisdiction. Furthermore, Schedule 3 lists the laws which will be repealed.

5. CONSULTATION

Various consultations have been conducted within the Department and the Reserve Force Council.

6. FINANCIAL IMPLICATIONS

None.

7. ORGANISATION AND PERSONNEL IMPLICATIONS

The Bill seeks to transform the military justice system which is already staffed and has resources. It is therefore not envisaged that any new human or logistical resources will be required in the execution of these functions.

8. COMMUNICATION IMPLICATIONS

The proposals contained in the Bill were sufficiently canvassed with the affected internal stakeholders and it is envisaged that further communication will be dealt with in accordance with the chains of command of the Department.

9. CONSTITUTIONAL IMPLICATIONS

None.

10. VULNERABLE GROUPS

The Bill will enhance the protection of members of the Defence Force and respect for their human rights.

11. PARLIAMENTARY PROCEDURE

11.1 The Constitution prescribes procedures for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

11.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

11.3 The established test for classification of a Bill is that any Bill with provisions which in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more a Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

11.4 Therefore, the issue to be determined is whether the provisions contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

11.5 The Bill seeks to provide for the effective administration of the military justice system and maintenance of discipline in the Defence Force, to establish and regulate military courts and the appointment of judicial officers and court officials, to provide for the appointment of a Judge Advocate General and Provost Marshal General of the Defence Force and administrative processes.

- 11.6 The provisions of the Bill have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 11.7 In our view, the subject matter of the provisions of the Bill do not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.
- 11.8 We are therefore of the opinion that since the Bill does not deal with any of the matters listed in Schedule 4 to the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 11.9 We are also of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.